

AMENDMENT NO. 1  
CONCESSIONS CONTRACT NO. CC-GRTE032-03  
THE HOLE HIKING EXPERIENCE, INC.  
GRAND TETON NATIONAL PARK

THIS AGREEMENT is made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior and the Director of the National Park Service, hereinafter referred to as the "Secretary", and The Hole Hiking Experience, Inc., a Corporation doing business as The Hole Hiking Experience, hereinafter referred to as the "Concessioner".

WITNESSETH

THAT WHEREAS, the Secretary and the Concessioner are parties to Concession Contract CC-GRTE032-03, which became effective on November 1, 2003, whereby the Concessioner is authorized to provide guided day cross country ski tours and guided snowshoe tour services for the public within Grand Teton National Park during the period from November 1, 2003 through October 31, 2013; and

NOW, THEREFORE, in consideration of the foregoing, the parties hereto covenant and agree to and with each other that Concession Contract GRTE032-03 is hereby amended as follows:

1. Amend Section 7, Record and Reports, Subsection (b) Annual Financial Report (1) of Concession Contract GRTE032-03 as follows:

Delete the paragraph, "(1) The Concessioner must submit annually as soon as possible but not later than 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")," in its entirety and substitute in lieu thereof the following sentence:

"(1) The Concessioner must submit annually as soon as possible but not later than June 15, a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report")."

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Executed at Lakewood, Colorado this 19 day of March, 2010.

THE HOLE HIKING EXPERIENCE, INC.

By: *Catherine E. Shel*

Title: *owner*

Date: *3-2-10*

NATIONAL PARK SERVICE

By: *[Signature]*  
Director, Intermountain Region  
National Park Service

**CATEGORY III CONTRACT**

**UNITED STATES DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE**

GRAND TETON NATIONAL PARK

GUIDED CROSS COUNTRY SKI TOURING SERVICES

CONCESSION CONTRACT NO. CC-GRTE032-03

The Hole Hiking Experience, Inc.

P.O. Box 366, Victor, ID 83455

info@holehike.com

208/787-2057

The Hole Hiking Experience

Doing Business As

Covering the Period

November 1, 2003 through October 31, 2013

This Contract is between the National Park Service and The Hole Hiking Experience, Inc. (hereinafter referred to as "Concessioner"), a Corporation, dba The Hole Hiking Experience under the authority of 16 U.S.C. 1 et. seq., including 16 U.S.C. 5901 et seq., and other laws that supplement and amend these laws. The Director and the Concessioner agree:

#### Sec. 1. Term of Contract

This Contract will be from November 1, 2003 until its expiration on October 31, 2013.

#### Sec. 2. Services and Operations

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

The Concessioner must provide the following REQUIRED Visitor Services within the Area:

GUIDED DAY CROSS COUNTRY SKI TOURS, including incidental transportation and food services.

The Concessioner may provide the following AUTHORIZED Visitor Services within the Area:

GUIDED SNOWSHOE TOUR SERVICES in Grand Teton National Park, excluding any and all areas being utilized for park naturalist guided snowshoe tours.

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

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

##### (c) Operating Plan

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

##### (d) Rates

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

##### (e) No Capital Improvements

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

### Sec. 3. Concessioner Personnel

- (a) The Concessioner must ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public.
- (b) The Concessioner must establish appropriate screening, hiring, training, safety, employment, termination and other policies and procedures.
- (c) The Concessioner must review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and must take such actions as are necessary to correct the situation.
- (d) The Concessioner must maintain, to the greatest extent possible, a drug free work environment.
- (e) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit B.

### Sec. 4. Environmental

The Concessioner must utilize appropriate best management practices (practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this Contract) in its provision of Visitor Services and other activities under this Contract.

### Sec. 5. Fees

#### (a) Franchise Fee

- (1) The Concessioner must pay a franchise fee to the Director as follows: Four percent (4%) or \$500 whichever is greater.
- (2) The Concessioner has no right to waiver of the fee under any circumstances.

#### (b) Payments Due

- (1) The minimum franchise fee of \$500 shall be due on an annual basis and shall be paid no later than **November 1** of each operating year.
- (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 will be deposited electronically by the Concessioner in the manner directed by the Director.

(c) Interest

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

Sec. 6. Insurance

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

Sec. 7. Records and Reports

(a) Accounting System

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

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

(3) The Concessioner must keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this Contract by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

(b) Annual Financial Report

(1) The Concessioner must submit annually as soon as possible but not later than 120 days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

(2) If the annual gross receipts of the Concessioner are in excess of \$1,000,000, the financial statements must be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between \$500,000, and \$1,000,000, the financial statements must 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 \$500,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

(c) Other Reports

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

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

Sec.8. Suspension, Termination, or Expiration

(a) Termination and Suspension

(1) The Director may temporarily suspend operations under this Contract in whole or in part or terminate this Contract in writing at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit Visitor Services in the Area to those that continue to be necessary and appropriate.

(2) The Director may terminate this Contract if the Director determines that the Concessioner has materially breached any requirement of this Contract.

(3) In the event of a breach of the Contract, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the Contract for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the Contract for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature will be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 8(a).

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

(1) In the event of suspension or termination of this Contract for any reason or expiration of this Contract, no compensation of any nature will be due the Concessioner, including, but not limited to, compensation for personal property, or for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this Contract for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner must, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, and repair any injury caused by removal of the property. This removal must occur within thirty (30) days (unless the Director in particular circumstances otherwise determines). Personal property not removed from the Area will be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner.

Sec. 9. Assignment, Sale or Encumbrance of Interests

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

Sec. 10. General Provisions – See Addendum 1

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

By:  
CONCESSIONER:

UNITED STATES OF AMERICA

*Catherine E. Skell*  
President, The Hole Hiking Experience, Inc.

*Ralph H. Emjey*  
Acting Superintendent, Grand Teton National Park

12/8/03  
Date

12/11/03  
Date

Attest

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

Title: \_\_\_\_\_

Attachments:

- Addendum 1 – General Provisions
- Exhibit A – Operating Plan
- Exhibit B – Nondiscrimination
- Exhibit C – Insurance

## ADDENDUM 1 GENERAL PROVISIONS

### 1. Definitions

The following terms used in this Contract will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

- (a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws, whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.
- (b) "Area" means the property within the boundaries of Grand Teton National Park.
- (c) "Days" means calendar days.
- (d) "Director" means the Director of the National Park Service, and his duly authorized representatives.
- (e) "Exhibit" means the various exhibits, which are attached to this Contract, each of which is hereby made a part of this Contract.
- (f) "Gross Receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this Contract, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:
  - (1) Intracompany earnings on account of charges to other departments of the operation (such as laundry);
  - (2) Charges for employees' meals, lodgings, and transportation;
  - (3) Cash discounts on purchases;
  - (4) Cash discounts on sales;
  - (5) Returned sales and allowances;
  - (6) Interest on money loaned or in bank accounts;
  - (7) Income from investments;
  - (8) Income from subsidiary companies outside of the Area;
  - (9) Sale of property other than that purchased in the regular course of business for the purpose of resale;
  - (10) Sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, hunting and fishing license fees, and postage stamps, provided that the amount excluded will not exceed the amount actually due or paid government agencies;
  - (11) Receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether provided by the Concessioner or by others, must be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones must be included in gross receipts. All revenues received from charges for in-room telephone or computer access must be included in gross receipts.

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

## 2. Legal and Regulatory Compliance

This Contract, operations under it by the Concessioner, and its administration by the Director, are subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this Contract at the Concessioner's sole cost and expense. The Concessioner must give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or Contractors, and must promptly correct any violation.

## 3. Services and Operations

- (a) All promotional material, regardless of media format (i.e., printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this Contract must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.
- (b) The Concessioner will provide Federal employees reduced rates, in accordance with guidelines established by the Director, when conducting necessary official business. Complimentary or reduced rates and charges may otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.
- (c) The Director and Comptroller General of the United States, or any of their duly authorized representatives, will have access to the records of the Concessioner as provided by the terms of Applicable Laws.
- (d) Subconcession or other third party agreements, including management agreements, for the provision of Visitor Services required and/or authorized under this Contract, whether in consideration of a percentage of revenues or otherwise, are not permitted.
- (e) The Concessioner will ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner's activities. Discoveries of any archeological resources by the Concessioner will be promptly reported to the Director.

## 4. Environmental Data, Reports, Notifications, and Approvals

- (a) Inventory of Hazardous Substances and Inventory of Waste Streams. The Concessioner must submit to the Director, upon request, an inventory of hazardous chemicals used and stored in the Area by the Concessioner. The Concessioner must obtain the Director's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this Contract. The Concessioner must also submit to the Director, upon request, an inventory of all waste streams generated by the Concessioner under this Contract.
- (b) Reports. The Concessioner must submit to the Director copies of all documents, reports, monitoring data, manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessioner must also submit to the Director any environmental plans for which coordination with Area operations are necessary and appropriate, as determined by the Director in accordance with Applicable Laws.
- (c) Notification of Releases. The Concessioner must give the Director immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area (whether solid, semi-solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.
- (d) Notice of Violation. The Concessioner must give the Director in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.

- (e) **Communication with Regulatory Agencies.** The Concessioner must provide timely written advance notice to the Director of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessioner related to compliance with Applicable Laws concerning operations under this Contract. The Concessioner must also provide to the Director any written materials prepared or received by the Concessioner in advance of or subsequent to any such communications. The Concessioner must allow the Director to participate in any such communications. The Concessioner must also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.
- (f) **Cost Recovery for Concessioner Environmental Activities.** If the Concessioner does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and Contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner will be liable for and must pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section precludes the Concessioner from seeking to recover costs from a responsible third party.

## 5. Fees

### (a) Adjustment of Franchise Fee

- (1) The Concessioner or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this Contract, a reconsideration and possible subsequent adjustment of the franchise fee established in this section. For the purposes of this section, the phrase "extraordinary, unanticipated changes" will mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this Contract which have or will significantly affect the probable value of the privileges granted to the Concessioner by this Contract. For the purposes of this section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this Contract.
- (2) The Concessioner or the Director must make a request for a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this Contract.
- (3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fee.
- (4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, prospectively as of the date of agreement.
- (5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee in accordance with this section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.

- (6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director will each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel will establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.
- (7) The arbitration panel will consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee (up, down or unchanged) that is consistent with the probable value of the privileges granted by this Contract within sixty (60) days of the presentations.
- (8) Any adjustment to the franchise fee resulting from this section will be prospective only.
- (9) Any adjustment to the franchise fee will be embodied in an amendment to this Contract.
- (10) During the pendency of the process described in this section, the Concessioner will continue to make the established franchise fee payments required by this Contract.

#### 6. Indemnification

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessioner, its employees, agents or Contractors under this Contract. This indemnification will survive the termination or expiration of this Contract.

#### 7. Notice of Bankruptcy or Insolvency

The Concessioner must give the Director immediate notice (within five (5) days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this Contract or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, NPS considers that this Contract is not a lease but an executory Contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 365. The Director may terminate this Contract if the Director determines that the Concessioner is unable to perform the terms of Contract due to such bankruptcy or insolvency action.

#### 8. Additional Provisions

- (a) This Contract contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this Contract. This Contract may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.
- (b) This Contract does not grant rights or benefits of any nature to any third party.
- (c) The invalidity of a specific provision of this Contract will not affect the validity of the remaining provisions of this Contract.
- (d) Waiver by the Director or the Concessioner of any breach of any of the terms of this Contract by the other party will not be deemed to be a waiver or elimination of such term, nor of any subsequent

breach of the same type, nor of any other term of the Contract. The subsequent acceptance of any payment of money or other performance required by this Contract will not be deemed to be a waiver of any preceding breach of any term of the Contract.

- (e) No member of, or delegate to, Congress or Resident Commissioner will be admitted to any share or part of this Contract or to any benefit that may arise from this Contract but this restriction will not be construed to extend to this Contract if made with a corporation or company for its general benefit.
- (f) This Contract is subject to the provisions of 43 CFR, Subtitle A, Part 12, Subpart D, 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.

**Exhibit A**

**OPERATING PLAN**

GRAND TETON NATIONAL PARK

THE HOLE HIKING EXPERIENCE, INC.

Guided Cross Country Ski Touring Services

Concession Contract No. GRTE032-03

Approved by:

*for Mallory Miller*  
\_\_\_\_\_  
Superintendent, Grand Teton National Park

Date: APR 02 2010

**Exhibit A****OPERATING PLAN****INTRODUCTION**

This Operating Plan between The Hole Hiking Experience, Inc. (herein referred to as the “Concessioner”) and the National Park Service (herein referred to as the “Service”) will serve as a supplement to Concession Contract GRTE032-03 (herein referred to as the “Contract”). It describes specific operating responsibilities of the Concessioner and the Service with regard to those lands utilized by the Concessioner for the purpose authorized by the Contract. In the event of any conflict between the terms of the Contract and this Operating Plan, the terms of the Contract, including its designations and amendments, will prevail.

This plan will be reviewed annually by the Superintendent of Grand Teton National Park in consultation with the Concessioner and revised as determined necessary by the Superintendent. Any revisions must be consistent with the main body of the Contract. Any revisions must be reasonable and in furtherance of the purposes of the Contract.

**I. MANAGEMENT, ORGANIZATION AND RESPONSIBILITIES****A. National Park Service**

The Superintendent manages the total park operation, including oversight of concession operations. The Business Resources Office is the liaison between the Concessioner and all other park divisions. All services, rates, advertising, operating dates and hours must be reviewed by the Business Resources Office and approved by the Superintendent.

**B. Concessioner**

The Concessioner will employ a general manager who has the responsibilities for carrying out the policies and directives of the Service as well as those of the Concessioner in operating the authorized services in Grand Teton National Park.

**II. GENERAL OPERATIONAL REQUIREMENTS**

The operation of services authorized by the Contract will conform to the evaluation standards set forth in the National Park Service Concession Management Guidelines and with this Operating Plan. The Concessioner shall monitor its concession services with respect to Service policy, applicable standards, authorized rates, safety, public health, impacts on cultural and natural resources, and visitor concerns and reactions.

**A. Reporting Requirements**

1. The Annual Financial Report is due no later June 15<sup>th</sup> each year. The Concessioner shall submit in an electronic format in accordance with current NPS policies and procedures.
2. The Certificate of Insurance is due annually prior to operating. Commercial auto insurance is required if guides transport clients in company-owned or personally owned vehicles. Insurance policies

must name the U.S. Government as additional insured. Additional requirements are outlined in Exhibit C of the Contract.

3. The Guide List must be submitted annually and updated as needed with the names of all guides and the expiration dates of American Red Cross Standard First Aid (or equivalent) and CPR certification.

4. The Concessioner must submit its Visitor Use Reports by the 4th day of each month during the operating season, even if the reported use is zero. The Service will provide a report form if needed. Information to be reported is subject to change. The report may be e-mailed or faxed to the Business Resources Office.

5. Accident Reports: The Concessioner must report to a park ranger or to Park Dispatch (307-739-3301) any incident resulting in (or with the potential to result in) personal injury requiring more than minor first aid treatment or property damage exceeding \$300 as soon as possible after the incident occurs. Guides involved in reportable incidents will be available to the investigating ranger within 48 hours of the incident. Names and phone numbers of clients involved in the incident are required to be reported. In the case of an emergency, the Concessioner will call Park Dispatch or 911.

6. Human Illness Reporting: Any suspected outbreak of human illness, whether employees or clients, is to be promptly reported to the Service's Public Health Officer through the Business Resources Office. A suspected outbreak of human illness is two or more persons with common symptoms that could be associated with contaminated water or food sources or other adverse environmental conditions. The Service may inspect and monitor concession services to ensure public health and safety and ensure that satisfactory services are provided. The Concessioner is required to correct any deficiencies within identified timeframes. The Concessioner will ensure that requirements are adhered to with respect to applicable standards, authorized rates, safety and public health.

7. Monthly Gross Receipts and Franchise Fee Payments: The Concessioner must submit Gross Receipts and Franchise Fee Payment information by the 15<sup>th</sup> day of each month for the preceding month in-park activities during each month of the operating season. The Service will provide a report form for use. The report may be e-mailed or faxed to the Business Resources Office.

#### **B. Rates**

1. The Concessioner will submit written requests for new or changes to rates at least 30 days prior to anticipated implementation date. The Service will approve, disapprove, or adjust rates and will inform the Concessioner of the reason for any disapproval or adjustment within 30 days of the rate request submittal. Rates must be approved in writing.

2. The Concessioner will prominently post all rates for services provided to the public.

#### **C. Quality of Services**

The Service may review services operated by the Concessioner to ensure public safety and health, identify operating deficiencies, and ensure satisfactory services for the general public within assigned areas of responsibility, if staffing and funds allow. The Service will evaluate services operated by the Concessioner based on visitor input and contractual compliance.

#### **D. Reservations/Deposits/Refunds**

A deposit may be required to hold a reservation. The deposit requirement and refund policy is part of the approved rates. Any deposit may be paid in cash, check, credit card or money order. Refunds will be processed within one month of cancellation.

#### **E. Schedule of Operation**

The Concessioner will inform the Service of starting and ending dates of operation each year. Beginning and ending dates may vary from year to year depending on snow conditions.

#### **F. Staffing and Employment**

1. The Concessioner will hire a sufficient number of employees to ensure satisfactory services and will attempt to offer its employees a full work week whenever possible.
2. The Concessioner will establish hiring policies that will include reference checks of applicants for employment as appropriate. The Concessioner will establish its own standards for evaluating the qualifications of guides. The Service must review and approve these standards.
3. Guides cannot be independent contractors. Guides must be on the Concessioner's payroll and be covered by its insurance policies and Workers Compensation Policy. Allowing a non-employee guide to bring his/her clients into the park area under the Concessioner's contract is not acceptable and may be deemed a violation of the Contract.
4. Employees will project a hospitable, friendly, helpful, positive attitude, be capable and willing to answer questions from visitors and provide visitor assistance.
5. Concessioner employees may not possess firearms while on duty within Grand Teton National Park. The Superintendent, in his or her sole discretion, may grant exceptions to this prohibition upon consideration of a written request from the Concessioner's general manager with a thorough explanation of the basis of the request. The Superintendent's response to the concessioner must be in writing.
6. The Concessioner shall not employ in any status a Service employee, his/her spouse, or minor children of Service employees without the Superintendent's approval. Employees must submit a written request to the Superintendent. The Concessioner shall not employ in any status the spouse or children of the Superintendent, Deputy Superintendent, Chief of Business Resources, Business Resources Specialists or Public Health Sanitarian.
7. Training Program
  - a. The Concessioner will provide employee orientation and training and will inform employees of park regulations and requirements, which affect their employment and activities while working in Grand Teton National Park. A Service representative may participate in scheduled sessions.
  - b. All guides must have a current American Red Cross standard first aid card (or equivalent) and current CPR certification.
  - c. The Concessioner will provide adequate, applicable training to each employee. Guides will be required to have a science background. Guides will receive a manual about the park service, forest

service, wilderness areas, Native Americans, wildlife, flora, local history, winter ecology and geology. An extensive library will also be available for reference material. An experienced guide will accompany new guides for a few trips to ensure that proper procedures are followed and informational content is accurate.

#### **G. Prohibited Services**

The Concessioner may not provide ski schools, snowboard trips, or trips that include extreme skiing or technical mountaineering.

#### **H. Entrance Fees**

1. Guides on Concessioner business will identify themselves at the park entrance stations. Their entrance fees will be waived.
2. Guides entering the park to recreate personally will pay applicable entrance fees.
3. Clients entering the park (with or without a guide) will pay applicable entrance fees.

#### **I. Park Planning**

This Contract is subject to the provisions of existing or future approved plans for Grand Teton National Park. The Superintendent reserves the right to revoke this Contract, in whole or in part, for the protection of visitors or area resources. Operations authorized by the Contract may be suspended, in whole or in part, at the discretion of the Superintendent, when the Superintendent determines such action is necessary to protect the health and safety of visitors or employees or to protect area resources.

#### **J. Nondiscrimination**

Requirements are outlined in Exhibit B of the Contract.

#### **K. Acknowledgement of Risk**

The Concessioner may require clients to sign an acknowledgment of risk form prior to participating in its activities. All such forms must comply with Service requirements and are subject to the approval of the Superintendent.

#### **L. Lost and Found Policy**

If a client loses an item or finds an item, the client should be referred to a ranger station or visitor center to make a report. If the Concessioner finds a lost item, the item should be turned in to a ranger or visitor center as soon as possible.

#### **M. Complaints**

The Service will send complaints or comments regarding Concessioner services to the Concessioner for investigation and response. The Concessioner will provide a copy of the response to the Superintendent in a timely manner. A copy of the Service's response will be forwarded to the Concessioner.

**N. Advertisements/Public Information**

1. The Superintendent must approve all promotional material, including electronic media, prior to publication, distribution, broadcast, etc. Advertisements must include a statement that the Concessioner is an authorized Concessioner of the National Park Service. Brochure changes and layout must be submitted to the Superintendent for review at least 30 days prior to projected need/printing dates.
2. Advertisements for employment must contain a statement that the Concessioner is an equal opportunity employer.

**III. APPROVED ROUTES****A. Approved Routes**

- Closed section of Moose-Wilson Road
- Granite Canyon Trail – below the patrol cabin
- Phelps Lake Overlook Trail
- Pilgrim Creek
- White Grass Ranch Area
- Valley Trail – between Granite Canyon and Bradley Lake
- Taggart and Bradley Lakes
- Cottonwood Creek Trail to Jenny Lake
- Two Ocean and Emma Matilda Lakes
- Arizona Creek, Bailey Creek and Arizona Lake
- Hermitage Point from Colter Bay
- Signal Mountain to Spalding Bay
- Shadow Mountain Baseline Road – Antelope Flats Road to Lost Creek

Additional routes must be approved in writing by the Superintendent. The Superintendent may remove routes from use at any time he or she deems necessary.

**IV. FOOD SERVICES AND SANITATION****A. Food Services**

1. All food service and sanitary procedures are subject to U.S. Public Health Standards and inspections.
2. Water provided for clients must be treated. Clients should be advised about the risks of drinking untreated water and informed about methods of water purification.
3. All food brought into the park must be obtained from a state licensed and inspected food service facility.
4. All cold foods shall be held at 41 degrees Fahrenheit or below. All hot foods shall be held at 145 degrees Fahrenheit or above. The Concessioner shall use a food thermometer to monitor temperatures.

**B. Sanitation**

1. In areas where toilet facilities are not available, clients will be informed of proper backcountry sanitation procedures.
2. The Concessioner is responsible for packing out all refuse from its activities.

## V. **RESOURCE PROTECTION**

- A. The National Park Service expects its Concessioners to join with them in fulfillment of its mission, and to give special attention in their operations to the preservation, conservation, and protection of park resources and the environment. Routine business operations, educational activities and employee programs must be conducted in accordance with all applicable environmental laws and in a manner that minimizes negative impacts on our environment and encourages others to do so as well.
- B. Operations may be conducted in a natural area with a variety of wildlife. The Concessioner must conduct its operations under Service direction for mitigating human-wildlife interactions. All wildlife will be viewed from a distance of 25 yards, except bears, which will be viewed at a distance of 100 yards. Animal behavior will be discussed and clients will be educated on how to visit areas safely, without disturbing the wildlife.
- C. Fires are NOT permitted.
- D. All tours will use established and approved trails. Park flora will not be damaged. Tours will follow Leave No Trace guidelines. All food, garbage and paper will be packed out. Human waste will be buried according to backcountry regulations.

## VI. **RISK MANAGEMENT AND SAFETY**

- A. While driving clients to and from trailheads, drivers, guides and clients must wear seatbelts.
- B. There must be at least one guide per eight clients. (Number of clients taken from Hole Hiking Experience, Inc. proposal package)
- C. All trips shall carry a basic first aid kit suitable for backcountry emergencies. Suggested items include 1 roll of two-inch medical tape, 1 roll of two-inch gauze, 1 two-inch ace bandage, 2 triangular bandages, 2 two-inch compresses, 6 four-inch compresses, 1 emergency blanket and several pairs of disposable gloves.
- D. Federal law prohibits the possession of firearms in federal facilities therefore all Concessioner employees and guides and trip participants are prohibited from possessing firearms if entering any visitor center, ranger station or administrative office in Grand Teton National Park.
- E. Guides will ensure that clients are properly attired for the current and forecasted weather conditions. All guides will be familiar with the terrain and backcountry travel. Tours will avoid avalanche terrain; however guides will be knowledgeable on avalanche safety and emergencies. Guides are required to carry cell phones and to check in at the end of a trip. Guides carry extra gear, hand warmers, feet warmers, and a thermos with a hot drink.

Ski equipment will be rented from local businesses. Snowshoes are owned by The Hole Hiking Experience, Inc. Fanny packs and backpacks are included in tour price. Equipment is checked at the beginning of the season and after each tour. Snowshoes are replaced every two years.

## 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.

## Exhibit C

### Insurance Requirements

#### I. General

The Concessioner must 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. The Director will approve the types and amounts of insurance coverage purchased by the Concessioner.

At the request of the Director, the Concessioner must, 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 must 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.

From time to time, as conditions in the insurance industry warrant, the Director may modify this Exhibit, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

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.

#### II. Liability Insurance.

The Concessioner must 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.

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

This insurance must 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. The following Liability Coverages and limits are to be maintained at a minimum, all of which are to be written on an occurrence basis only. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or Excess "Umbrella" Liability. Furthermore, the commercial general liability package must provide no less than the coverages and limits described.

##### A. Commercial General Liability

1. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability (and must include Contractual Liability and Products/Completed Operations Liability).

Bodily Injury & Property Damage Limit	\$300,000
Products/Completed Operations Limit	\$300,000
Personal Injury & Advertising Injury Limit	\$300,000
General Aggregate	\$500,000

2. The liability coverages may not contain the following exclusions/limitations:
  - a. Athletic or Sports Participants
  - b. Products/Completed Operations
  - c. Personal Injury or Advertising Injury exclusion or limitation
  - d. Contractual Liability limitation
  - e. Explosion, Collapse and Underground Property Damage exclusion
  - f. Total Pollution exclusion
  - g. Watercraft limitations affecting the use of watercraft in the course of the concessioner's operations (unless separate Watercraft coverage is maintained)
3. 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

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," will be maintained.)

Each Accident Limit: As required by the State of Wyoming

C. 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 must be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance must be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Excess "Umbrella" Liability policy.

D. Environmental Impairment Liability

Coverage (if requested by the Director) will be provided for bodily injury, personal injury or property damage arising out of pollutants or contaminants (on site and/or offsite).

Each Occurrence or Each Claim Limit: As required by the State of Wyoming  
Aggregate Limit

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. Self-Insured Retentions.

Self-insured retentions on any of the above described Liability insurance policies (other than Excess "Umbrella" Liability, if maintained) may not exceed \$5,000.

G. Workers Compensation and Employers' Liability.

Coverage will comply with the statutory requirements of the state(s) in which the concessioner operates.

### III. Insurance Company Minimum Standards.

All insurance companies providing the above described insurance coverages must meet the minimum standards set forth below:

1. All insurers for all coverages must be rated no lower than A-by the most recent edition of Best's Key Rating Guide (Property-Casualty Edition).
2. All insurers for all coverages must have a Best's Financial Size Category of at least VIII according to the most recent edition of Best's Key Rating Guide (Property-Casualty edition).
3. All insurers must be admitted (licensed) in the state in which the concessioner is domiciled.

### IV. Certificates of Insurance.

All certificates of Insurance required by this Contract must 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, must provide the Director with a complete copy of any of the insurance policies (or endorsements thereto) required herein to be maintained by the concessioner.

### V. Statutory Limits

In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit will be considered the minimum to be maintained.