

DRAFT

CATEGORY II CONCESSION CONTRACT
UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
National Mall and Memorial Parks
Interpretive Visitor Transportation Services
CONCESSION CONTRACT NO. TC-NAMA002-11

[Name of Concessioner]

[Concessioner's address, email address, phone number]

Doing Business As [Trade Name]

Covering the Period November 1, 2011 through October 31, 2013¹

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

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IDENTIFICATION OF THE PARTIES**[CORPORATION]**

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

[PARTNERSHIP]

THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the National Capital Region, (hereinafter referred to as the "Director"), and [Concessioner Name], a partnership organized under the laws of the State of [state name], (hereinafter referred to as the "Concessioner"):

[SOLE PROPRIETORSHIP]

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 National Capital Region, (hereinafter referred to as the "Director"), and [Concessioner Name], an individual of, doing business as [Trade name], (hereinafter referred to as the "Concessioner"):

[LIMITED LIABILITY COMPANY]

THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the National Capital Region, (hereinafter referred to as the "Director"), and [Concessioner Name], a Limited Liability Company organized and existing under the laws of the State of [state name], (hereinafter referred to as the "Concessioner"):

WITNESSETH:

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

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

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

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

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

SEC. 1. TERM OF CONTRACT

This Concession Contract No. TC-NAMA002-111 ("Contract") shall be effective as (Insert Effective Date), and shall be for the term of (Insert Number {Insert Alphabetic Number Of Years} Of Years) years until its expiration on (Insert Expiration Date).

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. See also Exhibit H hereto specifying some of the pertinent requirements of the Service Contracts Act.
- (b) "Area" means the property within the boundaries of National Mall and Memorial Parks.
- (c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this Contract. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner's operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.
- (d) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this Contract and all real property improvements assigned to the Concessioner under this Contract. The United States retains title and ownership to all Concession Facilities.
- (e) "Days" shall mean calendar days.
- (f) "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.
- (g) "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.
- (h) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this Contract, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:
- (1) Intracompany earnings on account of charges to other departments of the operation (such as laundry);
 - (2) Charges for employees' meals, lodgings, and transportation;
 - (3) Cash discounts on purchases;
 - (4) Cash discounts on sales;
 - (5) Returned sales and allowances;
 - (6) Interest on money loaned or in bank accounts;
 - (7) Income from investments;
 - (8) Income from subsidiary companies outside of the Area;
 - (9) Sale of property other than that purchased in the regular course of business for the purpose of resale;

- (10) Sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;
- (11) Receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

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

(i) "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.

(j) "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.

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

(l) "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.	Interpretive Visitor Transportation Services	Nineteen stops within the District of Columbia and Virginia, from the National Mall to Columbus Plaza at Union Station via the U.S. Capitol, and to the transfer station within Arlington Cemetery.

(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.	Multi-lingual services	
	Authorize the public transportation authority to advertise the Mall service on its buses	

(b) Operation and Quality of Operation

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

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

(c) Operating Plan

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this Contract in the form of an Operating Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating Plan is attached to this Contract as Exhibit A. The Director in his discretion, after consultation with the Concessioner, may make reasonable modifications to the 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 B.

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

(3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in

accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

SEC. 4. CONCESSIONER PERSONNEL

(a) 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 Exhibits B and H.
- (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
National Mall and Memorial Parks
900 Ohio Drive, S.W.
Washington, D.C. 20024
Attn: Concession Specialist

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

[Concessioner name]
[Address]
[Attention:]

SEC. 6. ENVIRONMENTAL AND CULTURAL PROTECTION

(a) Environmental Management Objectives

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

- (1) The Concessioner, including its employees, agents and contractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.
- (2) The Concessioner shall incorporate Best Management Practices (BMPs) in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this Contract.

(b) Environmental Management Program

(1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this Contract. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.

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

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

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

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

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

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

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

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

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

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

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

(c) Environmental Performance Measurement

The Concessioner shall be evaluated by the Director on its environmental performance under this Contract, including, without limitation, compliance with the approved EMP, on at least an annual basis.

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

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

(2) **Reports.** The Concessioner shall submit to the Director copies of all documents, reports, monitoring data, manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessioner shall also submit to the Director any environmental plans for which coordination with Area operations are necessary and appropriate, as determined by the Director in accordance with Applicable Laws.

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

(4) **Notice of Violation.** The Concessioner shall give the Director in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.

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

(e) Corrective Action

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

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

(f) Indemnification and Cost Recovery for Concessioner Environmental Activities

(1) The Concessioner shall indemnify the United States in accordance with Section 11 of this Contract from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or

judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts' fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this Contract.

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

(g) Weed and Pest Management

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

(h) Protection of Cultural and Archeological Resources

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

SEC. 7. INTERPRETATION OF AREA RESOURCES

(a) Concessioner Obligations

(1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area as reflected in Area planning documents, mission statements and/or interpretive prospectuses.

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

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

(b) Director Review of Content

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

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

(a) Assignment of Concession Facilities

(1) The Director hereby assigns Concession Facilities as described in Exhibit C to the Concessioner for the purposes of this Contract. The Concessioner shall not be authorized to construct any Capital Improvements (as defined in Applicable Laws including without limitation 36 CFR Part 51) upon Area lands. The Concessioner shall not obtain a Leasehold Surrender Interest or other compensable interest in Capital Improvements constructed or installed in violation of this Contract.

(2) The Director shall from time to time amend Exhibit C to reflect changes in Concession Facilities assigned to the Concessioner.

(b) Concession Facilities Withdrawals

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

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

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

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

(c) Effect of Withdrawal

Any permanent withdrawal of assigned Concession Facilities which the Director or the Concessioner considers to be essential for the Concessioner to provide the visitor services required by this Contract will be treated as a termination of this Contract pursuant to Section 15. No compensation is due the Concessioner in these circumstances.

(d) Right of Entry

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

(e) Personal Property

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

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

(f) Condition of Concession Facilities

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

(g) Utilities

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

(2) If the Director does not provide utilities to the Concessioner, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area.

SEC. 9. MAINTENANCE**(a) Maintenance Obligation**

Subject to the limitations set forth in Section 8(a)(1) of this Contract, the Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and 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 E. The Director in his discretion may make reasonable modifications to the Maintenance Plan from time to time after consultation with the Concessioner. Such modifications shall be in furtherance of the purposes of this Contract and shall not be inconsistent with the terms and conditions of the main body of this Contract.

SEC. 10. FEES**(a) Franchise Fee**

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

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

(b) Payments Due

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

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report.

Overpayments shall be offset against the following year's fees. In the event of termination or expiration of this Contract, overpayments will first be offset against any amounts due and owing the Government and the remainder will be paid to the Concessioner.

(3) All franchise fee payments consisting of \$10,000 or more, shall be deposited 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 a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this Contract.

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

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

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

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

(7) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee (up, down or

unchanged) that is consistent with the probable value of the privileges granted by this Contract within sixty (60) days of the presentations.

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

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

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

SEC. 11. INDEMNIFICATION AND INSURANCE

(a) Indemnification

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

(b) Insurance in General

(1) The Concessioner shall obtain and maintain during the entire term of this Contract at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this Contract as determined by the Director. The initial insurance requirements are set forth below and in Exhibit F. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in similar circumstances. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

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

(3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section.

The Concessioner shall provide the Director immediate written notice of any material change in the Concessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverages.

(c) Commercial Public Liability

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

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

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

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

(d) Property Insurance

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

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

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

(4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities and/or personal property utilized in the Concessioner's operations under this Contract, as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 12 shall apply to such insurance proceeds. The Concessioner shall not be relieved of its obligations under subsection (d)(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

(5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States, 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 F.

SEC. 12. BONDS AND LIENS

(a) Bonds

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

(b) Lien

As additional security for the faithful performance by the Concessioner of its obligations under this Contract, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first

lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the Contract hereunder within the Area.

SEC. 13. ACCOUNTING RECORDS AND REPORTS

(a) Accounting System

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

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

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

(b) Annual Financial Report

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

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

(3) If annual gross receipts are between \$500,000, and \$1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

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

(c) Other Financial Reports

Balance Sheet. Within ninety (90) days of the execution of this Contract or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this Contract. The balance sheet shall be audited or reviewed, as determined by the annual gross receipts, by an independent Certified Public Accountant.

SEC. 14. OTHER REPORTING REQUIREMENTS

The following describes certain other reports required under this Contract:

(a) Insurance Certification

As specified in Section 11, the Concessioner shall, at the request of the Director, provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this Contract. The Concessioner shall give the Director immediate written notice of any material change in its insurance program, including without limitation, any cancellation of required insurance coverages.

(b) Environmental Reporting

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

(c) Miscellaneous Reports and Data

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

SEC. 15. SUSPENSION, TERMINATION, OR EXPIRATION

(a) Suspension

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

(b) Termination

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

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

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

(4) The Director may terminate this Contract upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this Contract or any part thereof

upon execution, attachment or other process of law or equity. The Director may terminate this Contract if the Director determines that the Concessioner is unable to perform the terms of Contract due to bankruptcy or insolvency.

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

(c) Notice of Bankruptcy or Insolvency

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

(d) Requirements in the Event of Termination or Expiration

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

(2) Upon termination of this Contract for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner shall, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, repair any injury occasioned by installation or removal of such property, and ensure that Concession Facilities are in at least as good condition as they were at the beginning of the term of this Contract, reasonable wear and tear excepted. The removal of such personal property must occur within thirty (30) days after the termination of this Contract for any reason or its expiration (unless the Director in particular circumstances requires immediate removal). No compensation is due the Concessioner from the Director or a successor concessioner for the Concessioner's personal property used in operations under this Contract. However, the Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner in accordance with the terms of this Contract shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.

(3) 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 G to this Contract, "Transition to New Concessioner." This section and Exhibit G shall survive the expiration or termination of this Contract.

SEC. 16. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS

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

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

SEC. 17. GENERAL PROVISIONS

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

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

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

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

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

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

(g) This Contract is subject to the provisions of 43 CFR, Part 42, 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.

(n) Exhibit H, Requirements Related to the Service Contract Act of 1965, is attached hereto and made a part hereof.

In Witness Whereof, the duly authorized representatives of the parties have executed this Contract on the dates shown below.

CONCESSIONER

UNITED STATES OF AMERICA

By _____
[Name of signer]
[Title of signer]
[Company name, if applicable]

By _____
Steve Whitesell
Regional Director, National Capital Region

DATE: _____, 20__

DATE: _____, 20__

[Corporation/Partnership/Limited Liability Company]

ATTEST:

By _____
[Name of signer]
[Title of signer]

DATE: _____, 20__

[Sole Proprietorship]

WITNESS:

NAME _____

[Name of signer]

ADDRESS _____

DATE: _____, 20__

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1) **INTRODUCTION**

This Operating Plan between (insert name) (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 National Mall and Memorial Parks (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 designations and 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.

2) **Management Responsibilities**

A) Concessioner

To achieve an effective and efficient working relationship between the Concessioner and the Service, the Concessioner must designate an on-site general manager who:

- (1) Has the authority and the managerial experience to operate the Concession Facilities and services required under the Contract;
- (2) Must employ a staff with the expertise and training to operate all services required and authorized under the Contract;
- (3) Has full authority to act as a liaison in all concession administrative and operational matters within the Area; and
- (4) Has the responsibility for implementing the policies and directives of the Service. In the absence of the General Manager, the Concessioner must designate an acting General Manager.

B) Service

- (1) The Superintendent of the Area is responsible for all operations, including concession operations. The Superintendent carries out Service Policy, including Concession Contract management. Directly, or through designated representatives, including Service concessions management staff, the Superintendent reviews, directs, and coordinates pursuant to Service Policy and Applicable Laws Concessioner activities relating to the Area, including evaluation of Concessioner services and Concession Facilities and review and approval of rates charged for all services.
- (2) Contact Information. The Service will provide to the Concessioner a current list of all appropriate points of contact.

3) **GENERAL OPERATING STANDARDS AND REQUIREMENTS**

A) Rate Determination and Approval Process

- (1) Rate Determination. All rates and charges to the public by the Concessioner must comply with the provisions of Section 3(e) of the Contract, including (without limitation) Section 3(e)'s requirements regarding approval by the Service of the rates and charges set. The reasonableness and appropriateness of rates and charges under this Contract must be determined, unless and until a different rate determination is specified by the Service, using the Competitive Market Declaration method as described in the National Park Service Concession Management Rate Approval Guide (July 2010) ("Rate Approval Guide") (a copy which can be obtained by contacting the Service) as it may be amended, supplemented, or superseded throughout the term of this Operating Plan.

(2) Rate Approval Process

- (a) Approval Timing. Rate requests must be submitted to the Superintendent for approval at least 21 days prior to implementation. Should special conditions require a quicker than normal response, the Concessioner must clearly explain these conditions in writing.
 - (b) Format of Requests. All rate increase requests must be in writing and in accordance with applicable Service Policy and provide information to substantiate the requested rates in sufficient detail for the Service to be able to replicate results using methodology specified in the Rate Approval Guide. The Service will promptly approve, disapprove, or adjust rates, using its selected comparables, and will inform the Concessioner of the approved rates and the reason for any disapproval or adjustment.
 - (c) Approved Rate Postings. The Concessioner must prominently post all rates wherever visitors make reservations.
- (3) Rate Compliance. The Service will check rate compliance during periodic operational evaluations and throughout the year. Approved rates must remain in effect until superseded by written changes approved by the Service.
- (4) Reduced Rates for Government Employees. Services may not be provided to government employees or their families without charge or at reduced rates unless they are equally available to the general public.

B) Risk Management Plan

- (1) The Concessioner must develop, maintain, and implement a Risk Management Program that is in accordance with the Occupational Safety and Health Act and Director's Order #50B, Occupational Safety and Health Program, Directors Order #50C, Public Risk Management and NPS-48, Chapter 34, Risk Management. The Concessioner must submit its initial plan to the Superintendent within 120 days of effective date of Contract execution and annually thereafter by December 31 of each year. The Concessioner must update its Risk Management Program to comply with Applicable Laws.
- (2) The elements that must be addressed in the Risk Management Program include:
- (a) Policy written and available to staff
 - (b) Safety and health official designated
 - (c) Annual Goals and Objectives have been established
 - (d) Program administration requirements have been followed
 - (e) Inspection schedule has been developed
 - (f) Inspections conducted by person(s) trained and capable of recognizing/evaluating hazards
 - (g) Inspection records kept for a minimum of three years
 - (h) "Serious hazard" deficiencies abated or action plans developed within time limits
 - (i) "Non-serious hazard" deficiencies abated or action plans developed within time limits
 - (j) Documented plan for reporting and investigating employee and visitor accidents/incidents
 - (k) All reportable accidents are being reported to NPS
 - (l) Communication of activity-related hazards occurs
 - (m) Communication of resource-related hazards occurs
 - (n) Training planned and accomplished for Supervisors
 - (o) Training planned and accomplished for safety and health official(s)
 - (p) Training planned and accomplished for employees
 - (q) Procedures are documented for all probable occurrences
 - (r) Plans are coordinated with the NPS
 - (s) Plans are distributed to employees or posted conspicuously
 - (t) Other unique risk management program requirements in this Contract are followed

- (3) **Emergency Response.** The Concessioner must provide plans and procedures, equipment and training to employees to effectively respond to releases of hazardous substances for the purpose of stopping the release associated with their operations in accordance with Applicable Laws. These must include, as applicable by regulation an Emergency Action Plan, Emergency Response Plan, Spill Prevention Control and Countermeasure (SPCC) Plan. It must include a SPCC standard operating procedures (SOP) if not required by regulation to have a SPCC Plan. These plans must be submitted to the Superintendent within 120 days of the effective date of this Contract. These stand-alone planning requirements must also be referenced as key parts of the Concessioner's Risk Management and Environmental Management Programs. Emergency response equipment must be provided as appropriate and must be maintained in good condition. These plans must be provided to the Service to be consistent with each other and integrated with Service emergency response plans.
- (4) **Hazard Communication.** The Concessioner must submit to the Superintendent, it's Hazard Communication Plan, prepared in accordance with 29 CFR 1910.1200, within 120 days of the effective date of this Contract. This plan must be referenced as part of the Concessioner's Risk Management Program.
- (5) **Safety Representative.** The Concessioner must designate one employee as the safety representative at the beginning of the Contract and update this information as necessary. This person must have the authority to make decisions within the assigned area in regards to safety concerns.

C) Environmental Management Program

The Concessioner must prepare, with guidance from the Service, an Environmental Management Program ("EMP") in accordance with Section 6 of the Contract and the plan must be updated annually. Further environmental specifications and requirements are found in other sections of this Operating Plan.

D) Recycling

The Concessioner will promote recycling on vehicles through recycling and trash containers on trams.

E) Acknowledgement of Risk

The Concessioner may require clients participating in activities to sign an acknowledgement of risk form. If the Concessioner implements such a requirement, all such forms must comply with Service requirements (as these may be amended during the term of the Contract). The Concessioner may not require Area visitors to indemnify or hold harmless the Concessioner.

- (1) The Service approved sample Visitor's Acknowledgement of Risk form is available from the Service.
- (2) The Concessioner must submit to the Superintendent for approval its proposed Visitor's Acknowledgement of Risk form with at least 30 days in advance of any proposed changes in the form. If no Visitor's Acknowledgement of Risk form must be used, the Concessioner must advise the Superintendent of this intention. The Concessioner may not request or require guests participating in activities to sign a liability waiver form, insurance disclaimer, and/or indemnification agreement.

F) Human Resources Management

- (1) **Employee Identification and Appearance.** The Concessioner must issue each employee an employee photo identification card that includes, at a minimum, his or her name and an expiration date. The Concessioner must collect these identification cards upon termination of employment or at the end of the season for seasonal employees. All employees must wear standardized clothing with a personal nametag, and be neat and clean in appearance. Employees must project a hospitable, friendly, helpful, positive attitude, and be capable and willing to answer visitors' questions and provide visitor assistance.
- (2) **Check-in and check-out procedures.** The Concessioner must implement and utilize a standardized check-in and check-out system for every employee.

- (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 fully correct any such situation.
- (4) **Employee Hiring Procedure**
 - (a) **General Manager.** The General Manager must have an appropriate background as a manager or administrator that indicates his or her ability to manage an interpretive shuttle operation.
 - (b) **Staffing Requirements.** The Concessioner must hire a sufficient number of employees to ensure high-quality visitor services throughout the operating season.
 - (c) **Drug-free Awareness and Testing Program.** The Concessioner must provide its employees with a statement of its policies regarding drug and alcohol abuse, and conduct educational program(s) for its employees to deter drug and alcohol abuse.
 - (i) The Concessioner must establish an appropriate employee drug-testing program.
 - (ii) The Concessioner must require any employee who is in a safety-sensitive position such as an equipment operator, or security-sensitive position such as one with access to room keys, to participate as appropriate in pre-employment and random drug testing. The Concessioner must make results of drug testing available to the Service upon request.
 - (iii) Should the Concessioner become aware of illegal drug use, the Concessioner must promptly report it to the Service.
 - (d) **Background Checks.** The Concessioner must ensure that comprehensive background checks are performed on all employee hires as appropriate to the position. These may include: wants/warrants check; local criminal history checks; federal criminal records check; national multi-jurisdictional database and sexual offender search; social security number trace; and driving history check. The Concessioner must not hire any employee that has any active wants or warrants (current fugitive from justice).
 - (e) **Employment of Service employees or their family members**
 - (i) The Concessioner may not employ in any status the spouses and/or dependent children of a National Mall and Memorial Parks employee, without prior Superintendent written approval.
 - (ii) The Concessioner may not employ in any status the spouses and/or dependent children of the Superintendent, Deputy Superintendent, Commercials Services Management staff, Risk Management Officer, or Public Health Service Consultant.
- (5) **Training.** The Concessioner must provide and maintain records of appropriate training as set forth below and must provide those records to the Service upon request.
 - (a) **Manuals.** The Concessioner must develop written training materials for its employees.
 - (b) **Safety.** The Concessioner must train its employees annually in its Risk Management Program.
 - (c) **Environmental Training.** The Concessioner must provide annual environmental awareness training to all employees on its Environmental Management Program.
 - (d) **Job Training.** The Concessioner must provide appropriate job training to each employee prior to duty assignments and working with the public. Training must include the following in addition to job-specific skills:
 - (i) **Customer Service.** The Concessioner must provide customer service and hospitality training for employees who have direct visitor contact.
 - (ii) **Resource, Safety, and Information Training.** The Concessioner must provide training for all employees who provide resource, safety and information.
 - (iii) **Environmental and Risk Management Training.** The Concessioner must provide environmental and risk management training to employees as required by Applicable

Laws or otherwise specified in its Environmental Management and Risk Management Programs.

- (e) Orientation. The Concessioner must provide mandatory orientation and training for its employees.
 - (i) The Concessioner must inform employees of Service regulations and requirements that affect their employment and activities while working and residing within the Area.
 - (ii) The Concessioner must orient its employees to the resources of the Area, including potential safety hazards and their mitigation.
 - (iii) The Concessioner's employee orientation training program must be on-going, allowing employees to become knowledgeable on many aspects of the Area, beyond orientation or specific job operations.
 - (iv) The Concessioner may request Service staff to present certain topics of interest.
- (f) Interpretive Training. The Service must provide interpretive skills training for all employees who provide interpretive information and/or services. The Concessioner must require such staff to attend this training. The Concessioner must work closely with the Service to improve the methods of preparing and presenting effective interpretive information. The Service must evaluate interpretive visitor services to ensure appropriateness, accuracy, and their relationship to Area interpretive themes.
- (g) Employee Handbook. The Concessioner must develop and provide all employees with an employee handbook articulating the policies and regulations of the Concessioner and the Service, and must be made available to the Service upon request.

G) Structural Fire Protection

(1) Concessioner

- (a) Structural fire and life safety procedures must be integrated in the Concessioner's Risk Management Program. The Concessioner has the responsibility to ensure that all Concession Facilities meet Federal, State, and Local codes and that appropriate fire detection and suppression equipment is installed, operated, inspected, tested, and maintained in accordance with Applicable Laws, including, but without limitation, National Fire Protection Association (NFPA) standards and NPS Reference Manual #58 (RM-58, Section 16).
- (b) The Concessioner must submit to the park, its Fire Prevention Plan, prepared in accordance with 29 CFR 1910.1200, within 120 days of the effective date of this Contract. This plan must be referenced as part of the Concessioner's Risk Management Program.
- (c) All fires and violations of applicable laws must be reported immediately to the Service.
- (d) The Concessioner must provide and maintain fire hoses, nozzles, hose boxes, and extinguishers within assigned Concession Facilities.
- (e) Fire Drills. The Concessioner must conduct routine fire drills of all Concession Facilities as required by NPS RM-58 (Structural Fire Management) as it may be amended, supplemented or superseded throughout the term of this Operating Plan. All fire drills and training must be coordinated through the office of the Chief Ranger or his/her authorized representative.
- (f) The Concessioner must employ a "no tolerance" policy and immediately terminate any employee found to have tampered with smoke or fire detectors or fire extinguishers.
- (g) The Concessioner must post a fire or emergency exit plan in its assigned area.
- (h) The Concessioner must test its battery-powered fire alarms and smoke detectors monthly and replace batteries annually.
- (i) Fire and Life Safety Systems Policy and Procedures
 - (i) The Concessioner must have a qualified fire inspector or fire protection engineer licensed by the state and approved by the Service to perform interior and exterior fire

and life safety inspections of the Concession Facilities and vehicles within 30 days of initial occupancy and on an annual basis thereafter. Written records, verifying the completion of such inspections, must be maintained by the Concessioner and provided to the Service.

- (ii) The Concessioner must contract with appropriate and qualified fire protection system contractors, licensed by the State and approved by the Service, to conduct the periodic inspection, testing and maintenance of fire and life safety systems and devices, as required by and in compliance with applicable NFPA Codes and Standards. This work can also be performed by qualified concession personnel, as approved by the Service. The systems and devices include but are not limited to:
 - Fire Detection and Notification Systems
 - Fire Suppression Systems
 - Fire Extinguishers
 - Emergency Lighting
 - Illuminated Exit Signs
- (j) Concessioner Training
 - (i) Concessioner employees meeting physical and medical qualifications must be provided opportunities to cross-train with Service personnel during regularly scheduled structural fire training activities. The Service must provide information on available training opportunities. Training must be provided by either an NPS or NFPA certified instructor.
 - (ii) Documentation of all structural fire training must be submitted to the office of the Concession Specialist.
- (k) Monthly Inspections. The Concessioner must ensure all listed devices are inspected on a monthly basis. Fire extinguisher and other fire and life safety system components and device inspections must be documented and maintained on site, and the Concessioner must provide a copy to the Service, upon request. Documentation must be maintained for a minimum of three years. A proactive fire prevention program must include prompt repair or replacement of fire protection systems and life safety systems and components that are not functioning properly. The Concessioner must maintain a file of the inspection results and have the associated documentation available for inspection when requested by the Service. Periodic inspections must include the following:
 - (i) Fire extinguishers (Visual – Monthly/Service – Annually): Periodic inspection, testing, and maintenance must be performed in accordance with the minimum requirements of NFPA 10 (standard for Portable Fire Extinguishers). Annually the Concessioner must have a licensed fire extinguisher service contractor perform the required inspection, testing, and maintenance of each extinguisher. A monthly visual inspection is required and must be performed on all fire extinguishers. Monthly visual inspections can be performed by Concessions personnel that have been properly trained, as approved by the Service. The monthly visual inspections must include the following:
 - Extinguisher is mounted in a proper place and at an appropriate height
 - Access and visibility not obstructed
 - Operating instructions facing outward
 - Seals or other tamper indicators intact
 - Pressure gauge in normal range
 - No physical damage
 - (ii) Fire Suppression Systems (Sprinkler): Periodic inspection, testing, and maintenance must be performed in accordance with the minimum requirements of NFPA 25 (Inspection, Testing, and Maintenance of Water-based Fire Suppression Systems), to include monthly visual inspections and semi-annual and annual testing and maintenance. Monthly visual inspections can be performed by concession staff that has been properly trained, as approved by the Service. Semi-annual and annual

inspection, testing, and maintenance must be performed by a licensed sprinkler system contractor.

- (iii) Fire Suppression Systems (Other, e.g. Kitchen Hood and Computer Rooms Systems): Periodic inspection, testing, and maintenance must be performed in accordance with the minimum requirements of NFPA 72 (National Fire Alarm Code). All minimum periodicity requirements for inspection, testing, and maintenance must be enforced by the Service. All inspection, testing, and maintenance must be performed by a licensed fire alarm system contractor.
- (iv) Fire Detection and Notification Systems (Fire Alarm): Periodic inspection, testing, and maintenance must be performed in accordance with the minimum requirements of NFPA 72 (National Fire Alarm Code). All minimum periodicity requirements for inspection, testing, and maintenance will be enforced by the Service. All inspection, testing, and maintenance must be performed by a licensed fire alarm system contractor.
- (v) Emergency Lighting and Illuminated Exit Signs: Periodic inspection, testing, and maintenance must be performed in accordance with the minimum requirements of NFPA 101 (Life Safety Code). All minimum periodicity requirements for inspection, testing, and maintenance must be enforced by the Service. Inspection, testing, and maintenance may be performed by concession staff, as approved by the Service.

H) Advertisements and Promotional Material

- (1) Approval. The Concessioner must submit any new or updated promotional material, including websites, to the Service for review and approval, **at least 15 days prior** to publication, distribution, broadcast, etc. The Superintendent may require the Concessioner to remove any unapproved promotional material. Submissions may be sent via electronic mail.

Commercial notices or advertisements shall not be displayed, posted, or distributed on federally owned or controlled lands within a park area unless prior written permission has been given by the Superintendent. Such permission may be granted only if the notice or advertisement is of goods, services, or facilities available within the park area and such notices and advertisements are found by the Superintendent to be desirable and necessary for the convenience and guidance of the public (36 CFR 5.1).

Visitor transportation route maps must be provided and highlight the public transit connections (such as Circulator and Metro) with the Concessioner's service.

- (2) The Concessioner must use a variety of marketing tools in order to reach diverse populations of all ages, including but not limited to, social media, websites, and paper publications (i.e. brochures, newspaper, etc.).
- (3) The Concessioner's websites must link, at a minimum, to the National Park Service website.
- (4) Social media pages must be monitored for offensive postings and inappropriate activities and offensive inappropriate postings must be removed immediately upon discovery.
- (5) The Concessioner must distribute the Service newspaper, brochure, and other information deemed necessary by the Superintendent to visitors.
- (6) All advertisements and promotional material are recommended to be published on minimum 30% post-consumer material paper and or tree-free products and double sided. The use of soy-based inks is also recommended.
- (7) Statements.
 - (a) Authorization. Advertisements must include a statement that the National Park Service and the Department of the Interior authorize the Concessioner to serve the public in the Area.
 - (b) Equal Opportunity. Advertisements for employment must state that the Concessioner is an equal opportunity employer.

I) Evaluations

- (1) The Service and the Concessioner will separately inspect and monitor Concession Facilities, Concessioner personal property and equipment, and services with respect to Service Policy,

applicable standards, authorized rates, safety, public health, fire safety, impacts on cultural and natural resources, correction of operating deficiencies, responsiveness to visitor comments, and compliance with the Contract including its Exhibits.

- (2) The Concessioner must work with Service officials to prioritize and schedule the correction of deficiencies and the implementation of improvement programs resulting from these inspections and must perform such correction and implementation within the dates agreed.
- (3) The Concessioner shall be responsible for correction of deficiencies and abatement plans within dates agreed to with the Service.
- (4) *Annual Overall Rating.* The Service will determine and provide the Concessioner with an Annual Overall Rating by April 1 for the preceding calendar year. The Annual Overall Rating will include a Contract Compliance Report and rating and an Operational Performance Report and rating.
- (5) *Contract Compliance Report.* The Contract Compliance Report and rating must consider such items as timely submission of annual financial report, timely submission of proof of general liability, timely and accurate submission of franchise fees, and automobile and workers compensation insurance.
- (6) *Operational Compliance Report.* The Operational Compliance Report and rating must consider such things as the evaluation of the Concessioner's Risk Management Program, and Periodic Operational Evaluations.
- (7) *Risk Management Program Evaluation*
 - (a) The Service will annually conduct a comprehensive evaluation of the Concessioner's Risk Management Program. Safety must also be a component of Periodic Operational Evaluations.
 - (b) Safety Inspections. The Concessioner must perform periodic interior and exterior safety inspections of all Concession Facilities and equipment in accordance with its documented Risk Management Plan. The Concessioner must ensure employee compliance with health, fire, and safety code regulations as well as Service policies and guidelines.
- (8) *Periodic Operational Evaluations.* The Service will conduct both announced and unannounced periodic operational evaluations of Concession Facilities, Concessioner personal property and equipment, and services to ensure conformance to applicable operational and maintenance standards. The Service will contact the Concessioner at the time of these evaluations so that a representative of the Concessioner may accompany the evaluator.
- (9) *Environmental Management Evaluation.* The Service will annually conduct an evaluation of the Concessioner's Environmental Management Program (EMP).

J) Lost and Found

- (1) *Lost and Found.* The Concessioner, at its own expense, must establish and provide an effective lost and found program. Procedures for the handling of lost and found property must conform to Directors Order (DO) 44, Personal Property Management Information Notice 05-01, and 41 CFR 101-48. Current versions of these documents can be obtained by contacting the Service. The Concessioner must submit its lost and found program to the Service for approval within 120 days of the effective date of the Contract.

4) Specific Operating Standards and Requirements

A) Area of Operations

- (1) *Required Services.* The Concessioner must provide and operate a visitor transportation service within the District of Columbia and Virginia in the following areas:
 - (a) Union Station, U.S. Capitol, National Mall (to include stops at the Natural History Museum, American History Museum, Air and Space Museum and the National Mall / Smithsonian Metro Stop, National Gallery of Art, National Museum of the American Indian), Washington Monument, Thomas Jefferson Memorial, Franklin Delano Roosevelt Memorial, Martin Luther King Jr. Memorial, Bureau of Engraving and Printing, Lincoln

Memorial, Arlington Cemetery Passenger Transfer Point (No Tour), Vietnam Veterans Memorial, Constitution Gardens and the World War II Memorial.

- (b) Routes subject to approval by the National Park Service. Routes must connect with public transportation routes at the Smithsonian Metro Station, Arlington Cemetery, and Union Station.
- (c) Headway must be 20 minutes.

(2) *Authorized Services*

- (a) The Concessioner may choose to provide multi-lingual services to the visitor whenever possible.
- (b) The Concessioner may also choose to provide the following services:
 - Authorize the public transportation authority to advertise the Mall service on its buses.

B) Driver Requirements

- (1) The Concessioner must conduct drug and alcohol testing for safety-sensitive positions. The Federal Transit Administration's Drug and Alcohol Testing Policy shall be used to define safety-sensitive employees used in the Concessioner's transit operations. Drug and alcohol testing for transit operations and other safety-sensitive employees shall include, but not be limited to, pre-employment, random, post-accident, and reasonable suspicion. Drivers and other holders of safety-sensitive positions found to be working under the influence of alcohol or controlled substances shall be terminated from their positions immediately and may not be rehired for driver or safety-sensitive positions for a period of five (5) years.
- (2) Drivers of passenger-carrying vehicles shall possess a valid Commercial Driver's License (appropriate class as determined by the vehicle utilized) with a passenger endorsement. Each transit driver must have a current US DOT physical card in his or her possession when operating a vehicle in transit service.
- (3) The Concessioner shall review the current Motor Vehicle Record (MVR) of each applicant for the position of transit vehicle operator and shall reject any applicant whose record contains a conviction for DUI, DWI, and/or Implied Consent within the last five (5) years.

C) Transit Vehicle Requirements

- (1) Sustainability Requirements
 - (a) *Fuel.* The concessioner will use low-sulfur fuel that contains less than 500 parts per million of sulfur content.
- (2) Equipment Requirements
 - (a) *Wheelchair lifts.* All busses will be equipped with wheel chair lifts.
 - (b) *Visitors with special access needs.* The Concessioner must communicate to the Service any difficulties experienced by physically challenged individuals relevant to transportation equipment.
- (3) Registration, Licensing, Maintenance. The Concessioner must ensure that all vehicular equipment is properly registered, licensed and maintained in accordance with all Applicable Laws.
- (4) Identification. The Concessioner must identify its vehicles with the company name and logo.
- (5) Vehicle Specifications.
 - (a) Minimum power capacity: Up to thirty (30) miles per hour fully loaded, with the capability of starting with a full load on a ten percent upward gradient and to maintain a constant climb at a minimum of 5 miles per hour.
 - (b) Each vehicle must contain a sound amplification system, with solid panels in the passenger area, and an entrance and exit door with a locking device to prevent the vehicle from moving when the rear doors are open.
 - (c) All vehicles must meet current emission standards for the District of Columbia.
 - (d) Vehicles must be equipped with a fire suppression system.

- (e) Vehicles must be able to be enclosed in inclement weather.
- (6) **Accessibility.** All vehicles shall be handicapped accessible in accordance with the Americans with Disabilities Act.
- (7) **Standby Equipment.** The Concessioner must have the capability to provide standby equipment as may be necessary to maintain the approved schedule of trips in the event of breakdown of the regular equipment.
- (8) **Emergency Facilities and Equipment.** The Concessioner must have the capability to provide emergency facilities and equipment as may be necessary to remove disabled equipment expeditiously from vehicular traffic routes.
- (9) **Vehicle Maintenance**
 - (a) All vehicle maintenance is the responsibility of the Concessioner. The Concessioner must develop (unless already provided by the vehicle manufacturer) and implement a preventive maintenance program for all systems affecting the safe and reliable operation of its vehicles.
 - (b) *Daily Inspections.* Each transit vehicle must be inspected daily, when in regular use, by the operator and by maintenance personnel as required by the Federal Motor Carrier Safety Regulations. Records of each inspection shall be retained for the life of the Contract.
 - Any safety defects found shall be corrected before the vehicle resumes transit service. Such inspections shall include, but not be limited to: brakes, steering, tires, doors, interiors (loose seats, loose/broken stanchions, flooring), lights, safety equipment (fire extinguisher, flares or triangles, emergency exits), wheelchair lifts and associated devices, and dents, scrapes, and other body damage that may be considered a hazard to passengers.
 - The Concessioner must provide for Service approval a pre- and post-trip inspection form that will be completed daily by each driver.
 - (c) *Vehicle Replacement.* Any new vehicle must be approved, in writing, by the Service prior to an order being placed with the manufacturer.
 - (d) **Fleet Management Maintenance Record System**
 - The Concessioner must maintain an up-to-date industry standard fleet management program for all vehicles used in the operation of this Contract.
 - The program must track scheduled and all other maintenance items with the intention of providing the safest and most dependable service possible.
 - The system must keep track of the maintenance projects and schedule and implement them on a timely basis. Minimum information shall include:
 1. Make
 2. Model
 3. Year
 4. Serial number
 5. Documentation or License number
 6. Preventive maintenance reports
 7. Component change-outs
 - All reports generated by the maintenance record system (including, but not limited to, preventive maintenance inspection reports, daily inspection reports, and equipment breakdown logs) shall be kept for the term of the Contract. These records must be available to the Service upon request and shall not be destroyed until the Concessioner has received written permission from the Service.
 - (e) **Cleaning and Custodial Maintenance for Vehicles**
 - Daily. Prior to departure, the trams shall be cleaned. This cleaning shall include:

- Sweeping and cleaning the floor of the vehicle.
 - Dusting and cleaning the seats as necessary. Washing and scrubbing of the full exterior; however, no detergents or any chemical harmful to the environment may be used.
 - Cleaning of all windows (if any) exterior and interior.
 - Dusting of the interior, if applicable.
 - Sweeping, vacuuming, or scrubbing of all floor areas, as appropriate, including the removal of gum, grease, oil, etc.
 - Damage. Damage to the tram interiors must be repaired within seven days of occurrence. Particular attention must be given to seat supports. Any vehicle with seat supports that cause a safety hazard (e.g. jagged edges) shall be immediately removed from service and repaired.
 - Seats. All seats that can no longer be kept clean, have graffiti or stains that cannot be cleaned, or are damaged beyond repair must be replaced.
- (f) Safety Inspections & Quality Control
- The Concessioner must implement and conduct a safety inspection and quality control program for all its vehicles and services.
 - The Service may randomly inspect the Concessioner's vehicles at any time.

D) Schedule of Operations

- (1) Basic operations must be conducted year-round, except for the Christmas and New Year's Day holidays, with hours of operation from 9am to 6:30pm beginning June 15 through Labor Day and 9:30 am to 5 pm during the remaining year.
- (2) The Concessioner may choose not to operate on days the Federal Government closes due to extreme weather conditions.
- (3) The Concessioner must inform the Service in advance if weather, road safety or other contingencies or concentrated maintenance activities dictate closing at other than scheduled times. The Service must approve any deviations from the Schedule of Operations.

E) Ticketing and Reservations

- (1) General Reservation Requirements
 - (a) The Concessioner will comply with applicable accessibility standards and requirements including a Telephone Device for the Deaf or a TDD operator service.
 - (b) The Concessioner must provide service on a first-come; first-served basis.
 - (c) The Concessioner must provide on-line ticket sales and reservations.
 - (d) The Concessioner must be able to accept the following forms of payment on each bus that is operated in the Area: cash, major credit cards and debit cards.
 - (e) The Concessioner must be able to provide receipts for all transactions at the time of the transaction.
 - (f) The Concessioner will provide a variety of ticket fares including: an all day and/or multi-day hop-on and hop-off service and a single trip fare.
 - (g) The Concessioner must not allow visitors to embark or disembark between designated stops.
- (2) Group Reservations
 - (a) All group or "packaged tour" reservation arrangements between the Concessioner and third parties (entities other than the passengers themselves) are subject to Service review and approval.
 - (b) The Concessioner may make agreements with local hotels and businesses to sell tickets for any tour offered in the Area. All ticket sales agreements are subject to prior approval by the Service.
- (3) Cancellation and Refund Policies.

- (a) The Concessioner will submit to the Service its proposed cancelation and refund policy for review and approval within 30 days of the execution of the contract.
 - (b) A full refund must be provided to groups or individuals that cancel within 48 hours of the scheduled tour date.
 - (c) The Concessioner will inform all persons making reservations of its refund and cancellation policies and fees prior to finalizing the reservation.
- (4) Tickets
- (a) Information on all tickets, whether printed or electronic, shall include the Concessioner's name and contact information, including mailing address, e-mail address, and phone number.

F) Interpretation

(1) Resource Interpretation

- (a) The Concessioner is responsible for all interpretation aboard its vehicles. This interpretation can be provided via pre-recorded messages or by other mechanical means. All text/recordings must be pre-approved by the Service before they are utilized.
- (b) Although interpretation on the trams is the responsibility of the Concessioner, Service personnel may serve as interpreters on any trip, if requested and funding for interpretive positions is available. The Concessioner will advise the Service in advance if there is a special need to have a Park Service Interpreter on board (e.g. for large school group visits, dignitaries, etc.)

(2) Passenger Safety Instructions.

- (a) The Concessioner must provide patrons with safety instruction prior to the departure of a tram from the loading area. This instruction will include cautions including but not limited to:
 - (i) Getting on and off the tram,
 - (ii) No standing while the tram is moving,
 - (iii) Keep all body parts/limbs inside the tram,
 - (iv) Do not stand on the upper level on multi-level vehicles, and beware of low hanging trees,
 - (v) Small children must sit in the aisle seat away from any open windows,
 - (vi) No eating on the tram.

(3) Accessibility.

- (a) All trams will be accessible to people in wheelchairs and will have wheelchair tie downs.
- (b) The Concessioner must make assisted listening devices available to patrons for each tour, and notify patrons that the assisted listening devices are available on request.

G) Special Events, Demonstrations, and Footraces

- (1) The Concessioner and the Service will make every effort to maintain the scheduled tours and provide uninterrupted service to the maximum extent possible. Accordingly, the following procedures will be employed for all special events and demonstrations that the Service is aware of. Demonstrations that occur as the result of individuals or groups exercising First Amendment Rights cannot always be coordinated to protect the assigned routes within the Area.
 - (a) The Concessioner and the Service will each identify one individual to maintain direct liaison with the other party.
 - (b) In the case of proposed special events, parades, races, and other activities that may affect the Concessioner's schedules and operations, the Concessioner will be notified and invited to attend planning meetings.
 - (c) The Service will provide traffic cones, barricades, and fencing restraints to facilitate crowd control and provide assistance needed to facilitate the Concessioner's vehicle's movement.

- (d) The Concessioner must have its Special Events Coordinator, Safety Officer or Operations Manager on hand during special events, demonstrations, etc., to ensure safety in operations. Exceptions may be made due to security needs.
- (e) The Service will require parade units to assemble off of the roadways, with floats and vehicles staged on 3rd, 4th, and 7th Streets, NW whenever possible.

H) Visitor Comments

- (1) The Concessioner shall make Service-approved comment cards and on-line visitor comment and feedback opportunities available to visitors in order to measure service and quality standards, pricing, and overall park experience. An adequate sample of comment cards will be distributed to customers utilizing each service offered by the Concessioner. These cards will be reviewed and tabulated.
- (2) The Concessioner must investigate and respond to all visitor complaints regarding its services within 10 business days of receipt. A copy of the initial comment, Concessioner's response, and any other supporting documentation must be promptly provided to the Service, and the Service will copy any response it makes to the Concessioner.
- (3) Visitor comments that allege misconduct by Concessioner or Service employees, or that pertain to the safety of visitors or employees, or concern the safety of Area cultural and/or natural resources, must be provided to the Superintendent upon receipt.
- (4) The Concessioner shall provide summaries of all visitor comments to the Service on a semi-annual basis, including any resultant investigations and corrective measures.
- (5) The Concessioner and the Concessions Manager will meet on a semi-annual basis to review any complaints received by the Concessioner and review the responses/solutions to the complaints.

I) Required Notices, Public Statements and Signs

The following notices must be prominently posted on all Concessioner vehicles, cash registers and payment areas within the Area:

"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. Prices are approved by the National Park Service."

Please address comments to: Superintendent

National Mall and Memorial Parks

900 Ohio Drive, S.W.

Washington, D.C., 20024

"This is a facility operated in an area under the jurisdiction of the U.S. Department of the Interior. No discrimination by segregation or other means in the furnishing of accommodations, facilities, services, or privileges on the basis of race, creed, color, ancestry, sex, age, disabling condition or national origin is permitted in the use of this facility. Violations of this prohibition are punishable by fine, imprisonment, or both."

- (1) **Public Statements.** All media inquiries concerning operations within the Area, questions about the Area, or concerning any incidents occurring within the Area, must be referred to the Public Affairs Officer. This includes all media interviews. However, media interviews and visits to Concession Facilities to report on concession operations may be done with a courtesy notification to the Public Affairs Officer.
- (2) Commercial notices or advertisements shall not be displayed, posted or distributed on federally owned or controlled land within a park area, unless prior written permission has been given by the Superintendent. Such permission may be granted only if the notice or advertisement is of goods, services, or facilities available within the park area and such notices or advertisements are found by the Superintendent to be desirable and necessary for the convenience and guidance of the public.

- (3) The Superintendent will review and approve all Concessioner signage before it is posted, erected, attached or used. Billboard advertising is prohibited. All signage will be kept to a minimum, and must be neat and professional, easy to understand, appropriately posted, and well maintained. The Concessioner is responsible for the placement and maintenance of all signs which are directly associated with the Concessioners' operation.

J) Sanitary Services

- (1) The Concessioner is responsible for providing for the cleanup and disposal of litter, trash, etc., collected on vehicles operated by the Concessioner. Trash must be removed as frequently as needed to keep the vehicles clean and well maintained to Service standards.
- (2) All trash, debris, and waste must be removed to an authorized and licensed disposal site and shall not be disposed of in trash receptacles within the Area.

K) Protection, Security

- (1) The Concessioner is responsible for securing equipment under its control and use. The Concessioner should develop and implement a crime prevention/physical security program. A copy of this plan will be kept in the park files and updated by the Concessioner as needed.
- (2) In case of a break-in, theft, or other law enforcement emergency within the Area, the Concessioner must contact the United States Park Police at (202) 610-7500 immediately upon discovering the incident or on the morning following if the incident occurred after hours. Immediately upon notifying the United States Park Police, the Concessioner will notify the Service.

L) Emergency Response Medical Services

- (1) Emergency Reporting Procedures. The Concessioner and its employees must be trained in proper emergency reporting procedures and must be instructed to provide essential information, e.g. a call back number at its location. The United States Park Police must dispatch Park Police officers and emergency personnel. Any injury sustained by a visitor or employee on a concession operated vehicle and all medical emergencies shall be immediately reported to the United States Park Police and the Service. The United States Park Police will investigate all visitor and employee accidents which require medical attention. The following United States Park Police numbers must be made available to all employees and posted at appropriate locations.
 - (a) Life-threatening emergencies: (202) 610-7500.
 - (b) Non-emergencies: (202) 610-7505
- (2) Training. The Concessioner is encouraged to allow all employees to attend emergency response and cardiopulmonary resuscitation (CPR) training.
 - (a) The Concessioner shall train and equip personnel for evacuation of employees and visitors from all vehicles used to carry visitors in the park.

5) REPORTING REQUIREMENTS

A) Concessioner Operational Reports

- (1) The following reports must be provided to the Service. The Service and/or its designated representatives must be allowed to inspect supporting documentation for all operational reports upon request.
- (2) Management Listing. The on-site General Manager must provide the Service a list identifying the Concessioner's key management and supervisory personnel by department, including their job titles, and office and emergency phone numbers, within 30 days of the Contract effective date, and subsequently when significant revisions are made.
- (3) Incident Reports. The Concessioner must immediately report to the Service the following:
 - (a) Any fatalities or visitor-related incidents which could result in a tort claim to the United States
 - (b) Property damage estimated to be over \$500
 - (c) Employee or visitor injuries requiring more than minor first aid treatment

- (d) Any fires
 - (e) Any motor vehicle accidents
 - (f) Any incident that affects the Area's cultural or natural resources
 - (g) Any known or suspected violations of the law
- (4) **Human Illness Reporting.** Information on all human communicable illnesses, whether employees or guests, is to be promptly reported to the Park Concession Specialist. This information, along with other information received, must be inspected by the U. S. Public Health Service to help identify outbreaks of illness associated with contaminated water or food sources or caused by other adverse environmental conditions. Initial reports must be made by telephone.
- (5) **Hazardous or Non-hazardous Substance Spills**
- (a) The Concessioner must immediately report spills to the United States Park Police at (202) 610-7500
 - (b) In addition, within 24 hours, the Concessioner must report spills to the following:
 - (i) National Response Center: (202) 267-2675
 - (ii) AND EPA Region 3 (215) 814-5000
 - (iii) AND state and local regulatory agencies
- (6) **Certificates of Insurance.** The Concessioner must provide annual updated statements and certificates of insurance not later than 30 days after the insurance(s) renewal date(s) and in accordance with the Contract.
- (7) **Survey and Visitor Response Data.** All surveys must be approved in advance by the Service. All customer satisfaction data collected by third parties that are provided to the Concessioner must be provided to the Service within 14 days of receipt.
- (8) **Visitor Comments.** The Concessioner must provide tabulated summaries of all visitor comments to the Area, due by the 15th of the following month in which they are received.

B) Operational Reports by Use

- (1) All operational statistics for the Concessioner's service must be included in a monthly Concessioner operational report due by the 15th day for the previous month's usage. An annual summary report shall be provided to the park by March 1st each year.
- (2) **Ticket Reports.**
 - (a) The Concessioner will provide reports that include the following statistics for each type/class of ticket sold:
 - Number of adult tickets sold
 - Number of child tickets sold
 - Number of discount tickets sold, to be further categorized by the type of discount received
 - Total number of online tickets sold
 - Total number of tickets sold by mobile credit/debit card machines
 - Total number of tickets sold by other methods, to be further categorized by the method used.
 - Overall percentage of credit/debit card transactions versus all other transactions
- (3) **Incident Reports.**
 - (a) The Concessioner will immediately report to the Service any:
 - Fatalities or incidents which could result in a tort claim to the United States
 - Property damage over \$500;
 - Employee or visitor injury requiring more than minor first aid treatment;
 - Fire or motor vehicle accident;
 - Incident that affects the Area's natural or cultural resources;

- Any known or suspected violation of law occurring within the Area.
- (b) A summary of all incidents occurring during the month shall be included in the consolidated month-end report.
- (4) Other Reports
 - (a) Americans with Disabilities Act – Annual Report
 - (b) Certificate of Insurance – Annual upon renewal
 - (c) Quarterly Comment Card Summary Results
 - (d) Annual Marketing Plan

C) Concessioner Financial Reporting

- (1) In addition to the Annual Financial Report (AFR) required in the Contract, the following financial reports must also be delivered. For these reports, the Service desires that the format be developed based on currently accepted accounting practices. Each revenue-producing department must have a supporting schedule presenting revenues, labor, and departmental expenses. The report format must be agreed upon by the Superintendent at the inception of the Contract.
- (2) Annual Budget. A budget including detailed utilization and revenue and expense projections, due by the date determined by the Service.
- (3) Financial Forecast. A financial forecast for each business activity compared to annual budget. Format used to be pre-approved and due date to be determined by Service.
- (4) Monthly Franchise Fee Report. By the 15th of the month as part of the monthly reporting, the Concessioner must report on the franchise fee deposit made for the preceding month. Reporting documentation must include a copy of the wire transfer identifying the account and the amount transferred.

D) Risk Management and Environmental Management Reports

Various periodic or incidental reports are required to meet Risk Management and Environmental Management requirements.

- (1) Risk Management Program Reporting. Accident reporting and other requirements are outlined in Section 5 of this Operating Plan.
- (2) Environmental Management Program Reporting. Environmental reporting requirements are specified in Section 6(d) of the Contract.

E) Summary of Initial and Recurring Due Dates

Title	Schedule	Due Date
Initial Requirements		
Environmental Management Program	Initial & Annual	60 days after Contract effective date
Balance Sheet	Initial	90 days after Contract execution or effective date, whichever is later
Lost and Found Plan	Initial	120 days after Contract effective date
Risk Management Plan	Initial/ Annually	120 days after Contract effective date and by December 31 annually
Hazard Communication Plan	Initial	120 days after Contract effective date
Emergency Action Plan	Initial and as updated	120 days after Contract effective date
Emergency Response Plan	Initial and as updated	120 days after Contract effective date
Spill Prevention and Control Plan or SOP	Initial and as updated	120 days after Contract effective date
Management Listing	Initial and as updated	15 days after Contract effective date
Annual		
Certificate of Insurance	Annually	30 days after renewal date
Annual Financial Report	Annually	120 days after end of Concessioner's fiscal year
Annual Overall Rating	Annually	March 1
Annual Rate Change Requests	Annually	October 1
Semi-Annually		
Comment Card Summary	Semi-Annually	July 1 st and December 31 st
Quarterly		
Summary of drug testing	Quarterly	TBD
Monthly		
Franchise Fee	Monthly	15 th day of the following month
Operational Performance Report	Monthly Annually	15 th day of following month March 1 st
Upon Occurrence		
Incident Reporting	Upon Occurrence	Immediately
Human Illness Reporting	Upon Occurrence	Immediately
Survey Response Data	Upon Occurrence	Within 14 days of receipt
Notice of Releases and Notice of Violations	Upon Occurrence	Immediately

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

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

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

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

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

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

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

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

(b) Construction, Repair, and Similar Contracts

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

(c) Facilities

(1) Definitions: As used herein:

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

(2) The Concessioner is prohibited from:

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

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 C

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

Land Assigned

NONE

Real Property Improvements Assigned

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

NONE

Approved, effective _____, 20____

By: _____
Steve Whitesell
Regional Director, National Capital Region

EXHIBIT D

ASSIGNED GOVERNMENT PERSONAL PROPERTY

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

Property Number	Description of Item
	NONE

Approved, effective _____, 20____

By: _____
Steve Whitesell
Regional Director, National Capital Region

EXHIBIT E MAINTENANCE PLAN

INTRODUCTION

This Maintenance Plan between XXXXXXXX (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 National Capital Parks-Central (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 Contract and this Maintenance Plan, the terms of the Contract, including its designations and 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, including, without limitation, Component Renewal as defined below.

This plan will remain in effect until superseded or amended. It will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of 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.

PART A – GENERAL STANDARDS

There are no maintenance requirements for this Contract.

EXHIBIT F

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 in coverage or policy terms for all property insurance. The Concessioner must provide the Service with a 30-day notice of cancellation 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 additional 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, advertising injury liability and products, and completed operations liability. The Concessioner must provide the following minimum limits of liability:

General Aggregate	\$6,000,000
Products and Completed Operations Aggregate	\$6,000,000
Per Occurrence	\$5,000,000
Personal & Advertising Injury Liability	\$5,000,000
Medical Payments	\$10,000
Damage to Premises Rented to You	\$50,000

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

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

- (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. 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. Where there are no owned autos, coverage will be provided for "hired" and "non-owned" autos, "Symbols 8 & 9".

Combined Single Limit Each Accident	\$10,000,000
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(c) Liquor Liability (not applicable)

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	\$

(d) Watercraft Liability (or Protection & 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	\$
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Marina liability shall be maintained at the same Each Occurrence Limit if the Concessioner operates a marina, and tower's liability shall be maintained at the same Each Occurrence Limit if the Concessioner tows or transports non-owned vessels by water.

(e) Marina Operator's Legal Liability (not applicable)

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

Any One Loss	\$
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(f) Aircraft Liability (not applicable)

The Concessioner must provide coverage for bodily injury 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.

(g) 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.

(h) Excess Liability or "Umbrella" Liability

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.

The Concessioner may use an Excess or "Umbrella" liability policy to achieve the Commercial General Liability and automobile liability limits set forth above. If a lower limit of liability is used for a subordinate policy, however, then the limit of liability under the excess policy must be in an amount to achieve the minimum limit of liability required for the subject policy.

(i) Care, Custody and Control – Legal Liability, i.e. Innkeeper's Legal 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	\$

(j) Professional Liability, e.g. doctors, barbers and hairdressers (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	\$

(k) Environmental Impairment Liability

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

Each Occurrence or Each Claim Limit	\$ 500,000
Aggregate Limit	\$1,000,000

(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 Concessioner operations are conducted in proximity to navigable waters, United States Longshore and Harbor Workers' Compensation Act coverage must be endorsed onto the workers' compensation policy. If the Concessioner's operations include use of watercraft on navigable waters, a maritime coverage endorsement must be added to the workers' compensation policy, unless coverage for captain and crew is provided in a Protection & Indemnity policy.

SEC. 3. PROPERTY INSURANCE

(a) Building(s) and Contents Coverage

Amount of insurance (buildings): Full replacement value as listed in Exhibit C 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 C of this Contract.
- (2) Coverage shall apply on an "All Risks" or "Special Coverage" basis and shall include coverage for earthquake damage.
- (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 coinsurance provision, if any, shall be waived or suspended by an Agreed Amount clause.
- (6) Coverage is to be provided on a blanket basis for real and personal property.

- (7) 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.
- (8) Flood Coverage (if applicable) must be maintained 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.
- (9) Earthquake Coverage (if applicable) must be maintained at the maximum limit available not to exceed 100% replacement value, without deduction.
- (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 C, 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 and 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) Coverage is to be provided 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) Ordinance or law, demolition, and increased cost of construction coverage shall be maintained.

(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, or protection & indemnity liability policy.
- (2) Coverage shall apply to direct damage to covered property.
- (3) Flood and earthquake coverage shall be maintained.
- (4) Coverage shall be maintained 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 minimum coverage provided must be calculated by the Concessioner 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 & 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

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 VENDOR INSURANCE

Concessioners entering into contracts with third party vendors for various services or activities that the Concessioner is not capable of providing or conducting, must ensure that all vendors retained for such work maintain an insurance program that adequately covers the activity and complies with all the requirements applicable to the vendor'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 G TRANSITION TO A NEW CONCESSIONER

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 new concessioner or concessioners selected by the Director to continue such operations ("New Concessioner" for purposes of this exhibit), to achieve an orderly transition of operations in order to avoid disruption of services to Area visitors 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 Concessioner will operate the facilities and services.

(2) Promptly following notification to the Concessioner by the Director of the selection of the New Concessioner, the Concessioner shall provide the New Concessioner with a copy of Concessioner's reservation log for visitor services as of the last day of the month prior to the selection of the New Concessioner. 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 Concessioner.

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

(3) The Concessioner shall provide the Director and the New Concessioner 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 Concessioner with copies of all maintenance agreements, equipment leases (including short-wave radio), service contracts, and supply

contracts, including contracts for on-order merchandise (collectively "contracts"), and copies of all liquor licenses and other licenses and permits (collectively "licenses").

(5) The Concessioner shall allow the New Concessioner to solicit and interview for employment all of the concessioner's salaried and hourly employees, including seasonal employees, through a coordinated process implemented by the Concessioner.

(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 New Concessioner.

(d) Financial Reports

Within 30 days after receipt of the notification of the selection of the New Concessioner, The Concessioner shall provide the New Concessioner 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 Concessioner with a complete, detailed, and well-organized list of physical inventory, supplies, and other personal property owned or leased by the Concessioner in connection with its operations under the Contract (including a list of such items that are on order) The 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 Concessioner with all other information and reports as would be helpful in facilitating the transition, including, without limitation, a list of maintenance records for the Concessioner's operations for the period of one year prior to notification of the selection of the New Concessioner. 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 Concessioner 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 Concessioner 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 Concessioner elects to assume.

(b) Reservation Systems

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

- (i) Providing the New Concessioner 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 Concessioner in transitioning to the New Concessioner'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 Concessioner with such other cooperation as reasonably may be requested.

EXHIBIT H
REQUIREMENTS RELATED TO THE SERVICE CONTRACT ACT OF 1965

- (a) Service Contract Act of 1965, as amended: This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR part 4).
- (b) (1) Each service employee employed in the performance of this contract by the concessioner, or any contractor or subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.
- (2) (i) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section.
- (ii) Such conforming procedure shall be initiated by the contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the contractor to the contracting officer no later than 30 days after such unlisted class of employees performs any contract work. The contracting officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.
- (iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the contracting officer who shall promptly notify the contractor of the action taken. Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination.
- (iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.
- (B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was

previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting officer of the action taken but the other procedures in paragraph (b)(2)(ii) of this section need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined pursuant to paragraphs (b)(2)(i) and (ii) of this section shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with paragraphs (b)(2)(i) through (v) of this section, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(3) If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in subpart D of 29 CFR part 4, and not otherwise.

(d) (1) In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided

for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of § 4.1b(b) of 29 CFR part 4 apply or unless the Secretary of Labor or his authorized representative finds, after a hearing as provided in § 4.10 of 29 CFR part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in § 4.11 of 29 CFR part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. *53 Comp. Gen. 401 (1973)*. In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

- (e) The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.
- (f) The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR part 1925.
- (g) (1) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in paragraphs (g)(1) (i) through (vi) of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor:
 - (i) Name and address and social security number of each employee.
 - (ii) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.
 - (iii) The number of daily and weekly hours so worked by each employee.
 - (iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
 - (v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the labor standards clause in paragraph (b) of this section. A copy of the report required by the clause in paragraph (b)(2)(ii) of this section shall be deemed to be such a list.
 - (vi) Any list of the predecessor contractor's employees which had been furnished to the contractor pursuant to § 4.6(l)(2).

(2) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

- (h) The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.
- (i) The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests or such sums as the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.
- (j) The contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term contractor as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term Government prime contractor.
- (k) (1) As used in these clauses, the term service employee means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term service employee includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(2) The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for informational purposes only:

The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates of wages and fringe benefits:

Employee class	Monetary wage fringe benefits
To be completed following award of this Contract	-----

- (l) (1) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof

- effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.
- (2) Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (§ 4.173 of Regulations, 29 CFR part 4), the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract.
- (m) Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR part 4.
- (n) (1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.
- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.
- (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- (o) Notwithstanding any of the clauses in paragraphs (b) through (m) of this section relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:
- (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).
- (2) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).
- (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in parts 525 and 528 of title 29 of the Code of Federal Regulations.
- (p) Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The

wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

- (q) Where an employee engaged in an occupation in which he or she customarily and regularly receives more than \$ 30 a month in tips, the amount of tips received by the employee may be credited by the employer against the minimum wage required by Section 2(a)(1) or 2(b)(1) of the Act to the extent permitted by section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. To utilize this proviso:
- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
 - (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
 - (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;
 - (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.
- (r) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 4, 6, and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.