

DRAFT

CATEGORY III CONTRACT

UNITED STATES DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

Yellowstone National Park

Guided Interpretive Oversnow Vehicle Tours

CONCESSION CONTRACT NO. CC-YELL5OS-26

Name of Concessioner

Concessioner's address, email address, phone number

Doing Business As Trade Name

Covering the Period July 1, 2026 through June 30, 2036 ¹

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

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 National Park Service Regional Director, Interior Regions 6, 7 and 8, hereinafter referred to as the "Director", and [Concessioner Name], (hereinafter referred to as "Concessioner"), a [Corporation, Partnership, Sole Proprietorship, Limited Liability Company], organized and existing under the laws of the State of [state name], doing business as [business name] under the authority of 54 U.S.C. §§ 101911 et seq., including 54 U.S.C. §§ 100901 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 July 1, 2026 until its expiration on June 30, 2036.

SEC. 2. SERVICES AND OPERATIONS

(a) Required and Authorized Visitor Services

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

CC-YELL501-26, CC-YELL502-26, CC-YELL503-26, CC-YELL505-26, CC-YELL506-26, CC-YELL507-26, CC-YELL508-26, CC-YELL509-26, CC-YELL510-26, CC-YELL511-26, CC-YELL522-26, CC-YELL523-26

	Service	Location
i.	Guided Interpretive Oversnow Vehicle Transportation Events (tours)	Yellowstone National Park

CC-YELL504-26

	Service	Location
i.	Guided Interpretive Oversnow Vehicle Transportation Events (tours)	Yellowstone National Park
ii.	Guided Oversnow Vehicle Shuttle Trips to Old Faithful	Yellowstone National Park

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

All Contracts (CC-YELL501-26, CC-YELL502-26, CC-YELL503-26, CC-YELL504-26, CC-YELL505-26, CC-YELL506-26, CC-YELL507-26, CC-YELL508-26, CC-YELL509-26, CC-YELL510-26, CC-YELL511-26, CC-YELL522-26, CC-YELL523-26)

		Service	Location
i.		Guided Interpretive OSV Custom and Charter Transportation Events	Yellowstone National Park
ii.		Guided Interpretive OSV Transportation Events Including Other Services	Yellowstone National Park
iii.		Guided OSV Shuttle Trips	Yellowstone National Park
iv.		Food Service for Clients Only	Yellowstone National Park
v.		OSV Towing and Repair	Yellowstone National Park
vi.		OSV Freight and Supply	Yellowstone National Park

(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.

(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:

_____ percent (X%) of the Concessioner's gross receipts for the preceding year or portion of a year or a flat fee of \$1,000, whichever is greater.

- (2) The Concessioner has no right to waiver of the fee under any circumstances.

(b) Payments Due

- (1) The franchise fee is due on a monthly basis at the end of each month and must be paid by the Concessioner in such a manner that the Director will receive payment within fifteen (15) days after the last day of each month that the Concessioner operates.

- (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

(a) Indemnification

- (1) The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys' fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims

for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessioner, its employees, agents or contractors under this Contract. This indemnification shall survive the termination or expiration of this Contract.

(b) Insurance in General

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

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

(4) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessioner shall provide the Director immediate written notice of any material change in the Concessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverages.

(c) Commercial Public Liability

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

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

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

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

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 days (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

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

DATE: _____, 20__

[Corporation]

ATTEST:

By _____
Name of signer
Title of signer

DATE: _____, 20__

[Sole Proprietorship/Partnership/Limited Liability Company]

WITNESSES:

NAME _____
Name of signer

ADDRESS _____

DATE: _____, 20__

UNITED STATES OF AMERICA

By _____
Brian Carlstrom]
Regional Director
Interior Regions 6, 7, & 8
National Park Service

DATE: _____, 20__

NAME _____
Name of signer

ADDRESS _____

DATE: _____, 20__

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 Yellowstone National Park.

(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.

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

(j) "Oversnow vehicle" means a snowmobile, snowcoach, or other motorized vehicle that is intended for travel primarily on snow and has been authorized by the Superintendent to operate in the Area. All-terrain vehicles and utility-type vehicles are not oversnow vehicles, even if they have been modified for use on snow with track or ski systems.

(k) "Snowcoach" means a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1,000 pounds (450 kilograms), and having a capacity of at least eight passengers and no more than 32 passengers, plus a driver.

(l) "Snowcoach transportation event" means one snowcoach that does not meet enhanced emission standards traveling in Yellowstone National Park on any given day, or two snowcoaches that both meet enhanced emission standards traveling together in Yellowstone National Park on any given day.

(m) "Snowmobile" means a self-propelled vehicle intended for travel solely on snow, with a maximum curb weight of 1,000 pounds (450 kilograms), driven by a track or tracks in contact with the snow, and which may be steered by a ski or skis in contact with the snow.

(n) "Snowmobile transportation event" means a group of 10 or fewer commercially guided snowmobiles traveling together in Yellowstone National Park on any given day or a non-commercially guided group, which is defined separately. Snowmobiles entering Cave Falls Road are not considered snowmobile transportation events.

(o) "Subconcessioner" means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

(p) "Transportation event" means a snowmobile transportation event or a snowcoach transportation event.

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 contracts. The Concessioner may enter into a subconcession contract with respect to the exercise by others of the privileges granted by this Contract. A subconcessioner may provide the services required or authorized in Section 2 of this Contract by either snowcoach or snowmobile, but not by both, and will be solely responsible for all required or authorized services using that type of oversnow vehicle. If the Director approves such a subconcession contract, the Concessioner remains solely responsible for all required or authorized services using the other type of oversnow vehicle. Any such subconcession contract will be effective only if and when approved by the Director pursuant to 36 C.F.R. § 51.87, including that the subconcessioner is a qualified person as defined in 36 C.F.R. § 51.3. Any such subconcession contract must contain at least the minimum terms required by the Service as set forth in Appendix 1 to this Contract. If the Director approves a proposed subconcession contract, the Concessioner must pay to the Director within 45 days after December 31st each year or portion of year a sum equal to fifty percent (50%) of any and all fees, commissions, or compensation payable to the Concessioner thereunder, other than the subconcessioner's payment of franchise fees to the Concessioner. This payment is in addition to the franchise fee payable to the Director on the gross receipts of the subconcessioner as provided for in Section 5 of this Contract. The Concessioner may not enter into management agreements with third parties concerning the provision of visitor services required or authorized under this Contract.

(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, except for survival of the Concessioner's commitments as set forth in its Offeror's Transmittal Letter in response to the solicitation for this Contract. 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.

9. NATIONAL PARK SERVICE TRADEMARK LICENSE

(a) License Grant

The unique nature of a National Park Service concession blends commercial enterprise with the treasured historic, cultural, and, natural assets that the Director is responsible for protecting. The Director hereby grants to the Concessioner a royalty-free, non-exclusive, non-transferable license to use the marks as listed in Exhibit F ("Marks"), for use solely to carry out the services described under this Contract in manner that promotes National Park Service goals and values as stated herein. The Concessioner has the right to sub-license Marks in order to carry out services described under this Contract upon written approval of the Director and under same or substantially similar terms as contained herein. Any use of any Mark intended to identify the National Park Service, or one of the Concession Facilities, shall inure to the benefit of the National Park Service. This license shall cease upon termination or expiration of the Contract, or as otherwise determined by the Director or by law. This license does not constitute a compensable interest to the Concessioner.

(b) Quality Control and Goodwill

The Concessioner acknowledges that the maintenance of the high quality of the services, materials, products, and merchandise produced, sold or otherwise prepared for public dissemination pursuant to or in order to carry out services required under this Contract, as well as the control by the Director over their nature, quality, and manner of delivery or distribution, are material conditions of this Contract. The Concessioner shall maintain the distinctiveness of the Marks, the image of the National Park Service brand, and the image and high quality of the services, materials, products, and merchandise bearing the Marks licensed herein. Marks may be used and appear together with other marks used in connection with concession-related goods and services but must stand by themselves. The Concessioner shall immediately cease use of a Mark used in association with the services provided under this Contract on request of the National Park Service.

(c) Rights and Ownership

The Concessioner acknowledges that the National Park Service is the sole and exclusive owner of all right, title and interest in and to its Marks, including those licensed under this agreement, as well as to all combinations, forms, and derivatives which must be approved by the Director. The Concessioner further acknowledges, represents and warrants that it has not acquired and shall not acquire (whether by operation of law, by this Contract, or otherwise) any right, title, interest or ownership (collectively "Ownership Rights") in or to any National Park Service Marks or any part thereof. Should any Ownership Rights become vested in

the Concessioner, the Concessioner agrees to assign, and hereby assigns, all such Ownership Rights to the Director free of consideration. The Concessioner shall immediately provide and execute all documents reasonably requested by the Director to effectuate and record each such assignment. The Concessioner shall not, during the term or at any time thereafter, do anything which, in the Director's sole judgment, could in any way damage the validity and subsistence of the Marks. The Concessioner shall not attack, dispute, or challenge the National Park Service's Ownership Rights in or to the Marks or the validity of this Contract, nor shall the Concessioner assist others in so doing.

APPENDIX 1 - DRAFT SUBCONCESSION CONTRACT FOR THE PROVISION OF OVERSNOW VEHICLE SERVICES

This subcontract for oversnow Vehicle ("OSV") services (the "Subconcession Contract"), effective as of _____, 20____, is entered into by and between [*insert Concessioner's full legal name*] (hereinafter, the "Concessioner") and [*insert Subconcessioner's full legal name*] (hereinafter, the "Subconcessioner").

RECITALS

The Subconcession Contract is subject to the terms and conditions of Concessioner's Category III Contract [*insert contract number*] with the United States of America, acting by the Director of the National Park Service through the Regional Director, Interior Regions 6, 7 and 8 ("Director"), for the provision of oversnow vehicle tours within Yellowstone National Park ("Area"), dated _____, 20__ (as it may be amended from time to time, the "Contract").

The Contract requires the Concessioner to provide guided interpretive OSV tours to visitors of the Area by snowcoach OR by snowmobile. The Concessioner will provide all [snowcoach or snowmobile] OSV tours. The Concessioner and Subconcessioner desire that the Subconcessioner provide all OSV tours by [snowcoach or snowmobile].

AGREEMENT

1. Identification of Subconcessioner

The Subconcessioner represents and warrants that it is the legal owner or lessee of the OSVs listed on Attachment 1 hereto and is authorized to enter into this Subconcession Contract. Identifying information follows:

Subconcessioner's Name, Address, and Telephone Number:

If the Subconcessioner is a business entity, list at least one individual authorized to act on behalf of the Subconcessioner, their title in the entity, and contact information (telephone number and email address):

If any of the OSVs are leased, provide identifying information for each legal owner on Attachment 1.

2. Term of Subconcession Contract

This Subconcession Contract will be for a term of ____ (____) year(s), commencing on the effective date written above and expiring on _____, 20____. Notwithstanding the foregoing, the Subconcessioner acknowledges and agrees that this Subconcession Contract will terminate on the expiration or earlier termination of the Contract for any reason.

3. Applicable Laws

The Subconcessioner must comply with all "Applicable Laws," which means the federal, state, and local laws governing the Area, including, but not limited to, the rules, regulations, requirements, and policies promulgated under those laws (e.g., 36 C.F.R. Part 51), whether now in force, or amended, enacted, or promulgated in the future, including, without limitation, laws, rules, regulations, requirements, and policies governing nondiscrimination, protection of the environment, and protection of public health and safety.

4. Definitions

Any terms not defined herein have the same definition as set forth in Sec. 1 of Addendum 1 to the Contract (e.g., "gross receipts").

5. Services Provided by Subconcessioner

(a) Services. The Subconcessioner may provide OSV tours to visitors of the Area, subject to the daily transportation event allocation of the Concessioner:

[Add chart with number of transportation events]

The Subconcessioner must provide, operate, and maintain all OSVs, personnel, equipment, goods, and commodities necessary for operating and maintaining the required visitor services in accordance with this Subconcession Contract, including but not limited to, all safety equipment required by Applicable Laws for OSVs of this type. The Subconcessioner's authority to provide visitor services hereunder is non-exclusive. The Subconcessioner's provision of visitor services in accordance with this Subconcession Contract must be to such an extent and in a manner considered satisfactory by the Director.

(b) Subconcessioner Operating Plan. The Concessioner will establish and revise, as necessary, specific requirements for the operations of the Subconcessioner under this Subcontract in the form of a Subconcessioner Operating Plan (including, without limitation, a risk management program). This Subconcessioner Operating Plan will include similar general requirements, administrative requirements, and snowcoach or snowmobile operating requirements as exist in the Operating Plan between the Concessioner and the Director (Exhibit B of the Contract). In no event may the terms of the Subconcessioner Operating Plan contain terms that are inconsistent with the terms of the Contract and its exhibits. The Concessioner in its discretion, after consultation with the Subconcessioner, may make reasonable modifications to the initial Subconcessioner Operating Plan that furthers the purposes of this Subconcession Contract and are not inconsistent with the terms and conditions of the Subconcession Contract.

(c) Maintenance. The Subconcessioner, at its sole cost and expense, must provide and maintain the OSVs in a safe and clean condition in strict conformity with all Applicable Laws and manufacturers' specifications during the term of this Subconcession Contract. The Subconcessioner must maintain a maintenance log describing all preventive, cyclic, and repair actions for each OSV and make the log available for review by the Concessioner.

(d) Reservations/Bookings. The Concessioner is ultimately responsible for the management of all reservations, cancellations, and refunds. The Subconcessioner may take reservations, cancellations, and bookings if it is made clear to the visitor that: 1) the Subconcessioner is acting as a Subconcessioner to the Concessioner under an NPS concession contract; and 2) the visitor may cancel its reservation or booking

through the Concessioner. The Concessioner and Subconcessioner must actively communicate on all the Subconcessioner's reservations under the Subconcession Contract.

(e) Promotional Materials. All promotional materials, including brochures, websites, etc. must identify the Subconcessioner is acting as a Subconcessioner to the Concessioner under an NPS concession contract. The Subconcessioner is not authorized to use the Authorized Concessioner Mark in its promotional materials.

(f) Rates. The Concessioner sets all rates charged by the Subconcessioner, subject to rate approval by the Director.

(g) Notice to Concessioner if OSV is Out of Service. The Subconcessioner must notify the Concessioner as promptly as practicable if any of its OSVs are or will be out of commission for standard maintenance or due to unanticipated circumstances.

(h) Inspections. The Subconcessioner must permit representatives of the Concessioner to inspect its OSVs for compliance with the Subconcession Contract and Applicable Laws.

(i) Requirements of Subconcessioner Prior to Providing any Services Hereunder. The Subconcessioner must deliver the following documentation to the Concessioner (which in turn will make such documentation available to the Director) for review and acceptance before the Subconcessioner commences operations:

- Certificate of insurance with the Concessioner and the National Park Service listed as additional insured;
- List of guides and the expiration dates of their first aid and CPR certifications at least 10 days prior to the guide's first trip. Both certifications must be current and valid in order for a guide to lead a trip.
- Current state registrations for its OSVs; and
- Current drivers'/operators' licenses for all personnel providing service.

6. Role of the Director

The Director administers the Area and is an intended third-party beneficiary of this Subconcession Contract.

7. Fees

(a) Franchise Fee

(1) For the term of this Subconcession Contract, the Subconcessioner must pay to the Concessioner for the privileges granted under this Subconcession Contract a franchise fee equal to *[insert franchise fee alpha number]* percent (*[insert franchise fee numeric number]*%) of the Subconcessioner's annual gross receipts for the preceding year or portion of a year. (This amount must be the same amount as identified in Section 5(a) of the Contract).

(2) The Subconcessioner must report all of its gross receipts for services provided under this Subconcession Contract to the Concessioner without allowances, exclusions, or deductions of any kind or nature. The Concessioner is responsible for remitting the correct franchise fee payment to the Director required under the Contract based on the collective total of gross receipts, including gross receipts from the Subconcessioner.

(b) Other Subconcession Fee(s)

[Insert proposed language for any other fees, commissions, or compensation the Concessioner intends to require the Subconcessioner to pay it under this Subconcession Contract, 50% of which must be paid to the Director per the terms of the Contract.]

Example language: The Subconcessioner must pay to the Concessioner a sum equal to [insert amount] as an additional fee for the privileges granted under this Subconcession Contract.]

(c) Payments Due

The franchise fee is due on a monthly basis at the end of each month and must be paid by the Subconcessioner in such a manner that the Concessioner receives payment within ten (10) calendar days after the last day of each month that the Subconcessioner operates. This monthly payment must include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

[Optional: insert additional paragraph for any other fees required under this Subconcession Contract.

Example language: The Subconcessioner must pay any other fees required by this Subconcession Contract to the Concessioner by [insert deadline].]

(d) Interest. An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, if that payment is delayed beyond the ten (10) calendar day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury. The Concessioner may also impose penalties for late payment to the extent authorized by Applicable Laws.

8. Indemnity and Insurance

(a) Indemnification. The Subconcessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the Concessioner and the United States of America, their respective 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 Subconcessioner, its employees, agents or contractors under this Subconcession Contract. This indemnification will survive the termination or expiration of this Subconcession Contract.

(b) Insurance in General

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

(2) The Subconcessioner must, at the time insurance is first purchased and annually thereafter, provide the Concessioner with a certificate of insurance that accurately details the conditions of the policy(ies) as evidence of compliance with this section and provide copies of the policies themselves upon request. The Subconcessioner agrees that the Concessioner may provide the Director the certificates of insurance or policies referenced hereunder. The Subconcessioner must provide the Concessioner immediate written notice of any material change in the Subconcessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverages.

(3) All liability policies must specify that the insurance company has no right of subrogation against the United States of America and provide that the United States of America is included as an additional insured.

9. Suspension or Termination

(a) Suspension. If the Director temporarily suspends operations under the Contract in whole or in part in order to protect Area visitors or to protect, conserve and preserve Area resources, the Concessioner must suspend this Subconcession Contract. Neither the Concessioner nor the Director will owe compensation of any nature to the Subconcessioner in the event of a suspension of operations, including, but not limited to,

compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

(b) Termination. In the event of termination of this Subconcession Contract due to the expiration or earlier termination of the Contract, neither the Concessioner nor the Director will owe compensation of any nature to the Subconcessioner, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

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

(2) In the event of a monetary breach, the Concessioner will give the Subconcessioner a fifteen (15) day period to cure the breach. If the Subconcessioner fails to cure the breach within that period, then the Concessioner may terminate the Subconcession Contract for default. In the event of a nonmonetary breach, if the Concessioner considers that the nature of the breach so permits, the Concessioner will give the Subconcessioner thirty (30) days to cure the breach, or to provide a plan satisfactory to the Concessioner, to cure the breach over a specified period of time. If the Subconcessioner fails to cure the breach within this specified period of time, the Concessioner may terminate the Subconcession 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 Concessioner may suspend the Subconcessioner's operations as appropriate in accordance with subsection (a) above.

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

(4) Termination of this Subconcession Contract for any reason will be by written notice to the Subconcessioner.

10. Reporting Requirements of Subconcessioner

(a) Guide List. The Subconcessioner must submit to the Concessioner, prior to _____ of each operating year, a list of guides and the expiration dates of their first aid and CPR certifications.. Both certifications must be current and valid in order for a guide to lead a trip.

(b) Vehicle List. The Subconcessioner must submit to the Concessioner, prior to _____ of each operating year, a list and description (make & model) of the Subconcessioner's OSVs, wheeled vehicles, tow vehicles, and trailers with vehicle registration (VIN) numbers and license plate numbers. The Subconcessioner must include information to establish the Subconcessioner's vehicles meet the air and sound emission standards required by 36 C.F.R. 7.13(l) and when each vehicle expires.

(c) Monthly Use Report. The Subconcessioner must submit monthly as soon as possible but not later than ten (10) days after the last day of the preceding month, to the Concessioner, a monthly use report summarizing daily visitor use information in the same format as in Exhibit B of the Contract, Attachment A.

(d) Statement of Gross Receipts. The Subconcessioner must submit monthly as soon as possible but not later than ten (10) days after the last day of the preceding month, to the Concessioner, a statement of the amount of gross receipts it earned in the preceding month.

(e) Financial Statement. The Subconcessioner must submit to the Concessioner annually as soon as possible, but not later than ninety (90) days after the last day of the calendar year, a financial statement for the preceding calendar year or portion of a year. The Concessioner will provide the form of report the Subconcessioner must use, which will reflect the information required by the Director for operations of a size similar to that of the Subconcessioner's.

- (i) If the Subconcessioner's annual gross receipts exceed \$500,000, the financial statements must be reviewed by an independent certified public accountant in accordance with Generally Accepted Audit Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants. If the 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 Concessioner. The Concessioner must submit to the Director all financial reports from the Subconcessioner.

(f) From time to time, the Concessioner may require the Subconcessioner to submit other reports and data regarding its performance under the Subconcession Contract or otherwise, including, but not limited to, operational information.

11. General Provisions

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, will have access to the records of the Subconcessioner on request during the term of the Subconcession Contract and for a period of five (5) years thereafter.

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

(c) The Subconcessioner may not transfer or assign this Subconcession Contract. The Subconcessioner may not enter into third party agreements, including management agreements, for the provision of visitor services required or authorized under this Subconcession Contract.

(d) The Subconcessioner must promptly pay any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Subconcessioner.

(e) This Subconcession Contract contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this Subconcession Contract. This Subconcession Contract may be extended, renewed, or amended only when agreed to in writing by the Concessioner and the Subconcessioner and only when approved by the Director.

(f) This Subconcession Contract does not grant rights or benefits of any nature to any third party other than the Director.

(g) The invalidity of a specific provision of this Subconcession Contract will not affect the validity of the remaining provisions of this Subconcession Contract.

(h) Waiver by the Concessioner or the Subconcessioner of any breach of any of the terms of this Subconcession 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 Subconcession Contract. The subsequent acceptance of any payment of money or other performance required by this Subconcession Contract will not be deemed to be a waiver of any preceding breach of any term of the Subconcession Contract.

(i) In the event of any conflict between the provisions of the Contract and this Subconcession Contract, the terms of the Contract control.

(j) This Subconcession 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 Subconcessioner 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.

[The Concessioner may propose to add other provisions here for Director review and approval, so long as they are consistent with the terms set forth above. If so, all the Concessioner's terms should appear at the end and be introduced with this language: "In the event of any inconsistency between the terms below and the terms above, the terms above control."]

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

CONCESSIONER

[Name of Concessioner]

By_____

Printed Name:_____

DATE: _____, 20__

SUBCONCESSIONER

[insert Subconcessioner's full legal name]

By_____

Printed Name:_____

DATE: _____, 20__

Attachment 1 to Subconcession Contract

The Subconcessioner, *[insert Subconcessioner's full legal name]*, represents and warrants that it is the legal owner or lessee of the following OSVs. If the any of the OSVs are leased, provide identifying information for each legal owner.