



# United States Department of the Interior

## NATIONAL PARK SERVICE

1849 C Street, N.W.

WcW1ington, D.C. 20240

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**MAR' 19 2010**

### Memorandum

To: Regional Directors

From: Deputy Director, Operations

Subject: Changes to Standard Contract Language for Category I, II and III Concession Contracts

This memorandum addresses the changes to the standard concession contract language as published in the Federal Register on July 19, 2000, and as revised, approved on January 22, 2009. The following standard contract language changes are made effective immediately and are reflected in the template documents found on the SharePoint site at **Home - Concession Contract and Prospectus Development Templates**. Please use the templates for prospectus development on this SharePoint site to ensure that the documents contain the current standard contract language.

For a Category I contract, the addition of the language below (in the box) in Exhibit A, Leasehold Surrender Interest is required. The addition of 9(b) is not applicable to a Category II or a Category III contract.

#### ***Sec. 9. Extinguishment of a Leasehold Surrender Interest***

*(b) The Director at any time during the term of this Contract or after its termination or expiration may in his discretion pay the Concessioner the then applicable Leasehold Surrender Interest Value in all or portions of the related Capital Improvements in which the Concessioner holds a Leasehold Surrender Interest under the terms of this Contract. Upon receipt of such payment by the Concessioner, the applicable Leasehold Surrender Interest shall be extinguished or reduced, as applicable for all purposes of this Contract and Applicable Laws. In the event of a dispute between the Director and the Concessioner as to the appropriate amount of such payment under the terms of this Contract, the dispute shall be resolved through binding arbitration as defined above.*

The next change is applicable to a Category I contract with a Repair and Maintenance Reserve. The language below (in the box) identifies several terms as defined in 36 CFR Part 51 and replaces the language under Section 10(c)(5). The change is also applicable when a Category II contract uses the language from a Category I contract with approval of a standard deviation request to include a Repair and Maintenance Reserve. The change is not applicable to a Category III contract.

**Sec. IO. Maintenance**

**(c) Repair and Maintenance Reserve**

*(5) Repair and Maintenance Reserve funds shall not be used to construct "Capital Improvements " as that term is defined in 36 CFR Part 51, i.e., the construction of a "structure," a "major rehabilitation," or the installation or replacement of "fixtures and non-removable equipment "(as these terms are defined in 36 CFR Part 51). The Concessioner shall obtain no ownership, Leasehold Surrender Interest, or other compensable interest as a consequence of the expenditure of Repair and Maintenance Reserve funds.*

The language, "unless the damage exceeds \$1,000,000," is added below (in the box) at the end of the first sentence in order for the National Park Service to manage proceeds for losses. This language is added to Section 12(d)(5) in a Category I contract and to Section 11(d)(5) in a Category II contract and is consistent with the recommended changes for the updated Insurance Exhibit, approved under a separate memorandum. This change is not applicable to a Category III contract.

**Section 12. Indemnification and Insurance**

**(d) Property Insurance**

*(5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States, unless the damage exceeds \$1,000,000. The use of insurance proceeds for repair or replacement of Concession Facilities will not alter their character as properties of the United States and, notwithstanding any provision of this Contract to the contrary, the Concessioner shall gain no ownership, Leasehold Surrender Interest or other compensable interest as a result of the use of these insurance proceeds.*

And finally, the language below (in the box) is applicable to all category levels of contracts and the language is identical for each. The language is added to the General Provisions section in a Category I contract under Section J9(m), in a Category II contract under Section 17(m), and in a Category III contract under Section 10, General Provisions, Addendum 1, 8(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 or the future expenditure of money in excess of such appropriations.*

If you have any questions, please contact Jo A Pendry, Chief, Commercial Services Program, at 202/513-7156, or Debra Hecox, Planning and Development Branch Chief, at 303/987-6910.