



United States Department of the Interior



NATIONAL PARK SERVICE
Pacific West Region
1111 Jackson Street, Suite 700
Oakland, California 94607-4807

IN REPLY REFER TO:
C-3823(PWR-CM)

MAR 31 2008

Ms. Kirstie Dunbar-Kari
9721 Barium Mine Road
El Portal, CA 95318

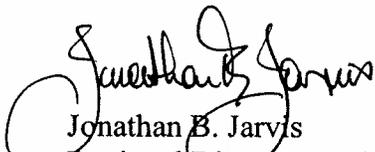
RE: Concession Contract No. CC-YOSE003-08

Dear Ms. Dunbar-Kari:

Enclosed please find your executed concession contract documents regarding operation of a grocery and general merchandise store within the El Portal Administrative Site adjacent to Yosemite National Park.

We appreciate your support of the National Park Service and look forward to working with you.

Sincerely,



Jonathan B. Jarvis
Regional Director, Pacific West Region

Enclosures

TAKE PRIDE[®]
IN AMERICA 

CATEGORY II CONTRACT

UNITED STATES DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

El Portal Administrative Area, Adjacent to

Yosemite National Park

Operation of a Grocery and General Merchandise Market

CONCESSION CONTRACT NO. CC-YOSE003-08

Kirstie Dunbar-Kari
9721 Barium Mine Road
P. O. Box 294
El Portal, CA 95318
209-379-2411

Doing Business As

Kari & Sons

Covering the Period

March 1, 2008 through May 31, 2014

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IDENTIFICATION OF THE PARTIES

This Contract 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, Kirstie Dunbar-Kari, an individual, doing business as Kari & Sons, hereinafter referred to as the "Concessioner":

WITNESSETH

THAT WHEREAS, Yosemite National Park ("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 Park unimpaired for the enjoyment of future generations and El Portal Administrative Site, established adjacent to the Park, is administered by the Director so that facilities and services required in the operation and administration of the Park may be located outside of the Park in order to preserve the extraordinary natural qualities of the Park; 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 Park and the Area should be provided for the public visiting the Park and 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 (16 U.S.C. 1, 2-4), and November 13, 1998 (Pub.L. 105-391), 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-YOSE003-08 ("Contract") shall be effective as of March 1, 2008 and shall be for the term of six (6) years and two (2) months until its expiration on May 31, 2014.

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 the El Portal Administrative Site, adjacent to the 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, 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 subconcessioner's 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 during the term of this Contract:
 - Grocery Store
 - General Merchandise

(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.

(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

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.

(1) 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.

(2) 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.

SEC. 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE

(a) Legal, Regulatory and Policy Compliance

This Contract, operations hereunder 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:

National Park Service
Attention: Business and Revenue Management Office
P.O. Box 577
Yosemite National Park, CA 95389

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

Concessioner	Kirstie Dunbar-Kari Kari & Sons
Address	9721 Barium Mine Road El Portal, CA 95318

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 (BMP) 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, a 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.

(h) Utilities Not Provided by the Director

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 three percent (3%) 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 electronically by the Concessioner using the Treasury Financial Communications System.

(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 annually in the Federal Register. 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. 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 (as defined in Applicable Laws including without limitation 36 CFR Part 51) or other compensable interest as a result of the use of these insurance proceeds.

(6) The commercial property package shall include the coverage 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 \$500,000 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 Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.
- (4) If annual Gross Receipts are less than \$250,000, 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).

(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) Sub-concession 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 43 CFR, Part 42, as applicable, 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. 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.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Contract as of the 31st day of March, 2008.

CONCESSIONER

UNITED STATES OF AMERICA

BY KDKari
Kirstie Dunbar-Kari
Kari & Sons
P. O. Box 294
9721 Barium Mine Road
El Portal, CA 95318

BY Jonathan Jarvis
Regional Director, Pacific West Region
National Park Service

[SOLE PROPRIETORSHIP]

WITNESSES: Sue S. Clark

NAME Sue S. Clark
ADDRESS PO Box 73, El Portal, CA 95318
TITLE _____

NAME Valerie Nelson
ADDRESS 5045 Myrtlewood Rd El Portal CA 95318
TITLE _____

[PARTNERSHIP]

WITNESSES AS TO EACH:

[Concessioner]

NAME _____

(NAME) _____

ADDRESS _____

NAME _____

(NAME) _____

ADDRESS _____

OPERATING PLAN

APR 01 2008

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(I) INTRODUCTION

This Operating Plan between Kirstie Dunbar-Kari dba Kari & Sons ("Concessioner"), and the National Park Service ("Service") acting by and through the Superintendent at Yosemite National Park ("Park") is an Exhibit to and a part of Concession Contract No. CC-YOSE003-08 ("Contract"). It describes specific operating responsibilities of the Concessioner and the Service with regard to those lands and facilities within El Portal Administrative Site ("Area"), adjacent to the Park and administered by the Service 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, shall prevail.

This Operating Plan will be reviewed annually by the Superintendent of Yosemite National Park in consultation with the Concessioner and revised as determined necessary by the Superintendent.

Any revisions shall be consistent with the main body of the Contract. Any revisions must be reasonable and in furtherance of the purposes of the Contract. This plan will remain in effect until superseded or amended.

(II) DEFINITIONS

In addition to all defined terms contained in the Contract, its Exhibits, and 36 CFR 51, the following definitions apply to this Operating Plan:

- (1) **Affirmative Acquisition.** Donating, buying, or purchasing preference of a product over a similar product because of certain characteristics or properties.
- (2) **Best Management Practices (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.**
- (3) **Environmental Purchasing.** The affirmative acquisition of environmentally preferable products.
- (4) **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, production, manufacturing, packaging, distribution, reuse, operations, maintenance, or disposal of the product or service.
- (5) **Facility Operations (FO)** – Work activities performed on a recurring basis throughout the year which intends to meet routine, daily park 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.
- (6) **Hazardous Chemical.** Any chemical which is a physical or health hazard, as regulated by the U.S. Occupational Safety and Health Administration in 29 CFR 1910.1200.
 - (7) **Hazardous Material.** A substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has been designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 USC 5103), as regulated by the US Department of Transportation in 49 CFR 171.
 - (8) **Hazardous Substance.** Any hazardous waste, hazardous chemical or hazardous material.
 - (9) **Hazardous Waste.** The definition of hazardous waste as regulated by the US Environmental Protection Agency in 40 CFR 261.
 - (10) **Incidental.** A spill or release of a hazardous substance that does not pose a significant safety or health hazard to employees in the immediate vicinity or to the employee cleaning it up, nor does it have the potential to become an emergency within a short time frame. Incidental releases are limited in quantity, exposure potential, or toxicity and present minor safety or health hazards to employees in the immediate work area or those assigned to clean them up. An incidental spill may be safely cleaned up by employees who are familiar with the hazards of the chemicals with which they are working.
 - (11) **Non-incidenta**l. A spill or release that is not an incidental spill or release.
 - (12) **Pollution Prevention.** “Source reduction,” as defined in the Pollution Prevention Act of 1990, and other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources; or protection of natural resources by conservation.
 - (13) **Post-consumer Material.** Material or finished product that has served its intended use and has been diverted or received from waste destined for disposal.
 - (14) **Recycling.** The act of producing new products or materials from previously used and collected materials.
 - (15) **Secondary Containment** refers to the provision of devices that will hold a spill or leak from the primary container in which the material was stored. This secondary containment may be a permanently installed feature such as a sunken floor in a storage building, a feature engineered into a storage unit (e.g., sills in a flammable storage cabinet) or a separate unit such as tub or pan placed under a container.
 - (16) **Service Policy** means directives, policies, instructions and guidance regarding the National Park System and the National Park Service that 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 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.
 - (17) **Solid Waste** refers to discarded household and business items such as product packaging, grass clippings, furniture, clothing, bottles, food scraps, newspapers, appliances, paint, and batteries. It is more commonly referred to as trash, garbage, litter, or rubbish. The term “solid waste,” as used in this Operating Plan, does not include sewage, septic sludge,

and hazardous waste. Solid waste will be managed in accordance with Applicable Laws including 40 CFR 243 and 36 CFR 6.

- (18) **Universal Waste.** The definition of universal waste as regulated by the US Environmental Protection Agency in 40 CFR 261.
- (19) **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.
- (20) **Waste Reduction.** Preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(III) RESPONSIBILITIES

A. Concessioner

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

- (1) Has the authority and the managerial experience for operating the authorized Concessions Facilities and services within the Park;
- (2) Will employ a staff with the expertise and training to operate all services authorized under the Contract;
- (3) Has full authority to act as a liaison in all concession administrative and operational matters within the Park; and,
- (4) Has the responsibility for implementing the policies and directives of the Service.

B. Service

The Superintendent of the Park is the Park manager with responsibility for all Park and Area operations, including concession operations. The Superintendent carries out the policies and directives of the Service, including concession contract management. Directly, or through designated representatives, the Superintendent reviews, directs, and coordinates concessioner activities related to the Park and Area. This includes:

- (1) Evaluation of concessioner services and facilities;
- (2) Review and approval of rates charged for all commercial services;
- (3) Review and approval of construction and all improvements to facilities;
- (4) Delivery of a current Service staff list, as needed, to the Concessioner with all appropriate points of contact; and,
- (5) Review of the qualifications related to the general manager, prior to hiring.

(IV) GENERAL OPERATING STANDARDS AND REQUIREMENTS

A. Schedule of Operation

The Concessioner will be open for business daily on a year-round basis from 9:00 AM to 7:00 PM, except for Thanksgiving Day, Christmas Day and New Years Day. The

Service will make every effort to inform the Concessioner of any schedule change that it may initiate due to weather, natural disasters, repair of infrastructure or other reasons.

B. Rate Determination and Approval Process

(1) *Rate Determination.* All rates and charges to the public by the Concessioner must comply with the provisions of Section 3(e) of the Contract, including (without limitation) Section 3(e)'s requirements regarding approval by the Service of the rates and charges set. The reasonableness and appropriateness of rates and charges under this Contract shall be determined, unless and until a different rate determination is specified by the Service, using the methodologies set out below. As used in this Operating Plan, each of the specified methodologies has the same meaning as that set out in the National Park Service Concession Management Rate Approval Guide (September 2002) as it may be amended, supplemented or superseded throughout the term of this Operating Plan. This guide may be requested from the Service.

(a) The Merchandise Pricing Method will be used for grocery and convenience items. This rate approval method uses industry gross margins by product category obtained through a nationally recognized source, the National Association of Convenience Stores (NACS). Each year, the NACS publishes a State of the Industry (SOI) Annual Report that includes gross margin percentages by product category used to determine mark-up percentages. The use of this source ensures comparability with the private sector.

(b) The Competitive Market Declaration (CMD) rate method should be used for all merchandise items.

(c) The Comparability Rate Method should be used for video and DVD rentals.

(2) *Request Submittal for Rate Determination and Approval Process.* Rate requests for Video and DVD rentals require support by established criteria and comparable data. The information to be included in the request is outlined in Service Policy.

(3) *Rate Approval.*

(a) Approval Timing. The Service will approve, disapprove or adjust rates. Requests for rate approvals should be submitted well in advance of their intended rate date, as major changes will require at a minimum 60 days for review and response by the Superintendent. Should special conditions require a quicker than normal response, the Concessioner will clearly explain these conditions in writing in the request. New rates will not be implemented until approved in writing by the Superintendent.

(b) Approved Rate Posting. The Concessioner will prominently post all rates for goods and services provided to the visiting public.

(4) *Discounted Items.* If the Concessioner offers an item or service at less than optimum condition (because of unavailable amenities or condiments, or because of poor service or other conditions), item or service will be discounted. This should not

be construed to condone shortages or “running out” of items on a regular basis and should be used only in unavoidable situations.

C. Purchasing

- (1) *Competitive Purchasing.* The Concessioner may purchase from a facility operated or owned by the Concessioner or a parent company, provided the product is comparable in quality and price.
- (2) *Discounts.* The Concessioner will take advantage of all available trade, cash and quantity discounts and rebates. Depending on the method of rate approval, the Concessioner will pass these savings through to the consumer.
- (3) *Environmental.* The Concessioner will purchase and use Environmentally Preferable products whenever available and feasible.

D. Evaluations

The Service and/or its representatives and the Concessioner shall separately inspect and monitor Concession services, facilities, and equipment with respect to Service Policy, applicable standards, authorized rates, safety, public health, impacts on cultural and natural resources, correction of operating and condition deficiencies, responsiveness to visitor comments and conformance with the Contract and all its Exhibits.

The Concessioner will meet with Service officials to prioritize and schedule the correction of deficiencies and the implementation of improvement programs resulting from these inspections. The Concessioner will be responsible for correction of deficiencies and abatement plans within dates assigned by the Service.

- (1) *Periodic Evaluations.* The Service will conduct both announced and unannounced periodic evaluations of Concession Facilities and activities to evaluate conformance to applicable standards. The location manager will be contacted at the time of facility evaluations so that a representative of the Concessioner may accompany the Park evaluator. The Service reserves the right to enter the Concession Facilities at any reasonable time for any evaluation or when otherwise deemed necessary.
- (2) *Health and Safety Inspections.*
 - (a) Concessioner Safety Inspection. The Concessioner will perform periodic interior and exterior safety inspections of all Concession Facilities in accordance with its documented Risk Management Program. The Concessioner will ensure employee compliance with health, fire, and safety code regulations as well as Service policies and guidelines.
 - (b) Service Safety Inspections. The Service may periodically conduct a comprehensive safety and occupational health evaluation of all operations and facilities in addition to the review of the Concessioner’s Risk Management Program. Safety will also be a component of regular periodic evaluations.
- (3) *Fire Inspections.*

- (a) Service Responsibilities. 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.

- (b) Concessioner Responsibilities. The Concessioner will have a qualified professional perform interior and exterior fire inspections of all concession buildings within 30 days of initial occupancy and on an annual basis thereafter. Written records, verifying the completion of such inspections, will be maintained by the Concessioner and available to the Service upon request. The Concessioner will conduct routine fire drills of buildings as required by its Risk Management Program. Inspections will be performed in accordance with Director's Order #50B and Director's Order #58 (and their successor orders).

(4) *Visitor Comments.* The Concessioner will make Service-approved comment cards available to visitors in order to measure service and quality standards, product mix, pricing, and overall Park experience. It will be the responsibility of the Concessioner to ensure that an adequate inventory of comment cards is available at appropriate locations within its facility at all times.

- (a) The Concessioner will investigate and respond to all visitor complaints regarding its services. Visitor comments that allege misconduct by concession or NPS employees, pertain to the safety of visitors or Service employees, or concern the safety of Park resources will be provided to the Service upon receipt.
- (b) The Concessioner will forward to the Superintendent twice yearly all comments and/or complaints received on comment cards or any other form of documentation. Individual comments must be provided upon request.
- (c) The Service will forward to the Concessioner any comments and/or complaints received regarding the Concession Facilities or services. The Concessioner will investigate and make an initial response to any complaints within 48 hours. The Concessioner will provide a copy of responses to the Superintendent, and a copy of any Service responses will be forwarded to the Concessioner.

(5) *Environmental Audit.* The Service has established a Concession Environmental Audit System to facilitate Concessioner compliance with all applicable environmental requirements, implementation of best management practices, promotion of sound environmental practices, and awareness and accountability for environmental management. The scope of the audit includes applicable federal, state and local laws and regulations, applicable Department of the Interior and Service policies and regulations, and other criteria as contained within the current NPS Environmental Audit Program Operating Guide and the Concession Environmental Audit System ("CEAS") Guide.

(6) *Other Evaluation Criteria.* The Concessioner may also be evaluated in terms of compliance with permit requirements, such as timely submission of annual financial report, timely submission of proof of general liability, automobile, and workers compensation insurance.

(7) *Public Health Inspections.* The Service Sanitarian will conduct announced and unannounced periodic evaluations of the Concessioner's food and beverage operations, grocery and other food sales. In addition, since operations are located within an area of proprietary jurisdiction, Mariposa County Public Health may also inspect Concession Facilities.

E. General Policies

(1) *Facilities Use.* Concession Facilities may not be used for activities or services that do not directly and exclusively support contractual services authorized by the Contract without prior written permission from the Service.

(a) Concession Facilities may not be used for activities or services that do not directly and exclusively support contractual services authorized by the Contract without prior written permission from the Service.

(b) *Smoking Policy.* Concession Facilities must comply with Service Policy and State laws. Smoking is prohibited in all concession public areas and any other area within Concession buildings so designated by "No Smoking" signs.

(2) *Compliance with Americans with Disabilities Act (ADA).* Facilities that are either newly constructed or are rehabilitated will meet the ADA Accessibility Guidelines (ADAAG). (Information related to ADAAG can be found at <http://www.accessboard.gov/adaag/html/adaag.htm>). Park planning will identify new construction and anticipated rehabilitation.

(3) *Lost and Found.* The Concessioner will establish and provide an effective program for handling lost and found or unattended property in the Concession Facilities. This program will include property that may have been abandoned by ~~Concession employees.~~ ~~Items lost or found within the Concession Facilities will be processed as follows:~~

(a) Found items will be tagged at the facility where they are found or turned in by completing a lost and found report, which identifies the item, date, location and name of finder.

(b) A lost and found report will be completed indicating name, address and telephone number of the person reporting a lost item, description of the item, date and location of loss, and the name of the person taking the report.

(c) The Concessioner will hold all found property for 30 days. Efforts will be made to return found items to the owner within the 30-day period.

(d) No items will be released without claimant providing proper identification of the item, name, address, and signature of receipt.

(e) All unclaimed items will be sent to the Service where usable items will be donated to a charitable non-profit organization and items of little or no value

may be destroyed. Disposition of items will be noted on the lost and found report.

- (f) Lost and found reports will be retained by the Concessioner for 3 years.
- (g) For items found outside the Concession Facilities, finders shall be instructed to contact the Service Lost and Found Office at 209-379-1001 to be further processed by the Park.

(4) Vehicles

- (a) Licensing, Insurance, Maintenance and Registration. All vehicular equipment used by the Concessioner and its employees used in performing service under the Contract, will be properly registered, licensed, insured, and maintained in accordance with federal and state law and regulations.
- (b) Parking. The Concessioner will ensure no maintenance of vehicular equipment may occur within the Area. Parking of vehicles by the public and/or the Concessioner and its employees occurs only in designated locations approved by the Area. Egress in or out of the designated parking locations will be maintained at all times.
- (c) Abandoned Vehicles. The Concessioner will notify the Service of abandoned vehicles within its Concession Facilities, which may include Concessioner employee vehicles. Concessioner employee vehicles will be towed at the expense of the owner, or if the owner cannot be located, at the expense of the Concessioner. The Concessioner will take necessary steps to remove abandoned property in a timely manner.

(5) Interactions with Wildlife.

- (a) The feeding of wildlife within a National Park Service area is not permitted. The Concessioner will not encourage the feeding of wildlife at any facility within its Concessions Facilities by displaying food in such a manner that may imply approval of the feeding of wildlife. This includes the placing of birdfeeders. Waste and garbage disposal containers will be located at the entrance to the Concession Facilities. Food storage and waste/garbage disposal facilities will be bear and vermin-proof. Preventive measures will be in place for Hantavirus.
- (b) ~~Concessioner will keep the porch, back deck and parking lot clean and free of litter and food spills to reduce smells that might attract wildlife.~~
- (c) The Concessioner and their employees will notify the Wildlife Management Office of all bear incidents immediately and sightings as soon as possible.
- (d) The market outside bulletin board will post visitor information about wildlife interactions and how to keep animals safe from the dangers of human food.

F. Staffing and Employment

(1) Concessioner Hiring

- (a) The Concessioner will hire a sufficient number of employees to ensure at least satisfactory services during the year.

- (b) The Concessioner will attempt to offer its employees a full workweek whenever possible. Prior to employment, the Concessioner will inform employees of the possibility that less-than-full-time employment may occur during slow periods. All applicable requirements of the federal and state labor laws and regulations will be met.
- (c) The Concessioner will establish hiring policies that will include appropriate background reviews of applicants for employment. The Concessioner will not hire any person known to have an outstanding warrant for arrest and will make reasonable efforts to secure this information prior to hiring new employees.
- (d) The Concessioner shall formally inform employees and potential employees that any individuals required to register with the county sheriff's office in accordance with California Health and Safety Code 11590 (drug offenders) and California Penal Code 290 (sex offenders) must register with the Chief Park Ranger Office.
- (e) The Concessioner will employ at least one bilingual (English/Spanish) employee.

(2) Employee Housing

- (a) No government housing is available to the Concessioner under this contract. The Concessioner is encouraged to secure housing for its employees whenever possible to help achieve a stable workforce.

(3) Employee/Staffing Practices

- (a) All employees dealing with the general public shall wear uniforms or standardized clothing with their own personal nametag. Employees will project a hospitable, friendly, helpful, positive attitude, be capable and willing to answer visitors' questions, and provide visitor assistance. The Concessioner shall ensure consistent application of this practice.

(4) Service Employees and Families

Federal law prohibits government employees from making recommendations, decisions, or approvals relating to applications, contracts, controversies, or other matters in which the employee or the employee's spouse or minor child has a financial interest. Park employees may not make decisions, approvals, or recommendations related to concession activities when their spouse or dependent child is employed by a Concessioner in that particular park. For example, the spouse or dependent child of the Superintendent, Deputy Superintendent, concession staff, environmental manager, Safety Officer, or Park Sanitarian may not be employed by a Concessioner in the specific park in which the NPS employee works. The Concessioner will not employ in any status any other Park employee, his/her spouse, or minor children without the consent of the Superintendent.

(5) Training Program.

- (a) The Concessioner will provide employee orientation and training and will inform employees of park regulations and requirements that affect their employment and activities while working in the Area. Additional orientation will be conducted by the Concessioner with Service participation as appropriate.
- (b) The Concessioner will provide adequate, applicable training (hospitality, environmental, etc.) to each employee prior to job assignments and working with the public.
- (c) An employee handbook which will specifically identify the policies and regulations of the Concessioner and the Service will be developed and provided to the Service for review at least 30 days prior to distribution to employees to assure consistency with all applicable Service Policies. When updated, changes must be reviewed by the Service.

(V) RISK MANAGEMENT PROGRAM

A. Documented Risk Management Program

The Concessioner will develop, maintain, and implement a documented safety program ("Risk Management Program"). An initial submittal and request of approval of this plan will be made to the Superintendent within one hundred twenty (120) days of the execution of this Contract. This plan will be submitted annually to the Service for review and approval by November 30 of the preceding year. The program will include, at a minimum, the following components:

- (1) Administration
- (2) Inspections
- (3) Deficiency Classification and Hazards Abatement Schedules
- (4) Accident Reporting and Investigation
- (5) Public Safety Awareness
- (6) Training
- (7) Emergency Procedures

B. Emergency Response

- (1) *General.* The Concessioner will provide plans and procedures, equipment and training to employees to effectively respond to releases of hazardous substances for the purpose of stopping the release in accordance with Applicable Laws.
- (2) *National Park Service Plans.* The Concessioner will be familiar with the Park's Emergency Response Plan. A copy will be provided upon request.
- (3) *Reporting.*
 - (a) The Concessioner will notify the Park immediately when a release of a hazardous substance occurs. The Concessioner will comply with all applicable reporting requirements of Applicable Laws. Proper safety actions must be

implemented immediately in accordance with the Concessioner's emergency response plans and procedures.

- (b) The Concessioner will submit all Emergency Planning and Community Right-to-Know (EPCRA) reports required under Applicable Laws to the Park in accordance with Section 6d of the Contract.
- (c) The Concessioner will also submit to the Park, upon request, applicable hazardous materials storage and toxic release information necessary for Park EPCRA reporting.

C. Hazard Communication

The Concessioner will develop, document, and implement a Hazard Communication Program in accordance with OSHA regulation 29 CFR 1910.1200. The Hazard Communication Program will address the written program, container labeling, material safety data sheets, and training.

D. Respiratory Protection

The Concessioner will develop, document, and implement a Respiratory Protection Program in accordance with OSHA regulation 29 CFR 1910.134. The Respiratory Protection Program will address voluntary and required respirator use and all respirators, including filtering face pieces (e.g., dust masks).

(VI) ENVIRONMENTAL MANAGEMENT PROGRAM

The Concessioner will prepare an Environmental Management Program ("EMP") in accordance with Section 6 of the Contract and will update the EMP annually.

A. Environmental Purchasing

Where feasible and appropriate, the Concessioner shall implement a green procurement program (e.g., purchase and use of environmentally preferable products and equipment that contain the least hazardous materials and are less toxic, are the most biodegradable, are made with recycled content, have less packaging, are less polluting, energy efficient, etc.). This program should consider all materials used in Concessioner operations (e.g., maintenance, janitorial, vehicles and equipment) and retail sales.

B. Integrated Pest Management

(1) An Integrated Pest Management Program will be prepared by the Concessioner. (See Section IIV, Facility Operations, Paragraph G, Pest Management, below.) Chemicals to control plant and insect pests will be used as a last resort and strictly regulated to minimize such uses.

- (a) The Concessioner will consult with the Service on the development and implementation of this program.

C. Hazardous Materials Management

- (1) *Reduction.* The Concessioner will implement hazardous material reduction to minimize and eventually eliminate use of hazardous materials and chemicals in its operation. The Concessioner will be familiar with its obligations under Section 6 of the Contract.
- (2) *Inventory.* The Concessioner will submit to the Park, at least annually, a list of hazardous chemicals identified by the Occupational Safety and Health Administration (OSHA) used or stored in the Park by the Concessioner. Material Safety Data Sheets will be submitted for each of the hazardous chemicals identified and listed,
- (3) *Standard Operating Procedures.* The Concessioner will develop and implement an NPS-approved documented standard operating procedure for the handling and storage of hazardous substances by location.
- (4) *Spill Prevention.* The Concessioner's Environmental Management Program (EMP) will include its approach to stopping, containing and cleaning up hazardous substance spills and releases, whether incidental or non-incidental.
- (5) *Spill Notification.* The Concessioner will notify the Service Dispatch Center without delay when a release of hazardous or non-hazardous chemical or biological product occurs. In addition, the Concessioner will comply with all applicable reporting requirements of Applicable Laws. Proper corrective, cleanup, and safety actions must be implemented immediately.
- (6) *Asbestos.* The Concessioner is responsible for maintaining all health and safety standards required to operate and work in the presence of asbestos in all assigned buildings and areas. Any repair or replacement of building features containing asbestos will be performed with the written approval of the Superintendent.
- (7) *Refrigerants.* The Concessioner will use EPA-certified technicians to service air conditioning equipment and will adequately document this maintenance activity to be performed in accordance with applicable Federal and State code and regulations

D. Waste Management

- (1) *Inventory.* The Concessioner will submit to the Park, by October 1 of each year, a list of waste streams generated by the Concessioner in the Area, including mixed solid waste, hazardous waste and any other waste that is regulated.
- (2) *Hazardous and Miscellaneous Maintenance Wastes.* The Concessioner shall develop and implement documented procedures for managing hazardous waste and other wastes containing hazardous substances. For example, used oil should be recycled. Waste antifreeze, fluorescent tubes, batteries of all types and any lab chemicals must be removed from the Area and the Park and disposed or recycled in accordance with applicable Federal regulation and policy and appropriate State and County codes and regulations.

E. Recycling and Conservation

- (1) *Recycling Program.* The Concessioner will develop, promote and implement a recycling program that fully supports the efforts of the Service, at the Concessioners

expense. Recycling containers must be bear resistant. Interim storage of all recyclable materials must be indoors to prevent access by bears and vermin. Products to be recycled include, but are not limited to, paper, newsprint, cardboard, bimetals, fluorescent tubes, plastics, aluminum, glass, waste oil, waste fuel, antifreeze, and batteries.

(2) *Use of Recycled Products.* The Concessioner will implement a source reduction program designed to minimize its use of disposable products in its operations. Reusable and recyclable products are preferred over single-service items. Polystyrene and plastics will be used as little as possible and then only polystyrene not containing chlorofluorocarbons may be used. Where disposable products are needed, products will be used which have the least impact on the environment. Use of post-consumer recycled products is encouraged whenever possible. The Concessioner will purchase and incorporate environmentally preferred products or services for use and for sale.

(3) *Water and Energy Conservation.* All facilities operated by the Concessioner will be evaluated for meeting Service water and energy conservation goals. Any personal property of the Concessioner will be replaced if necessary at the expense of the Concessioner to attain these resource conservation goals. As new technologies are developed, the Concessioner will explore the possibility of integrating them into existing operations where there is potential for increased efficiency, reduced water or energy consumption, or reduced impacts on the environment.

(VII) FACILITY OPERATIONS

A. General

The Concessioner will provide all Facility Operations (as defined in Section II in this Operating Plan), including but not limited to, those identified herein. Where practical, the Concessioner will use Environmentally Preferable products and practices that enhance sustainable operations.

B. Utilities

The Concessioner is responsible for all utilities identified herein and will contract with independent supplier(s) to provide year-around telephone service, data communication networks and propane. Any modification to Concession assigned utilities will require the approval of the Superintendent. The Concessioner will operate assigned utilities in accordance with the following:

(1) *Electrical.* The Concessioner will operate all electric distribution systems and components assigned including all fixtures of basic utility and any personal property connected thereto in accordance with the most recent National Electric Code. Primary electrical energy is furnished by Pacific Gas & Electric and delivered to the Concessioner through electric meters located at each building. The Concessioner is entirely responsible for distribution of electricity after it passes through meters.

(a) Electric Service Expenses. The Concessioner will pay for all electricity.

(2) *Water.* The Concessioner will operate all water distribution systems and components assigned including all fixtures of basic utility and any personal property

connected thereto in accordance with the public health requirements of the Service. Water is furnished by the Service and delivered to the Concessioner through water meters. The Concessioner is entirely responsible for distribution of water after it passes through meters.

- (a) Water Service Expenses. The Concessioner will pay the Service for all water furnished to the Concessioner through water meters operated and maintained by the Service. Invoices will be delivered to the Concessioner monthly for payment in accordance with Service terms and conditions.
 - (b) The Concessioner shall install and operate at all times effective back flow prevention devices.
 - (c) The Concessioner agrees to install water conserving fixtures approved by the Service.
- (3) *Wastewater.* Wastewater service connections (pipelines) extend underground from each building to a point of connection where service connection piping either extends beyond the Concessions Facilities area, at which point the responsibility of the Concessioner ends, or enters a Service maintained wastewater collection manhole or pipeline as identified by the Service. Wastewater collection piping and appurtenances are included as assigned Concession Facilities. All fixtures of basic utility and any personal property will be connected to wastewater collection components in accordance with the public health requirements of the Service. Once transmitted to Service operated wastewater transmission facilities, treatment is furnished by the Service. The Concessioner is entirely responsible for transmission of wastewater within the Concessioner's Concessions Facilities in accordance with State and Service regulations.
- (a) Wastewater collection and treatment expenses. The expense of wastewater collection and treatment is measured in accordance with industry standard by the quantity of water delivered to the Concessioner through water meters. The Concessioner will pay the Service for wastewater collection and treatment using this method of measurement. Invoices will be delivered to the Concessioner monthly for payment in accordance with Service terms and conditions.
 - (b) 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.
- (4) *Utility Costs.* The Service staff will conduct periodic reviews of the operating costs for utility systems and services and the Concessioner will be notified in writing of the rates for the upcoming year 60 days in advance of implementation.

C. Exterior and Interior Lighting

The Concessioner is responsible for ensuring that all exterior and interior luminary design and installation within its Concessions Facilities is performed in accordance with the most recent Park lighting standards. All artificial light will be evaluated for meeting

park resource conservation and management goals. All exterior and interior luminaries must be shielded to avoid light trespass to protect the night sky resource. The Service will approve new interior and exterior lighting. Luminaries that are the personal property of the Concessioner will be replaced if necessary at the expense of the Concessioner to attain park lighting standards and energy conservation goals.

D. Signs

The Concessioner is responsible for the installation, maintenance, and replacement of all exterior and interior signs relating to its operations and services within its Concession Facilities. Examples of this responsibility are signs identifying the location of functions (when attached to Concession Facilities, signs identifying operating services and hours, and signs identifying the Concessioner's rules or policies.

- (1) *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.
- (2) *Permanent Sign Design.* Signs of a permanent nature shall be prepared in a professional manner, appropriate for the purpose they serve, and consistent with Service guidelines, including but not limited to, Directors Order 52C, Park Signs.
- (3) *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. Solid Waste

The Concessioner will be responsible for the collection of all solid waste including any debris or tree branches and for securing a private contract for the transportation and disposal of solid waste in accordance with applicable County and State regulatory requirements. The Concession Facilities will be kept free of litter, garbage, materials stored for extended periods, and abandoned equipment, including vehicles. The Concessioner will be responsible for keeping the Concession Facilities free and clear of safety hazards (broken glass, sharp objects, etc.) at all times.

The Concessioner will provide adequate garbage cans and dumpsters. Garbage cans and dumpsters must be bear resistant, waterproof, vermin-proof, painted in approved colors and covered with working lids. All such receptacles will be kept clean, well maintained and serviceable.

F. 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.

- (1) *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.
- (2) *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.
- (3) *Exotic Plants and Species.* The Concessioner is prohibited from bringing exotic plants and species into the Park.

G. Pest Management

The Concessioner, in consultation with the Service, will develop an Integrated Pest Management Program, (IPMP) to be implemented by the Concessioner that will define the nature and frequency of treatment, approved chemical lists, etc. The IPMP will be designed to prevent concession facility damage using Service approved materials, chemicals and methods. (See Section I: Environmental Management Program (EMP), paragraph 2 above.) Application of any herbicide or pesticide, or engaging in any pest control or non-native species activity in buildings or in grounds/landscape materials will be in accordance with the IPMP. As such, the Concessioner is required to submit to the Superintendent on or before January 31 of each year a Pesticide Request Form requesting approval of anticipated pesticide use for the following year and a Pesticide Use Log which tracks the pesticide use for the current year.

- ~~(1) *Concession Facility Inspection.* The Concessioner will perform an annual inspection of the interior spaces and exterior of all Concession Facilities retaining a certified and licensed pest control contractor. The Service will be notified 10 business days in advance of the scheduled inspection to be present during the inspection. The initial inspection will be performed within 60 days of awarding this Contract. The inspection report will be submitted to the Superintendent within 10 days after inspection for evaluation and consultation.~~
- (2) *Concession Facility Pest Management.* The Concessioner is responsible for preventing Concession Facility damage by pests. The IPMP will identify specific facility conditions and/or condition deficiencies and identify methods and treatments to prevent facility damage.

(VIII) PROTECTION AND SECURITY

All suspected and known criminal violations and all medical emergencies will be reported to the Park Communication Center at 209-379-1992 or 911 (or 9-911 depending on location within the Park).

A. Concessioner Responsibilities

- (1) At a minimum, the Concessioner is required to have first aid kits in appropriate locations.
- (2) No intrusion alarms may be installed without prior written approval of the Service.
- (3) The Concessioner is encouraged to allow employees to attend emergency medical training, including cardio pulmonary resuscitation (CPR), automatic external defibrillator (AED) and First Aid courses.
- (4) The Concessioner will train all concession employees in proper emergency reporting procedures and how to provide essential information, e.g. a call back number at their location.
- (5) The Concessioner has the responsibility to ensure that all facilities within its assigned area meet all Applicable Laws and that fire detection and appropriate suppression equipment is installed, operated, and maintained in accordance with applicable National Fire Protection Association (NFPA) standards and NPS policies and guidelines, including but not limited to Director's Order 50 and Director's Order 58.
- (6) The Concessioner will post a fire evacuation plan in readily accessible locations on each story of the retail facility.
- (7) Fire prevention, protection, and suppression will be primary considerations at all facilities. Structural fires will be suppressed to prevent the loss of human life and limit damage to real property and to cultural and natural resources.

B. 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 Park 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.

(IX) PUBLIC RELATIONS

A. Required Notices

The Concessioner will prominently post the following:

"This service is operated by Kari & Sons, 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
Yosemite, CA 95389"

B. Public Statements

The Concessioner will forward all media inquiries concerning operations within the Park to the Park's Media Relations Office.

C. Advertisements and Promotional Material

(1) Promotional Material.

- (a) Approval. The Superintendent must approve all promotional material, including catalog sales, advertisements, and other forms of such visitor information in all formats (electronic media, audio, video, radio, television, and computer web sites) prior to any use including publication, distribution, and broadcast, etc. The Concessioner will contact the Concessions Management Office well in advance to establish specific time frames for review of new projects or major changes to existing materials. The Superintendent may require the Concessioner to remove from circulation any unapproved promotional material.
- (b) Park Publications. The Park's newspaper, *Yosemite Today*, includes information on concessioner-operated facilities within the Park.

(2) Statements.

- (a) Authorization. Advertisements must include a statement that the National Park Service and the Department of the Interior authorize the Concessioner to serve the public in Yosemite National Park.
- (b) Equal Opportunity. Advertisements for employment must state that the company is an equal opportunity employer.

(3) Internet Sales.

Sales via the Internet are gross receipts that are subject to fees and must be reported on the Annual Financial Report. No Internet sales will be authorized under this Contract.

(X) VOLUNTEERS IN PARKS (VIP) PROGRAM

The Concessioner may allow its employees to participate in the Park's Volunteers in Parks (VIP) program. More information on the Service VIP program can be found at www.nps.gov/volunteer.

(XI) SPECIFIC OPERATING STANDARDS AND REQUIREMENTS

The Concessioner will provide services in a consistent, environmentally sensitive, quality manner. Standards provided by Service Policies are Service minimums. The Concessioner must make every effort to exceed these standards. The Concessioner must monitor its operations to ensure it meets quality standards.

A. Grocery / General Merchandise Store.

(1) *General.* The Concessioner will provide a wide range, selection, and pricing for grocery and convenience items appropriate for the visiting public and to meet the needs and general preferences of the local community.

(2) *Merchandise.*

(3) This operation will comply with NPS Management Policies, Section 10.2.4.5 (Merchandise). This document may be found at www.nps.gov/policy/MP2006.pdf or the Concessioner may contact the Concessions Management Office for further information.

(4) Facility and merchandise displays should be clean, free of clutter, and organized in a safe and accessible manner.

(5) Additional guidelines are found in the Concession Services Plan which is available upon request from the Service.

(6) *Items Available for Sale and Rent.*

(a) Grocery. The Concessioner will provide grocery items including staple food products, fresh produce, organic produce where possible, seasonal specialties when possible, dairy and packaged grab and go products, meats, baby food and products, dry foods, candy, nuts, and other snack items, bakery goods, frozen foods, beverages (non-alcohol, beer, wine, etc.), off-sale distilled spirits, ice, and non-edible grocery items including laundry, dish and household care, paper/plastic/foil products, health and beauty care, and pet care.

(b) General Merchandise. The Concessioner will carry a selection of limited general merchandise including household hardware/tools/housewares, picnic and camper supplies, limited clothing, school and office supplies, toys, batteries, film/photo, greeting cards, and postcards,. The intent of this visitor service is to provide a limited number, but broad selection of general merchandise items to meet the needs of the local community and visiting public.

(c) Sporting Goods and Recreational Equipment. The Concessioner will carry a limited selection of sporting goods, recreational equipment, and clothing to meet the needs of visitors who may have forgotten items or need emergency replacements. The intent of this visitor service is to provide an appropriate, but limited, selection of items which represents a range of price and quality levels.

- (d) Firewood. The Concessioner may sell firewood. If available for sale, the Concessioner will acquire pest-free, fully cured firewood from outside the Park for sale in its facilities.
- (e) Gifts and Souvenirs. Souvenir, novelty, gift, curio, handcraft items or other similar merchandise are not authorized for sale.
- (f) Movie Rentals. The Concessioner may rent video and DVD movies.

B. Alcohol Sales.

General. Any sale by Concessioner of alcoholic, spirituous, vinuous, or fermented liquor containing more than one percent of alcohol by weight (collectively "Alcohol") shall conform with all Applicable Laws. The Area is held by the Federal Government as a proprietary interest only (with no legislative jurisdiction) and the State of California retains the entire jurisdiction over the area that the State would have if a private individual rather than the United States owned the land. Concessioner shall comply with all State and county laws and regulations regarding the possession and sale of Alcohol, including without limitation those of the California Alcoholic Beverage Control Act and implementing regulations.

C. Vending

- (1) *General.* The Concessioner may provide newspaper vending machines. Other machines such as hot and cold beverages, snacks, and ice may be provided with prior approval of the Service. Machines will be conveniently located, and of a design and color that complement the aesthetics of the building(s) and surroundings. The Concessioner must obtain the Service's approval of all machine locations, quantity, and exterior aesthetics before they are installed.
- (2) *Standards.* All machines will be clean, properly stocked, and in good working condition. Signing on the machine may relate to Park interpretive themes or will be generic in nature. Brand information may only be visible when at the machine. The machines may be illuminated, but will not contribute to night light pollution.
- (3) *Out-of-service.* Machines that are out of service will be repaired or replaced within a reasonable timeframe. Out of service signs will be appropriately located, accurate, attractive and well maintained.
- (4) *Cigarettes.* The Concessioner may not offer cigarette vending machines.

(XII) REPORTING REQUIREMENTS

A. Park Reports

Annual Performance Evaluation: The Concessioner will receive an annual performance evaluation by March 1 for the preceding calendar year. The Superintendent or his/her representative(s) are available to meet with the Concessioner to discuss the annual evaluation, which includes contractual, operational, public health, environmental, and safety components.

B. Concessioner

The Concessioner will allow the Service to inspect supporting documentation for all operational reports upon request.

(1) General

(a) Incident Reports. The Concessioner will immediately report to the Service Communication Center any fatalities or visitor-related incidents which could result in a tort claim to the United States, property damage over \$500, any employee or visitor injuries requiring more than minor first aid treatment, any fire, all motor vehicle accidents, any incident that affects the park's resources, or any known or suspected violations of the law.

(b) Human Illness Reporting. Any suspected outbreak of human illness is to be reported promptly to the Park Sanitarian. A suspected outbreak of human illness is two or more persons with symptoms that could be associated with contaminated water or food sources or other adverse environmental conditions.

(c) Survey Response Data. All customer satisfaction data collected by third parties for the Concessioner will be provided to the Superintendent in summary form within 30 days of receipt. The Superintendent reserves the right to review supplemental information that supports the summary provided.

(d) Environmental Report. The Concessioner will issue an annual environmental report that contains any violations, and addresses the current status of goals, policies, and procedures included in the EMP. Reports will be submitted as outlined in Section III. I., Environmental Management Program, above.

(2) Monthly Operational Performance Reports

The Concessioner will maintain a management information system to document visitor use patterns and impacts. A monthly operational performance report will be provided to the Service annually within 30 days of fiscal year end.

(a) Financial and Operational Statistics. The Concessioner will provide documentation to the Superintendent demonstrating proof of required franchise fee payments as described in Section 10 of the Contract within 15 days of remittance.

(b) Visitor Comments. The Concessioner will provide tabulated summaries of all visitor comments 15 days after the month end and a year-to-date tabulation due January 15 each year.

(3) *Annual Concessioner Operational Reports.* An annual summary report will be due 30 days after the end of the calendar year, unless otherwise agreed upon by the Superintendent. This data should be presented in a concise spreadsheet format and include the following:

(a) Market Monthly Sales

(4) *Concessioner Financial Reporting.* The annual financial report (AFR) shall be submitted annually as soon as possible but not later than ninety (120) days after the last day of its fiscal year as required in the Contract.

(5) *Asset Data.* Additional reporting as outlined in the Maintenance Plan, Exhibit E, Paragraphs 3d) and 3e).

C. Summary of Initial and Recurring Due Dates

The following page summarizes the preceding reporting requirements and details other reports, plans, payments, and inspections that will be the responsibility of the Concessioner.

SUMMARY INITIAL AND RECURRING DUE DATES			
Title	Schedule	Due Date	Reference
Initial Requirements			
Balance Sheet	Initial	Within 90 days of Contract Execution	Contract, Sec. 14 (c)(1)
Environmental Management Plan	Initial	Within 60 days of Contract Execution	Contract, Sec. 6 (b)(1)
Risk Management Plan	Initial/ Annually	Within 120 days of Contract Execution; Updates due by November 30 annually	Operating Plan, Sec. 6 A
Annual			
Employee Handbook	Annually	Provided to Service 30 days prior to release; updated copies provided annually by April 1	Operating Plan, Sec. 4F (5)c
Annual Financial Report	Annually	Not later than 90 days after the last day of the Concessioner's fiscal year	Contract, Sec. 13 (b)(1) Operating Plan, Sec. 14 C(4)
Concessioner Operation Reports (excluding Management Listing)	Annually	Monthly reports due not later than 30 days after the last day of the Concessioner's fiscal year	Operating Plan, Sec. 12C(3)
Maintenance Data	Semi-Annually	Maintenance Activity and Facility Operations Costs due Semi-annually	Maintenance Plan Sec.3 B (a) through (c)
Monthly			
Franchise Fee	Monthly	By the 15th day of the following month of each month of operation	Contract Sec. 10(b) Operating Plan, Sec. 14 B(2)(a)
Miscellaneous Reports and Data	As required	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.	Contract, Sec. 15 (c)

Effective: 3/31, 2008

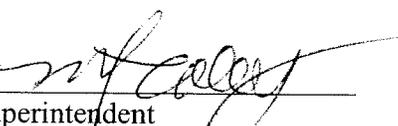
BY 
Superintendent
Yosemite National Park

EXHIBIT B
NONDISCRIMINATION

Section I: Requirements Relating to Employment and Service to the Public

A) Employment

During the performance of this Contract the Concessioner agrees as follows:

- (1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provision of this nondiscrimination clause.
- (2) The Concessioner will, in all solicitations or advertisements for employees placed by on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disabling condition.
- (3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed \$50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.
- (5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in

Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

B) Construction, Repair, and Similar Contracts

The preceding provisions A(1) through A(8) governing performance of work under this Contract, as set out in Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this Contract, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this Contract, and for that purpose the term "Contract" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

C) Facilities

(1) Definitions: As used herein:

- (a) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner;
- (b) 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:

- (a) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition;
- (b) discriminating by segregation or other means against any person.

Section II: Accessibility

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

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

Land Assigned:

Land is assigned in accordance with the boundary on the map that is Exhibit C-1.

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	Asset Type	Approx. Sq. Ft	Insurance Replacement Cost	FCI
El Portal Market					
El Portal Market EVP600	84786	4100	3,600	\$366,066	0.14'
Total Market				\$366,066	

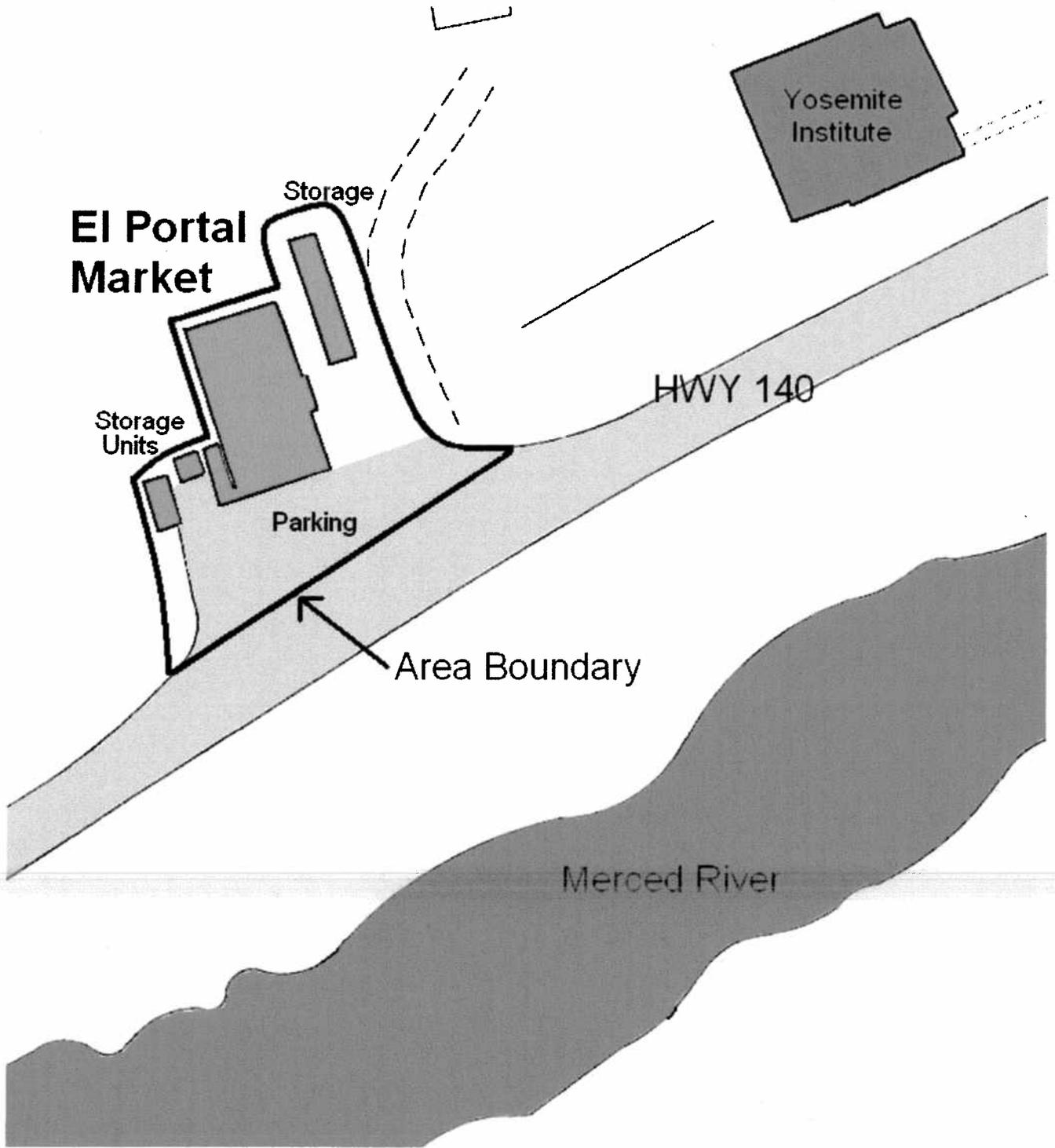
NOTE: NPS estimates Market usable square footage is approximately 2,100. For insurance purposes, the entire 3,600 square footage structure must be insured.

Effective, 3/31, 2008.

BY 
 Superintendent
 Yosemite National Park

EL PORTAL MARKET
CONCESSIONER LAND ASSIGNMENT MAP
YOSEMITE NATIONAL PARK

EXHIBIT C - 1
CC-YOSE003-08
PAGE 1 OF 1



ASSIGNED GOVERNMENT PERSONAL PROPERTY

None

Effective, 3/31, 2008.

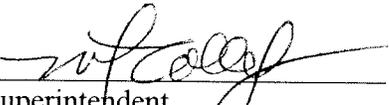
BY 
Superintendent
Yosemite National Park

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EXHIBIT E MAINTENANCE PLAN

(I) INTRODUCTION

This Maintenance Plan between Kirstie Dunbar-Kari dba Kari & Sons ("Concessioner") and the National Park Service ("Service") acting by and through the Superintendent at Yosemite National Park ("Park") is an Exhibit to and a part of Concession Contract CC-YOSE003-08 (hereinafter referred to as the "Contract"). It describes the specific maintenance responsibilities of the Concessioner with regard to the El Portal Administrative Site ("Area") adjacent to the Park and administered by the Service Concession Facilities 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, shall prevail.

This Maintenance Plan shall 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. Revisions may not be inconsistent with the terms and conditions of the main body of the Contract. Revisions must be reasonable and in furtherance of the purposes of the Contract.

This plan does not address Facility Operations (defined below), which are addressed in Exhibit A: Operating Plan. Facility Operations is only referenced in this plan to distinguish it from Maintenance (defined below).

For purposes of this Maintenance Plan, capitalized terms used herein shall have the meaning assigned to them under Section IV Definitions in addition and subject to the definitions set forth in the Contract (including any of its Exhibits).

(II) GENERAL STANDARDS FOR NATIONAL PARK CONCESSION FACILITIES

(1) The Concessioner is required by the terms of the Contract to provide Concession Facility Maintenance acceptable to the Service. It is the purpose of this Maintenance Plan to identify the performance and to define the maintenance relationship between the Concessioner and the Service. Both the Concessioner and the Service have specific responsibilities as outlined in the Contract and in this Maintenance Plan. The objective of the Service set forth by this Maintenance Plan is for the Concessioner to undertake all necessary and appropriate measures to return government assigned Concession Facilities to the Service in as good or better condition than initially provided for their use and care under the terms of the Contract.

(III) MAINTENANCE RESPONSIBILITIES

(A) General

- (1) The Concessioner will ensure that all Concession Facilities are adequately maintained, and will undertake all additional work necessary to ensure facility conditions are safe and meet the required level of visitor service. While the National Park Service acknowledges that Asset Wear will take place, the Concessioner will conduct all Maintenance so as to prevent Asset Damage.
- (2) *Concessioner Maintenance.* The Concessioner will perform Cyclic Maintenance (Recurring Maintenance - RM), Preventative Maintenance (PM), and Repair of Concession Facilities.

- (3) *Service Maintenance.* The Concessioner will have no responsibility for performing Component Renewal, and Major Rehabilitation of Concession Facilities.
- (4) *Terms and Standards of Concessioner Performance and Contract Compliance.*
- (a) Evaluation of Concessioner Performance. The Service may perform a facility condition assessment at any time. The Concessioner will be notified in advance.
- (b) Maintenance and Facility Condition Standards. All Maintenance will be conducted in compliance with all Applicable Laws. The condition of Concession Facilities will be evaluated in accordance with the following references as a measure of the Concessioner's facility Maintenance effort:
- Condition Assessment Inspection Guidance published by the Service available upon request,
 - Manufacturer's recommendations and/or specifications,
 - The International Building Code,
 - Life Safety Code,
 - National Fire Protection Association (NFPA).
- (c) In the event of any conflict between Applicable Laws and manufacturer's specifications and building codes, Applicable Laws will prevail. In the event of a conflict between the manufacturer's specifications and building code, building code will prevail.
- (5) *Computerized Maintenance Management System (CMMS).* For purposes of this Contract the Service will administer a CMMS and provide the written reports (referred to as the CMP) to Concessioner for appropriate action. The CNMS will outline maintenance activities and not facilities operations.
- (6) *Environmental Protection in Maintenance.* The Concessioner shall incorporate Best Management Practices ("BMPs") in its maintenance activities. Key goals in conducting these activities are pollution prevention, energy and water conservation, sustainable design and environmental purchasing.
- (a) Pollution Prevention and Waste Reduction. The Concessioner will incorporate utilizing construction and maintenance practices that prevent pollution and employ waste reduction strategies.
- (b) Energy and Water Conservation. The Concessioner will incorporate energy efficiency and water conservation in all maintenance practices and integrate energy and water conserving measures.
- (c) Environmental Purchasing. The Concessioner will incorporate the use of environmentally preferable products and services in its maintenance activities.

(B) Maintenance Program Planning, Data Reports and Inspections

The Concessioner is required to adequately plan maintenance, provide data reports, and participate and assist with facility inspection. For the purposes of this Exhibit, the term "plan"

will refer to written materials that outline the Concessioner's program of expected actions and expenses for a future period. The term "report" refers to data requested by the Service.

- (1) The Concessioner is required to perform the PM, RM, and Repair, at a minimum, as set forth in *Exhibit E-1: Initial Annual Construction and Maintenance Program* (attached to and made a part of this Maintenance Plan). The work tasks and estimates presented are approximations furnished only for the purpose of providing anticipated maintenance activity. The Concessioner is expected to verify that the estimated activity and cost presented are adequate to accomplish the required Maintenance of this Contract and undertake activity and expenditures as necessary to attain the level of Concessioner performance identified herein. The Concessioner will plan for at least the level of expenditure presented in *Exhibit E-1: Initial Annual Construction and Maintenance Program*, and make annual adjustments as needed to accomplish Maintenance and facility Condition Standards identified herein.
- (2) *Planning Maintenance Activity.* The Concessioner will review the Service provided CMP for all Concession Facilities each year and meet periodically to discuss the CMP and any unscheduled Maintenance that will be accomplished during the next period. Discussion will include the costs of each task within each of the following activities:
 - (a) Preventive Maintenance (PM) and Cyclic Maintenance (Recurring Maintenance - RM) Plan. The Concessioner is required to perform the PM, RM, and Repair, at a minimum, as set forth in *Exhibit E-1: Initial Annual Construction and Maintenance Program*
 - (b) Repair Plan. The plan may include Replacement of Elements as needed and shall include a description of specifications identifying materials and equipment to be used to undertake work planned for the year. Quality control standards, and methods of repair, must be also be referenced. Sufficient detail must be provided to the level that the work will be performed in accordance with Service approved specifications. In most cases, Repair will be Replacement. The Concessioner may proceed with Repair only after written authorization is provided by the Service.
 - (c) Unscheduled Maintenance Management Plan. A management plan will be developed by the Concessioner to adequately accomplish unscheduled maintenance. The plan will include procedures and methods of accomplishing this Maintenance. ~~Inspection will be included as a component of the management plan.~~
- (3) *Maintenance Activity and Facility Operations Costs Reported by Concessioner.*
 - (a) A report of all Maintenance activity must be submitted semi-annually to the Service on a form that will be provided to the Concessioner by the Service. The purpose of these reports is to transmit all information regarding maintenance activity including actual expenditures to update *Condition Reports* and Service CMMS programs.
 - (b) A report of Facility Operations separate from the Maintenance activity must be submitted semi-annually to the Service on a form that will be provided to the Concessioner by the Service.
 - (c) The data reporting requirement will be further developed by the Service after consultation with the Concessioner and as the Service concession asset management program develops.

(4) *Concession Facility Condition Evaluations and Concessioner Performance*

(a) Inspection. The Service will conduct inspections, including condition assessment and reviews of the assigned Concession Facilities. The Concessioner will make available at the time of inspection qualified personnel as needed to meet the terms and conditions of this Maintenance Plan. The purpose of inspection is to review the Concessioner's Maintenance activity and document Asset value by verification of facility condition. These inspections and reviews generally will occur on a schedule to be provided by the Service. Based upon the identified needs, the Service, in consultation with the Concessioner, will develop a timeline to cure noted deficiencies which will be reported annually in the CMP.

(b) Concession Facility Condition Evaluation. The Service will provide the Concessioner with a Concession Facility Condition Evaluation annually. The initial *Condition Report* for Concession Facilities presented in *Exhibit E-1: Initial Annual Construction and Maintenance Program (CMP)* will be updated reporting the results of the annual evaluation. The findings and results presented in this evaluation will become part of the basis of evaluating Concessioner performance under the "NPS Concessioner Annual Overall Rating" program, (Form 10-631).

(1) *Qualified Personnel.* The Concessioner will furnish qualified personnel as required by the Service.

(a) For all Maintenance activities the Concessioner will use personnel that have the professional certification, and experience appropriate for the specific Maintenance activity to be undertaken.

(2) *Maintenance Specifications.* The CMP will identify which Maintenance activities will require written specifications and/or drawings, as well as who will be responsible for document preparation. Prior to commencement of this work, the Concessioner must obtain written approval from the Service to proceed, and will follow the specifications of the written documentation.

(3) *Emergency Repairs and IPH.* The Concessioner will first notify the Service by at least telephone voice message and follow-up with written email correspondence. Work may begin without further Service approval with appropriate documentation to follow within one business day of action taken to prevent injury or property loss.

(IV) **DEFINITIONS**

In addition to all the defined terms contained in the Contract and all other Exhibits, the following definitions apply to this Maintenance Plan.

(1) **Asset** – Real or Personal Property or component thereof that the Service desires to track and manage as a distinct identifiable entity. An asset may be as small as any physical item or as large as a structure or grouping of structures, land features, or other tangible property that has a specific service or function. The term "asset" also means movable items such as vehicles and equipment. Typically, an asset is a uniquely identifiable element with a financial value against which maintenance actions can be recorded. Assets may share a hierarchal relationship wherein a building is defined as an asset and elements within the building are also defined as assets in a "parent-child" management and reporting relationship that usually occurs in a Computerized Maintenance Management System (CMMS).

(2) **Asset Damage** – A Condition Deficiency resulting from damage caused by deterioration and other unforeseen impacts to the physical condition of the Asset, or any form of Deferred

Maintenance, neglect, or detrimental action by employees, agents, contractors or visitors. Failure to perform Cyclic or Preventive Maintenance such as removal of soil from the base of wood siding or debris from roofs and gutters resulting in a Condition Deficiency would be neglect and therefore Asset Damage. Other examples of asset damage include excessive moisture, dry rot, pests, or broken wood and bent gutters on a roof eave caused by service vehicles hitting a building would be Asset Damage.

(3) **Asset Wear** – The progressive deterioration (not caused by Deferred Maintenance) of construction materials, hardware, window and door systems, switches, floor planking, pavement and or any other system components that over the Design Life leads to Replacement or Reproduction. Asset Wear is not an outcome of Deferred Maintenance.

(4) **Component Renewal (CR)** – The Replacement or Reproduction of Assets at the end of their Serviceable Life that are non-recurring within a seven-year time frame. Renewal includes the deconstruction of the existing system and replacement with a new system of equal capability and performance. Component Renewal includes Statutory/Mandated Corrective Measures necessary to attain code and regulatory compliant asset infrastructure and systems. Such projects may include repair or replacement of foundations, building frames, window frames, sheathing, sub-floors, drainage, rehabilitation of building systems such as electrical, plumbing, built-in heating and air conditioning, roof replacement and similar projects.

(5) **Condition Deficiency** – A condition that may affect or reduce the serviceability, life, or economic value (as determined by the Reproduction Cost) of an Asset. The type of corrective action needed determines condition deficiencies.

(6) **Condition Standards** – The criteria used to form the basis for rating the condition of a facility component, system, and/or entire Asset. Standards are based on engineering and architectural design criteria, manufacturers' maintenance and operation literature; industry practice and maintenance specifications; applicable building codes and/or Federal and/or State statutory requirements or regulations; and various guidelines, standards, and regulations relevant to the management of historic properties. Where applicable, the standard will be formulated and scaled to rate the Asset being evaluated.

(7) **Construction and Maintenance Program (CMP)** – A written document that for purposes of this Contract is generated from a Computer Maintenance Management System (CMMS) presenting all Repair and Maintenance to be undertaken by the Concessioner during the following calendar year. The plan must provide the detailed Maintenance actions and expenditures to be undertaken by the Concessioner down to the level of planned Cyclic and Preventive Maintenance activities anticipated for each building, structure, or infrastructure component within the Concessioner's Facilities.

(8) **Corrective Maintenance (CM)** – See Repair.

(9) **Cyclic Maintenance** – Also called recurring maintenance (RM). Planned work activities that reoccur on a periodic cycle of greater than one year to sustain the Serviceable Life of an Asset. Typical projects include, but not limited to painting, pump and motor replacement, cleaning, repair and replacement of luminaries, engine overhaul, and refinishing hardwood floors.

(10) **Deferred Maintenance (DM)** – A curable, physical Condition Deficiency that requires correction.

(11) **Design Life** – The projected duration in years for each real property Asset at the time of construction or manufacture.

- (12) **Element** – A separately identifiable part of an asset on which work is performed of which creates an identifiable workload. The condition of an Asset is reported in terms of the condition of its features.
- (13) **Facility Operations (FO)** – Work activities performed on a recurring basis throughout the year which intends to meet routine, daily park 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, snow removal, operation or purchase of utilities, (water, sewer, electricity), roof and gutter cleaning, grounds-keeping, etc.
- (14) **Immediate Personal Hazard (IPH)** – A facility deficiency that poses a threat to human health and safety, and requires immediate action.
- (15) **Historic Structure** – Includes districts, sites, buildings, structures, and objects as identified in the National Historic Preservation Act that have been listed in or are eligible for listing in the National Register of Historic Places.
- (16) **Life Cycle Cost** – A technique of economic evaluation that sums over a given study period the costs of initial investment (less resale value), replacements, operations (including energy use), and Maintenance and Repair of an investment decision (expressed in percent or annual value terms).
- (17) **Maintenance** – The work necessary to maintain the original anticipated useful life of a fixed asset (or subsequent improvement). It is the upkeep of property and equipment. Maintenance includes periodic and/or occasional inspection, adjustment, lubrication, cleaning (non-janitorial), painting, replacement of parts, repairs, and other actions to prolong service and prevent unscheduled breakdown, but it does not prolong the life of the property or equipment or add to its value. Maintenance is distinguished from Facility Operations in that Maintenance is performed to sustain the Remaining Life of assigned Concession Facilities.
- (18) **Major Rehabilitation** – a planned, comprehensive rehabilitation of an existing structure that: (1) The Director approves in advance and determines is completed within eighteen (18) months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances); and (2) The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure.
- (19) **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, fixed and removable equipment, furniture, and goods necessary for Concessioner operations under the CONTRACT. Identified in the Asset inventory as Concessioner property or government assigned personal property.
- (20) **Pollution Prevention** refers to “source reduction,” as defined in the Pollution Prevention Act of 1990, and other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources; or protection of natural resources by conservation.
- (21) **Post-consumer Material** refers to a material or finished product that has served its intended use and has been diverted or received from waste destined for disposal.
- (22) **Preventive Maintenance (PM)** – Planned, scheduled servicing, and adjustment, that results in continued service, fewer breakdowns, and prevents premature failure of equipment and materials. Postponed PM becomes Repair and if not corrected Deferred Maintenance.

- (23) **Remaining Life** – The estimated remaining Serviceable Life of Assets considering existing operating conditions and identified Preventive, Cyclic and Repair Maintenance required to sustain reliable use of the Asset over a period of years. (Could be greater than or less than the Design Life depending on adequate design and previous Maintenance of the Asset. The Remaining Life is a critical element of determining the cost of ownership using Life Cycle Cost analysis.)
- (24) **Reoccurring Maintenance (RM)** – See Cyclic Maintenance.
- (25) **Repair** – Also called corrective maintenance (CM). The action required to correct Condition Deficiencies. Work to restore the appearance and function of assets to meet the Condition Standards of the asset. As a basic distinction, “Repairs” are curative, and “Maintenance” is preventive. “Replacement” is an alternative to “Repair.”
- (26) **Replacement** – Exchange or substitution of one Asset for another with the capacity to perform the same function at a level of utility and service equivalent to the original Asset.
- (27) **Replacement Cost** – The estimated cost to reconstruct, at current prices, a new Asset with utility equivalent to the existing Asset, using modern materials and current standards, design and layout. This cost includes costs for planning, design, construction and construction management, as needed.
- (28) **Reproduction** – Replacement of an Asset with as nearly an exact replica using modern materials and equipment conforming to the most current codes and standards.
- (29) **Reproduction Cost** – The present cost of replacing (an Asset) with as nearly an exact replica as (an existing Asset) as modern materials and equipment will permit. This cost includes costs for planning, design, construction and construction management, as needed.
- (30) **Serviceable Life** – The number of years a built or manufactured Asset is expected to perform under specific physical and environmental conditions when specified Maintenance is provided.

Approved, effective 3/31, 2008

By: _____


Superintendent, Yosemite National Park

EXHIBIT E-1

INITIAL ANNUAL CONSTRUCTION AND MAINTENANCE PROGRAM (CMP)

1) Introduction.

This *Exhibit E-1: Initial Annual Construction and Maintenance Program (CMP)* is presented as the second part of *Exhibit E: Maintenance Plan* of the Draft Contract. This Exhibit outlines in further detail the Maintenance responsibilities of the Concessioner. The *Estimated Preventive and Cyclic Maintenance* the Concessioner must perform presented herein are available as electronic files upon request.

The Concessioner will perform the level of activity presented in this initial CMP as a minimum. In order to meet the level of performance the Concessioner must demonstrate, as described in *Exhibit E: Maintenance Plan*, the Concessioner must update the CMP annually.

2) Initial Construction and Maintenance Plan (CMP)

- a) General. The Maintenance activity presented in the initial CMP is organized in accordance with *Exhibit E: Maintenance Plan* and as further discussed below. Maintenance that is postponed or deferred is classified into Condition Deficiencies. (See definition in *Exhibit E*.) The *Condition Reports* attached presents previously identified Condition Deficiencies. When the Concessioner does not correct Condition Deficiencies the work will be identified in the Concessioner's annual CMP and reported as Deferred Maintenance in accordance with *Exhibit E: Maintenance Plan*. The following paragraphs present the initial CMP beginning with an outline of the Work Types the Concessioner will use to manage maintenance.

Work Types and Condition Deficiencies. The Work Types presented in the initial CMP to be performed by the Concessioner throughout the term of the Contract include the following:

- i) Preventive Maintenance (PM) and Cyclic Recurring Maintenance (RM). The *Estimated Preventive and Cyclic Maintenance* the Concessioner will undertake during the term of this contract each of the assigned areas is presented herein. If Preventive and Cyclic Maintenance is not performed, it will be identified as a Condition Deficiency and listed as Deferred Maintenance.
- ii) Repair – Corrective Maintenance (CM). Performance of identified Repair is a component of Draft Contract compliance. At the beginning and throughout the term of this Draft Contract the Concessioner must perform Repair work. The Concessioner must also perform Repairs to provide a safe and effective level of visitor service that may be identified by either the Concessioner or the Service throughout the term of the Draft Contract. If Repair is not performed, it will be identified as a Condition Deficiency and may be listed as Deferred Maintenance.
- iii) Component Renewal (CR). Component Renewal as defined in *Exhibit E: Maintenance Plan* will not be performed by the Concessioner.
- iv) Deferred Maintenance (DM). The Deferred Maintenance (DM) as defined in *Exhibit E* Definitions identified may be performed by the Concessioner.

Estimated Preventive and Cyclic Maintenance - Market										
Asset/Def	Asset	WBS	Location	Work Type	Ref Photo	Year	Component	Project	Description	Annual Cost (Est.)
Asset	Market	B	Shell	PM		2 x per yr	Exterior (All Components)	Inspect, clean & schedule repair as needed.	Inspect for repair.	\$
Asset	Market	B3010	Roof	PM		2 x per yr	Roof (All Components)	Inspect, clean & schedule repair as needed.	Inspect for repair.	\$ 30
Asset	Market	B301005	Roof	PM		2 x per yr	Gutter	Inspect, clean & schedule repair as needed.	Clean debris from gutter.	\$ 30
Asset	Market	C	Interior	PM		2 x per yr	Interior (All Components)	Inspect, clean & schedule repair as needed.	Inspect for repair.	\$ 40
Asset	Market	C3020	Storage/Office	PM		2 x per yr	Floor Covering	Clean & seal floors.	Clean and seal floor covering twice a year or more to sustain protective seal and manufactured finish.	\$ 30
Asset	Market	C3020	Restroom	PM		2 x per yr	Floor Covering	Clean & seal floors.	Clean and seal floor covering twice a year or more to sustain protective seal and manufactured finish.	\$ 245
Asset	Market	C3020	Retail Area	PM		2 x per yr	Floor Covering	Clean & seal floors.	Clean and seal floor covering twice a year or more to sustain protective seal and manufactured finish.	\$ 120
Asset	Market	D201001	Restroom	PM		2 x per yr	Watercloset	Inspect, clean & schedule repair as needed.	Check for leaks and integrity of base caulking. Replace caulking as needed.	\$ 770
Asset	Market	D201003	Restroom	PM		2 x per yr	Lavatory	Inspect, clean & schedule repair as needed.	Check for leaks and integrity of caulking. Replace caulking as needed.	\$ 35
Asset	Market	D201003	Office	PM		2 x per yr	Kitchen Sink	Inspect, clean & schedule repair as needed.	Check for leaks and integrity of caulking. Replace caulking as needed.	\$ 35
Asset	Market	D202003	Crawl Space	PM		Annually	Water Heater	Inspect, clean & schedule repair as needed.	Check for leaks. Drain and flush annually.	\$ 35
Asset	Market	D302003	Crawl Space	PM		Annually	Furnace	Inspect, clean & schedule repair as needed.	Clean, adjust, inspect, lubricate, perform annual maintenance in accordance with manufacturer's recommendations.	\$ 30
Asset	Market	D3030	Exterior	PM		Annually	Evaporative Cooler	Inspect, clean & schedule repair as needed.	Clean, adjust, inspect, lubricate, perform annual maintenance in accordance with manufacturer's recommendations.	\$ 60
Asset	Market	D3040	Restroom	PM		Annually	Exhaust Fan	Inspect, clean & schedule repair as needed.	Clean, adjust, inspect, lubricate, perform annual maintenance in accordance with manufacturer's recommendations.	\$ 145
Asset	Market	D5020	Throughout Building	PM		2 x per yr	Luminaries	Inspect, clean & schedule repair as needed.	Clean, adjust, inspect, lubricate, perform annual maintenance in accordance with manufacturer's recommendations.	\$ 35
Asset	Market	G20	Site Improvements	PM		2 x per yr	Paved Surfaces	Inspect, clean & schedule repair as needed.	Clean, adjust, inspect, perform annual maintenance in accordance with manufacturer's recommendations.	\$ 135
Asset	Market	B101004	South Elevation	RM		2014	Front porch, columns and railings.	Exterior painting.	Inspect for repair. Seal cracks. Prepare and paint as authorized.	\$ 30
Asset	Market	B102004	South Elevation	RM		2014	Front Porch ceiling.	Exterior painting.	Prepare and paint as authorized.	\$ 660
Asset	Market	B2010	All Exterior Elevations	RM		2014	All exterior walls and components.	Exterior painting.	Prepare and paint as authorized.	\$ 225
Asset	Market	B2020	All Exterior Elevations	RM		2014	Windows	Exterior painting.	Prepare and paint as authorized.	\$ 3,200
Asset	Market	B2030	All Exterior Elevations	RM		2014	Doors	Exterior painting.	Prepare and paint as authorized.	\$ 1,200
Asset	Market	C1010	Restroom	RM		2014	Interior Walls	Interior painting.	Prepare and paint as authorized.	\$ 735
Asset	Market	C1010	Storage/Office	RM		2014	Interior Walls	Interior painting.	Prepare and paint as authorized.	\$ 285
Asset	Market	C1010	Retail Area	RM		2014	Interior Walls	Interior painting.	Prepare and paint as authorized.	\$ 575
Asset	Market	C1020	Restroom	RM		2014	Interior Door	Interior painting.	Prepare and paint as authorized.	\$ 1,850
Asset	Market	G2020	Parking Lot	RM		2015	Paved Surfaces	Pavement crack seal.	Seal cracks and asphalt surface. Repaint and stripe.	\$ 140
										\$ 3,685
									Summary of Preventive Maintenance (PM)	
									Inspect, clean & schedule repair as needed.	\$ 670
									Clean & seal floors.	\$ 1,135
									Estimated Total Annual PM	\$ 1,805
									Summary of Cyclic Maintenance (RM)	
									Exterior painting. (Year 2014)	\$ 6,020
									Interior painting. (Year 2014)	\$ 2,850
									Pavement crack seal. (Year 2015)	\$ 3,685
									Estimated Total Cyclic Maintenance (RM)	\$ 12,555

EXHIBIT F

INSURANCE REQUIREMENTS

I. 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. In the event Visitor Services include the Vehicle Fueling Station, the type and amount of insurance coverage required is also specified below:

With the exception of statutory Workers' Compensation insurance protection, the National Park Service shall be named as an additional insured under all insurance policies issued or arranged in support of this Contract. All insurance coverage provided for the benefit of, or evidenced to the Service is not to be impaired by any act of the Concessioner, its agents, servants, or employees. The Concessioner will ensure that its insurance carriers provide that the Service shall, solely for its benefit, be provided *an unconditional 30 day advance* notice of cancellation, non-renewal or material change in coverage or policy terms for all coverage issues. The term National Park Service shall by definition and where appropriate and legally permissible, also include the term United States Government/United States of America.

The amounts of insurance, limits of liability and coverage terms indicated are not intended as a limitation of the Concessioner's responsibility or liability under the Contract, but rather an indication as to the minimum type(s), amount(s), and scope of insurance that the Service considers necessary to allow the operation of concession facilities at its park. Nevertheless, if the Concessioner purchases insurance in addition to the limits illustrated herein, the Service will receive the benefit of the additional amounts of insurance without additional cost to the Service.

II. LIABILITY INSURANCE

The following Liability Coverages are to be maintained at a minimum, 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. (See Section II.D., Excess Liability or Excess "Umbrella" Liability.)

A. Commercial General Liability Insurance

1. Coverage will be provided for bodily injury, property damage, contractual liability, personal or advertising injury liability (including contractual liability arising out of personal injury and advertising injury liability) and products/completed operations liability insurance protection. The following minimum limits of liability* are to be provided:

**or those minimum limits required by the Umbrella/excess liability insurer*

Bodily Injury and Property Damage Limit

a. General Aggregate	\$2,000,000
b. Products & Completed Operations Aggregate	\$1,000,000

c. Per Occurrence	\$1,000,000
d. Personal Injury & Advertising Injury Liability	\$1,000,000
e. Medical Payments	\$ 50,000
f. Fire Damage Legal Liability “per fire”	\$ 50,000

2. The liability coverage may not contain the following exclusions/limitations:

- a. Athletic or Sports Participation
 - b. Products/Completed Operations
 - c. Personal Injury or Advertising Injury
 - d. Contractual Liability (unless expressly and specifically excluding this NPS contract # from the exclusion/limitation)
 - e. Explosion, Collapse and Underground Property Damage exclusion
 - f. Total Pollution exclusion
3. Pollution liability insurance coverage must be included for damages resulting from smoke, fumes, vapor, or soot, or other contaminants 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, or, at least, separately to the appropriate NPS location(s)..

B. Automobile Liability Insurance

Coverage will be provided for bodily injury or property damage arising out of the ownership, maintenance or use of "any auto," Symbol 1. (Where there are no owned autos, coverage applicable to "hired" and "non-owned" autos, "Symbols 8 & 9," shall be maintained.)

Bodily Injury and Property
 Damage (combined) \$2,000,000 per occurrence*
**or those minimum limits required by the Umbrella/excess liability insurer*

C. Liquor Liability

Coverage will be provided for bodily injury or 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	\$1,000,000

D. Excess Liability or Excess “Umbrella” Liability

This coverage is not required, but may be used to supplement any of the above Liability coverage policies in order to arrive at the required minimum limit of liability. If maintained, coverage will be provided for bodily injury, property damage, personal or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage shall be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance shall be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the

Excess Liability or Excess “Umbrella” Liability policy. If the coverage afforded by the excess or umbrella policy results in limits greater than the limits required hereunder, then the greater limit shall be available to the Service in the event of a loss.

Note: An excess or “umbrella” liability policy may be used to achieve the liability limits outlined above. However, if a lower limit of liability is used for a subordinate policy, then the limit of liability under the umbrella policy must be that limit necessary to achieve the full limit of liability required for the subject policy. For instance, the General Liability policy requires a \$2,000,000 limit of liability. If the limit of liability provided under the General liability policy is \$1,000,000, then the umbrella policy must provide a limit of at least \$1M to provide the total requirement of \$2,000,000. Since the Umbrella/Excess policy applies over both the automobile and the commercial general liability policy, a single limit under the excess policy is all that will be required.

E. Special Provisions for Use of Aggregate Policies

At such time as the aggregate limit of any required policy is (or if it appears that it will be) reduced or exhausted, the Concessioner may be required to reinstate such limit or purchase additional coverage limits.

F. Workers Compensation & Employers' Liability

Coverage will comply with the statutory requirements of the state(s) in which the Concessioner operates. The state(s) of concession operations must be specifically included for coverage under the policy. The Employers' Liability limit will not be less than \$1,000,000.

G. Provisions for Use of Aggregate Policies

If at any time the aggregate limit of any required policy is (or if it appears that it will be) reduced or exhausted, the Concessioner may be required to reinstate such limit or purchase additional coverage limits. 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.

III. PROPERTY INSURANCE

A. Building(s) and/or Contents Coverage

1. Amount of Insurance (Building): 100% of replacement value as listed in Exhibit C
(without deduction for physical depreciation).
2. Amount of Insurance (Contents): 100% of replacement value (without deduction
for physical depreciation).
3. Amount of Insurance (Inventory): 100% of replacement value (without deduction
for physical depreciation).
4. Insurance shall cover buildings, structures, improvements & betterments and/or contents for all
Concession Facilities, as more specifically described in Exhibit C of this Contract.
5. Coverage shall apply on an “All Risks” or “Special Coverage” basis.

6. The policy shall provide for loss recovery on a Replacement value basis (without deduction for physical depreciation).
7. The amount of insurance, except for the inventory, should represent no less than 100% of the Replacement Cost value of the sum total of all insured property. Inventory shall be insured at 100% of the replacement cost of the products held for sale.
8. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
9. Coverage is to be provided on a blanket basis.
10. The Vacancy and Unoccupancy restriction, if any, must be eliminated for property that will be vacant or unoccupied beyond any time period specified in the policy.
11. Flood Coverage shall be maintained with a limit of not less than the building replacement value listed in Exhibit C (without deduction for physical depreciation).
12. Earthquake Coverage shall be maintained with a limit of not less than the building replacement value listed in Exhibit C (without deduction for physical depreciation).
13. Ordinance or Law, demolition and increased cost of construction Coverage shall be maintained with a limit of not less than the building replacement value (without deduction for physical depreciation) listed in Exhibit C.

B. Boiler & Machinery Coverage

1. Insurance will apply on the “comprehensive” basis of coverage including all objects within the Concession Facilities. Production equipment is to be included if applicable.
2. The policy shall provide for loss recovery on a replacement value basis (without deduction for physical depreciation).
3. The amount of insurance must represent no less than 100% of the Replacement Cost value (without deduction for physical depreciation) of the sum total of all insured property.
4. The coinsurance provision, if any, must be waived or suspended by an Agreed Amount or Agreed Value clause.
5. Coverage is to be provided on a blanket basis.
6. 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.
7. Ordinance or Law, demolition and increased cost of construction Coverage must be maintained with a limit of not less than the building replacement costs listed in Exhibit C.

C. Business Interruption and/or Expense

Business Interruption insurance and extra expense insurance must cover the loss of income and continuation of fixed expenses in the event of damage to or loss of Concession Facilities, including, without limitation and with respect to the interests of the Service, the loss (or reduction) of franchise fee payments to the Service by the Concessioner. Extra Expense insurance shall cover the extra expenses above normal operating expenses to continue operations in the event of damage or loss to covered property. The coverage to be provided can be calculated as follows:

Anticipated annual Gross revenue from operations	\$ _____
Less non-continuing expenses	(\$ _____)
Total	\$ _____
Prorated by ratio of days of operation divided by 365) =	X percentage
Business Interruption limit	\$ _____

D. Deductibles

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

1. Direct Damage deductibles must not exceed the lesser of 10 percent of the amount of insurance or \$25,000 (except Flood and Earthquake coverage may be subject to deductibles not exceeding \$50,000).
2. Extra Expense deductibles (when coverage is not combined with Business Interruption) shall not exceed \$25,000.

E. Required Clauses

Loss Payable Clause

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

"In accordance with Concession Contract No. CC-YOSE003-08 dated March 1, 2008 between the United States of America and Kirstie Dunbar-Kari 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."

V. 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 A.M. Best's Key Rating Guide (Property-Casualty edition).
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 A.M. Best's Key Rating Guide (Property-Casualty edition).
3. All insurers must be admitted (licensed) in the state of California.

VI. 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 (or endorsements thereto) required herein to be maintained by the Concessioner.

The Certificate of Insurance will contain a notation that the insurance coverage represented therein complies with the provisions of this agreement as outlined in this Exhibit F and Section 11 of the main body of this Contract.

The notice of cancellation provision of the certificate shall have any and all qualifying language such as: "*We will endeavor to provide*" or "*failure to provide said notice will not place any liability upon the company or its representative*" deleted from its terms.

VII. STATUTORY LIMITS

In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit is to be considered the minimum amount to be maintained. In the event that the statutorily required limit is less than the limits required herein, the limits required herein shall control.

Effective, March 31, 2008

UNITED STATES OF AMERICA

BY Patricia A. Neubacher
Regional Director
Pacific West Region,
National Park Service

EXHIBIT G
TRANSITION TO A NEW CONCESSIONER

SECTION 1. IN 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 (hereinafter "New Concessioner" for purposes of this Exhibit", to achieve an orderly transition of operations in order to avoid disruption of services to Park area visitors and minimize transition expenses.

SECTION 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 shall, notwithstanding such notification:

- A) Continue Operations.** 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, and with a view to maintaining customer satisfaction.
- B) Designating a Point of Contact and Other Actions.** Cooperate with the Director and the New Concessioner to ensure the smooth transition of operations by: (1) designating one of the Concessioner's executives as the point of contact for communications between the Concessioner and the New Concessioner; (2) providing the Director and the New Concessioner with access to any assigned Real Property Improvements, including "back-of-house areas" and including copies of the keys to assigned Real Property Improvements; (3) providing the Director and the New Concessioner with full access to the books and records, licenses and all other materials pertaining to any assigned Real Property Improvements and the Concessioner's operations in general; (4) providing 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) allowing 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; and (6) not entering into any Contracts or agreements that would be binding on any assigned Real Property Improvements or operations in general after the Termination Date without the prior written agreement of the New Concessioner.
- C) Financial Reports.** Within 30 days after receipt of the notification of the selection of the New Concessioner, provide the New Concessioner with a financial report with respect to the operation of any Real Property Improvements and the Concessioner's operations in general as of the last day of the month prior to receipt of such notification. Thereafter, the Concessioner shall update such financial report on a periodic basis (but no less frequently than thirty (30) days) until the Termination Date. Such financial report shall include, at a minimum, (1) a balance sheet for the Concessioner's assigned Real Property Improvements, if any; (2) a schedule of pending accounts payable; and (3) a schedule of pending accounts receivable.
- D) Inventory.** 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 list shall be provided to the New Concessioner within thirty (30) days following

receipt of the notification of the selection of the New Concessioner, shall be updated monthly thereafter, and shall designate those items that the Concessioner believes are essential to maintaining the continuity of operations or the special character of its operations. The Concessioner shall assist the New Concessioner in reviewing and validating the list.

- E) Other Information and Reports.** 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, and complete information with respect to: (1) utilities, including gas and electric; (2) telephone service; (3) water service; and, (4) specific opening and closing procedures. Such information shall be provided within thirty (30) days after receipt of notification of the selection of the New Concessioner, and shall be updated periodically (but no less frequently than thirty (30) days until the Termination Date.
- F) Other Cooperation.** Provide the Director and the new Concessioner with such other cooperation as may be reasonably requested.

SECTION 3. COOPERATION UPON THE TERMINATION DATE

Upon the Termination Date, the Concessioner shall:

- A) Transfer of Contracts and Licenses.** Cooperate with the transfer or assignment of all Contracts and Licenses entered into by the Concessioner that the New Concessioner elects to assume.
- B) Fees and Payments.** Within ten (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 shall, within ten (10) days of its delivery to the Director of this itemized statement, pay such fees and payments to the Director. The Concessioner and the Director acknowledge that adjustments may be required because of the information that was not available at the time of the statement.
- C) Access to Records.** Notwithstanding any other provision of this Contract to the contrary, upon the Termination Date, 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.
- D) Removal of Marks.** Concessioner shall within thirty (30) days after Termination, 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.
- E) Other Cooperation.** Provide the Director and the New Concessioner with such other cooperation as may be reasonably requested.



United States Department of the Interior



NATIONAL PARK SERVICE
Pacific West Region
1111 Jackson Street, Suite 700
Oakland, California 94607-4807

IN REPLY REFER TO:
C3817 (PWR-CM)

MAY 22 2009

Action FYI
Assigned: BRM
Due Date: _____

Ms. Kirstie Dunbar-Kari
9721 Barium Mine Road
El Portal, CA 95318

RECEIVED

JUN 04 2009

CONCESSIONS MGMT

Re: Concession Contract YOSE003-08

Dear Ms. Dunbar-Kari:

Please find enclosed a conformed copy of Amendment No. 1 to Concession Contract No CC-YOSE003-08.

Should you have any questions regarding this matter, please call Darby Watson, Concession Project Manager at (510) 817-1365 or Marty Nielson, Chief Business and Revenue Management at (209) 372-0274. We look forward to working with you in your new location.

Sincerely,

/s/ GEORGE J. TURNBULL
FOR

Jonathan B. Jarvis
Regional Director, Pacific West Region

✓ cc: Superintendent, Yosemite National Park

JH 5/24

**AMENDMENT NO. 1 TO NATIONAL PARK SERVICE CONCESSION CONTRACT
NO. CC-YOSE003-08**

THIS AMENDMENT No. 1 to National Park Service Concession Contract No. CC-YOSE003-08 is made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior through the Director of the National Park Service and the Regional Director of the Pacific West Region, collectively, the "Director") and, Kirstie Dunbar-Kari, an individual, doing business as Kari & Sons ("Concessioner"):

RECITALS

- A. The Concessioner is authorized under Concession Contract CC-YOSE003-08 to provide certain visitor services, including a grocery and general merchandise store within the El Portal Administrative site adjacent to Yosemite National Park ("Park").
- B. The Concession Facilities originally assigned under the Concession Contract were destroyed by a fire on April 22, 2008. Since then, the Park has rehabilitated another building for use under the Concession Contract, and the Director wishes to change the Concession Facilities assigned to the Concessioner to this rehabilitated building. The Director wishes to make these changes effective as of the date of notice from the Park that the Concessioner may occupy the rehabilitated building.
- C. The Director and the Concessioner desire to amend the Concession Contract to reflect this change in Concession Facilities and in the government personal property assigned for the Concessioner's use in the performance of the Concession Contract

Agreement

NOW THEREFORE, for and in consideration of the foregoing Recitals and in consideration of the mutual promises and covenants contained herein and intending to be legally binding, the Director and the Concessioner agree as follows:

1. The Concession Contract is amended as follows:
 - a. Exhibit C – Assigned Land and Real Property Improvements – is amended by replacing that exhibit in its entirety with the new Exhibit C set forth in the attachment to this Amendment.
 - b. A new Exhibit C-1 is added as set forth in the attachment to this Amendment.
 - c. Exhibit D – Assigned Government Personal Property – is amended by replacing that exhibit in its entirety with the new Exhibit D set forth in the attachment to this Amendment.

YOSEMITE NATIONAL PARK

PACIFIC WEST REGION – NATIONAL PARK SERVICE

2. All other terms and conditions of the Concession Contract shall remain unchanged. As specifically modified herein, the Concession Contract remains in full force and effect.
3. This Amendment shall be effective as of the date specified in a written notice from the Park to the Concessioner that the Concession may occupy and use the Concession Facilities described in the new Exhibit C.

IN WITNESS WHEREOF, the Director and the Concessioner have caused this Amendment to be executed by their duly authorized officers or representative as of the dates shown below.

CONCESSIONER

By: _____

Kirstie Dunbar
Kirstie Dunbar dba-Kari & Sons
P. O. Box 294
9721 Barium Mine Road
El Portal, CA 95318

NATIONAL PARK SERVICE

By: _____

Jonathan B. Jarvis
Jonathan B. Jarvis
Regional Director
Pacific West Region

YOSEMITE NATIONAL PARK

PACIFIC WEST REGION - NATIONAL PARK SERVICE

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

Land Assigned:

Land is assigned in accordance with the boundary on the map that is Exhibit C-1

Real Property Improvements Assigned:

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

El Portal Market	FMSS Asset Code	Asset Type	Approx.* Sq. Ft	Insurance Replacement Cost (Estimated)
El Portal Market EP0764	8845	4100	3,319	\$545,000

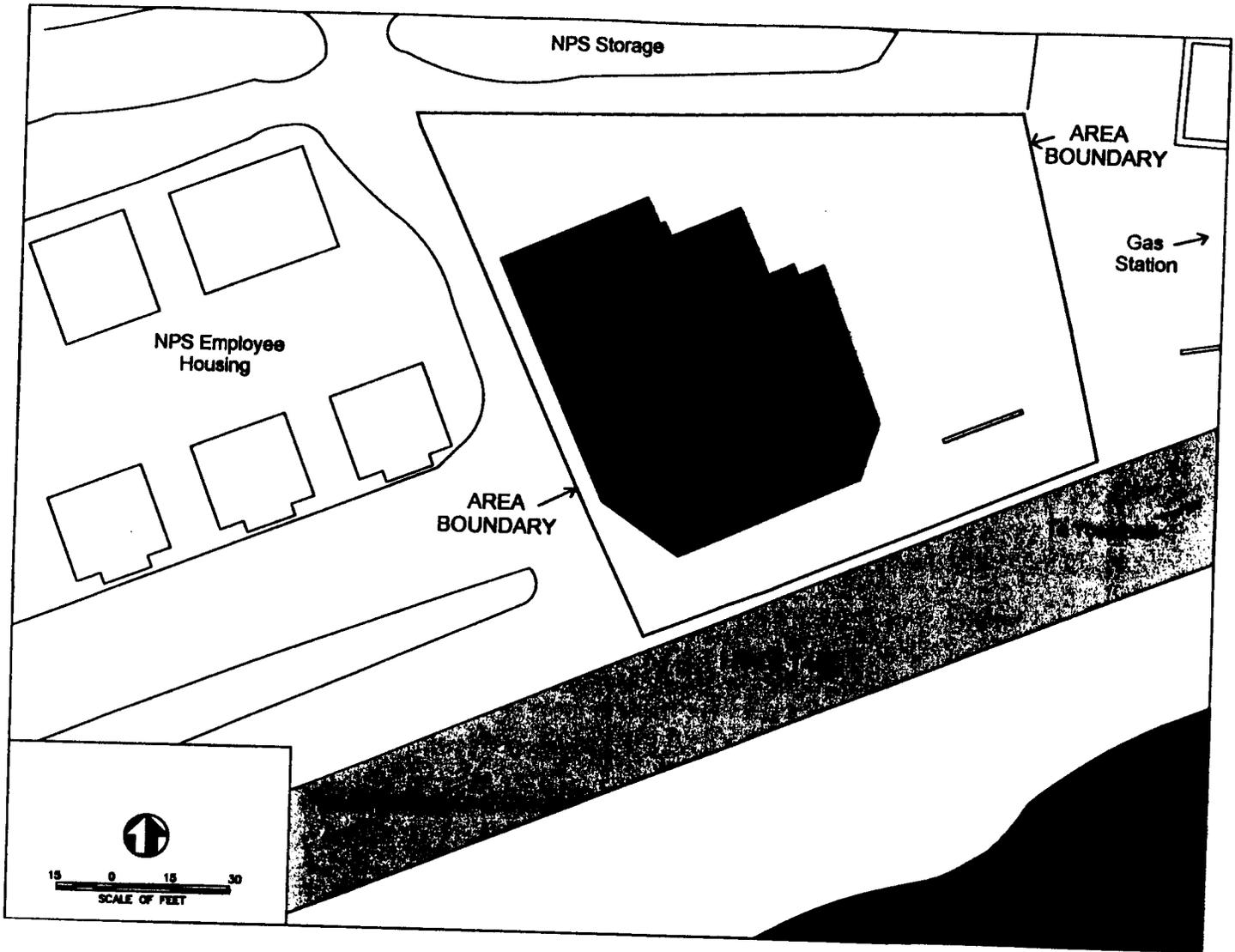
Effective May 22 2009.

BY 
Jonathan B. Jarvis
Regional Director, Pacific West Region

*All square footage provided is approximate and is furnished solely for insurance purposes

EL PORTAL MARKET
CONCESSIONER LAND ASSIGNMENT MAP
YOSEMITE NATIONAL PARK

EXHIBIT C -1
CC-YOSE003-08
PAGE 1 OF 1



ASSIGNED GOVERNMENT PERSONAL PROPERTY

ITEM	COST*
Metro Shelving Units, 55 Units, 5 Shelves per Unit	
Reach-In Coolers:	\$ 15,489
2 Kysor/Warren Freezers, Model No. QIV5V14-04UN	\$ 48,300
2 Kysor/Warren Refrigerators, Model No. QDV5V14-04UN	
Grab-N-Go Case:	
Kysor/Warren, Model No. C2VI3-12-UN	\$ 36,546
Ranger Hood	
	<u>\$ 21,652</u>
TOTAL COST	\$ 121,987

Effective, May 22, 2009.BY Jonathan B. Jarvis
Jonathan B. Jarvis
Regional Director, Pacific West Region

*All costs are approximate and are furnished solely for insurance purposes.



United States Department of the Interior

NATIONAL PARK SERVICE
Pacific West Region
1111 Jackson Street, Suite 700
Oakland, California 94607-4807



IN REPLY REFER TO:
C3817 (PWR-CM)

JUL 14 2009

PWR-CM

Watson
Rhea
Turnbull
Jarvis

Ms. Kirstie Dunbar-Kari
9721 Barium Mine Road
El Portal, CA 95318

Re: Concession Contract YOSE003-08

Dear Ms. Dunbar-Kari:

Please find enclosed four copies of Amendment No. 2 to Concession Contract No. CC-YOSE003-08. This amendment reduces your franchise fee to one half of one percent (.5 percent) pursuant to your request for Franchise Fee Reconsideration. Kindly sign where indicated on all four copies. A conformed copy will be forwarded to you after execution of the amendment by this office.

Should you have any questions regarding this matter, please call Darby Watson, Concession Project Manager at (510) 817-1365 or Marty Nielson, Chief Business and Revenue Management at (209) 372-0274.

Sincerely,

/S/ PATRICIA L. NEUBACHER
FOR

Jonathan B. Jarvis
Regional Director, Pacific West Region

cc: Superintendent, Yosemite National Park

FNP:DWATSON:dw:6/19/09:yose:1365

**AMENDMENT NO. 2 TO NATIONAL PARK SERVICE CONCESSION CONTRACT
NO. CC-YOSE003-08**

THIS AMENDMENT No. 2 to National Park Service Concession Contract No. CC-YOSE003-08 ("Amendment No. 2") is made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior through the Director of the National Park Service and the Regional Director of the Pacific West Region, (collectively, the "Director") and Kirstie Dunbar-Kari, an individual, doing business as Kari & Sons ("Concessioner") (collectively the Director and the Concessioner are the "Parties").

RECITALS

- A. The Concessioner is authorized under Concession Contract CC-YOSE003-08, as amended by Amendment No. 1 (as so amended the "Concession Contract"), to provide certain visitor services, including a grocery and general merchandise store within the El Portal Administrative site adjacent to Yosemite National Park ("Park").
- B. The Concession Contract, among other things, provides in Section 10(a)(1) that the Concessioner shall pay to the Secretary for the privileges granted herein a franchise fee equal to three percent (3%) of the Concessioner's Gross Receipts for the preceding year or portion of a year.
- C. The Concession Contract further provides in Section 10(d) that 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 Concession Contract, a reconsideration and possible subsequent adjustment of the franchise fee.
- D. On November 24, 2008, the Concessioner submitted a written request for reconsideration and adjustment of the franchise fee due to extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of the Concession Contract.
- E. The Director and the Concessioner have agreed that extraordinary, unanticipated changes have occurred after the effective date of the Concession Contract, i.e., the April 21, 2008 fire which destroyed the market building assigned to the Concessioner under the terms of the Concession Contract, along with the Concessioner's stored personal property and inventory.
- F. In recognition of the detrimental consequences of this event and related circumstances, the Director and the Concessioner desire to amend the Concession Contract to reflect an appropriate adjustment of its franchise fee.

Agreement

NOW THEREFORE, for and in consideration of the foregoing Recitals and in consideration of the mutual promises and covenants contained herein and intending to be legally binding, the Director and the Concessioner agree as follows:

1. The Concession Contract is amended as follows:
 - a. Section 10. FEES is amended by deleting sub-section (a)(1) in its entirety and replacing it with the following:

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 one half of one percent (0.5%) of the Concessioner's Gross Receipts for the preceding year or portion of a year.

2. All other terms and conditions of the Concession Contract shall remain unchanged. As specifically modified herein, the Concession Contract remains in full force and effect.
3. This Amendment No. 2 shall be effective on the latest date signed and dated by any of the Parties below

IN WITNESS WHEREOF, the Director and the Concessioner have caused this Amendment to be executed by their duly authorized officers or representative as of the dates shown below.

CONCESSIONER

By: _____

Kirstie Dunbar dba-Kari & Sons
P. O. Box 294
9721 Barium Mine Road
El Portal, CA 95318

NATIONAL PARK SERVICE

By: _____

Jonathan B. Jaryis
Regional Director
Pacific West Region



Marvin Mann/YOSE/NPS

08/12/2009 03:39 PM

To kirstiekari@gmail.com

cc Marty Nielson/YOSE/NPS@NPS, Linda
Niles-Sheetz/YOSE/NPS@NPS, Darby
Watson/OAKLAND/NPS@NPS

bcc

Subject Contract Amendment No. 2 - Effective Date

The effective date of contract amendment no. 2, which reduces the franchise fee to 0.5%, is July 14, 2009. The reduced fee should be applied from that date forward. The previous fee of 3.0% applies through July 13, 2009.

Marvin M Mann Jr
Financial Analyst
Yosemite National Park, CA 95389
209-372-0271 (Office)
209-372-0386 (Fax)



United States Department of the Interior

NATIONAL PARK SERVICE
Pacific West Region
1111 Jackson Street, Suite 700
Oakland, California 94607-4807



IN REPLY REFER TO:
C3817 (PWR-CM)

JUL 14 2009

PWR-CM

Watson
Rhea
Turnbull
Jarvis

Ms. Kirstie Dunbar-Kari
9721 Barium Mine Road
El Portal, CA 95318

Re: Concession Contract YOSE003-08

Dear Ms. Dunbar-Kari:

Please find enclosed four copies of Amendment No. 2 to Concession Contract No. CC-YOSE003-08. This amendment reduces your franchise fee to one half of one percent (.5 percent) pursuant to your request for Franchise Fee Reconsideration. Kindly sign where indicated on all four copies. A conformed copy will be forwarded to you after execution of the amendment by this office.

Should you have any questions regarding this matter, please call Darby Watson, Concession Project Manager at (510) 817-1365 or Marty Nielson, Chief Business and Revenue Management at (209) 372-0274.

Sincerely,

/s/ PATRICIA L. NEUBACHER

FOR

Jonathan B. Jarvis
Regional Director, Pacific West Region

cc: Superintendent, Yosemite National Park

FNP:DWATSON:dw:6/19/09:yose:1365