

AMENDMENT NO. 1
CONCESSION CONTRACT CC-EVER002-08
EVERGLADES NATIONAL PARK BOAT TOURS, INC.
EVERGLADES NATIONAL PARK

This Amendment No. 1 to Concession Contract CC-EVER-002-08 ("Amendment") is made and entered into by and between the United States, acting through the Director of the National Park Service and the Regional Director of the National Park Service, Southeast Region (hereinafter referred to as the "Director") and Everglades National Park Boat Tours, Inc., a corporation organized and existing under the laws of the State of Florida (hereinafter referred to as the "Concessioner").

Witnesseth:

WHEREAS, the Director and the Concessioner entered into Concession Contract No. CC-EVER002-08 ("Contract") on December 23, 2008, whereby the Concessioner was authorized by the Director to provide required and authorized facilities and services for visitors to the Gulf Coast District of Everglades National Park (Area) through December 22, 2018; and

WHEREAS, the Contract also authorized the Concessioner to provide required and authorized facilities and services for visitors to the Flamingo District of the Area through December 22, 2013; and

WHEREAS, the Concessioner has agreed to provide services at the Flamingo District through April 30, 2015; and

WHEREAS, the Contract established a franchise fee of twelve percent (12%) percent of gross revenues for Contract operations at both the Gulf Coast and Flamingo Districts within the Area for the entire term of the Contract; and

WHEREAS, the Director and the Concessioner have agreed to a four percent (4%) franchise fee for gross receipts generated by Contract operations at the Flamingo District of the Area to four percent (4%) for the period of December 23, 2013, through April 30, 2015.; and

WHEREAS, this Amendment has been negotiated by the Director and the Concessioner in good faith to effectuate the intent of the parties as expressed in these recitals and both believe it to be fair, reasonable, and in the public interest.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound thereby, the Director and the Concessioner hereby agree as follows:

1. Contract Section 3 **SERVICES AND OPERATIONS**, subsections (a)(1)(b) (page 3 of the Contract) and (a)(2)(b) (page 4 of the Contract), are hereby amended by replacing "December] 22, 2013" with "April 30, 2015".

2. Contract Section 10 FEES, subsection (a)(1), is hereby amended by replacing that subsection in its entirety 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:

(A) Gulf Coast District Operations. Twelve percent (12%) of the Concessioner's gross receipts generated by Contract operations in the Gulf Coast District for the preceding year or portion of a year for the ten (10) years of the Contract, until Dec 22, 2018.

(B) Flamingo District Operations. For the Contract period of December 23, 2008 through December 22, 2013, twelve percent (12%) of the Concessioner's gross receipts generated by Contract operations in the Flamingo District. For the Contract period of December 23, 2013 through April 30, 2015, four percent (4%) of the Concessioner's gross receipts generated by Contract operations in the Flamingo District.

3. The Concessioner and Director agree that the modifications set forth in this Amendment are unique to the special circumstances presented by Concession Contract No. CC-EVER002-08 and are not intended to, nor should they be construed as, precedent for any other concession contracts or agreements entered into by the Director or the U.S. Department of the Interior on matters of a similar type or subject matter.
4. To the extent that any provisions of this Amendment are considered to be in conflict with the terms and conditions of the Contract, any extensions thereof, or other obligations or agreements of the parties to the Contract, the Concessioner and Director agree that the provisions of this Amendment shall modify or supersede such terms and conditions to the extent necessary for the effectuation of this Amendment.
5. If written notice is required to be given by one party to another for any reason, it shall be directed to the individuals at the addresses specified below, unless the individuals specified or their successors give notice, in writing, to the other party that notice should be directed to a different individual or address. All notices shall reference this Amendment.

To NPS: Superintendent
Attn: Dan Kimball
Everglades National Park
40001 State Road 9336
Homestead, FL 33034

To Concessioner: Everglades National Boat Tours, Inc.
Attn: Sammy Hamilton, Jr.
P.O. Box 686
Everglades City, FL 34139

6. This Amendment contains the entire agreement of the Concessioner and Director with respect to the subject matter hereof and supersedes all prior amendments, agreements,

and understandings, whether oral or written. No modification of this Amendment shall be binding unless in writing and signed by the party to be bound.

7. All other terms of the Contract not expressly modified by the terms of this Amendment shall be and remain in full force and effect until expiration or termination of the Contract, except as any such terms may be modified by subsequent amendment(s). This Amendment may be executed in counterparts.

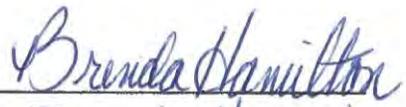
IN WITNESS WHEREOF, the Concessioner and Director have caused this Amendment to be executed by their duly authorized officers or representatives as of the latest date (the "Effective Date") set forth below.

CONCESSIONER

EVERGLADES NATIONAL PARK
BOAT TOURS, INC.

ATTEST:

By: 
Name: Sammy Hamilton Jr
(printed)
Title: Pres/owner
Date: 11/19/13

By: 
Name: Brenda Hamilton
(printed)
Date: 11/19/13

UNITED STATES OF AMERICA
NATIONAL PARK SERVICE

By: 
Name: Gordon Wisniewski
for Stan Austin
Regional Director
Southeast Region

Date: 9/23/13



United States Department of the Interior
NATIONAL PARK SERVICE



Everglades and Dry Tortugas National Parks
40001 State Road 9336
Homestead, Florida 33034-6733

In Reply Refer to:

C3827 (EVER002-08)

Sammy Hamilton, President
Everglades National Park Boat Tours, Inc.
P.O. Box 119
Everglades City, FL 33929

Re: Seasonal Food and Beverage Services in the Flamingo District

Dear Mr. Hamilton:

As a follow-up to our discussions over the last several months, we regret to inform you that the Park is unable to grant your request to use the Buttonwood Cafe in lieu of a mobile fast food facility in the Flamingo District.

After consultation with Department of the Interior lawyers and National Park Service Concessions staff at both the regional and national levels, it has been determined that for a number of reasons, none of the following contract amendments for EVER002-08 could be implemented:

1. Contract Extension
2. Leasehold Surrender Interest
3. Franchise Fee Renegotiation

The Park also believes that building code and insurance issues regarding renovating and using the former Buttonwood Cafe would be insurmountable.

Accordingly, the Park has determined that the EVER002-08 contract required services specifications for a mobile fast food facility (Operating Plan pgs 23-25, see attached) are the only viable solution. The Park has determined a location near the marina which provides shade, views, and access to water and sewer lines. More specifically, the location is between the Florida Bay ramp and the Flamingo Visitor Center. Further, this location is near available parking and in easy walking distance of nearby restroom facilities and should suit Everglades National Park Boat Tours, Inc.'s needs.

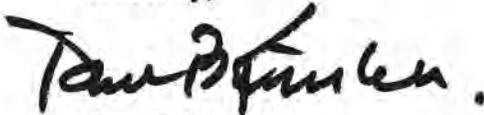
The Park is also prepared to execute a contract amendment removing the requirement for a 'Tiki' bar in the Flamingo area, provided that Everglades National Park Boat Tours, Inc. incorporates bar services in the mobile fast food facility and provides outside seating (e.g., picnic tables and umbrellas).

Like you, we wish the use of the Buttonwood Cafe was possible. However, we believe that given the circumstances in Flamingo, a mobile fast food facility will be less expensive, involve far less risk than a permanent structure within the Mission 66 Visitor Center building, and provide this amenity to our visitors in a timely way.

We look forward to working with Everglades National Park Boat Tours, Inc. to ensure that the seasonal food and beverage services at Flamingo are a success for everyone concerned.

If you have any questions regarding this letter, please contact our Chief of Commercial Visitor Services Bill Fay at (305) 242-7760 or William_Fay@nps.gov.

Sincerely,

A handwritten signature in black ink that reads "Dan B. Kimball". The signature is written in a cursive, slightly slanted style.

Dan B. Kimball
Superintendent

cc: Craig Erickson

Encl.

Text highlighted in yellow will be deleted from the Operating Plan in the contract amendment.

C) Food and Beverage Service - Flamingo

(1) *Food Service*

- (a) The Concessioner must ensure that a manager or other equally qualified employee is available during all operating hours.
- (b) The Concessioner will submit a proposed menu to the Service, 30 days prior to the initial opening of their mobile fast food facility.
- (c) The Concessioner must collect and recycle kitchen grease. The Concessioner must collect kitchen grease in containers that are waterproof, vermin-proof, covered with working lids, and well-labeled to indicate what should be deposited in the container.
- (d) The Concessioner must have at least one employee on staff with a current certificate as a ServSafe Food Protection Manager by the National Restaurant Association. All food and beverage employees will be certified by ServSafe before they are assigned to any food service area.
- (e) All food preparation and dishwashing must conform to U.S. Public Health Code requirements.
- (f) Items listed on the menu boards must be available during the entire serving period.

(2) *Alcoholic Beverage Sales*

- (a) The Concessioner must comply with all State of Florida Laws related to the sale of alcoholic beverages
- (b) Promotional activities at the "tiki bar" may not center on alcoholic beverages (e.g., 'happy hours', two-for-one sales, etc.).
- (c) The Concessioner must have at least one full-time manager who has attended a liquor law training program. The Concessioner must train its employees in the responsible practices of serving and selling alcoholic beverages through the ServSafe alcoholic beverage training offered through the National Restaurant Association or an equivalent program.

(3) *Food and Beverage Equipment*

- (a) The Concessioner will provide picnic tables and umbrellas.
- (b) The Concessioner will have an authentic chickee constructed in a location to be determined by the Service. The size of the chickee shall be at least 10' x 20'. The thatched roof of the chickee will be sprayed with a fire retardant approved by the Service. A hand built bar and bar stools will be constructed and installed in the chickee, as will a sink. The décor of the tiki bar will be subject to the Service's review and approval.

CATEGORY II CONTRACT

UNITED STATES DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

Everglades National Park

For Interpretive Boat Tours, Retail and Other Visitor Services
At Flamingo and Gulf Coast Districts

CONCESSION CONTRACT NO. EVER002-08

Everglades National Park Boat Tours, Inc.

Sammy Hamilton, Jr.

P.O. Box 686

Everglades City, Florida 34139

(239) 695-4731

Covering the Period

December 23, 2008 through December 22, 2018

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THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Southeast Region, (hereinafter referred to as the "Director"), and Everglades National Park Boat Tours, Inc., a corporation organized and existing under the laws of the State of Florida (hereinafter referred to as the "Concessioner"):

W I T N E S S E T H:

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

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

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

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

NOW, THEREFORE, pursuant to the authority contained in the Acts of August 25, 1916 (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. EVER002-08 ("Contract") shall be effective as of Dec 23, 2008 and shall be for a term of ten (10) years until its expiration on Dec. 22, 2018.

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 Everglades National Park.
- (c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and

maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this Contract. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner's operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.

- (d) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this Contract and all real property improvements, assigned to the Concessioner under this Contract. The United States retains title and ownership to all Concession Facilities.
- (f) "Days" shall mean calendar days.
- (g) "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.
- (h) "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.
- (i) "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; income from subsidiary companies outside of the Area;
 - (8) Sale of property other than that purchased in the regular course of business for the purpose of resale;
 - (9) Sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;
 - (10) 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.

- (j) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by a subconcession contract. A subconcessioner will report all of its gross receipts to the Concessioner without allowances, exclusions, or deductions of any kind or nature.
- (k) "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.
- (l) "Superintendent" means the manager of the Area.
- (m) "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) (a) Required Visitor Services. The Concessioner is required to provide the following visitor services in the Gulf Coast District during the term of this Contract.

Service	Service Description
Interpretive Boat Tours	Gulf Coast Interpretive Boat Tours
Retail	Retail store within Gulf Coast Visitor Center
Food and Beverage	Limited food and beverage items in the retail store
Equipment Rentals	Canoe and Kayak Rentals
Fuel Service	Not offered
Houseboat Rentals	Not offered
Slip Rentals	Not offered

- (b) Required Visitor Services. The Concessioner is required to provide the following visitor services in the Flamingo District for the first five (5) years of the Contract until Dec 22 2013 after which time the Concessioner will not be authorized as required to provide these visitor services.

Service	Service Description
Interpretive Boat Tours	Florida Bay and Whitewater Bay Tours
Retail	Marina store

Food and Beverage	Limited food and beverage items in the Marina store, Tiki Bar and Mobile food service
Equipment Rentals	Skiff, canoe and kayak rentals at Flamingo Bay. Canoe rentals at Nine Mile Pond
Fuel Service	Land and water-based fuel sales
Houseboat Rentals	2 houseboats for rent
Slip Rentals	Overnight dockage at Florida Bay

(2)(a) Authorized Visitor Services. The Concessioner is authorized but not required to provide the following visitor services in the Gulf Coast District during the term of this Contract:

	Service
i.	Guided canoe or kayak excursions, which could include multi day trips to and from Gulf Coast
ii.	Kayak and bike rentals

(b) Authorized Visitor Services. The Concessioner is authorized but not required to provide the following visitor services in the Flamingo District for the first five (5) years of this Contract until Dec 22, 2013 after which time the Concessioner will not be authorized to provide these visitor services.

i.	Charter fishing trips
ii.	Guided canoe or kayak excursions, which could include multi day trips to and from Flamingo
iii.	Fishing classes (flats fishing techniques, fly fishing, etc.)
iv.	Visitor boat transfer services from Flamingo Bay to and from Whitewater Bay
v.	Boat towing services
vi.	Two houseboats available to rent in addition to the two required houseboats
vii.	Shuttle service to popular local destinations
viii.	Rental equipment such as binoculars, ice chests, tents
ix.	'Step on' guide service
x.	Sailing tours of Florida Bay
xi.	Kayak and bike rentals

(b) Operation and Quality of Operation

- (1) 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.
- (2) The Concessioner shall provide employee housing for employees in the Flamingo District so long as it provides the visitor services described above. The Concessioners charges to its employees for this housing must be reasonable.

(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 Operating Plan that are in furtherance of the purposes of this Contract and are not inconsistent with the terms and conditions of the main body of this Contract.

(d) Merchandise and Services

- (1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this Contract, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.
- (2) All promotional material, regardless of media format (i.e. printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this Contract must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.
- (3) The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

(e) Rates

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

(f) Impartiality as to Rates and Services

- (1) Subject to Section (f)(2) and (f)(3), in providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit B.
- (2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this Contract. However, the Director reserves the right to review and modify the Concessioner's complimentary or reduced rate policies and practices as part of its rate approval process.

- (3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation, and other specified services necessary for conducting official business in accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

SEC. 4. CONCESSIONER PERSONNEL

- (a) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this Contract.
- (b) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit B.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) 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 thereunder by the Concessioner and the administration of it by the Director, shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this Contract at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this Contract. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this Contract.

(b) Notice

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

(c) How and Where to Send Notice

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

Superintendent
Everglades National Park
40001 State Road 9336
Homestead, FL 33034
Attention:

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

Everglades National Park Boat Tours, Inc.
PO Box 686
Everglades City, FL 34139
Attn: Sammy Hamilton, Jr.

SEC. 6. ENVIRONMENTAL AND CULTURAL PROTECTION

(a) Environmental Management Objectives

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

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

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

(b) Environmental Management Program

- (1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this Contract. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.
- (2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and complexity of the EMP may vary based on the type, size and number of Concessioner activities under this Contract.
- (3) The EMP shall include, without limitation, the following elements:
- (i) Policy. The EMP shall provide a clear statement of the Concessioner's commitment to the Environmental Management Objectives.
 - (ii) Goals and Targets. The EMP shall identify environmental goals established by the Concessioner consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (i.e. measurable results and schedules) to achieve these goals.
 - (iii) Responsibilities and Accountability. The EMP shall identify environmental responsibilities for Concessioner employees and contractors. The EMP shall include the designation of an environmental program manager. The EMP shall include procedures for the Concessioner to implement the evaluation of employee and contractor performance against these environmental responsibilities.
 - (iv) Documentation. The EMP shall identify plans, procedures, manuals, and other documentation maintained by the Concessioner to meet the Environmental Management Objectives.
 - (v) Documentation Control and Information Management System. The EMP shall describe (and implement) document control and information management systems to maintain knowledge of Applicable Laws and BMPs. In addition, the EMP shall identify how the Concessioner will manage environmental information, including without limitation, plans, permits, certifications, reports, and correspondence.
 - (vi) Reporting. The EMP shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Director under this Contract.

- (vii) Communication. The EMP shall describe how the environmental policy, goals, targets, responsibilities and procedures will be communicated throughout the Concessioner's organization.
- (viii) Training. The EMP shall describe the environmental training program for the Concessioner, including identification of staff to be trained, training subjects, frequency of training and how training will be documented.
- (ix) Monitoring, Measurement, and Corrective Action. The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will self-assess its performance under the EMP, at least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The self-assessment should ensure the Concessioner's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the Concessioner to correct any deficiencies identified by the self-assessment.

(c) Environmental Performance Measurement

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

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

- (1) Inventory of Hazardous Substances and Inventory of Waste Streams. The Concessioner shall submit to the Director, at least annually, an inventory of federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the Concessioner in operations under this Contract. The Concessioner shall obtain the Director's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this Contract. The Concessioner shall also submit to the Director, at least annually, an inventory of all waste streams generated by the Concessioner under this Contract. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.
- (2) Reports. The Concessioner shall submit to the Director copies of all documents, reports, monitoring data, manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessioner shall also submit to the Director any environmental plans for which coordination with Area operations are necessary and appropriate, as determined by the Director in accordance with Applicable Laws.
- (3) Notification of Releases. The Concessioner shall give the Director immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area, (whether solid, semi-solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

- (4) **Notice of Violation.** The Concessioner shall give the Director in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.
- (5) **Communication with Regulatory Agencies.** The Concessioner shall provide timely written advance notice to the Director of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessioner related to compliance with Applicable Laws concerning operations under this Contract. The Concessioner shall also provide to the Director any written materials prepared or received by the Concessioner in advance of or subsequent to any such communications. The Concessioner shall allow the Director to participate in any such communications. The Concessioner shall also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

(e) Corrective Action

- (1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the Concessioner's operations under this Contract, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.
- (2) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, or transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

(f) Indemnification and Cost Recovery for Concessioner Environmental Activities

- (1) The Concessioner shall indemnify the United States in accordance with Section 11 of this Contract from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts' fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this Contract.
- (2) If the Concessioner does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section shall preclude the Concessioner from seeking to recover costs from a responsible third party.

(g) Weed and Pest Management

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

(h) Protection of Cultural and Archeological Resources.

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

SEC. 7. INTERPRETATION OF AREA RESOURCES

(a) Concessioner Obligations

- (1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area as reflected in Area planning documents, mission statements and/or interpretive prospectuses.
- (2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this Contract.
- (3) The Concessioner is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessioner.

(b) Director Review of Content

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

SEC. 8. CONCESSION FACILITIES USED IN OPERATION BY THE CONCESSIONER

(a) Assignment of Concession Facilities

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

(b) Concession Facilities Withdrawals

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

- (1) The withdrawal is necessary for the purpose of conserving, preserving or protecting Area resources or visitor enjoyment or safety;
- (2) The operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or
- (3) Land or real property improvements assigned to the Concessioner are no longer necessary for the concession operation.

(c) Effect of Withdrawal

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

(d) Right of Entry

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

(e) Personal Property

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

(f) Condition of Concession Facilities

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

(g) Utilities

- (1) The Director may provide utilities to the Concessioner for use in connection with the operations required or authorized hereunder when available and at rates to be determined in accordance with Applicable Laws.
- (2) If the Director does not provide utilities to the Concessioner, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area.

SEC. 9. MAINTENANCE

(a) Maintenance Obligation

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

(b) Maintenance Plan

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

(c) Repair and Maintenance Reserve

- (1) The Concessioner shall establish and manage a Repair and Maintenance Reserve for so long as it provides the visitor services in the Flamingo District as described in Section 3 of this Contract. The funds in this Reserve shall be used to carry out, on a project basis in accordance with Exhibit E, repair and maintenance of Concession Facilities in the Flamingo District that are non-recurring within a seven-year time frame. Such projects may include repair or replacement of foundations, building frames, window frames, sheathing, subfloors, drainage, rehabilitation of building systems such as electrical, plumbing, built-in heating and air conditioning, roof replacement and similar projects. Projects will be carried out by the Concessioner as the Director shall direct in writing in advance of any expenditure being made and in accordance with project proposals approved by the Director. No projects may be commenced until the Concessioner receives written approval from the Director.
- (2) Projects paid for with funds from the Repair and Maintenance Reserve will not include routine, operational maintenance of facilities or housekeeping and groundskeeping activities. Nothing in this section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Concession Facilities or housekeeping and groundskeeping responsibilities as required by this Contract from Concessioner funds exclusive of the funds contained in the Repair and Maintenance Reserve.
- (3) The Concessioner shall establish within its accounting system a Repair and Maintenance Reserve. The Concessioner shall debit to this Reserve, within fifteen (15) days after the last day of each month that the Concessioner operates a sum equal to: one and four tenths percent (1.4%) of the Concessioner's gross receipts from the operations for the previous month. If the Concessioner fails to make timely debits to the Repair and Maintenance Reserve, the Director may terminate this Contract for default or may require the Concessioner to post a bond in an amount equal to the estimated annual Repair and Maintenance Reserve allocation, based on the preceding year's gross receipts.

- (4) The balance in the Repair and Maintenance Reserve shall be available for projects in accordance with the Reserve's purpose. For all expenditures made for each project from the Repair and Maintenance Reserve, the Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Director. Failure to expend Repair and Maintenance Reserve Funds when directed by the Director shall be considered as a material breach of this Contract for which the Director may seek monetary damages and other legal relief, including, without limitation, termination of this Contract.
- (5) Repair and Maintenance Reserve funds shall not be used for a major rehabilitation as defined in 36 CFR, Section 51.51. The Concessioner shall obtain no ownership, Leasehold Surrender Interest, or other compensable interest as a consequence of the expenditure of Repair and Maintenance Reserve funds.
- (6) Any Repair and Maintenance Reserve funds not duly expended by the Concessioner as of the termination or expiration of this Contract shall be retained by the Concessioner (subject to otherwise applicable terms and conditions 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 twelve percent (12 %) of the Concessioner's gross receipts for the preceding year or portion of a year for the ten (10) years of the Contract, until Dec 22, 2018.
- (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 shall be deposited electronically by the Concessioner in accordance with All Applicable Laws.

(c) Interest

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

(d) Adjustment of Franchise Fee

- (1) The Concessioner or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this Contract, a reconsideration and possible subsequent adjustment of the franchise fee established in this section. For the purposes of this section, the phrase "extraordinary, unanticipated changes" shall mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this Contract which have or will significantly affect the probable value of the privileges granted to the Concessioner by this Contract. For the purposes of this section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this Contract.
- (2) The Concessioner or the Director must make a request for a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this Contract.
- (3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fee.
- (4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, prospectively as of the date of agreement.
- (5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee in accordance with this section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.
- (6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel shall establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.
- (7) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee

(up, down or unchanged) that is consistent with the probable value of the privileges granted by this Contract within sixty (60) days of the presentations.

- (8) Any adjustment to the franchise fee resulting from this section shall be prospective only.
- (9) Any adjustment to the franchise fee will be embodied in an amendment to this Contract.
- (10) During the pendency of the process described in this section, the Concessioner shall continue to make the established franchise fee payments required by this Contract.

SEC. 11. INDEMNIFICATION AND INSURANCE

(a) Indemnification

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

(b) Insurance in General

- (1) The Concessioner shall obtain and maintain during the entire term of this Contract at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this Contract as determined by the Director. The initial insurance requirements are set forth below and in Exhibit F. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in similar circumstances. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.
- (2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.
- (3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessioner shall provide the Director immediate written notice of any material change in the Concessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverages.

(c) Commercial Public Liability

- (1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees, agents or contractors, in carrying out the activities and operations required and/or authorized under this Contract.
- (2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this Contract, as more specifically set forth in Exhibit F. Furthermore, the commercial general liability package shall provide no less than the coverages and limits described in Exhibit F.
- (3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.
- (4) From time to time, as conditions in the insurance industry warrant, the Director may modify Exhibit F to revise the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

(d) Property Insurance

- (1) In the event of damage or destruction, the Concessioner will repair or replace those Concession Facilities and personal property utilized by the Concessioner in the performance of the Concessioner's obligations under this Contract.
- (2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on Concession Facilities for all or part of their replacement cost as specified in Exhibit F in amounts no less than the Director may require during the term of the Contract. The minimum values currently in effect are set forth in Exhibit F.
- (3) Commercial property insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear.
- (4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities and/or personal property utilized in the Concessioner's operations under this Contract, as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 12 shall apply to such insurance proceeds. The Concessioner shall not be relieved of its obligations under subsection (d)(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.
- (5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States. 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 coverages and amounts described in Exhibit F.

SEC. 12. BONDS AND LIENS

(a) Bonds

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

(b) Lien

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

SEC. 13. ACCOUNTING RECORDS AND REPORTS

(a) Accounting System

- (1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this Contract, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.
- (2) If the Concessioner's annual gross receipts are \$250,000 or more, the Concessioner must use the accrual accounting method.
- (3) In computing net profits for any purposes of this Contract, the Concessioner shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this Contract by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

(b) Annual Financial Report

- (1) The Concessioner shall submit annually as soon as possible but not later than one hundred twenty (120) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").
- (2) If the annual gross receipts of the Concessioner are in excess of \$1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance

with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

- (3) If annual gross receipts are between \$500,000, and \$1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with 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 Financial Reports

- (1) 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.
- (2) Statements of Reserve Activity. The Concessioner shall submit annually, not later than one hundred twenty (120) days after the end of the Concessioner's accounting year, a statement reflecting total activity in the Maintenance Reserve for the preceding accounting year. The statement must reflect monthly inflows and outflows on a project by project basis.

SEC. 14. OTHER REPORTING REQUIREMENTS

The following describes certain other reports required under this Contract:

(a) Insurance Certification

As specified in Section 11, the Concessioner shall, at the request of the Director, provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this Contract. The Concessioner shall give the Director immediate written notice of any material change in its insurance program, including without limitation, any cancellation of required insurance coverages.

(b) Environmental Reporting

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

(c) Miscellaneous Reports and Data

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

SEC. 15. SUSPENSION, TERMINATION, OR EXPIRATION**(a) Suspension**

The Director may temporarily suspend operations under this Contract in whole or in part in order to protect Area visitors or to protect, conserve and preserve Area resources. No compensation of any nature shall be due the Concessioner by the Director in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

(b) Termination

- (1) The Director may terminate this Contract at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit visitor services in the Area to those that continue to be necessary and appropriate.
- (2) The Director may terminate this Contract if the Director determines that the Concessioner has materially breached any requirement of this Contract, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only those visitor services required or authorized by the Director pursuant to this Contract, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program and the requirement to comply with Applicable Laws.
- (3) In the event of a breach of the Contract, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the Contract for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the Contract for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 15(a).
- (4) The Director may terminate this Contract upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this Contract or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this Contract if the Director determines that the Concessioner is unable to perform the terms of Contract due to bankruptcy or insolvency.
- (5) Termination of this Contract for any reason shall be by written notice to the Concessioner.

(c) Notice of Bankruptcy or Insolvency

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

(d) Requirements in the Event of Termination or Expiration

- (1) In the event of termination of this Contract for any reason or expiration of this Contract, no compensation of any nature shall be due the Concessioner in the event of a termination or expiration of this Contract, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.
- (2) Upon termination of this Contract for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner shall, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, repair any injury occasioned by installation or removal of such property, and ensure that Concession Facilities are in at least as good condition as they were at the beginning of the term of this Contract, reasonable wear and tear excepted. The removal of such personal property must occur within thirty (30) days after the termination of this Contract for any reason or its expiration (unless the Director in particular circumstances requires immediate removal). No compensation is due the Concessioner from the Director or a successor concessioner for the Concessioner's personal property used in operations under this Contract. However, the Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner in accordance with the terms of this Contract shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.
- (3) To avoid interruption of services to the public upon termination of this Contract for any reason, or upon its expiration, the Concessioner, upon the request of the Director, shall consent to the use by another operator of the Concessioner's personal property, excluding inventories if any, not including current or intangible assets, for a period of time not to exceed one (1) year from the date of such termination or expiration. The other operator shall pay the Concessioner an annual fee for use of such property, prorated for the period of use, in the amount of the annual depreciation of such property, plus a return on the book value of such property equal to the prime lending rate, as published by the Federal Reserve System Board of Governors, effective on the date the operator assumes managerial and operational responsibilities. In such circumstances, the method of depreciation applied shall be either straight line depreciation or depreciation as shown on the Concessioner's Federal income tax return, whichever is less. To avoid interruption of services to the public upon termination of

this Contract for any reason or its expiration, the Concessioner shall, if requested by the Director, sell its existing inventory to another operator at the purchase price as shown on applicable invoices.

- (4) Prior to and upon the expiration or termination of this Contract for any reason, and, in the event that the Concessioner is not to continue the operations authorized under this Contract after its expiration or termination, the Concessioner shall comply with all applicable requirements of Exhibit G to this Contract, "Transition to New Concessioner." This Section and Exhibit G shall survive the expiration or termination of this Contract.

SEC. 16. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS

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

SEC. 17. GENERAL PROVISIONS

- (a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by the terms of Applicable Laws.
- (b) All information required to be submitted to the Director by the Concessioner pursuant to this Contract is subject to public release by the Director to the extent provided by Applicable Laws.
- (c) Subconcession or other third party agreements, including management agreements, for the provision of visitor services required and/or authorized under this Contract are not permitted.
- (d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this Contract.
- (e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.
- (f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit that may arise from this Contract but this restriction shall not be construed to extend to this Contract if made with a corporation or company for its general benefit.

- (g) This Contract is subject to the provisions of 43 CFR, Part 42, 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 on the dates shown below.

CONCESSIONER

UNITED STATES OF AMERICA

BY: 
 Sammy Hamilton, Jr. (President)
 Everglades National Park Boat Tours, Inc.

BY: 
 Director
 National Park Service

DATE 12-17-2008

DATE 12-23-08

[CORPORATIONS]

ATTEST:
 BY: 
 TITLE: SEC

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DRAFT OPERATING PLAN**

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INTRODUCTION

This Operating Plan between Everglades National Park Boat Tours, Inc. (hereinafter referred to as the "Concessioner") and the National Park Service (hereinafter referred to as the "Service") describes specific operating responsibilities of the Concessioner and the Service with regard to those lands and facilities within Everglades National Park (hereinafter referred to as "the Area") that are assigned to the Concessioner for the purposes authorized by the Contract.

In the event of any conflict between the terms of the Contract and this Operating Plan, the terms of the Contract, including its designations and amendments, shall prevail.

This plan will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of the Area.

Any revisions shall not be inconsistent with the terms and conditions of the main body of the Contract. Any revisions must be reasonable and in furtherance of the purposes of the Contract.

When the words "must," "shall," or "will" are used in this plan, they shall all mean that an obligation is mandatory and no distinction in the mandatory character shall be made or is it intended based on the choice among these words.

1) Responsibilities

A) Concessioner

- (1) Since this Contract contains operations at two locations, Flamingo and Gulf Coast, the Concessioner will designate a general manager for each location.
- (2) With respect to his/her location each general manager will:
 - (a) Have the authority and the managerial experience for operating the designated Concession Facilities and required and authorized services within the Area;
 - (b) Employ a staff with the expertise and training to operate all services authorized under the Contract;
 - (c) Have full authority to act as a liaison in all concession administrative and operational matters within the Area; and,
 - (d) Be responsible for implementing the terms of the Contract.
- (3) In the absence of the general manager or the assistant general manager, the Concessioner will designate an acting "manager on duty" for each of the two locations.

B) Everglades National Park

The Superintendent is the Area manager with responsibility for all 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 relating to the Area. These activities include:

- (1) evaluation of Concessioner services and Concessioner facilities;
- (2) review and approval of rates charged for all commercial services;
- (3) review and approval of all changes to Concessioner facilities; and

(4) delivery of a current Service staff list, as needed, to the Concessioner with all appropriate points of contact.

2) General Operating Standards and Requirements

A) Schedule of Operations

The Concessioner will provide the required services for Area visitors on a year-round or seasonal basis. Ninety days prior to requested implementation, the Concessioner annually will submit a schedule of proposed opening and closing hours and tour schedules. The usual peak operating season will run from November to April. The Service will approve the exact opening and closing hours and tour schedules each year in writing 45 days prior to the date on which the Concessioner intends to implement the schedules. The Service will give reasonable notice in writing of any schedule changes it may initiate.

B) Minimum Operating Season and Hours

The minimum hours of operation will be as follows:

Flamingo	Seasonal	Year-Round
Marina store	6:00am - 8:00pm November to April 7:00am - 7:00pm Weekdays, April to November 6:00am - 7:00pm Weekends, April to November	
Whitewater Bay tours	Minimum 2 trips per day (May to October) Minimum 3 trips per day (November to April)	
Florida Bay tours	10:00am, 12:00pm, 2:00 pm, Sunset Tour (time varies) November to April 2:00pm only April to November	
Canoe/kayak/skiff rentals		7:00am - 4:00pm
Bike rentals		7:00am - 4:00pm
Fuel service	6:00am -7:00pm November to April 7:00am - 7:00pm Weekdays, April to November 6:00am -7:00pm Weekends, April to November	
Slip rentals	6:00am - 8:00pm November to April 7:00am -7:00pm Weekdays, April to November 6:00am -7:00pm Weekends, April to November	
Houseboat rentals*	7:00am -5:00pm November to April 7:00am - 7:00pm Weekdays, April to November 6:00am -7:00pm Weekends, April to November	
Food & beverage*	11:00am - 7:00pm, November to April	
Tiki Bar*	12:00pm - 7:00pm, November to April	

* Suggested Minimum Operating Hours

Gulf Coast	Seasonal	Year-Round
Gift shop		8:30am - 5:00pm
10K Islands tours	Every ½ hour starting at 9:00am until 4:30pm, November to April Every hour on the ½ hour starting at 9:30am until 4:30pm, November to April	
Mangrove Wilderness tours		9:00am 11:00am 1:00pm 3:00pm
Canoe rentals		8:30am - 2:00pm

C) Rate Determination and Approval Process

- (1) *Rate Determination.* The Service ensures that the Concessioner's rates and charges to the public are commensurate with the level of services and facilities provided, and are reasonable, justified, and comparable with similar facilities and services provided by the private sector. The Service will judge reasonableness of rates based upon current Service rate approval guidelines. Rate approval methods are subject to review to ensure that they remain comparable with similar services offered outside of the Area. The currently approved rate method is comparability for all services and facilities *except* for the following:
 - (a) Merchandise, including gifts and souvenirs, is approved by competitive market declaration. On an annual basis, the Service will approve prices for convenience store items based on Service-provided markup percentages and a list of Category Definitions for merchandise and foodservice as compiled by the National Association of Convenience Stores (NACS). The Concessioner will identify the categories/definitions selected for merchandise being sold as a part of its rate request.
- (2) *Request Submittal for Rate Determination and Approval Process.* The Concessioner will submit all requests for rate changes in writing, at least 60 days prior to the anticipated implementation date(s), brochure publication dates, and customer notification. The rate change requests will be supported by established Service criteria and comparable data. The current Service rate approval guidelines outline the information the Concessioner must include in the request. The Service will evaluate rates once per year, using comparables it selects, unless extenuating circumstances require reevaluation. The Service will consider alternative rate settings methodology to reflect substantial changes in service quality, expenditures, or required investment.
- (3) *Rate Approval*
 - (a) *Approval Timing.* The Service will approve, disapprove or adjust rates and will inform the Concessioner within 45 days after the Service's receipt of the Concessioner's rate request submittal.
 - (b) *Approved Rate Posting.* The Concessioner will post rates for tour boats, houseboats, and skiff/canoe/kayak rentals at all service payment areas.
- (4) *Rate Compliance.* The Service periodically will conduct on-site comparability studies with follow-up telephone calls to update rate information in accordance with current concession rate reviews. The Service will check rate compliance during periodic operation evaluations and throughout the year. Approved rates will remain in effect until superseded by written changes approved by the Superintendent.
- (5) *Reduced Rates for Federal Government Employees.* Reduced rates for Federal Government employees on official business will be part of the approved rate schedules. Goods and services may not be provided to government employees or their families without charge or at reduced rates, except within the provisions described above or as available to the general public.

D) Purchasing

- (1) *Competitive Purchasing*. The Concessioner may purchase from a facility operated or owned by the Concessioner or a parent company, provided such products are comparable in quality and price to similar products offered for sale on the open market.
- (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 Products*
 - (a) General. Where economically and technically feasible and appropriate, the Concessioner will use environmentally preferable products and services. The Concessioner will develop a list of environmentally friendly (i.e., "green") products and acceptable alternatives for use in all of their operations and will provide the list to the Service for review and for information purposes.
 - (b) Prohibited Materials. The use of polystyrene plastics (e.g., Styrofoam®), and halogenated solvents is prohibited.
 - The Concessioner will minimize or eliminate the use of products in aerosol containers.
 - The Concessioner will eliminate chlorinated janitorial and cleanup products in use and in storage within six months of the effective date of the Contract.
 - (c) The Concessioner will eliminate non-chlorinated solvents and replace them with alternative within six months of the effective date of the Contract.
 - (d) The Concessioner will purchase and use the following where economically and technically feasible and appropriate:
 - Biobased lubricants as an alternative to petroleum based lubricants;
 - Rerefined motor oil;
 - Biodiesel fuel;
 - Propylene glycol antifreeze as an alternative to ethylene glycol antifreeze;
 - Reusable and recyclable products;
 - Bulk products and products with less packaging; and,
 - Products with recycled and/or organic content (e.g., plastic bags and food wrap, paper products, and retail clothing).

E) Operations Evaluations

The Concessioner will manage operations and service to ensure the protection of resources, compliance with public health and risk management requirements, and provision of satisfactory services and accommodations for the Area visitor within the assigned areas of responsibility. The Concessioner's operation of accommodations, facilities, and services authorized by the Contract will conform to the evaluation standards set forth in the current Service concession management guidelines, which may be amended from time to time. The Service's evaluation of facilities and services is a component of the Concessioner's annual overall rating.

The Service and the Concessioner will separately inspect and monitor Concession Facilities and services; such inspection and monitoring shall include consideration of

applicable Service policies, authorized rates, risk management, public health, environmental compliance, impacts on cultural and natural resources, integrated pest management policies, identified maintenance and operating deficiencies, and visitor satisfaction and concerns. The Service will assess the Concessioner's compliance with Applicable Laws during the inspection.

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 the time periods set by the Service.

(1) *Periodic Operations Inspections*

- (a) **Service Inspections.** The Service will conduct both announced and unannounced periodic inspections of Concession Facilities and services. The Service will contact the Concessioner at the time of evaluations so that a representative of the Concessioner may accompany the Service evaluator.
- (b) **Outside-party Inspections.** The Service may retain an outside organization to perform unannounced reviews ("mystery shoppers," for example) of the operation to ensure conformance to evaluation standards.
- (c) **Area Annual Report.** The Concessioner will receive an annual performance evaluation by March 30 for the preceding calendar year. The Superintendent and/or his/her representative(s) will be available to meet with the Concessioner to discuss the annual evaluation, which includes contractual, operational, public health, environmental, and risk management components.

(2) *Health and Safety Inspections*

- (a) **United States Coast Guard (USCG) Inspections.** The Concessioner must obtain the required USCG inspection for all Concessioner vessels. The Concessioner must provide a copy of the results of all USCG inspections and other USCG correspondence to the Superintendent within 30 days of any inspection and a copy of the Certificate of Inspection when received. In the event that any violations identified in the course of these inspections limit the ability of the Concessioner to continue to conduct operations, the Concessioner will notify the Superintendent within 24 hours of receiving such notification of violation(s) by the USCG.
- (b) **Public Health Inspections**
 - A representative of the U.S. Public Health Service will conduct periodic inspections.
 - The Concessioner will demonstrate a commitment to visitor safety by planning for safe food storage, handling and preparation. The Concessioner must document its compliance with public health standard operating procedures, processes, personnel responsibilities, and training in a separate food safety management plan or in a plan incorporated into existing business/operating plans.
 - Any inspection performed by any other entity with jurisdiction (for example, a County Health Service) will be provided to the Superintendent within 5 days of the Concessioner's receipt of a report of inspection.

- (c) **Concessioner Risk Management Inspection.** The Concessioner shall designate a safety/risk manager in its Risk Management Plan prepared, pursuant to Section 1) H of this plan. The Concessioner's Safety/Risk Manager will perform periodic interior and exterior safety inspections of all Concession vessels, in accordance with the Concessioner's Risk Management Plan. The Concessioner's Safety/Risk Manager will also periodically conduct inspections of land-based facilities used for services provided by the Concessioner under the Contract, including inspections of employee housing areas in Flamingo. Reports or findings identified during safety inspections will be made available to the Superintendent upon request. The Concessioner will assure employee compliance with all Applicable Laws, including, without limitation, local codes regarding health, fire and safety.
- (d) **Service Risk Management Inspections.** The Service may periodically conduct a comprehensive safety and occupational health evaluation of all concession operations and facilities, in addition to any other reviews allowed under the Contract.
- (3) ***Fire Inspections.***
- (a) **Concessioner Responsibility.** The Concessioner will have a qualified professional perform interior and exterior fire inspections of all concession facilities, and vessels used in the Concessioner's operations within 30 days of the effective date of the contract and annually thereafter. Further, such inspections shall be performed within 30 days of delivery of any vessel. The Concessioner must maintain written records, verifying the completion of such inspections and make these records available to the Service upon request.
- (b) **Evacuation and Fire Drills.** The Concessioner will conduct routine evacuation and fire drills of its facilities and vessels as required by Applicable Laws and the Risk Management Plan.
- (4) ***Environmental Audit.*** The Service's Environmental Audit Program evaluates Concessioner Facilities and operations compliance with all Applicable Laws, including without limitation, environmental requirements; implementation of best management practices; and awareness and accountability for environmental management. Generally, the Service conducts audits every 3 to 5 years. The Concessioner's Environmental Management Program (EMP) will be based on the international standard ISO 14001:2004. The Concessioner will successfully complete a registration audit against all clauses of the ISO by an internationally accredited registrar using approved international protocols within twelve (12) months of the effective date of the contract. The Concessioner will maintain this EMP for the duration of the Contract with annual surveillance audits and full system audits every three years.
- (5) ***Concessioner Environmental Inspections.*** The Concessioner will inspect facilities, equipment, and operations under this Contract in accordance with Applicable Laws addressing environmental compliance and in accordance with procedures described in its Environmental Management Program (EMP).
- (6) ***Visitor Comments.*** The Concessioner will make Service-approved comment cards available to visitors to measure service and quality standards, product mix, pricing,

and overall Area experience. The Concessioner must have an adequate inventory of comment cards available at appropriate locations within its facilities at all times.

- (a) The Concessioner will investigate and respond to all visitor complaints.
 - (b) The Concessioner will forward to the Superintendent by the 15th day of each month, a summary of all comments and complaints received on comment cards or any other form of documentation.
 - (c) The Service will forward to the Concessioner all comments and 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 forward a copy of responses to the Superintendent, and a copy of any Service response will be forwarded to the Concessioner.
- (7) *Interpretive Audit Program.* The Service will evaluate Concessioner interpretive and informational visitor services to ensure interpretive appropriateness, accuracy, quality, and the relationship of interpretive presentations to Park themes.

F) General Requirements

- (1) *Reservations.* The Concessioner will utilize a computerized reservation system that must accommodate requests for all services for which reservations are offered. The Concessioner may utilize its own reservation system or use the Service's reservation service provider, the National Recreation Reservation Service (<http://www.recreation.gov>). Any proprietary website must clearly identify the concession as a Service authorized concession.
- (2) The Concessioner may accept individual and group tour boat reservations no more than one year in advance of the requested dates. Groups may not reserve more than one specific tour per day (for example, at Flamingo a group could reserve one Whitewater Bay Boat Tour and one Florida Bay Boat Tour). The refund policy for group bookings is part of the rate approval process.
 - (a) The Concessioner may not over-book a tour. The Concessioner must immediately notify visitors of the cancellation of a reserved tour due to weather or vessel maintenance.
 - (b) At a minimum, the Concessioner must accept reservations via telephone, mail, fax, and e-mail.
 - (c) The Concessioner's deposit requirement and refund policy is part of the rate approval process. The policy must be included in all brochures and reservation confirmations.
 - (d) The Concessioner may require a deposit to hold a reservation and will accept cash, check, money order, or major credit card for such purpose.
 - (e) Refunds will be processed within two weeks of cancellation. If a cancellation is made more than three (3) calendar days before the date of the reservation, the deposit will be refunded in full, less an administrative fee to be approved by the Service. The Concessioner will submit its administrative fee schedule with each rate request. If the cancellation is made between three (3) days and one (1) day before the date of the reservation, fifty percent (50%) of the deposit is forfeited. No administrative fee will be charged for cancellations made between three (3)

and one (1) day prior to the date of the reservation. If the cancellation is made less than one (1) day prior to the reservation, the deposit is forfeited in full.

- (f) The Concessioner will submit for Service approval its policy on future bookings for the upcoming year. The policy will include how future reservations and accommodating walk-in demand will be balanced, package rates (if offered), and treatment of group commissions. This policy will be submitted in conjunction with any rate change approval requests.
- (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 and vessels. This program will integrate with the Area's existing 'lost and found' system. The Concessioner will provide the Service a written description of the rules for and method of implementing the initial 'lost and found' program within 30 days of the effective date of the Contract. The Concessioner will provide written changes to the program to the Service in advance of implementation.
- (4) *Deliveries.* Delivery trucks and delivery times at all Concession Facilities should not interfere with business operations during peak visitor times of day. Deliveries should utilize non-public areas to the extent possible.
- (5) *Credit Cards.* The Concessioner will honor government-issued credit cards and, at a minimum, American Express, MasterCard, Visa, and Discover. The Concessioner will accept debit cards.
- (6) *Vehicles and Vessels*
 - (a) *Registration, Licensing, Maintenance.* The Concessioner will ensure that all vehicular equipment and vessels used by the Concessioner are properly registered, licensed and maintained in accordance with all Applicable Laws.
 - (b) *Concessioner Parking.* The Concessioner and its employees will only use Service-approved designated areas to park and will store vehicles and equipment in a safe, organized manner.
 - (c) *Identification.* The Concessioner will discreetly identify its vehicles with the company name and logo.
- (7) *Interaction with Wildlife.* The feeding of wildlife within the Area is prohibited. The Concessioner will not encourage nor inadvertently facilitate the feeding of wildlife at any facility within its land assignment by displaying food in such a manner that may imply approval of the feeding of wildlife. The Concessioner will completely control and contain all food supplies and waste materials and containers, within the Concession Facilities and vessels, in order to avoid attracting wildlife.
- (8) *Employee Housing at Flamingo*
 - (a) The Concessioner will provide housing for its employees. The Concessioner must provide adequate cooking and food storage facilities. The Concessioner will ensure that food storage facilities are vermin-proof and that preventative measures are in place for Hantavirus.
 - (b) The Concessioner will manage its housing rental on a cost-recovery basis and not as a profit center. The Concessioner will ensure that the rental charges do not exceed an employee's earnings as a result of any mandatory reduction in work. A

mandatory reduction in work refers to a loss of work that is beyond the control of the employee (i.e. reduced hours during the summer months).

- (c) The Concessioner will designate a supervisor for employee housing and provide the supervisor's name and contact information to the Superintendent.
- (d) The Concessioner will not allow pets in shared housing. The Concessioner may allow up to two pets in RV housing. Employee pet owners are subject to the same pet restrictions as Area visitors, which are set forth under the provisions of 36 CFR. § 2.15 and in the Superintendent's Compendium.
- (e) The Concessioner will assign no more than two occupants per dorm room and must furnish employee rooms adequately to serve the number of occupants.
- (f) The Concessioner will inform employees residing in the Concessioner's employee housing area of Service regulations and policies, including but not limited to those regulations regarding residency within the Area, through employee orientation, newsletters, and official advisories and notices provided by the Concessioner or the Service.
- (g) The content of the employee housing agreement and the employee housing rules and regulations are subject to the review and approval of the Superintendent. The employee housing agreement will specify housing rates for employees, deposit and refund policies, and assignment of quarters policies.
- (h) The Concessioner must designate a smoking area for its employees near the dormitory area, subject to approval by the Superintendent. The Concessioner is encouraged to offer appropriate recreational activities for its employees.

G) Human Resources Management

- (1) *Employee Identification and Appearance.* At a minimum, the Concessioner must issue all employees an employee photo identification card that includes their name and an expiration date based on the employee's anticipated departure date. The Concessioner must collect the identification cards upon termination of employment or at the end of the season for seasonal employees. The Concessioner must ensure that all employees in direct contact with the general public wear uniforms or standardized clothing with their personal nametags. Employees must be neat and clean in appearance and project a hospitable, positive, friendly and helpful attitude. At the beginning of this Contract, the Concessioner must obtain the Superintendent's approval of the uniforms. Thereafter, the Concessioner must obtain the Superintendent's approval for any changes.
- (2) *Employee Hiring Procedures.*

General Manager. In addition to the qualifications of the general managers set out in Section 1) A) above, these managers must have an extensive background in the marine tour boat industry. The general manager at Flamingo also must have experience in the food and beverage industry.
- (3) *Staffing Requirements.* The Concessioner must adequately staff all operations, including reservations, and increase the number of staff, as necessary, to meet the Concessioner's staffing needs during seasonal peak periods.
 - (a) Drug-free Environment. The Concessioner must maintain, to the greatest extent possible, a drug-free workplace environment. The Concessioner will conduct

educational program(s) for its employees to deter substance and alcohol abuse. All employees who are either (1) in safety sensitive positions (e.g. tour boat captains), or (2) in positions where a federal or state law so requires, must participate in a drug-testing program. Should illegal drug use occur, the Concessioner promptly must report the use and subsequent action taken to the Chief Ranger or his or her designee.

- (b) **Background Checks**. The Concessioner must establish hiring policies that will include appropriate background reviews of applicants for employment. The Concessioner will submit these policies for the review of the Superintendent within 90 days following the effective date of the Contract. If the Concessioner amends these policies substantively, it must submit the amendment for the review of the Superintendent. The Concessioner may coordinate with the Service to assist in securing background information prior to hiring new employees. The Concessioner will make appropriate hiring decisions in consideration of the information obtained.
- (c) **Boat Captain Certification**. Within 15 days of the effective date of the Contract and within 48 hours of hiring a new Boat Captain or the renewal of the license of an existing boat captain, the Concessioner will forward to the Superintendent a copy of the Boat Captain's current operating license.
- (d) **Driver Requirements**. Drivers of all Concessioner vehicles must have a valid state operator's license for the size and class of vehicle being driven.
- (e) **Park Employees**. The Concessioner may not employ the spouse or dependents of the Superintendent, Deputy Superintendent, Concessions Management staff, or Park Safety Officer. The Concessioner may not employ in any status any Park employee, his/her spouse, or minor children without the prior written consent of the Superintendent.

(4) *Training*

- (a) **Safety**. The Concessioner must train its employees annually according to the training requirements in its Risk Management Plan.
- (b) **Orientation and Training**. The Concessioner must provide mandatory employee orientation and training and will inform employees of Area regulations and requirements that affect their employment and activities while working and residing in Everglades National Park. The Concessioner will provide the orientation to all employees at the start of employment, with refresher training provided as necessary or required by Applicable Laws. Topics at orientation will include, at a minimum, the mission and policies of the Service, an orientation to the Area, initial response fire suppression, public health and sanitation, risk management, and Park regulations. The Service may monitor this training and may periodically assist the Concessioner on request.
- (c) **Hospitality Training**. The Concessioner must provide hospitality training for employees who have direct visitor contact. Food and Beverage employees will receive training as specified in Section 6 (D) (1) (d) and Section 6 (D) (2) (c) of the operating plan.

- (d) Environmental Training. The Concessioner must provide general resource protection and environmental awareness training to all employees according to the requirements in its Environmental Management Plan.
 - (e) Interpretive Training. The Concessioner must provide interpretive skills training for all employees who provide interpretive, informational, and safety orientation information/services. The Concessioner also must require employees who provide interpretation on its tour boats to attend Service training for seasonal interpreters. The Concessioner must pay its employees while they are attending the seasonal interpretive training. The Concessioner must work closely with the Chief of Interpretation and Visitor Services or his or her designee to improve the methods of preparing and presenting effective interpretive information. The Chief of Interpretation and Visitor Services or his or her designee periodically evaluates interpretive visitor services to ensure appropriateness, accuracy, and the relationship to Area interpretive themes. See requirements in Sections 6 (A) (2) (c) and (d).
 - (f) Employee Handbook. The Concessioner must provide all employees with a copy of the Concessioner's employee handbook, which will specifically identify applicable policies and regulations of the Concessioner and the Service and will address resource protection and environmental management. The Concessioner must provide a copy of all employee handbooks to the Superintendent for a 30-day period of review prior to distribution to employees. When the handbook is updated, the Concessioner will forward a copy to the Superintendent.
- (4) *Employee Conduct*. The Concessioner must review the conduct of any of its employees whose actions or activities are considered by the Service or Concessioner to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors. The Concessioner must take appropriate actions to fully correct any such situation.

H) Risk Management Plan

- (1) The Concessioner must develop, maintain, and implement a Concessioner Risk Management Plan that is in accordance with the Occupational Safety and Health Act and Director's Order #50B, Occupational Safety and Health Program. The Concessioner must submit an initial Risk Management Plan to the Superintendent within 60 days of the effective date of this Contract, and resubmit the plan for review by the Service annually. The Concessioner must update its Risk Management Plan to ensure compliance with Applicable Laws and to respond to feedback provided by the Service.
- (2) The Concessioner's Risk Management Plan will address, at a minimum, the following components:
 - (a) Administration
 - (b) Inspections
 - (c) Deficiency Classification and Hazards Abatement Schedules
 - (d) Accident Reporting and Investigation
 - (e) Public Safety and Awareness Program
 - (f) Training

(g) **Emergency Procedures**

Implementation of the Concessioner Risk Management Plan shall include, but shall not be limited the following activities:

- (a) An employee accident/injury analysis. The Concessioner must provide an annual summary listing injury/accident types and employee lost days to the Superintendent. The summary will include additional information the Superintendent may require. The summary must compare the present year to the same data from the previous year.
- (b) Concessioner Inspections. The Concessioner must document the result of the periodic inspections of all equipment, facilities, visitor activities, and work processes to determine compliance with established safety and occupational health regulations.
- (4) The Concessioner's Risk Management Plan will be based on the British standard OHSAS 18001:2007. The Concessioner will successfully complete a conformance audit against all clauses of the standard by an internationally accredited registrar using approved international protocols within twelve (12) months of the effective date of the contract. The Concessioner will maintain this Risk Management Plan for the duration of the Contract with annual surveillance audits and full system audits every three years.

D) Vessel Standards and Operations

- (1) In addition to any other standards or requirements for vessels and their operation set forth elsewhere in the Contract, the following shall apply to all vessels, including rented vessels, and their operations;
 - (a) All outboard motors must be 4-stroke. The Concessioner must use rerefined oil, biobased lubricants, and propylene glycol-based antifreeze as technically and economically feasible. The Concessioner must inspect boat motors daily for fuel leaks and keep a record of inspection, which will be available to the Service upon request. The Concessioner must pull motors immediately from the water at the first sign of a fuel leak.
 - (b) Rental kayaks and canoes will be in colors, or have markings, that are highly visible in the water.

J) Incident Reporting.

- (1) The Concessioner must immediately report the following incidents by radio to Park Dispatch:
 - (a) Injuries. Personal injury to a visitor or crewmember that may result in a tort claim or requires medical attention.
 - (b) Hazardous Material Spills and Releases. Fuel spills or releases as defined by all Applicable Laws, including but not limited to USCG regulations.
 - (c) Interactions with Wildlife. Interactions with wildlife that involved injury to persons or wildlife, property damage, or posed a threat to humans or wildlife.

3) Utility Requirements

A) Flamingo

(1) *Concessioner*

- (a) The Concessioner must contract with independent suppliers to provide electrical and telephone services and pay those providers directly.
- (b) The Concessioner must promptly pay for electricity, fuel, refuse collection, telephone, sewage disposal, water, or any other utility or service, whether provided by a governmental authority, public, or community service company.
- (c) The Concessioner must encourage conservation of energy, water, and other resources through policies, programs, goals, and metrics.

(2) *Service*

- (a) The Service will provide water and sewer service to the Concessioner on a reimbursable basis.

B) Gulf Coast

(1) *Concessioner*

- (a) The Concessioner must contract with independent suppliers to provide electrical and telephone services and pay those providers directly.
- (b) The Concessioner must promptly pay for electricity, fuel, refuse collection, telephone, sewage disposal, water, or any other utility or service, whether provided by a governmental authority, public, or community service company.
- (c) The Concessioner must encourage conservation of energy, water, and other resources through policies, programs, goals, and metrics.

(2) *Service*

- (a) The Service will provide a fuel pump located within the marina basin for fueling the Concessioner vessels that provide services associated with the Contract. Fuel consumed by the Concessioner will be tracked (by electronic means or other). The Concessioner must replace the fuel it consumes on a regular basis, to be coordinated with the Service. The Concessioner must contract with an independent supplier to perform this service.
- (b) The Service will provide water service for the water fountain and restrooms which are located outside the jointly occupied building, Building 604. The Concessioner may use designated hose bibs by the marina basin. The hose bibs may be separately metered, in which case the Concessioner will pay the Service the cost of the water used by the Concessioner.

4) Protection and Security

A) Concessioner

- (1) The Concessioner must immediately report fatalities, injuries and illnesses, fires, boat accidents, property damage, illegal drug and controlled substance abuse, and any other activities that must be reported to local, state or federal governmental authorities to the Superintendent and to appropriate authorities as required by Applicable Laws.
- (2) The Concessioner must provide copies to the Superintendent immediately of any correspondence with the United States Coast Guard related to Concessioner's vessel operations, including any correspondence related to emergencies or other incidents.

- (3) *Hurricane Plan.* The Concessioner must, within 90 days of the effective date of the Contract, develop its own Hurricane Plan and submit the plan for the review and approval of the Service. The Concessioner's Hurricane Plan must be consistent with the Service's Hurricane Plan. The Concessioner, at the Service's request, will participate in the periodic review/revision of the Park's Hurricane Plan. The Concessioner must comply with all provisions of both Hurricane Plans. To the extent they are inconsistent, the Park's plan takes precedence.
- (4) *Fire Protection*
- (a) The Concessioner must ensure that all its vessels and Concession Facilities meet Federal, State, and Local codes and that fire detection and appropriate suppression equipment is installed, operated, and maintained in accordance with applicable National Fire Protection Association standards.
- (b) The Concessioner must report all fires immediately (even if the fire has been extinguished) to the Service and, if on board one of the Concessioner's vessels, to the Service and to the USCG.
- (5) *Emergency Medical Services ("EMS")*
- (a) On-Board Vessel Emergencies. In case of an emergency on a vessel, including a power failure, the Concessioner must:
- Ensure that its Boat Captain will contact the USCG and the Service.
 - The passengers will be kept informed of the situation and what actions are being taken.
 - A public address system capable of operating for two hours on battery power will be provided on all tour boats.
- (b) Reporting
- The Concessioner immediately must report all injuries sustained by a visitor or employee in a Concession Facility or on vessel that requires more than minor first aid treatment and all medical emergencies.
- (c) Training
- The Concessioner is encouraged to allow its employees to attend emergency medical training, including CPR, automatic external defibrillator (AED) and first aid courses provided in the local area.
 - The Concessioner must train all concession employees in proper emergency reporting procedures and how to provide essential information, e.g., a call back number at their location. All medical emergencies will be reported to the Everglades National Park Dispatch Center at (305) 242-7740 or 911 if the center is closed.
- (d) The Boat Captain and crew will be trained to handle all emergencies. The Concessioner will conduct all emergency drills required by the USCG for all crews.
- (e) Concessioner EMS Responsibilities. The Concessioner will ensure that Captains and Mates are certified in First Aid and CPR.
- (f) First Aid Kit. The Concessioner must provide a waterproof first aid kit on each tour vessel and Houseboat. Recommended items include:

1 CPR Mask	4 Pairs of Gloves
1 SAM Splint	2 4" Ace Wraps
2 Cold Packs	1 Trauma Scissors
1 Roll of 1" Medical Tape	1 Tube of Antibiotic Ointment
1 5x9 Trauma Dressing	2 4" Gauze Rolls
6 4x4 Gauze Pads	1 Feminine Pad
2 Triangular Bandages	1 Tube Sun-Block, SPF 30 or more
1 Space Blanket	1 Bottle Eye Wash
1 Pair Tweezers	10 Antiseptic Wipes
1 Flashlight	1 Package Waterproof Matches
10 Assorted Sizes of Adhesive Bandages (Band-Aids)	

B) Service

- (1) The Service has primary jurisdiction over all violations of federal, state, or local laws and regulations within Everglades National Park.
- (2) Fire Protection. The Service provides emergency assistance response to all fire incidents occurring within the Area. The Service will provide emergency medical services (EMS) to the extent that its resources permit. However, nothing herein shall require the Service to render EMS or create liability for failure to do so.

5) Public Relations

A) Required Notices

The Concessioner must prominently post the following at all Concessioner cash registers and payment areas:

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

Please address comments to:

Superintendent
 Everglades National Park
 4001 State Road 9336
 Homestead, FL 33034
 EVER_SUPERINTENDENT@nps.gov

B) Public Statements

The Concessioner must forward all media inquiries concerning operations within the Area to the Area's Public Affairs Office.

C) Advertisements and Promotional Material

- (1) *Promotional Material*

- (a) The Concessioner must obtain the Superintendent's approval for all promotional material prior to any Concessioner use including publication, distribution, and broadcast, etc. The Superintendent may require the Concessioner to remove from circulation any unapproved promotional material.
 - (b) The Concessioner may only distribute promotional material within the Concession Facilities that provides information about services and facilities available within the Area, unless the Superintendent approves exceptions in accordance with 36 CFR. § 5.1.
- (2) The Concessioner may only display information on environmental achievements that it wishes to display within the Area with the prior approval of the Superintendent.
- (3) *Statements*
- (a) Advertisements must include a statement that the Concessioner is authorized by the National Park Service to provide visitor services within Everglades National Park.
 - (b) Advertisements for employment must state that the company is an equal opportunity employer.

6) Specific Operating Standards and Requirements

A) Interpretive Tours – Flamingo and Gulf Coast

(1) *General*

- (a) The Concessioner will initially follow on the tour boat routes of the Existing Flamingo and Gulf Coast Concessioners. The Concessioner may submit proposed changes to the routes by providing a copy of a map showing the proposed changes to the Superintendent thirty days prior to the date the Concessioner proposes to implement any such changes. Approval is within the sole discretion of the Service.
- (b) The Concessioner may not use an external public address system to announce departure times for the various tours unless authorized by the Service.

(2) *Interpretive Services*

- (a) The Concessioner is responsible for all interpretation aboard its vessels. The purpose and goal of the Concession boat tours is to provide visitors with an educational opportunity to learn about the natural history, human history, ecology and environmental issues, and mission of Everglades National Park. Programs must adhere to Service interpretive standards and Everglades National Park interpretive themes, be sensitive to the concerns of the South Florida ecosystem, and be in support of the Service's goals and mission. Narratives should include historic, present-day, and future perspectives of the Park and its natural history, human history, and critical environmental issues. Flora and fauna identification shall be connected to greater ecosystem issues. Park programs and current research will be also discussed. Interpretive and narrative programs will be developed to be informative, educational, and compelling regardless of whether wildlife is observed. Service regulations prohibit the harassment of wildlife. The Flamingo and Northwest District Interpretive Supervisors (District Interpretive Supervisors) and their personnel, as staffing permits, will periodically audit boat

tour interpreters for accuracy, appropriateness, and the relationship of the information provided by tour boat interpreters to interpretive themes within their respective districts.

- (b) The District Interpretive Supervisors will work with the Concessioner within their respective districts to develop a written interpretive plan that outlines topics to be covered, bibliography of resource materials being used, and the scope of employee interpretive responsibilities and training. Such plan shall address both live interpretation by personnel and interpretive materials such as maps and handouts. The Concessioner will ensure that its interpretive messages are aligned with those desired by the Gulf Coast and Flamingo District Interpretive Supervisors. Concessioner employees responsible for interpretation will participate in a Service managed or Service approved training program and will receive certification from the Service when the program is completed.
- (c) All Concessioner employees responsible for interpretation will know and understand Service Standards for the interpretive work they perform. The Concessioner will fully integrate information from the Service Interpretive Modules 101, 102, and 103 into interpretive programs on boat tours at both the Gulf Coast District and the Flamingo District. In addition to any other training required under the Contract (see for example 2) G) above), the Concessioner will provide paid time for all employees performing interpretive services (including, without limitation, Captains and Mates on tour boats and interpretive guides for guided canoe and kayak excursions) to read the Concessioner designated materials and learn about the natural, cultural and historic features of Everglades National Park pertaining to each interpreter's duties. At a minimum this paid period will be 20 hours and shall be provided in the first two weeks of the interpreter's employment. At the conclusion of the two week period, the employee will sign a form certifying that he or she has reviewed the materials. The Concessioner will test the certifying employee's understanding through a twenty question comprehension test and provide additional training if the employee's response indicates a need for such training. For every year after their initial completion of the interpreter's training program, the Captains, Mates, and Guides will be provided a pin to indicate how long they have been an interpreter.
- (d) Other employees who will receive training in area interpretive information include:
- marina store managers at both locations,
 - general managers at both locations,
 - canoe and kayak rental personnel at both locations,
 - houseboat rental personnel at Flamingo,
 - mobile food service trailer personnel at Flamingo. and
 - the tiki bar manager and servers at Flamingo
- (e) Each District Interpretive Supervisor will serve as the direct line of communication with the Concessioner relating to interpretative issues within their respective districts.

- (f) Although interpretation on the boat tours is the responsibility of the Concessioner, Service personnel may serve as interpreters on selected trips, if funding for interpretive positions is available. The Concessioner will advise the District Interpretive Supervisors in advance if there is a special need to have a Park Service Interpreter on board (e.g. for large school group visits, dignitaries, etc.).
- (g) GPS-enabled handheld devices (Apple 3G iPhone or equivalent) will be in use on all tour boats within twelve (12) months of the effective date of the contract. These devices will be used to locate fixed and transient interpretive points along tour routes, serve as an interpretation "reference dictionary" and serve as a backup emergency contact device.
- (3) The Concessioner will make available to passengers a map of the interpretive tour for each of the four tour routes.
- (4) *Docking*
- (a) Dock space for concession vessels at both Flamingo and Gulf Coast is set out in Exhibit C. The Concessioner may not allow personal boats or vessels at the docks, the basin, or within any Concession Facilities at the Gulf Coast Operations. The Concessioner may designate an area, subject to the approval of the Service, for Concessioner employees' personal boats within the Concession Facilities at Flamingo.
- (b) The Concessioner must immediately report any damage to docks, piers and other facilities within the marina basin to the Service.
- (5) *Safety and Other*
- (a) Passenger Safety Instruction. The Concessioner must provide patrons with safety instruction prior to the departure of a tour boat from the dock. At a minimum, visitors will be shown the location of life jackets and proper donning procedures, the location of first aid kits, and 'man overboard' procedures.
- (b) Life Vests. The Concessioner must develop and implement procedures regarding life vests, subject to the approval of the Service. Procedures must include:
- All life vests must be clearly marked and accessible.
 - Adult and child life vests must be segregated and clearly marked.
 - Providing an appropriately-sized life vest for every child on board the vessel.
 - Performing pre-departure check off procedures to make certain that no vessels leave the dock without the required number of children's life vests.
- (c) Log Book. The Concessioner must maintain a "log book" of the daily trips made. The log book will be available on request for inspection by the Superintendent or a designated representative. The log book must record:
- the time of departure and location of departure for each trip;
 - the time of arrival for each trip;
 - the number of passengers, with separate subtotals for day visitors, government employees, contractors, and crew for each trip;
 - any unexpected event or incident that may have occurred;
 - any scheduled trip missed and the reason therefore.

(6) *Boarding Procedures*

- (a) Loading/Unloading of Vessels. Within thirty (30) days of implementing tours under this Contract, the Concessioner must provide the Superintendent for review and approval written standard operating procedures (“SOPs”) for loading passengers on and unloading passengers from its tour boats.
- (b) Gangways. The Concession will handle gangways, including any Service gangways, and gates at the dock as needed to efficiently load and unload the vessels.
- (c) Safety Precautions. The Concessioner must observe the following safety precautions:
- Prior to departing the dock, Boat Captains will coordinate with shore staff on duty who will assist in visitor control to ensure no visitors are injured or fall from the pier. Concessioner staff will “wave-off” the Boat Captain from the gangway areas of the dock on each departure.
 - Each time the boat moves away from the dock, all gangways and railing gates must be in the closed position.
- (d) All vessel operators must be licensed by the United States Coast Guard. Each vessel must be equipped with a marine radio licensed by the Federal Communications Commission and be operational on at least marine channels 6, 16, 22 and 83, and operated by licensed personnel. Copies of all captains' licenses, vessel operating certificates, and inspections will be provided to the Superintendent.
- (e) Charter of Vessels. The vessels used in this operation may, subject to the prior approval of the Service, be chartered for purposes other than those provided for in the Contract if such charters do not interfere with the Concessioner's ability to provide boat tours to Area visitors.
- (f) Vessels to be used by the Concessioner and replacement of vessels. The Concessioner must use the vessels in the existing inventory of record at both the Gulf Coast and Flamingo Districts in the Area. With the exception of the requirement for the Concessioner to acquire a vessel for the Florida Bay Boat Tour, the Service does not anticipate any changes to the inventory of record during the course of this contract, unless the Concessioner demonstrates to the satisfaction of the Superintendent that a certain vessel no longer is functional or safe, and, the cost of repair is prohibitive. Nonetheless, the Concessioner has agreed to the following:
- Within thirty (30) days of the effective date of the contract, the Concessioner will replace the Tohatsu 2-stroke outboard motors on the two (2) Carolina Skiffs at Gulf Coast with Yamaha 4-stroke outboard motors.
 - Within twenty-four (24) months of the effective date of the contract, the Concessioner will replace the two (2) Evinrude 115 horse-power outboard motors on the Pelican at Flamingo with two (2) Yamaha 200 horsepower 4-stroke outboard motors with noise reduction features.

- On the effective day of the contract, the Concessioner will purchase and place in service a new Corinthian tour boat with two (2) Yamaha 200 horsepower 4-stroke outboard motors with noise reduction features for the Florida Bay tours.

On the effective day of the contract, the Concessioner will purchase and place in service a new Corinthian tour boat in order to augment the number of tour boats available for Whitewater Bay tours. Any additional changes to the Concessioner's fleet must have the prior written approval of the Superintendent before a new vessel is purchased.

B) Retail

- (1) *General.* The Concessioner must prominently display items of interpretive value in natural, cultural, and environmental education. Wherever possible and appropriate, the Concessioner must attach informational tags or shelf signs to the sales items to show the item's relationship to Area themes. The Concessioner will upgrade the retail furnishings at Gulf Coast and Flamingo as appropriate.
- (2) *Merchandise Plan.* The Concessioner will develop a merchandise plan within one hundred twenty (120) days of contract execution and incorporate the merchandise plan into the operation of all merchandise areas.
 - (a) The Concessioner's merchandise plan is a handbook for implementing Service guidelines, while providing a concrete set of steps to achieve the Concessioner's business goals. It may also serve as a useful training tool for concession employees.
 - (b) The Concessioner must submit its merchandise plan to the Service for review and approval no later than 120 days after the effective date of the Contract. It must address at least the following:
 - Making environmentally preferred products (e.g., organic cotton clothing, post-consumer recycled paper products) available for sale to Area visitors where economically and technically feasible and appropriate. The Concessioner will use recycled paper and card stock for all calendars, boxed note cards, and paper bookmarks. The Concessioner will use recycled-content paper bags (30 per cent minimum) for merchandise for visitors and will always ask visitors who make purchases if they need a bag or a receipt.
 - The Concessioner's approach to integrating pollution prevention and waste-reduction objectives and strategies into its sales operation.
 - The Concessioner's approach to sales mix and types of merchandise.
 - The Concessioner's procedures for finding, purchasing, displaying, and selling Native American and locally produced handicrafts.
 - Display standards and stocking requirements.
- (3) *Items to Be Sold.* The Concessioner will offer souvenirs, Native American and local handicrafts as available, curios, sportswear, candy, chips, soft drinks, and visitor convenience items, including sundries and safety items.
- (4) *Labeling and Certification*
 - (a) The Concessioner must mark all merchandise with a selling price, point of origin, or other identification as available.

- (b) Informational Tags. Wherever appropriate, informational tags attached to the items will show their relationship to Area interpretive themes.
 - (c) Handicraft Labeling. The Concessioner must label handicraft items as such.
 - (d) Natural Products Labeling. The Concessioner must label merchandise made from natural products to disclose that the product was obtained from legally authorized sources outside of the Area and not from rare, threatened, or endangered species.
 - (e) Native American Handicraft Labeling. The Concessioner must maintain adequate records to verify the adjustments made to gross receipts related to the sale of Native American handicrafts. These records must provide verification of actual sales through use of a separate cash register key or a similar system. The Concessioner must maintain and provide for review, upon the request of the Superintendent, certification of authenticity of all Native American handicrafts for which the Concessioner claims an exception to franchise fee. The Concessioner must submit procedures to meet this requirement upon request of the Superintendent.
- (5) *Items not to be Sold or Displayed*. The Superintendent may review and approve all merchandise sold in the Area. The Superintendent may exercise his or her discretion to determine that certain items may be inappropriate and unacceptable for sale. The Concessioner may not sell or display the following:
- (a) Articles that persons of normal taste or sensitivity might consider obscene, offensive, profane and items that reflect a lack of concern for the environment or culture.
 - (b) Archeological specimens or objects of Native American origin over 100 years old, regardless of origin.
 - (c) Plant materials and other natural materials if obtained from units of the National Park System.
 - (d) Animal skins, taxidermy specimens, etc., containing parts from threatened or endangered species. Such items must not be incorporated into merchandise or used in displays.
 - (e) Gifts and souvenirs which are commonly found outside the Area that do not relate to identified Everglades National Park themes.
 - (f) Toy guns.
 - (g) Items that may, by their nature, encourage violation of Service and Area regulations, i.e., collecting kits, peanuts, birdseed, wildflower or plant seeds, etc.
 - (h) Junior Ranger Badges.
- (6) *Facility and Merchandise Appearance*
- (a) All signs advertising special promotions may appear only within the retail area or facility.
 - (b) Floor areas must be clean and free of clutter. The Concessioner will carry out a routine cleaning program at a minimum of once per day, either before daily opening or at the end of the day, with special attention to all floors.
 - (c) The Concessioner must maintain merchandise shelves and other glass areas (e.g., store windows) in good condition, free of dust and fingerprints.

- (d) The Concessioner must ensure that products that might present safety or security concerns for children are stored or displayed in areas that are not within easy reach and can be easily monitored or controlled by an employee. Displays must not be top-heavy. The Concessioner must pay special attention to the appropriateness of merchandise near checkout areas.
- (e) All merchandise must be undamaged, rotated on a regular basis, and checked for cleanliness.
- (f) The Concessioner must keep storage areas neat and clean and, to the extent possible, out of visitors' view.

C) Equipment Rental

- (1) The Concessioner must provide all rental equipment to the public in a clean, sound, undamaged, and complete condition. Visitors renting canoes must be given both a throwable seat cushion, a wearable life vest for each passenger, and an extra (3rd) paddle. On the effective day of the contract, the Concessioner will purchase and place in service five (5) new Pungo Wilderness 120 kayaks and five (5) new Pungo Wilderness 140 kayaks for use in the Gulf Coast District operation and twenty (20) new Pungo Wilderness 120 kayaks and twenty (20) new Pungo Wilderness 140 kayaks for use in the Flamingo District operation. The Concessioner must provide all visitors renting kayaks, skiffs, and houseboats with a wearable life vest for each passenger. The Concessioner will have binoculars for rent for tour boat passengers and boat rental customers. The Concessioner must conduct all sales and services according to customary business practices, with the patrons receiving the impression of a positive, service-oriented company eager to please its customers.
- (2) The Service may offer ranger led canoe trips utilizing its own canoes, as a fee based interpretive service.
- (3) The Concessioner may require a deposit on rental equipment and must provide a refund upon the return of the equipment if no unusual damage has occurred. Broken straps on binoculars, vests, etc. will be considered as usual wear and tear. Structural damage to rental craft or damaged accessories attributed to negligence of the patrons can be considered reason for reimbursement to the Concessioner from the patron's deposit.
- (4) *Houseboat Rental Standards – Flamingo*
 - (a) Within thirty (30) days after the execution of the contract, the Concessioner will purchase two new 35 foot Catamaran Cruiser houseboats, each equipped with one Yamaha 60-horsepower 4-stroke outboard motor. Each houseboat will include a single stateroom that sleeps two, augmented with foldout seating that can sleep four additional passengers. The houseboats will be equipped with one Cummins Onan Model QG60 kilowatt generator with sound reduction features to limit the sound to 70db (A) under full load at three feet. Each houseboat will also include the following:
 - Full air conditioning inside the enclosed area;
 - Eight kilowatt water cooled Onan generator for the air conditioning system;
 - 15,000 Btu roof mounted air conditioner with cover table;

- Microwave oven;
- Swing up swim boarding ladder;
- In-hull depth finder;
- Two fire extinguishers, smoke and CO2 detectors and alarms;
- Television, antenna with booster and 12 volt and 12 volt connections;
- AM, FM, and CD stereo system;
- Heavy duty deck edge bumper and docking lights;
- 100-gallon gray water holding tank;
- Four kilowatt Onan generator;
- Sleeper dinette table and four chairs;
- Ten foot, 8.5-cubic foot double door refrigerator;
- Gas cook top stove;
- 25-foot 30-amp shore power cord;
- Half bath (50 inches by 58 inches); 30-inch upper sundeck railing and molded staircase to upper sun deck;

(b) Molded front and rear rails;

(c) The Concessioner will equip each houseboat with carbon monoxide detection devices and smoke alarms inside the houseboat. The Concessioner also will equip each houseboat with devices or retrofitted to mitigate the accumulation of carbon monoxide under the platforms.

(d) Each houseboat will be thoroughly cleaned between rentals.

(e) The Concessioner will inspect each houseboat to ensure that the inventory of equipment and amenities are available for the next renter and replace all missing equipment and amenities prior to the next rental.

(6) *Vessel Operations*

(a) The Concessioner must provide all rental vessel customers hands-on instruction on (i) the operation of all vessels and proper use of all equipment; and (ii) applicable state, federal and local laws and regulations, including, but not limited to those of the Service (such regulations to include, but not be limited to, those concerning water pollution and "rules of the road"). The Concessioner will also provide information on weather, and emergency information.

D) Food and Beverage Service - Flamingo

(1) *Food Service*

(a) The Concessioner must ensure that a manager or other equally qualified employee is available during all operating hours.

(b) The Concessioner will submit a proposed menu to the Service, 30 days prior to the initial opening of their mobile fast food facility.

responsible practices of serving and selling alcoholic beverages through the ServSafe alcoholic beverage training offered through the National Restaurant Association or an equivalent program.

(3) Food and Beverage Equipment

- (a) The Concessioner will provide picnic tables and umbrellas.
- (b) The Concessioner will have an authentic chickee constructed in a location to be determined by the Service. The size of the chickee shall be at least 10' x 20'. The thatched roof of the chickee will be sprayed with a fire retardant approved by the Service. A hand built bar and bar stools will be constructed and installed in the chickee, as will a sink. The décor of the tiki bar will be subject to the Service's review and approval.

E) Fueling Procedures and Training

Within thirty (30) days of implementing fuel service under this Contract, the Concessioner must provide the Superintendent for review and approval written standard operating procedures ("SOPs") for fuel dock operations. The Concessioner must post a list of current staff trained in fuel dock SOPs within the Concession Facilities closest to the fuel docks.

7) Authorized Services

If the Concessioner opts to provide any of the authorized, but not required, services described in the Contract, the Concessioner must develop specific operating parameters for each authorized service including, but not limited to, rates, minimum hours of operations, methods of providing the service, location, training, and timing. The Concessioner must submit this information for the review and approval of the Superintendent prior to offering such services.

8) Reporting Requirements

A) Concessioner Operational Reports

The Concessioner must submit the following reports in addition to any others required in this Contract. The Concessioner must provide the Service supporting documentation for all operational reports upon request. The Concessioner must provide data in a Microsoft Word, or Excel format.

(1) *General*

- (a) Management Listing. Within 30 days after contract execution, the Concessioner must provide the Service a list of its key management and supervisory personnel, with office and emergency phone numbers for each. The Concessioner must submit updates of this list as personnel changes.
- (b) Incident Reports. The Concessioner must immediately report to the Park Dispatch Center the following:
 - Employee or visitor fatality;
 - Employee or visitor injuries requiring more than minor first aid treatment;
 - Personal or real property damage estimated to be over \$500;
 - Fires;

- Incidents that adversely affect Park resources;
- Known or suspected violations of the law;
- Any motor vehicle accident resulting in property damage, personal injury or death; and
- Hazardous or Non-hazardous substance spills;

The Concessioner must include a summary of all incidents occurring during the month in its monthly operational performance report.

- (c) Survey Response Data. The Concessioner must provide all customer satisfaction data collected by third parties for the Concessioner to the Superintendent in summary form within 30 days of receipt. Upon request, the Concessioner will provide the Superintendent supplemental information that supports the summary provided.
- (d) Environmental Report. The Concessioner must submit an annual environmental report by March 15th for the preceding calendar year that discloses any violations of law, regulations, or Service policy and addresses the status of goals, policies, and procedures included in the EMP. The report must quantify the following:
- Water used;
 - Waste disposed (by type, hazardous and non-hazardous);
 - Materials recycled (type and amount);
 - Energy used (type and amount);
 - Gas or other fuel substances such as propane used (type and amount) ;

(2) *Operational Performance Reports.* The Concessioner must maintain a management information system documenting visitor use patterns. The Concessioner must provide to the Service (i) a monthly operational performance report for each month by the 15th day of the following month; and (ii) an annual summary report for each calendar year by to April 1 of the following year. The Concessioner must present the data in a concise spreadsheet format. The report will include operational statistics and financial information for each activity as follows.

(a) Transportation

- Number of trips per month by type;
- Number of passengers and revenue per trip;
- Total monthly passengers by rate category;
- Source of ticket distribution (walkup, group, phone, etc.);
- Tour log book;

(b) Retail

- Revenue and number of transactions; and
- Revenue by merchandise category (e.g. Native American handicrafts, gifts and souvenirs).

(c) Boat Rental

- Number and size of boats available and rented by type;

- Revenue per type and size; and
- Average length of boat rentals.

(d) Fuel

- Gallons consumed and replaced per month.

B) Concessioner Financial Reporting

- (1) *Annual Financial Report.* In addition to the requirements for annual financial reporting in the Contract, the concessioner must, on the annual financial report, Schedule H, Department Income and Expenses, provide departmental revenue and direct expenses for each department at each location, (e.g., a separate column for guided water tours for the Flamingo District and another column for the guided water tours for the Gulf Coast District).
- (2) *Franchise Fee Payments and Monthly Financial Report.* The Concessioner must submit a Monthly Financial Report. Payments due to the Service will be made through electronic funds transfers via the U.S. Treasury Pre-Authorized Debit (PAD) system. The Concessioner must submit a Monthly Financial Report electronically, in the form prescribed by the Service budget office, no later than the 15th day of each month, for the previous month (or on the next regular business day if the 15th falls on a weekend or on a federal holiday). The Service budget office will gather all the information submitted and debit the payer's designated bank account on the 20th day of each month or the first business day thereafter.

9) Summary of Initial and Recurring Due Dates

The following table summarizes the preceding reporting requirements and details other reports, plans, payments, and inspections that will be the responsibility of the Concessioner. The Contract may outline additional reporting requirements that are **not** outlined below.

SUMMARY INITIAL AND RECURRING DUE DATES			
<i>Title</i>	<i>Schedule</i>	<i>Due Date</i>	<i>Reference</i>
Initial Requirements			
Balance Sheet	Initial	Within 90 days of the effective date of the contract	CONTRACT, Sec. 13 (c) (1)
Environmental Management Plan	Initial	Within 60 days of the effective date of the contract	CONTRACT, Sec. 6 (b) (1)
Risk Management Plan	Initial/ Annual	Within 60 days of the effective date of the contract; Updates due by November 30 of each year	Operating Plan, Sec. 2 H; Contract 3(c)
Merchandise Plan	Initial	Within 120 days of the effective date of the contract	Operating Plan, Sec. 6 B (2)
Hurricane Plan	Initial/Periodic	Within 90 days of the effective date of the contract	Operating Plan, Sec. 4 A (3)
Hiring Practices	Initial	Within 90 days of the effective date of the contract and as amended	Operating Plan, Sec. 2 G (3)
Proposed Menu	Initial	30 days prior to the opening of the mobile fast food facility	Operating Plan, Sec. 6 D (1) (b)
Management Listing	Initial	Within 30 days of the effective date of the contract	Operating Plan, Sec.8 A (1) (a)
Lost and Found	Initial	Within 30 days of the effective date of	Operating Plan, Sec. 2 F (3)

SUMMARY			
INITIAL AND RECURRING DUE DATES			
<i>Title</i>	<i>Schedule</i>	<i>Due Date</i>	<i>Reference</i>
Procedures		the contract	
Background Check Policies	Initial	Within 90 days of the effective date of the contract	Operating Plan, Sec. 2 G (3) (b)
Annual			
Opening & Closing Dates & Hours of Operation	Annual	Seasonal.	Operating Plan, Sec. 2 A
Environmental Report	Annual	By March 15 th for the proceeding calendar year	Operating Plan, Sec.8 A (1) (d)
Group Booking Policy	Annual	TBD	Operating Plan, Sec. 2 F (2)
Management Listing	Annual	May 1	Operating Plan, Sec. 8 A (1)a
Employee Handbook	Annual	All handbooks will be provided 30 days prior to release; updated copies will be provided annually	Operating Plan, Sec. 2 G (4) (f)
Annual Rate Change	Annual	At least 60 days prior to anticipated implementation dates.	Operating Plan, Sec. 2 C (2)
Tour Boat Route Change(s)	Periodic	Within 30 prior to proposed implementation change(s)	Operating Plan, Sec. 6 A (1) (a)
Annual Financial Report	Annual	Not later than 120 days after the last day of the Concessioner's fiscal year	CONTRACT, Sec. 13 (b)
Schedule of Operations	Annual	Ninety days prior to requested implementation	Operating Plan, Sec.2 A
USCG Inspections and Correspondence	Annual	24 Hours if the inspection limits the ability of the Concessioner to conduct operations, 30 days in all other cases.	Operating Plan, Sec. 2 E (2)
Fire Inspections	Initial/Annual	Within 30 days of Contract execution, within 30 days of any new or replacement Concession vessel, and on an annual basis thereafter – annual date to be determined	Operating Plan, Sec. 2 E (3)
Boat Captain Certification	Initial/Periodic	Within 15 days of the effective date of the contract and within 48 hours of each new hire of license renewal	Operating Plan, Sec. 2 G (3)) (c)
Monthly			
Visitor Use Statistics	Monthly	By the 15 th day of the following month of each month of operation	Operating Plan, Sec. 8 A (2)
Visitor Comments	Monthly	By the 15 th day of the following month for each month of operation	Operating Plan, Sec. 2 E (6) (b)
Operational Performance Reports	Monthly	By the 15 th day of the following month for each month of operation	Operating Plan, Sec.8 A (2)
Franchise Fee Payments and Monthly Financial Report	Monthly	By the 15 th day of the following month of each month of operation	CONTRACT, Sec. 10 (b)
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 14 (C)

Approved, effective _____, 200__

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 disabled person shall, because a Concessioner's facilities are inaccessible to or unusable by disabled 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 a disability:

- 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 disabled 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 disability 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 disabled 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 disabled persons. Notwithstanding, each departure point will be fully accessible,



EXHIBIT C
ASSIGNED LAND AND REAL PROPERTY IMPROVEMENT
(CONCESSION FACILITIES)

EVER001 Insurance Estimates
5/23/2008

Item #	Description	Area	Insurance Estimate
66867	FLCMHM486D Flamingo Concession Housing	2160	\$257,580
66876	FLCMBG491 Concession Laundry	134.998	\$17,566
67149	FLCMHM412E Flamingo Concession Housing	5399.89	\$554,353
67150	FLCMHM413F Flamingo Concession Housing	7199.86	\$708,466
67155	FLCMMF414 Flamingo Equip Maint Bldg	519.004	\$19,800
67159	FLCMST469 Flamingo Concession Warehouse, Bldg Desg C-5	4770	\$391,140
67209	FLCSCS466 Flamingo Marina Store	3412	\$359,011
67212	FLCSCS467 Flamingo Tour Boat Ticket Office	193.999	\$51,850
67216	FLMYMF421 Shop	1200	\$83,628
73182	FLBWVF Whitewater Bay Marina	1	\$927,753
75401	FLBWVF Florida Bay Marina	1	\$544,801
81267	FLCMGR Flamingo Conc Maint Grounds	1	\$113,649
83628	FLCSCS492 Canoe Livery	105	\$6,552
86662	FLCMRP917 Flamingo Conc Marina Parking, C-3	36289.6	\$620,190
86752	FLCSFD Flamingo Con Diesel	100	\$52,403
86751	FLCSFG Flamingo Conc Gasoline	100	\$89,341
89698	FLCMHT001 Flamingo Trailer Pad	400	\$4,092
89712	FLCMHT010 Flamingo Trailer Pad	400	\$4,092
89716	FLCMHT011 Flamingo Trailer Pad	400	\$4,092
89718	FLCMHT012 Flamingo Trailer Pad	400	\$4,092
89719	FLCMHT013 Flamingo Trailer Pad	400	\$4,092
89720	FLCMHT014 Flamingo Trailer Pad	400	\$4,092
89721	FLCMHT015 Flamingo Trailer Pad	400	\$4,092
89723	FLCMHT016 Flamingo Trailer Pad	400	\$4,092
89726	FLCMHT017 Flamingo Trailer Pad	400	\$4,092
89728	FLCMHT019 Flamingo Trailer Pad	400	\$4,092
89729	FLCMHT020 Flamingo Trailer Pad	400	\$4,092
89730	FLCMHT018 Flamingo Trailer Pad	400	\$4,092
114191	Concession Maint Parking	30,000	\$495,901

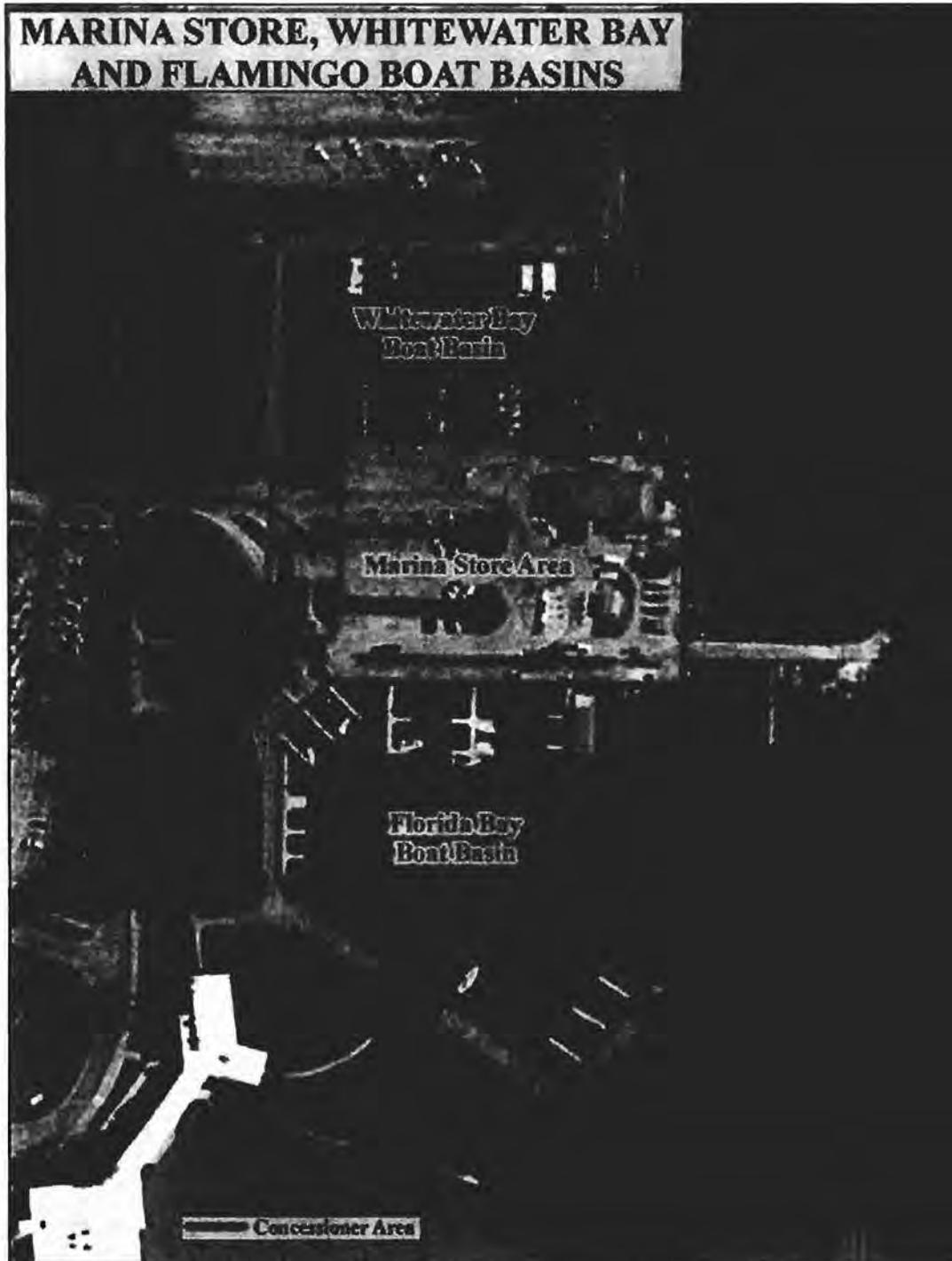
Gulf Coast

- A 1177 square foot area within Building 604, the Gulf Coast Visitor Center, is assigned to the Concessioner for the concession operation. The assigned area is located on the ground floor of the building and consists of approximately (1) 677 square feet for the gift shop and ticket sales area, and (2) 500 square feet of storage space.
- The building is jointly occupied by the Service and the Concessioner. The Service occupies the entire second floor of the building and has a small storage area at the south end of the ground floor.
- Seawall dockage space for concession tour boats docked at the Gulf Coast Visitor Center, Boat Basin, Everglades City, Florida.

Assigned Land:

The following lands are assigned to the Concessioner for use in conducting its operations under this CONTRACT.

Flamingo





NPS & CONCESSIONER MAINTENANCE AREA - FLAMINGO



GULF COAST MARINA AREA

Oyster Bar Lane

Concessioner
Canoe
Storage

Boat
Basin

Boat
Tour
Chickee

NPS Maintenance
Building

Shared Concession Sales
and NPS Visitor Center

Chokoloskee Bay

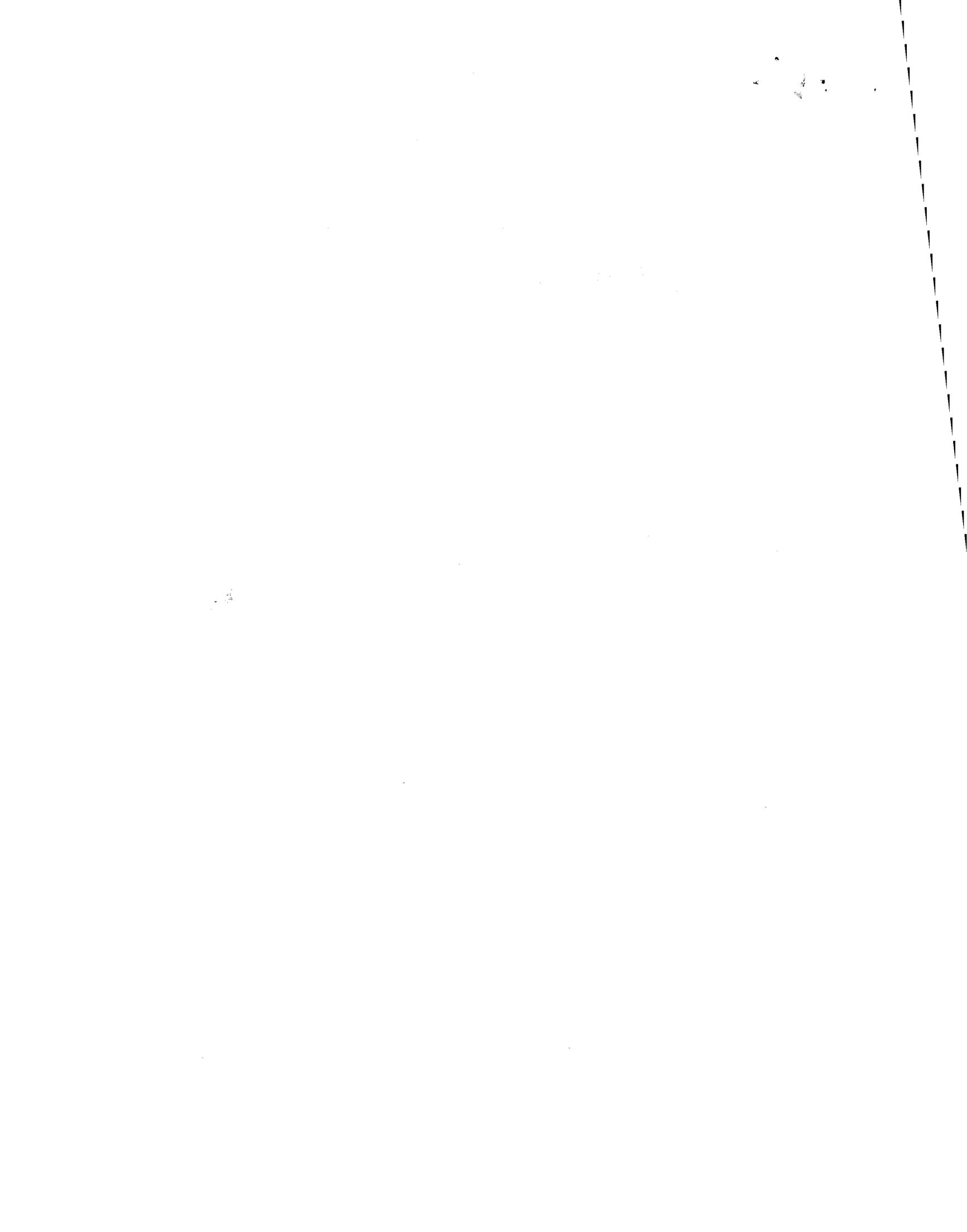
Concessioner Area



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Approved, effective December, 23 2008

By: 
Regional Director
Southeast Region



Location/ Bldg	Asset Classification	Asset Description	Manufacturer	Model	Serial Number
Office	Equipment	paper, and minor office support equipment			
Fuel Building	Office Equipment	Office Equipment c/o Fuel Dispensing Monitoring System including controller, cash registers, monitors, printers and card readers	Verifone		
Marine Maintenance Building	Machinery & Equipment	Mower, lawn ridding	Toro		
Marina/Yard	Machinery & Equipment	Pump, dual gasoline marina canal fuel	Bennett		
Marina/Yard	Machinery & Equipment	Pump, dual diesel marina canal fuel	Bennett		
Marina/Yard	Machinery & Equipment	Pump, dual gasoline marina bay fuel	Bennett		
Marina/Yard	Machinery & Equipment	Pump, dual diesel marina bay fuel	Bennett		
Marina/Yard	Machinery & Equipment	Pump, dual gasoline auto fuel	Bennett		
Marina/Yard	Machinery & Equipment	Pump, dual gasoline auto fuel	Bennett		
Marina/Yard	Machinery & Equipment	Pump, dual diesel auto fuel	Bennett		
Marina/Yard	Machinery & Equipment	Rack, group of 4-canoe storage			
Marina/Yard	Machinery & Equipment	Rack, group of 3-canoe storage			
Marina/Yard	Vehicles	Van, 2002	Ford	Windstar	2FMZA50482BB43263
Marina/Yard	Vehicles	Van, 2002	Ford	Windstar	2FMZA504X2BB4326 4
Marina/Yard	Vehicles	Truck, 2002 pick-up	Ford	Ranger	1FTYR10082B14985
Marina/Yard	Vehicles	Truck, 2004 pick-up	Chevy	Silverado	
Marina	Machinery & Equipment	Motor, 40HP outboard, Sea Trout skiff	Evinrude	E-Tec	
Marina	Machinery & Equipment	Motor, 40HP outboard, Black Trip skiff	Evinrude	E-Tec	
Marina	Machinery & Equipment	Motor, 40HP outboard, Stingray skiff	Evinrude	E-Tec	
Marina	Machinery & Equipment	Motor, 40HP outboard, Snook skiff	Evinrude	E-Tec	
Marina	Machinery & Equipment	Motor, 40HP outboard, Copia skiff	Evinrude	E-Tec	
Marina	Machinery & Equipment	Motor, 115HP outboard, Pelican tour boat	Evinrude	E-Tec	
Marina	Machinery & Equipment	Motor, 115HP outboard, Pelican tour boat	Evinrude	E-Tec	
Marina	Machinery & Equipment	Motor, 40 HP, outboard, backup	Bombardier		
Marina	Machinery & Equipment	Motor, 40 HP, outboard, backup	Bombardier		
Marina	Boats	Canoe, group of 10, 15' fiberglass including life jackets and paddles	Old Town	XR-Tripper	
Marina	Boats	Canoe, group of 10, 15' fiberglass including life jackets and paddles	Old Town	XR-Tripper	
Marina	Boats	Canoe, group of 10, 15' fiberglass including life jackets and paddles	Old Town	XR-Tripper	
Marina	Boats	Canoe, group of 10, 15' fiberglass including life jackets and paddles	Old Town	XR-Tripper	
Marina	Boats	Skiff, 17' fiberglass, Sea Trout	Sundance	F17	
Marina	Boats	Skiff, 17' fiberglass, Black Trip	Sundance	F17	

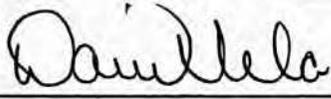
**EXHIBIT D
ASSIGNED GOVERNMENT PERSONAL PROPERTY**

Government personal property at Flamingo is assigned to the Concessioner for the purposes of this CONTRACT as follows:

Location/ Bldg	Asset Classification	Asset Description	Manufacturer	Model	Serial Number
Retail Store	Furnishings	Furniture c/o display racks& cabinets, shelving, tables, counters, and general retail support furnishings			
Retail Store	Furnishings	Furniture c/o display racks& cabinets, shelving, tables, counters, and general retail support furnishings			
Retail Store	Furnishings	Furniture c/o display racks& cabinets, shelving, tables, counters, and general retail support furnishings			
Retail Store	Office Equipment	Office Equipment c/o cash registers including monitor, printers and card readers, POS system			
Retail Store	Machinery & Equipment	Cooler, 3-dr beverage	Marc		
Retail Store	Machinery & Equipment	Cooler, 2-dr beverage	TRUE		
Retail Store	Machinery & Equipment	Coffee Maker	Fetco	CBS-52H	
Retail Store	Machinery & Equipment	Oven, microwave	Sharp		
Retail Store	Machinery & Equipment	Oven, microwave	Sharp		
Retail Store	Machinery & Equipment	Oven, microwave	Sharp		
Office	Furnishings	Furniture c/o desk, chairs, file cabinet, storage rack, record safe, space heater, and general office support furnishings			
Office	Office Equipment	Office Equipment c/o desktop computer with monitor and printer	HP		
Office	Office Equipment	Office Equipment c/o desktop computer with monitor and printer	HP		
Office	Office Equipment	Office Equipment c/o desktop computer with monitor and printer	HP		
Office	Office Equipment	Office Equipment c/o POS system including server, router, and related support equipment			
Office	Office Equipment	Office Equipment c/o phone system with 10-extensions, and related support equipment	Zion		
Office	Office Equipment	Office Equipment c/o time clock system	Kronos		
Office	Machinery & Equipment	Freezer, chest			
Accounting Office	Furnishings	Furniture c/o desks, chairs, tables, file cabinets, space heater, and general office support furnishings			
Accounting Office	Office Equipment	Office Equipment c/o desktop computer with monitor and printer	HP		
Accounting Office	Office Equipment	Office Equipment c/o color computer printer	HP	8000 DN	
Accounting	Office	Office Equipment c/o shredder,	Fellows	SB-95C	

Location/ Bldg	Asset Classification	Asset Description	Manufacturer	Model	Serial Number
Marina	Boats	Skiff, 17' fiberglass, Stingray	Sundance	F17	
Marina	Boats	Skiff, 17' fiberglass, Snook	Sundance	F17	
Marina	Boats	Skiff, 17' fiberglass, Copia	Sundance	F17	
Marina	Boats	Tour Boat, 40' x 12' beam, 45 passenger, Pelican	Corinthian	1987	
Employee Housing	Furnishings	Furniture c/o dressers, beds, night stands, and kitchen equipment incl. refrigerators, stoves, and microwaves			

Effective, this 23 day of Dec, 2008

By: 

Regional Director, Southeast Region

100

100

**EXHIBIT E
DRAFT MAINTENANCE PLAN**

1) GENERAL STANDARDS FOR CONCESSION FACILITIES 1

2) DEFINITIONS 1

3) ASSIGNED AREAS..... 3

4) CONCESSIONER RESPONSIBILITIES 3

A) GENERAL 3

B) ENVIRONMENTAL MANAGEMENT 3

C) ACTIVITIES AND QUALIFICATIONS..... 7

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E) BUILDING RESPONSIBILITIES..... 9

F) FOOD SERVICE EQUIPMENT 9

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H) FUELING FACILITIES - FLAMINGO 10

I) BOATS AND VESSELS 10

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5) SERVICE RESPONSIBILITIES 16

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SUPPLEMENT E-1: 18

INTRODUCTION

This Maintenance Plan between Everglades National Park Boat Tours, Inc. (hereinafter referred to as the "Concessioner") and the National Park Service (hereinafter the "Service") sets forth the maintenance responsibilities of the Concessioner and the Service with regard to those lands and facilities within Everglades National Park (hereinafter referred to as the "Area") that are assigned to the Concessioner for the purposes authorized by the Contract. In the event of any conflict between the terms of the Contract and this Maintenance Plan, the terms of the Contract, including its designations and amendments, shall prevail.

This plan will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of the Area. Any revisions shall not be inconsistent with the terms and conditions of the main body of this Contract. Any revisions must be reasonable and in furtherance of the purposes of this Contract.

When the words "must," "shall," or "will" are used in this plan, they shall all mean that an obligation is mandatory and no distinction in the mandatory character shall be made nor is it intended based on the choice among these words. When the word vessels is used in this plan it includes both vessels owned by the Concessioner and vessels assigned to the Concessioner by the Service.

1) General Standards for Concession Facilities

Pursuant to the Contract, the Concessioner must manage the Concession Facilities in a manner that is acceptable to the Service. This Maintenance Plan defines the necessary standards and the relationship between the Concessioner and the Service. Both the Concessioner and the Service have specific responsibilities as outlined in the Contract and this Maintenance Plan.

2) Definitions

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

- (a) **Asset** – Real or Personal Property that the Service desires to track and manage as a distinct identifiable entity. It may be a physical structure or grouping of structures, land features, or other tangible property that has a specific service or function such as a farm, cemetery, campground, marina, or sewage treatment plant. The term "Asset" also applies to movable items such as vehicles and equipment.
- (b) **Component Renewal/Replacement** – The planned replacement of an asset, component or system at the end of their useful life (Serviceable Life). Examples of component renewals may include roof systems, utility components, pavement, and other major dynamic equipment. Renewal includes the deconstruction of the existing system or system components and Replacement with a new system of equal capability and performance. These actions recur on a periodic cycle of greater than seven years and may include Statutory Mandated Corrective Measures necessary to attain code and regulatory compliant Asset infrastructure and systems. (The funding source is generally the Repair and Maintenance Reserve).
- (c) **Cyclic Maintenance** – Planned work activities that recur on a periodic cycle of greater than one year and less than seven years to sustain the useful life of an asset. Typical projects include, but are not limited to painting, pump and motor replacement, cleaning,

repair and replacement of lighting, engine overhaul, replacement of carpeting and refinishing hardwood floors.

- (d) **Deferred Maintenance** – Maintenance that was not performed when it should have been or was scheduled to be and which, therefore, is put off or delayed. Continued deferment of maintenance will result in deficiencies.
- (e) **Energy Star** refers to a joint US Environmental Protection Agency and Department of Energy program (www.energystar.gov) that helps businesses and individuals protect the environment through superior energy efficiency.
- (f) **Facility Management** – Those activities of the concessioner including Facility Operations, Facility Maintenance, Capital Improvements and Component Repair/Replacement, necessary to maintain the Concession Facilities to the satisfaction of the Director.
- (g) **Facility Maintenance** – The day-to-day activities as well as the planned work required to preserve Concession Facilities in such a condition that they may be used for their designated purpose over an intended service life. Facility Maintenance includes Preventive Maintenance, Cyclic Maintenance, and Repair. Facility Maintenance does not include Facility Operations, Component Renewal/Replacement or Capital Improvements. Facility Maintenance includes “routine, operational” maintenance.
- (h) **Facility Operations** – Work activities performed by the Concessioner on a recurring basis throughout the year that meet daily operational needs. Typical work performed under Facility Operations includes janitorial and custodial services (housekeeping), operation or purchase of utilities, groundskeeping, etc.
- (i) **Hazardous Substance** – refers to any hazardous waste, hazardous chemical or hazardous material as those terms are defined by Applicable Laws, including without limitation 26 CFR 1910.1200, 49 USC 5103, 40 CFR 261.
- (j) **Hazardous Waste** – refers to the definition of hazardous waste as regulated by the US Environmental Protection Agency in 40 CFR 261.
- (k) **Personal Property** – Manufactured items of independent form and utility including equipment and objects solely for use by the Concessioner to conduct business. Personal property includes, without limitation, removable equipment, furniture and goods, necessary for Concessioner operations under the Contract. Personal Property is identified in the personal property inventory as either Concessioner property or Government assigned property.
- (l) **Preventive Maintenance (PM)** – Planned, scheduled periodic maintenance activities (within a year) on selected equipment, typically includes inspection, lubrication and minor adjustment. (Maintenance Expense)
- (m) **Repair** – Work to restore damaged or worn-out property to a normal operating condition. Repairs are curative, while Cyclic and Preventive Maintenance are preventative.
- (n) **Replacement** – Exchange or substitution of one Real Property Asset for another that has the capacity to perform the same function at a level of utility and service equivalent to the original Asset.
- (15) **Statutory Mandated Corrective Measure** – Modifications required to existing Assets to meet current regulatory and governmental requirements such as regulations and codes

that may not have existed at the time of construction or acquisition. Mandated corrective measures include, without limitation, Americans with Disabilities Act (ADA) requirements, environmental requirements, and life/safety upgrades.

3) Assigned Areas

Land assigned under the Contract is identified on the land assignment maps included in Exhibit C. Any modification of assigned areas or buildings will be reflected by corresponding changes on the land assignment maps.

4) Concessioner Responsibilities

A) General

- (a) The Concessioner must perform all Facility Management activities, with the exception of those identified in Section 5 (Service Responsibilities) of this exhibit. This maintenance plan addresses, among other things, Facility Maintenance, Component Renewal/Replacement and Facility Operations. The Concessioner must correct any deficiencies in achieving the basic goals described in the most current Service provided Concession Management Guidelines, relative to all services required and authorized under the Contract, and must complete corrections on a timely basis.
- (b) The Concessioner must conduct all maintenance and repair activities in compliance with Service standards, DOI and Service Asset Management Plans, Service Management Policies, manufacturer recommendations and/or specifications, and all Applicable Laws. In the event of a conflict between DOI/Service Asset Management Plans, Applicable Laws, and the manufacturer's specifications, Applicable Laws will prevail.

B) Environmental Management

The Concessioner's Environmental Management Program ("EMP") must comply with the Contract and, at a minimum, include goals, targets, and means by which to address the environmental topics and issues listed in this section, and incorporate Best Management Practices ("BMPs") in all maintenance activities performed by the Concessioner in furtherance of the Contract and this Maintenance Plan. The EMP shall also include all appropriate goals and targets to manage environmental topics and impacts required to be addressed by the Concessioner under Applicable Laws.

The Concessioner will certify their Environmental Management Program based the International Standard ISO 14001:2000 using an internationally accredited registrar and international protocols. Within the first 12 months after the effective date of the Contract, the Concessioner will arrange for and successfully complete a registration audit against all clauses of the international standard by an internationally accredited registrar using approved international protocols. The Concessioner will maintain this environmental management system throughout the life of the Contract with annual surveillance audits and full system audits every three years.

- (a) The Concessioner will fulfill the requirements for membership in national and the State of Florida voluntary environmental leadership programs, and apply for and maintain membership for the duration of these programs or until Contract expiration. These programs include, but are not limited to, the National Environmental Performance Track Program, the WasteWise Program, the Climate Leaders Program, and the Green Power

Partner Program, all of which are referred to in the offer of ENPBT which led to this Contract.

Air Quality Management

- (i) General. The Concessioner must develop and implement ways to minimize air emissions and impacts to air quality from its operations and maintenance activities.
- (ii) The Concessioner will implement a “carbon neutral” program in both the Gulf Coast and Flamingo Districts. Electricity used in both districts will be offset with the purchase of wind renewable energy certificates (RECs). Fuel used for tour boats in both districts will be offset with the purchase of Verifiable Emissions Reduction (“VER”) certificates that are Green-e certified.
- (c) The Concessioner will also include all waste sent to landfills or recycled in its greenhouse gas inventory to be offset with VER certificates.

Energy and Water Conservation

- (i) General. The Concessioner must develop and implement water and energy conservation measures in its maintenance activities. As new technologies are developed, the Concessioner must strive to integrate them into existing operations where there is potential for increased efficiency, reduced water or energy consumption, or reduced impacts on the environment.
- (ii) Energy Conservation
 - Within six (6) months of the effective date of the Contract, the Concessioner will replace all incandescent light bulbs with energy conserving compact lights.
 - Within twelve (12) months of the effective date of the contract, the Concessioner will install advanced technology air hand dryers (e.g. Dyson Airblade) in all public and employee restroom in all structures assigned to the concessioner.
 - The Concessioner is encouraged to utilize other alternative energy sources where economically and technically feasible and appropriate.
 - All new equipment should meet Energy Star standards where economically and technically feasible and appropriate.
- (c) Hazardous Waste, Hazardous Substance, Solid Waste, and Pollutant Management
 - (i) The Concessioner must implement hazardous substance reduction strategies to minimize use of hazardous substances in its operation.
 - (ii) Hazardous waste, if any, generated by the Concessioner shall be managed in accordance with Applicable Laws.
 - (iii) The Concessioner shall use hazardous waste transporters that comply with Applicable Laws, including without limitation, 40 CFR 263.
 - (iv) Any Treatment, Storage, and Disposal (“TSD”) facility, as defined in the Applicable Laws, used by the Concessioner shall be a Permitted Final Status Facility, as that term is defined by Applicable Laws.
 - (v) Waste managed under the Resource Conservation and Recovery Act (“RCRA”), but not classified as hazardous waste if properly managed, including used oil and used

oil filters, antifreeze (not considered a hazardous waste), lead-acid and Nickel Cadmium ("NiCad") batteries shall be recycled to the maximum extent practicable through a licensed recycler. Accumulation areas for these materials must be designated by the Concessioner and approved by the Superintendent. These accumulation areas shall be provided protection from the weather and be equipped with spill and leak protection. All flammable materials shall be stored in UL approved flammable storage cabinets.

- (vi) The Concessioner will replace all mercury lights (fluorescent) with low-mercury lights which are not subject to hazardous waste regulations.
 - (vii) Within six months after the effective date of the Contract, the Concessioner will eliminate chlorinated janitorial and cleanup products in use and in storage.
 - (viii) The Concessioner will minimize or eliminate the use of products in aerosol containers.
 - (ix) Within six (6) months of the effective date of the contract, the Concessioner will eliminate non-chlorinated solvents and replace with alternatives that have fewer or less serious environmental impacts.
 - (x) **Reporting.** In accordance with the Contract, the Concessioner must provide to the Superintendent a list of all hazardous chemicals that are used or stored for operations and activities within the Park.
 - The Concessioner must prepare an annual Waste Management Plan ("WMP") by February 15th of each calendar year that will be approved and updated as deemed necessary by the Superintendent. This WMP shall itemize the hazardous wastes and other wastes including used oil and oil filters, waste anti-freeze, spent fluorescent tubes and waste batteries regulated by Applicable Laws and generated on Service lands. The WMP must provide details and procedures for waste identification, inventory, storage and disposal. The Concessioner must provide to the Superintendent a copy of all generated Uniform Hazardous Waste Manifests for hazardous wastes, manifests or other documentation for other wastes, and information pertaining to final TSD facilities.
 - The Concessioner must maintain an inventory of waste streams using a Hazardous Waste Inventory Form ("HWIF") to track the quarterly and cumulative generation of all hazardous wastes to determine and continuously document the concession's generator status. The Concessioner must submit a copy of the quarterly HWIFs to the Superintendent fifteen (15) days after the end of the quarter.
- (d) **Hazardous Substance or Hazardous Material Releases and Discharges of Petroleum Products** The Concessioner must develop and implement plans to manage the release of hazardous materials, hazardous wastes, petroleum and other pollutants.
- (i) The Concessioner must report all spills of hazardous materials or wastes on Park lands or waters, to the Service and all other appropriate regulatory agencies as required by Applicable Laws. The Service shall be notified of all spills, regardless of quantity.
 - (ii) The Concessioner must develop an Emergency Action Plan. The Plan must be submitted to the Superintendent for review and approval.

- (iii) The Concessioner must provide spill response kits on all vessels to address incidental spills of boat and vehicle fluids (e.g., gasoline, antifreeze, motor oil).
- (iv) The Concessioner must comply with all Spill Prevention, Control and Countermeasures ("SPCC") Plan requirements related to petroleum materials as defined in Applicable Laws, including without limitation, 40 CFR Part 112 (Oil Pollution Prevention) if applicable. The Concessioner must submit a copy of the SPCC Plan to the Superintendent for review and approval.
- (v) The Concessioner must cooperate fully with Park and Service officials to improve local emergency planning, spill prevention and response, accident notification, and pollution prevention planning.

(e) *Integrated Pest Management*

- (i) General. The control of pests by chemicals and other means is subject to Service approval. Pesticides shall not be stored on vessels or in the Concession Facilities. The Concessioner is required to submit to the Superintendent on or before January 15 of each year a Pesticide Request Form requesting approval of anticipated pesticide use for the following year and a Pesticide Use Log that tracks the pesticide use for the prior year.
- (ii) The Concessioner shall be responsible for the eradication of any pest infestation in all personal or other property and all Concession Facilities, including infestation that requires fumigation/tenting for termites or other pests. Pest control must be consistent with the Service's Integrated Pest Management Program ("IPM") and under the guidance and approval of the Park's IPM manager.
- (iii) Contracted Pesticide Applicators. The Concessioner is responsible for obtaining approvals and providing reporting for contracted pesticide applicators. Contracted pesticide applicators are subject to Service approval, which will be governed by Applicable Laws, including Service Integrated Pest Management Policies and other guidance.

(f) *Solid Waste Management and Recycling*

- (i) Responsibility. The Concessioner must cleanup all litter and trash within the Concessioner Facilities. The Concessioner must transport and dispose of litter and trash from where it is picked up to a concessioner-provided trash dumpster of a design and in a location approved by the Service. The Concessioner must provide trash cans, liners, and lids of a Service approved type within the Concession Facilities and vessels used in concession operations.
- (ii) The Concessioner must ensure that all recyclable materials are regularly removed and delivered to the recycling facilities.
- (iii) The Concessioner must collect trash from containers on a regular basis and dispose of it at a state permitted Resource Conservation and Recovery Act ("RCRA") Subtitle D compliant landfill.
- (iv) The Concessioner will provide recycling containers on each houseboat.
- (v) The Concessioner will eliminate the use of disposable paper towels for all internal company tasks and use reusable cloth wipes acquired through an exchange program with a local laundry.

(g) *Wastewater Management*

- (i) Vessel Operations. The Concessioner must comply with all Applicable Laws regarding the overboard discharge of sewage, bilgewater and greywater from its vessels. In addition:
- Sewage may not be discharged in any location within the Area. The Concessioner may use the Service's pump out stations.
 - The discharge of bilge water is prohibited.
 - The discharge of greywater is prohibited.
- (ii) Concessioner vessels greater than 26 feet in length shall be equipped with signage prohibiting the discharge of oil, in accordance with Applicable Laws, including, without limitation, the Federal Water Pollution Control Act.
- (iii) Concessioner vessels with greywater discharge sources (e.g., sinks and showers) will be equipped with educational signage for employees and customers concerning acceptable materials for discharge.

(h) *Clean Marina Program*

The Concessioner will complete all requirements established by the Florida Department of Environmental Protection to register the Gulf Coast marina in their Clean Marina Program.

C) Activities and Qualifications

All Concessioner operated appliances, machinery, and equipment; including parts, supplies, and related materials must be maintained, serviced, and repaired per manufacturers' recommendations, and replaced as necessary.

(1) *Qualified Personnel*. All maintenance and repair work must be done by qualified personnel as defined by Applicable Laws, including, without limitation, appropriate codes. All personnel conducting repair, maintenance, and rehabilitation work on assets must have the appropriate skills, experience, licenses and certifications to conduct such work.

(2) *General Maintenance Standards*. Concessioner must maintain and keep clean all assigned areas as identified in Exhibit C of the Contract. The Concessioner shall provide its own cleaning supplies, services, and devices. All assigned areas and spaces must be kept in an orderly condition and conform to all state and local fire and safety regulations and other applicable codes.

- (i) All concrete, asphalt, wood, grass or graveled areas within the area assigned to the Concessioner are to be maintained by the Concessioner and kept free of debris such as paper, sticks, cigarette butts, or any other litter or offensive material.
- (ii) 'No Smoking' signs, along with Service approved cigarette extinguishing cans, must be located outside the entrance of all buildings within the Concession Facilities utilized by park visitors (e.g., gift shop/marina store, Gulf Coast gift shop) and at boat loading areas.

(3) *Life Safety Protection*. The Concessioner must correct any safety deficiencies within a period of time agreed on with the Service. Life threatening situations shall be mitigated immediately.

- (i) **Life Safety Equipment.** Within the Concession Facilities, the Concessioner must provide smoke alarms, fire extinguishers, and other safety equipment as required by the National Fire Safety Code, state, and local regulations. The Concessioner must:
- Inspect, test, and certify at least annually all fire suppression and detection systems in accordance with Applicable Laws including, but not limited to, National Fire Protection Association (“NFPA”), federal, state and local requirements. Upon request, the Concessioner must provide a copy of all inspection reports to the Service.
 - Test battery-powered fire alarms and smoke detectors annually.
 - Maintain, service, repair, test, and replace as necessary, interior safety devices, including fire suppression and detection systems, fire fighting equipment, and appurtenances in compliance with manufacturers’ recommendations and/or appropriate Life Safety Codes. All safety equipment used and/or acquired must be compatible with national standards such as National Fire Protection Association (NFPA) and Occupational Safety and Health Administration (OSHA). All fire detection and suppression systems must be maintained by certified technicians in accordance with state and federal regulations.
- (d) ***Dock Damage.*** In the event the Concessioner causes damage, other than normal wear and tear, to any Government dock, marker, or facility, the Concessioner will be responsible for all expenses relating to the repair or replacement of the damaged area(s). The following is a partial, but not exhaustive, listing of dock damage that is not considered to be normal wear:
- (i) Pushing piles off the rubber bumpers;
 - (ii) Breaking pile chains;
 - (iii) Impact damage to the dock between piles;
 - (iv) Tearing the wear surface away from the piles;
 - (v) Breaking piles;
 - (vi) Bending, breaking, or pulling cleats from the dock; and
 - (vii) Bending or breaking pier safety rail hinges, latches, or gates.
- (e) ***Signs.*** The Concessioner must ensure that all of its signs are compatible with Service sign standards (see (b) below). Sign size, style, color, and location must be submitted for, and receive, Service approval prior to installation. No handwritten signs will be permitted. Temporary signs may be used for no more than two weeks.
- (i) **General.** Public signs for which the Concessioner is responsible must be appropriately located, accurate, and well-maintained. The Concessioner must install, maintain, and replace all interior and exterior signs relating to its operations and services within its Concession vessels. Examples of sign content or messages include the Concessioner's operating services and hours, rules or policies, and identifying the location of amenities.
 - (ii) **Standards.** Signs of a permanent nature must be prepared in a professional manner, appropriate for the purpose they serve, and consistent with Service

standards, as stated in draft Director's Orders 52C, Park Signage which can be found at <http://data2.itc.nps.gov/npspolicy/DOrders.cfm>.

D) Concessioner Housing - Flamingo

- (a) The Concessioner must maintain and repair all assigned concessioner employee housing and related facilities, fixtures and furnishings at Flamingo. The Concessioner must ensure that the assigned concessioner employee housing achieves the goals, as applicable, described in the Concessions Management Guidelines (Director's Order 36) and the Concessioner's written employee housing policy.

E) Building Responsibilities

- (a) The Concessioner will implement a computerized maintenance management system and associated work order management system to ensure the proper care of all structures and personal property assigned to the Concessioner under the Contract. The Concessioner must repair, maintain, and replace, as necessary, all interior walking surfaces of the Concession Facilities. The Concessioner must keep walking surfaces free of trip hazards.
- (b) The Concessioner must paint interior surfaces on at least a five (5) year cycle or whenever needed. The color and type of paint used shall be approved by the Service prior to use. The concessioner must utilize reprocessed, low volatile organic content, latex coatings whenever technically feasible.
- (c) The Concessioner must repair and maintain central and wall-mounted heating and air conditioning systems within or associated with the Concession Facilities.
- (d) The Concessioner must repair, maintain, and replace as necessary all equipment, registers, display counters, shelving, refrigeration and freezing devices, etc., within or associated with the Concession Facilities. When purchasing new equipment it shall be Energy Star compliant whenever technically and economically feasible.
- (e) The Concessioner must repair, maintain, and replace, as necessary, all doors, door frames and door trim within or associated with the Concession Facilities.
- (f) The Concessioner must repair, maintain, and replace, as necessary, all glass in windows, all glass in doors, screens, shutters, etc. within the Concession Facilities.
- (g) The Concessioner must repair, maintain, and replace, as necessary, all wall and ceiling coverings within or associated with the Concession Facilities.
- (h) The Concessioner must repair, refinish, and replace, as necessary, all floors and floor coverings within the Concession Facilities.
- (i) The Concessioner must provide all cleaning supplies, replacements lamp bulbs, and cleaning services to ensure a neat and clean appearance within the Concession Facilities.
- (j) The Concessioner must provide periodic window cleaning (inside and out) to maintain a clean appearance. Concessioner must purchase and use products or materials that are less toxic, reduce material use, contain post-consumer recycled content, and advance energy and water conservation where technically and economically feasible.
- (k) The Concessioner must repair and maintain, as necessary, the exterior lighting within or associated with the Concession Facilities

F) Food Service Equipment

- (a) All equipment used in food service operations, including but not limited to, refrigerators and serving tables, shall comply with all Applicable Laws, including, without limitation, the U.S. Public Health Service Food Code.

G) Utilities

- (a) Electrical System; The Concessioner must maintain and repair all interior electrical wiring and fixtures within or associated with the Concession Facilities. The area of responsibility in each building begins at the masthead where the electrical service enters the building. All electrical work performed on Concession Facilities must be accomplished by licensed electricians and be performed in accordance with local, state, and federal electrical codes.
- (b) Telephone System; The Concessioner must repair, maintain, and replace its telephone system within or associated with the Concession Facilities up to the point where the telephone company has responsibility.

H) Fueling Facilities - Flamingo

- (a) The Concessioner must maintain the fuel distribution system (pumps, fuel lines).
- (b) The Concessioner will be responsible for the duties of an operator as defined under Applicable Laws, for the aboveground storage tanks (ASTs) .

I) Boats and Vessels

(a) *Maintenance Standards*

- (i) Concessioner Responsibility. Maintenance of both Concessioner's and government assigned vessels is the sole responsibility of the Concessioner. All maintenance must be performed in a manner to ensure Park visitors will experience a pleasant, educational, and safe visit to Everglades National Park. The Concessioner shall be fully responsible for the safe and efficient maintenance, including preventive maintenance, of all vessels in strict conformity to all Applicable Laws and manufacturers' specifications.
- (ii) Location of Maintenance. The Concessioner is not authorized to conduct any repair and or maintenance projects on any vessels within the Gulf Coast Area with the exception of the custodial maintenance as described in Section I(4). The Concessioner is assigned an area within the Flamingo Maintenance Marina Basin (as shown in Exhibit C) to conduct custodial vessel maintenance and other vessel maintenance as approved by the Superintendent within the assigned boat maintenance building.
- (iii) Preventive Maintenance. The Concessioner must develop (unless already provided by the vessel manufacturer) and implement a preventive maintenance program for all systems affecting the safe operation of their vessels including the hull, mechanical and electrical systems.
- (iv) Scheduling of Maintenance. The Concessioner must notify the Service 72 hours prior to initiating work that removes the vessel(s) from service for routine maintenance. The submittal should include a plan for alternative transportation for visitors.
- (v) Vessel Changes. Any changes to vessels, including color schemes and functional layout, must have prior written approval of the Superintendent. Tributyl tin-based

(TBT) paints should only be used on boats that are aluminum hulled, greater than 82 feet (i.e., 25 meters) in length, or have outboard motors or lower drive units. Avoid using soft, ablative paints and consider using more innovative antifouling products (e.g., Teflon, silicone, polyurethane, and wax) with fewer adverse environmental impacts associated with application.

(b) *Regulatory & Quality Control*

(i) **Regulatory Control.** The vessels shall be operated and maintained in a manner consistent with Service requirements (as directed by the Contract and the Operating Plan), and the regulations of the United States Coast Guard ("USCG"), Department of Homeland Security ("DHS"), United States Public Health Service ("PHS"), the State of Florida, and, without limitation, all other Applicable Laws.

(ii) **United States Coast Guard**

- The USCG is the governmental agency responsible for periodically inspecting the Concessioner's vessels. The USCG determines the frequency with which vessels are inspected.
- The Concessioner must equip each vessel to meet USCG standards and the additional requirements designated by the Superintendent (as outlined in this Maintenance Plan and in the Operating Plan). All specified equipment shall be maintained through a program of routine inspection and replacement.

(c) *Fleet Management*

(i) **Maintenance Record System**

- The Concessioner must maintain an up-to-date, computerized, industry standard fleet management program for all vessels used in the operation of this Contract.
- The program must track scheduled and all other maintenance items with the intention of providing the safest and most dependable service possible.
- The system must keep track of the maintenance projects so that necessary maintenance may be scheduled and implemented on a timely basis. Minimum information shall include:
 - ◆ Make
 - ◆ Model
 - ◆ Year
 - ◆ Hull or Serial number
 - ◆ Documentation or License number
 - ◆ Certificate of Inspection
 - ◆ Preventive maintenance reports
 - ◆ Vessel maintenance and inspection reports requiring unscheduled mechanical inspection or attention, including, but not limited to, USCG inspections (dry dock, annual inspection, etc.), including listing of any notices regarding deficiencies including but not limited to 835-Notices and work lists. Such reports shall include the mechanic's diagnosis and proposed future action.

- ◆ Component change-outs
 - All reports generated by the maintenance record system (including, but not limited to, preventive maintenance inspection reports, daily vessel inspection reports, and equipment breakdown logs) shall be kept for the term of the Contract. These records must be available to the Service upon request and shall not be destroyed until the Concessioner has received written permission from the Service.
- (d) The Concessioner must immediately report to the Service all necessary repairs required after any vessel runs aground, or is involved in an incident that may impair the vessel's ability to perform the Concessioner's obligations under the Contract
- (e) *Cleaning and Custodial Maintenance for Houseboats, Canoes and Skiffs, and Tour Boats*
 - (i) General. Vessel janitorial service shall include, but is not limited to, trash pickup, cleaning bird droppings from handrails, washing floors when stained by bodily fluids, food products, and other use activities. Concessioner shall purchase and utilize products or materials that are less toxic, reduce material use, contain post-consumer recycled content, and/or advance energy and water conservation where technically and economically feasible.
 - (ii) Each Departure. The vessel restrooms shall be inspected and cleaned prior to each departure.
 - (iii) Daily. Prior to the first daily departure, the vessels shall be cleaned. This cleaning shall include:
 - Washing and scrubbing of the full exterior and above deck area, excluding the hull; however, no detergents or any chemical harmful to the water environment may be used.
 - Cleaning of all windows (if any) exterior and interior.
 - Dusting of the interior, if applicable.
 - Sweeping, vacuuming, or scrubbing of all floor areas, as appropriate, including the removal of gum, grease, oil, etc.
 - Ensure that each houseboat is fully stocked with supplies (i.e. cleaning supplies, paper goods, linens, and kitchenware) and that all the equipment is in working order when applicable.
 - Cleaning and regular supply of all vessel restrooms.
 - (iv) Semi-Monthly. Every 15 days, cleaning shall include the following in addition to the aforementioned cleaning:
 - Washing of the seats and stanchions; and,
 - Scrubbing, washing, or shampooing of ceiling (if any), sidewalls and floors.
 - (v) Waste Cleaning Fluids. All of the waste cleaning fluids generated by any cleaning activities must be collected and disposed of in accordance with Applicable Laws.
 - (vi) Damage. Damage to the vessel interiors must be repaired within seven days of occurrence. When extenuating circumstances prevent meeting this standard, the Concessioner must notify the Service and propose acceptable alternatives for Service consideration.

- (vii) **Seats and Cushions.** All seats that can no longer be kept clean or cushions that have worn out, have graffiti or stains that cannot be cleaned, or are damaged beyond repair shall be replaced with matching fabric/cushions.
 - (viii) **Other Equipment.** All Concessioner-operated appliances, machinery, and equipment, including parts, supplies, and related materials must be maintained, serviced, and repaired per the manufacturers' recommendations, and replaced as necessary.
- (f) **Safety Inspections & Quality Control**
- (i) The Concessioner shall implement a safety inspection and quality control program for all its vessels using Best Management Practices ("BMPs") of the marine industry. The Concessioner must update and modify BMPs throughout the term of the Contract. The Service may periodically review this program to ensure full operational compliance.
 - (ii) The Service may randomly inspect the Concessioner's vessels at any time while they are within the Area.
- (g) **Vessel Signage.** Vessels with marine heads shall also be equipped with required MARPOL signage concerning discharge of solid waste. Additional signage must be provided as appropriate on other vessels to educate customers to avoid throwing solid waste overboard.

J) Plans, Inspections, and Reporting

This Maintenance Plan requires a number of inspections, plans and reports. For the purposes of this document, the term "plan" will refer to written materials that outline the Concessioner's expected actions and expenses for a future period. The term "report" refers to written materials that document Concessioner accomplishments and expenses during a defined historical period.

- (a) **Annual Inspections.** The Concessioner must conduct reviews and inspections of Concession Facilities to determine necessary maintenance work and to verify its compliance with Applicable Laws.
- (b) **Annual Facility Maintenance Plan.** The Concessioner must provide the Service with an updated Annual Facility Maintenance Plan that covers all Concession Facilities and presents the planned Facility Maintenance activities for the next calendar year to meet the standards of section 9(a) of the Contract. The Concessioner must deliver the plan to the Superintendent on or before November 15 of each year of the Contract for review and comment. The Superintendent will provide written comments on the Plan within 90 days from receipt thereof. The Plan shall include the following elements:
 - (i) **Inspection Procedures and Schedules.** The Concessioner must include an inspection plan that describes how the Concessioner will ensure that the Concession Facilities and vessels are maintained properly and that deferred maintenance items are corrected in a timely manner.
 - (ii) **Preventive Maintenance ("PM") Procedures and Schedules.** The Concessioner must develop PM procedures and schedules that ensure proper maintenance of all Concession Facilities. At a minimum, PM procedures and schedules must include detailed PM activities for each building system (including, but not limited to, roofs, building envelopes and mechanical equipment). The PM procedures and schedules

will adhere to manufacturers' recommendations. The PM procedures must describe the year and those that it performed in the previous calendar year (for comparative purposes).

- In scheduling annual PM that requires vessels to be out of service, the Concessioner must, to the best of its ability, take into consideration and seasonality and must make reasonable efforts to minimize the number of days when a vessel is out-of-service.
- (iii) Cyclic Maintenance Schedules. The Concessioner must include programmed Cyclic Maintenance items in the plan. The cyclic procedures must describe the tasks that the Concessioner expects to perform during the next calendar year and those that it performed in the previous calendar year (for comparative purposes).
- (iv) Repair Items
- Scheduled Repair Items. The Concessioner must develop a plan to schedule known repair requirements during the year, including those that may have been deferred.
 - Unscheduled Repair Items. The plan must include a service call procedure and method to prioritize service calls for unscheduled facility maintenance items. Note: The Concessioner may perform emergency repairs without prior Service approval, with proper documentation to follow within one business day.
- (v) Projected Expenditures. Projected expenditures must include a breakout of labor, materials, contracted services and indirect costs. Indirect costs may not exceed local industry standards for similar expenditures.
- (vi) Reported Expenditures. The Concessioner must clearly document the PM, Cyclic Maintenance, and Scheduled and Unscheduled Repair activities that the Concessioner accomplished during the prior year and allow the Service to review these in conjunction with those activities that the Concessioner plans for the coming year. The Service will review the total reported expenditures for the prior year, in conjunction with the Annual Financial Report, to confirm that the Concessioner met the contractual requirements presented in Section 9(a) of the Contract.
- (c) Repair and Maintenance Reserve Plan. For the Repair and Maintenance Reserve obligation in Section 9(c) of the Contract, the Concessioner must provide the Service with an updated "Repair and Maintenance Reserve Plan" that covers Concession Facilities. The Concessioner must update the Repair and Maintenance Reserve Plan as requested by the Service but no less frequently than once per year. The Concessioner must deliver the plan for the following year to the Superintendent on or before November 15 with the exception of the first plan, which will be due within 6 months of the effective date of the Contract. The Superintendent will provide a written response within 90 days from receipt. The plan must include:
- (i) A forecast, by year, of projects that will use Repair and Maintenance Reserve funds for the next five years, or over the remaining life of the Contract, whichever is shorter.
 - (ii) The Service may require the Concessioner to perform Component Renewal/Replacement at the end of its useful life or when the item presents a

- quality, safety, or environmental issue. When such a requirement occurs, the Concessioner will incorporate it into the Repair and Maintenance Reserve Plan.
- (iii) This plan must show how the Concessioner will expend all funds in the reserve prior to the cessation of operations at Flamingo as set forth in the Contract.
- (iv) Please see Supplement E-1 of this Exhibit, which provides additional procedures for Repair and Maintenance Reserve projects.
- (d) *Repair and Maintenance Reserve Status Reports.* The Concessioner must submit a monthly report on the status of projects funded by the Repair and Maintenance Reserve by the 15th of each month and an annual summary report by March 1st of the following year.
- (e) *Operational Evaluation.* The Concessioner must develop a timeline to cure noted deficiencies identified during the Service's operational evaluations.
- (f) *Personal Property Replacement Plan.* The Concessioner must provide the Service with its planned personal property replacement schedule for the next calendar year by November 15 of each year of the contract for review and approval. The plan must include the specifications, description of the item, the estimated date of replacement, estimated replacement cost, expected life of replacement property, and expected salvage value of replaced personal property at time of replacement. Following approval of the plan, the Concessioner must coordinate with the Service as appropriate. The Superintendent will provide a written response within ninety (90) days after receipt.
- (g) *United States Coast Guard Inspections.* The Concessioner must comply with all United States Coast Guard regulations regarding inspections for all vessels operating pursuant to or in connection with the Contract.
- (i) Life-Safety Inspection The USCG will inspect the following items and components at the Concessioner's Expense:
- engines;
 - electrical system;
 - fire-fighting systems;
 - life saving equipment; and
 - electronics and navigational equipment.
- A report containing the USCG's findings must be submitted to the Superintendent within thirty (30) days of each inspection.
- (ii) Dry Dock Inspection. As required by the USCG, the Concessioner must provide the Superintendent with a schedule of regularly scheduled days that the vessels will be out of the water for USCG Dry Dock Inspection, and therefore out of service. The Concessioner must, to the best of its ability, take into consideration seasonality, and must make reasonable efforts to minimize the number of days when a vessel is out of the water.
- (iii) Concessioner Responsibility. The Concessioner must inspect vessels according to USCG regulations and Service requirements outlined in the Contract, Maintenance Plan, and Operating Plan. The Concessioner must maintain a log to record its compliance with this requirement and note with specificity

problems identified. The log will be kept updated and available for Service inspection. Items to be inspected include, without limitation:

- gangways;
- handles and wheels;
- lighting;
- sewage control and pumping systems;
- public address systems;
- emergency equipment; and
- other equipment for which inspection may be required by the Superintendent or required by USCG, PHS or FLDEP regulation or policy.

(h) *National Park Service Inspections*

Annual Evaluation: The Service and the Concessioner will conduct an annual joint evaluation and review of the Concession personal property and Concession Facilities to determine what maintenance is needed, and to ensure compliance with the Contract. This annual review shall occur on a schedule to be established by the Service in consultation with the Concessioner. Based upon the identified needs, the Service and the Concessioner will develop a timeline to cure any deficiencies.

- (i) ***Reporting:*** The table at the end of this document summarizes the preceding reporting requirements and details other reports, plans, payments, and inspections that will be the responsibility of the Concessioner in accordance with this Maintenance Plan. The Contract outlines additional reporting requirements with which the Concessioner must comply.

5) Service Responsibilities

The Service will assist the Concessioner in its maintenance program by assuming and executing the following responsibilities.

- (a) The Service will maintain the Service's portion of the jointly occupied visitor center building at Gulf Coast including the exterior maintenance of that entire building.
- (b) The Service is responsible for repair, cyclic, and custodial maintenance with respect to the visitor center restrooms located on the ground floor of the jointly occupied visitor center building at Gulf Coast.
- (c) The Service will provide, and, if necessary, replace the AST and fuel delivery system located within the marina basin area at Gulf Coast, unless repairs or replacement are required due to damage caused by the Concessioner, its agents, or patrons.
- (d) The Service will undertake the following grounds maintenance activities:
 - (a) Clearing of hazardous trees and limbs;
 - (b) Excavation, filling, or mitigation of external hazards created by flooding;
 - (c) Maintaining the ground surface at grade level by providing a rock, pavement, soil, or other ground surface for concession operations outside of any concession operated facility.
- (e) The Service will place trash cans and recycling containers, as needed, for use by the public on grounds outside of the Concession Facilities.

- (f) The Service is responsible for providing all necessary signs leading to the Area and located at the Area entrance indicating that Concession-provided facilities and services are available within the Area. The Service is also responsible for providing such signs as may be required for Service operations (e.g., operating hours for visitor centers).
- (g) The Service is responsible for installation, repair, or replacement as necessary of piers, floating docks, bulkheads, external electrical outlets, water delivery systems, and exterior lighting within the Whitewater Bay, Flamingo Bay, Flamingo Marina Maintenance Basin, and the Gulf Coast Marina Basin, except when repairs or replacement are due to damage caused by the Concessioner, its agents, or patrons as described in section 4 C) (5).

6) Summary of Initial and Recurring Due Dates

The following summarizes the preceding reporting requirements and details of other reports, plans, payments, and inspections that will be the responsibility of the Concessioner in accordance with this Maintenance Plan. The Contract and the Operating Plan may outline additional reporting requirements that are **not** outlined below.

SUMMARY INITIAL AND RECURRING DUE DATES			
Title	Schedule	Due Date	Reference
Waste Management Plan	Annual	By February 15 of each year	Maintenance Plan Sec. 4 B (3) (f)
Hazardous Waste Inventory Report	Quarterly	15 days after the end of each quarter	Maintenance Plan Sec. 4 B (3) (f)
Pesticide Request Form and Pesticide Use Log	Annual	No later than January 15 of each year for that calendar year	Maintenance Plan Sec. 4 B (5) (a)
Repair and Maintenance Reserve Plan	Initial/Annual	Within 6 months of the effective date of the Contract and by November 15 of each year thereafter	Draft Contract, Sec 9 (c) Maintenance Plan Sec. 4 J (3)
Personal Property Replacement Plan	Annual	By November 15 of each year	Maintenance Plan Sec. 4 J (6)
Repair and Maintenance Reserve Status Reports	Monthly	By the 15 th of each month for the proceeding month of operation	Maintenance Plan Sec. 4J (4)
Annual Facility Maintenance Plan	Annual	By November 15 of each year	Maintenance Plan Sec. 4 J (2)
Environmental Management Program (EMP)	Initial/Annual	Within 60 days of the effective date of the Contract and by February 1 of each year thereafter	Draft CONTRACT, Sec. 6 (b) (1)
Emergency Action Plan (EAP)	Initial	Within 60 days of the effective date of the Contract and by February 1, of each year.	Maintenance Plan, Section 4, B(4) (a)

Supplement E-1:

Repair and Maintenance Reserve Project Procedures

Introduction

This Supplement presents systematic procedures for the administration of projects funded out of the Repair and Maintenance Reserve within the Area. The Contract defines the purpose and scope of the Reserve Fund as well as the type and nature of eligible projects in Section 9(c).

Note that certain projects may require review under the National Environmental Policy Act (NEPA) of 1969, as amended. Projects within historic and culturally significant areas may require certain building management methods established under the National Historic Preservation Act (NHPA) of 1966, as amended. The Concessioner must ensure that all projects comply with codes and building requirements adopted by the Director, including without limitation and where applicable, the most recent International Building Code (IBC), National Fire Protection Association (NFPA) codes, the Americans with Disabilities Act (ADA) requirements, and National Park Service Management Policies.

Procedures

- **Roles and Responsibilities.** The Concessioner is responsible for all aspects of project development and implementation. The Service will provide direction, authorization, and oversight via the Superintendent.
- **Repair and Maintenance Reserve Plan Approval.** The Concessioner will provide the Service at least annually with a Repair and Maintenance Reserve Plan per Exhibit E. The Concessioner must obtain Repair and Maintenance Reserve Plan approval by the Superintendent prior to submitting any specific project for approval.
- **Project Approval.** The Concessioner must provide formal written notice to the Superintendent of the intent to proceed with the planning and design of any project at least one year prior to the intended commencement date. The Concessioner will not proceed prior to receiving written approval from the Superintendent.
- **Project Planning and Design Approval.** The Concessioner will submit a set of project Plans and Designs to the Superintendent for review and approval. The Concessioner will not execute any aspect of the project or contract prior to receiving written approval from the Superintendent. Project Plans and Designs will include, at a minimum:
 - *Project Statement:* A copy of the project Approval, the designated Concessioner project supervisor, a description of the work, and the justification for the work.
 - *Planning:* Documents as applicable such as those produced for NEPA and Section 106 compliance, concept design, preliminary design, or schematic design and related correspondence and documents.
 - *Design:* Documents produced and decisions made during the design phase of the project such as drawings, renderings, schematics, or descriptions.

- **Project Estimate and Schedule.** An estimate of the Total project Price and completion schedule before work begins based on the best information available identified during project planning and design.
- **Certification of No Capital Improvement.** An analysis of the proposed project to ensure that no element of the project would qualify as a Capital Improvement, as that term is defined in 36 C.F.R. Part 51, Subpart G, eligible for Leasehold Surrender Interest. The Concessioner must certify that the project does not include the construction or installation of a Capital Improvement. The Service must review this certification to confirm that the project does not include any element that may be eligible for Leasehold Surrender Interest. The parties will resolve any concerns before the Superintendent approves the project. The Superintendent is not authorized to allow the Concessioner to construct or install any Capital Improvement to Concession Facilities.
- **Project Management.** The Concessioner designated project supervisor will oversee the project and its completion. The Concessioner will submit to the Superintendent periodic activity reports, at a frequency to be agreed upon by the Concessioner and Superintendent prior to project commencement. A periodic activity report will, at a minimum:
 - Summarize project activity by recording observations and decisions
 - Identify project expenditures to date
 - Lists any changes to the approved project Plans and Designs
 - List any changes in Schedule and Total project Price
- **Project Change Approval.** Changes during the work that require review and approval of the Superintendent include, without limitation, the following:
 - Changes affecting natural, cultural, or historic resources
 - Changes in designated visual appearance
 - Changes in the interface with utility, road, or facility maintenance operations
 - Changes in project scope
- **Substantial Completion Inspection.** The Concessioner will notify the Superintendent that the project is substantially complete and request a joint inspection. The Concessioner and Service will develop a 'punch' list of work items required to close out the project. The Concessioner will not use the structure or structure area affected by the project until all 'punch' list items are resolved.
- **Project Completion Report Approval.** Upon completion of any project, the Concessioner must submit a project Completion Report to the Superintendent. The project Completion Report must include the total project cost; before-and-after photo documentation; warranties; operation and maintenance manuals, if required; all inspection and certification reports; as-constructed drawings, and other documents as requested by the Superintendent. Until receiving formal written project Completion Report Approval from the Area Superintendent, the Concessioner retains full responsibility for all project construction activity and liability for both completed and uncompleted work.

Approved, effective _____, 200__

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.

With the exception of statutory Workers' Compensation insurance protection, the Service shall be named as an additional insured under all insurance policies issued or arranged in support of this agreement. The coverage provided for the benefit of the Service is not to be impaired by any act of the Concessioner, its agents, servants or employees. 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. The term 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 and coverage terms indicated are not intended as a limitation of the Concessioner's responsibility or liability under this agreement, but rather an indication as to the minimum type(s), amounts and scope of insurance that the Service considers necessary to allow the operation of the concession facilities at its park. Nevertheless, if the concessioner purchases insurance in addition to the limits illustrated herein, the Service is to receive the benefits 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 item #3 excess or umbrella liability insurance policy).

A) Commercial General Liability Insurance

- 1) Coverage will be provided for bodily injury, property damage, 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:

Bodily Injury and Property Damage Limit

(a) General Aggregat	\$ 2,000,000
(b) Products & Completed Operations Aggregate	\$ 2,000,000
(c) Per Occurrence	\$ 1,000,000
(d) Personal Injury & Advertising Injury Liability	\$ 1,000,000
(e) Medical Payments	\$ 5,000
(f) Fire Damage Legal Liability "per fire"	\$ 50,000

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

- 2) The liability coverages 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
- (e) Explosion , Collapse and Underground Property Damage
- (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)

B) Watercraft Hull, Liability/ Protection & Indemnity (P&I) insurance (unless it is demonstrated that the watercraft liability exposures are otherwise insured)

A copy of the each vessel's inspection certificate and the pilot's license must be on file with the Concessioners' office. The inspection certificate must identify the operation and the rated passengers.

1) Limits of Liability*

Hull, Machinery and Equipment	Cash value of Vessel
Liability/Protection & Indemnity	\$5,000,000 per occurrence \$10,000,000 aggregate (if any)

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

C) Marina Operators' Legal Liability (unless it is demonstrated that these exposures are otherwise insured)

This coverage is intended to fill the gaps caused by the exclusions in the General liability policy with respect to coverage for the watercraft exposure and property in the care/custody and control of the concessioner.

Limit of liability*: \$300,000 per occurrence & aggregate

- 1) Repair, alteration, service or maintenance
- 2) Storage—must include an aggregate limit sufficient for the storage operation
- 3) Mooring
- 4) Hauling/launching
- 5) Fueling

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

D) Automobile Liability Insurance, including Garage Operations

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) \$1,000,000 per occurrence / \$2,000,000 aggregate*.

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

E) 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 \$2,000,000

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

F) 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.

Note: An excess or "umbrella" liability policy may be used to achieve any of 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 Marine Liability policy requires a \$5M limit of liability; if the limit provided under the primary marine liability policy is \$1M, then the umbrella policy must provide a limit of at least \$4M to provide the total requirement of \$5M. Since the Umbrella/Excess policy applies over both the automobile and the commercial general liability policy, and marine a single limit under the excess policy is all that will be required.

The umbrella liability policy 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 NPS in the event of a loss.

G) Environmental Impairment Liability

Coverage will be provided for bodily injury, personal injury or property damage arising out of pollutants or contaminants (on site and/off site) *.

Each Occurrence or Each Claim Limit \$1,000,000

Aggregate Limit \$2,000,000

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

H) Special 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.

I) Self-Insured Retentions

Self-insured retentions or deductibles on any of the above described Liability insurance policies (other than Excess "Umbrella" Liability, if maintained) may not exceed \$5,000 without prior approval of the Director.

J) Workers Compensation & Employers' Liability

Coverage will be maintained and 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.

K) Required Endorsement: United States of America as a Named Insured

The United States of America is to be included as a Named insured under all liability policies. Suggested policy language is as follows:

“It is agreed that the United States of America is included as a Named Insured hereunder as its interest may appear in property insured hereunder. It is also understood and agreed that any act or omission of any other insured under this policy shall not void or impair this policy as respects that benefit of the United States of America or any of its political subdivisions. Furthermore, the United States of America is not responsible for the payment of premium, reporting of losses or curing any defaults under this contract of insurance.”

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. Coverage shall apply on “All Risks” or “Special Coverage” basis.
- 5) The policy shall provide for loss recovery on a replacement value basis (without deduction for physical depreciation).
- 6) The amount of insurance should represent no less than 100% of the replacement value of the sum total of all insured property.
- 7) The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
- 8) Coverage is to be provided on a blanket basis for real and personal property.
- 9) 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.
- 10) Flood Insurance shall be maintained with a limit not less than 100% of replacement value as listed in Exhibit C (without deduction for physical depreciation)
- 11) Ordinance or Law, demolition and increased cost of construction coverage shall be maintained with a limit of not less than the building replacement value listed in Exhibit C.

B) Boiler & Machinery Coverage

- 1) Insurance shall apply on the “comprehensive” basis of coverage including all objects within the Concession Facilities.
- 2) The policy shall provide for loss recovery on a replacement value (without deduction for physical depreciation) basis.
- 3) The amount of insurance should represent no less than 100% of the replacement value (without deduction for physical depreciation) of the sum total of all insured property.
- 4) The coinsurance provision, if any, shall 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 shall be maintained with a limit of not less than the building replacement value (without deduction for physical depreciation) listed in Exhibit C.

C) Builders Risk Coverage

- 1) Insurance shall cover new buildings or structures under construction at the Concession Facilities, and include coverage for property that has or will become a part of the project while such property is at the project site, at temporary off-site storage and while in transit. Coverage should also apply to temporary structures such as scaffolding and construction forms.
- 2) Coverage shall apply on an “All Risk of loss” or “Special Coverage” basis.
- 3) The policy shall provide for loss recovery on a replacement value basis. (without deduction for physical depreciation)
- 4) The amount of insurance should represent no less than 100% of the replacement value of the insured property.
- 5) The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
- 6) Any occupancy restriction must be eliminated.
- 7) Any collapse exclusion must be eliminated.
- 8) Any exclusion for loss caused by faulty workmanship must be eliminated.

D) Business Interruption and/or Expense

- 1) Business Interruption insurance and extra expense insurance is to 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 shall be at least that calculated as follows:

Anticipated annual Gross revenue from operations	\$ _____
Less non-continuing expenses	(\$ _____)
Total:	\$ _____
Prorated by ratio of days of operation over 365 =	<u> </u> x <u>percentage</u>
Business Interruption limit	\$ _____

E) Deductibles

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

- 1) Direct Damage deductibles shall not exceed the lesser of 10% of the amount of insurance or \$25,000 (except Flood & 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.

F) Required Clauses

- 1) 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. _____ dated _____, between the United States of America and [the Concessioner] payment of insurance proceeds resulting from damage or loss of structures insured under this policy is to be disbursed directly to the Concessioner without requiring endorsement by the United States of America.”

IV. CONSTRUCTION PROJECT INSURANCE

Concessioners entering into contracts with outside contractors for various construction projects, including major renovation projects, rehabilitation projects, additions or new buildings/facilities will be responsible to ensure that all contractors retained for such work maintain an insurance program that adequately covers the construction project.

The insurance maintained by the construction and construction-related contractors shall comply with the insurance requirements stated herein (for Commercial General Liability, Automobile Liability, Workers' Compensation and, if professional services are involved, Professional Liability). Except for the workers' compensation insurance coverage, the interests of the Concessioner and the United States shall be covered in the same fashion as required in the Commercial Operator Insurance Requirements. The amounts/limits of the required coverages shall be determined in consultation with the Director taking into consideration the scope and size of the project.

V. THIRD PARTY VENDOR INSURANCE

Concessioners entering into contracts with third party vendors for various services, or activities, that the concessioner is not capable of providing or conducting, will be responsible to ensure that all vendors retained for such work maintain an insurance program that adequately covers the activity and that the activities and vendor comply with all the requirements applicable to the vendor's own insurance.

With respect to services or activities involving aircraft, aircraft liability coverage will be no less than \$5,000,000 pre occurrence / \$10,000,000 annual aggregate, and a current WS FAA Airworthiness Certificate and a copy of the pilot's license must be on file with the concession office, including an identification as to the operation and maximum number of passengers.

VI. INSURANCE COMPANY MINIMUM STANDARDS

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

- A) 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). However, if the insurance agent/broker formally confirms that no carriers with such ratings are writing the required coverage, carriers with B+ rating will be considered on an exception basis by the Director.
- B) 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).
- C) All insurers must be admitted (licensed) or approved in the State (s) in which the concessioner operates.

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 shall contain a notation that the insurance coverage represented therein complies with the provisions of this agreement as outlined in Exhibit F.

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.

VI. 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 to be maintained. In the event that the statutorily required limit is less than the limits required herein, the limits required herein shall control.

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, or any specific services hereunder, for any reason (hereinafter "Termination" for purposes of this Exhibit) and the Concessioner is not to continue the operations authorized under this Contract after the Termination Date, the Director and the Concessioner in good faith will fully cooperate with one another and with the new concessioner or concessioners selected by the Director to continue such operations ("New Concessioner" for purposes of this Exhibit), to achieve an orderly transition of operations in order to avoid disruption of services to 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). Continue Bookings. Continue to accept all future bookings for any facilities and services for which advance reservations are taken; not divert any bookings to other facilities or services managed or owned by the Concessioner or any affiliate of the Concessioner; and notify all guests with bookings for any period after the Termination Date that the facilities and services are to be operated by the New Concessioner. Promptly following notification to the Concessioner by the Director of the selection of the New Concessioner, the Concessioner shall provide the New Concessioner with a copy of Concessioner's reservation log for visitor services as of the last day of the month prior to the selection of the New Concessioner, and thereafter the Concessioner shall update such log on a periodic basis (but no less frequently than thirty (30) days) until the Termination Date. The reservation log shall include, without limitation, the name of each guest, and the guest's (1) address, (2) contact information, (3) dates of stay, (4) rate quoted, (5) amount of advance deposit received and (6) confirmation number, if applicable.

(c). 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 Concession Facilities, including "back-of-house areas" and including copies of the keys to all Concession Facilities; (3) providing the Director and the New Concessioner with full access to the books and records, licenses and all other materials pertaining to any Concession Facilities 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 Concession Facilities or

operations in general after the Termination Date without the prior written agreement of the New Concessioner.

(d). Financial Reports. Within 30 days after receipt of the notification of the selection of the New Concessioner, provide the New Concessioner with a financial report with respect to the operation of any Concession Facilities 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 Concession Facilities, if any; (2) a schedule of pending accounts payable; and (3) a schedule of pending accounts receivable.

(e). Personal Property List. 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.

(f). 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.

(g). 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). Reservation Systems. (1) Provide the New Concessioner with an update of the reservation log through the Termination Date; (2), disconnect its operations from the Concessioner's centralized reservation system, if any; and (3) cooperate with the New Concessioner in transitioning to the New Concessioner's reservation system.

(c). 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 information that was not available at the time of the statement.

(d). 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.

(e). 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.

(f). Other Cooperation. Provide the Director and the New Concessioner with such other cooperation as may be reasonably requested.