

CONTRACT MODIFICATION DOCUMENTS

A. INTERIM LETTER OF AUTHORIZATION (INTERIM OPERATING AUTHORITY)

There may be infrequent, exceptional situations where it is necessary to authorize new and/or existing concessioners to immediately commence and/or continue operations to adequately serve visitors pursuant to the terms of a new contract but before the contract is executed by the Regional Director. Due to the Congressional 60-day waiting period, and other possible delays, there can be a lapse in time from 60 to 90 days following the time the contract is signed by the concessioner and the time it is approved on behalf of the National Park Service. Interim Letters of Authorization are used to provide for public services as required during this period pending final execution of the contract. Interim Letters of Authorization pursuant to the terms of a new contract cannot be issued until the contract is signed by the concessioner.

Example: A proposed concessioner, XYZ Corporation, will shortly have a proposed contract in its possession for execution requiring a building program and a term of approximately 15 years from the date of execution by the National Park Service. It is the end of February and the proposed contract has not been transmitted to the Hill, but it is imperative that the concession be in operation by May 1. There is not sufficient time to do so before the proposed contract "comes off the Hill" at the end of the 60-day waiting period. In this situation, the Service may enter into a Letter of Interim Authorization with the concessioner pending final execution of the contract by the National Park Service.

It must be borne in mind that the use of Interim Letters of Authorization must be held in reserve for emergency situations only and should not be relied upon as a standard method of operation. Accordingly, a written request for permission to deviate from the normal contracting procedures, including sufficient justification, must be transmitted to WASO for approval by the Director before an Interim Letter of Authorization is issued.

A sample Interim Letter of Authorization is included as Exhibit 1 to this chapter.

B. AMENDMENTS AND EXTENSIONS

1. Amendments To Contracting Authorizations

The Service or the concessioner may initiate an amendment to an existing contract or permit at any time due to circumstances that may come about after the contract or permit is executed. The contract/permit as originally executed is binding upon both the Service and the concessioner. However, this does not apply to any amendments made necessary by law, regulation or policy.

In this event, the Service may amend contracts and permits unilaterally by letter since the concessioner has already agreed by contract or permit that its operations "shall be subject to the laws of Congress governing the area and the rules, regulations and policies promulgated thereunder, whether now in effect or hereafter enacted or promulgated." (Subsection 2(b), current contract language; Subsection 12(a), current permit language.)

Any proposed amendment that would accrue to the benefit of the concessioner or that addresses concerns or problems of the concessioner must be initiated by the concessioner in writing to the Superintendent. In so doing, the concessioner must explain and justify why the amendment is needed. This may be in context of a contract/permit provision that is harmful to the concessioner in providing contractual services and/or not having an opportunity for profit. An amendment may be needed to alleviate circumstances created by the Service, such as a delay in processing construction plans or in providing support facilities for concessioner building and improvement programs. There may be other extenuating circumstances beyond the control of the concessioner which must be reviewed on their own merits.

The Superintendent shall forward the request to the Regional Office along with his/her recommendation and backup information that may be needed to process the amendment in an efficient and timely manner. The Region, after any further studies that may be needed, will arrive at a decision as to whether an amendment is appropriate, if it should be denied or if some modification of the amendment should be negotiated with the concessioner.

Some of the types of amendments requested by the concessioner would include:

- a. Change in financial reporting dates; (Sample amendment attached as Exhibit 2 to this chapter.)
- b. Change in construction dates;
- c. Change in services to be provided; and
- e. Change in franchise fee structure (based on financial difficulties).

The Service may initiate an amendment to a contract or permit at any time that it is deemed to be in the interest of the Service or the public to do so. It may also do so when, through appropriate studies, it is deemed in the interest of the overall financial health and well-being of the concessions operation. The objective of contract amendments should be the same as those followed in establishing concessions in the first place, i.e., services to the park visitor and a reasonable opportunity for profit to the concessioner.

Some of the types of amendments initiated by the Service may include:

- a. Contract extension;
- b. Renegotiation of franchise fee and/or building use fee. (Franchise fees must be considered at least every 5 years of a contract.)
- c. Add or delete government-owned buildings and facilities assigned to the concessioner;
- d. Change in services, facilities and accommodations provided;
- e. Change in building and improvement program;
- f. To include any new legislation, regulations or policies affecting the language for contracts.

A copy of all contract and permit amendments should be sent to WASO for its files.

## 2. Extensions

The proper procedures for renewal of authorizations is through the Planning Process (Chapters 2, 3 and 4 of this Guideline) and the contract and permit renewal process (Chapter 6). It is, however, necessary at times to initiate the extension of existing contracts or permits to facilitate the completion of planning or other factors which cannot be completed prior to the expiration date of the existing authorization. An extension thereby provides continuity of operations under the terms and conditions of the existing authorization until a new authorization can be effected.

An extension may also be advisable when a sale is imminent or has occurred near the end of a contract term and additional time is needed to evaluate the performance of the new concessioner to establish its right of preference for renewal.

Extensions are normally of limited duration, such as to cover the period of time necessary to complete the planning process, the renewal process and have a new contract in place. Extensions should be held to a minimum period of time. Before a contract extension is initiated, the park and region should determine if a 1 or 2-year extension will allow sufficient time to fully effect a new contract before the proposed extension expires. If not, or if there is a reasonable doubt that it will not, the park and region should consider issuing a 5-year contract to ensure that further extensions will not be necessary. In the event that a 5-year status quo contract is executed, and it turns out that, for example, only 3 or 4 years are needed under that arrangement, then the 5-year

contract can be superseded and cancelled for a longer term contract.

A contract extension must be effected by means of a formal amendment to the contract, should not be longer than 1 or 2 years in duration, and should be in place before a contract expires. More than one extension of a contract is not advantageous to either the concessioner or the Service and damages our credibility with concessioners.

\* \*If the extension will create a situation such that the period of time from the last reconsideration of franchise fees to the end of the extension is greater than 5 years, the franchise fee must be reconsidered by the Service prior to finalization of the amendment language. If it is determined that the franchise fee should change, the change should be reflected in the amendment. (See Exhibit 5 to this chapter.)

When proposed extensions are sent to WASO for transmittal to the Congress, the memorandum containing the proposed extension must include a statement that the franchise fee was reconsidered in accordance with current policy and contain the conclusion of the review. Supporting documentation should be kept on file in the Regional Office.\*

In order for an extension to be in place before the expiration date of the existing contract, a number of advance actions are needed:

a. The concessioner must be advised of and concur in the proposed extension. Concessioners should be notified well in advance of the contract expiration date of the proposal to extend the contract. They must be informed of the proposed term of the extension and why it is needed. Concurrence in the extension should be obtained in writing.

b. From a legal standpoint, an extension of an existing concession contract or permit constitutes an "award" of a concession contract or permit and, therefore, requires that a public notice be published in the "Federal Register" which provides for a minimum of 60 days from the date of publication of the notice for interested parties to submit offers unless a written determination is made that a shorter period is necessary because of exceptional circumstances. Notwithstanding the foregoing, the public notice must explain why the NPS considers any predetermined response period to be sufficient time for applicants to submit offers. The public notice for an extension should be handled in the same manner as the public notices issued for the renewal of contracts and permits.

c. The extension must be reported to the Congress for a 60-day waiting period if the annual gross receipts are expected to be \$100,000 or more and/or the term of the expiring contract or permit is for 5 years or more. (Handle the same as described for the Execution and Distribution of Contracts and Permits in Chapter 9 of this Guideline.)

d. Extensions of contracts not entailing construction have been determined to be categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA). Those entailing construction should be checked against the list of exceptions to categorical exclusions which appear in NPS-12, and the public notice should be prepared accordingly.

Contract extensions may be effected by a formal amendment to the contract. Permit extensions may be effected by a letter amendment. A sample of both is attached to this Chapter as Exhibits 3 and 4 respectively. These may be modified as needed to meet any special circumstances.



## United States Department of the Interior

NATIONAL PARK SERVICE  
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

S A M P L E

### INTERIM LETTER OF AUTHORIZATION

Mr. \_\_\_\_\_  
President  
XYZ Corporation  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mr. \_\_\_\_\_:

The enclosed proposed concession contract is for your execution on behalf of XYZ Corporation, under which it will be authorized and required to provide, operate and maintain facilities and services at \_\_\_\_\_ National Recreation Area. This proposed concession contract, when executed by the United States, will be effective as of the date of execution and will be for a term of approximately \_\_\_\_\_ years through December 31, \_\_\_\_\_.

Since it is mutually agreed that these facilities should be maintained and operated as promptly as possible in order that the properties will be adequately protected, and that the various facilities and services should be available to meet visitor demands at the park area, this letter shall, upon acceptance by you as evidenced by your execution hereof, constitute the interim authorization to initiate maintenance, services and operations as soon as possible, pending final execution of the concession contract. The maintenance, operations and services rendered during the term provided for herein shall be pursuant to the terms and conditions set forth in the proposed concession contract, including Franchise Fees, which are incorporated by reference, except as otherwise provided in this interim authorization.

This interim authorization shall terminate upon the execution of the proposed concession contract on behalf of the United States, or on \_\_\_\_\_, 19\_\_\_\_\_, whichever occurs first. In the event that the contract is not executed by \_\_\_\_\_, 19\_\_\_\_\_, this letter of authorization may be extended for reasonable additional time.

It is agreed that this interim authorization gives XYZ Corporation the authority to proceed with the improvement and building program as outlined

in the proposed contract and that any monies expended toward the improvement and building program during the period of this interim authorization will be credited toward the required expenditure specified in the proposed contract.

Please indicate your acceptance of this interim operating authority by having the enclosed three copies of this letter executed by a duly qualified corporate official and return them to this office.

Sincerely yours,

Director

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

ATTEST:

XYZ CORPORATION

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Enclosures

SAMPLE AMENDMENT TO CHANGE FINANCIAL REPORTING DATE  
AND PAYMENT OF FRANCHISE FEES

AMENDMENT NO. \_\_\_\_\_  
CONCESSION CONTRACT NO. \_\_\_\_\_  
(NAME OF CONCESSIONER)  
\_\_\_\_\_  
(PARK OR AREA)  
\_\_\_\_\_

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Regional Director, \_\_\_\_\_ Region, National Park Service, hereinafter referred to as the "Secretary," and \_\_\_\_\_ (NAME OF CONCESSIONER), a \_\_\_\_\_ (CORPORATION, PARTNERSHIP, etc.) organized and existing under the laws of the State of \_\_\_\_\_, herinafter referred to as the "Concessioner":

W I T N E S S E T H:

THAT WHEREAS, the Secretary and the Concessioner entered into Concession Contract No. \_\_\_\_\_ on \_\_\_\_\_, 19\_\_\_\_, whereby the Concessioner is authorized to provide facilities and services for the public within \_\_\_\_\_ (Name of Area), during the period \_\_\_\_\_, 19\_\_\_\_, through \_\_\_\_\_, 19\_\_\_\_.

WHEREAS, the said concession contract has been amended by letters dated \_\_\_\_\_, 19\_\_\_\_, and \_\_\_\_\_, 19\_\_\_\_; and

WHEREAS, the said concession contract requires the Concessioner to submit an annual financial report and pay the franchise fee within ninety (90) days after the 31st day of May of each year; and

WHEREAS, the said Concession Contract requires subconcessioners, if any, to report the full amount of their gross receipts to the Concessioner within forty-five (45) days after the 31st day of May of each year; and

WHEREAS, the said Concession Contract requires the Concessioner to pay to the Secretary within ninety (90) days after the 31st day of May, each year a sum equal to fifty percent (50%) of any and all fees, commissions, or compensation payable to the Concessioner under approved sub-concession contracts or agreements; and

WHEREAS, the Concessioner operates on a calendar year fiscal basis and desires to change its annual financial report and related reporting and fee payment due dates to the said fiscal year basis; and

WHEREAS, the Secretary has determined that it is in the public interest to permit the Concessioner to proceed on a fiscal year basis corresponding to that which the other corporate transactions are based:

NOW, THEREFORE, in consideration of the foregoing, the parties hereto covenant and agree to and with each other that Concession Contract No. \_\_\_\_\_ is hereby amended as follows:

1. Amend Section \_\_\_\_\_, ACCOUNTING RECORDS AND REPORTS, as follows:

Amend subsection ( ) by deleting "the 31st day of May" in line \_\_\_\_\_, and substituting in lieu thereof "the 31st day of December."

2. Amend Section \_\_\_\_\_, FRANCHISE FEE, as follows:

Amend subsection ( ) by deleting "the 31st day of May" in line \_\_\_\_\_ and substituting in lieu thereof "the 31st day of December."

3. Amend Section \_\_\_\_\_, APPROVAL OF SUBCONCESSION CONTRACT, by deleting "the 31st day of May" in line \_\_\_\_\_ and substituting in lieu thereof "the 31st day of December."

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

UNITED STATES OF AMERICA

By \_\_\_\_\_  
Regional Director  
\_\_\_\_\_ Region  
National Park Service

ATTEST: \_\_\_\_\_  
(NAME OF CONCESSIONER)

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

SAMPLE

Formal Extension of Concession Contract

AMENDMENT NO. \_\_\_\_\_

CONCESSION CONTRACT NO. \_\_\_\_\_

(Name of Concessioner) \_\_\_\_\_

\_\_\_\_\_ National Park

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior through the Regional Director, \_\_\_\_\_ Region, National Park Service, hereinafter referred to as the "Secretary" and \_\_\_\_\_ (Name of Concessioner), a \_\_\_\_\_ (CORPORATION, PARTNERSHIP, ETC.) \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, hereinafter referred to as the "Concessioner":

W I T N E S S E T H:

THAT WHEREAS, Concession Contract No. \_\_\_\_\_ was entered into on \_\_\_\_\_ (date), with \_\_\_\_\_ (Name of Concessioner), effective \_\_\_\_\_ (Date), authorizing the Concessioner to provide accommodations, facilities and services for the public within \_\_\_\_\_ National Park, \_\_\_\_\_; and

WHEREAS, Concession Contract No. \_\_\_\_\_ expires by limitation of time on \_\_\_\_\_ (Date), and the parties mutually agree that it should be extended to authorize the Concessioner to continue to serve the public; and

WHEREAS, the Secretary has determined that it is in the best interest of the United States to extend this contract in order to provide continuity of operation and services to the public while planning is completed concerning the future operation of the concession facility:

NOW THEREFORE, the parties hereto covenant and agree to and with each other that Concession Contract No. \_\_\_\_\_ is hereby extended in all of its terms and conditions for an additional term of \_\_\_\_\_ year(s) from \_\_\_\_\_, through \_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

UNITED STATES OF AMERICA

By \_\_\_\_\_  
Regional Director, \_\_\_\_\_ Region  
National Park Service  
(Name of Concessioner)

ATTEST:

BY \_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

SAMPLE  
LETTER OF EXTENSION FOR A CONCESSION PERMIT

Dear Mr. \_\_\_\_\_:

Concession Permit No. \_\_\_\_\_ entered into between the National Park Service and \_\_\_\_\_ (Name of Concessioner), expires(d) by limitation of time on \_\_\_\_\_ (Date). It is our intention to negotiate a new concession permit authorizing the continuance of the services that you are presently providing when (viz., planning is completed).

However, in order to meet visitor demands and to provide continuity of said (Firewood sales, etc.) services, this letter shall, upon acceptance by you as evidenced by your execution hereof, serve as an extension of Concession Permit No. \_\_\_\_\_. This extension, which is effective \_\_\_\_\_ (Date), shall terminate on \_\_\_\_\_, or upon the execution of a prospective new contractual document on behalf of the National Park Service, whichever occurs first, except as it may be terminated at an earlier date in accordance with Sec. \_\_\_\_\_ of the permit.

Please indicate your acceptance of this extension by executing the original of this letter, as provided for below. Please return the original letter to our office. A signed carbon copy is enclosed for your files.

Sincerely,

Regional Director  
\_\_\_\_\_ Region

Enclosure

ACCEPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

ATTEST:

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

S A M P L E  
AMENDMENT AS A RESULT OF RECONSIDERATION OF FRANCHISE FEE

Amendment No. \_\_\_\_\_  
Concession Contract No. \_\_\_\_\_  
(Name of Concessioner)  
\_\_\_\_\_  
(Park or Area)

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and \_\_\_\_\_ (Name of Concessioner), hereinafter referred to as the "Concessioner":

W I T N E S S E T H:

WHEREAS, subsection 9(e) of said contract provides that within sixty (60) days after the end of each 5 year period of of this contract, at the instance of either party, the provisions for the franchise fee in subsection 9(a) may be reconsidered and such provisions inserted in lieu thereof as may be agreed upon between the parties in a written supplemental agreement; and

WHEREAS, the Secretary, by letter of \_\_\_\_\_, 19\_\_\_\_, advised the Concessioner that a revision of of the franchise fee was proposed and the Concessioner has agreed by letter of \_\_\_\_\_, 19\_\_\_\_, to an increased franchise fee:

WHEREAS, the Secretary has determined, in accordance with subsection 3(c) of the Act of October 9, 1965, that the probable value to the Concessioner of the privileges granted by Concession Contract No. \_\_\_\_\_ warrants an increase in the franchise fee as contained in subsection 9(a)(2) of the said contract:

NOW, THEREFORE, in consideration of the foregoing, the parties hereto covenant and agree to and with each other that Concession Contract No. \_\_\_\_\_, is hereby amended, effective \_\_\_\_\_, 19\_\_\_\_, as follows:

Amend subsection 9(a)(2) by deleting "one and one-half percent (1 1/2%)" and substituting in lieu thereof "two percent (2%)."

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

19\_\_\_\_. Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_,

UNITED STATES OF AMERICA

By \_\_\_\_\_  
Regional Director, \_\_\_\_\_ Region  
National Park Service

ATTEST:

\_\_\_\_\_  
(NAME OF CONCESSIONER)

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_