

- Shuttle buses
- News from Washington
- 6. Old Business:
  - Head of the Meadow Gas Station—Commercial Certificate
- 7. New Business—preparation, elections
- 8. Agenda for next meeting
- 9. Date for next meeting—November 19, 1999
- 10. Public comment
- 11. Adjournment

The Commission members will meet at 1:00 p.m. at headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: August 26, 1999.

**Maria Burks,**  
*Superintendent.*

[FR Doc. 99-22947 Filed 9-2-99; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### National Capital Memorial Commission Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission (the Commission) will be held at 2 p.m. on Thursday, September 23, 1999, at the National Building Museum, Room 312, 5th and F Streets, NW., Washington, D.C.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and environs.

In addition to discussing general matters and routine business, the agenda is expected to include the following:

I. Consultation: Memorial proponents will consult with the Commission on aspects of these authorized memorials:

Site selection alternatives for the Benjamin Banneker Memorial along the L'Enfant Promenade.

The Commission will consider these matters and take action as appropriate

in order to advise the Secretary of the Interior (the Secretary).

II. Review of Legislation: The Commission will review the following legislative proposals:

S. 311 and H.R. 1509, bills to authorize the Disabled Veterans LIFE Foundation to establish a memorial in the District of Columbia or its environs to honor veterans who became disabled while serving in the Armed Forces of the United States.

III. The Commission will continue deliberations on a draft report of its review of the Commemorative Works Act of 1986. This report was requested by the Subcommittee on National Parks, Historic Preservation, and Recreation, United States Senate Committee on Energy and Natural Resources. The Commission will review recommendations offered by the National Capital Planning Commission/National Capital Memorial Commission/Commission of Fine Arts Joint Task Force on Memorials which convened, in part, to assist in an evaluation of that Act.

The Commission was established by Public Law 99-652, the Commemorative Works Act, to advise the Secretary and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, D.C., and its environs.

The members of the Commission are as follows:

Director, National Park Service  
Chairman, National Capital Planning Commission  
Architect of the Capitol  
Chairman, American Battle Monuments Commission  
Chairman, Commission of Fine Arts  
Mayor of the District of Columbia  
Administrator, General Services Administration  
Secretary of Defense

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written

statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Executive Secretary to the Commission, at (202) 619-7097.

Dated: August 30, 1999.

**Joseph M. Lawler,**

*Regional Director, National Capital Region.*

[FR Doc. 99-23028 Filed 9-2-99; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Standard Concession Contract; Revision

**ACTION:** Proposed revision of the National Park Service Standard Concession Contract.

**SUMMARY:** The National Park Service (NPS) authorizes business entities to operate concessions in areas of the national park system. The agreements embodying these authorizations consist primarily of standard language that incorporate NPS terms and conditions established by law and prudent contract administration. In 1998, Public Law 105-391 was enacted which in many significant ways affects the content of concession contracts to be entered into after its effective date. Accordingly, NPS proposes to amend its existing standard concession contract to conform to the requirements of Public Law 105-391 and to otherwise make improvements to the standard form. NPS, although not legally required to do so, seeks public comments on the proposed standard concession contract to assist in the development of a final version as a matter of public policy.

**DATES:** NPS will accept written comments on the proposed standard contract on or before November 2, 1999.

**ADDRESSES:** Comments should be addressed to: Concession Program Manager, National Park Service, 1849 "C" Street, NW, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Wendelin Mann, Concession Program, National Park Service, 1849 "C" Street, NW, Washington, DC 20240 (202/565-1219).

**SUPPLEMENTARY INFORMATION:** Public Law 105-391, enacted on November 13, 1998, among other matters, amended the statutory policies and procedures under which NPS operated its concession program. The new law requires adoption of new regulations governing the award, content and management of concession contracts. On June 30, 1999, NPS published for public comment

proposed regulations implementing the new law. The proposed standard concession contract set forth in this notice reflects the requirements of the new law and the concomitant requirements of the proposed regulations. It also reflects a variety of improvements NPS wishes to make to its standard concession contract, including a new organizational structure for the sake of clarity. NPS is not publishing for public comment the various exhibits that will be attached to the standard contract. The exhibits only encompass legally mandated provisions, ministerial procedures under the terms of the standard concession contract, or documents that will substantially vary from contract to contract. These exhibits will be publicly available after adoption of the standard contract language. NPS plans to adopt both the new regulations and the new standard concession contract contemporaneously after due consideration of all public comments received on both documents.

NPS, after adoption of the new regulations and the new standard contract, also intends to develop and adopt a "short-form" concession contract that will be used for smaller concession operations that do not involve the concessioner obtaining a compensable interest in real property located on park area lands.

#### United States Department of the Interior

##### National Park Service

[Name of Area]

[Site]

[Type of Service]

Concession Contract No. \_\_\_\_\_

[Name of Concessioner]

[Address, including email address and phone number]

Doing Business As \_\_\_\_\_

Covering the Period \_\_\_\_\_ through \_\_\_\_\_

#### Concession Contract

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#### [Corporation]

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 \_\_\_\_\_ Region, hereinafter referred to as the "Director," and, a corporation organized and existing under the laws of the State of \_\_\_\_\_ doing business as *hereinafter* referred to as the "Concessioner":

#### [Partnership]

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 \_\_\_\_\_ Region, hereinafter referred to as the "Director", and of \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ of \_\_\_\_\_, partners, doing business as, pursuant to a partnership agreement dated \_\_\_\_\_, with the principal place of business at \_\_\_\_\_, hereinafter referred to as the "Concessioner":

#### [Sole Proprietorship]

This Contract made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the \_\_\_\_\_ Region, hereinafter referred to as the "Director," and, an individual of, doing business as \_\_\_\_\_, hereinafter referred to as the "Concessioner":

#### WITNESSETH

That Whereas, [*Name of Park, Recreation Area, etc.*] 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 wild life 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;

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. \_\_\_\_\_ ("Contract") shall be effective as of \_\_\_\_\_, and shall be for the term of [approximately] \_\_\_\_\_ (\_\_\_\_) years from \_\_\_\_\_, 20\_\_\_\_, [if the Concessioner satisfactorily completes the Concession Facilities Improvement program described in Section 9(e) of this Contract. If the Concessioner fails to complete this program to the satisfaction of the Director within the time specified, then this Contract shall be for the term of \_\_\_\_\_ (\_\_\_\_) years from \_\_\_\_\_.]

### 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, 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/or protection of public health and safety.

(b) "Area" means the property within the boundaries of [Name of Park Unit].

(c) "Capital Improvement" shall have the meaning set forth in 36 CFR Part 51 as of the effective date of this Contract.

(d) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this Contract and all real property improvements assigned to or constructed by the Concessioner under this Contract. The United States retains title and ownership to all Concession Facilities.

(e) "Director" means the Director of the National Park Service and his duly authorized representatives unless otherwise indicated.

(f) "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.

(g) "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:

(i) Intracompany earnings on account of charges to other departments of the operation (such as laundry);

(ii) Charges for employees' meals, lodgings, and transportation;

(iii) Cash discounts on purchases;

(iv) Cash discounts on sales;

(v) Returned sales and allowances;

(vi) Interest on money loaned or in bank accounts;

(vii) Income from investments;

(viii) Income from subsidiary companies outside of the Area;

(ix) Sale of property other than that purchased in the regular course of business for the purpose of resale;

(x) Sales and excise taxes that are added as separate charges to approved 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;

(xi) Receipts from the sale of handcrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handcrafts.

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.

(h) "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 subconcession contracts hereunder without allowances, exclusions or deductions of any kind or nature whatsoever.

(i) "Leasehold Surrender Interest" shall have the meaning set forth in 36 CFR Part 51 as of the effective date of this Contract.

(j) "Leasehold Surrender Interest Value" or the "value" of a Leasehold

Surrender Interest shall have the meaning set forth in 36 CFR Part 51 as of the effective date of this Contract.

(k) "Major Rehabilitation" shall have the meaning set forth in 36 CFR Part 51 as of the effective date of this Contract.

(l) "Possessory Interest" shall have the meaning set forth in 36 CFR Part 51.

(m) "Real Property Improvements" means real property other than land, including, but not limited to, capital improvements.

(n) "Superintendent" means the manager of the Area.

(o) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and authorized to provide by section 3(a) of this Contract.

### Sec. 3 Services and Operations

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

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

(1) *Required Visitor Services.* The Concessioner is required to provide the following visitor services during the term of this Contract:

[Provide detailed description of required services. Broad generalizations such as "any and all facilities and services customary in such operations" or "such additional facilities and services as may be required" are not to be used. A provision stating "The Concessioner may provide services incidental to the operations authorized hereunder at the request and written approval of the Director" is acceptable.]

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

[Provide detailed description of authorized services.]

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

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

## (c) Operating Plan

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this Contract in the form of an Operating Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating Plan is attached to this Contract as Exhibit "G." The Director in his discretion, after consultation with the Concessioner, may make modifications to the initial Operating Plan provided that these modifications shall not be 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 material, regardless of media format (i.e., printed, electronic, broadcast media), provided to the public by the Concessioner, including promotional material, 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 all 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 rate approval procedures and guidelines promulgated by the Director from time to time.

## (f) Impartiality as to Rates and Services

(1) 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 "A."

(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 Concessioner's complimentary or reduced rate policies and practices.

(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) 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 identified in Exhibit "A."

(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 for employment to assure that they conform to the hiring policies established by the Concessioner.

(5) The Concessioner shall hire, to the greatest extent possible, people who are both interested in serving the public in a national park environment and interested in being positive contributors to the park's purpose.

(6) 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.

(7) 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 fully correct the situation.

(8) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any employee housing within the Area.

(9) 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.

(10) 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 violates the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

## (b) Employee Housing, Meals and Recreation

(1) If the Concessioner is required to provide employee housing under this Contract, the housing must be in good condition and must meet employee needs. 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 adequate

employee recreational facilities and services.

#### *Sec. 5 Legal, Regulatory, 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 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  
Park name  
Address  
Attention:

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

Concessioner  
Address  
Attention:

#### *Sec. 6 Environmental and Cultural Protection*

##### *(a) Environmental Protection*

(1) In addition to complying with all Applicable Laws pertaining to the protection of natural resources within the area, the Concessioner will conduct its operation, construction, maintenance, acquisition, and provision of visitor services in a manner that prevents or reduces environmental degradation and that promotes the use of environmentally beneficial products. The Concessioner will develop, pursuant to guidelines provided by the Director, and carry out, to the satisfaction of the Director, a

documented environmental monitoring program or programs to ensure that park resources affected by concessioner activities under this Contract are not unduly impaired. The Concessioner shall be financially responsible for environmental audits that may be required by the Director for each three-year period of this Contract.

(2) The Concessioner shall obtain the Director's approval prior to using any chemicals, pesticides, any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(3) The Concessioner shall monitor, test, maintain, repair, upgrade, replace, remove, or mitigate, in accordance with Applicable Laws and in accordance with the requirements of the Director:

(i) Any discharge, release or threatened release (whether solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product on or to the Area, including soil, surface water or groundwater;

(ii) Any materials, equipment, and facilities associated with such discharge, release or threatened release; or

(iii) Any materials, equipment and facilities used in the handling, storage, disposal, transport or other use of any such hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) The Concessioner shall timely contact, notify and/or otherwise confer with appropriate federal, state and/or local agencies with respect to any reporting obligation arising out of Concessioner's operations under this Contract and the Concessioner shall simultaneously provide notice of such contact to the Director and allow the Director the opportunity to participate in any such proceedings.

(5) The Concessioner shall give the Director immediate notice of any discharge, release or threatened release (whether solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(6) The Concessioner shall give the Director immediate written notice of any threatened or actual notice of

violation of any federal, state or local law, rule, regulation, requirement or policy relating to or governing the use, handling, storage, disposal, transport, presence, acceptable concentration, or remediation of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product received by Concessioner.

(7) The Concessioner, at its sole cost and expense, shall promptly rectify any discharge or release as set forth in this section or any threatened or actual violation as set forth in this section, including, but not limited to, payment of any fines or penalties imposed thereon.

(8) The Concessioner shall indemnify the United States in accordance with section 12 of the Contract from losses, damages 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 pursuant to this section. Such indemnification shall survive termination of this Contract.

(9) If the Concessioner does not promptly rectify the discharge or release (whether solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product, the Director may, in its sole discretion and after notice to Concessioner, take any such action the Director deems necessary to minimize, remediate, or otherwise clean up such release or discharge, and recover any costs associated with such action from the Concessioner upon demand.

(10) 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, transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

(11) The Concessioner shall be responsible for managing weeds, harmful insects, rats, mice and other pests on all lands and improvements assigned to the Concessioner under this Contract. All such weed and pest management activities shall be in accordance with guidelines established by the Director.

(c) 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, subcontractors or agents, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by 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.

(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.

(b) Director Review of Content

The Concessioner must submit the proposed content of any interpretive programs, exhibits, materials or displays to the Director for review and approval prior to offering such programs, exhibits or displays to Area visitors.

(c) Provision of Interpretation Not Exclusive

Notwithstanding any provision of this Contract to the contrary, the Director retains the right to provide Area interpretation, including without limitation, the conduct of interpretive programs and the sale of interpretive materials, directly or through cooperative or other agreements with third parties, as the Director determines to be necessary or appropriate.

*Sec. 8 Concession Facilities Used in Operations by Concessioner*

(a) Assignment of Concession Facilities

(1) The Director hereby assigns the following Concession Facilities to the Concessioner for the purposes of this Contract:

(i) Certain parcels of Area land as described in Exhibit B upon which, among other matters, the Concessioner may be authorized to construct real property improvements; and

(ii) Certain real property improvements described in Exhibit B in existence as of the effective date of this Contract, as may be modified from time to time to include additional real property improvements completed in accordance with the terms and conditions of this Contract.

(2) The Director shall from time to time amend Exhibit B to reflect changes in Concession Facilities assigned to Concessioner, including, without limitation, real property improvements completed in accordance with the terms and conditions of this Contract.

(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 for the purpose of enhancing 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 considers as essential for the Concessioner to provide the visitor services required by this Contract will be treated by the Director as a termination of this Contract pursuant to Section 16. The Concessioner will be compensated pursuant to Section 17 for the value of any Leasehold Surrender Interest it may have, if any, in permanently withdrawn Concession Facilities. No other 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 removable equipment, furniture and

goods, necessary for its operations under this Contract.

(2) *Personal Property Provided by the Government.* The Director may provide certain items of government personal property and equipment for the Concessioner's use in the performance of this Contract. The Director hereby assigns government personal property and equipment listed in Exhibit C to the Concessioner as of the effective date of this Contract. This Exhibit C 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 and equipment assigned to it and shall be responsible for maintaining the property and equipment 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

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 Provided by the Director

The Director may provide utilities to the Concessioner for use in connection with the operations required and/or authorized under this Contract when available at rates to be fixed by the Director under applicable guidelines.

(h) Utilities Not Provided by the Director

If the Director does not provide these utilities, 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 or shall install the utilities within the Area with the written permission of the Director, subject to the following conditions:

(1) Any water rights deemed necessary by the Concessioner for use of water on Area or other federal lands must be acquired at the Concessioner's expense in accordance with applicable State procedures and law. Upon expiration or termination of this Contract for any reason, the Concessioner must assign these water rights to the United States without compensation, and these water rights will become the property of the United States;

(2) If requested by the Director, the Concessioner must provide to the

Director any utility service provided by the Concessioner under this section to such extent as will not unreasonably restrict anticipated use by the Concessioner. Unless otherwise agreed by the Concessioner and the Director, the rate per unit charged the Director for such service shall be approximately the average cost per unit of providing such service; and

(3) All appliances and machinery to be used in connection with the privileges granted in this Section, as well as the plans for location and installation of such appliances and machinery, shall first be approved by the Director.

#### *Sec. 9 Construction or Installation of Real Property Improvements*

##### *(a) Construction of Real Property Improvements*

The Concessioner may construct or install upon lands assigned to the Concessioner under this Contract only those real property improvements that are determined by the Director to be necessary and appropriate for the conduct by the Concessioner of the visitor services required and/or authorized under this Contract. Construction or installation of real property improvements may occur only after the written approval by the Director of their location, plans, and specifications. The form and content of the application and the procedures for such approvals, as may be modified by the Director from time to time, are set forth in Exhibit H. All real property improvements constructed or installed by Concessioner will immediately become the property of the United States and be considered Concession Facilities.

##### *(b) Removal of Real Property Improvements*

(1) The Concessioner may not remove, dismantle, or demolish real property improvements without the prior approval of the Director.

(2) Any salvage resulting from the authorized removal, severance or demolition of a Capital Improvement shall be the property of the Concessioner. Any salvage resulting from the authorized removal, severance or demolition of real property improvements other than a Capital Improvement shall be the property of the United States.

(3) In the event that an assigned real property improvement is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concessioner, at its expense, shall

promptly, upon the request of the Director, restore the site as nearly as practicable to its original condition.

##### *(c) Leasehold Surrender Interest*

(1) This Contract hereby provides the Concessioner, subject to all applicable definitions, requirements and limitations of 36 CFR Part 51 as it existed as of the effective date of this Contract, a Leasehold Surrender Interest in Capital Improvements constructed by the Concessioner under the terms of this Contract, including, but not limited to, those Capitol Improvements constructed as part of the Concession Facilities Improvement Program and those Capitol Improvements which result from the major rehabilitation, as defined by 36 CFR Part 51, of an existing real property improvement. Upon completion of a major rehabilitation by the Concessioner, an existing real property improvement assigned to the Concessioner in which the Concessioner had no Leasehold Surrender Interest prior to the major rehabilitation shall be considered as a Capital Improvement for all purposes of this Contract.

(2) This Contract also provides the Concessioner a Leasehold Surrender Interest in real property improvements resulting from possessory interest obtained under the terms of a possessory interest concession contract where required by 36 CFR Part 51 as it existed as of the effective date of this Contract. Exhibit D to this Contract describes the real property improvements in which the Concessioner has such a Leasehold Surrender Interest and states the value of this Leasehold Surrender Interest as of the effective date of this Contract.

(3) The Concessioner shall not obtain Leasehold Surrender Interest under this Contract except as may be provided in 36 CFR Part 51 as it exists as of the effective date of this Contract. Among other matters, no Leasehold Surrender Interest shall be obtained as a result of expenditures from the Maintenance Reserve described in this Contract and this Contract does not provide a Leasehold Surrender Interest as a result of expenditures for repair and maintenance of Concession Facilities of any nature.

##### *(d) Concession Facilities Improvement Program*

(1) The Concessioner shall undertake and complete an improvement program (hereinafter "Concession Facilities Improvement Program") costing not less than \$\_\_\_\_\_ as adjusted for each project to reflect par value in the year of actual construction in accordance with the appropriate indexes of the

Department of Commerce's "Construction Review."

(2) The Concession Facilities Improvement Program shall include:

[Provide detailed description of the Concession Facilities Improvement Program.]

(3) The Concessioner shall commence construction under the Concession Facilities Improvement Program on or before \_\_\_\_\_ in a manner that demonstrates to the satisfaction of the Director that the Concessioner is in good faith carrying the Concession Facilities Improvement Program forward reasonably under the circumstances. No construction may begin until the Concessioner receives written approval from the Director of plans and specifications in accordance with Exhibit H. During the period of construction, the Concessioner shall provide the Director with such evidence or documentation, as may be satisfactory to the Director, to demonstrate that the Concession Facilities Improvement Program duly is being carried forward. The Concessioner shall complete and have the improvements and buildings available for public use on or before \_\_\_\_\_.

#### *Sec. 10 Maintenance*

##### *(a) Maintenance Obligation*

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 F. The Director in his discretion may modify the Maintenance Plan from time to time after consultation with the Concessioner. Such modifications shall not be inconsistent with the terms and conditions of the main body of this Contract.

##### *(c) Maintenance Reserve*

[No Maintenance Reserve is included in this Contract.] or

(1) The Concessioner shall establish and manage a Maintenance Reserve. The funds in this Reserve shall be used to carry out, on a project basis, repair and maintenance of Concession Facilities 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 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 as required by this Contract from Concessioner funds exclusive of the funds contained in the Maintenance Reserve.

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

(4) The balance in the Maintenance Reserve shall be available for projects in accordance with the Reserve's purpose. For all expenditures made for each project from the Maintenance Reserve, the Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Director.

(5) Maintenance Reserve funds shall not be used for a major rehabilitation as defined in this Contract. The Concessioner shall obtain no ownership, Leasehold Surrender Interest, or other compensable interest as a consequence of the expenditure of Maintenance Reserve funds.

(6) Any Maintenance Reserve funds not duly expended by the Concessioner as of the termination or expiration of this Contract shall be immediately remitted by the Concessioner to the Director as an additional franchise fee under section 11 of this Contract.

#### Sec. 11 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 \_\_\_\_\_ percent (\_\_\_\_%) of the Concessioner's Gross Receipts for the preceding year or portion of a year.

(2) Neither the Concessioner nor the Director shall have a right to an adjustment of the fees except as provided below. The Concessioner has no right to waiver of the fees 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.

(3) All franchise fee payments consisting of \$10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

##### (c) Interest

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

##### (d) Reconsideration of Franchise Fee

(1) The Concessioner may request, in the event the Concessioner 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 must make a request for a reconsideration by mailing, within thirty (30) days from the date that the Concessioner becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the Director that includes a description of the possible extraordinary, unanticipated changes and why Concessioner believes they will significantly effect the probable value of the privileges granted by this Contract. A government official subordinate to the Director may also initiate such a reconsideration by so notifying the Concessioner in accordance with this section.

(3) If a franchise fee reconsideration is timely initiated in this manner, the Director shall make a written determination as to whether extraordinary, unanticipated changes exist. If a subordinate official to the Director initiated the reconsideration, an official appointed by the Director other than the subordinate initiating official shall make the determination. If the Director determines that extraordinary, unanticipated changes have not occurred, the reconsideration process shall terminate without an adjustment to the franchise fee. If the Director determines that extraordinary, unanticipated changes did occur, the Concessioner and the Director will undertake a good faith negotiation 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 Director makes his or her determination 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, retroactive to the date for which the notice of reconsideration was given.

(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 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 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. The third arbiter shall be the chairperson of the panel. The Director and the Concessioner shall share equally the expenses of the third arbiter and other common expenses associated with the arbitration. Within thirty (30) days of the selection of the third arbiter, the arbitration panel must hold an informal meeting with the Concessioner and the Director. At such meeting, the Concessioner and the Director shall be permitted to present their written and oral views and any accompanying documentation as to their position on an adjustment to the franchise fee and the members of the panel may pose questions to the Concessioner and the Director. Non-adjudicative procedures only shall be used in the arbitration proceedings. The arbitration panel shall not have the power to compel the production of documents or witnesses and shall not receive or take into account information or documents developed by the Concessioner or the Director for pre-negotiation or negotiation purposes. All actions related to the arbitration are subject to the applicable requirements of 36 CFR Part 51 as it may be amended from time to time.

(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 informal meeting.

(8) Any adjustment to the franchise fee resulting from this Section shall be effective retroactive to the date for which the notice of reconsideration was given and for the remaining term of this Contract, subject to the results of any further reconsideration.

(9) If an adjustment to the franchise fee results in higher fees, the Concessioner will pay all back franchise fees due (with accrued interest) at the time of the next regular franchise fee payment. If an adjustment results in lower franchise fees, the Concessioner may withhold the difference from future franchise fee payments until such time as the Concessioner has recouped the overpayment. Any payments made in

arrears by the Concessioner shall include interest at a percent based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual.

(10) Any adjustment to the franchise fee will be embodied in an amendment to this Contract.

(11) 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. 12 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 relating to or arising out of the activities of the Concessioner, his employees, subcontractors or agents 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. 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 thirty (30) days advance

written notice of any material change in the Concessioner's insurance program hereunder.

##### *(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 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 E. Furthermore, the commercial general liability package shall provide the coverages and limits described in Exhibit E.

(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 E to revise the minimum required limits or to require additional types of insurance.

##### *(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 in amounts that the Director may require during the term of the Contract. The values currently in effect are set forth in Exhibit E. This Exhibit will be revised at least every three (3) years, or earlier if there is a substantial change in value of Concession Facilities.

(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 13 shall apply to such insurance proceeds.

(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 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 E.

### Sec. 13 Bonds and Liens

#### (a) Bonds

The Director may require the Concessioner to furnish appropriate forms of bonds acceptable to the Director conditioned upon faithful performance of its obligations under this Contract, in such form and in such amount as the Director may deem adequate.

#### (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 and any Leasehold Surrender Interest of the Concessioner.

### Sec. 14 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 account in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized hereunder 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 ninety (90) 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 the Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between \$250,000, and \$1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with the Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than \$250,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

#### (c) Other Financial Reports

(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 gross receipts, by an independent Certified Public Accountant. The balance sheet shall be accompanied by a schedule that identifies and provides details for all capital improvements in which the Concessioner claims a Leasehold Surrender Interest. The schedule must describe these capital improvements in detail showing for each such capital improvement the date

acquired, useful life, cost and book value.

(2) *Statements of Reserve Activity* The Concessioner shall submit annually, not later than \_\_\_\_\_ (\_\_\_\_) 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. 15 Other Reporting Requirements

The following describes certain other reports required under this Contract:

#### (a) Insurance Certification

As specified in Section 12, at the time insurance is first purchased, and annually thereafter, the Concessioner shall 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 thirty (30) days advance written notice of any material change in its insurance program.

#### (b) Environmental Reporting

The Concessioner shall submit a quarterly report on any matters related to the Concessioner's environmental compliance requirements under 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. 16 Suspension and Termination

#### (a) Suspension

The Director may temporarily suspend operations under this Contract in whole or in part when necessary for administrative purposes or to enhance or protect Area resources, visitor enjoyment or safety. No compensation of any nature shall be due the Concessioner 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 in whole or part at any time when necessary for the purpose of enhancing or protecting Area resources or visitor enjoyment or safety.

(2) The Director may terminate this Contract in whole or part for default if the Director determines that the

Concessioner has 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 visitor services required or authorized by the Director, the requirement to pay the established franchise fee, 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 in his sole discretion, 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 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 16(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 notice fifteen (15) days prior to filing 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, this Contract is not a lease, but is an executory contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 1135.

#### (d) Requirements in the Event of Termination

(1) In the event of termination of this Contract by the Director for any reason, the total compensation due the Concessioner for such termination shall be as described in section 17 of this Contract. No other compensation of any nature shall be due the Concessioner in the event of a termination 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, and except as otherwise provided in this section, the Concessioner shall, at Concessioner's expense, promptly vacate the Area, remove all of Concessioner's personal property, repair any injury occasioned by installation or removal of such property, and ensure that Concession Facilities are in as good condition as they were at the beginning of the term of this Contract, reasonable wear and tear excepted.

(3) To avoid interruption of services to the public upon the termination of this Contract for any reason, the Concessioner, upon the request of the Director, shall continue to conduct all operations hereunder under the terms and conditions of this Contract for a reasonable period of time as determined by the Director, not to exceed the time limitations contained in 36 CFR Part 51 as it existed as of the effective date of this Contract applicable to payment of leasehold surrender interest value.

(4) To avoid interruption of services to the public upon expiration of this Contract or upon its termination for any reason, 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 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, effective on the date the operator assumes managerial and operational responsibilities, as published by the Federal Reserve System Board of Governors. 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 expiration of this Contract or termination of this Contract for any reason, the Concessioner shall, upon the request of the Director, sell its existing inventory to another operator at the purchase price as shown on applicable invoices.

#### Sec. 17 Compensation

##### (a) Just Compensation

The compensation provided by this Section shall constitute full and just compensation to the Concessioner for all losses and claims occasioned by the circumstances described below.

##### (b) Compensation for Contract Expiration or Termination

If, for any reason, including Contract expiration or termination, the Concessioner shall cease to be authorized by the Director to conduct operations under this Contract, the Concessioner shall convey to a person designated by the Director (including the Director if appropriate) any Leasehold Surrender Interest it has under the terms of this Contract and the Director shall assure, subject to subsection (c) below, that the Concessioner is paid the Leasehold Surrender Interest Value in accordance with the requirements of 36 CFR Part 51 as they existed as of the effective date of this Contract. The Concessioner shall not be required to convey such Leasehold Surrender Interest until the Concessioner is paid in accordance with 36 CFR Part 51 as it existed as of the effective date of this Contract.

##### (c) Compensation When Contract Terminated for Default

Notwithstanding any other provision of this Contract to the contrary, in the event of termination of this Contract for default, the Concessioner shall be entitled to the payment of any

Leasehold Surrender Interest Value it may have under the terms of this Contract, but such payment may be offset by the Director by any damages due the Director from the Concessioner as a result of the breach of Contract which resulted in the termination for default or by other funds due the Director under the terms of this Contract.

(d) Procedures for Establishing the Value of a Leasehold Surrender Interest

(1) In the event that agreement as to the value of a Leasehold Surrender Interest cannot be reached by the Concessioner and the Director such value shall be determined by binding arbitration, subject to applicable limitations of 36 CFR Part 51 as it existed as of the effective date of this Contract. In these circumstances, 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. The third arbiter shall be the chairperson of the panel. The Director and the Concessioner shall share equally the expenses of the third arbiter and other common expenses associated with the arbitration. Within thirty (30) days of the selection of the third arbiter, the arbitration panel must hold an informal meeting with the Concessioner and the Director. At such meeting, the Concessioner and the Director shall be permitted to present their written and oral views and any accompanying documentation as to their position on the value of the Leasehold Surrender Interest and the members of the panel may pose questions to the Concessioner and the Director. Non-adjudicative procedures only shall be used in the arbitration proceedings. The arbitration panel shall not have the power to compel the production of documents or witnesses and shall not receive or take into account information or documents developed by the Concessioner or the Director for pre-negotiation or negotiation purposes. All aspects of the arbitration are subject to the applicable requirements of 36 CFR Part 51 as it existed as of the effective date of this Contract.

(2) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on the value of the Leasehold Surrender Interest consistent with the terms of this Contract and 36 CFR Part 51 as it existed as of the effective date of this Contract.

(3) The Concessioner shall, at any time requested by the Director, enter into negotiations with the Director as to the value of the Concessioner's Leasehold Surrender Interest under this Contract. In the event that such negotiations fail to determine an agreed upon value, the Director may initiate arbitration proceedings to determine such value upon written request to the Concessioner. Such arbitration proceedings shall be conducted in accordance with the arbitration procedures set forth in this section. The arbitration panel shall determine the value of the Concessioner's Leasehold Surrender Interest consistent with the terms of this Contract and 36 CFR Part 51 as it existed as of the effective date of this Contract. The arbitration panel shall also provide a means to calculate the change in the value of such Leasehold Surrender Interest as may occur for up to two years from the date of the initial determination. The determination of the arbitration panel shall be binding on the Director and the Concessioner.

(d) Compensation for Personal Property

Except as otherwise provided in this Contract, upon expiration or termination of this Contract for any reason, the Concessioner shall remove its personal property from the Area unless it is sold to the Director or a successor concessioner. No compensation is due the Concessioner from the Director or a successor concessioner for such personal property. 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 as of the date of expiration or termination of this Contract, unless the Director in writing extends such date of removal, 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 Concessioner by the Director.

*Sec. 18 Assignment, Sale or Encumbrance of Interests*

(a) This Contract is subject to the requirements of 36 CFR Part 51 as it may be amended from time to time with respect to proposed conveyances and encumbrances as those terms are defined in 36 CFR Part 51, including, but not limited to, proposed management and subconcession agreements. Failure by the Concessioner

to comply with 36 CFR Part 51 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, including, but not limited to, Leasehold Surrender Interest or operating rights under this Contract, if obtained in violation of 36 CFR Part 51.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to 36 CFR Part 51 of the requirements of that regulation.

*Sec. 19 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 36 CFR Part 51 as it may now exist or be amended from time to time.

(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 required or authorized by Applicable Laws.

(c) Subconcession or other third party agreements, including management agreements, for the provision of principal services required and/or authorized under this Contract are not permitted. However, subconcession or other third party agreements may be allowed for incidental or specialized services which are incidental to the principal services required and/or authorized under this Contract. Any proposal to provide incidental or specialized services through subconcession or other third party agreements must be submitted to the Director in writing, along with a copy of the proposed subconcession or third party agreement, and shall be effective only if approved in writing by the Director. If the Director approves a subconcession or other third party agreement, the Concessioner and the Director will amend the Contract to reflect such approval. Agreements with others to provide vending or other coin-operated machines shall not be considered subconcession agreements.

(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, Subtitle A, Subpart D, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.

(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) The Concessioner is not granted by this Contract any rights to renewal of this Contract or to award of a new contract of any nature.

(j) This Contract does not grant rights or benefits of any nature to any third party.

(k) The invalidity of a specific provision of this Contract shall not affect the validity of the remaining provisions of this Contract.

In Witness Whereof, the duly authorized representatives of the parties have executed this Contract as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Concessioner

By \_\_\_\_\_  
(Title)  
(Company Name)

United States of America

By \_\_\_\_\_  
Director  
National Park Service  
[corporations]

Attest:

By \_\_\_\_\_  
Title  
[Sole Proprietorship]  
Witnesses:

Name  
Address  
Title

Name  
Address  
Title

[Partnership]

Witnesses as to each:

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_

[Concessioner]  
(Name)  
(Name)

Dated: August 20, 1999.

**Maureen Finnerty,**

*Associate Director, Park Operations and Education, National Park Service.*

[FR Doc. 99-23029 Filed 9-2-99; 8:45 am]

BILLING CODE 4310-70-P

## DEPARTMENT OF JUSTICE

### Justice Management Division

#### Notice of FIPS Waiver

**AGENCY:** Department of Justice.

**ACTION:** Notice.

**SUMMARY:** The Chief Information Officer for the Department of Justice has granted a waiver to the Agency to use the cryptographic features provided in Entrust/Authority,<sup>TM</sup> Entrust/Entelligence,<sup>TM</sup> and Entrust/Client,<sup>TM</sup> by Entrust Technologies, Inc., in lieu of the Data Encryption Standard (FIPS Pub 46-2).

**DATES:** This waiver was approved on May 25, 1999.

**ADDRESSES:** U.S. Department of Justice, Justice Management Division, Information Resources Management, 10th and Constitution Avenue NW, Washington, DC 20530.

#### FOR FURTHER INFORMATION CONTACT:

Richard Bowler, Information Management and Security Staff, U.S. Department of Justice, National Place Building, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530, email: [richard.w.bowler@usdoj.gov](mailto:richard.w.bowler@usdoj.gov), voice: 202-616-1171, fax: 202-616-5455.

**SUPPLEMENTARY INFORMATION:** The Federal Information Processing Standards Publication (FIPS Pub) 46-2 entitled "Data Encryption Standard (DES)" requires the use of DES, other FIPS-approved methods of encryption (FIPS 185 Escrowed Encryption Standard) or methods approved for classified information, where encryption of sensitive but unclassified information is deemed necessary. The Department plans to conduct testing of several public key encryption and digital signature prototypes using Entrust/Authority,<sup>TM</sup> Entrust/Entelligence,<sup>TM</sup> and Entrust/Client,<sup>TM</sup> by Entrust Technologies, Inc. The Entrust products are not compliant with FIPS 46-2, other FIPS-approved methods of encryption or for use with classified information. Accordingly, a waiver is required if the Entrust products are utilized.

The domestic versions of Entrust's Entelligence<sup>TM</sup> and Client<sup>TM</sup> products use the CAST-128 encryption algorithm for the storage of user profile information at the client's desktop. CAST-128 has not been approved by the National Institute of Standards and Technology. Additionally, in order to provide stronger security than that currently required under FIPS Pub 46-2, the Department will utilize Triple DES provided in Entrust's Authority,<sup>TM</sup> Entelligence,<sup>TM</sup> and Client.<sup>TM</sup>

The Department of Justice's Chief Information Officer has determined that compliance with FIPS 46-2 would adversely affect the accomplishment of the mission of the Department. Accordingly, he has granted a waiver of the FIPS to allow the Department to use these Entrust products. The tests will involve approximately 200 users and will be conducted over a period of six months. Actual data as opposed to test data will be transmitted during the six month test.

In accordance with FIPS Pub 46-2, notice of this waiver will be sent to the National Institute of Standards and Technology, the Committee on Government Reform and Oversight of the United States House of Representatives, and the Committee on Governmental Affairs of the United States Senate.

Dated: August 17, 1999.

**Stephen R. Colgate,**

*Assistant Attorney General for Administration.*

[FR Doc. 99-22968 Filed 9-2-99; 8:45 am]

BILLING CODE 4410-26-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Unemployment Compensation for Ex-Servicemembers (UCX) Handbook; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized,