

# DRAFT

CATEGORY II CONCESSION CONTRACT  
UNITED STATES DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE  
Yellowstone National Park

Guided Interpretive Oversnow Vehicle Tours and Skier's Camp

## CONCESSION CONTRACT NO. CC-YELL500-26

[Name of Concessioner]

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

Doing Business As [Trade Name]

Covering the Period July 1, 2026 through June 30, 2036<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 National Park 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****[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 National Park Service Regional Director, Interior Regions 6, 7 and 8, (hereinafter referred to as the "Director"), and [Concessioner Name], a Corporation organized and existing under the laws of the State of [state name], (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 National Park Service Regional Director, Interior Regions 6, 7 and 8, (hereinafter referred to as the "Director"), and [Concessioner Name], a partnership organized under the laws of the State of [state name], (hereinafter referred to as the "Concessioner"):

**[SOLE PROPRIETORSHIP]**

**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 National Park Service Regional Director, Interior Regions 6, 7 and 8, (hereinafter referred to as the "Director"), and [Concessioner Name], an individual of, doing business as [Trade name], (hereinafter referred to as the "Concessioner"):

**[LIMITED LIABILITY COMPANY]**

**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 National Park Service Regional Director, Interior Regions 6, 7 and 8, (hereinafter referred to as the "Director"), and [Concessioner Name], a Limited Liability Company organized and existing under the laws of the State of [state name], (hereinafter referred to as the "Concessioner"):

**WITNESSETH:**

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

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

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

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

**NOW, THEREFORE**, pursuant to the authority contained in the Acts of August 25, 1916 (54 U.S.C. §§100101 et seq.), and November 13, 1998 (Pub. L. 105-391 54 U.S.C. §§ 101911 et seq.), 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. CC-YELL500-25 ("Contract") shall be effective as of Click here to enter Effective date, and shall be for the term of ten (10) years until its expiration on Click here to enter Expiration date.

## SEC. 2. DEFINITIONS

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

(a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (e.g., 36 CFR Part 51), whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.

(b) "Area" means the property within the boundaries of Yellowstone National Park.

(c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this Contract. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner's operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.

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

(e) "Days" shall mean calendar days.

(f) "Director" means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and his duly authorized representatives.

(g) "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.

(h) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this Contract, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:

- (1) Intracompany earnings on account of charges to other departments of the operation (such as laundry);
- (2) Charges for employees' meals, lodgings, and transportation;
- (3) Cash discounts on purchases;
- (4) Cash discounts on sales;
- (5) Returned sales and allowances;
- (6) Interest on money loaned or in bank accounts;
- (7) Income from investments;
- (8) Income from subsidiary companies outside of the Area;
- (9) Sale of property other than that purchased in the regular course of business for the purpose of resale;

- (10) Sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;
- (11) Receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether provided by the Concessioner or by others, 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.

(i) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by a subconcession contract. A subconcessioner will report all of its gross receipts to the Concessioner without allowances, exclusions, or deductions of any kind or nature.

(j) "Subconcessioner" means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

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

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

(m) "Oversnow vehicle" means a snowmobile, snowcoach, or other motorized vehicle that is intended for travel primarily on snow and has been authorized by the Superintendent to operate in the Area. All-terrain vehicles and utility-type vehicles are not oversnow vehicles, even if they have been modified for use on snow with track or ski systems.

(n) "Snowcoach" means a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1,000 pounds (450 kilograms), and having a capacity of at least eight passengers and no more than 32 passengers, plus a driver.

(o) "Snowcoach transportation event" means one snowcoach that does not meet enhanced emission standards traveling in Yellowstone National Park on any given day, or two snowcoaches that both meet enhanced emission standards traveling together in Yellowstone National Park on any given day.

(p) "Snowmobile" means a self-propelled vehicle intended for travel solely on snow, with a maximum curbweight of 1,000 pounds (450 kilograms), driven by a track or tracks in contact with the snow, and which may be steered by a ski or skis in contact with the snow.

(q) "Snowmobile transportation event" means a group of 10 or fewer commercially guided snowmobiles traveling together in Yellowstone National Park on any given day or a non-commercially guided group, which is defined separately. Snowmobiles entering Cave Falls Road are not considered snowmobile transportation events.

(r) "Transportation Event" means a snowmobile transportation event or a snowmobile transportation event.

### 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:

|      | Service  | Location                  |
|------|--|---------------------------|
| i.   | Guided Interpretive Oversnow Vehicle (OSV) Transportation Events (tours) | Yellowstone National Park |
| ii.  | Lodging (Skier's Camp)   | Canyon Village            |
| iii. | Food and Beverage (Skier's Camp)   | Canyon Village            |

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

|      | Service  | Location                  |
|------|--|---------------------------|
| i.   | Guided Interpretive OSV Custom and Charter Transportation Events (tours) | Yellowstone National Park |
| ii.  | Guided Interpretive OSV Transportation Events Including Other Services   | Yellowstone National Park |
| iii. | Guided OSV Shuttle Trips   | Yellowstone National Park |
| iv.  | OSV Towing and Repair  | Yellowstone National Park |
| v.   | OSV Freight and Supply   | Yellowstone National Park |
| vi.  | Equipment Rental (Skier's Camp)  | Canyon Village            |

#### (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. Except for any such items that may be provided to the Concessioner by the Director, the Concessioner shall provide the plant, personnel, equipment, goods, and commodities necessary for providing, operating and maintaining the required and authorized visitor services in accordance with this Contract. The Concessioner's authority to provide visitor services under the terms of this Contract is non-exclusive.

#### (c) Operating Plan

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this Contract in the form of an Operating Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating Plan is attached to this Contract as Exhibit A. The Director in his discretion, after consultation with the Concessioner, may make reasonable modifications to the 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) Merchandise and Services

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this Contract, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.

(2) All promotional material, regardless of media format (i.e. printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this Contract must be

approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(3) The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

#### **(e) Rates**

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

#### **(f) Impartiality as to Rates and Services**

(1) Subject to Section (f)(2) and (f)(3), in providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit B.

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this Contract. However, the Director reserves the right to review and modify the Concessioner's complimentary or reduced rate policies and practices as part of its rate approval process.

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

### **SEC. 4. CONCESSIONER PERSONNEL**

#### **(a) 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 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, to the greatest extent possible, 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 Director, shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this Contract at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this Contract. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this Contract.

#### **(b) Notice**

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

#### **(c) How and Where To Send Notice**

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

Superintendent  
Superintendent  
Yellowstone National Park  
P.O. Box 168  
Yellowstone National Park, WY 82190-0168

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 Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this Contract. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.

(2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and complexity of the EMP may vary based on the type, size and number of Concessioner activities under this Contract.

(3) The EMP shall include, without limitation, the following elements:

(i) Policy. The EMP shall provide a clear statement of the Concessioner's commitment to the Environmental Management Objectives.

(ii) Goals and Targets. The EMP shall identify environmental goals established by the Concessioner consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (i.e. measurable results and schedules) to achieve these goals.

(iii) Responsibilities and Accountability. The EMP shall identify environmental responsibilities for Concessioner employees and contractors. The EMP shall include the designation of an environmental

program manager. The EMP shall include procedures for the Concessioner to implement the evaluation of employee and contractor performance against these environmental responsibilities.

(iv) Documentation. The EMP shall identify plans, procedures, manuals, and other documentation maintained by the Concessioner to meet the Environmental Management Objectives.

(v) Documentation Control and Information Management System. The EMP shall describe (and implement) document control and information management systems to maintain knowledge of Applicable Laws and BMPs. In addition, the EMP shall identify how the Concessioner will manage environmental information, including without limitation, plans, permits, certifications, reports, and correspondence.

(vi) Reporting. The EMP shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Director under this Contract.

(vii) Communication. The EMP shall describe how the environmental policy, goals, targets, responsibilities and procedures will be communicated throughout the Concessioner's organization.

(viii) Training. The EMP shall describe the environmental training program for the Concessioner, including identification of staff to be trained, training subjects, frequency of training and how training will be documented.

(ix) Monitoring, Measurement, and Corrective Action. The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will self-assess its performance under the EMP, at least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The self-assessment should ensure the Concessioner's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the Concessioner to correct any deficiencies identified by the self-assessment.

### **(c) Environmental Performance Measurement**

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

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

(1) Inventory of Hazardous Substances and Inventory of Waste Streams. The Concessioner shall submit to the Director, at least annually, an inventory of federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the Concessioner in operations under this Contract. The Concessioner shall obtain the Director's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this Contract. The Concessioner shall also submit to the Director, at least annually, an inventory of all waste streams generated by the Concessioner under this Contract. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.

(2) Reports. The Concessioner shall submit to the Director copies of all documents, reports, monitoring data, manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessioner shall also submit to the Director any environmental plans for which coordination with Area operations are necessary and appropriate, as determined by the Director in accordance with Applicable Laws.

(3) Notification of Releases. The Concessioner shall give the Director immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area, (whether solid, semi-solid, liquid or gaseous in nature) of any hazardous or toxic

substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) Notice of Violation. The Concessioner shall give the Director in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.

(5) Communication with Regulatory Agencies. The Concessioner shall provide timely written advance notice to the Director of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessioner related to compliance with Applicable Laws concerning operations under this Contract. The Concessioner shall also provide to the Director any written materials prepared or received by the Concessioner in advance of or subsequent to any such communications. The Concessioner shall allow the Director to participate in any such communications. The Concessioner shall also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

#### **(e) Corrective Action**

(1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the Concessioner's operations under this Contract, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.

(2) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, or transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

#### **(f) Indemnification and Cost Recovery for Concessioner Environmental Activities**

(1) The Concessioner shall indemnify the United States in accordance with Section 11 of this Contract from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts' fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this Contract.

(2) If the Concessioner does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section shall preclude the Concessioner from seeking to recover costs from a responsible third party.

#### **(g) Weed and Pest Management**

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

#### **(h) Protection of Cultural and Archeological Resources**

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

## **SEC. 7. INTERPRETATION OF AREA RESOURCES**

### **(a) Concessioner Obligations**

(1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area as reflected in Area planning documents, mission statements and/or interpretive prospectuses.

(2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this Contract.

(3) The Concessioner is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessioner.

### **(b) Director Review of Content**

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

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

### **(a) Assignment of Concession Facilities**

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

(2) The Director shall from time to time amend Exhibit C to reflect changes in Concession Facilities assigned to the Concessioner.

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

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

(1) The withdrawal is necessary for the purpose of conserving, preserving or protecting Area resources or visitor enjoyment or safety;

(2) The operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or

(3) Land or real property improvements assigned to the Concessioner are no longer necessary for the concession operation.

**(c) Effect of Withdrawal**

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

**(d) Right of Entry**

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

**(e) Personal Property**

(1) Personal Property Provided by the Concessioner. The Concessioner shall provide all personal property, including without limitation removable equipment, furniture and goods, necessary for its operations under this Contract, unless such personal property is provided by the Director as set forth in subsection (e)(2).

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

**(f) Condition of Concession Facilities**

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

**(g) Utilities**

(1) The Director may provide utilities to the Concessioner for use in connection with the operations required or authorized hereunder when available and at rates to be determined in accordance with Applicable Laws.

(2) If the Director does not provide utilities to the Concessioner, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area.

**SEC. 9. MAINTENANCE**

**(a) Maintenance Obligation**

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

**(b) Maintenance Plan**

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

## **SEC. 10. FEES**

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

(1) For the term of this Contract, the Concessioner shall pay to the Director for the privileges granted under this Contract a franchise fee equal to [Franchise Fee alpha number] percent ([Franchise Fee numeric number]%) 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 fee under any circumstances.

### **(b) Payments Due**

(1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees. In the event of termination or expiration of this Contract, overpayments will first be offset against any amounts due and owing the Government and the remainder will be paid to the Concessioner.

(3) All franchise fee payments shall be deposited electronically by the Concessioner in accordance with Applicable Laws.

### **(c) Interest**

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

### **(d) Adjustment of Franchise Fee**

(1) The Concessioner or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this Contract, a reconsideration and possible subsequent adjustment of the franchise fee established in this section. For the purposes of this section, the phrase "extraordinary, unanticipated changes" shall mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this Contract which have or will significantly affect the probable value of the privileges granted to the Concessioner by this Contract. For the purposes of this section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this Contract.

(2) The Concessioner or the Director must make a request for a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this Contract.

(3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fee.

(4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, prospectively as of the date of agreement.

(5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee in accordance with this section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.

(6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel shall establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.

(7) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee (up, down or unchanged) that is consistent with the probable value of the privileges granted by this Contract within sixty (60) days of the presentations.

(8) Any adjustment to the franchise fee resulting from this section shall be prospective only.

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

(10) During the pendency of the process described in this section, the Concessioner shall continue to make the established franchise fee payments required by this Contract.

## **SEC. 11. INDEMNIFICATION AND INSURANCE**

### **(a) Indemnification**

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

### **(b) Insurance in General**

(1) The Concessioner shall obtain and maintain during the entire term of this Contract at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this Contract as determined by the Director. The initial insurance requirements are set forth below and in Exhibit F. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in similar circumstances. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section.

The Concessioner shall provide the Director immediate written notice of any material change in the Concessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverages.

### **(c) Commercial Public Liability**

(1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees, agents or contractors, in carrying out the activities and operations required and/or authorized under this Contract.

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this Contract, as more specifically set forth in Exhibit F. Furthermore, the commercial general liability package shall provide no less than the coverages and limits described in Exhibit F.

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

(4) From time to time, as conditions in the insurance industry warrant, the Director may modify Exhibit F to revise the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

### **(d) Property Insurance**

(1) In the event of damage or destruction, the Concessioner will repair or replace those Concession Facilities and personal property utilized by the Concessioner in the performance of the Concessioner's obligations under this Contract.

(2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on Concession Facilities for all or part of their replacement cost as specified in Exhibit F in amounts no less than the Director may require during the term of the Contract. The minimum values currently in effect are set forth in Exhibit F.

(3) Commercial property insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear.

(4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair or replace Concession Facilities and/or personal property utilized in the Concessioner's operations under this Contract,

as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 12 shall apply to such insurance proceeds. The Concessioner shall not be relieved of its obligations under subsection (d)(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

(5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States, 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 Director may require the Concessioner to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Director, in order to ensure faithful performance of the Concessioner's obligations under this Contract.

### **(b) Lien**

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

## **SEC. 13. ACCOUNTING RECORDS AND REPORTS**

### **(a) Accounting System**

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this Contract, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are \$250,000 or more, the Concessioner must use the accrual accounting method.

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

### **(b) Annual Financial Report**

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

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

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

### **(c) Other Financial Reports**

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

## **SEC. 14. OTHER REPORTING REQUIREMENTS**

The following describes certain other reports required under this Contract:

### **(a) Insurance Certification**

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

### **(b) Environmental Reporting**

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

### **(c) Miscellaneous Reports and Data**

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

## **SEC. 15. SUSPENSION, TERMINATION, OR EXPIRATION**

### **(a) Suspension**

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

**(b) Termination**

(1) The Director may terminate this Contract at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit visitor services in the Area to those that continue to be necessary and appropriate.

(2) The Director may terminate this Contract if the Director determines that the Concessioner has materially breached any requirement of this Contract, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only those visitor services required or authorized by the Director pursuant to this Contract, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program and the requirement to comply with Applicable Laws.

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

(4) The Director may terminate this Contract upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this Contract or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this Contract if the Director determines that the Concessioner is unable to perform the terms of Contract due to bankruptcy or insolvency.

(5) Termination of this Contract for any reason shall be by written notice to the Concessioner.

**(c) Notice of Bankruptcy or Insolvency**

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

**(d) Requirements in the Event of Termination or Expiration**

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

(2) Upon termination of this Contract for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner shall, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, repair any injury occasioned by installation or removal of such property, and ensure that Concession Facilities are in at least as good condition as they were at the beginning of the term of this Contract, reasonable wear and tear excepted. The removal of such personal property must occur within thirty (30) days after the termination of this Contract for any reason or its expiration (unless the Director in particular circumstances requires immediate removal). No compensation is due the Concessioner from the Director or a successor concessioner for the Concessioner's personal property used in operations under this Contract. However, the Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner in accordance with the terms of this Contract shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.

(3) To avoid interruption of services to the public upon termination of this Contract for any reason, or upon its expiration, the Concessioner, upon the request of the Director, shall consent to the use by another operator of the Concessioner's personal property, excluding inventories if any, not including current or intangible assets, for a period of time not to exceed one (1) year from the date of such termination or expiration. The other operator shall pay the Concessioner an annual fee for use of such property, prorated for the period of use, in the amount of the annual depreciation of such property, plus a return on the book value of such property equal to the prime lending rate, as published by the Federal Reserve System Board of Governors, effective on the date the operator assumes managerial and operational responsibilities. In such circumstances, the method of depreciation applied shall be either straight line depreciation or depreciation as shown on the Concessioner's Federal income tax return, whichever is less. To avoid interruption of services to the public upon termination of this Contract for any reason or its expiration, the Concessioner shall, if requested by the Director, sell its existing inventory to another operator at the purchase price as shown on applicable invoices.

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

## **SEC. 16. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS**

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

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to Applicable Laws, including without limitation, 36 CFR Part 51, of the requirements of Applicable Law and this Contract.

## **SEC. 17. GENERAL PROVISIONS**

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by the terms of Applicable Laws.

- (b) All information required to be submitted to the Director by the Concessioner pursuant to this Contract is subject to public release by the Director to the extent provided by Applicable Laws.
- (c) Subconcession contracts. The Concessioner may enter into a subconcession contract with respect to the exercise by others of the privileges granted by this Contract. A subconcessioner may provide the services required or authorized in Section 3 of this Contract by either snowcoach or snowmobile, but not by both. If the Director approves such a subconcession contract, the Concessioner remains solely responsible for all required or authorized services using the other type of oversnow vehicle. Any such subconcession contract will be effective only if and when approved by the Director pursuant to 36 C.F.R. § 51.87, including that the subconcessioner is a qualified person as defined in 36 C.F.R. § 51.3. Any such subconcession contract must contain at least the minimum terms required by the Service as set forth in Appendix 1 to this Contract. If the Director approves a proposed subconcession contract, the Concessioner must pay to the Director within 45 days after December 31st each year or portion of year a sum equal to fifty percent (50%) of any and all fees, commissions, or compensation payable to the Concessioner thereunder, other than the subconcessioner's payment of franchise fees to the Concessioner. This payment is in addition to the franchise fee payable to the Director on the gross receipts of the subconcessioner as provided for in Section 10 of this Contract. The Concessioner may not enter into management agreements with third parties concerning the provision of visitor services required or authorized under this Contract.
- (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 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, 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 Director and the Concessioner.
- (i) This Contract does not grant rights or benefits of any nature to any third party.
- (j) The invalidity of a specific provision of this Contract shall not affect the validity of the remaining provisions of this Contract.
- (k) Waiver by the Director or the Concessioner of any breach of any of the terms of this Contract by the other party shall not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the Contract. The subsequent acceptance of any payment of money or other performance required by this Contract shall not be deemed to be a waiver of any preceding breach of any term of the Contract.
- (l) Claims against the Director (to the extent subject to 28 U.S.C. 2514) arising from this Contract shall be forfeited to the Director by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.

(m) Nothing contained in this Contract shall be construed as binding the 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 Director in any contract or other obligation for the future expenditure of money in excess of such appropriations.

## **SEC. 18. NATIONAL PARK SERVICE TRADEMARK LICENSE**

### **(a) License Grant**

The unique nature of a National Park Service concession blends commercial enterprise with the treasured historic, cultural, and, natural assets that the Director is responsible for protecting. The Director hereby grants to the Concessioner a royalty-free, non-exclusive, non-transferable license to use the marks as listed in Exhibit H ("Marks"), for use solely to carry out the services described under this Contract in manner that promotes National Park Service goals and values as stated herein. The Concessioner has the right to sub-license Marks in order to carry out services described under this Contract upon written approval of the Director and under same or substantially similar terms as contained herein. Any use of any Mark intended to identify the National Park Service, or one of the Concession Facilities, shall inure to the benefit of the National Park Service. This license shall cease upon termination or expiration of the Contract, or as otherwise determined by the Director or by law. This license does not constitute a compensable interest to the Concessioner.

### **(b) Quality Control and Goodwill**

The Concessioner acknowledges that the maintenance of the high quality of the services, materials, products, and merchandise produced, sold or otherwise prepared for public dissemination pursuant to or in order to carry out services required under this Contract, as well as the control by the Director over their nature, quality, and manner of delivery or distribution, are material conditions of this Contract. The Concessioner shall maintain the distinctiveness of the Marks, the image of the National Park Service brand, and the image and high quality of the services, materials, products, and merchandise bearing the Marks licensed herein. Marks may be used and appear together with other marks used in connection with concession-related goods and services but must stand by themselves. The Concessioner shall immediately cease use of a Mark used in association with the services provided under this Contract on request of the National Park Service.

### **(c) Rights and Ownership**

The Concessioner acknowledges that the National Park Service is the sole and exclusive owner of all right, title and interest in and to its Marks, including those licensed under this agreement, as well as to all combinations, forms, and derivatives which must be approved by the Director. The Concessioner further acknowledges, represents and warrants that it has not acquired and shall not acquire (whether by operation of law, by this Contract, or otherwise) any right, title, interest or ownership (collectively "Ownership Rights") in or to any National Park Service Marks or any part thereof. Should any Ownership Rights become vested in the Concessioner, the Concessioner agrees to assign, and hereby assigns, all such Ownership Rights to the Director free of consideration. The Concessioner shall immediately provide and execute all documents reasonably requested by the Director to effectuate and record each such assignment. The Concessioner shall not, during the term or at any time thereafter, do anything which, in the Director's sole judgment, could in any way damage the validity and subsistence of the Marks. The Concessioner shall not attack, dispute, or challenge the National Park Service's Ownership Rights in or to the Marks or the validity of this Contract, nor shall the Concessioner assist others in so doing.

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 \_\_\_\_\_  
Brian Carlstrom  
Regional Director  
Interior Regions 6, 7, & 8  
National Park 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\_\_

**APPENDIX 1 - DRAFT SUBCONCESSION CONTRACT FOR THE PROVISION OF OVERSNOW VEHICLE SERVICES**

This subcontract for oversnow Vehicle ("OSV") services (the "Subconcession Contract"), effective as of \_\_\_\_\_, 20\_\_\_\_, is entered into by and between [insert Concessioner's full legal name] (hereinafter, the "Concessioner") and [insert Subconcessioner's full legal name] (hereinafter, the "Subconcessioner").

**RECITALS**

The Subconcession Contract is subject to the terms and conditions of Concessioner's Category III Contract [insert contract number] with the United States of America, acting by the Director of the National Park Service through the Regional Director, Interior Regions 6, 7 and 8 ("Director"), for the provision of oversnow vehicle tours within Yellowstone National Park ("Area"), dated \_\_\_\_\_, 20\_\_ (as it may be amended from time to time, the "Contract").

The Contract requires the Concessioner to provide guided interpretive OSV tours to visitors of the Area by snowcoach OR by snowmobile. The Concessioner will provide all [snowcoach or snowmobile] OSV tours. The Concessioner and Subconcessioner desire that the Subconcessioner provide all OSV tours by [snowcoach or snowmobile].

**AGREEMENT**

**1. Identification of Subconcessioner**

The Subconcessioner represents and warrants that it is the legal owner or lessee of the OSVs listed on Attachment 1 hereto and is authorized to enter into this Subconcession Contract. Identifying information follows:

Subconcessioner's Name, Address, and Telephone Number:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If the Subconcessioner is a business entity, list at least one individual authorized to act on behalf of the Subconcessioner, their title in the entity, and contact information (telephone number and email address):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If any of the OSVs are leased, provide identifying information for each legal owner on Attachment 1.

## 2. Term of Subconcession Contract

This Subconcession Contract will be for a term of \_\_\_\_ (\_\_\_\_) year(s), commencing on the effective date written above and expiring on \_\_\_\_\_, 20\_\_\_\_. Notwithstanding the foregoing, the Subconcessioner acknowledges and agrees that this Subconcession Contract will terminate on the expiration or earlier termination of the Contract for any reason.

## 3. Applicable Laws

The Subconcessioner must comply with all "Applicable Laws," which means the federal, state, and local laws governing the Area, including, but not limited to, the rules, regulations, requirements, and policies promulgated under those laws (e.g., 36 C.F.R. Part 51), whether now in force, or amended, enacted, or promulgated in the future, including, without limitation, laws, rules, regulations, requirements, and policies governing nondiscrimination, protection of the environment, and protection of public health and safety.

## 4. Definitions

Any terms not defined herein have the same definition as set forth in Sec. 1 of Addendum 1 to the Contract (e.g., "gross receipts").

## 5. Services Provided by Subconcessioner

**(a) Services.** The Subconcessioner may provide OSV tours to visitors of the Area, subject to the daily transportation event allocation of the Concessioner:

*[Add chart with number of transportation events]*

The Subconcessioner must provide, operate, and maintain all OSVs, personnel, equipment, goods, and commodities necessary for operating and maintaining the required visitor services in accordance with this Subconcession Contract, including but not limited to, all safety equipment required by Applicable Laws for OSVs of this type. The Subconcessioner's authority to provide visitor services hereunder is non-exclusive. The Subconcessioner's provision of visitor services in accordance with this Subconcession Contract must be to such an extent and in a manner considered satisfactory by the Director.

**(b) Subconcessioner Operating Plan.** The Concessioner will establish and revise, as necessary, specific requirements for the operations of the Subconcessioner under this Subcontract in the form of a Subconcessioner Operating Plan (including, without limitation, a risk management program). This Subconcessioner Operating Plan will include similar general requirements, administrative requirements, and snowcoach or snowmobile operating requirements as exist in the Operating Plan between the Concessioner and the Director (Exhibit B of the Contract). In no event may the terms of the Subconcessioner Operating Plan contain terms that are inconsistent with the terms of the Contract and its exhibits. The Concessioner in its discretion, after consultation with the Subconcessioner, may make reasonable modifications to the initial Subconcessioner Operating Plan that furthers the purposes of this Subconcession Contract and are not inconsistent with the terms and conditions of the Subconcession Contract.

**(c) Maintenance.** The Subconcessioner, at its sole cost and expense, must provide and maintain the OSVs in a safe and clean condition in strict conformity with all Applicable Laws and manufacturers' specifications during the term of this Subconcession Contract. The Subconcessioner must maintain a maintenance log describing all preventive, cyclic, and repair actions for each OSV and make the log available for review by the Concessioner.

**(d) Reservations/Bookings.** The Concessioner is ultimately responsible for the management of all reservations, cancellations, and refunds. The Subconcessioner may take reservations, cancellations, and bookings if it is made clear to the visitor that: 1) the Subconcessioner is acting as a Subconcessioner to the Concessioner under an NPS concession contract; and 2) the visitor may cancel its reservation or booking

through the Concessioner. The Concessioner and Subconcessioner must actively communicate on all the Subconcessioner's reservations under the Subconcession Contract.

**(e) Promotional Materials.** All promotional materials, including brochures, websites, etc. must identify the Subconcessioner is acting as a Subconcessioner to the Concessioner under an NPS concession contract. The Subconcessioner is not authorized to use the Authorized Concessioner Mark in its promotional materials.

**(f) Rates.** The Concessioner sets all rates charged by the Subconcessioner, subject to rate approval by the Director.

**(g) Notice to Concessioner if OSV is Out of Service.** The Subconcessioner must notify the Concessioner as promptly as practicable if any of its OSVs are or will be out of commission for standard maintenance or due to unanticipated circumstances.

**(h) Inspections.** The Subconcessioner must permit representatives of the Concessioner to inspect its OSVs for compliance with the Subconcession Contract and Applicable Laws.

**(i) Requirements of Subconcessioner Prior to Providing any Services Hereunder.** The Subconcessioner must deliver the following documentation to the Concessioner (which in turn will make such documentation available to the Director) for review and acceptance before the Subconcessioner commences operations:

- Certificate of insurance with the Concessioner and the National Park Service listed as additional insured;
- List of guides and the expiration dates of their first aid and CPR certifications at least 10 days prior to the guide's first trip. Both certifications must be current and valid in order for a guide to lead a trip.
- Current state registrations for its OSVs; and
- Current drivers'/operators' licenses for all personnel providing service.

## 6. Role of the Director

The Director administers the Area and is an intended third-party beneficiary of this Subconcession Contract.

## 7. Fees

### (a) Franchise Fee

(1) For the term of this Subconcession Contract, the Subconcessioner must pay to the Concessioner for the privileges granted under this Subconcession Contract a franchise fee equal to [*insert franchise fee alpha number*] percent (*[insert franchise fee numeric number]*%) of the Subconcessioner's annual gross receipts for the preceding year or portion of a year. (This amount must be the same amount as identified in Section 5(a) of the Contract).

(2) The Subconcessioner must report all of its gross receipts for services provided under this Subconcession Contract to the Concessioner without allowances, exclusions, or deductions of any kind or nature. The Concessioner is responsible for remitting the correct franchise fee payment to the Director required under the Contract based on the collective total of gross receipts, including gross receipts from the Subconcessioner.

### (b) Other Subconcession Fee(s)

*[Insert proposed language for any other fees, commissions, or compensation the Concessioner intends to require the Subconcessioner to pay it under this Subconcession Contract, 50% of which must be paid to the Director per the terms of the Contract.]*

*Example language: The Subconcessioner must pay to the Concessioner a sum equal to [insert amount] as an additional fee for the privileges granted under this Subconcession Contract.*

**(c) Payments Due.** The franchise fee is due on a monthly basis at the end of each month and must be paid by the Subconcessioner in such a manner that the Concessioner receives payment within ten (10) calendar days after the last day of each month that the Subconcessioner operates. This monthly payment must include the franchise fee equal to the specified percentage of gross receipts for the preceding month. *[Optional: insert additional paragraph for any other fees required under this Subconcession Contract.]*

*Example language: The Subconcessioner must pay any other fees required by this Subconcession Contract to the Concessioner by [insert deadline].]*

**(d) Interest.** An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, if that payment is delayed beyond the ten (10) calendar day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury. The Concessioner may also impose penalties for late payment to the extent authorized by Applicable Laws.

## 8. Indemnity and Insurance

**(a) Indemnification.** The Subconcessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the Concessioner and the United States of America, their respective 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 Subconcessioner, its employees, agents or contractors under this Subconcession Contract. This indemnification will survive the termination or expiration of this Subconcession Contract.

### (b) Insurance in General.

(1) The Subconcessioner must obtain and maintain during the entire term of this Subconcession Contract, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this Subconcession Contract as determined by the Concessioner. The minimum insurance requirements are set in Exhibit D to the Contract. Any changes or additional requirements that the Concessioner determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in similar circumstances. The Concessioner must approve the types and amounts of insurance coverage purchased by the Subconcessioner.

(2) The Subconcessioner must, at the time insurance is first purchased and annually thereafter, provide the Concessioner with a certificate of insurance that accurately details the conditions of the policy(ies) as evidence of compliance with this section and provide copies of the policies themselves upon request. The Subconcessioner agrees that the Concessioner may provide the Director the certificates of insurance or policies referenced hereunder. The Subconcessioner must provide the Concessioner immediate written notice of any material change in the Subconcessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverages.

(3) All liability policies must specify that the insurance company has no right of subrogation against the United States of America and provide that the United States of America is included as an additional insured.

## 9. Suspension or Termination

**(a) Suspension.** If the Director temporarily suspends operations under the Contract in whole or in part in order to protect Area visitors or to protect, conserve and preserve Area resources, the Concessioner must suspend this Subconcession Contract. Neither the Concessioner nor the Director will owe compensation of

any nature to the Subconcessioner 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.** In the event of termination of this Subconcession Contract due to the expiration or earlier termination of the Contract, neither the Concessioner nor the Director will owe compensation of any nature to the Subconcessioner, 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.

(1) The Concessioner may terminate this Subconcession Contract if the Concessioner determines that the Subconcessioner has materially breached any requirement of this Subconcession Contract, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only those visitor services required or authorized by the Director pursuant to the Contract, the requirement to pay the established franchise fee, and the requirement to comply with Applicable Laws.

(2) In the event of a monetary breach, the Concessioner will give the Subconcessioner a fifteen (15) day period to cure the breach. If the Subconcessioner fails to cure the breach within that period, then the Concessioner may terminate the Subconcession Contract for default. In the event of a nonmonetary breach, if the Concessioner considers that the nature of the breach so permits, the Concessioner will give the Subconcessioner thirty (30) days to cure the breach, or to provide a plan satisfactory to the Concessioner, to cure the breach over a specified period of time. If the Subconcessioner fails to cure the breach within this specified period of time, the Concessioner may terminate the Subconcession Contract for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature will be grounds for termination for default without a cure period. In the event of a breach of any nature, the Concessioner may suspend the Subconcessioner's operations as appropriate in accordance with subsection (a) above.

(3) The Concessioner may terminate this Subconcession Contract upon the filing or the execution of a petition in bankruptcy by or against the Subconcessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Subconcessioner for the benefit of creditors, a petition or other proceeding against the Subconcessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this Subconcession Contract or any part thereof upon execution, attachment or other process of law or equity.

(4) Termination of this Subconcession Contract for any reason will be by written notice to the Subconcessioner.

## 10. Reporting Requirements of Subconcessioner

**(a) Guide List.** The Subconcessioner must submit to the Concessioner, prior to \_\_\_\_\_ of each operating year, a list of guides and the expiration dates of their first aid and CPR certifications.. Both certifications must be current and valid in order for a guide to lead a trip.

**(b) Vehicle List.** The Subconcessioner must submit to the Concessioner, prior to \_\_\_\_\_ of each operating year, a list and description (make & model) of the Subconcessioner's OSVs, wheeled vehicles, tow vehicles, and trailers with vehicle registration (VIN) numbers and license plate numbers. The Subconcessioner must include information to establish the Subconcessioner's vehicles meet the air and sound emission standards required by 36 C.F.R. 7.13(l) and when each vehicle expires.

**(c) Monthly Use Report.** The Subconcessioner must submit monthly as soon as possible but not later than ten (10) days after the last day of the preceding month, to the Concessioner, a monthly use report summarizing daily visitor use information in the same format as in Exhibit B of the Contract, Attachment A.

**(d) Statement of Gross Receipts.** The Subconcessioner must submit monthly as soon as possible but not later than ten (10) days after the last day of the preceding month, to the Concessioner, a statement of the amount of gross receipts it earned in the preceding month.

**(e) Financial Statement.** The Subconcessioner must submit to the Concessioner annually as soon as possible, but not later than ninety (90) days after the last day of the calendar year, a financial statement for the preceding calendar year or portion of a year. The Concessioner will provide the form of report the Subconcessioner must use, which will reflect the information required by the Director for operations of a size similar to that of the Subconcessioner's.

- (i) If the Subconcessioner's annual gross receipts exceed \$500,000, the financial statements must be reviewed by an independent certified public accountant in accordance with Generally Accepted Audit Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants. If the 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 Concessioner. The Concessioner must submit to the Director all financial reports from the Subconcessioner.

**(f)** From time to time, the Concessioner may require the Subconcessioner to submit other reports and data regarding its performance under the Subconcession Contract or otherwise, including, but not limited to, operational information.

## 11. General Provisions

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, will have access to the records of the Subconcessioner on request during the term of the Subconcession Contract and for a period of five (5) years thereafter.

(b) All information required to be submitted to the Concessioner by the Subconcessioner pursuant to this Subconcession Contract may be subject to public release by the Director to the extent provided by Applicable Laws.

(c) The Subconcessioner may not transfer or assign this Subconcession Contract. The Subconcessioner may not enter into third party agreements, including management agreements, for the provision of visitor services required or authorized under this Subconcession Contract.

(d) The Subconcessioner must promptly pay 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 Subconcessioner.

(e) This Subconcession Contract contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this Subconcession Contract. This Subconcession Contract may be extended, renewed, or amended only when agreed to in writing by the Concessioner and the Subconcessioner and only when approved by the Director.

(f) This Subconcession Contract does not grant rights or benefits of any nature to any third party other than the Director.

(g) The invalidity of a specific provision of this Subconcession Contract will not affect the validity of the remaining provisions of this Subconcession Contract.

(h) Waiver by the Concessioner or the Subconcessioner of any breach of any of the terms of this Subconcession Contract by the other party will not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the Subconcession Contract. The subsequent acceptance of any payment of money or other performance required by this Subconcession

Contract will not be deemed to be a waiver of any preceding breach of any term of the Subconcession Contract.

(i) In the event of any conflict between the provisions of the Contract and this Subconcession Contract, the terms of the Contract control.

(j) This Subconcession Contract is subject to the provisions of 2 C.F.R. Part 1400, as applicable, concerning nonprocurement debarment and suspension. The Director may recommend that the Subconcessioner 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.

*[The Concessioner may propose to add other provisions here for Director review and approval, so long as they are consistent with the terms set forth above. If so, all the Concessioner's terms should appear at the end and be introduced with this language: "In the event of any inconsistency between the terms below and the terms above, the terms above control."]*

**IN WITNESS WHEREOF**, the duly authorized representatives of the parties have executed this Subconcession Contract on the dates shown below.

**CONCESSIONER**

**SUBCONCESSIONER**

*[Name of Concessioner]*

*[insert Subconcessioner's full legal name]*

By \_\_\_\_\_

By \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

**Attachment 1 to Subconcession Contract**

The Subconcessioner, *[insert Subconcessioner's full legal name]*, represents and warrants that it is the legal owner or lessee of the following OSVs. If the any of the OSVs are leased, provide identifying information for each legal owner.