

- Comply with Applicable Laws, regulations and codes.
- Apply the conditions of the contract when assigning, selling, or transferring responsibilities of this Concession Contract to a third party.

In addition, this Concession Contract will be subject to termination pursuant to the conditions set forth in Exhibit G (Operating Plan). Reclamation shall reserve the right to collect penalties and administrative costs and shall terminate this Concession Contract for default and for nonperformance.

In the event of a breach of this Concession Contract, Reclamation will provide the Concession Contractor an opportunity to cure by providing written notice to the Concession Contractor of the breach. In the event of a monetary breach, Reclamation will give the Concession Contractor a 15-day period to cure the breach. If the breach is not cured within that period, Reclamation may terminate this Concession Contract for default. In the event of a non-monetary breach, if Reclamation considers that the nature of the breach so permits, Reclamation will give the Concession Contractor 30 days to cure the breach or to prepare a plan to cure the breach that is approved by the Contracting Officer and 30 days to implement the plan over a period of time unless the breach involves immediate danger to persons or property or immediate threat to the environment, in which case Reclamation shall give reasonable notice under the circumstances. If the breach is not cured within this specified period of time, Reclamation may terminate this Concession 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, Reclamation may suspend the Concession Contractor's operations, as appropriate. This Concession Contract is subject to 43 Code of Federal Regulations (CFR) Part 430, in the event of termination for default.

Reclamation may terminate this Concession Contract upon the filing by the Concession Contractor's of any petition seeking relief under any provision of the Bankruptcy Act or successive legislation; an assignment by the Concession Contractor for the benefit of creditors; a petition or other proceeding against the Concession Contractor for the appointment of a trustee, receiver, or liquidator. Reclamation may terminate this Concession Contract if the Contracting Officer determines that the Concession Contractor is unable to perform the terms of the Concession Contract because of such filings or assignments. Termination of this Concession Contract for any reason shall be by written notice to the Concession Contractor.

***Disputes between Reclamation and the Concession Contractor regarding contract termination for default and unsatisfactory performance are to be resolved through informal negotiations and discussions. In the event that such disputes fail to reach resolution, either party may request a formal, nonbinding arbitration process. Each party selects one member for the arbitration panel and, together, these two members will select the third (neutral) panel member. The expenses of the neutral arbiter and other costs of the arbitration will be borne equally by the Concession Contractor and Reclamation. The panel will treat each party equally and fairly.***

*Recommendations must be made by a majority of the panel members but they will not be binding on either the Concession Contractor or Reclamation. If either party disagrees with the arbiter's recommendation, that party may file an appeal with Reclamation's Regional Director. Reclamation's Regional Director makes the final decision, either accepting the panel's recommendation or not. If the Concession Contractor does not like that decision, it can be appealed to the Commissioner. If the Concession Contractor does not like the Commissioner's decision then, based on 43 CFR Part 430, the Concession Contractor can appeal to Office of Hearing and Appeals (OHA). The OHA determination is final and binding.*

### **C. NOTICE OF BANKRUPTCY OR INSOLVENCY**

The Concession Contractor must give Reclamation immediate notice (within 5 business days) after the Concession Contractor files any petition seeking relief under any provision of the Bankruptcy Act or its successive legislation; the Concession Contractor makes any assignment for the benefit of creditors; any petition or other proceeding is filed against the Concession Contractor for the appointment of a trustee, receiver, or liquidator. For purposes of the bankruptcy statutes, Reclamation considers that this Concession Contract is not a lease but an executory contract exempt from inclusion in assets of the Concession Contractor pursuant to 11 United States Code (U.S.C.) 365.

### **D. REQUIREMENTS IN THE EVENT OF TERMINATION OR EXPIRATION**

In the event of termination of this Concession Contract, any compensation due the Concession Contractor for such termination or expiration shall be as described in Section 5 of this contract. No other compensation of any nature shall be due the Concession Contractor in the event of a termination or expiration of this Concession 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, bankruptcy, or expiration.

#### **Personal Property**

In the instance of a regularly scheduled expiration the Concession Contractor will have all Personal Property removed and all restoration accomplished, at the Concession Contractor's expense, in advance of the last day of the contract.

#### **Miscellaneous Assets**

Upon termination or expiration, Reclamation may require and the Concession Contractor shall consent to the use by another operator or Reclamation Intangible Assets and other property and data including but not limited to; telephone and website reservation systems, operation manuals, vendor lists and customer lists and such tangible Personal Property on the premises as is necessary to avoid interruption of services to the public.

#### **Concession Contractor Improvements**

However, in the event of contract termination, Reclamation may request, and the Concession Contractor will permit the use, by another operator, of the Concession Contractor Improvements needed to provide uninterrupted services to the public. Such use will be for a period of time not to exceed 1 year from the date of any contract

termination or expiration. Reclamation will make such request at least 90-days prior to contract expiration and as soon as possible in the event of a termination. The other operator shall pay the Concession Contractor a fee (“Usage Fee”) for use of such property, prorated for the period of use, in the amount of 1% per month of original cost.

#### **E. CONCESSION CONTRACT SUSPENSION**

Reclamation may direct the Concession Contractor to temporarily suspend its operations under this Concession Contract in whole or in part, as deemed necessary by Reclamation, to protect area visitors or to protect, conserve, and preserve area resources. This Concession Contract may also be suspended in whole or in part as deemed necessary by Reclamation for Concession Contract violations that include, but are not limited to, contract noncompliance, operational deficiency, health and safety, and noncompliance with environmental regulations. No compensation of any nature shall be due the Concession Contractor by Reclamation in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, wages, or the necessity to make expenditures as a result of the suspension.

#### **F. NO RIGHT OF RENEWAL PREFERENCE**

This Concession Contract does not include a preferential right of renewal.

#### **G. CONTRACT SALE OR TRANSFER OF INTERESTS**

The Concession Contractor shall not transfer, assign, sell, or otherwise convey or pledge interests, part of its interests, under this Concession Contract, the concession operation, Concession Contractor Improvements within the Concession Area to another party without prior notification of intent and written approval of the transaction by Reclamation. Concession contractors must complete and submit all transactional information as required by Reclamation before any consideration will be given to the approval of a sale or transfer of all or any portion of a concession operation. A proposed transaction is subject to the same evaluation process, including but not limited to an assessment of financial health, concession management experience or those that may have been delinquent in paying fees to the United States, that is performed for a new Concession Contract. Reclamation may choose not to approve a proposed transaction or may place such conditions on any approval that Reclamation considers necessary to protect the public. Before the approval of a transaction, the terms and conditions of this Concession Contract are subject to reasonable changes that are consistent with the purpose and objectives of this Concession Contract and current Reclamation policy, at the discretion of Reclamation.

Failure by the Concession Contractor to comply with applicable laws is a material breach of this Concession Contract for which Reclamation may terminate this Concession Contract for default. Reclamation shall not be obliged to recognize any right of any person or entity to an interest in this Concession Contract of any nature, including, but not limited to, operating rights under this Concession Contract, if obtained in violation of applicable laws.