

CONCESSION AGREEMENT GUIDANCE

Most deeds for properties conveyed through the Federal Lands to Parks Program of the National Park Service (NPS), or its predecessors [the Bureau of Recreation (BOR) or the Heritage Conservation and Recreation Service (HCRS)] contain a clause which states:

The property shall not be sold, **leased**, assigned, or otherwise disposed of except to another eligible governmental agency that the Secretary of the Interior agrees in writing can assure the continued use and maintenance of the property for public park or public recreation purposes subject to the same terms and conditions in the original instrument of conveyance.

Newer deeds also provide the following wording:

However, nothing in this provision shall preclude the Grantee from providing related recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the Secretary of the Interior.

Concessions are private businesses (or non-profits) operating under “contract” in a state/county/municipal park or recreational area to provide products and services designed to enhance the park visitor’s (user’s) experience. Concessions may provide small-scale, seasonal services, such as concession booths at youth sporting events and mobile food carts, to large-scale, year-round operations, such as golf courses and marinas. At large state/county parks, concessions may include snack bars, mobile food services, gift shops, camp stores, golf courses, marinas, aquatic services, equestrian centers, theaters, and educational programs and demonstrations. At smaller county/municipal facilities, concessions may be non-profit groups that organize youth sporting leagues; groups that provide after-school activities or senior services; groups which manage artistic activities (i.e., local theater or artist guilds); or historical societies, etc.

The main purpose of this document is to provide the Grantee/recipient of Federal Lands to Parks Program properties with an outline and points to consider when drafting a concession agreement. There are a variety of subjects and issues which should be included in a concession agreement, depending on the scope of the agreement, the facilities to be utilized and financial arrangements. The Concession Agreement Template provides standard wording which may be used, or tailored (subject to approval) to fit the particular need of the park or recreational manager. Use of the guidelines will help establish appropriate safeguards for the property, establish clear expectations for the use of the property and responsibilities for the parties involved, and make sure the operation is managed appropriately. Use of these guidelines also will facilitate the review and approval by the Secretary of the Interior or his/her delegated representative, National Park Service (NPS). Template subjects/issues generally fall into three categories:

1. Those which generally must be included in all agreements; **(M)**
2. Those which must be included in agreements, if applicable; **(MA)** and
3. Those which are optional, if applicable **(OA)**.

The Grantee/recipient may substitute a concessions agreement using their own format, provided that sections relating to all elements marked (M) or (MA) are represented in their agreement. The Grantee/recipient may add any additional provisions that are necessary and agreed to by the Secretary of the Interior or his/her delegated representative, NPS.

Please note the following caveats:

The Grantee/recipient cannot convey an estate or interest in the land, nor enter into agreements which surrender absolute control and possession of its property. Subsequently, the Grantee/recipient can enter into terminable at will license agreements for use upon parkland, including concession operations subject to prior concurrence by the Secretary of the Interior or his/her delegated representative, NPS.

- 1. Any contemplated concession agreement must be in accordance with the current, approved, program of utilization for the property.**
- 2. Regardless of the use and occupancy of the property/facility by a concessionaire, the Grantee/recipient is ultimately responsible to ensure that the property is used for public park and recreation purposes by the general public and that the property is maintained in a safe and environmentally appropriate condition.**

Generally, text contained in [] is to be used as guidance and deleted from the finished agreement, or must be replaced with appropriate language specific to the agreement.

SAMPLE CONCESSION TEMPLATE:

Concession Agreement

(M) This Concession Agreement, hereinafter referred to as the "Agreement" is made and entered into this _____ day of _____, 20XX, between the [Name of Town/City/County/State] hereinafter referred to as the "[Town/City/County/State]", and [Name of Concessionaire], hereinafter called the "Concessionaire." [Identify type of Concessionaire, i.e. nonprofit, sole proprietor, LLC, volunteer organization].

Witnesseth:

(M) Whereas, the [Town/City/County/State], owns certain land totaling _____ acres, obtained by the [Town/City/County/State] from the United States of America (hereinafter referred to as the "USA", as surplus property, known as [former/current name of site], and deeded to the [Town/City/County/State] on [date]. Said quitclaim deed is attached and hereinafter referred to as **Exhibit A**; and

(M) Whereas, Condition No. 3 of said Deed provides that the [Town/City/County/State] "will not sell, lease, assign or otherwise dispose of the premises, except to another local Government agency..." (MA) However, nothing in this provision shall preclude the [Town/City/County/State] from providing related recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is provided in writing by the Secretary of the Interior or his/her delegated representative, NPS.

(M) Whereas, the [Town/City/County/State] and Concessionaire desire to provide a [insert type of service - ex. food service, bike rentals] on a portion of [former/current name of site] for the use and benefit of the general public.

(M) Whereas the [Town/City/County/State] is satisfied that provision of additional services and facilities at [former/current name of site] is in the [Town/City/County/State's] best interest;

NOW, THEREFORE, for the reasons set forth above, and in consideration of the mutual covenants and agreements as hereinafter set forth, the [Town/City/County/State] agrees to allow Concessionaire to provide [describe type of concession] services and facilities hereinafter to be mentioned upon a portion of the real property described in Exhibit A attached hereto and incorporated herein by this reference and located at the [former/current name of site].

1. (M) **Location:** The [Town/City/County/State] does hereby assign to the Concessionaire the use of the [describe area/building] which is [a portion of/located on] the property as described in Exhibit A. [If the deed contains any restrictions on the use of the property which have been incorporated by

reference, Concessionaire must be provided with appropriate sections of the documents and they should be described here and named as Exhibit B].

2. **(M) Use of Premise:** Concessionaire shall use, occupy and maintain the premises/portion of premises herein assigned in a business like, careful, clean and non-hazardous manner for the sole purpose of [describe activity] in strict accordance with all terms and provisions imposed by the Department of the Interior as set forth in Exhibit A. Written approval by the [Town/City/County/State] and written concurrence by the Secretary of the Interior or his/her delegated representative, NPS, shall be required for other proposed use in conjunction with or in addition to those specified above.

(MA) [SPECIFICALLY ENUMERATE any restrictions and environmental and usage conditions which affect the property. [i.e., asbestos, lead paint, prohibition on digging in the soil, restricted use of ground water, historic property, archeological covenants, etc., and how they may effect the concessionaire's operation. For example: If there are ground water restrictions on the property, words like "Concessionaire is specifically prohibited from using ground water to irrigate the ball fields."]

(M) [Describe how the general public will be allowed to use the property for park and recreational use such as when the concession is not in operation and/or during off season.]

3. **(MA) Personal Property:** Concessionaire shall have use of the following personal property which shall be maintained in good working condition, subject to reasonable wear and tear. [Insert list] Upon completion/termination of this agreement, all items shall be accounted for and returned to [Town/City/County/State]. During the course of this agreement any damage to personal equipment shall be reported to [Town/City/County/State]. [If personal property is extensive, consider creating an Exhibit which would list any personal property being assigned to Concessionaire (e.g. furniture, sports fixtures, kitchen equipment etc.)]

4. **(M) Term:** This agreement shall be effective from [date] to [date].

5. **(OA) Renewal:** Concessionaire will have an option to renew this agreement for [select number of renewals] consecutive [number of years] -year terms upon conditions to be mutually agreed upon at that time. Any agreement reached by the [Town/City/County/State] and Concessionaire for renewal of this agreement shall be subject to the written approval of the Secretary of the Interior or his/her delegated representative, NPS, if any significant changes to the agreement are included.

[Describe] specifics of Concessionaire exercising an option to renew the Agreement with the [Town/City/County/State]. (e.g. number of days notice prior to expiration of agreement).

6. **(M) Concession Payments:** [Describe the Payment structure between the [Town/City/County/State] and Concessionaire. Note: Fees charged by the concessionaire must be reasonable so as not to deny participation by the general public and must be approved by the [Town/City/County/State].]
7. **(M) Concessionaire's records and documents:** With respect to all matters covered by this Agreement concessionaire's records and documents shall be subject at all times to inspection review or audit by the [Town/City/County/State]. Concessionaire will supply [Town/City/County/State] any documentation that may be needed by the [Town/City/County/State] to file required compliance reports to the Secretary of the Interior or his/her delegated representative, NPS.
8. **(M) Operations and Maintenance:** [Describe Concessionaire obligations (e.g. should offer reasonable prices, minimum hours of operation, seasonal use, courteous service, building requirements, etc.). Describe [Town/City/County/State] obligations, if any. i.e., snow plowing, trash removal, security.]
9. **(MA) Licenses and Permits:** All necessary licenses and permits to operate concession must be obtained from the appropriate offices before operation may begin. All licenses are subject to Code of Enforcement for safety, health and fire inspections.
10. **(MA) Operating Expenses and Utilities:** [Describe operating expenses and who is responsible for the payment of utilities, as well as the costs associated with installation/upgrade of systems that are required by building codes and local ordinances relating to safety, health and fire. These systems must meet all local, state and federal requirements.
11. **(M) Non-discrimination:** [Town/City/County/State] and Concessionaire agree to comply with all Federal laws relating to nondiscrimination in connection with any use, operation, program, or activity on or related to the previously described property, including, but not limited to:

All requirements imposed by or pursuant to the non-discrimination regulations of the U.S. Department of the Interior (43 C.F.R. Part 17);

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d-1), which prohibits discrimination on the basis of race, color, or national origin;

The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.), which prohibits discrimination on the basis of age;

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicap;

The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151), which requires facilities located on the property to be accessible to the physically handicapped; and

The Americans with Disabilities Act of 1990 (42 U.S.C. 12181), which requires that no otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be excluded from the participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

12. **(MA) Historic Properties:** The subject property is deemed to be historic property as stated in Exhibit A, [Town/City/County/State] and Concessionaire will adequately ensure the preservation of the historic property per the covenants stated therein. Any proposed changes to a historic structure require consultation with the State Historic Preservation Officer (SHPO) and will be in compliance with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

13. **(MA) Alterations and Improvements:** [Proposed alterations and improvements shall be described in agreement.] Concessionaire may not make alterations or improvements to the assigned premises without written consent of the [Identify Title of Position] representing the [Town/City/County/State]. Such written consent will not be unreasonably withheld or delayed.

Further define [other Titles of Positions] representing the [Town/City/County/State] *if necessary* for approval.

If structural changes are required, the [determine whether [Town/City/County/State] or Concessionaire] shall arrange for and supervise all necessary construction work and be responsible for all costs associated with providing the changes. (If applicable), All construction work must comply with the Historic Properties section of this agreement.

14. **(MA)** [This Agreement should specifically address disposition of any real and/or personal property constructed on or affixed to the site.] Concessionaire acknowledges that the building/property is subject to the possibility of reversion *with improvements without compensation* to the USA should there be a material breach of noncompliance by the [Town/City/County/State] or the Concessionaire for not adhering to covenants and agreements contained within Exhibit A.

15. **(MA) Maintenance and Repair:** The [Concessionaire and/or [Town/City/County/State]] shall at its sole cost and expense maintain the assigned property in good condition and perform such repairs that become necessary from time to time during the term of this agreement and any renewals hereof as set forth herein.

16. **(M) Inspection of Concession Areas:** Concessionaire shall allow the [Identify Title of Position] representing the [Town/City/County/State], or his designee and/or the Secretary of the Interior's designated representative, NPS, at any and all reasonable times to inspect any facility operated under this Agreement.
17. **(M) Indemnity:** Concessionaire hereby expressly agrees to indemnify, save and hold harmless, and defend the [Town/City/County/State] against all fines, claims, damages, losses, judgments, and expenses arising out of, or from, any omission or activity of such person, organization, its representatives, or employees.
18. **(OA) Insurance:** Concessionaire shall, at its own expense, provide such public liability insurance that will protect Concessionaire and the [Town/City/County/State] from all claims for damages to property and persons, including death, and particularly the use of products prepared, and/or sold, which may arise in the operation of the activities conducted under this Agreement or anyone directly or indirectly employed by Concessionaire. All policies shall name the [Town/City/County/State] as a named insured. The public liability insurance shall provide limits of not less than [insert dollar amount] for one person or occurrence, [insert dollar amount] for more than one person injured or killed in any one accident or occurrence, and shall include products liability coverage. Property damage liability insurance shall provide a limit of not less than [insert dollar amount].
- Concessionaire agrees to provide evidence to the [Town/City/County/State] that insurance is current based on subsequent renewal information.
[Examples of types of insurance to consider are: contents; building (e.g. fire, vandalism, weather hazard; liability ("patron" or employee accident?)]
19. **(M) Assignment and Subletting:** Concessionaire shall not assign this Agreement or any interest therein, nor let or sublet the said premises or any part thereof or any right or privilege appurtenant thereto, nor permit the occupancy or use of any part thereof by any other person. Said let or underlet shall be grounds for termination of Agreement by the [Town/City/County/State] or possible reversion by the USA.
20. **(M) Amendment to Concession Agreement:** This Agreement contains all the terms and conditions between the parties, and no alteration, amendment, or addition shall be valid unless in writing and signed by both parties with written concurrence by the Secretary of the Interior or his/her delegated representative, NPS.
21. **(M) Laws and Regulations:** Concessionaire is aware of and agrees that it will use the assigned premises so as to conform with deeded environmental and usage controls and not violate any laws, regulations and /or requirements of the United States of America and/or State of [insert state] and/or any

ordinance, rule or regulation of the [Town/City/County/State] now or hereafter made, relating to the use of the premises.

22. **(OA) Signage:** Concessionaire shall place no sign or advertisement upon any location of the property unless prior written approval has been granted by the [identify title of position] representing the [Town/City/County/State], and the [identify title of position] shall have the right, without first notifying Concessionaire, to remove at the expense of Concessionaire, any sign or signs that may be erected without prior approval.

23. **(M) Surrender; Waste:** Concessionaire agrees that upon expiration of this Agreement or earlier termination thereof, it shall surrender the assigned premises to the [Town/City/County/State] in as good or better condition as they were in at the time of execution of this document, ordinary wear excepted.

[Describe removal of equipment, responsibility for cost and timeline].
Concessionaire further agrees that it shall permit no waste nor suffer the same to be committed, nor injure nor misuse the demised premises.

24. **(M) Liens:** Concessionaire shall keep the assigned premises free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by Concessionaire during the term of this Agreement or any extension or renewal thereof.

25. **(M) Waiver:** Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of said party's rights hereunder. No waiver by either party at any time, expressed or implied, of any breach of any provision of this Agreement shall be deemed a waiver of breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent and approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed to be a consent to or approval of said action on any subsequent occasion. Any and all rights and remedies which either party may have under this Agreement, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them, whether exercised by said party or not, shall be deemed to be an exclusion of any other.

26. **(M) Termination:** This Concession Agreement shall terminate automatically upon the occurrence of any of the following events:

- a. The [Town/City/County/State] unilaterally terminates the Agreement upon [select number of days] days written notice for any cause whatsoever and specifying the date of termination.

- b. Concessionaire materially violates any provision of the Agreement.
- c. The expiration of the term of this Agreement or any renewal thereof.
- d. [Describe any conditions that may allow the Concessionaire to voluntarily terminate this agreement].

27. (M) Acknowledgement:

This Agreement and the obligations of the parties hereto are subject to the terms and conditions set forth in the deed from the United States of America to the [Town/City/County/State] , dated_____, _____, and recorded at _____ County Registry of Deeds/Clerks Office at Book _____, Page_____, and the current Program of Utilization which governs the use of the assigned property. Violations of the said terms and conditions may be grounds for reversion to the United States of America, at its discretion and termination of this Agreement. Concessionaire owned personal and real property improvements associated with the real property, may be subject to seizure, without compensation, by the USA.

- 28. (M) Notice:** Any notice by either party to the other shall be in writing and shall be deemed to be given only if delivered personally or mailed by registered or certified mail as follows:

[Town/City/County/State]: [Identify Title of Position] representing the
[Town/City/County/State]
[Name]
[Address]
[Town, State, Zip Code]

Concessionaire: [Name of Concession]
[Name of owner]
[Address]
[Town, State, Zip Code]

Other addresses may be established as the parties hereto may designate by written notice to the other party and delivered in accordance with the provisions of this paragraph.

Signature Page Follows

IN WITNESS WHEREOF, the [Town/City/County/State] has authorized its [insert title] representing the [Town/City/County/State] to sign this Agreement and Concessionaire has approved the Agreement and signed as of the date first noted above.

WITNESS: [Town/City/County/State], (OWNER)

____ BY: _____
[Name]
[Title]
[Address]
[Town, State, Zip Code]

WITNESS: CONCESSIONAIRE

____ BY: _____
[Name]
[Title]
[Address]
[Town, State, Zip Code]

(OPTIONAL) Sample Notary blocks follow

STATE OF _____)
) ss
COUNTY OF _____)

On this _____ day of _____, 20XX before me, _____,
personally appeared _____, representing the
[Town/City/County/State], known to be the person described in the foregoing
instrument and acknowledged that he/she executed the same in the capacity therein
stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand.

Notary Public
My Commission Expires: _____

STATE OF _____)
) ss
COUNTY OF _____)

On this _____ day of _____, 20XX before me, _____,
personally appeared _____, representing Concessionaire,
known to be the person described in the foregoing instrument and acknowledged
that he/she executed the same in the capacity therein stated and for the purposes
therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand.

Notary Public
My Commission Expires: _____