

**DRAFT 10-3-2023**

**CONCESSION CONTRACT**

**UNITED STATES DEPARTMENT OF THE INTERIOR**

**U.S. Fish and Wildlife Service**

J.N. "Ding" Darling National Wildlife Refuge

**Tarpon Bay Recreation Area**

**For the Operation of Tours and Rental Services**

**CONCESSION CONTRACT NO. CC-JNDDNWR 24-34**

[Name of Concessioner] [Concessioner's address, email address, phone number]

Doing Business As [Trade Name]

Covering the Period June 1, 2024 through May 31, 2034<sup>1</sup>

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<sup>1</sup> The effective date of the Contract is subject to change prior to contract award if determined necessary by the Service due to transfer timing issues. The expiration date will be changed to continue the same term length from any effective date. This footnote is to be deleted prior to contract execution.

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**IDENTIFICATION OF THE PARTIES**

THIS CONCESSION CONTRACT (Contract) is made and entered into on June 1, 2024 by and between the Secretary of the U.S. Department of the Interior (Secretary), acting under the authority of Section 4 of the National Wildlife System Administration Act of 1966 (the 1966 Act), as amended, 16 U.S.C. §§668dd(b)(1) and (d)(1)(A)(1999), and through the U.S. Fish and Wildlife Service (Service) represented by the undersigned Regional Director, and \_\_\_\_\_, (Concessionaire).

**WITNESSETH**

WHEREAS, the National Wildlife Refuge System (System) is the largest assemblage of lands and waters set aside for wildlife and habitat conservation in the world. As stated in the National Wildlife Refuge System Improvement Act of 1997, Pub. L. 105-57 (the 1997 Act), the mission of the System is:

“to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife and plant resources and their habitats within the United States for the benefit of present and future generations of Americans”

Pub.L.105-57 (10/9/97), 111 Stat.1254; and

WHEREAS, the J.N. Ding Darling National Wildlife Refuge (Refuge), located on Sanibel Island in Lee County, Florida, was established on December 1, 1945 for use as “an inviolate” sanctuary, or for any other management purpose, for migratory birds as authorized under the 1978 Amendment to the Migratory Bird Conservation Act, Pub.L.95-616, 16 U.S.C. §715d (2002);

WHEREAS, the Refuge also was established because it is “suitable for (1) incidental fish and wildlife-oriented recreational development, (2) the protection of natural resources and, (3) the conservation of endangered species or threatened species” as authorized under the Refuge Recreation Act of 1962, as amended, 16 U.S.C. § 460k-1 (1999); and

WHEREAS, the Service has determined that the concession activities described herein constitute a “wildlife-dependent recreational use” which is a “compatible use” within the

Refuge as those terms are defined in Section 3 of the 1997 Act, 16 U.S.C. §668ee(1); and

WHEREAS, the Concessionaire intends to provide services that will promote compatible wildlife-dependent recreational uses which are directly related to the purposes of the Refuge and to the mission of the System; and

WHEREAS, the Concessionaire intends to provide such services at reasonable rates under the supervision and regulation of the Secretary in a manner that will benefit visitors to the Refuge and foster an appreciation for fish and wildlife; and

WHEREAS, Section 5 of the 1997 Act, 16 U.S.C. §668dd(a)(3)(D) authorizes the Secretary to facilitate such recreational activities, subject to restrictions or regulations as may be necessary, reasonable, and appropriate;

WHEREAS, The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. §§668dd(b)(1) and (b)(5) authorize the Secretary of the Interior to negotiate and award contracts and issue regulations to carry out the Act; and

WHEREAS, 50 CFR §25.61 (Subpart F - Concessions) and Service policies 630 FW 6-8 provide for the operation of public use facilities under contracts or legal agreements on national wildlife refuges.

NOW, THEREFORE, in consideration of the mutual promises herein expressed, the parties mutually covenant and agree as follows:

### **Section I. Term of Contract.**

This Contract shall be for a term of 10 years (120 months) beginning on the date of final execution by the Service as inscribed herein ("Effective Date") provided it is not earlier terminated under the terms and conditions stated herein. The operation of the concession shall commence on or before June 1, 2024 ("Commencement Date"). This Contract may be renewed by written, mutual agreement not to exceed an additional five-year period.

### **Section II. 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:

1. **Administrative costs** means those expenses directly associated with our administration of the concession contract. This includes inspection of concessionaire operation, maintenance, and construction costs for facilities; costs of negotiations; and concessionaire selection. Also included are our costs to maintain or construct facilities not included in the contract but that are necessary for the concession to function. (For example, the costs to maintain a road that leads to the Concession Area).
2. **Applicable Laws** means the laws of Congress governing the Refuge, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws, whether now in force, or amended, enacted or promulgated in the future, along with all other applicable federal, state and local laws, rules, and regulations, including requirements and policies governing nondiscrimination, protection of the environment and/or protection of public health and safety.
3. **Concession** means a business operated by private enterprise that provides recreational, educational, and/or interpretive enjoyment of our lands and waters for the visiting public. A concession provides a public service and generally requires some capital investment by the concessionaire for buildings, boat docks, boats, etc. More than one firm can fill concession opportunities.
4. **Concessionaire or Concessioner** means any person, corporation, or organization operating commercial visitor services for the recreational, educational, and/or interpretive enjoyment of the visiting public.
5. **Concession Area** shall mean all Refuge land assigned to the Concessionaire under this Contract as depicted on Exhibit C.
6. **Concession Contract or Contract** shall mean the legal instrument that binds the concessionaire and the Government to agreed upon terms and conditions. We base contracts on the minimum requirements for quantity and quality of services to fulfill the public need and form a sound business arrangement. We will incorporate the prospective concessionaire's proposal as a part of the contract. Concession contracts are not Federal procurement contracts in that we are not directly receiving goods or services. We are authorizing a privilege; therefore, the statutory and/or regulatory requirements governing procurement contracts are not applicable.
7. **Concession Facilities** shall mean all Refuge real property improvements assigned to the Concessionaire under this Contract as described in Exhibit C. The United States retains right, title and ownership to and of all Concession Facilities and the assignment of Concession Facilities in this Contract conveys no property or other ownership interest to the Concessionaire in said facilities as a consequence of the Contract.

8. **Concession Manager** means the individual or team that the Regional Director or Regional Chief, National Wildlife Refuge System designates as having authority to administer concession contracts on Service lands and waters. This could be a team consisting of Regional Office members from Contracting and General Services and the National Wildlife Refuge System, refuge supervisors, project leaders, and refuge staff members. We anticipate that this will be the authorized field representative and primary contact for the concessionaire.
9. **Entrance fee** means the concessionaires one dollar (\$1.00) payment to the Refuge from each adult (13 and over) tram passenger. This fee shall be paid quarterly and is a separate payment from the percentage payment. Entry fee is taken from the concession's gross income before the percentage payment is calculated. The entry fee is not an extra charge to tram customers, but will be taken out of the agreed concessionaire's adult tram fee.
10. **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.
11. **Franchise fee** means the concessionaire's payment to us for the privilege of conducting business on our lands and waters. The franchise fee represents a reasonable return to us. The franchise fee will be a fixed rate payable on an annual basis at the beginning of the contract year. A **\$100.00 fee** shall be paid by the Concessionaire on the award date of this contract and followed by the same payment at the beginning of each contract year.
12. **Gross receipts** means the total dollars collected by the concessionaire from business operations conducted on the premises, including receipts of sub-concessions and licensees. Concessionaires will only deduct the costs of hunting and fishing licenses and other license fees, taxes, and pass-through costs such as managing metered utilities. Concessionaires must pay utility companies the exact amount collected from customers for metered utility service.
13. **Gross receipts of sub-concessionaires** means the total amount received or realized by, or accruing to, sub-concessionaires from all sources, as a result of the exercise of the rights conferred by sub-concession contracts hereunder without allowances, exclusions or deductions of any kind or nature whatsoever.
14. **Maintenance** means minor repairs as specified in Exhibit E.
15. **Major repairs** means repairs or enhancements to existing facilities owned by the Federal Government, to include but not limited to, repairs or replacement of a roof, building, or road. This will be the responsibility of the Service, subject to the availability of funds.
16. **Percentage payment** means the concessionaire's payment to us for the privilege of conducting business on our lands and waters. We base this payment on the gross receipts collected by the concessionaire for goods and services rendered. The concessionaire offers a proposed percentage payment of his/her gross receipts in his/her proposal.
17. **Prospectus** means the document that concession managers use as the primary method for soliciting and selecting a concessionaire for commercial visitor services. A prospectus describes the commercial visitor services required on a refuge. For example:
- (1) Requirements for interpretive guided tours; canoe, boat, and bike rentals, etc.
  - (2) An estimate for annual gross receipts for a concession.
  - (3) The evaluation criteria for contract selection.
  - (4) Applicable terms and conditions.
18. **Refuge** means the property within the boundaries of the J.N. Ding Darling National Wildlife Refuge.
19. **Refuge Manager** means the manager of the Refuge and duly authorized representatives.
20. **Regional Director** shall mean the Regional Director of Region 4 of the U.S. Fish and Wildlife Service and duly authorized representatives.
21. **Secretary**, Shall mean the Secretary of the Interior, delegated responsibilities for managing the System to

the Service.

22. **Service** means the U.S. Fish and Wildlife Service.

23. **Visitor Services** means the facilities and services that the Concessionaire is required and authorized to provide under Section III of this Contract.

### SEC. 3. SERVICES AND OPERATIONS

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

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

##### *Required Visitor Services under the Contract*

Service	Brief Description
Tram Tours	Provide fully narrated tram tour, including private charters, along the Refuge's Wildlife Drive.
Kayak Tours:	Provide Guided interpretive tours through the Commodore Creek Canoe Trail
Rental Equipment	Provide Rental Kayak, Stand-up Paddle Boards, Bicycles and Pontoon Boats (with up to x hp motors).
Day Use, Boat Ramp	Provide motorized and non-motorized boat launching at the Tarpon Bay Boat Ramp.
Entrance Fee Collection	Collect Entrance Fees on Wildlife Drive the Drive is open 7AM to Sunset 6 days per week.
Recreation Pass Sales	Sell annual Recreational Passes at the Entrance Fee Booth

The Concessioner is required to provide the following visitor services during the term of the Contract: The Service requests offers for the award of a 10-year concessions contract to continue the operation and maintenance of the required and authorized services below. The Service expects that operations under the Existing Contract will remain essentially the same under the Draft Contract.

Essential operating and maintenance requirements are provided in the exhibits to the Contract: specifically, the Operating Plan (Exhibit A) and the Maintenance Plan (Exhibit E).

The Concessioner is authorized, but not required, to provide the following visitor services during the term of the Draft Contract.

##### *Authorized Visitor Services under the Draft Contract*

Service	Brief Description
Guided Fishing	Charter fishing within Tarpon Bay
Boat Rentals	Small vessels 25hp or less within Tarpon Bay only
Nature/ Sealife Cruise	An interpretive guided tour on a shallow water vessel (i.e Pontoon Boat) operated within Tarpon Bay



Interpretive programs/deck talks	Aquarium/touch tank, nature and sea life displays with interpretive talks on native wildlife and conservation topics.
Vending	Sale of water, other non-alcoholic beverages, and packaged snacks.
Other Merchandise Services	Sale of souvenirs related to South Florida Wildlife, and of J.N. "Ding" Darling NWR, Tarpon Bay and its environs as well as fishing gear, paddle craft and accessories. The sale of visitor convenience items such as sunglasses and sunblock is also authorized.
Guidebooks and Maps	Sale of printed material directly related to South Florida Wildlife, and of J.N. "Ding" Darling NWR and its environs.
Employee Housing	Concessionaire may opt to house one (1) employee in the 2-bedroom 1 bath apartment located in the Tarpon Bay Concessionaire building.

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

The Concessioner shall provide, operate and maintain the required and authorized visitor services and any related support facilities and services in accordance with this Contract to such an extent and in a manner considered satisfactory by the Regional Director and Refuge Manager. Except for any such items that may be provided to the Concessioner by the Regional Director, the Concessioner shall provide the personnel, equipment, goods, and commodities necessary for providing, operating and maintaining the required and authorized visitor services in accordance with this Contract. The Concessioner's authority to provide visitor services under the terms of this Contract is non-exclusive.

**(c) Operating Plan**

The Regional Director, acting through the Refuge Manager, 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 Regional Director in his discretion, after consultation with the Concessioner, may make reasonable modifications to the initial Operating Plan that are in furtherance of the purposes of this Contract and are not inconsistent with the terms and conditions of the main body of this Contract.

**(d) Hours of Operation**

During the period of November 1 through April 30 of each year of the Contract, operation for all Visitor Services will be available and Concession Facilities will be open 7 days a week from 9 a.m. to 5 p.m. local time. During the period of May 1 through October 31 of each year of the Contract, all Visitor Services will be available, and Concession Facilities will be open 7 days a week from 9 am to 4 p.m. local time. Hours may be extended, but not beyond one-half hour before sunrise and one-half hour after sunset. The only exceptions to the hours of operation indicated above will be that Concessionaire may elect to close for 2 weeks during the month of September, and on Thanksgiving Day and Christmas Day. The Concessionaire shall notify the Refuge Manager or Concession manager in advance of implementing any plan to close operations in accordance with the preceding sentence.

During the entire year, tram services will be open 6 days a week (Saturday through Thursday) from 10 a.m., to 4 p.m. local time. Hours may be extended, but not beyond one-half hour before sunrise and one-half hour after sunset. The only exceptions to the hours of operation indicated above will be that Concessionaire may elect to close Tram services for 2 weeks during the month of September, and on Thanksgiving Day and Christmas Day. The Concessionaire shall notify the Refuge Manager or Concession manager in advance of implementing any plan to close Tram services in accordance with the preceding sentence.

\*Due Current mark

**(e) Merchandise and Services**

- (1) The Regional 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 Refuge Manager prior to use. All such material will identify the Concessioner as an authorized Concessioner of the U.S. Fish and Wildlife Service, Department of the Interior.
- (3) The Concessioner, where applicable, will develop and implement a plan satisfactory to the Regional 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.

**(f) 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 Refuge Manager in accordance with Applicable Laws. Reasonableness of rates and prices will be judged by comparison with those currently charged for comparable services or goods furnished or sold in the vicinity of the Refuge under similar conditions, with due allowance for length of season, provision for peak loads, accessibility, availability and cost of labor and materials, type of patronage, plus any other conditions customarily considered in determining fair rates of service. Due regard shall be given to such factors as the Refuge Manager deems significant.

**(g) Impartiality as to Rates and Services**

- (1) Subject to Section (f) 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 Refuge Manager 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 Concessionaire will provide Federal employees with reduced rates while they are performing essential transportation and other specified services necessary for conducting official Service business. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

**SEC. 4. CONCESSIONER PERSONNEL**

**(a) Employees**

- (1) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this Contract.
- (2) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit B.
- (3) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

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

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

(6) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Regional Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to correct the situation.

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

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

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

**(b) Employee Housing and Recreation**

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

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

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

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

This Contract, operations thereunder by the Concessioner and the administration of it by the Regional Director through their Subordinates, 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 Regional 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 Regional Director shall be sent to the following address:

Refuge Manager  
 J.N. "Ding" Darling National Wildlife Refuge  
 1 Wildlife Drive  
 Sanibel, FL 33957

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

[Concessioner name]  
 [Address]  
 [Attention:]

**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 Regional Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The initial EMP shall be developed and submitted to the Refuge Manager for approval within sixty days of the effective date of this Contract.
- (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 Service protocol regarding audit of Service 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 Regional 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 Regional 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 Regional 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) Regional 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 Regional 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 Regional 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 as any construction or major renovation of real property.) 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 Regional Director shall from time to time amend Exhibit C to reflect changes in Concession Facilities assigned to the Concessioner.

### **(b) Concession Facilities Withdrawals**

The Refuge Manager 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 Regional 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 Regional 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 Regional Director as set forth in subsection (e)(2).

(2) Personal Property Provided by the Government. The Regional 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 Regional 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 Refuge Manager as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Regional 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**

The Concessionaire shall secure at its own expense all utilities necessary or appropriate to conduct concession operations under and for the entire term of the Contract, with renewals, including without limitation electricity, telecommunications, wifi, cellular service, trash disposal and hazardous material disposal.

**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 Regional Director.

**(b) Maintenance Plan**

For these purposes, the Regional Director, acting through the Refuge Manager, 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 Regional 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) Component Renewal Reserve**



(1) The Concessioner shall establish and manage a Component Renewal Reserve. The funds in this Reserve shall be used to carry out, on a project basis in accordance with Exhibits E and H, component renewal of Concession Facilities that are non-recurring within a seven-year time frame. Such projects may include repair or replacement of building frames, window frames, sheathing, subfloors, drainage, fencing, gates, docks repairs and 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 Regional Director shall direct in writing in advance of any expenditure being made and in accordance with project proposals approved by the Regional Director. No projects may be commenced until the Concessioner receives written approval from the Regional Director.

(2) Projects paid for with funds from the Component Renewal 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 Component Renewal Reserve.

(3) The Concessioner shall establish within its accounting system a Component Renewal 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: 2 percent (2%) of the Concessioner's gross receipts for the previous month. If the Concessioner fails to make timely debits to the Component Renewal Reserve, the Regional Director may terminate this Contract for default or may require the Concessioner to post a bond in an amount equal to the estimated annual Component Renewal Reserve allocation, based on the preceding year's gross receipts.

(4) The balance in the Component Renewal Reserve shall be available for projects in accordance with the Reserve's purpose. For all expenditures made for each project from the Component Renewal Reserve, the Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Regional Director. Failure to expend Component Renewal Reserve Funds when directed by the Regional Director shall be considered as a material breach of this Contract for which the Regional Director may seek monetary damages and other legal relief, including, without limitation, termination of this Contract.

(5) Component Renewal Reserve funds shall not be used to construct "Capital Improvements" as that term is defined as the construction of a "structure," a "major rehabilitation," or the installation or replacement of "fixtures and non-removable equipment." The Concessioner shall obtain no ownership, Leasehold Surrender Interest, or other compensable interest based on the expenditure of Component Renewal Reserve funds.

(6) Any balance in the Component Renewal Reserve not duly expended by the Concessioner as of the termination or expiration of this Contract shall be remitted by the Concessioner to the Regional Director as an additional franchise fee or other monetary consideration due to the Regional Director under this Contract in accordance with 54 U.S.C. §101917 within fifteen (15) days after such termination or expiration. Interest on delayed payment shall be due in accordance with section 11(c) of this Contract. If any Component Renewal Reserve funds have been obligated by the Concessioner but not expended as of the termination or expiration of this Contract, the Regional Director and the Concessioner may enter into an agreement under which the Concessioner will expend such funds for their obligated purposes in lieu of a remittance of those funds to the Regional Director.

## **SEC. 10. FEES**

### **(a) Franchise Fee**

(1) For the term of this Contract, the Concessioner shall pay to the Regional Director for the privileges granted under this Contract a franchise fee as set out below for the preceding year or portion of a year (with each such year commencing on January 1:

5% of Gross Receipts for Gross Receipts from \$0 to \$ 250,000; plus

5-15% of Gross Receipts for Gross Receipts greater than \$250,000.

(2) Neither the Concessioner nor the Regional 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 quarterly basis at the 5 days after the end of the quarter and shall be paid by the Concessioner in such a manner that the Regional Director shall receive payment within five (5) days after the last day of each month. This quarterly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month. The Concessioner must calculate the monthly franchise fee payments based on the cumulative gross receipts for the year starting from January 1 and ending on the last day of December so that the payments reflect the graduated franchise fee as set in subsection (a) above.

(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 Applicable Laws.

**(c) Entrance Fees**

(1) The Service will pay the Concessionaire 20% of the gross entrance fees (sales of passes and duck stamps are exempt) or up to \$75,000 per year as compensation for the entrance fee collections operations on Wildlife Drive. Concessionaire will present the Service with a check for 100% of the entrance fees as provided and will be reimbursed for 20% or up to \$75,000 per year. (See Exhibit A Operational Plan for details)

(2) A sum in the amount of one dollar (\$1.00) per each and every person over the age of 15 tram passenger shall be paid to the Refuge as an entrance fee. This entrance fee shall be calculated separately from the percentage payment and subtracted from the Concessionaire's Gross Receipts before the percentage payment is calculated. The entrance fee payment will be paid quarterly, in such a manner that the Refuge Manager shall receive this payment within five (5) days after the last day of the previous month in which that the Concessionaire has conducted concession operations under the Contract. The entrance fee payment shall be paid by the Concessionaire to the Service in a separate transaction and shall not be included with the percentage payments described in Section XIII, subsections A and B.

(3) The entrance fees described above shall not be subject to, nor shall the Service give consideration to, any request by the Concessionaire for a waiver, downward adjustment of the entrance fee, or other request for reconsideration of the prescribed entrance fee amount.

**(d) Interest**

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

**(e) Adjustment of Franchise Fee**

(1) The Concessioner or the Regional 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 Regional 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 Regional Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Regional 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 Regional 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 Regional 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 Regional 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 Regional 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 Regional Director. The initial insurance requirements are set forth below and in Exhibit F. Any changed or additional requirements that the Regional 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 Regional Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Regional 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 Regional Director, the Concessioner shall at the time insurance is first purchased and annually thereafter, provide the Regional 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 Regional 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 Regional 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 Regional 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 Regional 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 Regional Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States, unless the damage exceeds \$1,000,000. The use of insurance proceeds for repair or replacement of Concession Facilities will not alter their character as properties of the United States and, notwithstanding any provision of this Contract to the contrary, the Concessioner shall gain no ownership, Leasehold Surrender Interest or other compensable interest as a result of the use of these insurance proceeds.

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

## **SEC. 12. BONDS AND LIEN**

### **(a) Bonds**

The Regional Director may require the Concessioner to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Regional 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 Regional 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 Regional Director ("Concessioner Annual Financial Report").

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

(3) If annual gross receipts are between \$500,000, and \$1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Statements on Standards for Accounting and Review Services (SSARS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than \$500,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Regional 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 Regional 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 Component Renewal 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 Regional Director, provide the Regional Director with a Certificate of Insurance for all insurance coverages related to its operations under this Contract. The Concessioner shall give the Regional 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 Regional Director under the terms of this Contract.

**(c) Miscellaneous Reports and Data**

The Regional 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 Regional 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 Regional 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 Regional 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 Regional Director may terminate this Contract if the Regional 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 Regional Director, the requirement to provide only those visitor services required or authorized by the Regional 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 Regional 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 Regional 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 Regional Director may terminate the Contract for default. In the event of a nonmonetary breach, if the Regional Director considers that the nature of the breach so permits, the Regional Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Regional Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Regional 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 Regional Director may suspend the Concessioner's operations as appropriate in accordance with Section 15(a).

(4) The Regional 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 Regional Director may terminate this Contract if the Regional 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 Regional 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 Regional 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, SERVICE 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 Regional Director in particular circumstances requires immediate removal). No compensation is due the Concessioner from the Regional Director or a successor concessioner for the Concessioner's personal property used in operations under this Contract. However, the Regional 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 Regional Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Regional Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Regional 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 Regional 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 Regional 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, 50 CFR Part 25, 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 Regional Director may terminate this Contract for default. The Regional 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, 50 CFR Part 25, of the requirements of Applicable Law and this Contract.

**SEC. 17. GENERAL PROVISIONS**

- (a) The Regional 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 Regional Director or their designee by the Concessioner pursuant to this Contract is subject to public release by the Regional Director to the extent provided by Applicable Laws.
- (c) Sub concession or other third-party agreements, including management agreements, for the provision of visitor services required and/or authorized under this Contract are not permitted.
- (d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this Contract.
- (e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.
- (f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit that may arise from this Contract but this restriction shall not be construed to extend to this Contract if made with a corporation or company for its general benefit.
- (g) This Contract is subject to the provisions of 2 C.F.R. Part 1400, as applicable, concerning Non procurement debarment and suspension. The Regional Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.
- (h) This Contract contains the sole and entire agreement of the parties, except for survival of the Concessioner's commitments as set forth in its Offeror's Transmittal Letter in response to the solicitation for this Contract. No oral representations of any nature form the basis of or may amend this Contract. This Contract may be extended, renewed or amended only when agreed to in writing by the Regional 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 Regional 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 Regional Director (to the extent subject to 28 U.S.C. 2514) arising from this Contract shall be forfeited to the Regional Director by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.

(m) Nothing contained in this Contract shall be construed as binding the Regional Director to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year or administratively allocated for the subject matter of this Contract, or to involve the Regional Director in any contract or other obligation for the future expenditure of money in excess of such appropriations.

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 \_\_\_\_\_  
Name of signer  
Title of signer  
Company name

By \_\_\_\_\_  
Regional Director  
Interior Region 4  
U.S. Fish and Wildlife Service

DATE: \_\_\_\_\_, 20\_\_

DATE: \_\_\_\_\_, 20\_\_

**[Corporation]**

ATTEST:

By \_\_\_\_\_  
[Name of signer]  
[Title of signer]

DATE: \_\_\_\_\_, 20\_\_

**[Sole Proprietorship/Partnership/Limited Liability Company]**

WITNESSES:

NAME \_\_\_\_\_  
[Name of signer]

NAME \_\_\_\_\_  
[Name of signer]

ADDRESS \_\_\_\_\_

ADDRESS \_\_\_\_\_

DATE: \_\_\_\_\_, 20\_\_

DATE: \_\_\_\_\_, 20\_\_