

COMMERCIAL USE LICENSE (CUL)

A. GENERAL

The Commercial Use License (CUL) comes under the authority of CFR Title 36, Chapter 1, Section 5.3. It does not come within the purview of P.L. 89-249.

The CUL is a simple, uncomplicated document for use by the Superintendents to authorize commercial activities in park areas which are provided by commercial operators who initiate and terminate their operations outside of park boundaries and conduct no aspects of business within the boundaries of a park. It is necessary for the Superintendent to know who provides services within the parks and the extent of their operations to properly control commercial activities pursuant to the above referenced regulation. (See Chapter 5 of this guideline for Section 5.3.)

B. CRITERIA FOR USE

To utilize the CUL rather than a concession authorization, the following criteria, without exception, must be met:

1. Activities authorized must be appropriate to the preservation of the park (resource protection, visitor protection, and interpretation).
2. The number of licensees must not be limited, and there must be no intent to limit the number. A limited area of a park can be assigned for a specific activity, but the number of licenses issued for the activity cannot be limited.
3. The services provided must originate and terminate outside of the park; and all aspects of business, i.e., advertisement, exchange of money, etc., must take place outside of the park.
4. The rates of the licensee are not approved by the National Park Service.
5. Licensee has none of the rights or privileges of P.L. 89-249.
6. The license may not be used for activities that are appropriately authorized by Special Use Permit, such as agricultural uses.
7. Licensee will not be allowed to construct any temporary or permanent structure(s) in the park and will not be assigned any buildings, or portions thereof, located in the park, except as allowed to the general public.
8. The services provided must not conflict with the preferential rights provided under any concession contract(s).

9. The operator must be duly licensed by State or local authorities, where applicable, to conduct business within the State or territory in which the park area is located.

The above criteria have been incorporated as provisions of the license to assure that the CUL does not come under the purview of P.L. 89-249.

C. OTHER PROVISIONS OF THE CUL

1. Term. The term of the CUL may not exceed 2 years. It may be for any period of lesser term.

2. Payment. The CUL requires an administrative preparation payment, paid in advance, of \$50, or as determined, notwithstanding the term of the license, i.e., whether the term be for 1 day or 2 years. Other identifiable administrative or management costs incurred by the park above and beyond the \$50 fee should be charged to the licensee to recover such cost to the fullest extent possible. Management costs would include those incurred by the park staff in monitoring (overseeing) the CUL operations to assure compliance with operational and safety requirements (identified in an attachment to the license) or excessive preparation costs. A fee of less than \$50 needs to be fully justified.

3. Indemnification. The minimum insurance requirements established for concession authorizations apply. (See Chapter 23 of this Guideline.)

4. Nondiscrimination. Licensees and their employees shall not discriminate against any individual because of race, creed, color, religion, sex, age, national origin, or physical or mental handicap.

Licensees should have affirmative action programs, if applicable, to assure equal employment opportunities and should adhere to the Department's labor standards and to applicable Federal and State labor laws.

5. Assignment. The CUL may not be transferred, extended or assigned under any circumstances.

6. Revocation. The CUL may be revoked at any time at the discretion of the Superintendent without compensation to the licensee or liability to the United States.

7. Annual Report. At the discretion of the Superintendent, the licensee may be required to submit an annual report which summarizes visitor use and/or includes gross revenues for the year.

8. Soil Erosion. At the direction and approval of the Superintendent, the licensee will take adequate measures to restrict and prevent soil erosion on

CONCESSIONS  
NPS-48  
Commercial Use License (CUL)

Guideline  
Chapter 13  
Page 3

the lands covered by the license and will not contribute to erosion on adjoining lands.

A copy of the revised Commercial Use License is attached to this Chapter as Exhibit 1.

NATIONAL PARK SERVICE  
COMMERCIAL USE LICENSE

\_\_\_\_\_  
(AREA)

In accordance with National Park Service regulations as contained in Title 36, CFR Chapter 1, Section 5.3, permission is granted to \_\_\_\_\_ of (Complete Address) \_\_\_\_\_

to conduct the following commercial activities in the above-named area (or specified portion thereof): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ for a period of \_\_\_\_\_ from \_\_\_\_\_ through \_\_\_\_\_, but not to exceed two (2) years, subject to payment in advance to the Government of the United States \* \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), for processing this license and \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), for monitoring (overviewing) the operational and safety requirements stipulated in Attachment " \_\_\_\_\_ " to this license, for a total amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_).

The license is granted subject to the following conditions:

1. The licensee and all participants authorized herein must comply with all of the conditions of this license and with all directions of the Park Superintendent. The licensee must have obtained all permits or licenses of State or local governments, as applicable, necessary to conduct the commercial activities specified above and must operate in compliance with all pertinent Federal, State, and local laws and regulations.

2. The area(s) authorized for use under this license must be left in substantially the same condition as it was prior to the activities authorized herein, and all refuse shall be placed in the trash containers provided, or disposed of as otherwise required by the Superintendent. The licensee shall be liable for any damages to property of the United States resulting from the activities authorized hereunder.

\* See Page 2, paragraph C.2 of this Chapter.

CONCESSIONS

NPS-48

Commercial Use License (CUL)

EXHIBIT 1  
Chapter 13  
Page 2

3. This license is applicable only for the use of the area(s) and term designated above.

4. It is expressly agreed and understood that this license does not authorize the licensee to advertise, solicit business, collect any fees, or sell any goods or services on lands owned and controlled by the United States.

5. Indemnification. The licensee shall save, hold harmless, defend and indemnify the United States of America, its agents and employees for losses, damages, or claims for personal injury, death, or property damage of any nature whatsoever and by whomever made, arising out of the activities of the licensee, its employees or agents under the license.

6. Nondiscrimination. See Attachment "A".

7. Construction. No building, or other structures will be erected under this license within (name of park).

8. Assignment. This license may not be transferred, extended or assigned under any circumstances.

9. Revocation. It is expressly understood and agreed that this license may be revoked at any time at the discretion of the Superintendent without compensation to the licensee or liability to the United States.

10. General Provisions. (a) Operations under this license shall be subject to the laws of Congress governing the area and rules and regulations promulgated thereunder, whether now in force or hereafter enacted or promulgated; provided, however, that this license does not constitute a concession contract or permit within the meaning of 16 U.S.C. 20 et seq., and, specifically, that no preferential right of renewal attaches to this license.

(b) Reference in this license to "Superintendent" shall mean the Service official executing this license and the term shall include his/her duly authorized representatives, and reference to "Service" herein shall mean the National Park Service.

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

(d) The licensee (is)(is not) required by the Superintendent to submit annually, but not later than THIRTY (30) DAYS after \_\_\_\_\_, an annual report which summarizes visitor use; the licensee (is)(is not) required to include gross revenues for the year in the report.

(e) The licensee is subject to any and all special conditions (if any) attached hereto.

11. Soil Erosion. The licensee shall take adequate measures, as directed and approved by the Superintendent, to restrict and prevent soil erosion on the lands covered hereby and shall so utilize such lands as not to contribute to erosion on adjoining lands.

12. Non-Exclusive Authorization. This license shall not be construed as limiting the obligation of the Superintendent to issue similar licenses at the request of all other persons seeking to conduct the same or similar activities in the area.

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

\_\_\_\_\_  
(LICENSEE)

\_\_\_\_\_  
(SUPERINTENDENT)

\_\_\_\_\_  
(NAME OF PARK)

By \_\_\_\_\_

TITLE \_\_\_\_\_

EXHIBIT "A"

CONCESSION  
AUTHORIZATION NO.:

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NONDISCRIMINATION

SECTION I  
REQUIREMENTS RELATING TO EMPLOYMENT  
AND  
SERVICE TO THE PUBLIC

A. EMPLOYMENT: During the performance of this concession contract the Concessioner agrees as follows:

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

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

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates

gross receipts which exceed \$50,000 or more and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices and procedures in accordance with the affirmative action program requirement.

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

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

(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this concession contract or with any of such rules, regulations, or orders, this concession contract may be cancelled, terminated, or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contract 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 (8) governing performance of work under this contract, as set out in Section 202 of Executive Order No. 11246, dated

CONCESSIONS

NPS-48

Commercial Use License (CUL)

EXHIBIT 1  
Chapter 13  
Page 6

September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this contract, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this contract, and for that purpose the term "Contract" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

C. FACILITIES: (1) Definitions: As used herein: (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner; (ii) facility shall mean any and all services, facilities, privileges, and accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from: (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin or disabling condition; (ii) discriminating by segregation or other means against any person because of race, color, religion, sex, age, national origin or disabling condition in furnishing or refusing to furnish such person the use of any such facility.

(3) The Concessioner shall post a notice in accordance with Federal regulations to inform the public of the provisions of this subsection, at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges. Such notice will be furnished the Concessioner by the Secretary.

(4) The Concessioner shall require provisions identical to those stated in subsection C herein to be incorporated in all of the Concessioner's contracts or other forms of agreement for use of land made in pursuance of this agreement.

SECTION II

ACCESSIBILITY

Title V, Section 504 of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the ser-

vice or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law and calls for consultation with disabled persons in determining what is reasonable and feasible.

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

PART A

DISCRIMINATION PROHIBITED

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

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

PART B

EXISTING FACILITIES

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