

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

Yosemite National Park

El Portal Administrative Site

Grocery, including Retail Sales, Food and Beverage, and Related Services

**CONCESSION CONTRACT NO. CC-YOSE003-16**

National and State Park Concessions El Portal, LLC

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Covering the Period November 1, 2016 through October 31, 2026

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**IDENTIFICATION OF THE PARTIES**

**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 Pacific West Region, (hereinafter referred to as the "Director"), and National and State Park Concessions El Portal, LLC, a Limited Liability Company organized and existing under the laws of the State of Florida, (hereinafter referred to as the "Concessioner"):

**WITNESSETH:**

**THAT WHEREAS**, Yosemite National Park is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

**WHEREAS**, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

**WHEREAS**, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director; and

**WHEREAS**, the Director desires the Concessioner to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship, and leadership;

**NOW, THEREFORE**, pursuant to the authority contained in the Acts of August 25, 1916 (54 U.S.C. §§100101 et seq.), and November 13, 1998 (Pub. L. 105-391 54 U.S.C. §§ 101911 et seq.), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

**SEC. 1. TERM OF CONTRACT**

This Concession Contract No. CC-YOSE003-16 ("Contract") shall be effective as of November 1, 2016, and shall be for the term of ten (10) years until its expiration on October 31, 2026.

**SEC. 2. 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 (e.g., 36 CFR Part 51), 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 Yosemite National Park.

(c) "Best Management Practices" or "BMPs" are policies and 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. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner's operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.

(d) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this Contract and all real property improvements assigned to the Concessioner under this Contract. The United States retains title and ownership to all Concession Facilities.

(e) "Days" shall mean calendar days.

(f) "Director" means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and his duly authorized representatives.

(g) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this Contract, each of which is hereby made a part of this Contract.

(h) "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, including gross receipts of subconcessioners as herein defined, 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, fishing license fees, and postage stamps, provided that the amount excluded shall 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, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

- (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 will report all of its gross receipts to the Concessioner without allowances, exclusions, or deductions of any kind or nature.
- (j) "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.
- (k) "Superintendent" means the manager of the Area.
- (l) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by Section 3(a) of this Contract.

**SEC. 3. SERVICES AND OPERATIONS**

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

During the term of this Contract, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

(1) Required Visitor Services. The Concessioner is required to provide the following visitor services during the term of this Contract:

	<b>Service</b>	<b>Location</b>
i.	Grocery	El Portal Market
ii.	Retail Sales	El Portal Market
iii.	Food and Beverage	El Portal Market
iv.	Automated Teller Machine	El Portal Market

(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.	Movie Rentals	El Portal Market
ii.	Firewood Sales	El Portal Market
iii.	Vending	El Portal Market

**(b) Operation and Quality of Operation**

The Concessioner shall provide, operate and maintain the required and authorized visitor services and any related support facilities and services in accordance with this Contract to such an extent and in a manner considered satisfactory by the Director. Except for any such items that may be provided to the Concessioner

by the Director, the Concessioner shall provide the plant, personnel, equipment, goods, and commodities necessary for providing, operating and maintaining the required and authorized visitor services in accordance with this Contract. The Concessioner's authority to provide visitor services under the terms of this Contract is non-exclusive.

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

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this Contract in the form of an Operating Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating Plan is attached to this Contract as Exhibit A. The Director in his discretion, after consultation with the Concessioner, may make reasonable modifications to the initial Operating Plan that are in furtherance of the purposes of this Contract and are not inconsistent with the terms and conditions of the main body of this Contract.

### **(d) Merchandise and Services**

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this Contract, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.

(2) 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.

(3) The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

### **(e) Rates**

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this Contract. The Concessioner's rates and charges to the public must be approved by the Director in accordance with Applicable Laws and guidelines promulgated by the Director from time to time.

### **(f) Impartiality as to Rates and Services**

(1) Subject to Section (f)(2) and (f)(3), in providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit B.

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this Contract. However, the Director reserves the right to review and modify the Concessioner's complimentary or reduced rate policies and practices as part of its rate approval process.

(3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not

be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

#### **SEC. 4. CONCESSIONER PERSONNEL**

##### **(a) Employees**

(1) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this Contract.

(2) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit B.

(3) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

(4) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessioner.

(5) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(6) The Concessioner shall 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 shall take such actions as are necessary to correct the situation.

(7) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any Concessioner employee housing, within the Area.

(8) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.

(9) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that is found to be in violation of the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

##### **(b) Employee Housing and Recreation**

(1) If the Concessioner is required to provide employee housing under this Contract, the Concessioner's charges to its employees for this housing must be reasonable.

(2) If the visitor services required and/or authorized under this Contract are located in a remote or isolated area, the Concessioner shall provide appropriate employee recreational activities.

## **SEC. 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE**

### **(a) Legal, Regulatory and Policy Compliance**

This Contract, operations thereunder by the Concessioner and the administration of it by the Director, shall be 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. Certain Applicable Laws governing protection of the environment are further described in this Contract. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this Contract.

### **(b) Notice**

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or contractors, and, at its sole cost and expense, must promptly rectify any such violation.

### **(c) How and Where To Send Notice**

All notices required by this Contract shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

Superintendent  
Yosemite National Park  
P.O. Box 577  
Yosemite National Park, CA 95389

Notices sent to the Concessioner shall be sent to the following address:

National and State Park Concessions El Portal, LLC  
2801 Industrial Ave. 2  
Fort Pierce, Florida 34946

## **SEC. 6. ENVIRONMENTAL AND CULTURAL PROTECTION**

### **(a) Environmental Management Objectives**

The Concessioner shall meet the following environmental management objectives (hereinafter "Environmental Management Objectives") in the conduct of its operations under this Contract:

(1) The Concessioner, including its employees, agents and contractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.

(2) The Concessioner shall incorporate Best Management Practices (BMPs) in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this Contract.

### **(b) Environmental Management Program**

(1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental

Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this Contract. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.

(2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and complexity of the EMP may vary based on the type, size and number of Concessioner activities under this Contract.

(3) The EMP shall include, without limitation, the following elements:

(i) Policy. The EMP shall provide a clear statement of the Concessioner's commitment to the Environmental Management Objectives.

(ii) Goals and Targets. The EMP shall identify environmental goals established by the Concessioner consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (i.e. measurable results and schedules) to achieve these goals.

(iii) Responsibilities and Accountability. The EMP shall identify environmental responsibilities for Concessioner employees and contractors. The EMP shall include the designation of an environmental program manager. The EMP shall include procedures for the Concessioner to implement the evaluation of employee and contractor performance against these environmental responsibilities.

(iv) Documentation. The EMP shall identify plans, procedures, manuals, and other documentation maintained by the Concessioner to meet the Environmental Management Objectives.

(v) Documentation Control and Information Management System. The EMP shall describe (and implement) document control and information management systems to maintain knowledge of Applicable Laws and BMPs. In addition, the EMP shall identify how the Concessioner will manage environmental information, including without limitation, plans, permits, certifications, reports, and correspondence.

(vi) Reporting. The EMP shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Director under this Contract.

(vii) Communication. The EMP shall describe how the environmental policy, goals, targets, responsibilities and procedures will be communicated throughout the Concessioner's organization.

(viii) Training. The EMP shall describe the environmental training program for the Concessioner, including identification of staff to be trained, training subjects, frequency of training and how training will be documented.

(ix) Monitoring, Measurement, and Corrective Action. The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will self-assess its performance under the EMP, at least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The self-assessment should ensure the Concessioner's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the Concessioner to correct any deficiencies identified by the self-assessment.

### **(c) Environmental Performance Measurement**

The Concessioner shall be evaluated by the Director on its environmental performance under this Contract, including, without limitation, compliance with the approved EMP, on at least an annual basis.

**(d) Environmental Data, Reports, Notifications, and Approvals**

(1) Inventory of Hazardous Substances and Inventory of Waste Streams. The Concessioner shall submit to the Director, at least annually, an inventory of federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the Concessioner in operations under this Contract. The Concessioner shall 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 shall also submit to the Director, at least annually, an inventory of all waste streams generated by the Concessioner under this Contract. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.

(2) Reports. The Concessioner shall 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 shall 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.

(3) Notification of Releases. The Concessioner shall 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.

(4) Notice of Violation. The Concessioner shall 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.

(5) Communication with Regulatory Agencies. The Concessioner shall 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 shall 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 shall allow the Director to participate in any such communications. The Concessioner shall also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

**(e) Corrective Action**

(1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the Concessioner's operations under this Contract, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.

(2) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, or transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

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

(1) The Concessioner shall indemnify the United States in accordance with Section 11 of this Contract from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments

(including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts' fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this Contract.

(2) 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 shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section shall preclude the Concessioner from seeking to recover costs from a responsible third party.

### **(g) Weed and Pest Management**

The Concessioner shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice and other pests on Concession Facilities assigned to the Concessioner under this Contract. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Director.

### **(h) Protection of Cultural and Archeological Resources**

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees, agents and contractors, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by the Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

## **SEC. 7. INTERPRETATION OF AREA RESOURCES**

### **(a) Concessioner Obligations**

(1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area as reflected in Area planning documents, mission statements and/or interpretive prospectuses.

(2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this Contract.

(3) The Concessioner is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessioner.

### **(b) Director Review of Content**

The Concessioner must submit the proposed content of any interpretive programs, exhibits, displays or materials, regardless of media format (i.e. printed, electronic, or broadcast media), to the Director for review and approval prior to offering such programs, exhibits, displays or materials to Area visitors.

**SEC. 8. CONCESSION FACILITIES USED IN OPERATION BY THE CONCESSIONER****(a) Assignment of Concession Facilities**

(1) The Director hereby assigns Concession Facilities as described in Exhibit C to the Concessioner for the purposes of this Contract. The Concessioner shall not be authorized to construct any Capital Improvements (as defined in Applicable Laws including without limitation 36 CFR Part 51) upon Area lands. The Concessioner shall not obtain a Leasehold Surrender Interest or other compensable interest in Capital Improvements constructed or installed in violation of this Contract.

(2) The Director shall from time to time amend Exhibit C to reflect changes in Concession Facilities assigned to the Concessioner.

**(b) Concession Facilities Withdrawals**

The Director may withdraw all or portions of these Concession Facilities assignments at any time during the term of this Contract if:

(1) The withdrawal is necessary for the purpose of conserving, preserving or protecting Area resources or visitor enjoyment or safety;

(2) The operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or

(3) Land or real property improvements assigned to the Concessioner are no longer necessary for the concession operation.

**(c) Effect of Withdrawal**

Any permanent withdrawal of assigned Concession Facilities which the Director or the Concessioner considers to be essential for the Concessioner to provide the visitor services required by this Contract will be treated as a termination of this Contract pursuant to Section 15. No compensation is due the Concessioner in these circumstances.

**(d) Right of Entry**

The Director shall have the right at any time to enter upon or into the Concession Facilities assigned to the Concessioner under this Contract for any purpose he may deem necessary for the administration of the Area.

**(e) Personal Property**

(1) Personal Property Provided by the Concessioner. The Concessioner shall provide all personal property, including without limitation removable equipment, furniture and goods, necessary for its operations under this Contract, unless such personal property is provided by the Director as set forth in subsection (e)(2).

(2) Personal Property Provided by the Government. The Director may provide certain items of government personal property, including without limitation removable equipment, furniture and goods, for the Concessioner's use in the performance of this Contract. The Director hereby assigns government personal property listed in Exhibit D to the Concessioner as of the effective date of this Contract. This Exhibit D will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property assigned to it and shall be responsible for maintaining the property as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

**(f) Condition of Concession Facilities**

The Concessioner has inspected the Concession Facilities and any assigned government personal property, is thoroughly acquainted with their condition, and accepts the Concession Facilities, and any assigned government personal property, "as is."

**(g) Utilities**

(1) The Director may provide utilities to the Concessioner for use in connection with the operations required or authorized hereunder when available and at rates to be determined in accordance with Applicable Laws.

(2) If the Director does not provide utilities to the Concessioner, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area.

**SEC. 9. MAINTENANCE****(a) Maintenance Obligation**

Subject to the limitations set forth in Section 8(a)(1) of this Contract, the Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and groundskeeping for all Concession Facilities to the satisfaction of the Director.

**(b) Maintenance Plan**

For these purposes, the Director, acting through the Superintendent, shall undertake appropriate inspections, and shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. The initial Maintenance Plan is set forth in Exhibit E. The Director in his discretion may make reasonable modifications to the Maintenance Plan from time to time after consultation with the Concessioner. Such modifications shall be in furtherance of the purposes of this Contract and shall not be inconsistent with the terms and conditions of the main body of this Contract.

**SEC. 10. FEES****(a) Franchise Fee**

(1) For the term of this Contract, the Concessioner shall pay to the Director for the privileges granted under this Contract a franchise fee equal to eight percent (8.0%) of the Concessioner's gross receipts for the preceding year or portion of a year.

(2) Neither the Concessioner nor the Director shall have a right to an adjustment of the fees except as provided below. The Concessioner has no right to waiver of the fee under any circumstances.

**(b) Payments Due**

(1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall 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 shall 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.

(3) All franchise fee payments consisting of \$10,000 or more, shall be deposited by the Concessioner in accordance with Applicable Laws.

### **(c) Interest**

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for above. 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.

### **(d) 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" shall 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 shall 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 shall 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 shall 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 shall 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 shall continue to make the established franchise fee payments required by this Contract.

## **SEC. 11. INDEMNIFICATION AND INSURANCE**

### **(a) 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 shall survive the termination or expiration of this Contract.

### **(b) Insurance in General**

(1) 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 F. 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.

(2) 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.

(3) 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 F. Furthermore, the commercial general liability package shall provide no less than the coverages and limits described in Exhibit F.

(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 F 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.

#### **(d) Property Insurance**

(1) In the event of damage or destruction, the Concessioner will repair or replace those Concession Facilities and personal property utilized by the Concessioner in the performance of the Concessioner's obligations under this Contract.

(2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on Concession Facilities for all or part of their replacement cost as specified in Exhibit F in amounts no less than the Director may require during the term of the Contract. The minimum values currently in effect are set forth in Exhibit F.

(3) Commercial property insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear.

(4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities and/or personal property utilized in the Concessioner's operations under this Contract, as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 12 shall apply to such insurance proceeds. The Concessioner shall not be relieved of its obligations under subsection (d)(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

(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.

(6) The commercial property package shall include the coverages and amounts described in Exhibit F.

### **SEC. 12. BONDS AND LIENS**

#### **(a) Bonds**

The Director may require the Concessioner to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Director, in order to ensure faithful performance of the Concessioner's obligations under this Contract.

#### **(b) Lien**

As additional security for the faithful performance by the Concessioner of its obligations under this Contract, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the Contract hereunder within the Area.

**SEC. 13. ACCOUNTING RECORDS AND REPORTS****(a) Accounting System**

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this Contract, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are \$250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this Contract, the Concessioner shall 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 shall submit annually as soon as possible but not later than one hundred 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 shall 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 Financial Reports**

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

**SEC. 14. OTHER REPORTING REQUIREMENTS**

The following describes certain other reports required under this Contract:

**(a) Insurance Certification**

As specified in Section 11, the Concessioner shall, at the request of the Director, provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this Contract. The

Concessioner shall give the Director immediate written notice of any material change in its insurance program, including without limitation, any cancellation of required insurance coverages.

**(b) Environmental Reporting**

The Concessioner shall submit environmental reports as specified in Section 6 of this Contract, and as otherwise required by the Director under the terms of this Contract.

**(c) Miscellaneous Reports and Data**

The Director from time to time 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.

**SEC. 15. SUSPENSION, TERMINATION, OR EXPIRATION**

**(a) Suspension**

The Director may temporarily suspend operations under this Contract in whole or in part in order to protect Area visitors or to protect, conserve and preserve Area resources. No compensation of any nature shall be due the Concessioner by the Director 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**

(1) The Director may terminate this Contract 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, 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 this Contract, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program and the requirement to comply with Applicable Laws.

(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 shall 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 15(a).

(4) The Director may terminate this Contract upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a 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. The Director may terminate this Contract if the Director

determines that the Concessioner is unable to perform the terms of Contract due to bankruptcy or insolvency.

(5) Termination of this Contract for any reason shall be by written notice to the Concessioner.

**(c) 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.

**(d) Requirements in the Event of Termination or Expiration**

(1) In the event of termination of this Contract for any reason or expiration of this Contract, no compensation of any nature shall be due the Concessioner in the event of a termination or expiration of this Contract, 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.

(2) Upon termination of this Contract for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner shall, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, repair any injury occasioned by installation or removal of such property, and ensure that Concession Facilities are in at least as good condition as they were at the beginning of the term of this Contract, reasonable wear and tear excepted. The removal of such personal property must occur within thirty (30) days after the termination of this Contract for any reason or its expiration (unless the Director in particular circumstances requires immediate removal). No compensation is due the Concessioner from the Director or a successor concessioner for the Concessioner's personal property used in operations under this Contract. However, the Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner in accordance with the terms of this Contract shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.

(3) To avoid interruption of services to the public upon termination of this Contract for any reason, or upon its expiration, the Concessioner, upon the request of the Director, shall consent to the use by another operator of the Concessioner's personal property, excluding inventories if any, not including current or intangible assets, for a period of time not to exceed one (1) year from the date of such termination or expiration. The other operator shall pay the Concessioner an annual fee for use of such property, prorated for the period of use, in the amount of the annual depreciation of such property, plus a return on the book value of such property equal to the prime lending rate, as published by the Federal Reserve System Board of Governors, effective on the date the operator assumes managerial and operational responsibilities. In such circumstances, the method of depreciation applied shall be either straight line depreciation or depreciation as shown on the Concessioner's Federal income tax return, whichever is less. To avoid interruption of services to the public upon termination of this Contract for any reason or its expiration, the Concessioner shall, if requested by the Director, sell its existing inventory to another operator at the purchase price as shown on applicable invoices.

(4) 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 G to this Contract,

"Transition to New Concessioner." This section and Exhibit G shall survive the expiration or termination of this Contract.

#### **SEC. 16. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS**

(a) This Contract is subject to the requirements of Applicable Laws, including, without limitation, 36 CFR Part 51, with respect to proposed assignments and encumbrances, as those terms are defined by Applicable Laws. Failure by the Concessioner to comply with Applicable Laws is a material breach of this Contract for which the Director may terminate this Contract for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this Contract of any nature or operating rights under this Contract, if obtained in violation of Applicable Laws.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to Applicable Laws, including without limitation, 36 CFR Part 51, of the requirements of Applicable Law and this Contract.

#### **SEC. 17. GENERAL PROVISIONS**

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

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

(c) Subconcession or other third party agreements, including management agreements, for the provision of visitor services required and/or authorized under this Contract are not permitted.

(d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this Contract.

(e) 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 Concessioner shall be paid promptly by the Concessioner.

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

(g) 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.

(h) 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.

(i) This Contract does not grant rights or benefits of any nature to any third party.

(j) The invalidity of a specific provision of this Contract shall not affect the validity of the remaining provisions of this Contract.

(k) Waiver by the Director or the Concessioner of any breach of any of the terms of this Contract by the other party shall 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 shall not be deemed to be a waiver of any preceding breach of any term of the Contract.

(l) Claims against the Director (to the extent subject to 28 U.S.C. 2514) arising from this Contract shall be forfeited to the Director by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.

(m) 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.

## **SEC. 18. INTELLECTUAL PROPERTY LICENSE**

### **(a) License Grant**

As used in this Contract, including all Exhibits, "Marks" means all trademarks, service marks and logos and brand identification and indicia, used to identify or describe the National Park Service and/or the Area and associated properties or features located therein, whether registered or not.

The Director hereby grants to Concessioner and Concessioner accepts a revocable, nonexclusive world-wide, royalty-free license to use the Marks described and depicted in attachments hereto during the term of the Contract, for use solely in connection with carrying out the Contract requirements, and only in the form described and depicted in Exhibit H to this Contract. Fanciful uses or use in combination with other devices (such as a logo) of the Marks listed herein must be reviewed and approved by the Director prior to use. All uses may be reviewed and approved in advance or as otherwise mutually agreed to in cases of administrative burden. This license does not constitute a compensable interest to the Concessioner. This license shall cease upon termination or expiration of the Contract, or as otherwise determined by the Director or by applicable laws.

The Director may amend this Contract to include additional Marks. The license to use the Marks does not include the right to use or to incorporate the Marks in any manner unconnected with the services provided under the Contract, including collateral marketing, outreach or advertising, or as trade names or internet domain names. The Marks may not be combined or altered in any way that may affect the integrity of the Mark.

### **(b) Quality Control and Goodwill**

The Director and the Concessioner acknowledge that maintaining the distinctiveness of the Marks and high quality of the services, materials, products and merchandise produced, sold or otherwise prepared for public dissemination are material conditions of this Contract in order to preserve the associated goodwill generated by the Parties in furtherance of meeting the National Park Service mission. All uses of Marks by the Concessioner, including all goodwill arising from the Marks, shall inure solely to the benefit of the National Park Service. The Concessioner shall not by any act or omission use the Marks in any manner that disparages or reflects adversely on the National Park Service or its reputation. The Concessioner shall immediately cease use of any Mark used in association with the services provided under this Contract upon request of the Director, whether listed in this Contract or not.

**(c) Rights and Ownership**

(1) The Concessioner acknowledges and agrees that the National Park Service owns, or otherwise has the right to use and to license, these Marks.

(2) The Concessioner acknowledges it shall not acquire any right, title, or interest in the Marks by virtue of this Contract other than the license granted hereunder, and disclaims any such right, title, interest, or ownership. The Concessioner shall not contest, dispute, challenge, oppose or seek to cancel the government's right, title, and interest in any Mark owned by the National Park Service or the validity of the license granted under this Contract, or any rights or ownership otherwise stated herein. The Concessioner shall not prosecute any application for registration or seek to register a Mark as a domain name or part of any domain name of any Mark that identifies the National Park Service or the Area, or that may otherwise cause confusion in the public as between the Concessioner and the National Park Service. Any term, name or device used for the purpose of describing the Area or goods, services or property located within the Area, including Concession Facilities, should be referred to as identified on the attachment. Any deviation or use outside of a nominative context must be approved by the Director.

(3) The Concessioner will not sublicense, assign, pledge, grant or otherwise encumber to any third party all or any part of its rights or duties under this Contract in whole or in part without the prior written consent from the Director, which consent the Director may grant or withhold in its sole and absolute discretion. Any purported transfer without such consent is hereby void.

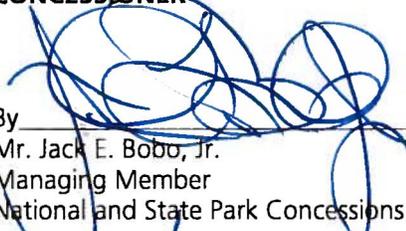
**(d) Notice and Assistance Regarding Intellectual Property Infringement**

(1) The Concessioner shall report to the Director promptly, in writing, and in reasonable detail, each notice or claim of intellectual property infringement based on the performance of this Contract of which the Concessioner has knowledge.

(2) In the event of any claim or suit against the United States on account of any alleged intellectual property infringement arising out of performance of this Contract, the Concessioner shall furnish the Director, when requested, all evidence and information in the Concessioner's possession pertaining to such claim or suit.

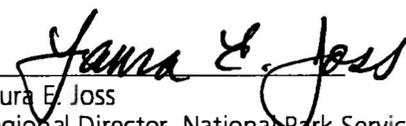
In Witness Whereof, the duly authorized representatives of the parties have executed this Contract on the dates shown below.

**CONCESSIONER**

By   
Mr. Jack E. Bobo, Jr.  
Managing Member  
National and State Park Concessions El Portal, LLC

DATE: 8/30, 2016

**UNITED STATES OF AMERICA**

By   
Laura E. Joss  
Regional Director, National Park Service

DATE: Sept. 9, 2016

WITNESSES:

By   
Signature  
Daniel W. Bobo  
Name

ADDRESS 2801 Industrial Ave 2 Fort Pierce, FL

DATE: 8/30, 2016

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

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## 1) **INTRODUCTION**

This Operating Plan between National and State Park Concessions El Portal, LLC (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 at the El Portal Administrative Site within Yosemite National Park (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.

## 2) **DEFINITIONS**

In addition to all defined terms contained in the Contract, its Exhibits, and 36 C.F.R. Part 51, the following definitions apply to this Operating Plan.

- A) Environmentally Preferable.** Products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, productions, manufacturing, packaging, distributions, reuse, operations, maintenance, or disposal of a product or service. Product considerations include, but are not limited to, the environmental impacts of the product's manufacture, toxicity, recycled content including post-consumer material, amount of packaging, energy or water conserving features, recyclability, and biodegradability.
- B) Environmental Purchasing.** Purchasing of environmentally preferable products.
- C) Facility Operations (FO).** Work activities performed on a recurring basis throughout the year which intends to meet routine, daily Area operational needs and sustain authorized Visitor Service operations. Facility Operations is not Maintenance. Typical work performed under operations includes janitorial and custodial services, operation of mechanical equipment, grease trap cleaning, roof and gutter cleaning, snow removal, operation or purchase of utilities, (water, sewer, electricity), grounds-keeping, etc.
- D) Post-consumer Material.** Material or finished product that has served its intended use and has been diverted or received from waste destined for disposal
- E) Recycling.** The act of producing new products or materials from previously used and collected materials.
- F) Service Policy.** The directives, policies, instructions and guidance regarding the National Park System and the Service which are in writing and approved by the Secretary of Interior or a Department of Interior or National Park Service official to whom appropriate authority has been delegated, as such may be amended, supplemented, or superseded throughout the term of the Contract. Service Policy is available upon request from the Service.
- G) Waste Prevention.** Any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.
- H) Waste Reduction.** Preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

## 3) **RESPONSIBILITIES**

### **A) Concessioner**

To achieve an effective and efficient working relationship between the Concessioner and the Service, the Concessioner must designate an on-site general manager who:



















inspection, testing, and maintenance will be enforced by the Service. All inspection, testing, and maintenance must be performed by a licensed fire alarm system contractor.

- (5) *Emergency Lighting and Illuminated Exit Signs.* Periodic inspection, testing, and maintenance will be performed in accordance with the minimum requirements of NFPA 101 (Life Safety Code). All minimum periodicity requirements for inspection, testing, and maintenance will be enforced by the Service. Inspection, testing, and maintenance may be performed by concession staff, as approved by the Service.

#### **D) Service Responsibilities**

- (1) Under its proprietary jurisdiction in El Portal, the National Park Service may enforce property based laws and regulations, including for example the regulations published in Title 36 of the Code of Federal Regulations. All non-property related crimes are addressed under State law by State officers. In addition, the Area has memorandum of understandings with surrounding law enforcement agencies that describe law enforcement and mutual aid relationships.
- (2) The Service Communication Center will dispatch rangers and emergency personnel. The Concessioner must call 911 for emergency service.
- (3) *Fire Inspections.* The Service is the Authority Having Jurisdiction (AHJ) for all structural fire and life safety issues on federal lands administered by the National Park Service. The Service will conduct fire safety inspections at its discretion over the course of the contract term. The location manager will be contacted at the time of facility inspections so that a representative of the Concessioner may accompany the Park evaluator.

### **9) PUBLIC RELATIONS**

#### **A) Required Notices**

The following notices must be prominently posted at all Concessioner cash registers and payment areas:

"This service is operated by (Concessioner's name), a Concessioner under contract with the U.S. Government and administered by the National Park Service. The Concessioner is responsible for conducting these operations in a satisfactory manner. Prices are approved by the National Park Service."

Please address comments to: Superintendent

Yosemite National Park

P.O. Box 577

Yosemite, CA 95389

Or email: [YOSE\\_Superintendent@nps.gov](mailto:YOSE_Superintendent@nps.gov)

*"This is a facility operated in an area under the jurisdiction of the U.S. Department of the Interior. No discrimination by segregation or other means in the furnishing of accommodations, facilities, services, or privileges on the basis of race, creed, color, ancestry, sex, age, disabling condition or national origin is permitted in the use of this facility. Violations of this prohibition are punishable by fine, imprisonment, or both."*

#### **B) Use of National Park Service Authorized Concessioner Mark (Mark)**

- (1) 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."
- (2) *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 rating in the previous Annual Overall Review to use the Mark following the first year of the Contract.
- (3) *Authorized Uses of the Mark.* The Concessioner may use the Mark in publications; written advertising; web-based information; interpretive materials; or broadcasts (television, film or other audio/visual) associated with required or authorized services; facility signs designed, constructed,









(3) *Other*

- (a) Movie Rental revenue per month
- (b) Firewood revenue per month
- (c) Vending revenue per month
- (d) Total number of permanent full time, part time, and/or seasonal employees.

**C) Concessioner Financial Reporting**

In addition to the Annual Financial Report (AFR) required in the Contract, the following financial reports must also be required.

- (1) *Monthly Franchise Fee Report.* By the **15th of the month** as part of the monthly reporting, the Concessioner must report on the franchise fee deposit made from the preceding month. Reporting documentation must include a copy of the wire transfer identifying the account and the amount transferred.

**D) Risk Management and Environmental Management Reports**

Various periodic or incidental reports are required to meet Risk Management and Environmental Management requirements.

- (1) *Risk Management Program Reporting.* Accident reporting and other requirements are outlined in Section 5 of this Operating Plan.
- (2) *Environmental Management Program Reporting.* Environmental reporting requirements are specified in Section 6(d) of the Contract.

**13) SUMMARY OF INITIAL AND RECURRING DUE DATES**

Title	Schedule	Due Date
<b>Contract &amp; Exhibit B (Operating Plan)</b>		
Annual Financial Report	Annually	Within 120 days after Concessioner's fiscal year end
Balance Sheet	Initial	Within 90 days of Contract effective date
Certificate of Insurance	Annually	Within 30 days of renewal
Emergency Operations Plan (includes: Emergency Action Plan, Emergency Response Plan, Spill Prevention Control and Countermeasure Plan)	Initial, Updated	Within 120 days of Contract effective date
Environmental Management Program	Initial, Updated	Within 60 days of Contract effective date
Franchise Fee & Monthly Report	Monthly	Within 15 days of end of prior month
Hazard Communication Plan	Initial, Updated	Within 120 days of Contract effective date
Human Illness Reporting	Upon Occurrence	Immediately
Incident Reporting	Upon Occurrence	Immediately
Inventory of Hazardous Substances and Waste Streams	Annually	TBD
Lost and Found Plan	Initial, Updated	Within 120 days of Contract effective date
Notice of Release and Notice of Violations	Upon Occurrence	Immediately

Title	Schedule	Due Date
Operational Reports by Use	Annually, Monthly	Within 30 days after year end; within 15 days of following month
Rate Request Timing	As Needed	At least 60 days prior to need
Response to Visitor Complaints	Upon Occurrence	Within 10 business days of receipt
Risk Management Plan	Initial, Annual	Within 120 days of Contract effective date; by December 31 annually thereafter
Survey and Visitor Response Data	Upon Occurrence	Within 14 days of receipt

# RISK MANAGEMENT PROGRAM STANDARDS

## PURPOSE

These standards define NPS minimum requirements for the concessioner's Risk Management Program (RMP) in accordance with NPS policy. The RMP is the management system the concessioner develops and implements to address the risk management aspects of its operations. Concessioners are independently responsible for developing and implementing an RMP of adequate scope and content to comply with all Applicable Laws and to provide for a safe and healthy environment for employees and visitors, irrespective of these RMP standards.

## AUTHORITIES

NPS Management Policies (section 10.2.4.8) states that concessioners are responsible for managing its operations to minimize risk and control loss due to accident, illness, or injury, and that concession contracts must contain requirements for each concessioner to develop a RMP that is (1) appropriate in scope to the size and nature of the operation, (2) in accord with the [Occupational Safety and Health Act of 1970](#) and the NPS concession risk management program, and (3) accepted by the superintendent.

## STANDARDS DEVELOPMENT AND UPDATE

The standards were developed in consideration of Applicable Laws, industry safety management standards (such as BS OHSAS 18001), NPS risk management and Operational Leadership policy and guidance, past NPS concession RMP policy and standards, and concessioner risk management practices. This standard will be periodically reviewed and may be revised to reflect changes in Applicable Laws, industry practices, or to provide program improvements.

## RMP STANDARDS

The RMP standards defined by the NPS consist of the requirements associated with ten elements, identified in Table 1 below. While the RMP must address each of these elements, it should be specific to, and adequately address, the type and size of services the concessioner provides under its concession contract with the NPS. The RMP can, and should, be simple and flexible to ensure it is fully embraced and implemented by the concessioner's management and staff. More complex operations and services, or additional park requirements to prepare for specific events, may warrant a more detailed program with additional elements or sub-elements than those defined through the NPS standard.

**Table 1 – NPS Concession RMP Elements**

1	Risk Management Program Scope	6	Reporting
2	Responsibility and Accountability	7	Inspections and Corrective Action
3	Training	8	Hazard Incident Investigations and Abatement
4	Documentation and Operational Controls	9	Management Review
5	Communication	10	Other Contract Requirements

### RMP Element 1 –Risk Management Program Scope

The concessioner must establish and maintain an RMP appropriate for the activities, size, and complexity of the operation.

Standards:

- 1.1 The RMP is documented, and its scope covers the ten risk management elements. Furthermore, the RMP scope addresses the risk management objectives and aspects applicable to the operation, including:
  - legal requirements (Applicable Laws), contract requirements (including requirements contained in Exhibits), and safety best management practices
  - employee and visitor hazards
  - operational, facility and natural hazards
- 1.2 The RMP establishes a safety policy for the organization. The policy indicates commitment to:
  - compliance with Applicable Laws
  - providing a safe and healthful environment for employees, park staff and visitors to the extent possible
  - assigning responsibilities
  - providing staff and resources
  - monitoring performance

### **RMP Element 2 – Responsibility and Accountability**

The concessioner must establish the organizational structure, personnel roles and responsibilities, and resources needed to effectively implement the RMP.

Standards:

- 2.1 The concessioner identifies a safety and health official, and documents this assignment in the RMP.
- 2.2 The concessioner identifies the risk management organizational and staff responsibilities, and documents this structure and assignments in the RMP.
- 2.3 RMP resources are developed, documented in the RMP, and applied; resources are adequate to execute the program. Resources include:
  - personnel (e.g., number of staff, experience and skills)
  - facilities and equipment
  - information, documentation, and data management systems
  - agreements for support from outside contractors and agencies
  - training programs for concession personnel

### **RMP Element 3 – Training and Qualifications**

Personnel must be competent to perform the tasks assigned to implement the RMP.

- 3.1 Managers and staff with safety and health responsibilities meet the qualification requirements defined in the contract and RMP. Competency requirements are defined by appropriate education, training, and experience.
- 3.2 A training plan is developed, documented in the RMP, and executed; and includes:
  - Defined training requirements for the safety officer and other personnel, including requirements to meet Applicable Laws, the contract, and the RMP.
  - Required training records, such as training materials, schedules, and participant records.
- 3.3 The concessioner has conducted and documented all training.

### **RMP Element 4 – Documentation and Operational Controls**

The concessioner must establish and maintain plans and procedures to manage operations and emergencies associated with its RMP. The number and complexity of these plans and procedures will depend on the size and complexity of the concessions operation. Some plans and procedures may be required by Applicable Law or the contract.

Standards:

- 4.1 RMP plans and standard operating procedures are developed, implemented, maintained, and included or referenced in the RMP. These plans and procedures address requirements in Applicable Laws, the contract, and the RMP to ensure safe operations. Some plans and procedures may overlap with those in the EMP. Examples of operating procedures include:
- Procedures for the safe storage and handling of chemicals
  - Procedures for embarking and disembarking visitors
  - Procedures for safe equipment use
  - Procedures for managing wildlife interactions
  - Procedures for cancelling operations due to weather
- 4.2 RMP emergency plans and procedures are developed, documented (if applicable), implemented, maintained, and included or referenced in the RMP. These plans and procedures address requirements in Applicable Laws, the contract, and the RMP. Some plans and procedures may overlap with those in the EMP. Emergencies to be addressed include:
- Natural disasters (earthquakes, floods, tornados, hurricanes, etc.)
  - Motor vehicle incidents
  - Medical emergencies (visitors and employees)
  - Fire (structural, motor vehicles, wildfires, etc.)
  - Terrorism and law enforcement activities
  - Accidents and fatalities (visitors and employees within park boundaries)

### **RMP Element 5 - Communication**

The RMP must be effectively communicated internally to concession employees, and externally to park personnel, visitors, and to other parties that could be involved in the RMP.

Standards:

- 5.1 The RMP is available to staff and communicated throughout the concession organization so that personnel understand and can effectively implement the RMP.
- 5.2 The RMP addresses procedures for communicating hazards to visitors. The hazards may include:
- Activity-related hazards (e.g., white water rafting)
  - Natural resource-related hazards (e.g., bears)
  - Facility-related hazards and procedures (e.g., property evacuation maps)
- 5.3 Any visitor acknowledgment of risk is approved by the park. Waivers of liability are not used.
- 5.4 The concessioner's risk emergency plans are coordinated and agreements in place with other applicable parties such as the NPS, other federal, state, or local emergency response agencies.

### **RMP Element 6 - Reporting**

As part of its RMP, the concessioner must develop and implement procedures for reporting internally within the concession organization, and externally to the park and other regulatory agencies.

Standards:

- 6.1 All documents, reports, monitoring data, manifests, notices and other documentation required to be submitted to regulatory agencies are submitted on time and in accordance with Applicable Laws. Copies of such communications are provided to the NPS in accordance with the contract. Additional plans, reports, and other documentation are submitted to the NPS in accordance with the contract and RMP.
- 6.2 Imminent danger and serious incidents are reported to the park in a timely manner in accordance with the contract and RMP.
- 6.3 Annual reports include internal, park, and other regulatory agency risk data, and are submitted to the NPS in accordance with the contract and RMP.

#### **RMP Element 7 – Inspections and Corrective Action**

Concessioners must develop and implement safety inspection processes to identify risk management issues. Inspections must be conducted by persons trained and capable of recognizing and evaluating the applicable aspects of the operation. Inspections may be conducted for the concessioner by a qualified third party. Concessioners must also develop and implement a process for abating deficiencies identified through their inspection processes or by any regulatory agency.

Standards:

- 7.1 Safety inspections are conducted as specified in the contract and RMP or as otherwise necessary to effectively manage operations safely. Formal and routine inspections are scheduled, conducted, and documented. The inspections are conducted by qualified personnel as described in the RMP.
- 7.2 Imminent danger, serious, and non-serious hazard deficiencies identified by internal or external inspections are analyzed, corrected, or mitigated within the contract or RMP required timeframes. Any deviations from these timeframes are accepted by the park and documented.

#### **RMP Element 8 – Emergency Incident Investigation and Abatement**

Concessioners must develop and implement procedures to address accidents/incidents as part of its RMP.

Standards:

- 8.1 Accidents/incidents are responded to in a timely and effective manner.
- 8.2 An investigation is conducted for every accident/incident.
  - The investigation includes an analysis to determine the cause.
  - Corrective action is taken to mitigate recurrences of the accident/incident.

#### **RMP Element 9 – Management Review**

Concessioners must conduct a management review of the RMP at least annually to ensure its continued suitability, adequacy, and effectiveness. This review should consider performance against internal indicators such as health and safety goals and objectives. The review must also consider program failures that occurred during the year. The RMP must be modified to reflect any necessary changes to address any program gaps required.

Standards:

- 9.1 The RMP is reviewed at least annually, and updated as necessary.

- The RMP review includes analysis of performance in each RMP element area to determine any systemic program failures (particularly failures that resulted in fatal or serious accidents/incidents or imminent danger hazard deficiencies) and non-compliance with Applicable Laws.
- Systemic problems are addressed in RMP updates.

9.2 The initial RMP is submitted to the park within the contract specified timeframe for review, and is accepted by the park. Any subsequent documented RMP updates are submitted to the park for review and acceptance.

### **RMP Element 10 – Other Contract Requirements**

In addition to the requirements outlined for other RMP elements, the concession contract may have additional risk management requirements in the contract, operating, or maintenance plans that are *de facto* standards.

10.1 Contract-specific safety and health requirements not otherwise addressed in the RMP standards are met.

### **DEFINITIONS**

**Applicable Laws:** The laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (e.g., 36 CFR Part 51), 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.

**Concession Contract:** A binding written agreement between the NPS Director and a concessioner entered into under 36 CFR 51. It authorizes concessioners to provide certain visitor services within a park under specified terms and conditions. All NPS concessioners awarded concessions contracts that are based on the standard concession contract provisions published in the Federal Register on May 4, 2000 (65 FR 26051-26086: Part III, Department of the Interior, National Park Service, Standard Concession Contract; Revision; Notice), are required under Section 4 of the standard concession contract to prepare and submit an initial written RMP to the park within 60 days of the effective date of their concession contract for acceptance.

**Emergency Action Plan (EAP):** Contract required emergency plan to ensure visitor and employee safety. Emergencies include:

- Natural disasters (earthquakes, floods, tornados, hurricanes, etc.)
- Motor vehicle incidents
- Medical emergencies (visitors and employees)
- Fire (structural, motor vehicles, wildfires, etc.)
- Terrorism and law enforcement activities
- Accidents and fatalities (visitors and employees within park boundaries)
- Hazardous spills or releases

**Incident:** Incidents which must be reported to the park include:

- Fatalities
- Visitor incidents which could result in a tort claim against the United States
- Property damage incidents over \$500
- Employee injuries requiring more than first aid treatment
- Any fire
- Motor vehicle accidents over \$250

**Deficiencies:** Deficiencies are classified into one of three categories.

- Imminent danger: A condition or practice with potential for loss of life or body part, permanent disability, and/or extensive loss of structure, equipment or material.
- Serious hazard: A condition or practice with potential for serious injury or illness resulting in temporary disability or property damage that is disruptive, but less severe than imminent danger.
- Non-serious hazard: A condition or practice with potential for minor non-disability injury or illness or non-disruptive property damage.

**Timely:** The period of time reasonable under the circumstances. Corrective action for deficiencies is completed within the maximum time limits:

- Imminent danger: immediately
- Serious hazard: 15 days
- Non-serious hazard: 45 days

**RESOURCES** (available soon on SharePoint)

For more detailed guidance on the Risk Management Program, please refer to the following:

RM 48 Chapter 5: Contract Management

RM 48 Chapter 6: Concession Review Program

RMP Guidance

RMP example

## **ENVIRONMENTAL MANAGEMENT PROGRAM STANDARDS**

### **PURPOSE**

These standards define NPS minimum requirements for concessioner Environmental Management Programs (EMPs) in accordance with NPS policy. The EMP is the management system the concessioner develops and implements to address the environmental management aspects of its operations. Concessioners are independently responsible for developing and implementing an EMP of adequate scope and content to comply with all Applicable Laws and to provide for the protection of the environment, irrespective of these EMP standards.

### **AUTHORITIES**

NPS Management Policies (10.2.4.10) states that concessioners are required to meet environmental compliance objectives by complying with all applicable laws pertaining to environmental health and safety and implementing environmental best management practices in all areas of the concession operation. Management Policies also state that Concessioners are required by contract to develop document, implement and comply with an EMP that is (1) appropriate to the nature and size of the operation, (2) accounts for the activities with potential environmental impacts conducted by the concessioner or to which the concessioner contributes, (3) updated at least annually, and (4) accepted by the superintendent.

EMP requirements are further defined in the Standard Concession Contract (Section 6 for Category I and II contracts, and Section 4 and Addendum 4 for Category III contracts). The NPS requires that this program is documented for Category I and II contracts, and defines nine specific areas that must be covered in the written document. The EMP is not required to be documented for Category III concession contracts unless specified as a unique contract requirement. Concessioners operating under a Category III contract are, however, still required to have a 'program' in place, even if undocumented, to manage its operations and meet their contractually stated environmental objectives.

### **STANDARDS DEVELOPMENT AND UPDATE**

The standards were developed in consideration of Applicable Laws, industry environmental management standards (such as ISO 14001), NPS environmental policy and guidance, and concessioner environmental management practices. These standards will be periodically reviewed and may be revised to reflect changes in Applicable Laws, industry practices, or to provide program improvements.

### **EMP STANDARDS**

The EMP standards defined by the NPS consist of the requirements associated with eight elements, identified in Table 1 below (many, but not all, directly correspond to the EMP areas defined in Section 6 of the concession contract). While the EMP must address each of these elements, it should be specific to, and adequately address, the type and size of services the concessioner provides under its concession contract with the NPS. The EMP can, and should be, simple and flexible to ensure it is fully embraced and implemented by the concessioner's management and staff. More complex operations and services, or additional park requirements to address specific environmental impacts or activities, may warrant a more detailed program with additional elements or sub-elements than those defined through the NPS standards. Category III contracts may not be contractually required to meet some of the elements and standards, unless they are uniquely identified for that particular contract. The elements and/or standards that do not generally apply to Category III contracts are identified with a '#' symbol.

**Table 1 – NPS Concession EMP Elements**

1	Environmental Management Program Scope	5	Communications
2	Responsibility and Accountability	6	Reporting
3	Training	7	Monitoring, Measurement, and Corrective Action
4	Documentation and Operational Controls	8	Other Contract Requirements

### **EMP Element 1 – Environmental Management Program Scope**

The concessioner establishes and maintains an EMP appropriate for the activities, size, and complexity of the operation.

Standards:

- 1.1 The concessioner's EMP scope (whether documented or undocumented) covers the environmental objectives and environmental management aspects applicable to the operation including:
  - legal requirements (Applicable Laws), contract requirements (including requirements contained in Exhibits), and environmental best management practices
  - facilities and operations
  - natural and cultural resources
- 1.2# The EMP is documented.
- 1.3# The EMP establishes the concessioner's environmental policy. The policy indicates commitment to:
  - compliance with Applicable Laws
  - protecting and conserving park resources and human health
  - assigning responsibilities
  - providing staff and resources
  - monitoring performance

### **EMP Element 2 – Responsibility and Accountability**

The concessioner must establish the organizational structure, personnel roles and responsibilities, and resources needed to effectively implement the EMP.

Standards:

- 2.1# The concessioner must identify an environmental officer and/or program manager and document this assignment in the EMP. The environmental officer must meet the contract specified qualifications and requirements defined in the documented EMP.
- 2.2 The concessioner determines management and staff responsibilities as necessary to effectively manage environmental activities, and describes this structure and these assignments in the documented EMP (if applicable).
- 2.3 EMP resources are developed, documented in the EMP (if applicable), and applied; resources are adequate to execute the program. Resources include:
  - personnel (e.g., number of staff, experience and skills)
  - facilities and equipment
  - information, documentation, and data management systems
  - agreements for support from outside contractors and agencies

- training programs for concession personnel

### **EMP Element 3 – Training**

Personnel must be competent to perform the tasks assigned to implement the EMP.

Standards:

- 3.1 Managers and staff with environmental management responsibilities meet qualification requirements defined in the contract and documented EMP (if applicable). Competency requirements are defined by appropriate education, training, and experience.
- 3.2 A training plan is developed, documented in the EMP (if applicable), and executed; and includes:
  - Defined training requirements for the environmental officer and other personnel, including requirements to meet Applicable Laws, the contract, and the EMP.
  - Required training records, such as training materials, schedules, and participant records.
- 3.3 The concessioner has conducted and documented all training.

### **EMP Element 4 – Documentation and Operational Controls**

The concessioner must establish and maintain plans and procedures to manage operations and emergencies associated with its EMP. The number and complexity of these plans and procedures will depend on the size and complexity of the concessions operation. Some plans and procedures may be required by Applicable Law or the contract.

Standards:

- 4.1 EMP plans and standard operating procedures are developed, implemented, maintained, and included or referenced in the documented EMP (if applicable). These procedures address requirements in Applicable Laws, the contract, and the EMP to ensure protection of human health and the environment. Some plans and procedures may overlap with those in the RMP. Examples of operating procedures include:
  - Procedures for the storage and handling of chemicals
  - Procedures for the management and maintenance of fuel
  - Procedures for pesticide use
  - Procedures for hazardous and solid waste disposal
  - Procedures for weed and pest management
  - Procedures for the protection of cultural and archeological resources
- 4.2 EMP emergency plans and procedures for environmental management are developed, documented (if applicable), implemented, maintained, and included or referenced in the documented EMP (if applicable). These plans and procedures address requirements in Applicable Laws, the contract, and the EMP. Some plans and procedures may overlap with those in the RMP. Emergencies to be addressed include:
  - Hazardous substance spill response
  - Leaks from fuel storage tanks or other chemical storage areas
  - Storm water contamination

### **EMP Element 5 – Communication**

The EMP must be effectively communicated internally to concessioner employees and externally to park personnel, visitors and to other parties involved in the EMP.

Standards:

- 5.1 The EMP is available to staff (if applicable), and communicated throughout the concession organization so that personnel understand and can effectively implement the EMP.
- 5.2 The EMP addresses procedures for communicating environmental controls and initiatives to visitors. These may include:
  - Handling hazardous materials (e.g., fuel)
  - Handling waste (e.g., trash)
  - Natural resource or cultural resource impacts
  - Pest management (e.g., notification of pests if observed)
- 5.3 The concessioner's environmental emergency plans are coordinated and agreements in place with other applicable parties such as the NPS, other federal, state, or local environmental agencies.

### **EMP Element 6 – Reporting**

The concessioner must develop and implement procedures for reporting internally within the concession organization, and externally to the park and regulatory agencies.

Standards:

- 6.1 All documents, reports, monitoring data, manifests, notices and other documentation required to be submitted to regulatory agencies are submitted on time and in accordance with Applicable Laws. Copies of such communications are provided to the NPS in accordance with the contract. Additional plans, reports, and other documentation are submitted to the NPS in accordance with the contract and documented EMP (if applicable). These may include inventories of hazardous substance and waste streams.
- 6.2 Notices of any discharges, release or threatened release of hazardous or toxic substance, material or waste are reported in a timely manner to the NPS in accordance with the contract.
- 6.3 Any written, threatened or actual notices of violation of Applicable Law from any environmental regulatory agency are reported in a timely manner to the NPS in accordance with the contract.
- 6.4 The NPS is provided timely written advance notice of, and the opportunity to participate in, communications with regulatory agencies regarding the concessioner's environmental activities in accordance with the concession contract.

### **EMP Element 7 – Monitoring, Measurement and Corrective Action**

Concessioners must develop and implement inspection processes to identify environmental management issues and correct deficiencies identified through such inspections. Concessioners effectively respond to environmental incidents. Concessioners must develop and implement management review procedures to improve EMP performance over time.

Standards:

- 7.1 Environmental inspections are completed as required by Applicable Law, the contract, the documented EMP (if applicable), or as otherwise necessary to effectively manage environmental activities.
- 7.2 Environmental deficiencies identified by internal or external inspections (e.g., NPS concession environmental audits, etc.) are analyzed, corrected, or mitigated within the timeframes designated by Applicable Law, the contract, documented EMP (if applicable), or inspection report. Any deviations from these timeframes are accepted by the park and documented.

7.3 Environmental incidents are responded to in a timely and effective manner to stop, contain, and remediate the incident. Investigations are conducted, and corrective actions are taken to prevent recurrences to the satisfaction of the NPS in accordance with the contract, EMP, and relevant regulations and NPS policies.

7.4# The EMP is reviewed at least annually, and updated as necessary.

- The EMP review includes analysis of performance in each EMP element area to determine any systemic program failures (particularly failures that resulted in serious incidents of inspection deficiencies), and non-compliance with Applicable Laws.
- Systemic problems are addressed in EMP updates.

7.5# The initial EMP is submitted to the park within the contract specified timeframe for review, and is accepted by the park. Any subsequent documented EMP updates are submitted to the park for review and acceptance.

### **EMP Element 8 – Other Contract Requirements**

In addition to the requirements outlined for other EMP elements, the concession contract may have additional environmental requirements in the contract, operating, or maintenance plans that are *de facto* standards.

8.1 Contract-specific environmental requirements not otherwise addressed in the EMP standards are met.

### **DEFINITIONS**

**Applicable Laws:** The laws of Congress governing the area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (e.g., 36 CFR Part 51), 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.

**Concession Contract:** A binding written agreement between the NPS Director and a concessioner entered into under 36 CFR 51. It authorizes concessioners to provide certain visitor services within a park under specified terms and conditions.

**Emergency Action Plan (EAP):** Covers designated actions employers and employees must take to ensure employee safety from emergencies. Emergencies include hazardous substance spills or releases, especially if the park directs the concessioner not to clean up large (non-incident) hazardous substance spills or releases.

**Environmental Management Program (EMP):** Program that achieves the Standard Concession Contract Environmental Management Objectives of (1) complying with all applicable laws pertaining to the protection of human health and the environment and (2) incorporating best management practices in a concessioner's operation, construction, maintenance, acquisition, provision of visitor services, and other activities under a concession contract. The EMP should be developed, documented, implemented, and complied fully with by a concessioner to account for all activities with potential environmental impacts conducted by the concessioner or to which the concessioner contributes.

**Standard Operating Procedure (SOP):** Procedures used to carry out a specific activity or operation. SOPs are usually documented and filed or posted in a readily accessible location for employee review.

**Sustainability:** Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.

**United States Environmental Protection Agency (EPA):** Federal agency responsible for developing and overseeing many environmental regulations at the Federal level.

**RESOURCES** (available soon on SharePoint)

For more detailed guidance on the Environmental Management Program, please refer to the following:

RM 48 Chapter 5: Contract Management

RM 48 Chapter 6: Concession Review Program

EMP Guidance

EMP example

## Asset Management Program Standards and Evaluation

### Purpose

The NPS conducts an Asset Management Program (AMP) evaluation as part of the Concession Review Program. This document identifies the elements of this evaluation and the standards from which they are derived.

### Standards Development and Update

Standards for asset management are contained in the *concession contract* and associated *maintenance plan*. There are no separate, stand-alone asset management standards.

Concession contractual requirements for asset management may be periodically reviewed and revised to reflect changes in Applicable Laws, industry practices, or to provide program improvements. As such requirements change; the associated program evaluation will also be modified.

### AMP Evaluation Scope and Elements

AMP evaluation elements are derived from requirements contained in the concession contract. They are key, measurable AMP program areas that are reviewed as indicators of compliance.

The AMP evaluation elements do not represent the full scope of concessioner asset management program requirements to meet contractual, maintenance plan, or legal requirements. Concessioners are independently responsible for developing, implementing, and fully complying with a documented AMP that is appropriate for the size and nature of the concession operation, and that address all concession contract requirements.

The AMP evaluation covers the six key asset management areas covered in the maintenance plan. The areas are listed in Table 1. Each area has one or more evaluation elements. The applicable section of the standard maintenance plan form where the evaluation areas and elements are derived are also listed below. As noted above, these elements are key indicators of performance, but do not cover the entire scope of AMP requirements applicable to the concessioner. Element 7 provides the opportunity for the Park to identify and evaluate any contract-specific standards.

**Table 1 – NPS Concession AMP Evaluation Areas**

	Evaluation Area	Cat I (Exhibit H)	Cat II (Exhibit E)
1	Computerized Maintenance Management System (CMMS)	4	4
2	Inspections	5	5
3	Annual Concessioner Maintenance Plan (ACMP)	6	6
4	Annual Concessioner Maintenance Reporting (ACMR)	7	7
5	Repair and Maintenance Reserve (RMR) Plans and Reports	8	8 (if applicable)
6	Personal Property Report	9	9 or 8 (if no RMR)
7	Other (Table 2)		

**ATTACHMENT C**

**CONCESSIONER PERFORMANCE STANDARDS**

**RETAIL STANDARDS ..... 1**

**HEALTHY FOOD STANDARDS & GUIDELINES ..... 9**

**SUSTAINABLE FOOD STANDARDS & GUIDELINES..... 10**

# RETAIL STANDARDS (10-RET)

**Description** - Retail services include the sale of general merchandise, convenience and grocery items.

General merchandise stores focus on souvenirs, gifts, and recreational specialty items. Gifts and souvenir items include specialty foods, handicrafts, and thematic merchandise (coffee mugs, stuffed animals, t-shirts, magnets, postcards, etc.). Recreational specialty outlets focus on the sale of equipment and apparel for a particular activity (golf, mountaineering, camping, etc.), and may also rent equipment associated with the activity.

Convenience stores focus on immediately consumable, transient convenience type items. Convenience stores may sell a combination of groceries, gifts and souvenirs, and grab-and-go food items (hot dogs, muffins, sandwiches, soft drinks, etc.). Convenience stores often operate in conjunction with self-service fuel services.

The grocery category specializes in the sale of consumable grocery items. Grocery items include perishable meat, fish and produce, frozen foods, canned and boxed goods, and beverages (including alcohol). Grocery stores may also include some grab-and-go food items.

Stores in each category may operate independently. In most NPS locations, one or more retail categories are provided in the same store. Some standards apply to every category. Some standards cover the same general topic (e.g., aisles) but differentiate requirements for a particular retail type (e.g., aisle width for foot traffic in general merchandise versus shopping carts in grocery stores). Other standards may be specific to only one type of retail and are 'stand-alone' (e.g., produce scales for grocery).

In general, the following definitions apply to these terms throughout the standards:

- Appropriate: Suitable to the level of service or as specified in the operating plan
- Clean: Free from dirt, marks, stains, or unwanted matter
- Neat: Arranged in an orderly, tidy manner
- Operational: In use or ready for use
- Well-maintained: Kept in good order or condition

Standard Number	FACILITY STANDARDS	A, B, C Ranking	Primary Focus Area
<b>Retail – Exterior</b>			
1	<b>Building Structure</b> - Building exterior is well-maintained and surfaces are treated to protect against deterioration. Roofs, gutters and downspouts are well-maintained and clear of obstructions. Rooftop ventilation and other systems are well-maintained and operational.	B	CC
2	<b>Landscaping/Grounds</b> - Landscaping conforms to park standards. Noxious weeds and invasive plants are removed in accordance with an approved landscape plan. Grounds are well-maintained. Appropriate drainage is maintained to keep water from collecting against buildings.	B	CC
3	<b>Parking</b> - Paved parking is well-maintained and spaces are marked. Gravel or dirt parking is graded to remove drainage ruts and holes.	B	CC
4	<b>Pathways, Sidewalks, Ramps, Steps and Stairs</b> - Pathways, sidewalks, ramps, steps, and stairs are unobstructed. Surfaces are well-maintained and free of tripping hazards. Hand railings are well-maintained and sturdy enough to support visitor use.	A	LS

5	<b>Lighting/Illumination</b> - Lighting is adequate and appropriate. Light fixtures are well-maintained and operational. Lighting is consistent with NPS Night Sky requirements.	B	LS
6	<b>Public Signs</b> - Public signs are appropriately located, accurate, and well-maintained. Permanent signs are consistent with NPS standards, and were approved prior to installation. Temporary signs are professional in appearance.	B	VS
7	<b>Flags</b> - National, state, or park flags are well-maintained and comply with the United States Flag Code (flags are a minimum size of 3'x 5'). Decorative flags and banners are appropriate and well-maintained.	C	VS
8	<b>Site Utilities and Equipment</b> - Service areas are neat and well-maintained. Utilities are hidden from public view as much as possible.	C	CC
9	<b>Trash/Recycling/Composting</b> - Sufficient trash containers are conveniently located. Waste does not accumulate in trash containers to the point of overflowing. Refuse is stored in covered, waterproof receptacles in accordance with NPS standards. Market available recyclable products are collected and recycled. Compost collection areas are clean and orderly. Central refuse collection sites are screened from public view.	B	RP
10	<b>Loading Docks/Delivery Area</b> - Loading docks and delivery areas are neat, well-maintained and screened from public view.	C	CC
<b>Retail – Interior</b>			
11	<b>Entrance Area</b> - Store entrance and waiting areas are appropriately furnished, clean, and well-maintained.	B	CC
12	<b>Windows, Doors, Walls, Ceilings, Floors, and Screens</b> - Floors, walls, and ceilings are clean and well-maintained. Doors, windows, and screens are clean, operational, and fit adequately to exclude rodents and insects. Windows and doors do not have excessive signage.	B	CC
13	<b>Aisles</b> - Aisles are sufficiently wide to accommodate 2-way foot traffic and carts in grocery areas. Aisles are uncluttered and free from obstructions and tripping hazards. Aisle signs are visible, accurate, and numbered.	B	CC
14	<b>Public Restrooms</b> - Restrooms are clean, ventilated, well-illuminated, and well-maintained. Restrooms have hot and cold running water. Toilets, sinks, and urinals are clean, free of stains and chips, and operational. Toilet tissue and disposable towels or hand dryers are available. Soap is provided in bulk dispensers. Women's or unisex restrooms have a covered waste receptacle in every stall. The disposal containers are clean and emptied at least daily. A cleaning inspection log is maintained and posted.	B	CC
15	<b>Public Signs</b> - Public signs are appropriately located, accurate, and well-maintained. Permanent signs are consistent with NPS standards, and were approved prior to installation. Temporary signs are professional in appearance. Signage is neatly arranged.	B	VS
16	<b>Illumination</b> - Lighting is adequate and appropriate for the retail type. Light fixtures are clean and operational, with no empty sockets or burned out bulbs.	B	VS
17	<b>Ventilation/Climate Control</b> - Public spaces are adequately ventilated and maintained at a temperature consistent with visitor comfort.	B	VS
18	<b>Drinking Fountains</b> - Water fountains are clean and operational.	C	CC
19	<b>Noise Level</b> - Background music and intercom systems are operational. Music is played	C	VS

at an appropriate level for customers and cannot be heard in adjoining areas.

**20 Store Merchandise Shelving and Displays** - Shelving and display fixtures are clean, well-maintained, and suitable to the retail type. Shelving has rounded or beveled edges in areas of visitor contact. Displays are secure and adequately balanced. **B** CC

**21 Fitting Rooms** - Fitting rooms have doors, curtains or other means of assuring privacy, adequate mirrors, clothes hooks, and appropriate seating. Fitting rooms are neat, clean, and well-maintained. Abandoned items are promptly restocked. **B** VS

**22 Merchandise Carts and Shopping Baskets** - A sufficient number of shopping carts, baskets or bags are provided. Carts and baskets are clean, well-maintained, and well-organized in designated areas. **B** VS

**23 Produce Section Amenities** - Grocery produce sections have clean, operational, and calibrated scales. Produce bag dispensers are well stocked. **B** VS

**24 Checkout Area** - Checkout areas are marked or easily identifiable. Checkout counters and conveyor belts are clean, operational and well-maintained. **B** VS

**25 Storage Areas** - Storage areas within view of the public are neat and clean with appropriate access signage. Products are stored to prevent damage or spoilage. Traces of insects, rodents, or other animals are not found in food storage areas. Back-of-house storage areas are neat and clean. **C** CC

**26 Retail Office** - Offices are neat, clean, and well-maintained. **C** CC

## Safety

**27 Emergency Lighting/Exit Lights/Emergency Exits** - Exit lights are on emergency circuits and in operation at all times. Emergency exits and routes are marked and unobstructed. **A** LS

**28 Smoke Detectors** - Operational single-station, hard-wired smoke detectors are present in compliance with NFPA standards. Battery-operated detectors are tested monthly and batteries are replaced at least yearly. **A** LS

**29 Fire Alarms and Pull Boxes** - Fire alarms and pull boxes are visible and accessible. **A** LS

**30 Fire Extinguishers** - Accessible fire extinguishers are signed and correctly located, with current operating instructions and inspection tags. **A** LS

**31 First Aid Kit** - A first aid kit is available, stocked, marked, and staff can easily locate the kit. **B** LS

**32 Security Cameras** - Security cameras are discreet and professionally installed. **C** LS

**33 Shelving and Display Safety** - Products in customer areas are shelved, displayed, or stored so they are not falling or tripping hazards. Products that present safety risks are placed out of children's reach. Out of reach merchandise has appropriate staff assistance signage. Products that present security concerns are stored or displayed in areas that are monitored or controlled by concession staff. **B** LS

## Perishable Food Storage, Preparation and Service Areas

**34 Food Preparation Area** - Food preparation areas (meat and fish handling, produce sorting and packing, deli, grab-and-go prep) are clean and neat. A cleaning inspection log is posted and completed. Traces of insects, rodents or other animals are not found in the food preparation areas. **A** LS

35	<b>Hand Washing Stations</b> - Hand washing sinks are available in the grocery and grab-and-go food preparation areas. Sinks are operational and well-maintained, with hot and cold running water, soap, and towels or hand driers.	<b>A</b>	LS
36	<b>Health Inspection Certificates</b> - Current health inspection certificates are displayed in food preparation areas and self-service counters in accordance with state or local codes.	<b>B</b>	AL
37	<b>Food Refrigeration and Heating/Cooking Equipment</b> - Equipment in storage and food preparation areas and display cases are clean, operational, and well-maintained. Thermometers are present, calibrated, and accurate.	<b>A</b>	LS
38	<b>Self-Service Equipment</b> - Self-serve equipment (soft drinks, hot drinks, ice cream) is clean and operational. Self-serve refrigeration units with glass doors are maintained so customers can clearly see products.	<b>A</b>	CC
39	<b>Self-Service Counters</b> - Counters are clean and well-maintained. Self-service condiment and utensil stations have adequate selections and are clean, neat, and well stocked. Eating utensils are recyclable, compostable, or bio-degradable if possible. Styrofoam is prohibited. Trash and recycling receptacles are marked, clean, and located at or near the self-service area.	<b>B</b>	CC

## OPERATIONAL STANDARDS

### Accessibility

40	<b>Accessibility</b> - Retail facilities and services meet the requirements of the Americans with Disabilities and Architectural Barriers Acts and all other applicable laws related to accessibility.	<b>A</b>	AL
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### Merchandise Selection, Condition and Labeling

41	<b>General Merchandise</b> - Items offered for sale are consistent with the park-approved merchandise plan. Gifts and souvenir merchandise reflect park themes. Specialized retail (camping, boating, climbing, skiing, golf, tennis, etc.) items are consistent with the recreational activity. Grocery and convenience items provide an adequate selection that address common visitor needs. Items are available at a range of prices within categories.	<b>B</b>	VS
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**Unacceptable Merchandise** - Sale of the following items is not permitted:

42	<ul style="list-style-type: none"> <li>• Items that persons of normal taste or sensitivity might consider obscene, offensive, or profane</li> <li>• Items that reflect a lack of concern for the environment or culture</li> <li>• Items that do not relate to identified park themes</li> <li>• Archeological specimens or objects of American Indian origin over 100 years old, regardless of origin</li> </ul>	<b>B</b>	VS
	<ul style="list-style-type: none"> <li>• Biological objects, including items such as plants (including seeds) and animals (including vertebrates and invertebrates). This includes merchandise or novelty items containing whole biological specimens (e.g., scorpions, butterflies, snakes, coral, etc.) or parts of biological specimens (teeth, claws, antlers, seashells, feathers, seeds, etc.). Exception: Handicrafts and other retail items containing non-living biological materials, such as decorative feathers, seeds, nuts or flowers embedded or affixed to the item, provided they are from legally authorized sources and labeled as originating from outside the park, are permissible.</li> <li>• Animal skins or parts of animals obtained illegally or from threatened or endangered</li> </ul>		

species

- Minerals, rocks, and stones without at least one face or surface of the item planed and polished to distinguish it from the natural state.
- Toy firearms
- Items that may, by their nature, encourage violation of NPS regulations (collecting kits, birdseed, wildflower or plant seeds, etc.).
- Styrofoam (coolers, other)

Note: Exceptions to unacceptable merchandise (seeds, toy firearms, geodes, etc.) must be documented in the operating and merchandise plans, and approved by the park.

43	<p><b>Authentic Native American and Other Handicrafts</b> - Authentic native handicraft items are featured in accordance with the operating plan and the park-approved merchandise plan. These products are prominently displayed separately from similar items that do not qualify as authentic, and are clearly labeled as authentic native handicrafts. Appropriate certifications of authenticity and sales verification are available on request.</p>	A	AL
44	<p><b>Thematic and Environmentally Preferable Products</b> - Items of interpretive value and general value in natural and cultural resource education and environmentally preferable products are featured in accordance with the operating plan and the park-approved merchandise plan. These products may include reused or recycled content, less toxic materials, materials that are locally sourced, or organically grown from certified sources. These products are displayed and tagged, or labeled to distinguish them from other products to promote awareness and sales. Local or organic grocery items are marked and displayed separately from similar products that are not local or organic. Grocery items are obtained from certified sources.</p>	B	VS
45	<p><b>Made in USA and Handcrafted Products</b> - Items handcrafted and made or finished in the USA are featured in accordance with the operating plan and the park-approved merchandise plan. These products are prominently displayed and are clearly tagged or labeled as made or finished in the USA. Locally crafted and sourced items are preferred.</p>	B	VS
46	<p><b>Employee or Local Resident Merchandise</b> - Products not normally sold to visitors (school supplies, tools, cleaning supplies, and groceries) are available for employees or local residents at the discretion of the superintendent. Items are stocked less prominently in a designated area.</p>	C	VS
47	<p><b>Alcohol</b> - Alcoholic sales are in accordance with applicable federal, state and local laws. Minimum customer age signs are posted. A 'carding' policy for the purchase of alcohol is enforced. Policies are enforced that alcohol is not consumed on-site by store customers.</p>	A	AL
48	<p><b>Internet Sales</b> - Online sales are tracked and approved by the park. No park merchandise plan items are sold exclusively online.</p>	C	VS
49	<p><b>Merchandise Layout</b> - Merchandise is arranged in a neat and organized manner throughout the retail area. Item labels face the customer. Displays highlighting featured merchandise and other promotions are appropriate and professional in appearance. Promotions are current.</p>	B	CC
50	<p><b>Merchandise Supply</b> - An adequate supply and appropriate selection of product types and sizes is available.</p>	B	VS

51	<b>Perishable Items Condition</b> - Perishable items including meat, fish, produce, and prepared grab-and-go foods are unspoiled and not discolored. Perishable items are not sold past the manufacturers' sell-by date.	<b>A</b>	LS
52	<b>Merchandise Condition</b> - Items are neat, undamaged, and rotated on a regular basis. Boxes, cans, and other packaging are in adequate condition. Outdated merchandise where spoilage is not a concern is properly labeled and separated from in-date merchandise, and sold at a discounted rate.	<b>B</b>	VS
53	<b>General Merchandise Labeling</b> - Merchandise is properly labeled with price and point of origin. Price labels do not conceal the point of origin or manufacturer identification. Use of bar-code tags, stickers, grease pencils, stringed price tags, or other methods are approved by the park. Identical items may be marked by display area, rather than individually.	<b>B</b>	VS
54	<b>Natural Product Labeling</b> - Items made from natural products are labeled to disclose that the products were obtained from authorized sources outside the park, and not from rare, threatened, or endangered species.	<b>B</b>	VS
<b>Services</b>			
55	<b>Hours of Operation</b> - Facilities and services are operated and provided in accordance with posted hours of operation. Hours of operation are prominently displayed at each facility and visible from the facility's exterior.	<b>B</b>	VS
56	<b>Payment Methods</b> - Credit cards are honored and include MasterCard, Visa, American Express, and Discover. Debit cards and other payment methods (travelers' checks, personal visitor checks, and gift cards) are accepted at the concessioner's discretion or at the direction of the Service.	<b>B</b>	VS
57	<b>Required Notices</b> - Notices stating that the concession is an authorized service include information on how to address comments to the park are posted at every point of sale in accordance with the operating plan.	<b>C</b>	VS
58	<b>Checkout Services</b> - Environmentally preferred bags (paper, compostable plastic) are provided. A 'bag on request' policy is implemented. Grocery bagging and loading services are provided if applicable.	<b>C</b>	VS
59	<b>Merchandise Shipping</b> - Packing and shipping services are available in accordance with the operating plan and the park-approved merchandise plan. Packing materials are environmentally preferable.	<b>C</b>	VS
60	<b>Return/Exchange Policy</b> - A return or exchange policy is implemented for damaged or expired merchandise accidentally sold.	<b>C</b>	VS
61	<b>Lost and Found</b> - All items found are logged and secured in a designated location. Records are maintained and procedures established to ensure prompt, accurate responses to visitor inquiries.	<b>C</b>	VS
62	<b>Park Orientation Material</b> - Park-specific materials are available (brochures, park maps, newsletters, and special notices). Additional information is available about the area (local businesses, places of interest, highways, airports, restaurants, etc.) or the visitor is directed to an information source.	<b>C</b>	VS
63	<b>ATM Machines</b> - ATM machines are signed, stocked, operational, and well-maintained. Machines are appropriately located and do not obstruct visitor foot traffic. ATM signage is park-themed or generic. Brand information is only visible when at the	<b>C</b>	VS

machine.

## Inventory Management

- |    |   |          |    |
|----|---|----------|----|
| 64 | <b>Deliveries</b> - Delivery vehicles and schedules do not disrupt business operations during peak customer hours. Deliveries are screened from public view.  | <b>C</b> | VS |
| 65 | <b>Sales Tracking</b> - An electronic point of sale system (POS) is utilized to provide timely and accurate checkout services and to support reporting systems. A merchandise inventory management system is operational and adequate to maintain sufficient inventory and to track sales for determining gross receipts. Records are maintained to verify sales and adjustments to gross receipts for the sale of authentic Native American Handicrafts. | <b>B</b> | AL |
| 66 | <b>Loss Prevention</b> - An appropriate loss prevention program is implemented that does not cause unnecessary inconvenience to customers. Programs may include tagging mechanisms or other devices for higher value items.   | <b>B</b> | VS |

## Personnel

- |    |   |          |    |
|----|---|----------|----|
| 67 | <b>Customer Service</b> - Customers are greeted by staff. Employees are knowledgeable about the merchandise available.  | <b>B</b> | VS |
| 68 | <b>Staffing Levels</b> - Facilities and services are sufficiently staffed to prevent avoidable delays in service.   | <b>A</b> | VS |
| 69 | <b>Employee Attitude</b> - Employees project a friendly and helpful attitude, and are capable and willing to answer customer questions (about both job and general park information). Employees are proactive in solving issues, ensuring customer satisfaction, and anticipating customer needs.   | <b>B</b> | VS |
| 70 | <b>Employee Appearance</b> - Employees wear a uniform or name tag identifying them as concession staff. Uniforms are commensurate with the type of service provided and approved by the park. Employees present a neat, clean, and professional appearance.   | <b>B</b> | VS |
| 71 | <b>Employee Training Programs</b> - An active training program for employees in the development of necessary skills and procedures is implemented. Training emphasizes work performance and, as appropriate to the position, covers requirements such as technical training, emergency response, cleanliness, employee attitude, NPS philosophy and policy. All training is documented. | <b>B</b> | VS |

## Rates

- |    |  |          |    |
|----|--|----------|----|
| 72 | <b>Approved Rates</b> - Rates and other customer charges do not exceed those approved by the superintendent. | <b>A</b> | VS |
|----|--|----------|----|

### Ranking Definitions

**Major:** First Priority (A) conditions or practices create or have the potential to exert a **significant** impairment to visitor or employee health and safety, park resources, visitor services or visitor enjoyment, Concession Facilities, or associated personal property.

**Moderate:** Second Priority (B) conditions or practices create or have the potential to exert a **moderate** impairment to visitor or employee health and safety, park resources, visitor services or visitor enjoyment, Concession Facilities, or associated personal property.

**Minor:** Third Priority (C) conditions or practices create or have a potential to exert a **minor** impairment to visitor or employee health and safety, park resources, visitor services or visitor enjoyment, Concession Facilities, or associated personal property.

**Focus Area Acronyms**

LS Life Safety/Health

RP Resource Protection

VS Visitor Satisfaction

CC Cleanliness/Condition

AL Accessibility/Legal Requirements

# HEALTHY FOOD STANDARDS & GUIDELINES

## A. Food Ingredients and Choices: Applicable to the portion of the menu as specified.

### 1. Overall Menu: Applicable to the entire menu.

<u>Vegetable and Fruit Option</u>	Offer all entrées or full meals with at least one serving of a fruit or vegetable. Where food is available only à la carte, offer fruits or vegetables as side dishes on the menu.
<u>Low-fat and Fat-free Dairy</u>	Where milk and milk products are offered, offer low-fat or fat-free milk and milk products.
<u>Beverages with No Added Sugar</u>	At least 30 percent of beverages offered must have no added sugar (e.g., high-fructose corn syrup, fructose, fruit juice concentrates, honey, sucrose, dextrose). Offerings should be grouped when determining the percentage (e.g. diet flavored teas, diet sodas, and non-diet sodas).

### 2. For Certain Menu Choices: Applicable to two core menu items: one vegetarian and one non-vegetarian. Applies to sit-down meals as well as grab-and-go and cafeteria offerings.

<u>Light/Lite</u>	Entrée, including sides, is <u>light</u> and contains approximately 800 or fewer calories for adults and 600 or fewer calories for children when prepared according to the recipe.
<u>Fat</u>	Entrée is designated as <u>low fat</u> .
<u>Sodium</u>	Entrée is designated as <u>low sodium</u> .
<u>Whole Grain</u>	Where grains are offered in entrées, they are <u>whole grains</u> .

## B. Food Preparation

<u>Portion Sizes</u>	Offer half servings or reduced portion sizes when possible such as when items are prepared in bulk (e.g., pasta, soups) and are served to order.
<u>Frying Oil Used</u>	Offer the choice of steamed and grilled food rather than fried when food is made to order. Do not use artificial trans fats in frying or as ingredients in any foods on the menu.

## C. Food Education

<u>Signage and Labeling</u>	Identify "healthy choice" options that meet the NPS healthy food choice standards with a designated symbol and key on menus, signs, and other materials to educate visitors on these items. Use signs or other materials to educate visitors on the importance of healthy food.
<u>Placement</u>	For grab-and-go food establishments, ensure that healthier options are placed where they are noticeable and more likely to be purchased.
<u>Nutritional Data</u>	Provide specific nutritional information for core healthy food menu items upon request. At minimum, this information should include the labeling facts recommended by the USDA's Dietary Guidelines for Americans. (The percent daily values and vitamin labels are not necessary).
<u>Marketing</u>	Do not offer fried items as "specials" or "featured" items.

# SUSTAINABLE FOOD STANDARDS & GUIDELINES

## A. Food Ingredients and Choices:

<u>Sustainable Fisheries</u>	Where seafood options are offered, provide those procured from responsibly managed, sustainable, healthy fisheries.
<u>Fair Trade</u>	Offer fair trade-certified coffee.
<u>Sustainably Grown</u>	Offer shade grown coffee.
<u>Seasonal, or Locally or Regionally Produced</u>	Offer seasonal, locally (within 400 miles) or regionally (within 1,000 miles) produced products and ingredients.
<u>Organic</u>	Provide menu items that could be labeled as " <u>made with organic ingredients</u> ", " <u>organic</u> " or "100 percent organic." Note: Organic foods by definition are not <u>genetically modified organisms (GMOs)</u> .

## B. Food Education

<u>Signage and Labeling</u>	Identify "sustainable choice" options with a designated symbol and key on menus, signs, and other materials to educate visitors on these items. Such items meet one or more of the sustainable food choice attributes. Use signs or other materials to educate visitors on the importance of sustainability and the sustainable components of the food and beverage operation.
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**EXHIBIT B****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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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) The Concessioner will comply with all provisions of Executive Order 13658- Establishing a Minimum Wage for Contractors, and its implementing regulations, including the applicable contract clause, which are incorporated by reference into this Contract as if fully set forth in this Contract. The applicable contract clause is available at <https://federalregister.gov/a/2014-23533>.
- (8) 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.

(9) 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, sexual orientation, gender identity, 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**

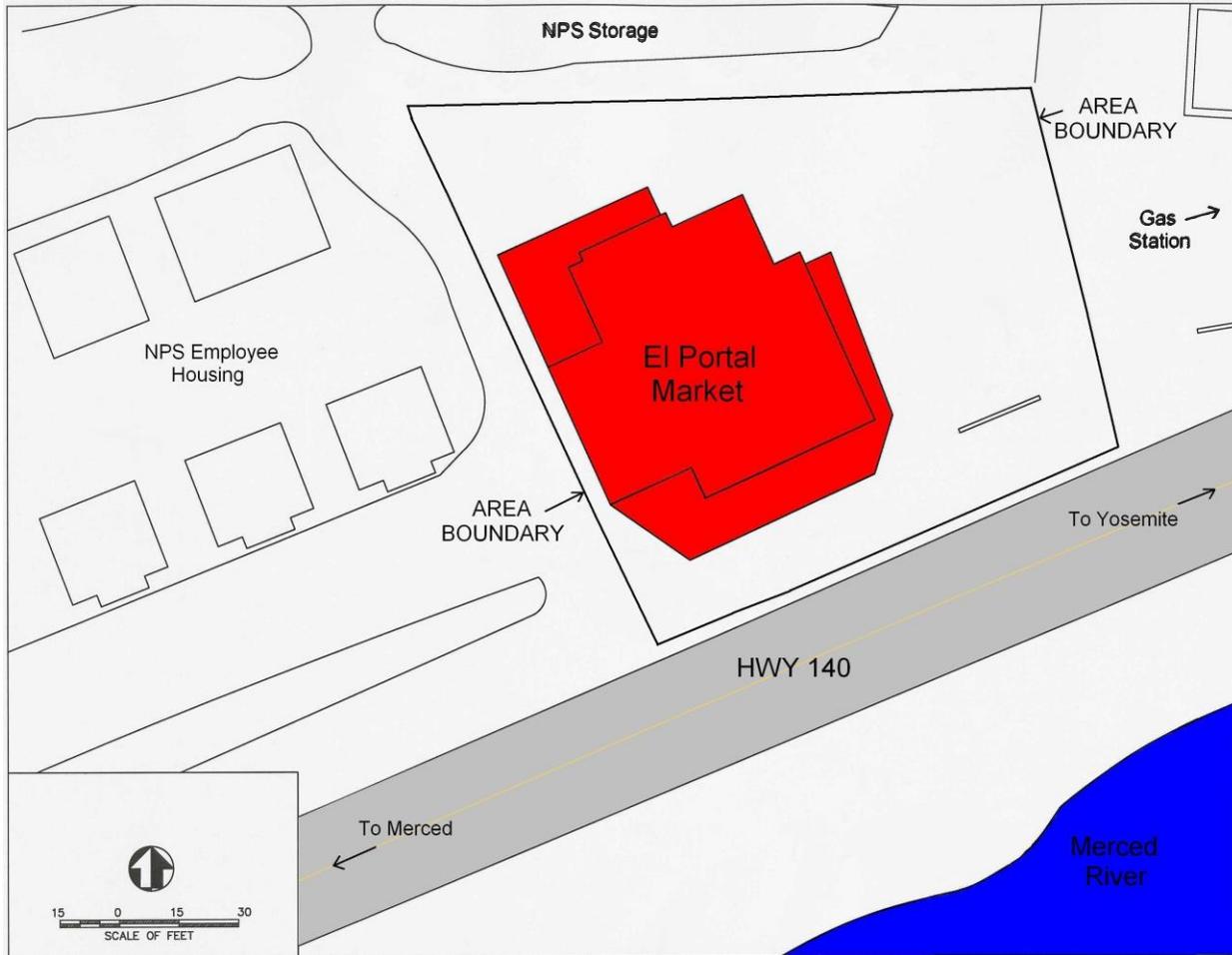
A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible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

**EXHIBIT C**

**ASSIGNED LAND AND REAL PROPERTY IMPROVEMENTS  
(CONCESSION FACILITIES)**

**Land Assigned**

Land is assigned in accordance with the boundaries shown on the following map[s]:



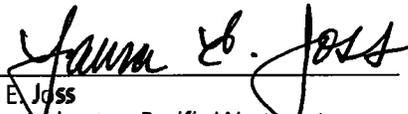
**Real Property Improvements Assigned**

The following real property improvements are assigned to the concessioner for use in conducting its operations under this Contract:

FMSS Asset Code	FMSS Asset Description	FMSS Asset Type	Unit of Measure*	Date Built or Installed	Historic (Y or N)	Insurance Replacement Value
8845	EPB0764 El Portal Market	4100	3,319 SF	2009	N	\$676,969

\*All square footage provided is approximate.

Approved, effective November 1, 2016

By:   
 Laura E. Joss  
 Regional Director, Pacific West Region

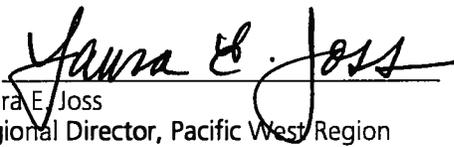
**EXHIBIT D****ASSIGNED GOVERNMENT PERSONAL PROPERTY**

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

<b>Description of Item</b>	<b>Quantity</b>
Water Heater (Electric Instantaneous), under Coffee Bar	1 Each
Hand Washing Sink for Coffee Bar	1 Each
Open Produce & Grab-N-Go Case	1 Each
Reach-In Freezers	1 Each
Reach-In Coolers	1 Each
Walk-In Cooler	1 Each
Walk-In Freezer	2 Each
Work Surface (with Sink) for Food Prep	1 Each
Artisan Foods Display	1 Each
Bulk Foods Display	1 Each
Grocery Display Shelving	16 Each
Hardware Display/Shelving	1 Each
Display/Shelving Against Walls	2 Each
Low Shelving Under Windows	2 Each
Shelving for Dry Storage Area	2 Each

Approved, effective November 1, 2016

By:

  
Laura E. Joss

Regional Director, Pacific West Region

**EXHIBIT E**

**MAINTENANCE PLAN**

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## INTRODUCTION

This Maintenance Plan between National and State Park Concessions El Portal, LLC (hereinafter referred to as the "Concessioner") and the National Park Service (hereinafter referred to as the "Service") sets forth the Maintenance responsibilities of the Concessioner and the Service with regard to those lands and facilities within Yosemite National Park (hereinafter referred to as the "Area") that are assigned to the Concessioner for the purposes authorized by the Contract. In the event of any apparent conflict between the terms of the Contract and this Maintenance Plan, the terms of the Contract, including its designations and amendments will prevail. Full compliance with the requirements of this Maintenance Plan is required in order to satisfy the Concessioner's Maintenance obligations under the terms of the Contract.

This plan will remain in effect until superseded or amended. It will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of the Area. Revisions may not be inconsistent with the terms and conditions of the main body of the Contract. Any revisions must be reasonable and in furtherance of the purposes of this Contract.

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## PART A – GENERAL STANDARDS

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### 1) General Concession Facilities Standards

Pursuant to the Contract, the Concessioner is solely responsible for the Maintenance of all Concession Facilities to the satisfaction of the Service. Compliance with the terms of this Maintenance Plan is required for this purpose.

The Concessioner must conduct all Maintenance activities in compliance with Applicable Laws. Applicable Laws include, but are not limited to Service standards, DOI and NPS Asset Management Plans, NPS Management Policies, manufacturer recommendations and specifications and those otherwise defined in the Contract.

### 2) Definitions

In addition to the defined terms contained or referenced in the Contract, the following definitions apply to this Maintenance Plan.

**Asset** – Real Property that the Service desires to track and manage as a distinct identifiable entity. It may be a physical structure or grouping of structures, land features, or other tangible property that has a specific service or function such as an office building, lodge, motel, cabin, residence, campground, marina, etc.

**Capital Improvement** – A Capital Improvement is a structure, fixture, or non-removable equipment provided by the Concessioner pursuant to the terms of this Contract.

**Component** – A portion of an Asset or system.

**Component Renewal/Replacement (CR)** – The planned Replacement of a Component at the end of its Useful Life. Component Renewal/Replacement examples include the replacement of roofs; electrical distribution systems; heating and cooling systems; pavement replacement for roads, parking lots and walkways; and the rehabilitation of windows and/or replacement of windows and doors. Component Renewal/Replacement includes the deconstruction of the existing Component and Replacement with a new Component of equal capability and performance. These actions recur on a periodic cycle of greater than seven years.

**Concession Facilities** – Concession Facilities, as defined in the main body of the Contract, are all Area lands assigned to the Concessioner under the Contract and all real property improvements assigned to the Concessioner under the Contract.

**Contract** – The agreement (as it may be amended from time to time) to which this Maintenance Plan is attached, including all attachments, exhibits or incorporated provisions of the agreement.

**Deferred Maintenance (DM)** – Maintenance that was not timely or properly conducted. Continued Deferred Maintenance will result in Deficiencies.

**Deficiencies** – Defects in an Asset or Component that results when Maintenance is not performed in a timely manner. Deficiencies may not have immediately observable physical consequences, but when allowed to accumulate uncorrected, lead to deterioration of performance, loss of Asset value, or both.

**Environmentally Preferable** – Products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, productions, manufacturing, packaging, distributions, reuse, operations, maintenance, or disposal of a product or service. Product considerations include, but are not limited to, the environmental impacts of the product's manufacture, product toxicity, and product recycled content including post consumer material, amount of product packaging, energy or water conserving features of the product, product recyclability and biodegradability. These include those products for which standards have been established for federal agency facilities and operations.

**Facility Operations** – Operational actions performed by the Concessioner on a recurring basis that meet daily operational needs of Concession Facilities. Typical work performed under Facility Operations includes janitorial and custodial services, snow removal, operation of utilities, and grounds keeping. Certain Facility Operations requirements may be included in Exhibit A (Operating Plan) to the Contract.

**Feasible** – The ability to provide the equipment, materials or procedures that are required because they are technically possible, economically reasonable, appropriate for the location and the use identified, and consistent with industry best management practices.

**Hazardous Substance** – Any hazardous waste, hazardous chemical or hazardous material as defined under 40 Code of Federal Regulations (CFR), Part 261, US Occupational Safety and Health Administration (OSHA) in 29 CFR 1910.1200 or 40 CFR 171, respectively.

**Hazardous Waste** – Any waste defined as such under 40 CFR 261 – 265.

**Maintenance** – The maintenance of Concession Facilities as described in this Maintenance Plan. Maintenance includes, but is not limited to, actions taken under the following maintenance categories: Component Renewal/Replacement; Recurring Maintenance; Facility Operations; Preventive Maintenance; and Repair.

**Personal Property** – Manufactured items of independent form and utility including equipment and objects solely for use by the Concessioner to conduct business. Personal Property includes, without limitation, removable equipment, furniture and goods, necessary for Concessioner operations under the Contract. Personal Property may be Government assigned property.

**Preventive Maintenance (PM)** – Planned, scheduled periodic maintenance activities that is performed weekly, monthly, quarterly, semi-annually, or annually on selected Assets or Components, typically including, but not limited to, inspection, lubrication, and adjustment.

**Recurring Maintenance (RM)** – Planned work activities that reoccur on a periodic cycle of greater than one year to sustain the useful life of an Asset or Component. Typical projects include, but are not limited to painting, pump and motor replacement, cleaning, repair and replacement of lighting, engine overhaul, replacement of carpeting, and refinishing hardwood floors.

**Repair** – Work undertaken to restore damaged or worn out Assets or Components to a fully functional operating condition.

**Replacement** – Exchange or substitution of one Asset or Component for another that has the capacity to perform the same function at a level of utility and service equivalent to the original Asset or Component.

**Solid Waste** – Discarded household and business items such as product packaging, grass clippings and other green waste, furniture, clothing, bottles, food scraps, newspapers, white goods and other appliances. It is

more commonly referred to as trash, garbage, litter, or rubbish. The term "solid waste," as used in this Maintenance Plan, does not include sewage, septic sludge, hazardous waste, universal waste and miscellaneous maintenance wastes such as used oil, tires and lead-acid batteries.

**Sustainable Design** – Design that applies the principles of ecology, economics, and ethics to the business of creating necessary and appropriate places for people to visit, live in or work. Development that has a sustainable design sites lightly on the land, demonstrates resource efficiency, and promotes ecological restoration and integrity, thus improving the environment, the economy and society.

**Sustainable Practices/Principles** – Those choices/decisions, actions and ethics that will best achieve ecological/biological integrity; protect qualities and functions of air, water, soil, and other aspects of the natural environment; and preservation of human cultures. Sustainable practices allow for use and enjoyment by the current generation, while ensuring that future generations will have the same opportunities.

**Useful Life** – The serviceable life of an Asset or Component.

**Universal Waste** – Any waste as defined under 40 CFR § 273. These include but are not limited to mercury-containing materials such as thermostats, mercury containing lamps such as fluorescent, high intensity discharge, sodium vapor, mercury vapor, lamps, cathode ray tubes (CRTs) from computers and televisions, nickel-cadmium and sealed lead-acid batteries and waste pesticides.

**Waste Prevention** – Any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

**Waste Reduction** – Preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

### 3) Concessioner Responsibilities

#### A) In General

- (1) The Concessioner must undertake Maintenance of Concession Facilities to the satisfaction of the Service, including, without limitation, compliance with the requirements of this Maintenance Plan.
- (2) All Maintenance must be undertaken in accordance with Applicable Laws, including without limitation, applicable building and safety codes. All personnel conducting Maintenance must have the appropriate skills, experience, licenses and certifications to conduct such work.
- (3) The Concessioner, where applicable, must submit project plans to the Service that are stamped by a Professional Engineer or Registered Architect licensed in the applicable State.
- (4) The Concessioner, where applicable, must obtain the appropriate permits required by State or local law, U.S. Environmental Protection Agency, and other regulatory agencies and provide copies of the permits to the Service.
- (5) The Concessioner must conduct Maintenance activities in a manner that, to extent feasible, minimizes environmental impact and utilizes principles of preventive maintenance, waste prevention and reduction, sustainable design and sustainable practices/principles and incorporates best management practices.
- (6) The Concessioner must comply with the Americans with Disabilities Act and the Architectural Barriers Act guidelines where applicable.
- (7) The Concessioner will not construct or install Capital Improvements.
- (8) The Concessioner may perform emergency repairs without prior Service approval as long as appropriate documentation follows within one business day.

#### B) Environmental, Historic, and Cultural Compliance.

- (1) Certain Maintenance actions may be subject to compliance procedures under the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), and other laws as part of a planning process that allows the Service to ensure that all Concessioner activities meet the requirements of Applicable Laws for natural and cultural resource protection.
- (2) The Concessioner in cooperation with the Service will determine what environmental compliance may be required for particular Maintenance actions.
- (3) Any proposed Maintenance actions that require review under these procedures must be submitted to the Superintendent by the Concessioner in the format required.
- (4) The Concessioner may be required to prepare an environmental assessment, environmental impact statement, or related documents at its expense for certain Maintenance actions. The Service will advise the Concessioner on proper process and procedure.

#### **4) Maintenance Tracking**

- (1) The Concessioner must schedule and track completion of all of the Concessioner's Maintenance actions and associated expenditures in an electronic format acceptable to the Service that is capable of effectively providing the Service the Maintenance information required by this Maintenance Plan.
- (2) The Concessioner must provide the Service with requested Maintenance information on a frequency determined by the Service in an electronic format defined by the Service. This information may include, but is not limited to: (1) outstanding Deferred, Recurring, Preventive, scheduled, and unscheduled Maintenance and Component Renewal by Asset; and (2) budgeted and actual expenditures by Asset for Deferred, Recurring, Preventive, scheduled, and unscheduled Maintenance and Component Renewal. The Service, in consultation with the Concessioner, will define the specific requirements for providing requested information, including data export formats, required fields, and data structure.
- (3) The Concessioner must fully develop, implement, and administer a Computerized Maintenance Management System (CMMS) within the first year of the Contract and use it to track the condition and work associated with Concession Facilities in accordance with this Maintenance Plan and upon direction from the Service. The Concessioner must use the CMMS to record all Maintenance and/or construction performed on Concession Facilities.

#### **5) Concessioner Inspections**

The Concessioner must conduct annual inspections of Concession Facilities to determine compliance with this Maintenance Plan and to develop future Maintenance requirements.

#### **6) Annual Concessioner Maintenance Plan (ACMP).**

The Concessioner must provide the Service on an annual basis (for Service review and approval) a proposed Annual Concessioner Maintenance Plan for the next calendar year applicable to all Concession Facilities. The Concessioner must deliver the proposed revised ACMP to the Superintendent on or before **April 30** of each year. The ACMP must include the following information.

##### **A) Maintenance Action Information.**

The ACMP must include the following Maintenance action information:

- (1) *Preventive Maintenance (PM)*. The proposed ACMP must include PM actions, procedures and schedules that ensure proper Preventive Maintenance of all Concession Facilities. At a minimum, the PM actions, procedures and schedules must include summary procedures for each Asset, including, but not limited to, roofs, building envelopes, and mechanical equipment.
- (2) *Recurring Maintenance*. The ACMP must include Recurring Maintenance actions, procedures and schedules for Recurring Maintenance to be performed.
- (3) *Scheduled Repair*. The proposed ACMP must include actions, plans and procedures for scheduled Repair of Concession Facilities.

- (4) *Unscheduled Repair*. The ACMP must include a service call procedure and method to prioritize service calls for unscheduled Repairs.
- (5) *Component Renewal/Replacement*. The proposed ACMP must include actions, plans and procedures for Component Renewal/Replacement.
- (6) A description of the Deferred Maintenance (and any resulting Deficiencies) that are to be cured under the terms of the proposed ACMP.
- (7) Inspection plans and procedures that demonstrate how the Concessioner will oversee the conduct of Maintenance during the next calendar year.

## **B) Projected Maintenance Expenditures**

The ACMP must also include the Concessioner's estimated expenditures associated with the proposed ACMP, including, without limitation, a breakout of labor, materials, contracted services, and indirect costs on an Asset basis applicable to each maintenance category set forth above

## **7) Annual Concessioner Maintenance Reporting (ACMR)**

The Concessioner must provide the Service with an Annual Maintenance Report that covers all Concession Facilities and presents the Maintenance accomplished during the previous calendar year. The Concessioner must deliver the report to the Superintendent on or before **January 31** of each year. The ACMR must include the following elements

### **A) Maintenance Actions**

The ACMR must include a summary of all Maintenance actions by applicable Asset and Maintenance category that were completed in the previous calendar year, including, without limitation, actions to cure Deferred Maintenance (and any resulting Deficiencies).

### **B) Maintenance Expenditures**

The ACMR must include the Concessioner's expenditures associated with Maintenance by applicable Asset and Maintenance category for the previous calendar year, including, without limitation, expenditures to cure Deferred Maintenance (and any resulting Deficiencies).

## **8) Personal Property Report**

The Concessioner must provide the Service with a planned Personal Property replacement, rehabilitation, and repair schedule for the next calendar year annually by **November 30** for review and approval of the Service. The plan must include the specifications, item description, estimated date of replacement, estimated replacement cost, expected life of replacement property, and expected salvage value of replaced Personal Property at time of replacement.

## **9) Service Responsibilities**

Nothing in this Maintenance Plan will be construed as requiring the Service to conduct Maintenance of Concession Facilities of any kind except as otherwise expressly stated by the terms of this Maintenance Plan. Part B of this Maintenance Plan may describe certain Service responsibilities for particular elements of Maintenance of Concession Facilities. Any approval or consent given by the Service of any plan, permit, report, inspection, or any other consent or approval given by the Service under this Maintenance Plan does not relieve the Concessioner or the Concessioner's contractors of any responsibility for any errors or omissions or from the responsibility to comply with the requirements of this Maintenance Plan or the Contract.

### **A) Service Inspections**

The Service from time to time (as determined necessary by the Service but no less than annually) will inspect the condition of Concession Facilities and the progress and quality of Maintenance activities. The Concessioner must provide qualified personnel to accompany the Service when Concession Facilities inspection is performed.

**B) Evaluation of Concessioner Maintenance**

The Service will provide the Concessioner with an annual evaluation of Concession Facilities. The evaluation will be based, among other matters, on the application of the National Park Service Facility Condition Standards during facility inspection. The evaluation will be provided to the Concessioner as a record of Concession Facilities condition documenting the Concessioner's compliance with its obligation to perform all necessary Maintenance, including, without limitation, Annual Concessioner Maintenance Plan (ACMP) actions. The findings and results of the evaluation will become part of the basis of evaluating Concessioner performance under the "NPS Concessioner Annual Overall Rating" program.

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## PART B – PARK REQUIRED CONCESSIONER RESPONSIBILITIES

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### 1) Concessioner Responsibilities

#### A) General

- (1) *Land Assignment*. The Concessioner is responsible for all Facility Management as defined in this Maintenance Plan of the Concession Facilities, except as noted as "Service Responsibilities".
- (2) *Deficiencies*. The Concessioner must correct any deficiencies on a timely basis to achieve the basic goals described in the Service's Concession Guidelines relative to all services required under the Contract.
- (3) *Programmatic Compliance Agreement*. The Concessioner will work with the Service to develop a Programmatic Compliance Agreement **within 90 days of the Contract effective date**, which will generate appropriate NEPA Compliance approval for routine or frequent activities involving Concession Facilities. This will likely include most Facility Maintenance Activities. The Concessioner and the Service will review this plan on an annual basis and update it as needed.
- (4) *Painting*. Unless required more frequently per the manufacturer's recommendation or the International Property Maintenance Code (IPMC), paintable surfaces must be painted on a regular cycle, exteriors of not less than once every five (5) years, and interiors not less than once every seven (7) years, unless an exception is approved by the Service. Paint products must be of a "best quality" from a major manufacturer and a type and color that are readily available on the open market and approved by the Service in accordance with defined design standards. Any changes to paint colors from the color range provided by the Service must be approved by the Service. The Concessioner must utilize reprocessed, low volatile organic content (VOC), latex coatings when technically feasible and appropriate. No oil based paints may be used without the prior written approval of the Service.
- (5) *Heating, Ventilating, and Air Conditioning Units*. HVAC equipment must be inspected on an annual basis and be kept clean, maintained and operated in strict accordance with manufacturer's instructions.
  - (a) New installation(s) and repair shall be done in accordance with manufacturers recommended requirements. New installations must be designed to minimize energy consumption.
  - (b) Areas adjacent to heating, ventilation and air conditioning units shall be free of litter, dirt accumulation and unnecessary storage.
  - (c) The Concessioner will apply appropriate rodent exclusion methods to all heating, ventilating, and all conditioning units.
- (6) *Flooring*. The Concessioner must keep floors clean and free of litter and stains. Vinyl floor coverings must be clean, waxed or buffed (if appropriate), free of cracks, chips, and worn places. Masonry or flagstone grouting must be clean and in good repair. Wood floors must be clean or otherwise sealed. Tile flooring should be free of chips, non-slip, and grout should be sealed and free of stains.
- (7) *Interior*. The Concessioner must ensure that all interior spaces are clean, properly illuminated, and well maintained, including, at a minimum, the following:
  - (a) The Concessioner must maintain walls and ceilings free of breaks and stains, with a fresh appearance.
  - (b) Windows must be clean and unbroken. Caulking and glazing must be clean and in good repair.
  - (c) The Concessioner must maintain interior lighting as appropriate for its use. Where feasible, the Concessioner must use photo and motion sensors for lighting systems.
- (8) *Exterior*. The Concessioner must maintain the structural and architectural integrity of the Concession Facilities, including performing the following activities:

- (a) Roofs. The Concessioner must inspect roofs on an annual basis to ensure that roofing materials are intact and free of deterioration that may affect structural quality and protection of the building envelope, and that roofs are not jeopardized by adjacent vegetation or overhanging tree limbs.
  - (b) Gutters, downspouts and roof drains. The Concessioner must ensure that gutters, downspouts, and roof drains remain attached to each of the buildings. The Concessioner must inspect and clean gutters, downspouts and roof drains annually at a minimum to maintain the system free of obstructions and to ensure that they are fully operational.
  - (c) Doors and windows. The Concessioner must routinely inspect and maintain doors and windows to prevent moisture from causing deterioration of materials or structural damage to the building. Seals must be maintained to prevent dirt and dust from accumulating in the interior of buildings and exclude rodents and pests. Window screens must not have tears or be excessively worn.
  - (d) Siding, walls and trim. The Concessioner must routinely inspect and maintain siding to prevent moisture from entering the building or causing deterioration of the siding material. The Concessioner must maintain the walls and trim of Concession Facilities in satisfactory condition.
  - (e) Structural ventilation. The Concessioner must inspect and maintain structural ventilation on at least an annual basis to ensure air circulation based on current HVAC codes and regulations and to exclude wildlife.
  - (f) Foundations and exterior walls. The Concessioner must inspect foundations and exterior walls on an annual basis to ensure they are structurally sound and maintain them to prevent settlement or displacement.
  - (g) Exterior Lighting. As lights are replaced they must be shielded to cast light downward only. Exterior lighting must provide the minimum necessary lighting for visitor safety and security of Concession Facilities. New lighting must be approved by the Service. Energy efficient lighting must be used where feasible.
  - (h) Rodent Exclusion. The Concessioner is responsible for applying appropriate rodent exclusion techniques to all building components. Rodent exclusion measures will be routinely inspected to ensure integrity and repaired when breaches are located. Information regarding the most current rodent exclusion recommendations is identified in Yosemite Park Directive No. 9: Hantavirus Risk Reduction Program available from the Service.
- (9) *Fire Detection and Protection Systems*
- (a) Fire detection, alarms and sprinkler systems must be inspected on an annual basis and maintained in full operating condition at all times in accordance with Service adopted National Fire Protection Association (NFPA) codes and Applicable Laws. The Concessioner must use a licensed fire safety inspector to inspect all fire detection and suppression equipment to meet Applicable Laws. Inspection records must be retained and made available at the Service's request for the term of the Contract.
  - (b) Fire Escapes and Exits must be inspected on an annual basis and be maintained to provide safe and expedient exit from the building at all times in accordance with Applicable Laws.
  - (c) A fire or emergency exit plan will be posted in each area showing escape routes and emergency exits.
  - (d) Written Service approval must be obtained for installations of fire escapes and changes to emergency exit hardware and signs. All of the above must be in compliance with Applicable Laws.
  - (e) Emergency lighting must be installed to illuminate exit routes in accordance with Applicable Laws.

## **B) Personal Property Maintenance**

- (1) *General Maintenance*. All Concessioner Personal Property including appliances, machinery, and equipment, including parts, supplies, and related materials must be maintained, serviced, and

- repaired per the manufacturers' recommendations, and replaced as necessary. The Superintendent reserves the right to require the Concessioner to replace personal property provided by the Concessioner including furniture and equipment at the end of its remaining life or when the item presents a quality, safety, or environmental issues or when the item does not comply with all Applicable Laws.
- (2) *Food Service Personal Property.* All equipment used in food service operations, including but not limited to refrigerators, freezers, and serving tables, will be in compliance with all Applicable Laws, including without limitation of the most current FDA Food Code. Specification sheets for equipment proposed for use in food service operations will be submitted to the Service for review prior to installation.
  - (3) *Government Personal Property.* The Concessioner is required to maintain all Government Personal Property assigned to the Concessioner.

### C) Utilities

- (1) *General.* The Concessioner is responsible to contract with independent supplier(s) to provide electricity, telephone, internet, and propane at its own expense.
- (2) *Electrical.* The Concessioner must maintain all secondary electrical lines and equipment (conduit, fuses, panels, switches, transformers, lines, etc.) as described below within the Concession Facilities. Any changes to the utility system require written approval from the Service. All electrical circuits under its control must meet, at a minimum, the National Electric Code.
  - (a) The Concessioner must repair, maintain, or replace all electrical systems within Concession Facilities to the nearest appropriate meter. Any changes to the utility system require written approval from the Superintendent as defined earlier in this plan.
  - (b) The Concessioner is not responsible for electrical lines or equipment that belongs to commercial power companies or their successors or assignees. The Concessioner is not responsible for electrical lines or equipment that does not solely service their facilities or improvements. However, the Concessioner must notify the appropriate utility provider when circumstances warrant.
  - (c) The Concessioner must repair or replace all electrical system damage within Concession Facilities and damage occurring beyond the Concession Facilities that result from actions of the Concessioner, its employees, agents, or contractors.
- (3) *Water and Wastewater*
  - (a) The Service will provide water/wastewater services to the Concessioner. The Concessioner will pay the Service. Invoices will be delivered to the Concessioner monthly for payment in accordance with Service terms and conditions.
  - (b) Water Lines. The Concessioner must operate, maintain and repair all water system infrastructure and building plumbing systems within the Concession Facilities. The Concessioner must maintain and repair all piping and appurtenances from the building/facility to the nearest meter. The Concessioner must maintain and repair all sub-mains and laterals within the Concession Facilities. Water services and components will be maintained in accordance with the Uniform Plumbing Code and requirements of the county health department or state agency having jurisdiction. Downstream of the meter, the Concessioner is responsible for all pressure reducing and air or vacuum release devices needed to maintain adequate and consistent pressure within the plumbing network within the Concession Facilities.
  - (c) Backflow Prevention and Cross Connections. The Concessioner shall install and operate at all times effective back flow prevention devices. The Concessioner will insure that the cross-connection control program in accordance with the most current version of the Area's Guidelines for the Control of Backflow and Cross-Connections, which will be made available upon request. The Concessioner must maintain meters and backflow prevention devices assigned to the Concessioner within the Concession Facilities.

- (d) Sewage Lines. The Concessioner will maintain all sewage lines, connections, disposal systems, and appurtenances within the Concession Facilities to the sewer collection main. The Concessioner must maintain exterior lines and laterals from the Concession Facilities to the sewer collection mains. This includes pumps and pump filters.
- Any modification that affect the sewage collection system, including but not limited to sewage lift stations and pumps, piping and appurtenances, must be approved by the Service before installation.
  - The Concessioner must clear stoppages and make repairs within the Concession Facilities for damage caused by such stoppages.
  - The Concessioner will maintain and record flow meter readings.
  - If the service needs to access a main within the Concessioner Facilities, the Service will restore the area to substantially the condition existing prior to the commencement of the access reasonable wear and tear excepted unless the Concessioner (including its employees, agents, or contractors) has caused the need to access the main.
  - Damage or any release occurring beyond the Concession Facilities, including discharged grease that results from actions of the Concessioner's employees or its subcontractors will be corrected at Concessioner expense.
- (e) Fixtures. The Concessioner will maintain and repair fixtures attached to the sewage disposal system, including but not limited to: sinks, toilets, urinals, and dishwashing equipment.
- (f) The Concessioner must comply with requirements of local and state regulatory agencies when reopening and/or repairing drinking water distribution systems and sewer collection/disposal systems. The Concessioner must disinfect repaired lines in accordance with Service procedures.

#### **D) Signs**

- (1) *Responsibilities*. The Concessioner must provide, maintain and replace all interior and exterior signs relating to its operations and services within its Concession Facilities as needed or required. Examples are signs identifying the location of functions within Concession Facilities, signs identifying operating services and hours, and signs identifying Concession rules or policies. The Concessioner is not authorized to place signs outside of its land assignment, as noted in Exhibit C.
- (2) *Design Approval*. The Concessioner is responsible for ensuring that its signs are compatible and consistent with Service sign standards as determined by the Superintendent. All new sign installations shall be approved in advance by the Superintendent. No handwritten or typed signs will be permitted within assigned areas unless the Service approves exceptions. Signs must be appropriately located, accurate, attractive, and well maintained.
- (3) *Location and Type*. The Concessioner must ensure its signs are appropriately located, accurate, and well maintained. Signs of a permanent nature must be prepared in a professional manner, appropriate for the purpose they serve, and consistent with Service design guidelines and standards, including but not limited to, Directors Order 52C, Park Signs.
- (4) *Bear Warning Signs*. The Concessioner will provide Service-approved bear warning signs to be placed on garbage cans, and dumpsters within its assigned area.

#### **E) Grounds and Landscaping**

The Concessioner is responsible for the landscape and grounds within the Concession Facilities. A grounds and landscape management plan will be prepared by the Concessioner for Service approval and updated as required. The Concessioner will conduct its business and daily activities in such a manner as to minimize impacts to the natural scene. This will involve protecting native vegetation and controlling erosion. The Concessioner will observe standard landscape watering conservation practices. The Concessioner is responsible for the removal and disposal of debris and hazards from grounds, roads, parking areas, trails, and walkways within the Concession Facilities.

**F) Snow Removal**

The Concessioner is responsible for all snow removal within the Concession Facilities including the removal of snow from parking areas, porches, walkways, and, if necessary, roofs. Snow and ice will be removed from all areas of pedestrian access including paved areas, porches and stairs to the extent where pedestrian travel is safe for winter conditions. Ice buildup on walkways will be sanded or removed for safety. Any chemical used for removing ice must be approved in advance by the Service. Special requests by the Concessioner for snow removal by the Service will be made through the Division of Business and Revenue Management.

**G) Hazard Tree Removal**

The Concessioner is responsible for removing trees after receiving Service approval. Approval will be granted in accordance with the established Park policy for hazard tree removal. The Concessioner is not authorized to remove hazard trees from its assigned area without the specific approval of the Superintendent or his designated representative, unless there is an imminent hazard.

**H) Exotic Plants and Species**

The Concessioner is prohibited from bringing exotic plants and species into the Park.

**2) Park Responsibilities**

The Service assumes no responsibility for Facility Operations or Maintenance, except as stated below.

**A) Water and Wastewater**

- (1) *Rates for services.* The Service will review costs for water/wastewater utility systems and services annually, and will notify the Concessioner in writing 90-days in advance of a rate change. Rates will be based on the results of the review in accordance with Directors Order 35B.
- (2) *Bacteriological Monitoring.* The Service provides bacteriological monitoring and chemical analysis of potable water as required by all Applicable Laws.

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## PART C – CONCESSIONER ENVIRONMENTAL RESPONSIBILITIES

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The following Concessioner environmental responsibilities are specified for Maintenance. Park-required Concessioner responsibilities provided in Part B may provide more specific and/or additional environmental requirements. When in conflict, responsibilities described in Part B supersede those identified in this part.

### **1) General**

#### **A) Air Quality**

- (1) The Concessioner will minimize impacts to air quality in maintenance under this contract through the use of appropriate control equipment and practices.
- (2) The Concessioner will use diesel fuel/heating oil containing no more than 500 parts per million (ppm) sulfur (i.e., low sulfur fuel) accepted as permitted by the Service.
- (3) The Concessioner will not use halon fire suppression systems except as permitted by the Service.

#### **B) Environmentally Preferable Products, Materials and Equipment**

- (1) The Concessioner will use products, materials and equipment that are environmentally preferable where feasible in maintenance. Environmentally preferable maintenance related products, materials and equipment include but are not limited to re-refined oils, re-tread tires, bio-based lubricants, low-toxicity cleaners and chemical additives for toilets, low-toxicity and recycled antifreeze, safe alternatives to ozone-depleting substances for HVAC equipment, construction and building materials with recycled content, and alternative fuel vehicles.
- (2) The concessioner will use polystyrene as little as possible and may not use polystyrene that contains chlorofluorocarbons.

#### **C) Hazardous Substances**

- (1) The Concessioner will minimize the use of hazardous substances for maintenance purposes under this Contract where feasible.
- (2) The Concessioner will provide secondary containment for hazardous substances storage where there is a reasonable potential for discharge to the environment. At a minimum, the Concessioner will provide secondary containment for hazardous substances located in outside storage areas and in interior storage areas in the proximity of exterior doorways or floor drains, on docks or vessels.
- (3) The Concessioner will provide an inventory of hazardous substances to the Service annually in accordance with Section 6(d)(1) of the Contract. The inventory will identify each substance, location and amounts stored.

#### **D) Hazardous, Universal and Other Miscellaneous Maintenance Wastes**

- (1) The Concessioner will minimize the generation of hazardous, universal and miscellaneous maintenance waste where feasible.
- (2) The Concessioner will recycle hazardous, universal, and miscellaneous maintenance wastes, where feasible, including but not limited to, used oil, used oil contaminated with refrigerant, used solvents, used antifreeze, paints, used batteries, and used fluorescent lamps (including CFLs).
- (3) Concessioner will obtain approval from the Service for hazardous, universal, and miscellaneous maintenance waste storage area siting and designs.
- (4) If the Concessioner is a conditionally exempt small quantity generator (CESQG) as defined in federal regulations, it will follow small quantity generator (SQG) regulations related to container labeling, storage, accumulation times, use of designated disposal facilities, contingency planning, training, and recordkeeping.

- (5) The Concessioner will manage universal wastes (i.e., storage, labeling, employee training, and disposal) in accordance with federal universal waste regulations irrespective of hazardous waste generator status.
- (6) The Concessioner will address hazardous, universal and miscellaneous maintenance wastes in its inventory of waste streams which is required annually in accordance with Section 6(d)(1) of the Contract. The inventory will identify each waste type, locations stored, amount generated annually, amount typically generated per month and amount typically stored on site at any one time.

#### E) Pest Management

- (1) The Concessioner will conduct any pesticide management activities in accordance with NPS Integrated Pest Management (IPM) procedures contained in NPS 77 and the Park IPM Plan. These procedures include but are not limited to Park approval before the use of any chemical pesticides by the Concessioner or its contractor, proper pesticide storage, application and disposal, and pesticide use reporting.
- (2) The Concessioner and employees must adhere to practices that tightly seal buildings and supplies, and maintain clean facilities, thereby reducing potential for wildlife becoming pests.
- (3) The Concessioner must obtain Service approval to control pests utilizing chemicals or by other means. The Concessioner must submit to the Service, by **March 1** of each calendar year, a pesticide request form requesting approval of anticipated pesticide use and a Pesticide Use Log which tracks the pesticide use for the current year.

#### F) Solid Waste

- (1) *Baseline Analysis.* The Concessioner must complete an analysis of solid waste generated by its operations no later than the **first anniversary of the Contract effective date**. This analysis will provide the baseline amounts of paper waste, plastic waste, and food waste the Concessioner must then reduce as outline below.
- (2) *Reduction Goal.* The Concessioner must reduce the amount of solid waste (paper, plastic and food), from the baseline developed in the first year of its operation, as follows:
  - (a) Divert a total of 70% of each paper, plastic, and food waste no later than the **second anniversary of the Contract effective date**.
  - (b) Divert a total of 80% of each paper, plastic, and food waste no later than the **third anniversary of the Contract effective date**.
  - (c) Divert a total of 90% of each paper, plastic, and food waste no later than the **fourth anniversary of the Contract effective date**.
- (3) *Litter Abatement*
  - (a) The Concessioner will develop, promote and implement a litter abatement program and provide litter free messages on appropriate materials and in appropriate locations.
  - (b) The Concessioner will keep all Concession Facilities free of litter, debris, and abandoned equipment, vehicles, furniture, and fixtures.
- (4) *Solid Waste Storage and Collection and Disposal*
  - (a) The Concessioner is responsible for providing, at its own expense, an effective system for the collection, storage and disposal of solid waste generated by its facilities and services as well as the solid waste generated by the visiting public at its facilities.
  - (b) To prevent pest attraction and breeding, all solid waste from the Concessioner's operations will be adequately bagged, tied and stored in sealed containers.
  - (c) Solid waste collection and disposal will be conducted on a schedule approved by the Service, at a rate as necessary to prevent the accumulation of waste.
  - (d) Solid waste that is not recycled will be properly disposed at an authorized sanitary landfill or transfer station.

**G) Solid Waste Receptacles**

- (1) The Concessioner will locate its solid waste containers (i.e., cans, "roll-off" containers/dumpsters, etc.) conveniently and in sufficient quantity to handle the needs of its operations. The Concessioner will not allow waste to accumulate in containers to the point of overflowing.
- (2) Outdoor receptacles must be waterproof, vermin-proof, bear-proof, and covered with working lids. Indoor receptacles should be similarly constructed based on use (i.e., food waste versus office trash).
- (3) The Concessioner will keep its receptacles clean, well maintained, painted in Service-approved colors, and serviceable; containers must be clearly signed; sites must be free of spills, waste, and odors. All solid waste containers will remain closed when containers are not in use.
- (4) Concessioner bulk solid waste storage/accumulation facilities will be screened from the public.

**H) Solid Waste Source Reduction and Recycling**

- (1) The Concessioner will implement a source reduction program designed to minimize its use of disposable products in its operations. Purchase and reuse of materials is encouraged where feasible as the first choice in source reduction.
- (2) The Concessioner is encouraged to reuse materials where allowable under Applicable Laws where the collection of the materials will not present public health, safety or environmental concerns. Opportunities include the reuse of retail product packaging.
- (3) The Concessioner will develop, promote and implement a recycling program that fully supports the efforts of the Service for all Park specified materials. These may include but may not be limited to paper, newsprint, cardboard, bimetals, plastics, aluminum and glass. It may also include large items such as computers and other electronics, white goods and other bulky items and others.
- (4) The Concessioner will make recycling receptacles available to the public and Concession employees.
- (5) Recycling containers will be waterproof, vermin-proof, bear-proof, and covered with working lids as necessary to maintain the quality of the recyclables for market and to prevent vermin from being attracted to the recycling containers. Containers must be clearly signed; sites must be free of spills, waste, and odors. It is encouraged that lids are provided with openings or holes sized to limit the types of materials deposited and to minimize contamination in recycling containers.
- (6) The Concessioner will remove all recyclables from the Area and transport them to an authorized recycling center. The Concessioner may contract with an independent vendor, with the approval of the Service, to provide recycling services.

**I) Composting**

- (1) The Concessioner will use solid waste composting as a waste management method if feasible.
- (2) The Concessioner composting system will be animal-proof and Service-approved.

**J) Solid Waste Inventory**

- (1) The Concessioner will address solid waste in its inventory of waste streams which is required annually in accordance with Section 6(d)(1) of the Contract. The inventory will identify waste types including trash, each category of recyclables, green waste, construction debris, and other solid waste streams. The inventory will specify amount generated by weight, annually.

**K) Water and Energy Efficiency**

- (1) The Concessioner will consider water and energy efficiency in all facility management practices and integrate water-conserving and energy conserving measures whenever feasible.

- (2) In addition to meeting standards established in accordance with Applicable Laws, Concession Facilities equipment and practices will be consistent with water and energy efficiency standards established for federal facilities and operations where feasible.
- (3) As new technologies are developed, the Concessioner will assess these opportunities and integrate them into existing operations where feasible and there is the potential for increased efficiency, reduced water or energy consumption, or reduced impacts on the environment.

#### **L) Wastewater**

- (1) The Concessioner will minimize impacts to water quality in maintenance under this contract through the use of appropriate control equipment and practices.
- (2) The Concessioner will prevent discharges to the sanitary sewer system that could result in pass through of contaminate or that could interfere with the operation of the sanitary wastewater treatment system.
- (3) The Concessioner will maintain assigned wastewater treatment systems (i.e., oil-water separators, grease traps) on a frequency adequate to ensure proper operation to maintain wastewater quality. The Concessioner will maintain maintenance log for this wastewater treatment equipment which will be made available to the Service upon request.
- (4) The Concessioner will minimize the storage of equipment and materials on the Assigned Facilities in a manner that would cause storm water contamination (i.e., storage outside without weather protection).

#### **M) Night Sky**

- (1) The Concessioner will minimize impacts to the night sky and incorporate practices into its operations that reduce light pollution. Outdoor lighting should be at an appropriate intensity to address the identified safety and security need in each location and installed in such a manner that it only impacts the specific area to be lighted.

## PART D – CONCESSIONER REPORTING RESPONSIBILITIES

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### 1) Reporting Requirements

The following chart summarizes the plan and reporting dates established by Parts A, B and C of this Maintenance Plan.

Report or Plan	Schedule	Due Date
Part A – Annual Concessioner Maintenance Plan (ACMP)	Annual	April 30
Part A – Annual Concessioner Maintenance Reporting (ACMR)	Annual	January 31
Personal Property Report	Annual	November 30
Part C – Pesticide Use Report	Annual	January 31
Part C – Pesticide Use Approval(s)	As Needed	As Needed
Part C – Inventory of Hazardous Substances	Annual	March 1
Part C - Inventory of Waste Streams	Annual	March 1

## EXHIBIT F

### 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 ensure that its insurance carriers provide the Service, solely for the benefit of the Service, **an unconditional 30 days advance notice** of cancellation of coverage or policy terms for all property insurance. 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:

Per Occurrence	\$2,000,000
Personal and Advertising Injury Liability	\$2,000,000
General Aggregate	\$1,000,000
Products and Completed Operations Aggregate	\$1,000,000
Medical Payments	\$5,000
Damage to Premises Rented to You	\$5,000

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

Athletic or Sports Participants  
 Contractual Liability  
 Personal and Advertising Injury exclusion or limitation  
 Products and Completed Operations  
 Explosion, Collapse and Underground Property Damage exclusion  
 Total Pollution exclusion

- (3) Pollution liability insurance coverage must be included for injuries resulting from smoke, fumes, vapor, or soot, or other contaminants arising from equipment used to heat the building or from a hostile fire.

- (4) If the policy insures more than one location, the general aggregate limit must be amended to apply separately to each location.

**(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, including garage operations for products and completed operations. Where there are no owned autos, coverage will be provided for "hired" and "non-owned" autos, "Symbols 8 & 9." Garagekeepers' 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
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**(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**

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	\$ 1,000,000
Aggregate Limit	\$ 2,000,000

**(e) Watercraft Liability (or Protection and Indemnity) (not applicable)**

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

Each Occurrence Limit	\$ N/A
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Marina liability shall be maintained at the same each occurrence limit if the Concessioner operates a marina.

Tower's liability shall be maintained at the same each occurrence limit if the Concessioner tows or transports non-owned vessels by water.

**(f) Marina Operator's Legal Liability (not applicable)**

Coverage will be provided for damage to property in the care, custody or control of the Concessioner.

Any One Loss	\$ N/A
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**(g) Environmental Impairment Liability (or Pollution 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	\$ N/A
Aggregate Limit	\$ N/A

**(h) 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	\$ N/A
Property Damage Limit	\$ N/A
Each Accident Limit	\$ N/A

The Concessioner must maintain airport liability insurance at a limit of at least [\$ N/A] 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.

**(i) Garage Liability (not applicable)**

This coverage is required for any operations in which the Concessioner services, handles or repairs automobiles owned by third parties. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability arising out of garage operations (including products/completed operations and contractual liability) as well as bodily injury and property damage arising out of the use of automobiles.

Each Accident Limit - Garage Operations (Other than Covered Autos)	\$ N/A
Aggregate Limit-Garage Operations	\$ N/A
Covered Auto Limit (each accident)	\$ N/A
Garagekeepers' Liability	\$ N/A
Personal Injury Protection (or equivalent no-fault coverage)	\$ N/A
Uninsured Motorists	\$ N/A
Personal & Advertising Injury Limit	\$ N/A
Fire Legal Liability "per fire"	\$ N/A

If owned vehicles are involved, liability coverage should be applicable to "any auto" ("Symbol 21"), otherwise coverage applicable to "hired" and "non-owned" autos ("Symbols 28 & 29") should be maintained.

**(j) Care, Custody and Control – Legal Liability, i.e. Innkeeper's Legal Liability (not applicable)**

Coverage will be provided for damage to property in the care, custody or control of the Concessioner.

Any one Guest	\$ N/A
Any One Loss	\$ N/A

**(k) 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	\$ N/A
Aggregate Limit	\$ N/A

**(l) Special Provisions for Use of Aggregate Policies**

The general aggregate under the Commercial General Liability policy must apply on a "per location" basis. The Certificate of Insurance required herein will note compliance with this aggregate provision.

**(m) 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.

**(n) 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. PROPERTY INSURANCE****(a) Building(s) and Contents Coverage**

Amount of insurance (buildings): Full replacement value as listed in Exhibit C without deduction.

Amount of insurance (contents): Full replacement value without deduction.

Amount of insurance (inventory): Full replacement value without deduction.

- (1) Insurance shall cover buildings, structures, improvements & betterments, and contents for all Concession Facilities, as more specifically described in Exhibit C of this Contract.
- (2) Coverage shall apply on an "all risks" or "special coverage" basis and shall include earthquake coverage if the Concession Facilities are located within Seismic Zones 3 or 4.
- (3) The policy shall provide for loss recovery on a replacement value basis without deduction.
- (4) The amount of insurance must represent no less than 100% of the replacement cost value of the insured property. The Concessioner must insure inventory for 100% of the replacement cost of the products held for sale.
- (5) The vacancy restriction and unoccupied restriction, if any, must be eliminated for all property that will be vacant beyond any vacancy or unoccupied time period specified in the policy.
- (6) The Concessioner must maintain flood coverage at least at the maximum limit available in the National Flood Insurance Program (NFIP) or the total replacement cost of the property, whichever is less, if the Concession Facilities are partially or fully within a Special Flood Hazard Area (Flood Zones A or V as identified by the Federal Emergency Management Agency).

- (7) The Concessioner must maintain earthquake coverage at the maximum limit available not to exceed 100% replacement value, without a deductible greater than 5% of the property value, or its equivalent in whole dollars if the Concession Facilities are located within Seismic Zones 3 or 4.
- (8) The coinsurance provision, if any, shall be waived or suspended by an agreed amount clause.
- (9) The Concessioner must provide coverage on a blanket basis for real and personal property.
- (10) Ordinance or law, demolition, and increased cost of construction. The Concessioner must maintain coverage with a limit of not less than 20% of the building replacement costs listed in Exhibit C, each for the increased cost of construction and for the cost to replace the undamaged portion of a building ordered torn down by the appropriate authorities.

#### **(b) Boiler and Machinery/Equipment Breakdown Coverage**

- (1) Insurance shall apply on the comprehensive basis of coverage including all objects within the Concession Facilities.
- (2) The policy shall provide a limit at least equal to the full replacement cost for all covered objects in the highest valued Concession Facilities location, plus 20% on a replacement cost basis.
- (3) No coinsurance clause shall apply.
- (4) The Concessioner must provide coverage on a blanket basis.
- (5) If insurance is written with a different insurer than the building(s) and contents insurance, both the property and boiler insurance policies must be endorsed with a joint loss agreement.
- (6) The Concessioner must maintain ordinance or law, demolition, and increased cost of construction coverage.

#### **(c) Inland Marine Coverage**

- (1) Insurance shall apply to all boats, office trailers, equipment, storage racks and docks owned or rented by the insured, unless otherwise covered by building and contents coverage or provided for as part of a Watercraft Liability (or Protection and Indemnity) policy.
- (2) Coverage shall apply to direct damage to covered property.
- (3) The Concessioner must maintain flood coverage and earthquake coverage as described above.
- (4) The Concessioner must maintain coverage while covered property is in transit or away from the insured's premises.
- (5) No coinsurance clause shall apply.

#### **(d) Builders Risk Coverage**

- (1) Insurance shall cover buildings or structures under construction pursuant to the terms of the Contract and include coverage for property that has or will become a part of the project while such property is at the project site, at temporary off-site storage, and while in transit. Coverage also must apply to temporary structures such as scaffolding and construction forms.
- (2) Coverage shall apply on an "all risks" or "special coverage" basis.

- (3) The policy shall provide for loss recovery on a replacement cost basis.
- (4) The amount of insurance should represent no less than 100% of the replacement value of the property in the process of construction.
- (5) No coinsurance clause shall apply.
- (6) Any occupancy restriction must be eliminated.
- (7) Any collapse exclusion must be eliminated.

**(e) Business Interruption and/or Expense**

Business interruption insurance is required on all property policies, and Boiler and Machinery policies. Business interruption insurance and extra expense insurance covers the loss of income and continuation of fixed expenses in the event of damage to or loss of any or all of the Concession Facilities. Extra expense insurance covers the extra expenses above normal operating expenses to continue operations in the event of damage or loss to covered property. The Concessioner must calculate the minimum coverage provided as follows:

Anticipated annual gross revenue from operations	\$ _____
Less non-continuing expenses	(\$ _____)
Annual Total	\$ _____
Divided by 12	\$ _____
Times the number of months estimated to rebuild or repair the Concession Facilities.	\$ _____
Minimum Coverage	\$ _____

**(f) Deductibles**

Property insurance coverages described above may be subject to deductibles as follows:

- (1) Direct damage deductibles shall not exceed the lesser of 10% of the amount of insurance or \$50,000 (except flood coverage and earthquake coverage may be subject to deductibles not exceeding 5% of the property value for flood, windstorm and earthquake).
- (2) Extra expense deductibles (when coverage is not combined with business interruption) shall not exceed \$50,000.

**(g) Required Clauses**

Loss Payable Clause: A loss payable clause, similar to the following, must be added to Buildings and Contents, Boiler and Machinery, and Builders Risk policies:

“In accordance with Concession Contract No. \_\_\_ dated \_\_\_, between the United States of America and [the Concessioner] payment of insurance proceeds resulting from damage or loss of structures insured under this policy is to be disbursed directly to the Concessioner without requiring endorsement by the United States of America, unless the damage exceeds \$1,000,000.”

#### **SEC. 4. CONSTRUCTION PROJECT INSURANCE**

Concessioners entering into contracts with outside contractors for various construction projects, including major renovation projects, rehabilitation projects, additions or new structures must ensure that all contractors retained for such work maintain an insurance program that adequately covers the construction project.

The insurance maintained by the construction and construction-related contractors shall comply with the insurance requirements stated in the Contract including this Exhibit (for commercial general liability, automobile liability, Workers' Compensation and, if professional services are involved, professional liability). Except for Workers' Compensation insurance, the interests of the Concessioner and the United States shall be covered in the same fashion as required in the commercial operator insurance requirements. The amounts and limits of the required coverages shall be determined in consultation with the Director taking into consideration the scope and size of the project.

#### **SEC. 5. 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. 6. 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. 7. 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. 8. 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 G****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.

## EXHIBIT H

## INTELLECTUAL PROPERTY LICENSED MARKS

Ackerson Creek	Big Oak Flat Road	Castle Cliffs
Ackerson Meadows	Bigelow Peak	Cathedral Lakes
Ackerson Mountain	Biledo Meadow	Cathedral Pass
Adair Lake	Bingaman Lake	Cathedral Peak
Agnew Lake	Birch Building	Cathedral Range
Agnew Meadows	Bishop Creek	Cathedral Rocks
Agnew Pass	Black Spring	Cathedral Spires
Ahwahnee	Blackie Lake	Cedar Cottage
Ahwahnee Bridge	Blue Jay Creek	Chain Lakes
Ahwahnee Drive	Blue Lake	Cherry Creek
Ahwahnee Hotel	Boothe Lake	Cherry Lake
Ahwahnee Meadow	Boundary Hill	Cherry Ridge
Ahwiyah Point	Boystown	Chilnualna Creek
Alder Building	Breeze Lake	Chilnualna Fall
Alder Creek	Bridalveil Campground	Chilnualna Lake
Alpine Lake	Bridalveil Creek	Chinquapin
Amelia Earhart Peak	Bridalveil Fall	Chinquapin Falls
Arch Rock	Bridalveil Meadow	Chinquapin Historic District
Arch Rock Entrance Station	Bridalveil Moraine	Chounaired Herbert
Arch Rock Tunnel	Broad Illilouette Falls	Chris Jorgenson Studio
Arrowhead Spire	Buck Camp	Church Tower
Artist Creek	Buck Creek	Clark Cottage
Artist Point	Buck Creek Cabin	Clark Point
Aspen Building	Budd Creek	Clark Range
Aspen Valley	Budd Lake	Clarks Valley
Avalanche Creek	Buena Vista Crest	Cliff Room
Azalea Building	Buena Vista Lake	Climber Steward
Bachelor and Three Graces	Buena Vista Pass	Clouds Rest
Badger Pass	Buena Vista Peak	Cockscomb Crest
Badger Pass Ski Area	Bunnell Cascade	Cockscomb Peak
Bagby Stationhouse, Water Tanks & Pavilion	Bunnell Point	Colby Mountain
Bald Mountain	Caboose No.	Colonial Room
Basket Dome	California Falls	Columbia Finger
Battalion Pass	California Tree	Columbia Rock
Bear Valley	Camp 1	Conness Creek
Bench Canyon	Camp 4	Conness Glacier
Bennettville	Camp 6	Conness Lakes
Benson Lake	Camp Curry	Cook's Meadow
Benson Pass	Camp Curry Historic District	Cora Lakes
Bernice Lake	Carlson Falls	Cottonwood Building
Big Creek	Carlson Guard Station	Coulterville Road
Big Meadow	Cascade Cliffs	Coyote Rocks
Big Meadow Creek	Cascade Creek	Crane Flat
Big Oak Flat Entrance	Cascade Lake	Crane Flat Campground
	Castle Camp	Crane Flat Fire Lookout

Crescent Creek	Electra Peak	Glen Aulin High Sierra Camp
Crescent Lake	Elephant Rock	Glen Aulin High Sierra Camp
Crocker Ridge	Elevenmile Creek	Historic District
Crown Point	Elizabeth Lake	Golden Crown Mine
Curry Village	Ellery Lake	Grace Meadow
Curry Village Drive	Emerald Pool	Grand Canyon of the Tuolumne
Curry Village Ice Skating Rink	Emeric Creek	River
Curry Village Pavilion	Emeric Lake	Grand Mountain
Dana Meadow	Empire Meadow	Granite Creek
Dana Plateau	Evelyn Lake	Grant Lakes
Dark Hole	Facelift	Gray Butte
Death Slabs	Fairview Dome	Gray Lakes
Deer Camp	Faithful Couple	Gray Peak
Degnan's	Falls Creek	Grayling Lake
Devil Gulch	Falls Ridge	Great Sierra Mine
Devils Dancefloor	Fantail Lake	Great Sierra Wagon Road
Dewey Point	Fern Spring	Grizzly Creek
Diamond Cascade	Fireplace Bluffs	Grizzly Giant
Dingley Creek	Fireplace Creek	Grizzly Meadow
Discovery View	Flat Lake	Grizzly Peak
Diving Board	Fletcher Creek	Grouse Creek
Doc Moyle's	Foerster Creek	Grouse Lake
Doe Lake	Foerster Peak	Gunsight
Dog Lake	Foresta	Half Dome
Dog Rock	Foresta Falls	Half Dome Cables
Doghead Peak	Forester Creek	Hanging Basket Lake
Dogwood Building	Forester Peak	Happy Isles
Donohue Pass	Fort Monroe	Harden Lake
Donohue Peak	Four Mile Trail	Harriet Lake
Eagle Creek	Four Mile Trailhead	Hart Lakes
Eagle Meadows	Frog Creek	Hazel Green Creek
Eagle Peak	Frog Lakes	Hazel Green Ranch
Eagle Tower	Gale Peak	Helen Lake
Echo Lake	Gallison Lake	Hemlock Building
Echo Peaks	Garden Terrace	Henness Ranch
Echo Valley	Gates of the Valley	Henness Ridge
Edna Lake	Gaylor Lakes	Henness Ridge Fire Lookout
Edson Lake	Gaylor Peak	Hermaphrodite Flake
El Capitan	Gibbs Canyon	Hetch Hetchy Comfort Station
El Capitan Meadow	Gibbs Lake	Hetch Hetchy Dome
El Capitan Picnic Area	Gin Flat	Hetch Hetchy Railroad Engine No.
El Portal	Girls Club	6
El Portal Historic Structures	Givens Lake	Hetch Hetchy Reservoir
El Portal Hotel	Givens Meadow	Hetch Hetchy Valley
El Portal Market	Glacier Point	Hidden Lake
El Portal Old Schoolhouse	Glacier Point Road	High Sierra
Elderberry Building	Glacier Point Trailside Museum	Hills Studio
Eleanor Creek	Gladys Lake	Hite Cove
Eleanor Lake	Glen Aulin	Hodgdon Homestead Cabin

Hodgdon Meadow	Kuna Crest	Major James D. Savage
Hodgdon Meadow Campground	Kuna Lake	Mammoth Peak
Hoffmann Creek	Kuna Peak	Manzanita Building
Hoover Lakes	Lady Lake	Maple Building
Horizon Ridge	Lake Eleanor	Mariposa Grove
Horse Ridge	Lake Florence	Mariposa Grove Historic District
Horsetail Fall	Lake Vernon Cabin	Mariposa Grove Museum
Housekeeping Beach	Laurel Building	Mariposa Grove of Giant Sequoias
Housekeeping Camp	Laurel Lake	Mary Lake
Huff House	Le Conte Falls	Matterhorn Canyon
Hummingbird Lake	Le Conte Memorial	Matterhorn Peak
Hutchings Creek	Le Conte Point	Matthes Crest
Illilouette Creek	Leaning Tower	Matthes Lake
Illilouette Fall	Lee Vining Creek	Mattie Lake
Illilouette Gorge	Lee Vining Peak	Maul Lake
Illilouette Ridge	Lehamite Creek	May Lake
Indian Canyon	Lehamite Falls	May Lake High Sierra Camp
Indian Canyon Creek	Leidig Meadow	May Lake High Sierra Camp Historic District
Indian Cave	Lembert Dome	McCauley and Meyer Barns
Indian Creek	Lewis Creek	McGurk Cabin
Indian Ridge	Liberty Cap	McGurk Meadow
Indian Rock	Lillian Lake	McSwain Meadows
Indian Village	Little Crane Creek	Medial Moraine
Inspiration Point	Little White Cottage	Medlicott Dome
Ireland Creek	Little Yosemite Valley	Merced Canyon Travel Corridor Historic District
Ireland Lake	Long Meadow	Merced Gorge
Iron Creek	Lookout Point	Merced Grove
Iron Mountain	Lost Arrow	Merced Grove of Giant Sequoias
Iron Spring	Lost Arrow Spire	Merced Grove Ranger Station
Isberg Peak	Lost Bear Meadow	Merced Lake
Jack Main Canyon	Lower Brother	Merced Lake High Sierra Camp
Jacuzzi Camp	Lower Merced Lake	Merced Lake High Sierra Camp Historic District
Joe Crane Lake	Lower Ottoway Lake	Merced Lake Ranger Station
John Muir	Lower Pines Campground	Merced Pass
John Muir Trail	Lower River Campground	Merced Pass Lake
John Muir's High Sierra	Lower Yosemite Fall	Merced Peak
Johnson Creek	Lower Yosemite Falls	Merced River
Johnson Lake	Lukens Lake	Merced River Canyon
Junior Ranger	Lundy Canyon	Middle Brother
Juniper Building	Lundy Lake	Middle Cascade
Kerrick Canyon	Lundy Mine	Middle Fork Tuolumne River
Kerrick Meadow	Lundy Pass	Miguel Creek
Keys Creek	Lyell Canyon	Miguel Meadow
Kibbie Creek	Lyell Fork	Mildred Lake
Kibbie Lake	Lyell Fork Tuolumne River	Miller Lake
Kibbie Ridge	Lyell Glacier	Red Peak Pass
Koip Peak	Maclure Creek	
Kolana Rock	Maclure Glacier	
KP Pinnacle		

Mine Creek	Olmsted Point	Reymann Lake
Minnow Lake	Ostrander Lake	Ribbon Fall
Mirror Lake	Ostrander Lake Ski Hut	Ribbon Meadow
Mist Trail	Ostrander Rocks	Rocky Point
Miwok Lake	Ottoway Lake	Rodgers Peak
Mono Meadow	Ottoway Peak	Roosevelt Lake
Mono Pass	Pacific Crest Trail	Royal Arch Cascade
Monroe Meadows	Panorama Cliff	Royal Arch Creek
Moore Cottage	Panorama Point	Royal Arch Lake
Moraine Dome	Panorama Trail	Royal Arches
Moraine Flat	Parker Creek	Royal Arches Regular Route
Moran Point	Parker Lake	Rush Creek
Mosquito Creek	Parker Pass	Sachse Springs
Moss Canyon	Parker Pass Lake	Sachse Springs Cabin
Moss Creek	Parsons Lodge	Saddle Bag Lake
Moss Spring	Parsons Memorial Lodge	Saddle Horse Lake
Mother Curry	Parsons Peak	Sawtooth Ridge
Mount Ansel Adams	Pate Valley	Sentinel Beach Picnic Area
Mount Broderick	Peregoy Meadow	Sentinel Bridge
Mount Bruce	Pinnacles	Sentinel Dome
Mount Clark	Pioneer Yosemite History Center	Sentinel Fall
Mount Conness	Pleasant Valley	Sentinel Meadow
Mount Dana	Pohono Bridge	Sentinel Rock
Mount Florence	Pohono Trail	Shamrock Lake
Mount Gibbs	Polly Dome	Sheep Peak
Mount Hoffmann	Polly Dome Lakes	Shirley Creek
Mount Lyell	Poopenaut Valley	Shirley Lake
Mount Maclure	Porcupine Creek	Sierra Nevada
Mount Savage	Porcupine Flat	Sierra Nevada Mountain Range
Mount Starr King	Porcupine Flat Campground	Sierra Point
Mount Watkins	Pothole Dome	Siesta Lake
Muir Gorge	Pothole Meadow	Silver Apron
Murphy Creek	Potter Point	Silver Strand Fall
Museum Store	Pywiack Cascade	Simmons Peak
National Park Service	Pywiack Dome	Sing Peak
Ned Gulch	Quarter Domes	Skelton Lakes
Nelson Lake	Quartzite Peak	Smith Meadow
Nevada Fall	Rafferty Creek	Smith Peak
New Big Oak Flat Road	Rafferty Peak	Smoky Jack Campground
North American Wall	Ragged Peak	Snake Dike
North Dome	Rail Creek	Snow Creek
North Pines Campground	Rancheria Creek	Snow Creek Cabin
Northwest Books	Rancheria Falls	Snow Creek Falls
Nose Wipe	Rancheria Housing Area	Snow Flat
O'Shaughnessy Dam	Rancheria Mountain	Snow Flat Cabin
Obelisk Lake	Ranger's Club	Soda Springs
Old Big Oak Flat Road	Red Devil Lake	Soda Springs Cabin
Old Coulterville Road and Trail	Red Peak	Tuolumne Meadows Historic District
Soda Springs Complex Historic	Red Peak Fork	

District	The Cables	Tuolumne Meadows Lodge
South Crack	The Cascades	Tuolumne Meadows Ranger Stations & Comfort Stations
South Entrance	The Fissures	Tuolumne Meadows Visitor Center
South Entrance Historic District	The Great Lounge	Tuolumne Peak
South Fork Merced River	The Grove	Tuolumne River
Spotted Lakes	The LeConte Memorial Lodge	Tuolumne Stables
Squirrel Creek	The Mariposa Grove Museum	Turner Meadow
Staircase Falls	The Mountain Room	Turner Ridge
Stanford Point	The Mountain Shop at Yosemite	Turtleback Dome
Starr King Lake	The Nature Center at Happy Isles	Twin Lake
Starr King Meadow	The Nose	Unicorn Peak
Stoneman Bridge	The Nose Route	Union Point
Stoneman Cottage	The Rostrum	Upper Merced Lake
Stoneman House	The Solarium	Upper Ottoway Lake
Stoneman Meadow	The Tuolumne Meadows Wilderness Center	Upper Pines Campground
Strawberry Creek	The Underlounge	Upper River Campground
Substation & Substation Control House No. 1	The Village Store	Upper Yosemite Fall
Sugar Pine Bridge	The Wawona Hotel	Upper Yosemite Fall Trail
Sunrise Creek	The Wawona Visitor Center	Valley View
Sunrise High Sierra Camp	The Yosemite Leadership Program (YLP)	Vernal Fall
Sunrise Lake	The Yosemite Museum	Vernon Lake
Sunrise Mountain	The Yosemite Valley Visitor Center	Vernon Lake Cabin
Swan Slab	The Yosemite Valley Wilderness Center	Virginia Lake
Sweet Shop	Thomas Hill Studio	Vogelsang High Sierra Camp
Swinging Bridge	Three Brothers	Vogelsang High Sierra Camp Historic District
Swinging Bridge Loop	Timber Creek	Vogelsang Lake
Table Lake	Tioga Pass	Vogelsang Peak
Taft Point	Tioga Pass Entrance Station	Wapama Falls
Tamarack Building	Tioga Peak	Washburn Cottage
Tamarack Creek	Tresidder Peak	Washburn Lake
Tamarack Flat	Tresidder Room	Washburn Point
Tamarack Flat Campground	Triple Divide Peak	Washington Column
Tangerine Trip	Trumbull Peak	Waterwheel Fall
Telescope Tree	Tudor Lounge	Watkins Pinnacles
Ten Lakes	Tueeulala Falls	Wawona
Tenaya Canyon	Tunnel View	Wawona Campground
Tenaya Creek	Tuolumne River	Wawona Cemetery
Tenaya Lake	Tuolumne Meadows Campground	Wawona Covered Bridge
Tenaya Peak	Tuolumne Grove	Wawona Dome
The Ahwahnee	Tuolumne Grove of Giant Sequoias	Wawona Meadow
The Ahwahnee Cottages	Tuolumne High Sierra Camp Historic District	Wawona Meadow Loop
The Ahwahnee Dining Room	Tuolumne Meadows	Wawona Point
The Ahwahnee Hotel		Wawona Stables
The Ahwahnee Hotel and Cottages		Wawona Tunnel
		Yosemite Point
		Yosemite Transportation Company
Westfall Meadows	Wilma Lake Cabin	Yosemite Valley

White Mountain White Wolf Campground White Wolf Lodge Wild Cat Creek Wild Cat Falls Wildcat Point Wilderness Education Center Wildlink (Program) Wildlink Bridge Willow Building Wilma Lake	Wilmer Lake Wilmer Lake Cabin Windy Lake Winter Club Room Yosemite Cemetery Yosemite Creek Campground Yosemite Falls Yosemite Lodge Yosemite Museum Yosemite National Park Yosemite Park	Yosemite Valley Bridges Historic District Yosemite Valley Chapel Yosemite Valley Railroad Yosemite Valley Stables Yosemite Village Yosemite Wilderness (Ken Watson) Young Lakes
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**DESIGN MARKS**

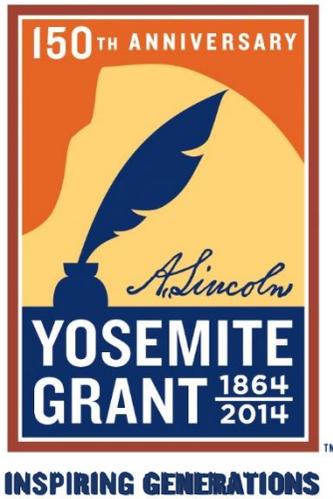
Yosemite National Park 125<sup>th</sup> Anniversary



National Park Service, Centennial Logo



Yosemite Grant 150<sup>th</sup> Anniversary



Yosemite National Park Sustainability Logo

