

## **ATTACHMENT B: Legal and Business Considerations**

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### **A. Limitations on Sales**

Regardless of the type of use of a leased building, the following items will not be sold or displayed:

- Tobacco products sold from vending machines
- Illegally obtained materials (e.g., materials from protected areas, sources, or species) and merchandise made from illegally obtained materials
- Merchandise that is improperly labeled as to its sources, manufacture, or nature
- Glass containers may not be sold from vending machines
- Archeological artifacts of any type

### **B. Services**

1. The National Park Service is not responsible for providing city water, sewage, electricity, and telephone service to leased structures. The Service assumes no responsibility to provide the lessee with these services. All required permits and inspections are the responsibility of the lessee.
2. No on-site parking is available. Limited access to street parking and nearby parking lot spaces is available. Parking arrangements are the responsibility of the lessee.
3. Thermal water is available from the National Park Service in accordance with the laws, regulations, policies, and availability. The National Park Service is responsible for periodic testing of thermal water to ensure compliance with the National Safe Water Drinking Act. The quantity of water available to the lessee will be discussed during lease negotiations. Lessees will not be

entitled to any ground water or subsurface mineral rights pursuant to the lease.

### **C. Taxes**

The lessee shall be responsible for all taxes and other charges as may be assessed and levied by a proper authority.

### **D. Compliance with Federal, State, and Local Laws and Park Jurisdiction**

Hot Springs National Park operates under the jurisdiction of the federal government. The park has exclusive jurisdiction under the authority of the National Park Service Superintendent.

Law enforcement is conducted by National Park Service Rangers holding federal law enforcement commissions. Federal law and state law, through the Act of June 25, 1948, the Assimilative Crimes Act, are enforced by these officers. The Park has general agreements with the surrounding police departments that describe the law enforcement and mutual aid relationships.

Structural fire protection is conducted by the City of Hot Springs Fire Department.

Public health codes are prescribed by the United States Public Health Service (USPHS), and inspections will be conducted in accordance with model codes they have issued. The USPHS, through the Arkansas State Department of Health, will inspect and supervise the operation of the Park's water supply and sewage disposal systems. They will also inspect food service operations. Plans for food service facilities will require approval of the National Park Service, in consultation with the U. S. Public Health Service. That approval will be coordinated by the National Park Service.

Building codes that apply are the strictest of federal, state, and/or local codes or the applicable national codes that are NPS standards, whichever sets a higher standard. No construction may be undertaken unless the NPS has issued a letter or permit to proceed and has approved the plans involved and National Historic Preservation Act (NHPA) Section 106 (historical) and/or National Environmental Protection Act (NEPA) clearance has been received from the appropriate entity.

Although operations are conducted on federal property, the lessee will be subject to applicable state laws and ordinances in the same manner as if they operated outside the federal holding.

### **E. Park Management Structure**

Hot Springs National Park is managed by a Park Superintendent. The Superintendent is assisted by a permanent authorized staff of approximately 60 employees. The Park organization is divided into four divisions: Administration, Maintenance and Utilities, Interpretation and Cultural Resources, and Resources Management and Visitor Protection. Each division is supervised by a chief who reports to the Park's Deputy Superintendent. Concession and leasing programs are managed by the Superintendent through the Deputy Superintendent, the Executive Assistant, and the Administrative Officer.

### **F. Park Resource Management Issues**

Hot Springs National Park's core purpose is the protection of its thermal springs. Understandably, the Park's major resources, cultural as well as natural, are intimately related to the springs.

The presence of the hot springs is a result of the unique geology of the area and its present topography. The water is geothermally heated at an unusually shallow depth of only several thousand feet, and then rises through faults in the sandstone formation to emerge at the surface as thermal springs. The discharge zone, containing many separate springs, is a narrow strip about ¼ mile-long at the foot of Hot

Springs Mountain along Central Avenue. This zone has been a focus of human activity for hundreds of years and is today the site of Bathhouse Row and downtown Hot Springs. Except for three display springs, the springs are concealed from visitors, and capped to prevent contamination. The spring water is captured and diverted into the Park's extensive underground thermal water distribution system.

Water use must be conserved in order not to overload the thermal water collection and distribution system providing water to users. Activities must be prevented that would reduce the natural flow of water in the spring system, introduce contaminants into the system, or disturb the flow paths of the thermal water in the discharge area.

Methods of control of pests and vegetation and use of pesticides and herbicides must be approved in advance by the NPS before execution.

### **G. Concession and Other Authorizations**

36 C.F.R. § 18.6 states that NPS leases may not authorize activities by lessees that are subject to authorization by an NPS concession contract, commercial use authorization or similar instrument. The NPS will reject any lease proposal for uses that NPS considers to be in conflict with 36 C.F.R. § 18.6.

### **H. Americans with Disabilities Act**

Leased buildings must meet the requirements of the Americans with Disabilities Act to assure that accessibility is provided throughout the facility. The Americans with Disabilities Act (ADA) establishes federal guidelines that define requirements for disabled access to parking facilities, pathways, and buildings.

### **I. Minimum Business and Other Lease Terms and Conditions**

Leases awarded under this RFP will contain the terms and conditions stated in 36 C.F.R. § 18.11 and 18.12 (See Appendix C to this RFP).

## **J. Historic Rehabilitation Income Tax Credits**

If the proposed use of these National Register properties is income producing or commercial, the investor(s) may qualify for the rehabilitation investment tax credit provided by the Internal Revenue Code. Under the provisions of these sections, rehabilitation expenditures made by a lessee may qualify for an investment tax credit providing the remaining lease term is no less than the applicable recovery period. For Hot Springs National Park, this program is administered jointly by the Internal Revenue Service and the NPS in conjunction with the Arkansas State Historic Preservation Office (SHPO). Questions regarding financial and administrative aspects of the tax code should be directed to the Internal Revenue Service. Questions regarding architectural or engineering aspects of the program should be directed to the Arkansas SHPO. Among the conditions for qualifications, the rehabilitation must be certified by the NPS to be consistent with the historic character of the structure and to meet The Secretary of the Interior's Standards for Rehabilitation. Potential lessees are advised that tax reform legislation is always a possibility and new tax provisions may affect the credits available for participants in the Historic Property Leasing Program. It is highly recommended that applicants whose use is income-producing or commercial consult with their legal and financial counsel regarding how the current tax code and

potential changes may affect their proposal.

## **K. Insurance**

The lessee will be required to maintain adequate insurance and to indemnify the National Park Service against losses connected with or caused by the use, activities, and operations authorized by the lease. The lessee should be aware that it is assuming a risk of loss or potential liability because the structures offered for lease are located in a 100-year floodplain. In addition to adequate insurance coverage, lessees may be required to undertake flood proofing measures to assure some protection against loss of life and property. These measures need not be physical measures but may include warning systems and evacuation plans.

## **L. Bonds**

The lessee will be required to obtain a satisfactory surety bond in an amount that will reasonably assure performance of the contractual obligations under the lease. Such bonds may be for the purpose of guaranteeing the following: (1) not less than 1 year's rental unless the lease contract provides that the annual rental or portion thereof shall be paid in advance; (2) the estimated construction cost of any improvements by the lessee; (3) an amount estimated to be adequate to insure compliance with any additional contractual obligations.