

Category III Contract

**United States Department of the Interior
National Park Service**

Buffalo National River
[Name of Area]

Upper Buffalo District
[Site]

Canoe Rental, Raft Rental, and Shuttle Services
[Type of Service]

Concession Contract No. CC-BUFFXXX-03

[Name of Concessioner]

[Address, including email address and phone number]

Doing Business As

Covering the Period January 1, 2003 through December 31, 2012

This Contract is between the National Park Service and _____ (hereinafter referred to as "Concessioner"), a Corporation, d/b/a _____ under the authority of 16 U.S.C. 1 et. seq., including 16 U.S.C. 5901 et seq., and other laws that supplement and amend these laws. The Director and the Concessioner agree:

Sec. 1. Term of Contract

This Contract will be from January 1, 2003 until its expiration on December 31, 2012.

Sec. 2. Services and Operations

(a) Required and Authorized Visitor Services

The Concessioner must provide the following required Visitor Services within the Area:

Canoe rental services to park visitors. This service may include transporting the visitor to the appropriate access point and picking them up again and returning them to their personal vehicle.

The Concessioner may provide the following authorized Visitor Services within the Area:

Shuttle service related to the rental. The Concessioner will be permitted to provide shuttle service to transport private canoes.

Raft and kayak rentals and shuttle service related to the rentals are authorized.

Private vehicle shuttle service is authorized.

(b) Operation, Maintenance and Quality of Operation

(1) The Concessioner must provide, operate and maintain the Visitor Services in accordance with this Contract in a manner considered satisfactory by the Director, including the nature, type and quality of the Visitor Services. The Concessioner's authority to provide Visitor Services under the terms of this Contract is nonexclusive. The Concessioner's operations and contract compliance will be evaluated on at least an annual basis.

(2) The Director assigns government owned personal property listed in Exhibit C to the Concessioner. The Concessioner must maintain the government owned personal property assigned to it and will be responsible for maintaining the property as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it must be returned to the Director for disposition.

(c) Operating Plan

The Director will establish and revise, as necessary, after consultation with the Concessioner, specific requirements for the operations of the Concessioner under this Contract in the form of an Operating Plan. The

initial Operating Plan is attached to this Contract as Exhibit B.

(d) Rates

All rates and charges to the public by the Concessioner for Visitor Services must be reasonable and appropriate and must be approved by the Director.

(e) No Capital Improvements

The Concessioner may not construct any Capital Improvements upon Area lands.

Sec. 3. Concessioner Personnel

(a) The Concessioner must ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public.

(b) The Concessioner must establish appropriate screening, hiring, training, safety, employment, termination and other policies and procedures.

(c) The Concessioner must 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 must take such actions as are necessary to correct the situation.

(d) The Concessioner must maintain, to the greatest extent possible, a drug free work environment.

Sec. 4. Environmental

The Concessioner must utilize appropriate best management practices (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) in its provision of Visitor Services and other activities under this Contract.

Sec. 5. Fees

(a) Franchise Fee

(1) The Concessioner must pay a franchise fee to the Director as follows:

For the term of this Contract, the Concessioner shall pay to the Director for the privileges granted under this Contract a flat franchise fee of \$500, 4% of the total gross receipts between \$25,001 and \$100,000, and 7% of the remaining total gross receipts exceeding \$100,000.

(2) The Concessioner has no right to waiver of the fee under any circumstances.

(b) Payments Due

(1) The minimum franchise fee of \$500 is due on January 15 each year.

(2) The franchise fee is due on a quarterly basis at the end of each three month period (March 31, June 30, September 30, and December 31) and must be paid by the Concessioner in such a manner that the Director will receive payment within fifteen (15) days after the last day of each quarter that the Concessioner operates.

This quarterly payment must include the franchise fee equal to the specified percentage of gross receipts for the preceding three months (see Exhibit B, Attachment 3, to this Contract).

(3) The Concessioner must 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 will 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.

(c) Interest

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

Sec. 6. Insurance

The Concessioner must obtain and maintain during the entire term of this Contract at its sole cost and expense, coverage necessary to fulfill the obligations of this Contract. The insurance requirements are set forth in Exhibit D.

Sec. 7. Records and Reports

(a) Accounting System

(1) The Concessioner must maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system must be capable of providing the information required by this Contract. The Concessioner's system of accounts classification must 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) The Concessioner must 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 must submit by April 30 annually, a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

(2) The Concessioner will be required to itemize and report the departmental income for gross receipts (i.e., canoe/kayak rentals, shuttles, rafts).

(3) If the annual gross receipts of the Concessioner are in excess of \$1,000,000, the financial statements must 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.

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

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

(c) Other Reports

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

(2) Concessioner Report of Gross Receipts and Franchise Fees. Payments will be due as defined in Exhibit B, Attachment 3, of the Contract.

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

Sec.8. Suspension, Termination, or Expiration

(a) Termination and Suspension

(1) The Director may temporarily suspend operations under this Contract in whole or in part or terminate this Contract in writing 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.

(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 will 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 8(a).

(b) Requirements in the Event of Suspension, Termination or Expiration

(1) In the event of suspension or termination of this Contract for any reason or expiration of this Contract, no compensation of any nature will be due the Concessioner, including, but not limited to, compensation for personal property, or 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 must, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, and repair any injury caused by removal of the property. This removal must occur within thirty (30) days (unless the Director in particular circumstances otherwise determines). Personal property not removed from the Area will be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner.

Sec. 9. Assignment, Sale or Encumbrance of Interests

This Contract may not be assigned [e.g. sold] or encumbered [e.g. mortgaged] without the approval of the Director in accordance with 36 CFR Part 51 with respect to proposed assignments and encumbrances.

Sec. 10. General Provisions - See Addendum 1.

Addendum 1 attached to this Contract is made a part of this Contract.

Sec. 11. Special Provisions - See Addendum 2.

Addendum 2 attached to this Contract is made a part of this Contract.

By:
CONCESSIONER:

UNITED STATES OF AMERICA

(Title)

Superintendent, Buffalo National River
National Park Service

Date: _____

Date: _____

[Corporation]

Attest

By: _____

Title: _____

Attachments:

Addendum 1 - General Provisions

Addendum 2 - Special Provisions

Exhibit A - Nondiscrimination

Exhibit B - Operating Plan

Exhibit C - Assigned Government Personal Property

Exhibit D - Insurance

ADDENDUM 1
GENERAL PROVISIONS

1. Definitions.

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

- (a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws, whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.
- (b) "Area" means the property within the boundaries of Buffalo National River.
- (c) "Days" means calendar days.
- (d) "Director" means the Director of the National Park Service, and his/her duly authorized representatives.
- (e) "Exhibit" means the various exhibits, which are attached to this Contract, each of which is hereby made a part of this Contract.
- (f) "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, 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, hunting and fishing license fees, and postage stamps, provided that the amount excluded will 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, must be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones must be included in gross receipts. All revenues received from charges for in-room telephone or computer access must be included in gross receipts.

- (g) "Superintendent" means the manager of the Area.

(h) "Visitor Services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by this Contract.

2. Legal and Regulatory Compliance

This Contract, operations under it by the Concessioner, and its administration by the Director, are 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. The Concessioner must give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or Contractors, and must promptly correct any violation.

3. Services and Operations

- (a) 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.
- (b) The Concessioner will provide Federal employees reduced rates, in accordance with guidelines established by the Director, when conducting necessary official business. Complimentary or reduced rates and charges may otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.
- (c) The Director and Comptroller General of the United States, or any of their duly authorized representatives, will have access to the records of the Concessioner as provided by the terms of Applicable Laws.
- (d) Subconcession or other third party agreements, including management agreements, for the provision of Visitor Services required and/or authorized under this Contract, whether in consideration of a percentage of revenues or otherwise, are not permitted.
- (e) The Concessioner will ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner's activities. Discoveries of any archeological resources by the Concessioner will be promptly reported to the Director.

4. Environmental Data, Reports, Notifications, and Approvals

- (a) Inventory of Hazardous Substances and Inventory of Waste Streams. The Concessioner must submit to the Director, upon request, an inventory of hazardous chemicals used and stored in the Area by the Concessioner. The Concessioner must 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 must also submit to the Director, upon request, an inventory of all waste streams generated by the Concessioner under this Contract.
- (b) Reports. The Concessioner must 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 must 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.

- (c) Notification of Releases. The Concessioner must 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.
- (d) Notice of Violation. The Concessioner must 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.
- (e) Communication with Regulatory Agencies. The Concessioner must 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 must 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 must allow the Director to participate in any such communications. The Concessioner must also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.
- (f) Cost Recovery for Concessioner Environmental Activities. 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 his/her 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 will be liable for and must pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section precludes the Concessioner from seeking to recover costs from a responsible third party.

5. Fees - Adjustment of Franchise Fee

- (a) 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" will 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.

- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director will 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 will 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.
- (g) The arbitration panel will 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.
- (h) Any adjustment to the franchise fee resulting from this section will be prospective only.
- (i) Any adjustment to the franchise fee will be embodied in an amendment to this Contract.
- (j) During the pendency of the process described in this section, the Concessioner will continue to make the established franchise fee payments required by this Contract.

6. 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 will survive the termination or expiration of this Contract.

7. 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. The Director may terminate this Contract if the Director determines that the Concessioner is unable to perform the terms of Contract due to such bankruptcy or insolvency action.

8. Additional Provisions

- (a) This Contract contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this Contract. This Contract may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.
- (b) This Contract does not grant rights or benefits of any nature to any third party.
- (c) The invalidity of a specific provision of this Contract will not affect the validity of the remaining provisions of this Contract.
- (d) Waiver by the Director or the Concessioner of any breach of any of the terms of this 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 Contract. The subsequent acceptance of any payment of money or other performance required by this Contract will not be deemed to be a waiver of any preceding breach of any term of the Contract.
- (e) No member of, or delegate to, Congress or Resident Commissioner will be admitted to any share or part of this Contract or to any benefit that may arise from this Contract but this restriction will not be construed to extend to this Contract if made with a corporation or company for its general benefit.
- (f) This Contract is subject to the provisions of 43 CFR, Subtitle A, Part 12, Subpart D, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.

ADDENDUM 2
SPECIAL PROVISIONS

1. Fees

The Concessioner shall provide a memo with each submission of quarterly franchise fees which lists the estimated gross upon which the fee was calculated and the amounts of franchise fee with the submission (see Attachment 3 to Exhibit B, Operating and Maintenance Plan).

2. Visitor Use Data

The Concessioner will cooperate with the Service in establishing visitor use patterns, numbers, and trends by compiling and maintaining accurate visitor use data as requested by the Service and by participating in any special surveys that may be directed by the Superintendent to produce this information.

The Concessioner will provide visitor use data by the 25th of each month. The compilation of statistics will be the responsibility of the Concessioner. These statistics will be in writing and submitted to the District Ranger with the monthly rental register receipts.

3. Incident Reports

The Concessioner will immediately report to the Service: any fatalities or visitor-related incidents; property damage over \$500; any employee, visitor, or stock injuries requiring more than minor first aid treatment; any fire; all motor vehicle accidents; any incident that affects the park's resources; and any known or suspected violations of the law.

Concessioners will be required to report to District park personnel any unlawful incident they observe, any boating accidents they know about, and any injuries that result from accidents at any time.

Exhibit A
Nondiscrimination

Section I: Requirements Relating to Employment and Service to the Public

A. Employment

During the performance of this Contract the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provision of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disabling condition.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed \$50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.

(5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The

Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

B. Construction, Repair, and Similar Contracts

The preceding provisions A(1) through A(8) governing performance of work under this Contract, as set out in Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this Contract, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this Contract, and for that purpose the term ``Contract'' shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term ``Concessioner'' shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

C. Facilities

(1) Definitions: As used herein:

- (a) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner;
- (b) Facility shall mean any and all services, facilities, privileges, accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from:

- (a) Publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition;
- (b) Discriminating by segregation or other means against any person.

Section II: Accessibility

Title V, Section 504, of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the service or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law, and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

A. Discrimination Prohibited

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

- (1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
- (2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
- (4) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
- (5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;
- (6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
- (7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

B. Existing Facilities

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

Exhibit B Operating Plan 2011

I. INTRODUCTION

This Operating Plan between **business name** (hereinafter referred to as the “Concessioner”) and Buffalo National River (hereinafter referred to as the “Service”) shall serve as a supplement to **Concession Contract CC-BUFFxxx-xx** (hereinafter referred to as the “CONTRACT”).

This plan describes specific operating responsibilities of the Concessioner and the Service with regard to those lands utilized by the Concessioner for the purposes authorized by the Contract. In the event of any conflict between the terms of the Contract and this Operating Plan, the terms of the Contract, including its designations and amendments, will prevail.

This plan will be reviewed annually by the Service in consultation with the Concessioner and revised as determined necessary by the Service of the Area. Any revisions must be consistent with the main body of this Contract. Any revisions must be reasonable and in furtherance of the purposes of the Contract.

II. MANAGEMENT AND ORGANIZATION

National Park Service – The Superintendent is responsible for the total park operation. The Superintendent has designated the Concession Specialist as the staff person responsible for day-to-day concession operations. Law enforcement/visitor protection matters are delegated to the Chief Ranger. Resource Management and Compliance matters are delegated to the Chief of Natural Resource Management and Chief of Cultural Resource Management. Each of these may designate a specific contact person to handle routine matters.

Concessioner – Concession operations will carry out the policies and directives of the Service as well as those of the Concessioner in the operation of the authorized concessions services in Buffalo National River. The Concessioner will manage and, if necessary, employ a staff with the expertise to operate all services authorized under the concessions contract. The primary Concessioner contact for the National Park Service will be **contact name(s)**.

III. REQUIRED DOCUMENTS

A. In addition to the reports required by the Contract, the Concessioner will provide the following documents to the Service:

Description	Due Date
Franchise Fee	On or before December 31 st
Annual Financial Report	<i>On or before April 20th for the preceding year</i>
Monthly statistical report (rental stats)	By the 5th day of each month
Rates, Cancellation, deposit, refund policy	<i>Prior to startup of operations</i>
Risk Management Plan (Safety Plan)	Concessioner review annually & submit any changes
Proof of Insurance	Prior to startup of operations
* List of employees, title, and type of driver's license	Prior to startup of operations
<i>Vessel list with NPS decals and vessel ID</i>	<i>Prior to startup of operations</i>

** Should the Concessioner add or change employees after submission of the initial report, the Concessioner will advise the Service of the changes as soon as possible.*

B. Additional Reports

1. Concessioners must report all wildland and structural fires to the Service immediately.
2. Accidents involving personal injury, threatening incidents involving wildlife or conflicts with other park users must be reported to the Service within one (1) workday following the incident.
3. The Concessioner will immediately report all fatalities or visitor-related incidents, property damage over \$500; any employee, visitor, or stock injuries requiring more than minor first aid treatment; any fire; all motor vehicle accidents; any incident that affects the park's resources; and any known or suspected violations of the law.
4. The Concessioner will immediately report any unlawful incident they observe, any boating accidents they know about, and any injuries that result from accidents.

IV. SERVICES AND OPERATIONS

Location, Hours and Schedule of Operations:

Business Location and Telephone

This concession will be required to operate from the **Buffalo District** area. A public contact business telephone number must be provided during the season of operation and, if not the same, an off-season address and telephone number must be provided.

Hours and Emergency Contact

Hours must be clearly posted for the public. An after-hours emergency contact number must be provided by the Concessioner to the Service.

Season and Schedule of Operation

The Concessioner will notify the Service as soon as possible of any proposed closure.

A. Required and Authorized Visitor Services

1. Vessel Allotments

The Director reserves the right to regulate, condition, limit, apportion, allocate and/or adjust the Concessioner's authorized allotment of use and to withdraw such use in whole or in part as may be necessary for resource protection and visitor use and enjoyment. Such apportionment, allocations or adjustments between authorized Concessioners shall be made on an equitable basis, or individually, as fully justified. If a withdrawn allotment of use is to be continued, the Service may reassign such use to other Concessioners or private persons.

The Service may also determine, establish, and adjust limits during any day or year on the number and size of launches, the number of persons allowed in any one vessel or expedition, and other similar measures of river use consistent with NPS policies.

a. Number of Vessels

1. **See Attachment 1** to this Operating Plan.
2. The number of vessels authorized by this Contract is the maximum number regardless of type.
3. The NPS will not adjust upward the total occupancy rating for each vessel type as based on U.S. Coast Guard standards.
4. The Concessioner shall not exceed any carrying capacity per vessel type in accordance with U.S. Coast Guard standards.

2. Assigned/Authorized Accesses

a. Area of Operation

River sections for commercial use will be designated by the Service. Canoe, kayak, raft and tube rentals will be restricted to the district in which allotted. District limits may be set, raised, lowered, or eliminated by the Service at any time based on needs for resource protection and visitor use and enjoyment.

Concessioners permitted to operate in the Upper Buffalo District will be allowed to use the following river access points:

Boxley	Ponca	Steel Creek
Kyles	Erbie	Ozark
Pruitt	Hasty	Carver

Concessioners permitted to operate in the Middle Buffalo District will be allowed to use the following river access points:

Mount Hersey	Woolum	Baker Ford
Tyler Bend	Grinder's Ferry	Gilbert
Maumee South		

Concessioners permitted to operate in the Lower Buffalo District will be allowed to use the following river access points:

Maumee North	Buffalo Point	Rush
Dillard's Ferry	Spring Creek	

Camp Orr

No public access is available at Camp Orr. Camp Orr may be used when the Concessioner's clients have rented Camp Orr for their group or on an emergency basis for pickup of visitors who have overshot the Kyles take-out. Concessioners must contact staff at Camp Orr prior to picking up visitors.

b. Put-Ins and Take-Outs

- 1. Only officially designated put-in/take-out locations may be used. The Service's written approval must be obtained prior to utilizing any other location.*
- 2. All Concessioners must put-in or take-out in their respective district.*
- 3. All Concessioners **may** provide services to all sections of the river for trips of four days or longer.*
- 4. The Service may regulate put-in and take-out times and the number of vessels launched at any authorized river access point to avoid congestion.*

c. Deviations and Specific Rules

Ponca Low Water Crossing:

- 1. During the month of May, Concessioners shall not use the Ponca Low Water Crossing between the hours of 9 a.m. and 12 noon on Saturdays.*
- 2. Concessioner's vehicles and trailers shall not be left unattended at the Ponca Low Water Crossing (East or West side).*
- 3. Authorized vessels may only be launched from the west or east ends of the*

bridge.

d. Stockpiling

No overnight stockpiling or storage of equipment will be allowed within the park **except for special considerations approved by the Service in advance.**

The National Park Service will not be responsible for the Concessioner's unattended property.

Stockpiling may take place between the hours of 5:00 a.m. until 10:00 p.m.

All canoes and other equipment must be hauled out of the park by 10 p.m. each day **except for special considerations approved by the Service in advance.**

Stockpiling of equipment during the day at put-in locations will be allowed as follows:

Buffalo Point - One-third (1/3) of the total inventory of canoes per concession operation may be stockpiled at Buffalo Point in the area designated by the District Ranger.

Dillard's Ferry (Highway 14 Bridge) - One-third (1/3) of the total inventory of canoes per operation may be stockpiled at Dillard's Ferry in the area designated by the District Ranger.

Maumee North - Stockpiling of canoes may be done at Maumee North (in the area designated by the District Ranger) from 5 a.m. until 10 a.m. Contact the District Ranger if overnight consideration is required.

Steel Creek – One-third (1/3) of the total inventory of canoes per concession operation may be stockpiled at Steel Creek in the area designated by the District Ranger.

Other Designated Locations

Rush	Maumee South	Gilbert
Grinder's Ferry	Tyler Bend	Baker Ford
Carver	Hasty	Pruitt
Ozark	Erbie	Kyles
Boxley	Ponca	

3. Rafts and Tubes

A. RAFTS

- a. Rafts may be no wider than 6 feet and no longer than 13 feet, 6 inches.
- b. No rafts with less than two floatation chambers will be permitted.
- c. Rafts will be constructed of Hypolon, Neoprene or equivalent material.

- d. One paddle will be provided for each paddler.
- e. Rafts will be loaded to assure that the mid-line of floatation tubes are above water.
- f. If rafts are used for an overnight trip, then each raft must have a patch kit and a pump.
- g. Motors are not authorized for raft use.

B. TUBES

- a. The tube may not exceed 42" in diameter and must be heavy duty, at least 30 gauge.
- b. Tubes must be clearly marked with the Concessioner's business name or logo.
- c. The **float trip must be less than 2.5 miles.**
- d. Any tube rental for a float trip of **2.5 miles or longer** must be rented in conjunction with a canoe rental.
- e. All adults must be informed that a tube is not a life-saving device and be offered a PFD.
- f. The Concessioner will not launch a tube with a child under the age of 13 unless the child is wearing an approved PFD of the proper size and is accompanied by a parent or an adult guardian.
- g. If the visitor is bringing drinks or items to eat for the float trip, then mesh litter bags must be provided.

4. Personal Flotation Device (PFD)

Each occupant of a permitted craft will be provided a U.S. Coast Guard approved personal floatation device (PFD) in accordance with Coast Guard regulations. The only exception is where the individual supplies their own Coast Guard approved PFD of the proper type in good condition.

PFD's must be appropriately sized for all individuals, including adults and children and be in good condition.

Boat cushions (Type IV throwables) are not to be used as personal floatation devices.

The Concessioner shall not launch a vessel with a child under the age of 13 unless the child is wearing an approved PFD of the proper size and is accompanied by a parent or an adult guardian.

5. Shuttle Service and Parking

a. Shuttle Service

- 1. To reduce the congestion at put-in and take-out points, and to minimize potential resource damage, the Concessioners will, **as much as possible**, park their customer's vehicles outside the park.
- 2. Vehicles must not be shuttled to the take-out point within the park more than 12 hours before the visitors are scheduled to arrive **except in extenuating circumstances.**

b. Designated Official Parking

When parked at specific locations within the boundaries of Buffalo National River, the following limitations will apply:

All parking must occur only in designated areas.

Buffalo Point: Lower Buffalo District Concessioners may not use the parking area at Buffalo Point on Saturdays, Sundays and holidays from the period of May 1 through September 30. However, use of the parking area is permissible during week days.

Hasty: Upper District Concessioners must park within "Permit Parking" signs at Hasty.

Each Concessioner will be issued two parking permits with *an expiration date of December 31, 2012*. These parking permits must be placed on the dashboard of the vehicles so they are visible and easy to read. All canoe trailers must be clearly marked with the Concessioner's name or logo.

Kyles Landing: *Upper District Concessioners must park within "Permit Parking" signs at Kyles Landing. Each Concessioner will be issued two parking permits with an expiration date of December 31, 2012. These parking permits must be placed on the dashboard of the vehicles so they are visible and easy to read. All canoe trailers must be clearly marked with the Concessioner's name or logo.*

B. Quality of Operation

1. Operational Evaluations

- a. The Concessioner, or designee, will be available for all formal Service evaluations.
- b. The Service evaluations will include, at a minimum:
 - 1) Operational Performance
 - 2) Environmental Management Program
 - 3) Risk Management Program

2. Complaints and Comments

- a. The Service will forward employee and client complaints or comments to the Concessioner for investigation and response. The Concessioner shall provide a copy of the response to the Service within 30 days.
- b. Employee and client complaints received directly by the Concessioner will be provided to the Service along with the Concessioner's response within 30 days of receipt by the Concessioner.
- c. The Concessioner will maintain a complaint file at the place of business. This file is subject to review by Service evaluators.

3. Vehicle Requirements

- a. *Shuttle vehicles used in conjunction with approved services must comply with all State motor vehicle laws and must meet or exceed the State and Federal regulations associated with the type of operation the vehicle is used for.*
- b. The words "School Bus" must be removed and the Concessioner's identifying information must be prominently displayed.
- c. Any equipment, concession or privately owned, hauled in the shuttle vehicle must be secured.

4. Risk Management Program

- a. The Concessioner will provide a safe and healthful environment for all of its employees and visitors in compliance with all Applicable Laws and current NPS guidelines and policies.
- b. The Concessioner will maintain a documented safety program known as a Risk Management Plan. The Risk Management Plan will be reviewed annually by the Concessioner and made available to the Service upon request. The Risk Management Plan will include, at a minimum, the following elements:
 - 1) Documented Program
 - 2) Inspections – schedule, document, mitigate and record
 - 3) Hazard abatement documentation
 - 4) Accident reporting and investigation
 - 5) Public safety awareness and promotion
 - 6) Training for supervisors and employees
 - 7) Emergency procedures
 - 8) Other safety items unique to the Concessioner's operation
- c. The Concessioner will perform safety inspections of their operation on a regular basis and maintain appropriate documentation.
- d. Concessioner inspections will include, but are not limited to:
 - 1) Annual fire and safety inspections of all concession vehicles prior to startup of operations each year. Written records, verifying the completion of such inspections will be maintained by the Concessioner and available to the Service upon request.
 - 2) A vehicle maintenance log or checklist must be maintained for each vehicle. The Service has authority to inspect vehicles at his/her discretion.
- e. Concessioner will provide an orientation and safety briefing to all clients renting

vessels prior to the beginning of the trip. The orientation and safety briefing will include, but is not limited to:

- 1) Orientation on the use of the vessel rented
- 2) Information about potential river conditions
- 3) River mileage; put-in and take-out locations

f. Overdue Floaters

The Concessioner shall try to determine the whereabouts of the overdue floater(s) prior to seeking assistance from the Service. If the situation appears to require a search and rescue operation, the Concessioner will notify a Park Ranger for assistance.

g. Acknowledgement of Risk

The Concessioner **may** require clients to sign an Acknowledgement of Risks form.

The Service-approved sample Visitor's Acknowledgement of Risks form is provided as

***Attachment 2** to this Operating Plan. The Concessioner will submit to the Superintendent for approval its proposed Visitor's Acknowledgement of Risks Form, if any, at least 30 days in advance of any proposed changes in the form.*

The Concessioner **may not** request *or require* clients *participating in activities* to sign a liability waiver form, insurance disclaimer and/or indemnification (hold-harmless) agreement.

5. River Hazards/Closures

- a. In emergency circumstances the Service may announce closure of the river.
- b. All Concessioner put-in activity is prohibited when river levels are determined to be at flood stage or as directed by the Service.
- c. Concessioners must be knowledgeable of hazardous conditions and discourage river use when conditions exist as defined in the Service's River Level Floating Guide. *See Buffalo National River Services and River Level Guide Webpage:*
<http://ar.water.usgs.gov/buffaloriver/>
- d. The Concessioner will use discretion in providing service to people who appear to be incapacitated to the point of being harmful to *themselves* or other people and will report serious incidents to the Service promptly.

6. Vessel Identification:

- a. Identification decals will be furnished by the Service.
- b. The Concessioner will identify authorized vessels with the identification decals

furnished by the Service.

- c. The Concessioner will remove the old decals, *return the old decals (or pieces of the old decals) to the Service*, and place new decals on new vessels and/or replacement vessels as needed.
- d. The Concessioner will maintain a list of all vessels by manufacturer's identification number, *color, make/model*, and the NPS decal number. At a minimum, this list must be updated by the Concessioner annually prior to the beginning of operations with a copy provided to the Service.

7. Reports

The Concessioner will provide the Service with the following *Monthly Statistical Report*:

- a. *Monthly Statistical Report form* – Due by the 5th of each month via email to: BUFF_Superintendent@nps.gov.
- b. **If extenuating circumstances require the report to be late, or to be submitted in hard copy, please contact the Concessions Specialist at 870-365-2702.**
- c. If no activity occurs during the month, then a negative report is required. *Send an email to: BUFF_Superintendent@nps.gov with the name of your business and "Negative Report for the month of _____."*
- d. *Negative reports may be submitted for multiple months in one email, i.e. "Negative Report for the months of Dec., Jan., and Feb."*
- e. *Reports may be later modified by resubmitting the report and adding: "Modified Report" to the email message.*
- f. *The Service will provide the electronic report form to the Concessioner.*

C. Operating Plan - Specific Requirements

1. General

The Concessioner is required to issue one mesh litter bag per vessel rented.

2. Solicitation

Solicitation of business and advertising within Buffalo National River is prohibited, except that brochures may be available at business offices inside park boundaries as long as they are not intentionally handed to, or made reference to, by Concessioners or their employees unless the visitor requests the information.

3. Damaged Equipment, Salvage and Replacement

Concessioner will be required to remove any of its damaged, submerged or lost equipment from the park within 72 hours of notification or discovery of its location, river

conditions permitting.

The Concessioner is responsible for repair or replacement of equipment damaged due to vandalism.

The Concessioner will not rent damaged equipment to the public.

4. Customer Damage Liability

The Concessioner must make the renter aware of his/her potential liability for damaged equipment prior to completion of the rental transaction.

A receipt must be given to the renter listing the damage assessment amount, lost equipment costs, or other costs following any settlement. This receipt must include any identification numbers associated with damaged equipment.

The Concessioner agrees to limit the customer's liability when settling for any and all claims for *property* damage or loss to canoes, paddles, life vests, and other equipment to the fair market value at the time of loss or a reasonable cost of repair to damaged equipment.

5. Protection and Security

- a. Visitor protection is provided by the Service and all authorized state and local agencies.
- b. The Concessioner is responsible for security of concession equipment, and customer equipment or possessions under their control.
- c. Fire protection shall be provided jointly by the Service, Concessioner, and local fire departments, with primary response from local fire departments.

6. Lost and Found Policy

Each found item shall be tagged by the Concessioner, listing the item found, location found, date and time found, and who found it. If an item is not claimed within seven (7) days, it shall be turned over to the Service or mailed or transmitted to the park in accordance with the park's Lost and Found Policy. When possible, the Concessioner shall attempt to identify the ownership of the found item and provide this information to the Service.

Visitors inquiring about lost items should be referred to any Park Ranger in the event the Concessioner is unable to assist the visitor in the recovery of the item.

7. Volunteers in the Park (VIP)

The Concessioner shall not restrict its employees from participating in the Volunteers-In-Park (VIP) program.

8. Meetings

- a. At least one meeting, with required attendance by all Concessioners or their representatives, will be held annually with the Service. Topics will include, but are not limited to:
 1. Safety and Emergency Plans
 2. Contract review
 3. Operations – NPS and Concessions
- b. Other general meetings may be required throughout the year.
- c. The Concessioner will meet with the Service at the Concessioner's place of business at least once prior to the operating year to review contract operational requirements.

9. Insurance Certification

The Concessioner shall submit proof of insurance to the Service *prior to startup of operations* each year. If not submitted by the required *time period*, the concession operation will be suspended without further notice.

E. Rates Reservation/Deposit/Refund

1. A highly competitive market exists within the local area for canoe, kayak, raft and tube rentals and shuttle services. A sufficient number of businesses provide similar services in the area resulting in a range of prices and rental equipment. Prices are comparable based on competition and negotiation. Therefore, **a competitive market declaration** will be the rate approval method for this concessions operation.
2. Reservation, cancellation, deposit, and refund policies shall be reasonable, not overly restrictive, and efficiently handled.
3. The Concessioner shall submit their rates and reservation, cancellation, deposit and refund policies to the Service *prior to startup of operations* each year.
4. Rates will be posted by the Concessioner in a location conspicuous to the general public.
5. The following statement must be prominently posted at the Concessioner's point of business:

This service is operated by **Business Name**, a Concessioner under contract with the U.S. Government and administered by the National Park Service. The Concessioner is responsible for conducting these operations in a satisfactory manner. The reasonableness of prices is based on comparability. Prices are approved by the National Park Service based upon prices charged by similar private enterprises outside the Park for similar services with due consideration for appropriate differences in operating conditions.

Please address comments to:

Superintendent
Buffalo National River
402 N. Walnut, Suite 136
Harrison, Arkansas 72601

V. CONCESSIONS PERSONNEL

- A. A current list of concession employees, (including name, title and type of driver's license) shall be provided to the Service prior to the beginning of operations each year.
- B. Concession employees must be knowledgeable about Buffalo National River, its environment, culture, and points of interest.
- C. Only those concessions employees who have received training from the Concessioner about Federal, State and National Park Service laws and regulations will be qualified to provide the safety and orientation briefing to clients as required in section IV. B. 4. e. of this Operating Plan. Proof of employee training will be provided to the Service upon request.
- D. The Concessioner shall not employ in any status a Service employee, his/her spouse, or minor children of Service employees without the Service's prior approval. Employees must submit a written request to the Service.
- E. The Concessioner shall not employ in any status the spouse or children of any Service employee directly involved in the concessions program management or who conducts inspections or evaluations of a Concessioner's services.
- F. In cooperation with the Service, Concessioners shall encourage their employees to participate in park interpretive training programs.

VI. ENVIRONMENTAL

- A. The Concessioner will develop, implement and promote environmental management and sound environmental strategies that are appropriate best management practices within their operational framework.
- B. The Concessioner will, at a minimum:
 - 1. Remove litterbags, trash and other debris generated by clients from the put-in and take-out points and deposit them in the appropriate trash or recyclable container.
 - 2. To the fullest extent practicable, will develop and implement a recycle program.
 - 3. To the fullest extent practicable, will participate in scheduled river clean-up activities.

CONCESSIONER

NATIONAL PARK SERVICE

Business Name

Title: _____

Date: _____

Superintendent
Buffalo National River

Date: _____

This Operating Plan shall remain in effect until specific changes are approved
in writing by the Service

Attachment 1: Authorized Vessels

Attachment 2: Sample "Acknowledgement of Risks" form

Attachment 1
Business Name

Buffalo National River

Number of Vessels

The Concessioner is authorized to rent:

Canoes #

Kayaks #

Rafts #

CONCESSIONER:

NATIONAL PARK SERVICE:

Business Name

Title: _____

Date: _____

Superintendent

Buffalo National River

Date: _____

Attachment 2
Sample Acknowledgement of Risk Form
VISITOR'S ACKNOWLEDGEMENT OF RISKS

In consideration of the services of _____,

Doing Business As _____,
 their officers, agents, employees, and stockholders, and all other persons or entities associated with those businesses (hereafter collectively referred to as "_____"), I agree as follows:

Although _____ has taken reasonable steps to provide me with appropriate equipment and skilled guides so I can enjoy an activity for which I may not be skilled, _____ has informed me this activity is not without risk. Certain risks are inherent in each activity and cannot be eliminated without destroying the unique character of the activity. These inherent risks are some of the same elements that contribute to the unique character of this activity and can be the cause of loss or damage to my equipment, or accidental injury, illness, or in extreme cases, permanent trauma or death. _____ does not want to frighten me or reduce my enthusiasm for this activity, but believes it is important for me to know in advance what to expect and to be informed of the inherent risks. The following describes some, but not all, of those risks.

I am aware that (*Description of activity*): _____ entails risks of injury or death to any participant. I understand the description of these inherent risks is not complete and that other unknown or unanticipated inherent risks may result in injury or death. I agree to assume and accept full responsibility for the inherent risks identified herein and those inherent risks not specifically identified. My participation in this activity is purely voluntary; no one is forcing me to participate, and I elect to participate in spite of and with full knowledge of the inherent risks.

I acknowledge that engaging in this activity may require a degree of skill and knowledge different from other activities and that I have responsibilities as a participant. I acknowledge that the staff of _____ has been available to more fully explain to me the nature and physical demands of this activity and the inherent risks, hazards, and dangers associated with this activity.

I certify that I am fully capable of participating in this activity. Therefore, I assume and accept full responsibility for myself, including all minor children in my care, custody, and control, for bodily injury, death, or loss of personal property and expenses as a result of those inherent risks and dangers identified herein and those inherent risks and dangers not specifically identified, and as a result of my negligence in participating in this activity.

I have carefully read, clearly understood, and accepted the terms and conditions stated herein and acknowledge that this agreement shall be effective and binding upon me, my heirs, assigns, personal representative, and estate and for all members of my family, including minor children.

 Signature Printed Name Date

 Address, City, State, Zip Phone Date

Signature of Parent of Guardian, if participant is under 18 years of age

 Signature Printed Name Date

 Phone

Exhibit C
Assigned Government Owned Personal Property

Government owned personal property is assigned to the Concessioner for the purposes of this Contract as follows:

Property Number	Description of Item
-----------------	---------------------

List of serial numbered decals that are assigned and affixed to vessels will be included with final contract.

Effective, this _____ day of _____, 2003.

By:

Superintendent
Buffalo National River

Exhibit D
Insurance Requirements

I. General

The Concessioner must obtain and maintain during the entire term of this Contract, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of the Contract. The Director will approve the types and amounts of insurance coverage purchased by the Concessioner.

At the request of the Director, the Concessioner must, 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 must 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.

From time to time, as conditions in the insurance industry warrant, the Director may modify this Exhibit, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

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.

II. Liability Insurance.

The Concessioner must 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.

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

This insurance must 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. The following Liability Coverages and limits are to be maintained at a minimum, all of which are to be written on an occurrence basis only. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or Excess "Umbrella" Liability. Furthermore, the commercial general liability package must provide no less than the coverages and limits described.

A. Commercial General Liability

1. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability (and must include Contractual Liability and Products/Completed Operations Liability).

1

Bodily Injury and Property Damage Limit-	see below
Products/Completed Operations Limit-	see below
Personal Injury & Advertising Injury Limit-	see below
General Aggregate-	see below

Fire Damage Legal Liability "per fire"- **see below**

In each of the applicable categories listed above, the following minimums as they relate to passenger capacities apply:

Cars, trucks and vans up to 5 passengers:	\$300,000
Cars, trucks and vans 6-12 passengers:	\$500,000
Vans and buses 13-20 passengers:	\$750,000
Buses 21-50 passengers:	\$1,500,000

2. The liability coverages may not contain the following exclusions/ limitations:
 - a. Athletic or Sports Participants
 - b. Products/Completed Operations
 - c. Personal Injury or Advertising Injury exclusion or limitation
 - d. Contractual Liability limitation
 - e. Explosion, Collapse and Underground Property Damage exclusion
 - f. Total Pollution exclusion
 - g. Watercraft limitations affecting the use of watercraft in the course of the concessioner's operations (unless separate Watercraft coverage is maintained)
3. If the policy insures more than one location, the General Aggregate limit must be amended to apply separately to each location, or, at least, separately to the appropriate NPS location(s).

B. Automobile Liability

This coverage will be required of commercial operators whose activities or occupancy involves the use of any vehicles. This coverage protects (up to the policy limit) the insured (commercial operator) for claims alleging or involving bodily injury or property damage arising out of the ownership, maintenance or use of vehicles. Where there are no owned autos, coverage applicable to "hired" and "non-owned" autos, will be maintained. **Concessioners that shuttle privately-owned vehicles must provide Liability coverage for these vehicles.**

Each Accident Limit - \$300,000

C. Watercraft Liability (or Protection & Indemnity)

Coverage will be provided for bodily injury or property damage arising out of the use of any watercraft.

Each Occurrence Limit:

Vessels with a carrying capacity of 1-5 people -	\$300,000
Vessels with a carrying capacity of 6-12 people -	\$500,000

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D. Excess Liability or Excess "Umbrella" Liability

This coverage is not required, but may be used to supplement any of the above Liability coverage policies in order to arrive at the required minimum limit of liability. If maintained, coverage will be

provided for bodily injury, property damage, personal or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage must be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance must be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Excess "Umbrella" Liability policy.

E. Care, Custody and Control--Legal Liability (Describe Specific Coverage)

Coverage will be provided for damage to property in the care, custody or control of the concessioner.

Any One Loss - \$300,000

F. Environmental Impairment Liability

Coverage (if requested by the Director) will be provided for bodily injury, personal injury or property damage arising out of pollutants or contaminants (on site and/or offsite).

Each Occurrence or Each Claim Limit as required by the State of
Arkansas
Aggregate Limit as required by the State of Arkansas

G. Special Provisions for Use of Aggregate Policies.

At such time as the aggregate limit of any required policy is (or if it appears that it will be) reduced or exhausted, the concessioner may be required to reinstate such limit or purchase additional coverage limits.

H. Self-Insured Retentions.

Self-insured retentions on any of the above described Liability insurance policies (other than Excess "Umbrella" Liability, if maintained) may not exceed \$5,000.

I. Workers Compensation and Employers' Liability.

Coverage will comply with the statutory requirements of the state(s) in which the concessioner operates.

III. Insurance Company Minimum Standards.

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

1. All insurers for all coverages must be rated no lower than A-by the most recent edition of Best's Key Rating Guide (Property-Casualty Edition).
2. All insurers for all coverages must have a Best's Financial Size Category of at least VIII according to the most recent edition of Best's Key Rating Guide (Property-Casualty edition).

3. All insurers must be admitted (licensed) in the state in which the concessioner is domiciled.

IV. Certificates of Insurance.

All certificates of Insurance required by this Contract must be completed in sufficient detail to allow easy identification of the coverages, limits, and coverage amendments that are described above. In addition, the insurance companies must be accurately listed along with their A.M. Best Identification Number (“AMB#”). The name, address and telephone number of the issuing insurance agent or broker must be clearly shown on the certificate of insurance as well.

Due to the space limitations of most standard certificates of insurance, it is expected that an addendum will be attached to the appropriate certificate(s) in order to provide the space needed to show the required information.

In addition to providing certificates of insurance, the concessioner, upon written request of the Director, must provide the Director with a complete copy of any of the insurance policies (or endorsements thereto) required herein to be maintained by the concessioner.

V. Statutory Limits

In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit will be considered the minimum to be maintained.

AMENDMENT NO. 1
CONCESSION CONTRACT NO. CC-BUFFXXX-03

(Concessioner)
Buffalo National River

THIS AGREEMENT 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 Superintendent, Buffalo National River, (hereinafter referred to as the "Superintendent"), and _____, a corporation organized and existing under the laws of the State of Arkansas (hereinafter referred to as the "Concessioner"):

WITNESSETH:

THAT WHEREAS, Concession Contract No. CC-BUFFXXX-03 was entered into on February 26, 2003, with _____ requiring the Concessioner to provide canoe rental services to park visitors and may include transporting the visitor to the appropriate access point and picking them up again and returning them to their personal vehicle; and authorizing the Concessioner to provide shuttle service related to the rental, shuttle service to transport private canoes, raft and kayak rentals and shuttle service related to the rentals, and private vehicle shuttle service for the public within Buffalo National River, Arkansas; and

WHEREAS, Concession Contract No. CC-BUFFXXX-03 entered into on February 26, 2003 includes the following language in Section 5 (b):

(b) Payments Due

- (1) The minimum franchise fee of \$500 is due on January 15 each year.
- (2) The franchise fee is due on a quarterly basis at the end of each three month period (May 31, June 30, September 30, and December 31) and must be paid by the Concessioner in such a manner that the Director will receive payment within fifteen (15) days after the last day of each quarter that the Concessioner operates.

This quarterly payment must include the franchise fee equal to the specified percentage of gross receipts for the preceding three months (See Exhibit B, Attachment 3, to this Contract).

- (3) The Concessioner must 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 will 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.

and;

WHEREAS, Concession Contract No. CC-BUFFXXX-03 entered into on February 26, 2003 includes "Addendum 2 – Special Provisions", and;

WHEREAS the Director has determined that it is in the best interest of the United States to amend the contract;

NOW THEREFORE, in consideration of the foregoing, the parties hereto covenant and agree to and with each other that Concessions Contract number CC-BUFFXXX-03 is hereby amended as follows:

1. Section 5 (b):
(b) Payments Due

(1) Payment of the franchise fee is due on December 31 of each year. If adjustments need to be made to the franchise fee payment due to adjustments to the reported gross receipts at the time of submission of the Concessioner's Annual Financial Report, or for any other reason, the adjustments will be made as follows:

- (i) Additional payments will be made at the time of submission of the Concessioner's Annual Financial Report,
- (ii) Overpayments will be offset against the following year's fees.

(2) 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.

2. Delete "Addendum 2, Special Provisions"

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

CONCESSIONER

UNITED STATES OF AMERICA

By _____
(Title)

By _____
Superintendent
Buffalo National River

Date: _____

Date: _____

ATTEST:

By _____

Title _____