

**CATEGORY III CONTRACT**  
**UNITED STATES DEPARTMENT OF THE INTERIOR**  
**NATIONAL PARK SERVICE**

Alaska Region

Glacier Bay National Park & Preserve

Kayak Rental Services

**CONCESSION CONTRACT NO. CC-GLBA035-15**

Glacier Bay Sea Kayaks, Inc.

PO Box 26  
Gustavus, Alaska 99826  
(907) 697-2257

Doing Business As Glacier Bay Sea Kayaks, Inc.

Covering the Period January 1, 2015 through December 31, 2024

**CONCESSION CONTRACT**

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This Contract is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Alaska Region, hereinafter referred to as the "Director", and Glacier Bay Sea Kayaks, Inc., (hereinafter referred to as "Concessioner"), a Corporation, doing business as Glacier Bay Sea Kayaks, Inc. under the authority of 16 U.S.C. 1 et. seq., including 16 U.S.C. 5901 et seq., and other laws that supplement and amend these laws. The Director and the Concessioner agree:

## **SEC. 1. TERM OF CONTRACT**

This Contract will have a term of ten years from January 1, 2015 until its expiration on December 31, 2024.

## **SEC. 2. SERVICES AND OPERATIONS**

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

(1) The Concessioner must provide the following required Visitor Services within the Area:

	<b>Service</b>	<b>Location</b>
i.	Kayak rental services	Based out of Bartlett Cove, Alaska

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

	<b>Service</b>	<b>Location</b>
i.	Rental of equipment and clothing associated with kayak rental activities	Based out of Bartlett Cove, Alaska

### **(b) Operation, Maintenance and Quality of Operation**

The Concessioner must provide, operate and maintain the Visitor Services in accordance with this Contract in a manner considered satisfactory by the Director, including the nature, type and quality of the Visitor Services. The Concessioner's authority to provide Visitor Services under the terms of this Contract is nonexclusive. The Concessioner's operations and contract compliance will be evaluated on at least an annual basis.

No government-owned personal property is assigned to the Concessioner.

### **(c) Operating Plan**

The Director will establish and revise, as necessary, after consultation with the Concessioner, specific requirements for the operations of the Concessioner under this Contract in the form of an Operating Plan. The initial Operating Plan is attached to this Contract as Exhibit B.

### **(d) Rates**

All rates and charges to the public by the Concessioner for Visitor Services must be reasonable and appropriate and must be approved by the Director.

### **(e) No Capital Improvements**

The Concessioner may not construct any Capital Improvements upon Area lands.

**SEC. 3. CONCESSIONER PERSONNEL**

- (a) The Concessioner must ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public.
- (b) The Concessioner must establish appropriate screening, hiring, training, safety, employment, termination and other policies and procedures.
- (c) The Concessioner must 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 must take such actions as are necessary to correct the situation.
- (d) The Concessioner must maintain, to the greatest extent possible, a drug free work environment.

**SEC. 4. ENVIRONMENTAL**

The Concessioner must utilize appropriate best management practices (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) in its provision of Visitor Services and other activities under this Contract.

**SEC. 5. FEES****(a) Franchise Fee**

- (1) The Concessioner must pay a franchise fee to the Director as follows: An annual fee of the greater of \$1,000.00 or three percent (3 %) of annual gross receipts.
- (2) The Concessioner has no right to waiver of the fee under any circumstances.

**(b) Payments Due**

- (1) The franchise fee is due annually on November 15 of each year that the Contract is in effect, with the first payment due November 15, 2015.
- (2) All franchise fees shall be deposited electronically by the Concessioner in accordance with all Applicable Laws.
- (3) The Concessioner must 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 will 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.

**(c) Interest**

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed. 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.

## **SEC. 6. INSURANCE**

The Concessioner must obtain and maintain during the entire term of this Contract at its sole cost and expense, coverage necessary to fulfill the obligations of this Contract. The insurance requirements are set forth in Exhibit D.

## **SEC. 7. RECORDS AND REPORTS**

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

(1) The Concessioner must maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system must be capable of providing the information required by this Contract. The Concessioner's system of accounts classification must be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are \$500,000 or more, the Concessioner must use the accrual accounting method.

(3) The Concessioner must 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 must submit annually as soon as possible but not later than one hundred and 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 must be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between \$500,000, and \$1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Statements on Standards for Accounting and Review Services (SSARS) and procedures promulgated by the American Institute of Certified Public Accountants.

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

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

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

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

## **SEC. 8. SUSPENSION, TERMINATION, OR EXPIRATION**

### **(a) Termination and Suspension**

(1) The Director may temporarily suspend operations under this Contract in whole or in part or terminate this Contract in writing 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.

(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 will 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 8(a).

### **(b) Requirements in the Event of Suspension, Termination or Expiration**

(1) In the event of suspension or termination of this Contract for any reason or expiration of this Contract, no compensation of any nature will be due the Concessioner, including, but not limited to, compensation for personal property, or 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 must, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, and repair any injury caused by removal of the property. This removal must occur within thirty (30) days (unless the Director in particular circumstances otherwise determines). Personal property not removed from the Area will be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner.

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

## **SEC. 9. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS**

This Contract may not be assigned [e.g. sold] or encumbered [e.g. mortgaged] without the approval of the Director in accordance with 36 CFR Part 51 with respect to proposed assignments and encumbrances.

**SEC. 10. GENERAL PROVISIONS - SEE ADDENDUM 1.**

Addendum 1 attached to this Contract is made a part of this Contract.

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 Bonnie Kaden  
Bonnie Kaden  
President  
Glacier Bay Sea Kayaks, Inc.

By Herbert C. Frost, Ph.D.  
Herbert C. Frost, Ph.D.  
Regional Director, National Park Service

DATE: 12/22, 2014

DATE: 12/30, 2014

[Corporation]

**ATTEST:**

By Hayden Kaden  
Name of signer  
Title of signer Vice President

DATE: 12/22/14, 2014

**SEC. 10. GENERAL PROVISIONS – SEE ADDENDUM 1.**

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**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 \_\_\_\_\_  
Bonnie Kaden  
President  
Glacier Bay Sea Kayaks, Inc.

By \_\_\_\_\_  
Herbert C. Frost, Ph.D.  
Regional Director, National Park Service

DATE: \_\_\_\_\_, 2014

DATE: \_\_\_\_\_, 2014

**[Corporation]**

ATTEST:

By \_\_\_\_\_  
Name of signer  
Title of signer

DATE: \_\_\_\_\_, 2014

**ADDENDUM 1  
GENERAL PROVISIONS**

**1. 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, whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.

(b) "Area" means the property within the boundaries of Glacier Bay National Park & Preserve, Alaska..

(c) "Days" means calendar days.

(d) "Director" means the Director of the National Park Service, and his duly authorized representatives.

(e) "Exhibit" means the various exhibits, which are attached to this Contract, each of which is hereby made a part of this Contract.

(f) "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, 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, hunting and fishing license fees, and postage stamps, provided that the amount excluded will 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, must be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones must be included in gross receipts. All revenues received from charges for in-room telephone or computer access must be included in gross receipts.

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

(h) "Visitor Services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by this Contract.

## **2. LEGAL AND REGULATORY COMPLIANCE**

This Contract, operations under it by the Concessioner, and its administration by the Director, are 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. The Concessioner must give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or Contractors, and must promptly correct any violation.

## **3. SERVICES AND OPERATIONS**

(a) 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.

(b) The Concessioner will provide Federal employees reduced rates, in accordance with guidelines established by the Director, when conducting necessary official business. Complimentary or reduced rates and charges may otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

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

(d) Subconcession or other third party agreements, including management agreements, for the provision of Visitor Services required and/or authorized under this Contract, whether in consideration of a percentage of revenues or otherwise, are not permitted.

(e) The Concessioner will ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner's activities. Discoveries of any archeological resources by the Concessioner will be promptly reported to the Director.

## **4. ENVIRONMENTAL DATA, REPORTS, NOTIFICATIONS, AND APPROVALS**

### **(a) Inventory of Hazardous Substances and Inventory of Waste Streams**

The Concessioner must submit to the Director, upon request, an inventory of hazardous chemicals used and stored in the Area by the Concessioner. The Concessioner must 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 must also submit to the Director, upon request, an inventory of all waste streams generated by the Concessioner under this Contract.

### **(b) Reports**

The Concessioner must 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 must 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.

**(c) Notification of Releases**

The Concessioner must 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.

**(d) Notice of Violation**

The Concessioner must 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.

**(e) Communication with Regulatory Agencies**

The Concessioner must 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 must 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 must allow the Director to participate in any such communications. The Concessioner must also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

**(f) Cost Recovery for Concessioner Environmental Activities**

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 will be liable for and must pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section precludes the Concessioner from seeking to recover costs from a responsible third party.

**5. FEES****(a) 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" will 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 will 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 will 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 will 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 will 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 will continue to make the established franchise fee payments required by this Contract.

## **6. 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 will survive the termination or expiration of this Contract.

## **7. 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. The Director may terminate this Contract if the Director determines that the Concessioner is unable to perform the terms of Contract due to such bankruptcy or insolvency action.

## **8. ADDITIONAL PROVISIONS**

- (a) 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.
- (b) This Contract does not grant rights or benefits of any nature to any third party.
- (c) The invalidity of a specific provision of this Contract will not affect the validity of the remaining provisions of this Contract.
- (d) Waiver by the Director or the Concessioner of any breach of any of the terms of this Contract by the other party will 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 will not be deemed to be a waiver of any preceding breach of any term of the Contract.
- (e) No member of, or delegate to, Congress or Resident Commissioner will be admitted to any share or part of this Contract or to any benefit that may arise from this Contract but this restriction will not be construed to extend to this Contract if made with a corporation or company for its general benefit.
- (f) This Contract is subject to the provisions of 2 C.F.R. Part 1400, as applicable, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.
- (g) 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.

**EXHIBIT A****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 B**  
**OPERATING PLAN**

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## **I. Introduction**

This Operating Plan between Glacier Bay Sea Kayaks, Inc. (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 Glacier Bay National Park & Preserve (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.

### **1) Management Responsibilities**

#### **A) Concessioner**

- (1) To achieve an effective and efficient working relationship between the Concessioner and the Service, the Concessioner must designate a point of contact who:
  - (a) Has the authority and the managerial experience for operating the services required under the Contract;
  - (b) Must employ a staff with the expertise and training to operate all services required and authorized under the Contract;
  - (c) Has full authority to act as a liaison in all concession administrative and operational matters within the Area; and,
  - (d) Has the responsibility for implementing the policies and directives of the Service.
- (2) In the absence of the point of contact, the Concessioner must designate an acting point of contact.
- (3) Contact information: The Concessioner must provide a current list to the Service with all appropriate points of contact.

#### **B) National Park Service**

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

- (1) Evaluation of concessioner services;
- (2) Review and approval of construction and all improvements to facilities,
- (3) Delivery of a current Service staff list, as needed, to the Concessioner with all appropriate points of contact; and,
- (4) Review and approval of all reporting requirements.

**2) General operating standards and requirements****A) Evaluations and Contract Compliance**

- (1) The Concessioner must ensure the protection of resources, compliance with environmental, requirements, and provide satisfactory services and accommodations for the Area visitor when within the Area.
- (2) The Service and the Concessioner must separately inspect and monitor the services with respect to Service policy, applicable standards, safety, environmental compliance, impacts on cultural and natural resources, and visitor satisfaction and concerns.
- (3) Periodic Evaluations. The Service will conduct both announced and unannounced periodic evaluations of the services to ensure conformance to applicable standards.
- (4) Annual Overall Rating. The Concessioner receives an annual performance evaluation by April 1 for the preceding calendar year. The Concessioner may request to meet with the Service to discuss the annual evaluation, which includes contractual and operational components.
- (5) Concessioner Safety Inspection. An "inspection" is defined as a documented examination of all equipment, visitor activities, and work processes to determine compliance with established safety and occupational health regulations. The Concessioner must perform periodic interior and exterior safety inspections of all equipment, vessels, and other personal property, including employee housing spaces. The Concessioner must ensure employee compliance with health, fire, and safety code regulations as well as the Service's policies and guidelines.
- (6) Environmental Audit. The Service's Environmental Audit Program evaluates the Concessioner's operations with respect to environmental compliance, conformance with the Concessioner's Environmental Management Program, and Best Management Practices Criteria contained within the current Service environmental audit program operating guidelines. The Service may conduct periodic environmental audits and evaluations

**B) Risk Management Plan**

- (1) The Concessioner must develop and maintain a Risk Management Plan. The Concessioner will make an initial submittal and request for acceptance of this plan to the Service within 120 days after the Contract's effective date, and will submit any revisions by November 30 of each following year thereafter. The program will include, at a minimum, the following components:
  - (a) How the policy will be made available to the Concessioner's staff.
  - (b) The name of the Concessioner's local safety and health official.
  - (c) How the Concessioner's management team and staff will be held accountable for carrying out the risk management program.
  - (d) How the Concessioner will ensure that adequate funding is available to support the program.
  - (e) An annual update of the Concessioner's risk management goals and objectives.
  - (f) Annual inspection schedules and the method for ensuring that the inspections are conducted.
  - (g) The Concessioner's method for ensuring that qualified individuals are capable of recognizing and evaluating hazards.
  - (h) The Concessioner's records management plan for risk management (e.g., training, inspection and accident/injury records).
  - (i) How deficiencies will be classified (examples) and the hazard abatement schedule for deficiencies classified as:
    - Imminent danger
    - Serious hazard

- Non-serious hazard
- (j) The Concessioner's procedures for recording, reporting and investigating employee and guest injuries.
  - (k) How the Concessioner will promote safety awareness for guests.
  - (l) The Concessioner's risk management training plan for employees.
  - (m) The Concessioner's emergency procedures. This includes identifying probable occurrences, coordinating with plans developed by the Service, and identifying how the Concessioner's staff will be trained to implement the plans.
- (2) Emergency Response for Release of Hazardous Substances. Within 120 days of contract effective date, the Concessioner must provide an Emergency Action Plan that describes procedures, equipment, and training to employees to respond effectively to releases of hazardous substances for the purpose of stopping the release in accordance with applicable laws. As appropriate, the Concessioner must provide and maintain emergency response equipment in good operating condition.
  - (3) Illness and Infestation Prevention and Response. The Concessioner must include in its Risk Management Plan its inspection, prevention and response procedures to minimize the risk and impact of common communicable diseases, vector borne illnesses, or pest infestations. The Concessioner must include appropriate elements of these inspection, prevention, and response procedures in its housekeeping, housing management, and facility maintenance procedures. The Concessioner must address at least the following types of infestations and illnesses: norovirus, Hantavirus, West Nile virus, influenza, Rocky Mountain spotted fever, and relapsing fever.

**C) Human Resources**

- (1) Employee Appearance and Attitude. Employees in direct contact with the public must wear personal name tags, uniforms or standardized clothing to identify them as an employee of the Concessioner. Employees must be neat and clean in appearance and must project a hospitable, friendly, helpful, positive attitude, be capable and willing to answer visitors' questions, and provide visitor assistance.
- (2) Drug-free Environments. The Concessioner must maintain, to the greatest extent possible, a drug-free workplace environment. The Concessioner must ensure any employees who are in a position where a federal or state law so requires, participate in an appropriate drug-testing program. If the Concessioner finds evidence of illegal drug use/possession/distribution within the Area they must immediately contact the Service.
- (3) Service Employees. The Concessioner must not employ, in any status, a Service employee (or that employee's spouse or dependents) of the Superintendent's office or Commercial Services office. The Concessioner must not employ, in any status, a spouse or dependent of other Service employees without the Superintendent's prior written approval.

**D) Public Relations**

- (1) Public Statements. The Concessioner must refer all media inquiries concerning operations within the Area, questions about the Area, or concerning any incidents occurring within the Area to the Service. This includes all media interviews.
- (2) Use of National Park Service Authorized Concessioner Mark.
  - (a) The Service has an approved Mark it allows concessioners to use to advertise the official relationship between the Service and the Concessioner. The Mark consists of the official NPS Arrowhead and the words "Authorized Concessioner."
  - (b) Authorized Users. The Concessioner is authorized to use the Mark at the start of the Contract in accordance with the approval procedures below. The Concessioner must have received a

satisfactory or marginal overall rating in the previous Annual Overall Review to continue to use the Mark following the first year of the Contract.

- (c) **Authorized Uses of the Mark.** The Concessioner may use the Mark in publications; written advertising; brochures associated with required or authorized services; web-based information; interpretive materials; broadcasts (television, film or other audio/visual); facility signs designed, constructed, or commissioned for official Concessioner functions or purposes; and signs placed on visitor transportation systems, vessels and aircraft.
  - (d) **Prohibited Uses of the Mark.** The Concessioner may not use the Mark on merchandise, souvenirs, and clothing presented for sale to the public; Concessioner employee uniforms; or Concessioner equipment, including transportation equipment, not specifically providing required or authorized visitor services.
  - (e) **Approval.** The Concessioner must submit a written request to the Service for approval to use the Mark. The submittal must include proposed applications and sample layouts. The Concessioner may not use the Mark until the Service has approved the request in writing.
  - (f) **Artwork and Layout.** The Concessioner must use official artwork provided by the Service in accordance with the Authorized Concessioner Mark Guidelines available on the NPS Commercial Services web site.
- (3) **Advertisements and Promotional Material**
- (a) **Approval.** Before the Concessioner distributes any promotional or informational material, the Concessioner must submit the proposed material to the Service for approval. This comprises all promotional and informational material, including website information and social media. The Concessioner must contact the Service well in advance to establish specific time frames for each project review. The Concessioner must remove all unapproved promotional material from circulation at the request of the Service.
  - (b) **Changes.** The Concessioner must submit all promotional media (including websites) changes and layout to the Service for review at least 30 days prior to implementation or printing. The Service will make every effort to respond to minor changes to submissions and other texts within 15 days. Longer periods may be required for major projects or where Service staff assistance is requested to help develop the product. The Concessioner should contact the Service well in advance to establish specific time frames for each project.
  - (c) **Material.** The Concessioner should publish all advertisements and promotional material using recycled, post-consumer paper and double-sided.
- (4) **Statements.**
- (a) Advertisements must include a statement that the Concessioner is authorized by the Service and the Department of the Interior to serve the public within Glacier Bay National Park & Preserve.

**E) General Operating Provisions**

- (1) All operations shall comply with relevant National Park Service regulations with particular attention to applicable elements of 36 CFR Part 13 Subpart N and the Park Compendium.
- (2) Feeding wildlife is prohibited in national parks by federal law. The Concessioner will ensure that employees do not feed wildlife (including birds), and that food and garbage are not accessible to wildlife.
- (3) The Concessioner shall remove all solid wastes from the park for proper separation, recycling and disposal. Use of Service solid waste receptacles is prohibited.
- (4) Paragraph 3)B)(1) of this Operating Plan designates a specific area at Bartlett Cove for Concessioner use for operation and storage activities. No other areas within Glacier Bay National Park may be used for Concession operation and storage without approval from the Superintendent.

- (5) Concessioner's representative is required to attend an annual orientation meeting prior to each operating season to review and receive continuing education about regulations, wildlife viewing, bear safety, wilderness and leave no trace ethics. This orientation will be an expansion of the general backcountry orientation.
- (6) Acknowledgement of Risk. The Concessioner may require participants or their legal guardian if the participant is under 18 years of age, to sign an acknowledgement of risk form. All such forms must be approved in advance by the Service. Concessioner shall not require visitors to sign a waiver of liability statement, insurance statement and/or an indemnification agreement.
- (7) Visitor Comments. The Concessioner must make Service-approved comment cards, or equivalent, available to visitors in order to measure service and quality standards and overall experience. The Concessioner must provide the Service with copies of all guest written comments on an annual basis.
  - (a) The Concessioner must investigate and respond to all visitor complaints regarding its services within 10 business days of receipt. The Concessioner must provide the Service a copy of the initial comment, Concessioner's response, and any other supporting documentation at the time of the response.
  - (b) The Concessioner promptly must provide the Service all 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 resources.
  - (c) The Service will forward to the Concessioner any comments and complaints received regarding services. The Concessioner must investigate and respond to these complaints within 10 business days of receipt. The Concessioner must provide the Service with a copy of the response.
  - (d) Annually, the Concessioner must provide all customer satisfaction data collected including both written comments and tabulation of rating questionnaires. The annual customer satisfaction data is due to the Service by October 15. Upon request, the Concessioner must provide the Service supplemental information that supports the summary provided.
- (8) Lost and Found. The Concessioner must refer the visitors who lose an item in the Park to the Visitor Information Station to make a report. If the Concessioner or visitor finds an item in the Park, the item must be turned over to the Visitor Information Station or a Park Ranger as soon as possible to be processed by the Service.

#### **F) Schedule of Operation**

The Concessioner will rent kayaks on a daily basis at Bartlett Cove from Memorial Day weekend through Labor Day and may rent kayaks at Bartlett Cove for the remainder of the year. The Concessioner must submit annually a written schedule of proposed operating dates 90 days prior to proposed start date.

### **3) Kayak Rental Operations and Requirements**

The Concessioner must provide all services in a consistent, environmentally sensitive, quality manner. Standards provided by this plan and current Service concession management guidelines are Service minimums. The Concessioner must make every effort to exceed these standards.

#### **A) Required and Authorized Services**

- (1) Required Services
  - (a) The Concessioner will rent kayaks on a daily basis at Bartlett Cove.
  - (b) Operating Season: Memorial Day weekend through Labor Day. Requests to operate outside the operating season must be submitted to the Superintendent for approval.
- (2) Authorized Services

- (a) The Concessioner is authorized to provide land transportation between Gustavus and Bartlett Cove for necessary transportation associated with providing kayak rental services.
- (b) The Concessioner is authorized the rental of equipment and clothing associated with kayak rental activities.
- (c) The Concessioner is authorized to rent sea kayaks to the public based out of Bartlett Cove, with the on-site inventory limited to no more than 16 kayaks. This is the number of kayaks the Concessioner had available prior to January 1, 1979, and consequently is the historical number authorized pursuant to 36 CFR 13.310.
- (d) In addition, the Superintendent may specify, within the limitations of the Historical Operator determination, the number of kayaks that may be stored (un-rented) within the area.

**B) General Policies and Practices**

- (1) The Concessioner may not install temporary improvements or other property without express written approval from the Superintendent. The Concessioner is authorized to store kayaks and associated equipment at Bartlett Cove, at a site designated by the Superintendent. The designated site is along the shoreline, approximately 50 meters northeast of the Bartlett Cove Public Use Dock. At this site, the Concessioner is authorized to leave up to three racks for storing sea kayaks and three sheds for storing associated equipment. These improvements are not capital improvements, as defined in 36 CFR 51.51.
- (2) Temporary sheds shall be well maintained and kept in an appropriate /acceptable level of appearance in character with other NPS buildings at Bartlett Cove. The Concessioner shall notify the Service prior to any performance of work which is outside routine maintenance on the sheds or other structures.
- (3) Temporary sheds adjacent to and inside of the historic district shall be maintained to an acceptable appearance in character with other NPS buildings within the district and should blend in with the surrounding environment. Any color or material change requires prior approval from the park.
- (4) Upon the termination of this Contract, all use areas will be returned to as natural a condition as possible and the Concessioner must remove all property including temporary racks and sheds from the Area within six months. Any property not removed within six months shall become the property of the United States without compensation, thereof.
- (5) The Concession is authorized motorized access to the authorized site along the beach trail from time to time, when necessary. Vehicles or trailers shall not be parked unattended here, and shall be moved out of the corridor as soon as equipment is dropped off or picked up. Visitor Information Station staff or a Park Ranger shall be notified prior to driving on this access. As a general practice, the Concessioner will access and transport equipment to and from the site by foot or non-motorized conveyance.

**C) Equipment**

- (1) Within 30 days of award of this contract, the Concessioner will submit to the Superintendent for review and approval the initial rental inventory. The Concessioner will submit to the Superintendent for review and approval any proposed changes to the rental inventory, after the initial inventory is approved, including quantity, make, model or colors.
- (2) The Concessioner must inspect, at least annually, prior to the start of the operating season, all equipment (including safety equipment and supplies) for quantity, quality, and repair needs. As a result of these inspections, it must dispose of expired equipment, and repair or purchase equipment to maintain the inventory.
- (3) All equipment (including safety equipment and supplies) must be tested annually, prior to the start of the operating season, and prior to each conducted trip. If found defective, the equipment must be discarded or repaired prior to use. Equipment shall be maintained in a safe and seaworthy condition.

- (4) Except as provided in 3) A (2) (c) and 3) B (1) above, materials, supplies, or equipment of any type will not be cached or stored within the Area without prior written approval by the Superintendent.

**D) Safety**

- (1) Within 60 days of contract award, and prior to making any subsequent changes, the Concessioner will submit to the Superintendent for review and approval, a proposed Sea Kayak Orientation and Safety Program. The program will include a list of information to be provided to participants, a list of all equipment to be provided, a description of how the participant will be oriented to the functions and use of this equipment, and a description of the information provided regarding the safe use of the equipment. The Concessioner will adhere to the program approved by the Superintendent for all kayak rentals under this contract.
- (2) The Concessioner is authorized to provide to participants weather-dependent gear such as rain gear, rubber boots, maps, etc.
- (3) The Concessioner must provide appropriately sized personal flotation devices (pfd's) for all participants, including adults and children.
- (4) Concessioner vehicles transporting participants must be equipped with a fire extinguisher and road flares. Employees must be instructed on the use of these items.
- (5) The Concessioner's employees and support staff must provide pre-trip safety sessions covering, at a minimum, such topics as weather, tides, general information regarding wildlife and minimizing encounters, proper clothing and gear, food storage, and emergency procedures.

**E) Interpretation**

- (1) The Concessioner must provide information to its visitors to address wilderness stewardship values and Leave No Trace principles.
- (2) The Concessioner may additionally include information about the Area and its resources and include interpretive techniques designed to connect diverse audiences with Area resources, instill conservation ethics, and increase participant's environmental awareness.

**4) Required Reports and Submissions**

**A) Concessioner Operational Reports**

- (1) The Concessioner must provide the Service any and all supporting documentation for all operational reports upon request.
- (2) Employee Listing. The Concessioner's POC must provide the Service with a list of employees, office and emergency phone numbers prior to the start of the season of each year. The Concessioner must promptly notify the Service of any changes.
- (3) Incident Reports. For the incidents below, the Concessioner must immediately contact the Service Dispatcher at the Visitor Information Station at 907-697-2651 or the Alaska Regional Communication Center at 907-683-9555, or any other means necessary to make the Service aware of the emergency.
  - (a) Any accident resulting in property damage, personal injury, or death.
  - (b) All accidents, injuries or overdue kayakers.
  - (c) Personal injury to a visitor or employee that may result in a tort claim or requires medical attention other than minor first aid.
  - (d) Wildlife incidents involving collision, injury, property damage, or threat to humans or wildlife.
  - (e) Any whale strike where a collision occurred.
    - Whale Strike is defined as when a kayak comes into direct contact with a whale.
  - (f) Other incidents that may affect Area resources (e.g., fires, hazardous material spills, collisions with whales) or violate state and federal law.

- (g) A summary of all incidents occurring during the season must be included in the annual report by October 15.
- (4) Human Illness Reporting. The Concessioner immediately must report any suspected outbreak of human illness, whether employees or participant's, to the Service. A suspected outbreak of human illness is two or more persons with common symptoms that could be associated with contaminated water or food sources or other adverse environmental conditions. Reports must be made by telephone and email.
- (5) Visitor Comments. The Concessioner must provide tabulated summaries of all visitor comments annually, by October 15, including a year-to-date tabulation.
- (6) Concessioner Operational Reports by Service. The annual operational performance report must include all operational statistics for the individual service. This report is due to the Service through the Commercial Services office by October 15<sup>th</sup> for each year's activities. This data must be presented in a concise, electronic spreadsheet format. The Service will provide a basic template format.
- (7) Summary of all equipment rentals, to include:
  - (a) List of all rentals under the park concession contract including name, number of single and double kayaks rented, dates of rental and return; and
  - (b) Summary of rentals by month, broken down by length of rental (e.g., number of days) and type of kayak (e.g. single, double, expedition double, etc.); and
  - (c) Summary of incidental equipment rentals.

**B) Summary of Concessioner Reporting Requirements:**

<b>SUMMARY INITIAL AND RECURRING DUE DATES</b>		
<b>Title</b>	<b>Due Date</b>	<b>Reference</b>
<b>Initial Requirements</b>		
Balance Sheet	90 days of effective date of the Contract.	Contract Sec. 7(c)(1)
Initial Rental Inventory	30 days after effective date of contract	3)C)(1)
Orientation & Safety Program	60 days after effective date of contract	3)D)(1)
<b>Annually</b>		
Franchise Fee	November 15	Contract Sec. 5(b)
Dates of Operation	90 days prior to proposed start date each season	2)F)
Employee Listing	Prior to each operating season and when changes occur	4)A)(2)
Insurance Certificate	Prior to each operating season	Contract Exhibit D
Annual Financial Report	120 days after the end of the Concessioner's Fiscal Year	Contract Sec.7(b)(1)
Risk Management Plan	120 days after contract effective date	2)B)(1)
Visitor Comments	October 15	2)E)(7)
Summary of Incident Reporting	October 15	4)A)(3)(h)
Operational Reports by Service	October 15	4)A)(7)

<b>Monthly</b>		
Miscellaneous Reports and Data	The Director 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.	As noted throughout this Plan
<b>Upon Occurrence</b>		
Response to Visitor Complaints	Within 10 business days of initial receipt of visitor complaint	2)E)(7)
Incident Reporting	Immediately upon occurrence	4)A)(3)
Approval of any Promotional Material	At least 30 days prior to implementation or printing	2)D)(3)
Risk Management Plan Changes	November 30	2)B(1)

Effective this **1st** day of **January, 2015**.

**EXHIBIT C**

**ASSIGNED GOVERNMENT PERSONAL PROPERTY**

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

**NONE**

Approved, effective \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_

Herbert C. Frost, Ph.D.  
Regional Director, Alaska Region

**EXHIBIT D****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 provide the Service with an unconditional 30-day advance notice of cancellation of coverage or policy terms on all liability and workers' compensation insurance policies.

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

**SEC. 2. LIABILITY INSURANCE**

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

**(a) Commercial General Liability**

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

General Aggregate	\$1,000,000
Products and Completed Operations Aggregate	\$1,000,000
Per Occurrence	\$500,000
Personal and Advertising Injury Liability	\$500,000
Medical Payments	\$1,000

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

Athletic or Sports Participants  
 Products/Completed Operations  
 Personal and Advertising Injury exclusion or limitation  
 Contractual Liability

**(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. Use of Symbol 7, "specifically described autos," is acceptable when an insurer will not provide Symbol 1 because that insurer does not provide coverage for all of the Concessioner's owned "autos." Where there are no owned autos, the Concessioner will provide coverage for "hired autos" and "non-owned autos," Symbols 8 and 9. Garage-keepers' liability is

to be included on a "direct" basis for all Concessioner operations handling, parking or storing automobiles owned by others for a fee.

Combined Single Limit Each Accident	\$1,000,000
-------------------------------------	-------------

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

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

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

**(d) Liquor Liability (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	\$

**(e) Watercraft Liability (or Protection and Indemnity)**

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

Each Occurrence Limit	\$ 500,000
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Tower's liability shall be maintained at the same each occurrence limit if the Concessioner tows or transports non-owned vessels by water.

**(f) Environmental Impairment Liability (not applicable)**

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

Each Occurrence or Each Claim Limit	\$
Aggregate Limit	\$

**(g) Aircraft Liability (not applicable)**

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

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

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

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

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

Each Occurrence Limit	\$
Aggregate Limit	\$

**(i) 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.

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

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

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

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

**SEC. 3. 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. 4. THIRD PARTY INSURANCE**

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

**SEC. 5. 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. 6. 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 E 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.