

**PROSPECTUS FOR A CONCESSION OPERATION
AT THE CRAB ORCHARD MARINA
ON CRAB ORCHARD NATIONAL WILDLIFE REFUGE**

Prospectus Number: 33610-22-001

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BACKGROUND INFORMATION

Located in the heart of southern Illinois, the Crab Orchard National Wildlife Refuge (Refuge) is host to a multitude of recreational opportunities, including hiking, bicycling, picnicking, photography, boating, hunting, fishing, camping, wildlife observation, and much more. Managed by the U.S. Fish and Wildlife Service (Service), the 44,000-acre refuge includes the 7,000-acre Crab Orchard Lake. The Refuge receives over one million visitors annually. For more information, visit the Refuge's website at: fws.gov/refuge/crab_orchard

The Crab Orchard Marina (Marina) has been managed by the Refuge since 1997. The Marina and surrounding area, totaling almost 200 acres, is described as follows:

The 128-slip Crab Orchard Marina is on the western edge of Crab Orchard Lake, at the Williamson/Jackson County line, near Carbondale, Illinois. The marina has three houseboat docks with slips ranging in length from 40 feet to 70 feet, with water service and individually metered 50/30-amp electric service pedestals available for each slip, a sailboat dock with 24 slips, a pontoon/sailboat/runabout dock with 42 slips, a rigging dock with hoist for day sailors who park on the sailing lot, and a catamaran beach. Dockside services offered at the marina include gasoline sales and septic pump out. Other structures at the marina include a 95' x 50' pole barn, two full hookup camper/RV pads, an automated gate with key card entry (closed nightly and during the off-season), restroom with a utility chase, and a ROMTEC pit toilet.

The Hogan's/Take Pride Point area access is located at the corner of Route 13 and Spillway Road, north of Crab Orchard Marina, and winds around to the southeast of the marina cove. The area has not been maintained for several years but has access to two boat ramps and a beach that could be restored, and the entire area revitalized. The northern boundary of this area parallels Route 13 for approximately one-half mile, where according to the Illinois Department of Transportation, over 30,000 cars pass by each day. A bike trail connecting Marion to Carbondale is being constructed starting in 2023 and will run along the northern border of the property.

Look Out Point is adjacent to the southern portion of the marina. This area has not been maintained, but also has a beach and could be developed as well.

I. Nature of Commercial Opportunity: The Crab Orchard National Wildlife Refuge is proposing to offer the opportunity for up to a 20-year major concession contract to manage the Crab Orchard Marina and surrounding area, totaling almost 200 acres.

A. Concession Operation: The Concessionaire will be expected to equip and maintain at its own expense, on the land described herein, all buildings, structures, infrastructure, above and below ground utility lines, and other improvements, subject however, to the right of the parties to mutually agree to changes in the types and quantities of facilities specified. The Refuge will not be responsible for facility maintenance or repairs of any kind. The Concessionaire will be expected to supply the following services, at a minimum:

1. Marina dock slip rental
2. Dockside gasoline sales and septic pump out service
3. Boat rental
4. Various amenities not currently offered (include details in your proposal)
5. Utilities associated with the concession operation
6. Development of the land to the north and south of the current marina operation with compatible uses

The Concessionaire shall provide, during the term of the proposed Contract, accommodations, facilities and services for the public, as follows:

The Concessionaire shall make provisions for the sale of food and beverages, basic outdoor supplies for camping, boating and fishing, rental boat service, rental of dock slips, and miscellaneous services and articles as authorized by the Refuge Manager through the offeror's Marina and Development Plan.

The successful Concessionaire will be required to secure, at his or her own expense, necessary services to include water, electric, phone, septic, trash disposal, etc., as required to perform the operations required in the Contract. The Concessionaire shall obtain at his or her own expense all necessary Federal, State, and local licenses and permits; such licenses and permits to be acquired and displayed on the premises before the establishment is open to the public and shall observe all Federal, State and local laws pertaining to its operations.

The Refuge Manager, and/or his or her authorized representative reserves the right to determine and control the nature, type, and quality of the visitor services described in the proposed Contract, including, but not limited to, the nature, type and quality of merchandise, if any, to be sold or provided by the Concessionaire. The Marina and Development Plan should list the allowable services proposed to be provided by the Concessionaire. A Merchandising Plan determines the nature and type of merchandise the Concessionaire will sell. The Concessionaire, where applicable, will develop and implement a plan satisfactory to the Refuge Manager that will assure that gift merchandise, if any, to be sold or provided is appropriate.

The successful Concessionaire shall provide all personnel necessary to provide the visitor services required and authorized by the Contract. The Concessionaire will ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the

public and will provide and require its employees who come in direct contact with the public to wear a uniform by which they may be identified as the employees of the Concessionaire. Uniforms must be approved in advance by the Refuge Manager.

The Operations Plan provided by the Concessionaire should address all the proposed requirements, stipulations, and rates for rentals, sales, guided tours, and special events. Appendix F will address those regulations required by the Service.

Operating Period:

Operation of this Concession is mandatory from April 1 through October 31 of each year. This Contract requires the presence of on-site personnel who will be available 24 hours per day, 7 days a week during those months. In the off-season, the Concessionaire is responsible for routine facility checks of the marina premises.

Promotional Material:

All promotional material, regardless of media format (i.e., printed, electronic, broadcast media), provided to the public by the Concessionaire in connection with the services provided under this Contract must be approved in writing by the Refuge Manager prior to use. All such material will identify the Concessionaire as an authorized Concessionaire of the National Wildlife Refuge System, Department of the Interior.

Visitor Services and Interpretation of Crab Orchard National Wildlife Refuge Resources:

1. The Concessionaire shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals, and objectives of the Refuge as reflected in Refuge planning documents, mission statements, and/or interpretive plans.
2. The Concessionaire may assist in Refuge interpretation upon agreement by the Refuge Manager to enhance visitor enjoyment of the Refuge. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of the Marina and Development Plan.
3. The Concessionaire is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessionaire.
4. The Concessionaire must submit the proposed content of any interpretive programs, exhibits, displays or materials, regardless of media format (i.e., printed, electronic, first person, or broadcast media), to the Refuge Manager for review and approval prior to offering such programs, exhibits, displays or materials to Refuge visitors.

Payments, Audits, and Reporting Requirements:

The Concessionaire shall pay to the Service, as stipulated in the Contract, the agreed upon franchise fee and/or percentage of gross receipts, as hereinafter defined. Payments will be due as specified in the final Contract.

The term "gross receipts" shall be construed to mean the total amount received or realized by, or accruing to the Concessionaire from all sales, for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the privileges authorized in the Contract. This excludes earnings derived from intra-company earnings on account of charges to other departments of the operation (such as laundry, charges to employees for meals, transportation, etc.), cash discounts on purchases, interest on money loaned or in bank accounts, income from investments from subsidiary companies outside of the Refuge, refunded sales and allowances, sales of property other than that purchased in the regular course of business for the purpose of resale, sales, and excise taxes, fishing licenses, (except fees received there from), postage stamps, (except any return in addition to the face value of such stamps), gasoline taxes, whether or not the Concessionaire is accountable therefore, and items for which the Concessionaire is accountable in full.

An interest charge will be assessed on overdue amounts for each thirty-day (30) period, or portion thereof, that payment is delayed beyond the specified due date. 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 Refuge Manager may also impose penalties for late payment to the extent authorized by Applicable Law.

The Concessionaire shall submit for the approval of the Refuge Manager a balance sheet showing assets and liabilities pertaining to the operations hereunder as of the beginning of such operations, accompanied by a schedule describing the items sufficiently in detail to clearly establish their identity and respective values.

The Refuge Manager shall notify the Concessionaire in writing of this approval or disapproval of the balance sheet within sixty (60) days after its receipt. If the balance sheet as submitted is disapproved, the Refuge Manager shall set out in the notification of his or her finding upon which such disapproval is based. If no notice is given within the time herein specified, the balance sheet as submitted shall be deemed to have received the approval of the Refuge Manager.

The Concessionaire shall maintain such accounting records as may be prescribed by the Refuge Manager. The Concessionaire shall submit to the Refuge Manager an annual financial report, under oath, not later than thirty (30) days following the anniversary date of the Contract giving details of this concession operation during the year as well as other reports and data required from time to time by the Refuge Manager. The Refuge Manager, or his authorized representative, may verify said reports from the books, correspondence, memoranda and other records of the Concessionaire which shall be maintained intact for not less than three (3) years following the close of the Concessionaire's fiscal year and which shall be available for such for a three-year (3) period at the Concessionaire's principal place of business on the Refuge.

The Concessionaire shall maintain a financial accounting system under which its accounts can be readily identified with its system of accounts classification. Such an accounting system shall be capable of providing the information required by the proposed Contract. If the Concessionaire's annual gross receipts are \$250,000 or more, the Concessionaire must use the accrual accounting method. If annual gross receipts are less than \$250,000, the financial statements may be prepared without involvement of an independent certified public accountant (CPA), unless otherwise directed. The Concessionaire must submit financial reports monthly to the Refuge Manager. These reports will state gross receipts for the time period, as well as year-to-date gross receipt information, and will be broken down by categories. The Concessionaire shall submit annually, as soon as possible but not later than thirty (30) days after the last day of its fiscal year, a financial statement for the preceding fiscal year or portion of a year.

The Service reserves the right to require an audit to be performed by an independent certified public accountant in the event questions arise concerning the annual financial report.

Sale or Transfer:

Concessionaires or parties holding an ownership in a concession may not sell, assign, or transfer their interests or part of their interest, to another party without prior written approval from the Refuge Manager. No sub-concession contracts will be allowed under this Contract. This does not include any agreements that the Concessionaire may have with suppliers.

Contract Disputes:

All disputes arising under or relating to the proposed Contract shall be resolved under the following clause.

(a) "Claim," as used in this clause, means a written demand or written assertion by the Concessionaire, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of Contract terms, or other relief arising under or relating to this Contract. However, a written demand or written assertion by the Concessionaire seeking the payment of money exceeding \$100,000 is not a claim under this Contract until certified as required in subparagraph b(1) below.

(b) A claim by the Concessionaire must be made in writing and submitted to the Refuge Manager for a written decision. A claim by the Government against the Concessionaire shall be subject to a written decision by the Regional Director.

(1) For Concessionaire claims exceeding \$100,000, the Concessionaire shall submit with the claim a certification that:

- (A) The claim is made in good faith;
- (B) Supporting data are accurate and complete to the best of the Concessionaire's knowledge and belief; and
- (C) The amount requested accurately reflects the Contract adjustment for which the Concessionaire believes the Government is liable.

(2) If the Concessionaire is:

(A) An individual, the certificate shall be executed by that individual.

(B) Not an individual, the certification shall be executed by:

(I) A senior company official in charge of the concession facility involved; or

(II) An officer or general partner of the Concessionaire having overall responsibility of the conduct of the Concessionaire's affairs.

(c) For Concessionaire claims of \$100,000 or less, the Refuge Manager must, if requested in writing by the Concessionaire, render a decision within 60 days of the request. For Concessionaire-certified claims over \$100,000, the Refuge Manager must, within 60 days, decide the claim or notify the Concessionaire of the date by which the decision will be made.

(d) The Refuge Manager's decision shall be final.

(e) At the time a claim by the Concessionaire is submitted to the Refuge Manager, or a claim by the Government is presented to the Concessionaire, the parties by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in b(1) of this clause, and executed in accordance with b(2) of this clause.

(f) The Government must pay interest on the amount found due and unpaid by the Government from:

(1) The date the Refuge Manager received the claim (properly certified if required); or

(2) The date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, which is applicable to the period during which the Refuge Manager receives the claim, and then at the rate applicable for each 6-month period as fixed by the Secretary of the Treasury during the pendency of the claim.

(g) The Concessionaire shall proceed diligently with the performance of the Contract, pending final resolution of any request for relief, claim, appeal, or action arising under the Contract, and comply with any decision of the Refuge Manager.

B. Land and Improvements: The Refuge will provide the following land and improvements. The Refuge Manager will reserve to the Concessionaire for and during the term of the proposed Contract, the use of the following described land and facilities referred to as the concession facility:

1. Marina dock slips for houseboats (H1, H2, H3 docks)– 62 each with metered electric and water service pedestals for each boat. Slips range from 40' to 70' in length

2. Marina dock slips for pontoons/sailboats/small watercrafts (P1 dock)-42 each with electric pedestals

3. Marina dock slips for sailboats (S1 dock)-24 each with electric pedestals
4. Rigging dock
5. day sailor parking lot with hoist
6. catamaran beach – sand area
7. gas/pump out dock
8. boat ramp with courtesy dock
9. comfort station (restrooms/utility & pump room)
10. ROMTEC pit toilet
11. pole barn storage building
12. one sanitary dump station
13. Two full hook-up host campsites
14. 2,000 gallon no-ethanol gasoline tank and dispenser
15. Rip-rap breakwater

Construction, modification, or alterations, other than normal and anticipated repairs of buildings, structures, facilities, and other improvements shall be subject to the prior approval of the Refuge Manager for plans, specifications, and locations thereof, and the Refuge Manager may prescribe the form and content of the application for such approval. Facility construction and improvements that involve life, safety, and building code compliance issues must be coordinated with the Regional Engineering Office and the Refuge Manager. These improvements must be approved by the Service. Title to all permanent improvements and/or fixtures erected or otherwise furnished by the Concessionaire shall vest in the United States at the end of the Contract term and will become property of the Service when completed. No compensation will be given to the Concessionaire for the improvement.

If any buildings or improvements are removed or demolished by the Concessionaire, the site occupied by the building or improvement, shall be restored to the satisfaction of the Refuge Manager. Any building or improvement destroyed by fire or other cause shall be restored promptly by the Concessionaire according to plans and specifications approved by the Refuge Manager.

In the event that an improvement owned by the Concessionaire is removed, abandoned, demolished, or substantially destroyed, and no other improvement is constructed on the site, the

Concessionaire shall promptly, upon approval by the Refuge Manager, restore the site as nearly as possible to its original condition at no cost to the United States.

II. Location of Concession Facility: The Refuge is located in southern Illinois, between the cities of Marion and Carbondale, Illinois. The Refuge consists of approximately 44,000 acres and is a unit of the National Wildlife Refuge System (System). The concession operation consists of approximately 200 acres and is located on Crab Orchard Lake near Carbondale, Illinois, on the northwest side of the Refuge. Access to the site is by vehicle via Playport Road, just off of Spillway Road. A map of the location of the facility is included as Appendix A. The Concession includes those facilities listed above as Refuge provided.

III. Proposed Concession Contract: The proposed Concession Contract is located in Appendix E of this prospectus. Offerors are advised that this is not a procurement instrument subject to the rules and regulations of the Federal Acquisition Regulations (FAR). All provisions governing the concession operation, including required periods of operation, reporting, pricing and subcontracting, are set forth in this solicitation.

By submitting a proposal, an offeror agrees to execute the Contract in its present form without negotiations or discussions; however, proposals for development of the concession area and proposed new services may be incorporated into the Concession Contract once a Concessionaire is selected. Offerors are strongly encouraged to carefully review this document and submit any questions in writing to the official listed in Section V. of this prospectus.

IV. Period of Proposed Agreement: The length of the proposed Concession Contract is 10 years with a renewal option for a period of an additional 10 years, to be mutually agreed upon, and depending upon performance of the company/individual winning the solicitation. In the event that changes are necessary due to new regulations or legislation, the Service and the Concessionaire will amend any material terms of the Contract affected by the changes.

V. Examination of Concession Area and Additional Information: The Service will conduct a one-time guided tour and question-and-answer session of the concession area on Tuesday, February 1, 2022 at 10:00 a.m. Offerors interested in participating should contact Beth Kerley, Contract Compliance Specialist at 618-998-5910 phone or beth_kerley@fws.gov. Offerors are encouraged to submit in advance of this meeting any questions they may have regarding the information contained in the prospectus or Contract. Send advance questions in writing (by mail or email) to the designated official identified in Section VI. at least three calendar days prior to the meeting date. A written transcription of all questions and answers presented at this session will be made available to all offerors.

VI. Submission of Proposals: Persons or businesses having the experience and financial means to meet the minimum conditions specified in the prospectus and who desire to enter into an agreement may do so by submitting an original and four copies of a proposal to:

USPS Address:

U.S. Fish and Wildlife Service
Attn: Beth Kerley (CO Marina)
8588 Route 148
Marion, IL 62959

Federal Express Address:

U.S. Fish and Wildlife Service
Attn: Beth Kerley (CO Marina)
6987 Headquarters Road
Marion, IL 62959

You must enclose proposals and modifications to proposals in sealed envelopes marked:

“CONCESSION PROPOSAL IN RESPONSE TO PROSPECTUS 33610-22-001. TO BE OPENED ONLY BY JUSTIN SEXTON, REFUGE MANAGER.”

Closing Date: All proposals must be received at the above address no later than Monday, February 14, 2022 at 3:00 p.m. CST. Proposals received after that date and time will not be eligible for consideration and will be returned. We will not accept proposals and modifications to proposals transmitted by email.

Proposals will become the property of the U.S. Government at the time of submission and will not be returned. Disclosure of information in the proposals will be confined by the limits of the Freedom of Information Act. Upon signing the Concession Contract, the winning proposal will become part of the Contract.

Award Decisions:

Award decisions regarding the proposed Contract are final and submitting a proposal does not give the offeror any right to challenge the award.

VII. Standards:

A. Accessibility Standards: The Concessionaire is subject to Section 504 of the Rehabilitation Act of 1973, the Secretary of the Interior’s Zero Tolerance of Discrimination Policy, February 10, 1997, and Executive Orders 11478 and 13145. The Concessionaire will not discriminate against anyone on the basis of race, color, national origin, sex, religion, disability, age, sexual orientation, status as a parent or genetic information, with regard to any program, activity, or service, including employment.

B. Environmental Standards: The U.S. Fish and Wildlife Service is committed to the protection of the natural and cultural resources of the area. We expect Concessionaires to be environmentally conscious and to assist the Service in protecting our resources. The Concessionaire will use materials and processes that are environmentally preferable, particularly focusing on the use of post-consumer recycled materials, materials that require less-toxic care, equipment and product life-cycle analysis, and minimization of pesticides, persistent toxic chemicals, and carcinogens. Pollution prevention materials, recycling, and hazardous waste generation elimination are goals of this Concession Contract. Use EPA’s Guiding Principles for Environmentally Preferable Purchasing as a reference when purchasing equipment, construction materials, and other products. All actions by the Concessionaire must be in a management plan

approved by the Refuge Manager or if new issues arise prior to updating the management plan, a signed letter from the Refuge Manager stating that an activity is approved.

C. Construction Standards: The Service will assign the Government-owned property listed above to the Concessionaire for use during the Contract period. Concessionaires must pay for the necessary repairs and for operation and maintenance of these facilities. Facility construction and improvements that involve life, safety, and building code compliance issues must be coordinated with the Regional Engineering Office through the Refuge Manager. These improvements must be approved by the Service. Title to all permanent improvements and/or fixtures erected or otherwise furnished by the Concessionaire shall vest in the United States at the end of the Contract term and will become the property of the Service when completed. No compensation will be given to the Concessionaire for the improvement.

D. Health and Safety: The health and safety of the visiting public, employees, and wildlife must be considered at all times. In the event that there is a safety issue at the Refuge or concession site, facilities, tours, programs, etc., may be discontinued until the safety issue is no longer a concern.

The Concessionaire must report any unsafe condition at the marina to the Refuge Contract Compliance Specialist and/or the Collateral Duty Safety Officer (CDSO), immediately.

E. Prohibited Uses: The Service is responsible for ensuring the safe operation and maintenance of the land, water, and facilities located at the Crab Orchard Marina. Appendix B details marina-specific regulations. Refuge-wide regulations are contained in various brochures and Title 50 Code of Federal Regulations. Additionally, the following uses are prohibited:

1. No gambling devices or games shall be operated on the premises.
2. The Concessionaire must refuse services or accommodations to drunk or disorderly persons and any difficulty with such shall be reported to law enforcement officials and/or the Refuge officer in charge.
3. No smoking is allowed on Federal property.
4. The Concessionaire shall not provide, sell, distribute, manufacture, or allow any substances or activities considered illegal by the Federal government and State of Illinois at the concession facility.
5. The Concessionaire shall not publicize any facility operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptance of any person because of age, race, creed, sex, sexual orientation, disability, color, ancestry, or national origin.
6. The Concessionaire shall not discriminate by segregation or other means against any person because of age, race, creed, sex, sexual orientation, disability, color, ancestry, or national origin in furnishing or refusing to furnish such person the use of any such facility.

F. Property Protection: The Government may, but is not obligated, to assign real or personal property. These items must be kept in good working condition. The Service will conduct annual inspection of equipment and property assigned to the Concessionaire. The

Concessionaire is responsible for maintaining the facilities in good repair. Approval from the Refuge Manager may be necessary to maintain these facilities. The Concessionaire is also responsible for preventing vandalism and reporting illegal activities. The Concessionaire will maintain individual records of each item of government-owned property provided and must establish and administer a program to maintain, protect, preserve, and account for all government-owned property used in fulfilling the Contract.

G. Insurance:

1. Insurance in General.

a. The Concessionaire shall obtain and maintain during the entire term of this Contract at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this Contract as determined by the Refuge Manager and commensurate with the guidelines found in Appendix D. The initial insurance requirements are set forth below. Any changed or additional requirements that the Refuge Manager determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in similar circumstances. The Refuge Manager shall approve the types and amounts of insurance coverage purchased by the Concessionaire.

b. The Refuge Manager will not be responsible for any omissions or inadequacies of insurance coverage and amounts in the event the insurance purchased by the Concessionaire proves to be inadequate or otherwise insufficient for any reason whatsoever.

c. At the request of the Refuge Manager, the Concessionaire shall at the time insurance is first purchased and annually thereafter, provide the Refuge Manager with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessionaire shall provide the Refuge Manager immediate written notice of any material change in the Concessionaire's insurance program hereunder, including without limitation, cancellation of any required insurance coverage.

2. Commercial Public Liability

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

b. This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this Contract, and no less than \$1,000,000. Furthermore, the commercial general liability package shall provide no less than the coverage and limits described in Appendix D.

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

d. From time to time, as conditions in the insurance industry warrant, the Refuge Manager may modify Appendix D to revise the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

3. Property Insurance

a. In the event of damage or destruction, the Concessionaire will repair or replace those concession facilities and personal property utilized by the Concessionaire in the performance of the Concessionaire's obligations under this Contract.

b. For this purpose, the Concessionaire shall provide fire and extended insurance coverage on concession facilities for all or part of their replacement cost as specified in Appendix D in amounts no less than they may require during the term of the Contract. The minimum values currently in effect are set forth in Appendix D.

c. Commercial property insurance shall provide for the Concessionaire and the United States of America to be named insured as their interests may appear.

d. In the event of loss, the Concessionaire shall use all proceeds of such insurance to repair, rebuild, restore or replace concession facilities and/or personal property utilized in the Concessionaire's operations under this Contract, as directed by the Refuge Manager. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 7 of the Contract shall apply to such insurance proceeds. The Concessionaire shall not be relieved of its obligations under subsection (d)(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

e. Insurance policies that cover concession facilities shall contain a loss payable clause approved by the Refuge Manager which requires insurance proceeds to be paid directly to the Concessionaire without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of concession facilities will not alter their character as properties of the United States and, notwithstanding any provision of this Contract to the contrary, the Concessionaire shall gain no ownership, Leasehold Surrender Interest, or other compensable interest as a result of the use of these insurance proceeds.

f. The commercial property package shall include the coverage and amounts described in Appendix D.

H. Inspections: The Service retains the right to enter the property and premises as needed to conduct inspections, audits, safety checks, etc. The primary goal of inspections is to ensure that the Concessionaire provides safe, sanitary, and high-quality visitor services and facilities. Evaluation categories are: (1) operation and facilities; (2) safety and environmental; and (3) contract compliance.

Inspection responsibilities are allocated to the local Refuge staff to conduct the most accurate and efficient evaluations possible. Local Refuge reviewers, because of their familiarity with the concession operation, are well-suited to conduct the highly detailed operation and facilities evaluation. Non-local reviewers may be used periodically to provide an objective overall evaluation of the Concessionaire, the property, and the operations of the concession.

The operation and facilities evaluation will be conducted semi-annually by staff from the Refuge. Inspection by non-local staff may occur at least once, midterm, for contracts with a term of five (5) years or less. The safety and environmental evaluations will be conducted by Service “reviewers”, who are staff members with expertise in safety and environmental evaluations, as well as the Illinois Department of Public Health and Franklin/Williamson Bi-County Health Department.

I. Cooperation with authorities: Concessionaires will cooperate with authorities in the event of emergencies, investigations, and other events. The Refuge Manager and his/her designated representative shall have the right at any time to enter upon any lands within the concession area for any purpose deemed reasonable and necessary for the administration of the area and the services therein. This right shall include periodic and unscheduled inspections.

J. Performance Bonds: The Refuge Manager requires the Concessionaire to furnish and keep in force a joint and service bond with a surety company acceptable to the Secretary of the Treasury, conditioned upon the faithful performance of this Contract in such amount that the Refuge Manager deems adequate but not in excess of \$250,000. As additional security for the faithful performance by the Concessionaire of all of his obligations under this Contract and the payment to the United States of all damages or claims that may result from the Concessionaire’s failure to observe such obligations, the United States shall have at all times a first and prior lien on all assets of the Concessionaire within the Concession facility, including but not limited to all personal property of the Concessionaire used in the performance of the Contract within the concession facility.

K. Termination, Expiration, and Suspension:

1. Termination: The Refuge Manager may terminate the proposed Contract in whole or in part, to protect visitors to the Refuge and concession facility or to protect, conserve, and preserve resources in the area of the concession operation. The Refuge Manager may terminate this Contract if it is determined that the Concessionaire has materially breached any requirement of the Contract. The Contract will include the requirements to:

- Maintain and operate visitor services to the satisfaction of the Refuge Manager.
- Provide only the visitor services required and approved by the Refuge Manager, pursuant to this concession Contract.
- Implement the Marina and Development Plan.
- Pay the established franchise fee and/or percentage of gross receipts
- Prepare and comply with environmental policies
- Comply with all applicable laws and regulations

In addition, the Contract will be subject to termination and the Refuge Manager shall reserve the right to collect penalties and administrative costs and shall terminate the Contract for default and non-performance at any time. The operations authorized may be suspended in whole or in part at the discretion of the Refuge Manager to protect the health and safety of visitors and employees or to protect area resources. Termination or suspension shall be by written notice to the Concessionaire and, in the event of proposed termination for default, the Refuge Manager shall give the Concessionaire a reasonable period of time to correct stated deficiencies. In the event of a breach of any nature, the Refuge Manager may suspend the Concessionaire's operation as appropriate.

In the event of termination of this Contract when necessary for the protection of visitors or area resources or for default, the Government will provide no compensation to the Concessionaire for such termination. The United States is not responsible for losses and expenses incurred by the Concessionaire due to conditions beyond its control. Closure of the Refuge or concession facilities for longer than a day because of a natural disaster, natural phenomenon, or because of the risk to public health and safety are examples. The United States only provides the opportunity for Concessionaires to supply visitor services to the general public; we do not guarantee it. No compensation is due the Concessionaire from the Secretary of the Interior or a successor Concessionaire for the Concessionaire's personal property used in operations under the Contract. However, the Refuge Manager or a successor Concessionaire may wish to purchase personal property from the Concessionaire. If personal property is sold, the purchase price of the personal property shall be determined by mutual agreement between the Concessionaire holding the Contract and the successor Concessionaire or the Refuge Manager. Personal property not removed from the area by the Concessionaire in accordance with the terms of the Contract shall be considered abandoned property subject to disposition by the Refuge Manager.

2. Suspend Operations: In the event it is deemed necessary to suspend operations hereunder in whole or in part for any reason, the Refuge Manager shall not be liable for any compensation to the Concessionaire for losses occasioned thereby, including but not limited to lost income, profit, wages, or other monies which may be claimed.

The Refuge Manager may temporarily suspend operations under this Contract in whole or in part, as deemed necessary for reasons including but not necessarily limited to the following: to protect area visitors; or to protect, conserve, and preserve area resources. This Contract may be suspended in whole or in part for Contract violations that include, but are not limited to, administrative deficiency, operational deficiency, health and safety, employee problems, or issues, and environmental regulation noncompliance as deemed necessary by the Refuge Manager.

3. Cancellation for default: Termination for default shall be utilized in circumstances where the Concessionaire has breached any requirements of this Contract, including, but not limited to, failure to maintain and operate the required accommodations, facilities, and services to the satisfaction of the Refuge Manager, unsafe operations, and failure to provide and adhere to the Contract requirements listed above. In the event of a monetary breach, the Refuge Manager will give the Concessionaire a 15-day period to cure the breach. If the breach is not cured within that period, the Refuge Manager may terminate the Contract for default. In the event of a non-

monetary breach, if the Refuge Manager considers that the nature of the breach so permits, the Refuge Manager may give the Concessionaire thirty (30) days to cure the breach or to prepare a plan to cure the breach that is approved by the Regional Office and 30 days to implement the plan. If the breach is not cured within this specified period of time, the Refuge Manager may terminate the proposed Contract for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period.

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

4. Cancellation for convenience: Contracts may be cancelled for any reason including, but not limited to, the convenience of the Government if new laws or authorities require the cancellation; the level of visitation did not provide a sustainable venture; damages caused by the Concessionaire; or natural conditions mandate the cancellation of the Contract.

L. Requirements in the Event of Termination or Expiration. Upon termination or expiration of this Contract for any reason, and except as otherwise provided, the Concessionaire shall, at the Concessionaire's expense, promptly vacate the area, remove all personal property, repair any injury occasioned by installation or removal of such property, and ensure that the concession facilities are in at least as good condition as they were at the beginning of the term of this Contract, reasonable wear and tear excepted. The removal of such personal property must occur within 30 days after the termination of the Contract or its expiration, unless the Refuge Manager, in particular circumstances, requires immediate removal. At the end of 30 days, if the subject property is not removed, it will be considered abandoned property and may become the property of the United States Government or removed by the Government. The former Concessionaire will be billed and responsible for all costs of removal.

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

avoid interruption of services to the public upon termination of this Contract for any reason or its expiration, the Concessionaire shall, if requested by the Refuge Manager, sell its existing inventory to another operator at the purchase price as shown on applicable invoices.

M. Accident Prevention. The Concessionaire shall comply with all Occupational Safety and Health Administration (OSHA) regulations. In addition to OSHA, the Concessionaire shall adhere to the requirements set forth within the solicitation provision and Contract clauses; and all current local, Federal, and State safety requirements. In the event any safety standard referenced herein conflicts with another, the more stringent shall govern. The United States is not responsible for any costs associated with losses and/or injuries to Concessionaire employees.

The Concessionaire shall initiate and maintain, throughout the performance of the Contract, an effective safety program that provides adequate systematic, policies, procedures, and practices to protect its employees from and allow them to recognize job-related safety and health hazards. The program shall include provisions from the systematic identification, evaluation, prevention and control of general work site hazards, specific job hazards, and potential hazards that may arise from foreseeable work methods and conditions, as well as providing a competent person to conduct frequent and regular inspections. Each employee must be instructed in the recognition and avoidance of unsafe conditions and the regulations applicable to the work environment.

The Concessionaire shall immediately notify the Refuge Manager of any accident, incident or exposure resulting in a fatality, lost-time injury, or property loss/damage of \$2,500 or more arising out of work performed under this Contract. The Concessionaire shall investigate all work-related accidents/incidents to the extent necessary to determine their cause(s) and furnish the Refuge Manager an investigation of the accident/incident and submit a comprehensive report of findings and recommendations to the Refuge Manager. The Refuge Manager shall consult with the local Collateral Duty Safety Officer (CDSO) and Regional Safety Officer in reviewing the investigation report and corrective action. If the Concessionaire fails or refuses to institute prompt corrective action, as required by the Contract, the Refuge Manager may invoke any remedy available to the Government. Any delay or cost resulting from a safety related suspension of work shall be borne by the Concessionaire.

In the event of an accident/incident, the Concessionaire shall be responsible for providing and obtaining appropriate medical and emergency assistance. Except for rescue and emergency measures, the scene of the accident/incident shall not be disturbed, nor the operation resumed until the on-site aspect of the investigation has been completed.

Regional Safety Officer and representatives from Federal, State, and local government agencies shall have the right to examine and conduct an investigation at sites or areas where work under the Contract is being performed. The absence of such investigations shall not relieve the Concessionaire of their safety program responsibilities.

The Refuge Manager and/or the CDSO shall have the authority to request immediate correction of unsafe conditions and safety violations. If the Concessionaire is unable to immediately correct the situation, the Concessionaire shall halt work until the situation is corrected. The Refuge Manager or CDSO shall immediately notify the Regional Safety Office of the situation.

N. General Obligations of the Concessionaire and Miscellaneous Information:

1. General Obligations of the Concessionaire: The Concessionaire shall:

- a. Comply with all applicable Federal, State, and local laws, ordinances, and regulations provided by the Refuge Manager, not limited to the regulations, cited herein, but also as promulgated by the Refuge Manager as part of the Concession area inspections.
- b. Comply with State standards for public health and safety, environmental protection, and operation and maintenance of, or for, such use if those standards are more stringent than applicable Federal standards.
- c. Comply with air and water quality standards established pursuant to applicable Federal and State laws.
- d. Minimize damage to scenic, cultural and aesthetic values, and fish and wildlife habitat and otherwise protect the environment.
- e. Weed and Pest Management. The Concessionaire shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice, and other pests in and around concession facilities assigned to the Concessionaire under this Contract. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Refuge Manager.
- f. Protect Federal property and economic interests.
- g. Manage efficiently the public lands which are subject to the use under this Contract or are adjacent to or occupied by the use under this Contract.
- h. Protect lives and property.
- i. Grounds keeping. Maintain concession facility grounds in a neat and clean manner using materials and techniques to provide an attractive landscape for visitors to use.
- j. Otherwise protect the public interest.
- k. Protection of archeological and cultural resources. The Concessionaire shall ensure that any protected sites and archeological resources within and/or immediately adjacent to the concession facility are not disturbed or damaged by the Concessionaire, including the Concessionaire's employees, agents, and contractors, except in accordance with Applicable Laws, and only with the prior approval of the Refuge Manager. Discoveries of any archeological resources by the Concessionaire shall be promptly reported to the Refuge Manager. The Concessionaire shall cease work or other disturbance that may impact any protected site or archeological resource until the Refuge Manager grants approval, upon such terms and conditions as the Refuge Manager deems necessary, to continue such work or other disturbance.
- l. Not use the public lands for any purposes other than those specified in this Contract without the approval of the Refuge Manager.
- m. The Concessionaire agrees that the concession facility is at all times subject to the dominant use and regulation of the Secretary of the Interior in his/her control and conservation of fish and wildlife and the Concessionaire shall not do or suffer to be done by the agents or employees any act intended to interfere with the Secretary's control over the same. The Concessionaire specifically waives any and all claims for damage resulting from activities of the Secretary or his representatives or employees in connection with the program of fish and wildlife conservation. The Secretary reserves the right to enter the area at any time and further right to construct, maintain, and operate roads, trails, paths, bridges, automobile parking space, comfort stations and other sanitary

facilities, electric, telephone, water, and area lines provided the same do not damage or interfere with the improvements and facilities operated by the Concessionaire.

n. The Concessionaire shall have the privilege of ingress and egress through and across the lands of the Refuge adjacent to the concession facility for the purpose of complying with the proposed Contract.

o. The Service may require the Concessionaire to attend certain meetings and workshops. Additional meetings identified by the Refuge Manager may be required. The Service does not pay for the cost for attendance by the Concessionaire or his/her employees at such meetings. These meetings may be local or may require travel to the Midwest Regional Office in Bloomington, Minnesota. These meetings will not be required more than one time a year.

p. The Concessionaire will provide Federal employees conducting official business reduced rates for essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Refuge Manager.

2. Miscellaneous Information:

a. Condition of concession facilities. The Concessionaire will inspect the concession facilities and any assigned government-owned personal property, be thoroughly acquainted with the condition, and will accept the concession facilities, and any assigned government-owned personal property, "as is."

b. Indemnification. The Concessionaire agrees to assume liability for and does 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 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 Concessionaire, its employees, agents or contractors under the proposed Contract. This indemnification shall survive the termination or expiration of the proposed Contract.

c. Release of Information. All information required to be submitted to the Refuge Manager by the Concessionaire pursuant to this Contract is subject to public release by the Refuge Manager to the extent provided by Applicable Laws.

d. Negotiating Rights. The Concessionaire is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of the proposed Contract.

e. State Taxes. Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessionaire shall be paid promptly by the Concessionaire.

f. Members of Congress Not to Benefit. No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of the proposed Contract or to any benefit that may arise from the Contract, but this restriction shall not be construed to extend to the Contract if made with a corporation or company for its general benefit.

- g. Entire Agreement. The proposed Contract contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend the Contract. The Contract may be extended, renewed, or amended only when agreed to in writing by the Refuge Manager and the Concessionaire.
- h. Third Party Rights. This Contract does not grant rights or benefits of any nature to any third party.
- i. Invalidity of Specific Provision. The invalidity of a specific provision of the Contract shall not affect the validity of the remaining provisions of the Contract.
- j. Waiver. Waiver by the Refuge Manager or the Concessionaire of any breach of any of the terms of the Contract by the other party shall not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the Contract. The subsequent acceptance of any payment of money or other performance required by the Contract shall not be deemed to be a waiver of any preceding breach of any term of the Contract.

VIII. Proposal Requirements: All proposals should at a minimum contain the following information:

A. Identify the Offeror:

1. Identify the offeror ("proposed entity that the offeror intends to establish for the purpose of operating this concession") submitting this proposal.
2. Clearly identify both the formal structure of the primary business entity who the U.S. Fish and Wildlife Service will be dealing and its owner(s).
3. Provide materials to explain the financial circumstances, legal form, and ownership of the business entity for the proposed concession operation.
4. Identify related, subordinate, and superior entities and any other organization, entity, contractor, or subcontractor that will have a role in managing, directing, operating, or otherwise carrying out the service to be provided. Where these exist, or where many entities will act in concert to provide the services required, describe each of them and the relationship between or among them.
5. Identify the offeror and any other entity that will be involved in the concession operation. Add information as necessary to make the relationships clear.

B. Demonstrated Experience:

1. Offerors should give specific examples of past or current business operations that are similar to the type of business activity being solicited.
2. Describe the business management qualifications and experience of the entity and how it relates to the management of the recreation area described on the first page of this solicitation. Include any past experience with providing services similar to the concession operation at the Refuge.
3. Be specific with respect to size of operation, dates, area of operation, specific duties, number of people supervised, hours worked per week, and

other factors that would be helpful to evaluators in establishing a clear understanding of the offeror's concession operation experience.

4. Include training, licenses, education, and special qualifications that are needed for special occupations such as electricians, plumbers, etc.
5. Include professional and community awards or special recognition received related to similar work or operation of a business.
6. Include any educational programs/workshops and community involvement activities that demonstrate experience requiring knowledge of the U.S. Fish and Wildlife Service mission, the National Wildlife Refuge System mission, Refuge objectives, and the local ecosystem.

C. Financial Capability and Financial Resources:

1. Provide the following information:
 - a. For corporations, partnerships, or others that propose to provide the services or part of the services required: Provide the latest financial statement available including the notes to the statement or similar explanatory material and the related audit report.
 - b. Sole proprietors and unconventional lenders and proposed individual investors: Provide personal financial statements.
 - c. For proposed corporations or partnerships that will be formed for the purpose of offering a proposal for the concession: Provide financial statements that will demonstrate financial capability and resources.
2. Identify the source(s) of all needed funding. Document the source and availability of all funds with current audited financial statements, financing agreements, letters of commitment, and similar supporting documents from all sources. Present compelling and specific evidence of offeror's ability to obtain the necessary funds. Identify all sources of funding and provide complete documentation. Explain fully the financial arrangements you propose to use.
 - a. If funds are to be obtained from individuals, provide a current personal financial statement, documentation of assets to be sold, commitments from lenders, or other assurances which make a compelling demonstration that the funds are available and committed.
 - b. Funds from other sources must be supported by a current audit balance sheet and income statement and whatever supporting documents are needed to provide compelling evidence that funds are available and committed.
 - c. Funds obtained by the sale of assets must be supported by a description and condition of the assets and any encumbrances on those assets and/or the proceeds of their sale. Also, the condition of the market for such items should be indicated in a way that both the ability to sell the asset at the necessary time and the ability to sell at a price sufficient to meet

funding expectations is identified. Qualified appraisals and other professional estimates of value must be provided. You must prove in a compelling way that the asset will yield the necessary funds at the necessary time.

D. Marina and Development Plan: Please describe in detail your proposed Marina and Development Plan for the concession. This should describe all operating considerations of the concession along with additions or changes you propose to make. A rental/fee structure should become part of this plan. All rentals and fees must be equal to or greater than those charged by members of the private sector for opportunities equal to those provided by the Concessionaire. Describe your specific plans for providing each of the required services identified in the prospectus and proposed Contract. Specifically describe additional services you would like to provide and the operation and management of these services. The Service will give credit in its evaluation for the provisions of as many of these services as possible if they meet the management objectives of the Refuge. The more complete and thought-out your plans, the better the proposal. This will become part of the Contract. Items which you should address in this plan include:

1. Management's policy statement.
2. Inspection and abatement.
3. Accident investigation and reporting.
4. Safety and health committee.
5. Employee management – including training.
6. Emergency procedures.
7. Proposed rental rates and charges.
8. Maintenance of facilities.

E. Proposed Staffing Plan:

1. Provide an organizational chart showing the principal lines of authority between departments or functional areas and managers. Provide names of individuals, background experience, and duties for all managerial positions associated with administering the proposed concession operation. If the individuals are not known, identify the positions and duties to be performed. Provide detailed resumes for all current and proposed onsite managers. Identify the specific responsibilities of the onsite manager and how that individual is qualified to undertake those responsibilities.
2. Describe the decision-making authority that will be delegated to the onsite manager(s) if a higher corporate level of control is held.
3. Describe how managers are to be employed. Such as by Contract, as regular employees, season to season, on a rotation from some other operation, on rotation through the various parts of the concession operations. What assurances can you give that the proposed manager(s) will be in place initially? What is your source of managers and key employees? Provide the skills or background profile you use for certain positions.

4. Specifically describe your proposed Staffing Plan for all concession activities. Indicate the number of employees in each department or functional area and provide summary description of the basic functions. Make absolutely clear who the management decision makers will be. Where key employees are known, make sure that they are identified.
5. Provide proposed wage levels and estimated hours per week for each position or group of positions.
6. Identify the standards that you apply to the hiring of personnel. Identify the training they will receive.
7. Indicate how you will ensure that employees be hospitable and exercise courtesy and consideration in their relations with the public. Explain how you will hire people of integrity, who are both interested in serving the public in a national wildlife refuge and interested in being positive contributors to the refuge community.
8. Outline the employee training program that you propose. In instances where there is seasonal phase-up in operations, describe the training program that will prepare the staff for that phase of business.
9. Describe how you will achieve a consistent standard level of knowledge among all staff about the Refuge and its rules, regulations, special programs, as well as a consistent friendly and positive attitude by which guests are greeted.
10. Specifically describe any special experience or educational background that qualifies any of your staff to inform the public regarding such environmental topics as the mission and objectives of the National Wildlife Refuge System, endangered species of the Refuge, specific plants and animals that inhabit the Refuge, the surrounding ecosystem, and other habitat protection. Identify the individual and his/her qualifications including but not limited to education (include all degrees), training, experience, and special recognition including awards articles published, speaking engagements, and teaching/instruction experience.

F. Description of Public Services and Facilities Proposed:

1. Specifically describe all equipment/facilities that you will use, rent or sell at the concession operation. Your description should include, but not necessarily be limited to the following:
 - a. Provide description, manufacturer, model numbers, and age of equipment/facilities.
 - b. Provide photos of equipment/facilities if owned or catalog descriptions if you intend to purchase for the concession operation.
 - c. Describe what steps you will take to ensure that all equipment is safe and environmentally friendly.
 - d. Describe what merchandise you intend to sell at the concession facility and how it will be wildlife and eco-tourist related.
 - e. Describe food/beverage items that you intend to sell at the concession

- facility, and if they will be sold in environmentally friendly packaging.
- f. The Concessionaire will be required to provide all local and State permits required.

2. Specifically describe all services that you will provide at the concession operation. Your description should include (but not necessarily be limited to) the following:

- a. If tours will be offered, describe how tours will be conducted.
- b. Describe your proposed rental fee schedule.
- c. Describe what methods you will take to ensure that tours/rentals are conducted in order not to disturb wildlife.
- d. Describe training/instruction that you will give to all renters of equipment prior to embarking upon their self-guided tours.
- e. Specifically describe the type of information you intend to present during guided interpreted tours what major themes you plan to use. Describe what information you plan to present pertaining to the surrounding ecosystem, the plants and wildlife of the Refuge, endangered species of the Refuge, preservation of habitat of the Refuge, and the mission and objectives of the Refuge.
- f. Identify any contracts that you intend to use and the extent to which you propose to utilize them.
- g. Describe your intended renter registration and reservation system.
- h. Describe how your staff will keep vigilant watch of the water areas for canoes/kayaks/boats in distress.
- i. Describe what procedures your staff will use to respond to emergency situations.
- j. Describe the safety procedures you intend to use.
- k. Describe what procedures you will employ to ensure that renters do not litter the wildlife area.
- l. Describe any educational programs/workshops you plan to provide to the public. Describe their purpose and content.

G. Environmental Plan: Submit with your offer, your proposed Environmental Plan, which addresses the elements identified below. The Environmental Plan should be tailored for the specific needs of the area of operation and should not be generic or standardized. For example, your plan might include specific best management practices that you will apply in your operation (including, the provision of visitor services, accessibility, construction, maintenance, and acquisition) to further the protection, conservation, and preservation of the area and its resources. This Environmental Plan, upon approval by the Refuge Manager will become part of the Contract.

1. The Environmental Plan shall account for all activities with potential environmental impacts conducted by the concessionaire or to which the Concessionaire contributes.

2. The Environmental Plan shall include, but not be limited to the following elements:
 - a. Goals and Targets: The Environmental Plan shall identify environmental goals established by the Concessionaire consistent with all plan objectives as stated in the Contract. The Environmental Plan shall also identify specific targets (i.e., measurable results and schedules) to achieve these goals. The Concessionaire shall conduct an audit to identify environmental impacts resulting from Concessionaire activities and develop, as part of the plan, operating procedures which will reduce those impacts.
 - b. Responsibilities and Accountability: The Environmental Plan shall identify environmental responsibilities for Concessionaire employees and contractors. The plan shall include procedures for the Concessionaire to implement the evaluation of employee and contractor performance of these environmental responsibilities.
 - c. Reporting: The Environmental Plan shall describe and implement a system for reporting environmental information on a routine and emergency basis, including providing reports to the Refuge Manager under the Contract.
 - d. Documentation: The Environmental Plan shall identify plans, procedures, manuals, and other documentation maintained by the Concessionaire to meet the plan's objective.
 - e. Documentation Control and Information Management System: The Environmental Plan shall describe and implement document control and information management systems to maintain knowledge of applicable laws. In addition, the plan shall identify how the Concessionaire will manage environmental information, including without limitation, plans, permits, certificates, reports, and correspondence.
 - f. Monitoring, Measurement, and Corrective Action: The Environmental Plan shall describe how the Concessionaire will comply with the plan and how the Concessionaire will self-assess its performance under the plan, at least annually, in a manner consistent with Service standards. The self-assessment should ensure the Concessionaire's conformance with the plan objectives and measure performance against environmental goals and targets. The plan shall describe procedures to be taken by the Concessionaire to correct any deficiencies identified by the self-assessment.
 - g. Communication: The Environmental Plan shall describe how the environmental policy, goals, targets, responsibilities, and procedures will be communicated throughout the Concessionaire's organization.
 - h. Training: The Environmental Plan shall describe the environmental training program for the Concessionaire, including identification of staff to be trained, training subjects, frequency of training, and how training will be documented.
 - i. Integrated Pest Management: An Integrated Pest Management Plan

must be included in the Environmental Plan.

3. Other specific issues to be addressed in the elements of the offeror's Environmental Plan are:
 - a. Hazardous materials and waste management. (How will you reduce or eliminate the use of hazardous materials in your operations?)
 - b. Education of public regarding environmental protection/awareness.
 - c. Solid waste management (including recycling and composting where appropriate).
 - d. Water and energy conservation. (What steps will you take to practice water and energy conservation in daily operations and in the design construction and rehabilitation of facilities? How do you propose to recycle antifreeze and motor oil? What other recycling efforts will you use?)
 - e. Emergency planning and response.
 - f. Pollution prevention and reduction of toxins. (The reduction of pollution and the use of toxic products in the concession area, within the constraints of the U.S. Public Health Service codes, are important to the U.S. Fish and Wildlife Service. One method of reducing pollution and the use of toxic products is using environmentally preferable cleaning products for custodial, housekeeping, and fleet operations. Most of the products used for these purposes are naturally derived from renewable resources. Products that are toxic, skin irritants, flammable, corrosive, non-biodegradable, petroleum and hydrocarbons, ozone-depleting chlorinated compounds or with artificial dyes and fragrances should be avoided.)
 - g. Reduction of emissions from vehicle and other operations that affect air quality.
 - h. Protection of water quality and wastewater treatment.
 - i. Pest management practices.
 - j. Sustainable design and construction practices.
 - k. Use of native species.
 - l. Environmental mitigation.
 - m. Best management practices to be employed to demonstrate responsible stewardship of the environment and use of the best available technology to protect the public's natural resources.
 - n. Use of alternative fuels.
 - o. Waste reduction.
 - p. Procurement practices.
 - q. Green construction: The Concessionaire will provide a high level of environmental stewardship by focusing all construction efforts on "green" methods and using "green" products. Where possible, the Concessionaire will use materials and processes that are environmentally preferable, particularly focusing on use of post-consumer recycled materials, materials that require less-toxic care, equipment and products

life-cycle analysis, and minimization of pesticides, persistent toxic chemicals, and carcinogens. Pollution prevention, materials recycling, and hazardous waste generation elimination are goals of this Contract. Use EPA's Guiding Principles for Environmentally Preferable Purchasing as a reference when purchasing equipment, construction materials, and other products.

4. Discuss how you intend to manage and implement the Environmental Plan. Please include a description of how your experience and qualifications will enable you to address environmental issues that may exist or may arise at the concession operation. If you intend to assign an environmental program manager, please identify him or her and provide a brief description of his or her qualifications and past experience with regard to managing an environmental program.

H. Merchandising Plan: The U.S. Fish and Wildlife Service wishes to provide high-quality merchandise, focusing on basic necessities and items relevant to the area. Merchandise should enhance appreciation and understanding of the area of operation and the Service, the significance of the natural world and the environment, and set a model of environmental responsibility. The offeror is required to develop a Merchandising Plan, which will become part of the Contract. This plan shall ensure that merchandise to be sold or provided reflects the significance of the location, including conservation of resources, geology, wildlife, plant life, archeology, and local culture. Things to address in the Merchandising Plan include:

1. How will you approach developing the store theme and decor as well as the necessary policies and sources of merchandise to successfully effect this continual change? Include specifically how you will acquire and present merchandise that reflects the purpose and significance of the Refuge.
2. Items you plan to sell in the shop that are convenience items.
3. Items must be sought within a broad price range, providing visitors the opportunity to purchase both expensive and inexpensive items.
4. The Concessionaire will provide a general list of items to the Refuge Manager for approval as part of the Merchandising Plan. The Service recognizes that purchasing and merchandising new inventory will be phased and that items which do not sell, need not be offered for sale or reordered.

I. Proposed Percentage of Gross Receipts Payable to the Government: Proposed percentage of gross receipts payable to the Government must be a minimum of five (5) percent up to a maximum of twenty (20) percent of gross receipts. Offerors are advised that it is the current policy of the U.S. Fish and Wildlife Service that in accordance with statute 16 U.S.C. 715, all revenues paid to the Service (including annual franchise fees and/or percentages of gross receipts) by public recreation-related concession enterprises are credited entirely into the National Wildlife Refuge Fund. These limits are set because of several GAO audits on contracts related to agencies in the Department of the Interior. An offeror may propose a constant fixed percentage, regardless of the level of gross receipts, or a "tiered" or "graduated" percentage that varies according to a range

of gross receipts. These funds are utilized to help make payments to local governments prescribed by the Revenue Sharing Act of 1935 and will be returned to the refuge for administrative costs only. Proposals offering less than five (5) percent will not be considered for award.

J. Information in Appendix C: The Appendix C form will provide the cover sheet for each proposal.

IX. Consideration of Proposals: The Service will consider all proposals submitted where the offeror agrees to all of the conditions of the Contract and the prospectus, and provides all information specified in the solicitation necessary for evaluation by the deadline stated above.

X. Rejection of proposals: In its sole discretion, the United States may reject any or all proposals received and/or terminate the selection process.

XI. Freedom of Information Act:

A. Public Access to Federal agency records: The Freedom of Information Act (FOIA) allows the public to gain access to Federal agency records except to the extent that such records, or portions of them, are protected from disclosure by one of nine exemptions. Exemption 3 of the FOIA incorporates the disclosure prohibitions that are contained in various other Federal statutes. The "National Defense Authorization Act for Fiscal Year 1997" exempts contract proposals from public disclosure. Exemption 3 therefore allows for proposals to be protected from disclosure. Exemption 4 of the FOIA protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." If a contract contains information that could be harmful to a company if disclosed, that information can potentially be withheld. In order to protect information from disclosure, you must mark the cover page of each copy of the proposal with the following:

Exemption 3 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(3)) permits the withholding of information prohibited from disclosure by another statute. Pursuant to the "National Defense Authorization Act for Fiscal Year 1997" (Section 821 of P.L. 104-201), Contract proposals may be exempted from such public disclosure in accordance with the FOIA.

B. Trade Secrets: In the event that the Contract is awarded to the offeror, information submitted during the proposal stage that is included in the successful Contract may be subject to disclosure under the FOIA. If the Service receives a FOIA request for such information, we will consult with the offeror. It is in the best interest of the offeror (prior to or upon award of a successful Contract) to indicate what information they believe to be exempt under 5 U.S.C. 552(b)(4), which allows the withholding of "trade secrets and commercial or financial information." The offeror should also provide an explanation of which parts of the Contract (what information) would put them at a competitive disadvantage if released, and which information was voluntarily provided

(not required as part of the competitive process). Doing so allows the agency to obtain any necessary review by the Office of the Solicitor; and affect the necessary withholdings and defend information that is subject to appeal under the FOIA.

XII. Criteria for Evaluation of Offers and Selection: Generally, the Service will consider offers based upon the following elements:

- A. Offeror's capabilities and financial responsibility;
- B. Type and quantity of facilities proposed;
- C. Offeror's operating and maintenance plans;
- D. Fixed franchise fee and/or percentage of gross income paid to the Government;
- E. Offeror's references;
- F. Offeror's demonstrated experience;
- G. Terms and conditions of the prospectus relating to the quality of service to our visitors; and
- H. Environmental stewardship and principles of using environmentally conscious technologies, strategies, and products.

XIII. Proposal Evaluation: The Service will use the following criteria to evaluate all proposals for concession operations on Service lands:

A. Proposal Evaluation:

1. Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the Contract successfully. The Service will evaluate all proposals to assess their relative qualities solely on the factors specified in the prospectus. Evaluations will be conducted using weighted factors. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation will be documented in the file. The Government intends to evaluate proposals and make award without discussions. Discussions are defined as negotiations that may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, or other terms of a proposed agreement. Award of the Contract will not be subject to discussions.
2. The Government will evaluate each proposal strictly in accordance with its content and will not assume that performance will include areas not specified in the offeror's proposal. All proposals will be evaluated by a panel consisting of three to five service staff knowledgeable in concession management issues. Members of the panel will sign a "*No Conflict of Interest*" statement. They will individually evaluate each proposal. After individual proposal evaluations are completed, the panel members will meet to determine the best financial and the best technical proposals. The panel will evaluate the financial aspects of the proposals and will rank the proposals from lower number to higher number with the lower number

having the most benefit to the Government. They will evaluate the technical aspects of the proposal and will rank the proposals from lower number to higher number with the lower number having the most technical benefit to the Government. When this process is completed, the panel will meet and determine which proposal provides the best financial and technical proposal for the Government.

3. Listed below is a rating scale using adjectives and a numerical equivalent. The relative weight of the factor will be multiplied by this to determine the "weighted" score.

1.0 Outstanding - Very comprehensive, in-depth, clear response. Proposal consistently meeting this standard with no omissions. Consistently high-quality performance can be expected.

0.8 Excellent - Extensive, detailed response to all requirements similar to outstanding in quality, but with minor areas of unevenness or spottiness. High quality performance is likely but not assured due to minor omissions or areas where less than excellent performance might be expected.

0.6 Good - No deficiencies in the response. Better than acceptable performance can be expected, but in some significant areas, there is an unevenness or spottiness that might impact on performance.

0.4 Fair - The response generally meets requirements but there is no expectation of better than acceptable performance. Deficiencies are confined to areas with minor impact on performance and can be corrected during negotiation without major revision to the proposal.

0.2 Poor - The response fails to meet one or more requirements. Deficiencies exist in significant areas but can be corrected during negotiations without major revision to the proposal or serious deficiencies exist in areas with minor impact.

0.0 Unsatisfactory - Serious deficiencies exist in significant areas. The proposal cannot be expected to meet the stated requirements without major revisions. The proposal only indicates a willingness to perform in accordance with the requirements document without specifying how or demonstrating the capability to do so. Only vague indications of the required capability are present.

-1.0 Non-responsive - Required documents are not provided or the proposal was submitted late.

4. The panel will evaluate the proposals for financial aspects on the following criteria:

Factor	Weight (%)
A. Financial capability and financial resources adequate for the operation of the concession	40
B. Proposed percentage of gross receipts payable to the Government	25
C. The amount of anticipated sales	35
Total Possible Points	100

5. The following factors and weights are how each proposal will be evaluated in regard to Technical expertise.

Factor	Weight (%)
A. Demonstrated experience in the operation of concessions or other types of business similar to the concession operation at Crab Orchard Refuge (Past Performance)	30
B. Proposed sales and services (Phase-in and plan of operation)	30
C. Method and caliber of staffing/management of the concession operation (Management/Organization)	20
D. Quality control factors	10
E. Environmental stewardship	10
Total Possible Points	100

6. After initial review of each proposal the evaluation panels will be afforded the opportunity to request clarifications on any aspects of the proposals. Clarifications are limited to written exchanges of information between the Government and offerors. Normally the purpose is to allow offerors to clarify certain aspects of their proposal or to resolve minor or clerical errors. However, an offeror may not substantively amend or supplement a responsive proposal after the submission unless the agency provides all offerors that submitted responsive proposals a similar opportunity to amend or supplement their proposals. After the initial proposal review, the

evaluation panel members will submit to the agency official in writing, their requests for clarification, if any. The agency official will provide to the offeror the written requests for clarification within one business day of receiving the written requests for clarification. The offeror must provide a written response and clarification within 24 hours of the date and time of the written request for clarification. Responses may be sent via facsimile to the agency official. If the response is late, the proposal will not be considered.

7. After clarifications with offerors are completed, the evaluation panels will meet to provide their final scores and recommendations to the agency official.
8. Award of Contract: The Contract will be awarded to the offeror with the highest combined scoring proposal as determined by the evaluation panel. In the event of a tie, the award will go to the offeror with the highest percentage of gross receipts payable to the Government. If a tie still persists, we will award the Contract to the offeror receiving the most number one rankings from the panel. In the event that a tie still exists, the award determination will be made by the Refuge Manager after consultation with the evaluation panel. The Government may reject any or all proposals received and or terminate the selection process.
9. Debriefing: Requests for a debriefing must be submitted in writing to the agency official within five calendar days of receipt of the notice of award.

Appendix A – Location map of marina grounds



APPENDIX B

Marina Rules (currently in place)

CRAB ORCHARD MARINA REGULATIONS (Revised 11/21)

- 1) The U.S. Fish and Wildlife Service reserves the right to designate dock space. Dock assignments may be based on boat size, water levels or other emergency conditions. Any boats new to the marina must pass an inspection and be approved in advance by the Refuge.
- 2) Any rented slip that remains vacant for more than 30 days is subject to reassignment unless the Refuge has been notified. The Refuge retains the right to reassign a vacant slip and slip rental fees are not refundable.
- 3) Billings issued by the Refuge to the marina tenant for charges such as slip rental and electrical usage, are due and payable, as specified in the billing. Failure to meet due dates is a violation of the terms and conditions of the contract. Late fees will apply to past due accounts.
- 4) Liability insurance is required for all boats moored or stored at the Crab Orchard Marina. A copy of your proof of current liability insurance is required to be submitted.
- 5) In the interest of security, only boat owners and accompanied guests are permitted on the boat docks. Gate combinations are not to be given to non-slip renters under any circumstances.
- 6) The contract holder is responsible for the conduct of all persons operating, using, visiting, or working on the moored vessel.
- 7) Disorderly conduct, persistent infraction of these rules and regulations, or any action which might reasonably be expected to cause injury or damage to life or property in the marina shall be cause for immediate termination of the contract and removal of the vessel from Crab Orchard Lake. If the contract is terminated under these conditions, no refund will be made to the contract holder regardless of termination date.
- 8) Alterations or additions to slips, walkways, utilities or other facilities of Refuge marinas are prohibited. No personal property may be attached to or stored on any dock system, including, but not limited to, satellite dishes, steps, or dock boxes.
- 9) No boats, floats, rafts, or vessels other than those regularly carried aboard the vessel shall be brought into, or moored at, the marina. Second vessels, regardless of type, are not permitted in the slips or on walkways or fingers. Absolutely no vessels belonging to guests or anyone other than the slip renters should ever be moored on any of the dock systems in the marina.
- 10) Personal items must be stored and secured on boat, not dock or marina grounds. Walkways and fingers shall be kept clear of boats, motors, equipment and all other personal property. An excessive amount of personal property on boats is also prohibited.

- 11) Petroleum products, paints and other toxic or flammable materials shall not be stored on or dispensed from any dock, walkway or finger. Petroleum or fuel leakage/spillage is the responsibility of the contract holder but must be reported to Refuge personnel immediately.
- 12) No repairs or maintenance shall be performed on any vessel in the marina slips except such minor maintenance as would be normally performed by the vessel owner without benefit of a mechanic or other craftsman. Power tools such as grinders, sanders, torches, welders, and flammable or toxic paint or varnish removers shall not be used in the slips. Precautions should be made so that no debris or materials fall into the water.
- 13) Any boat requiring dry dock maintenance must have a Special Use Permit prior to boat removal. Permits will be for a period no longer than one week. Any boat with repair work that will take longer than one week must be moved off-site until ready to be returned to assigned slip.
- 14) No commercial activity of any kind shall be conducted by the contract holder, his agents, or guests in Refuge marinas. Advertising, signs, placards or commercial displays, including "For Sale" signs, shall NOT be permitted on any vessel or anywhere in the marina. Advertisements for selling a boat may not include reference to the slip being included with the sale of that boat.
- 15) The U.S. Fish and Wildlife Service shall have the right, but not the obligation, to inspect the vessel for leakage, safety or unseaworthiness, and to remove the vessel from the slip in case of emergency. The permit holder is solely responsible for the seaworthiness and care of the vessel.
- 16) All vessels are to be equipped with, but not limited to, one life preserver, buoyant cushion, or other life-saving device for each person or guest aboard, a fire extinguisher, a sound producing device, a current Illinois registration and current annual Refuge sticker. All boats are to be operated in accordance with Illinois and U.S. Coast Guard boating regulations. In addition, all boaters must adhere to the information on the buoys in the lake.
- 17) All boats must be navigable under their own power and must check in at the fuel/pump out dock at least once per month (May-Sept) to be recorded as having moved from the slip, and septic checked (if applicable).
- 18) All boats must be properly moored and tied with marine quality mooring lines to prevent damage to other boats or to the docks. Please check ropes on a regular basis. Ropes must be tied to cleats ONLY. Ropes may not be tied to dock frames or dock pilings. The permit holder will be responsible for any and all damage resulting from improper mooring or inadequate mooring lines.
- 19) All vessels that have plumbing facilities shall be equipped with holding tanks or other approved treatment type facilities and operate in compliance with all applicable Federal and State laws and regulations. Absolutely no water discharge of sewage is allowed. Pump out services will be available during the posted hours from approximately April through October, conditions permitting.
- 20) All electrical lines, fixtures and equipment (e.g., stoves, refrigerators, and air conditioners) which are connected to the marina's electrical supply facilities shall conform to all applicable Federal and State laws, codes, and regulations. No electrical heaters or other electrical appliances which are capable of creating a fire hazard shall be left connected when the boat is unattended. No electrical line connections (plug-ins) are permitted below water level. If a problem is suspected with an electric meter, it is the responsibility of the slip renter to report it to the Refuge immediately for safety and billing reasons.

- 21) Any vehicle parked at the marina must have one of the following: An annual Refuge sticker (black is the current color), a one-day or weekly Refuge pass (available from the marina hosts, Crab Orchard Campground, or Visitor Center), or a current marina hanging pass (two are issued for use by you or your guests and are only valid in the marina).
- 22) No boats, jet skis, trailered vessels or empty trailers belonging to slip renters may be parked anywhere on the marina grounds for more than a period of two days at a time. Vessels and trailers belonging to visitors are not allowed to remain overnight at the marina. This includes the grassy areas surrounding the parking lots. Marina host should be made aware who owns the vessel/trailer
- 23) All garbage and other trash (including cigarette butts) must be bagged and deposited in receptacles. No paints, petroleum products, hazardous or toxic wastes, batteries, household trash, furniture, satellite dishes or items other than normally generated as a result of recreating on your boat, shall be deposited in Refuge trash receptacles. No fish waste is allowed in marina garbage cans or dumpsters. No garbage, paint, petroleum products, bilge water or other hazardous or toxic waste shall be thrown, deposited or permitted to fall into the water.
- 24) Absolutely NO swimming or diving is permitted in marina waters.
- 25) All pets are to be kept on a leash. Owners are responsible for cleaning up after their pets.

Appendix C

Administrative Documentation and Prospectus Overview

**Department of the Interior
U.S. Fish and Wildlife Service**

Region 3

Proposal to Operate the Concession at Crab Orchard Marina

Proposal Date: _____

DUE DATE: February 14, 2022, by 3:00 P.M., C.S.T.

All applications and any modifications must be received at the following address:

Mailing Address:

U.S. Fish and Wildlife Service
8588 Route 148
Marion, IL 62959
Attention: Beth Kerley (Crab Orchard Marina)
Telephone Number: (618)998-5910

Federal Express Address:

U.S. Fish and Wildlife Service
6987 Headquarters Road
Marion, IL 62959
Attention: Beth Kerley (Crab Orchard Marina)
Telephone Number: (618)998-5910

To: Justin Sexton, Refuge Manager
Crab Orchard National Wildlife Refuge
(mailing) (Fed Ex)
8588 Route 148 OR 6987 Headquarters Road
Marion, Illinois 62959 Marion, Illinois 62959

Dear Mr. Sexton:

(I) (We) hereby offer to provide visitor services and facilities at the Crab Orchard Marina, located at Crab Orchard National Wildlife Refuge in Marion, Illinois, in accordance with the terms and conditions specified in the concession prospectus for concession contract number: 14-16-0003-22-620, provided in the prospectus issued by public notice in sam.gov dated January 3, 2022

(I) (We) are enclosing the required "PROPOSAL" which, by this reference, is made a part hereof.

(I) (We) certify that the information furnished herewith is true to the best of (my) (our) knowledge and belief.

(I) (We) agree to meet all the minimum requirements of the Contract, specified in part A of the prospectus, and that (I) or (we) have provided all the mandatory information specified in the prospectus.

(I) (We) certify:

None of the individuals or entities seeking participation in this Contract is currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from a public transaction by a Federal department or agency.

Within the 3 years preceding submission of the proposal, none of the individuals or entities seeking participation in this Contract have been convicted or had a civil judgment rendered against him or her for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction or for violation of Federal or State antitrust statutes or for commission of embezzlement, theft, forgery, bribery, falsification of records, making false statements, or receiving stolen property.

None of the individuals or entities seeking participation in this Contract is presently indicted for or otherwise criminally or civilly charged by a Federal, State, or local unit of the Government with commission of any of the offenses.

The individuals or entities seeking participation in this Contract have not had one or more public transactions (Federal, State, or local) terminated for cause or default within the 3-year period preceding the submission of the proposal.

(I) (We), by submitting this proposal hereby agree, if selected for award of the new concession contract:

1. To the minimum requirements of the prospectus as identified in this proposal.
2. To complete the execution of the final concession contract within 30 working days after it is presented by the U.S. Fish and Wildlife Service.
3. To commence operations under the new concession contract on the effective date of the new concession contract. The effective date of the new concession contract will be May 1, 2022.
4. To provide the facilities necessary for this Contract with the understanding that no possessory interest is given for these facilities. These facilities remain the personal property of the successful Concessionaire.

By: (Type or print name) _____

Signature: _____

Title: _____

Date: _____

Address: _____

CERTIFICATE OF CORPORATE OFFEROR

(Offerors who are not corporations should skip this certificate)

I, _____, certify that I am the _____ of the corporation named as offeror herein; that _____, who signed this proposal on behalf of the offeror, was then _____ of said corporation; that said proposal was duly signed for and in behalf of the corporation by authority of its governing body within the scope of its corporate powers.

By: (Type or print name) _____

Signature: _____

Title: _____

Date: _____

Address: _____

Unless the offeror, in its proposal, agrees to all the following minimum requirements, the proposal will be considered non-responsive.

(I) (We) agree to comply with all terms and conditions in the Contract, including, without limitation, all applicable laws, environmental protection and conservation laws, and U.S. Fish and Wildlife Service Policies, Directives, and Standards.

(I) (We) agree to comply with all the terms and conditions specified in the Contract, including its exhibits.

(I) (We) agree to charge rates for concession basic goods and services during the term of the Contract that are comparable to rates charged for similar goods and services at comparable facilities in the region. These rates are subject to approval by the U.S. Fish and Wildlife Service.

(I) (We) agree to accept the government provided concession facilities and personal property assigned to the concession as required by the Contract, "as is."

(I) (We) agree to implement the proposed Maintenance Plan for this operation, addressing all the elements identified in the Contract.

(I) (We) agree to implement the proposed Marina and Development Plan for this operation, addressing all the elements identified in the Contract.

(I) (We) agree to develop and implement an effective Risk Management Program (health and safety program) according to the requirements of the Contract.

(I) (We) agree to develop and implement an effective Environmental Plan according to the requirements of the concession contract.

(I) (We) agree to meet the public liability and property insurance requirements of the Contract and agree to provide property and liability insurance at least at the types and levels of coverage described in the Contract.

(I) (We) agree to implement the annual financial and reporting requirements identified in the Contract.

(I) (We) agree to implement an equal opportunity program and comply with the terms of equal opportunity and access for persons with disabilities requirements identified in the Contract.

(I) (We) agree to develop and implement a Merchandising Plan allowing for final approval of items by the Refuge Manager with the U.S. Fish and Wildlife Service. Offerors must provide the following information for their proposals to (1) qualify for consideration and (2) be evaluated with respect to other qualifying competitive Proposals submitted. A proposal will not qualify for further consideration if it receives an unsatisfactory rating for any one of the following principal factors.

Identify the legal structure of the offeror's organization. Indicate how long this business organization has been in existence or whether it will be organized specifically to operate the concession.

Enter the following information for your business organization:

1. Name: _____

2. Present address: _____

3. Contact person: _____

4. Present telephone number: _____

5. Fax number: _____

6. Website and e-mail address: _____

7. Form of business: Corporation ___ Partnership ___ Individual ___
 Sole proprietorship ___ Other: _____

8. Ownership

Names and Addresses of Owners (Corp: Show Controlling Interest; Close Corp: Show All)	Number and Type of Shares or Percentage of Ownership	Total Current Value of Investment
Total of all owners		
Total Shares Outstanding		

9. If a corporation, list the names, addresses, and titles of corporate officers and the names and affiliations of the members of the Board of Directors:

Name	Address	Title

10. State of incorporation: _____

11. The following attachments must be provided as applicable for each subject of the form. For offerors and Concessionaires who are corporations:

- a. Articles of Incorporation.
- b. Bylaws.
- c. Certificate from the State of incorporation indicating that the corporation is in "good standing."

12. For offerors and Concessionaires who are partnerships:

- a. Partnership agreements or joint venture agreements.

13. If the entity that is to be the Concessionaire is not formally in existence as of the time of submission of the Proposal, demonstrate that the individual(s) or organization (s) that intend(s) to establish the entity that will become the Concessionaire has (have) the ability and is (are) legally obligated to create and participate in managing the entity.

14. Has the offeror (or have the principals) ever defaulted or been issued a notice of default or been terminated from a management position or contract, or been forbidden from contracting by a public agency or private company? If the answer is yes, provide full details of the circumstances.

15. Describe any filings for bankruptcy, fines, or penalties levied by Government agencies, including but not limited to, any and all legal proceedings against the offeror (or its principals) that are related to the offeror's (or its principal) past performance in providing facilities and services similar to those described in the prospectus. Include the date of those occurrences and all related information.

16. The entity that will operate the concession services must provide a clear complete, and understandable internal organizational chart. In addition, an external organizational chart must show the relationship between the entity that will operate the concession service and any superior

organization (s), all subsidiaries or affiliates and any parent organization with management, financial, or legal relationship to that entity. Show the lines of authority between individuals within all the business organization(s) in full. Within both organization charts, show the names of individuals, as well as titles, not merely titles. Include resumes for those individuals, indicating their relevant experience.

NOTE: Appendix C will be incorporated as Exhibit A in the Contract of the successful bidder.

Exhibit A

(insert Offeror's Operations Plan)

(see Appendix C of Prospectus)

Exhibit B

(insert Offeror's Marina and Development Plan)

Exhibit C

(insert Offeror's Merchandising Plan)

Exhibit D

(insert Offeror's Staffing Plan)

Exhibit E

(insert Offeror's Insurance Plan)

Exhibit F

(insert Offeror's Environmental Plan)

Appendix D

Insurance Requirements

I. Insurance Requirements

The Concessionaire shall obtain and maintain during the entire term of this Contract, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of the Contract:

II. Liability Insurance

The following Liability Coverages are to be maintained at a minimum, all of which are to be written on an occurrence basis only. The Concessionaire may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or Excess "Umbrella" Liability.

A. Commercial General Liability:

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

a. General Aggregate:	\$5,000,000
b. Products/Completed Operations Limit:	\$5,000,000
c. Per Occurrence:	\$5,000,000
d. Personal Injury & Advertising Injury Limit	\$5,000,000
e. Medical Payments:	\$5,000
f. Fire Damage Legal Liability "per fire:"	\$50,000

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 Concessionaire's operations (unless separate Watercraft coverage is maintained).

3. For all indoor facilities where there may be a large concentration of people, the pollution exclusion may be amended so that it does not apply to the smoke, fumes, vapor or soot from equipment used to heat the building.
4. 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 Service location.

B. Automobile Liability: Coverage will be provided for bodily injury or property damage arising out of the ownership, maintenance or use of "any auto."

Bodily Injury and Property Damage (combined):	\$500,000
Each Common Cause Limit:	\$1,000,000
Aggregate Limit:	\$5,000,000

C. Watercraft Liability (or Protection & Indemnity) (if applicable): Coverage will be provided for bodily injury or property damage arising out of the use of any watercraft.

Each Occurrence Limit:	\$5,000,000
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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, and personal or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage shall be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance shall 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 Concessionaire.

Any One Loss:	\$500,000
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F. Environmental Impairment Liability: Coverage 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: \$500,000

Aggregate Limit: \$1,000,000

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 Concessionaire 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 & Employers' Liability: Coverage will comply with the statutory requirements of the State of Illinois

III. Insurance Company Minimum Standards: All insurance companies providing the above-described insurance coverages must meet the minimum standards set forth below:

- A. 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).
- B. All insurers must be admitted (licensed) in the state in which the Concessionaire is domiciled.

IV. Certificates of Insurance: All certificates of Insurance required by this Contract shall 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 Concessionaire, upon written request of the Refuge Manager, shall provide the Refuge Manager with a complete copy of any of the insurance policies (or endorsements thereto) required herein to be maintained by the Concessionaire.

V. Statutory Limits: In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit shall be considered the minimum to be maintained.

Appendix E

Concession Contract Crab Orchard National Wildlife Refuge Crab Orchard Marina

THIS CONTRACT, No. 14-16-0003-22-620, made and entered into this 1st day of May, 2022, by and between the Regional Director, U.S. Fish and Wildlife Service, Midwest Region, and the Refuge Manager of the Crab Orchard National Wildlife Refuge, hereinafter referred to as the Refuge Manager, acting on behalf of the Secretary of the U.S. Department of the Interior, hereinafter referred to as the Secretary, executing this Contract and ***PROPOSED OFFEROR, a corporation, sole proprietorship, etc.*** doing business as the Crab Orchard Marina, hereinafter referred to as the Concessionaire.

WITNESSETH

THAT WHEREAS, the Crab Orchard National Wildlife Refuge, located in the county of Williamson, State of Illinois, has been established in accordance with Public Law 361 which in part states: "includes the development of wildlife conservation, agricultural, recreational, industrial, and related purposes."; and

WHEREAS, it is the purpose of the Secretary to facilitate enjoyment by the general public of the recreational opportunities in the area to an extent consistent and compatible with the primary purposes of the Refuge; and

WHEREAS, the accomplishment of the said purpose requires that certain facilities and services be provided for the public visiting the Refuge; and

WHEREAS, the Secretary desires the Concessionaire to maintain and operate such facilities and services at reasonable rates under the supervision and regulation of the Secretary and in a manner that demonstrates sound environmental management, stewardship and leadership;

WHEREAS, the Concessionaire represents itself as capable, qualified and financially able to provide such facilities and services; and

WHEREAS, this Contract is not governed by the Federal Acquisition Regulations;

NOW, THEREFORE, pursuant to the authority contained in section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715a); 16 U.S.C. 715s, and 16 U.S.C. 668dd-668ee, as amended, Public Law 361, and in consideration of the mutual promises herein expressed, the parties hereto do hereby mutually covenant and agree as follows:

Section 1. Term of Contract. This Contract shall be for a term of **ten (10) years**, beginning **May 1, 2022, and ending May 31, 2032**, except as it may be sooner terminated as herein

provided. This Contract provides for an optional one-time renewal period of up to ten (10) additional years, depending upon the performance of the Concessionaire winning the solicitation.

In the event that changes are necessary due to new regulations or new legislation, the Service and the Concessionaire will, at the discretion of the Refuge Manager, renegotiate any material terms of the Contract affected by the changes. The Concessionaire may, at the discretion of the Refuge Manager or his/her Refuge Manager be relieved in whole or in part of any or all of the obligations of this Contract for such stated periods as the Refuge Manager may deem proper upon written application showing circumstances beyond the control of Concessionaire warranting such relief and upon a determination by the Refuge Manager that such action is in the interest of the United States.

The term of this Contract may not be extended beyond that stated within this section. If a subsequent Contract is not in place at the time this Contract expires or is terminated, an interim Contract may be issued for a term not to exceed two (2) years.

Section 2. Land and Improvements. The Refuge Manager hereby reserves to the Concessionaire, for and during the term of this Contract, the use of the following described land and facilities, hereinafter referred to as concession facility, for the improvements necessary or desirable to the privileges herein granted:

Designated Refuge lands within (Carterville) T9S R1E, Section 18

(a) The Concessionaire will be expected to equip and maintain at its own expense, on the land described herein, all buildings, structures, infrastructure, above and below ground utility lines, and other improvements, subject however, to the right of the parties to mutually agree to changes in the types and quantities of facilities specified. The Refuge will not be responsible for facility maintenance or repairs of any kind. The Concessionaire will be expected to supply the following services, at a minimum:

1. Marina dock slip rental
2. Dockside gasoline sales and septic pump out service
3. Boat rental
4. Various amenities not currently offered (include details in your proposal)
5. Utilities associated with the concession operation
6. Development of the land to the north and south of the current marina operation with compatible uses

(b) Construction, modification or alterations, other than normal and anticipated repairs of buildings, structures, facilities and other improvements shall be subject to the prior approval of the Refuge Manager for plans, specifications and locations thereof, and the Refuge Manager may prescribe the form and content of the application for such approval. Facility construction and improvements that involve life, safety, and building code compliance issues must be coordinated with the Regional Engineering Office and the Refuge Manager. These improvements must be approved by the U.S. Fish and Wildlife Service (Service). Title to all permanent improvements and/or fixtures erected or otherwise furnished by the Concessionaire shall vest in the United

States at the end of the Contract term and will become the property of the Service when completed. No compensation will be given to the Concessionaire for the improvement.

(c) If any buildings or improvements are removed or demolished by the Concessionaire, the site occupied by the building or improvement shall be restored to the satisfaction of the Refuge Manager. Any building or improvement destroyed by fire or other cause shall be restored promptly by the Concessionaire according to plans and specifications approved by the Refuge Manager.

(d) In the event that an improvement owned by the Concessionaire is removed, abandoned, demolished, or substantially destroyed, and no other improvement is constructed on the site, the Concessionaire shall promptly upon approval by the Refuge Manager, restore the site as nearly as possible to its original condition at no cost to the United States.

(e) On or before the expiration of this Contract or its termination by the Concessionaire, the Concessionaire shall vacate the premises, remove the property of the Concessionaire and restore the premises to a condition satisfactory to the Refuge Manager. If, however, this Contract is revoked, or terminated, the Concessionaire shall vacate the premises, remove said property there from, and restore the premises to the aforesaid condition within such time as the Refuge Manager may designate. In either event, if the Concessionaire shall fail or neglect to remove said property and restore the premises, then, at the option of the Refuge Manager, said property shall either become the property of the United States without compensation therefore, or the Refuge Manager may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Concessionaire shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this Contract in restoring the premises.

(f) The Concessionaire will maintain individual records of each item of government-owned property provided and must establish and administer a program to maintain, protect, preserve, and account for all government-owned property provided for the use in fulfilling the terms of this Contract.

Section 3. Location of Concession Facility: The Refuge is located in southern Illinois, between the cities of Marion and Carbondale, Illinois. The Refuge consists of approximately 44,000 acres and is a unit of the National Wildlife Refuge System (System). The Concession operation area consists of approximately 200 acres and is located on the 7,000-acre Crab Orchard Lake near Carbondale, Illinois, on the west side of the Refuge. Access to the marina (physical address: 762 Playport Road Carbondale, Illinois) is via Playport Road, just off of Spillway Road, near State Route 13. A map of the location of the facility is included as Appendix A.

Section 4. Concession Operations.

(a) The Concessionaire shall provide, during the term of this Contract, accommodations, facilities and services for the public as follows:

The Concessionaire shall make provisions for the sale of food and beverages, basic outdoor supplies for camping, boating and fishing, rental boat service, rental of dock slips, and miscellaneous services and articles as authorized by the Refuge Manager through the offeror's Marina and Development Plan (Exhibit B).

(b) The Refuge Manager reserves the right to determine and control the nature, type, and quality of the visitor services described in this Contract, including, but not limited to, the nature type and quality of merchandise, if any, to be sold or provided by the Concessionaire. The allowable services provided by the Concessionaire are found in the Marina and Development Plan, Exhibit B of this Contract. A Merchandising Plan determines the nature and type of merchandise the Concessionaire will sell. The Concessionaire, where applicable, will develop and implement a plan satisfactory to the Refuge Manager that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the area, including, but not limited to, merchandise that reflects the conservation of the area's resources or the area's geology, wildlife, plant life, archeology, local culture, local ethnic culture, and historic significance. This is also part of the Contract and is attached as Exhibit C.

Promotional Material. All promotional material, regardless of media format (i.e., printed, electronic, broadcast media), provided to the public by the Concessionaire in connection with the services provided under this Contract must be approved in writing by the Refuge Manager prior to use. All such material will identify the Concessionaire as an authorized Concessionaire of the National Wildlife Refuge System, Department of the Interior.

Interpretation of Crab Orchard National Wildlife Refuge Resources.

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

(2) The Concessionaire may assist in Refuge interpretation at the request of the Refuge Manager to enhance visitor enjoyment of the Refuge. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of the Marina and Development Plan (Exhibit B) of this Contract.

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

(4) The Concessionaire must submit the proposed content of any interpretive programs, exhibits, displays or materials, regardless of media format (i.e., printed, electronic, first person, or broadcast media), to the Refuge Manager for review and approval prior to offering such programs, exhibits, displays, or materials to Refuge visitors.

(c) Operation of the concession is mandatory from April 1 through October 31 of each year.

(d) In connection with the performance of work under this Contract, the Concessionaire agrees as follows:

- (1) The Concessionaire shall provide all personnel necessary to provide the visitor services required and authorized by this Contract.
- (2) The Concessionaire shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessionaire shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessionaire.
- (3) The Concessionaire will provide a proposed Staffing Plan which shows the organizational chart with the principal lines of authority, describes the decision-making authority, and describes how managers and staff are to be employed. This Staffing Plan will become part of this Contract as Exhibit D.
- (4) The Concessionaire shall establish pre-employment screening, hiring, training, employment termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding and safe working environment for its employees. The Concessionaire shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessionaire.
- (5) The Concessionaire will not discriminate against any employee or applicant for employment because of age, race, creed, sex, sexual orientation, disability, color, or national origin. The Concessionaire will take affirmative action to ensure that applicants are citizens of the United States, and that employees are treated during employment without regard to their age, race, creed, sex, sexual orientation, disability, color, or national origin. Such action shall include but not be limited to, the following:
 - (A) 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 Concessionaire agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth this nondiscrimination policy.
 - (B) Training. The Concessionaire shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills without regard to their age, race, creed, sex, sexual orientation, disability, color or national origin.
- (6) The Concessionaire will, in all solicitations or advertisements for employees placed by or on behalf of the Concessionaire, state that all qualified applicants will receive consideration for employment without regard of age, race, creed, color, sex, sexual orientation, disability, or national origin.

(7) The Concessionaire will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, advising the said labor union or workers' representative of the Concessionaire's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Concessionaire shall publish and post a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Crab Orchard National Wildlife Refuge area and specifying the actions that will be taken against employees for violating this prohibition.

In addition, the Concessionaire shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the concession area, the availability of drug counseling, rehabilitation, and employee assistance programs, and the Concessionaire's policy of maintaining a drug-free environment both in the workplace and in the concession area.

(9) The Concessionaire shall review the conduct of any of its employees whose action or activities are considered by the Concessionaire or the Refuge Manager to be inconsistent with the proper administration of the area and enjoyment and protection of visitors and shall take such actions as are necessary to fully correct the situation.

(A) The Concessionaire shall maintain a drug-free environment, both in the workplace and in any Concessionaire employee housing, within the concession area.

(B) The Concessionaire shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that is found to be in violation of the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

(10) The Concessionaire shall comply with the requirements of all Applicable Laws relating to employment and employment conditions including but not limited to, the following:

(A) Title VII of the Civil Rights Act of 1964, as well as Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967;

(B) Title V, Section 503 and 504 of the Rehabilitation Act of September 26, 1973, P.O. 93-112 as amended in 1978 and any law which has replaced it such as the Americans with Disabilities Act;

(C) CFR, Part 60-2 which prescribes affirmative action requirements for contractors and subcontractors;

(D) The Age Discrimination in Employment Act of December 15, 1967;

(E) The Architectural Barriers Act of 1968 (P.L. 90-480), which requires Government Contractors and Subcontractors to take affirmative action to employ, and

to advance in employment, qualified individuals with disabilities so that they will not 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 under any program or activity conducted by an Executive agency or by the United States Postal Service; and

(F) The Concessionaire shall also comply with regulations heretofore or hereafter promulgated, relating to non-discrimination in employment and providing accessible facilities.

(e) The Concessionaire shall obtain at his own expense all necessary Federal, State, and local licenses and permits, such licenses and permits to be acquired and displayed on the premises before the establishment is opened to the public, and shall observe all Federal, State, and local laws pertaining to its operations and all orders and regulations relating to the administration and management of the Crab Orchard National Wildlife Refuge or the operations of the Concessionaire as may be presently in effect or promulgated from time to time during the period of this Contract.

(f) Utilities: The Concessionaire shall secure, at his own expense, necessary water, electric light and power, telephone, sewage, trash and garbage disposal, as required, to be used in connection with the performance of this Contract. The Concessionaire is liable for prompt payment of all utilities including, but not necessarily limited, to electricity, fuel, refuse collection, telephone, sewage disposal, water, or any other utility or service bills, whether provided by the public or a community service company.

(g) Sale or Transfer: Concessionaires or parties holding an ownership in a concession may not sell, assign, or transfer their interests or part of their interest in this Contract, to another party without prior written approval from the Regional Director. **No sub-contracts will be allowed under this contract.** This prohibition does not include any contract or agreements that the Concessionaire may have with suppliers.

(h) Residential Management: This Contract requires the presence of, and the Concessionaire will provide for an on-site manager at the concession facility 24-hours per day, 7 days a week during the months of April through October of each year.

Section 5. Annual Financial Reports and Accounting System.

(a) Upon the execution of this Contract, the Concessionaire shall pay to the Service the sum of _____ and shall pay a like amount annually on each anniversary date thereafter during the term of this Contract. In addition, the Concessionaire shall pay to the Service as stipulated in the Marina and Development Plan a sum equal to _____ percent of gross receipts, as hereinafter defined. Payments will be due _____.

(b) The term "gross receipts", as used herein, shall be construed to mean the total amount received or realized by, or accruing to the Concessionaire from all sales, for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the privileges authorized in this Contract, but excluding earnings derived from intracompany earnings on

account of charges to other departments of the operation (such as laundry, charges to employees for meals, transportation, etc., cash discounts on purchases, interest on money loaned or in bank accounts, income from investments from subsidiary companies outside of the Refuge, refunded sales and allowances, sales of property other than that purchased in the regular course of business for the purpose of resale, sales, and excise taxes, fishing licenses (except fees received therefrom), postage stamps (except any return in addition to the face value of such stamps), gasoline taxes, whether or not the Concessionaire is accountable therefore, and items for which the Concessionaire is accountable in full.

(c) Interest. An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond specified due date. 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 Refuge Manager may also impose penalties for late payment to the extent authorized by Applicable Law.

(d) The Concessionaire shall submit for the approval of the Refuge Manager a balance sheet showing assets and liabilities pertaining to the operations hereunder as of the beginning of such operations accompanied by a schedule describing the items sufficiently in detail to clearly establish their identity and respective values.

The Refuge Manager shall notify the Concessionaire in writing of his approval or disapproval of the balance sheet within sixty (60) days after its receipt. If the balance sheet as submitted is disapproved, the Refuge Manager shall set out in the notification of his finding upon which such disapproval is based. If no notice is given within the time herein specified, the balance sheet as submitted shall be deemed to have received the approval of the Refuge Manager.

(e) The Concessionaire shall maintain such accounting records as may be prescribed by the Refuge Manager. The Concessionaire shall submit to the Refuge Manager an annual financial report, under oath, not later than thirty (30) days following the anniversary date of the Contract giving details of this concession operation during the year as well as other reports and data required from time to time by the Refuge Manager. The Refuge Manager, or his authorized representative, may verify said reports from the books, correspondence, memoranda, and other records of the Concessionaire, which shall be maintained intact for not less than three (3) years following the close of the Concessionaire's fiscal year and which shall be available for such three (3)-year period at the Concessionaire's principal place of business on the Refuge.

(f) The Concessionaire shall maintain a financial accounting system under which its accounts can be readily identified with its system of accounts classification. Such an accounting system shall be capable of providing the information required by this Contract. If the Concessionaires' annual gross receipts are \$250,000 or more, the Concessionaire must use the accrual accounting method. If annual gross receipts are less than \$250,000, the financial statements may be prepared without involvement of an independent certified public accountant (CPA), unless otherwise directed. The Concessionaire shall submit annually, as soon as possible but not later than 30 days after the last day of its fiscal year, a financial statement for the preceding fiscal year or portion of a year.

(g) The Service reserves the right to require an audit to be preformed by an independent certified public accountant in the event questions arise concerning the annual financial report.

(h) Nothing in this Contract shall be construed as in any way modifying, altering, or affecting any rights, claims or demands which the United States may have as a result of a final audit of the Concessionaire's accounts covering its operations during the term of this Contract.

Section 6. Performance Bond and Lien.

The Refuge Manager requires the Concessionaire to furnish and keep in force a joint and service bond with a surety company acceptable to the Secretary of the Treasury, conditioned upon the faithful performance of this Contract in such amount as the Refuge Manager deems adequate but not in excess of \$250,000. As additional security for the faithful performance by the Concessionaire of all of his obligations under this Contract and the payment to the United States of all damages or claims that may result from the Concessionaire's failure to observe such obligations, the United States shall have at all times a first and prior lien on all assets of the Concessionaire within the concession area, including but not limited to all personal property of the Concessionaire used in performance of this Contract hereunder within the concession facility.

Section 7. Insurance.

(a) Insurance in General.

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

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

(3) At the request of the Refuge Manager, the Concessionaire shall at the time insurance is first purchased and annually thereafter, provide the Refuge Manager with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessionaire shall provide the Refuge Manager immediate written notice of any material change in the Concessionaire's insurance program hereunder, including without limitation, cancellation of any required insurance coverage.

(b) Commercial Public Liability

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

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this Contract, and no less than \$5,000,000. Furthermore, the commercial general liability package shall provide no less than the coverage and limits described in Exhibit E.

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

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

(c) Property Insurance

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

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

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

(4) In the event of loss, the Concessionaire shall use all proceeds of such insurance to repair, rebuild, restore, or replace concession facilities and/or personal property utilized in the Concessionaire's operations under this Contract, as directed by the Refuge Manager. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 7 shall apply to such insurance proceeds. The Concessionaire shall not be relieved of its obligations under subsection (d)(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

(5) Insurance policies that cover concession facilities shall contain a loss payable clause approved by the Refuge Manager which requires insurance proceeds to be paid directly to the Concessionaire without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of concession facilities will not alter their character as properties of the United States and, notwithstanding any provision of this Contract to the contrary, the Concessionaire shall gain no ownership, Leasehold Surrender Interest or other compensable interest as a result of the use of these insurance proceeds.

(6) The commercial property package shall include the coverage and amounts described in Exhibit E.

Section 8. Termination, Expiration, and Suspension.

(a) The Refuge Manager may terminate this Contract in whole or part, to protect visitors to the Refuge and concession facility or to protect, conserve, and preserve resources in the area of the concession operation. The Refuge Manager may terminate this Contract if the Refuge Manager determines that the Concessionaire has materially breached any requirement of this Contract. The Contract includes the general requirements to:

- Maintain and operate visitor services to the satisfaction of the Refuge Manager.
- Provide only the visitor services required by the Refuge Manager pursuant to this concession contract.
- Implement the Marina and Development Plan.
- Pay the established franchise fee and/or percentage of gross receipts
- Prepare and comply with an Environmental Plan
- Comply with Applicable Laws.

In addition, the Contract will be subject to termination and the Refuge Manager shall reserve the right to collect penalties and administrative costs and shall terminate this Contract for default and non-performance at any time. The operations authorized hereunder may be suspended in whole or in part at the discretion of the Refuge Manager to protect the health and safety of visitors and employees or to protect area resources. Termination or suspension shall be by written notice to the Concessionaire and, in the event of proposed termination for default, the Refuge Manager shall give the Concessionaire a reasonable period of time to correct stated deficiencies. Termination for default shall be utilized in circumstances where the Concessionaire has breached any requirements of this Contract, including, but not limited to, failure to maintain and operate the required accommodations, facilities and services to the satisfaction of the Refuge Manager, unsafe operations, and failure to provide and adhere to the Contract requirements listed above. In the event of a monetary breach, the Refuge Manager will give the Concessionaire a 15-day period to cure the breach. If the breach is not cured within that period, the Refuge Manager may terminate this Contract for default. In the event of a non-monetary breach, if the Refuge Manager considers that the nature of the breach so permits, the Refuge Manager may give the Concessionaire 30 days to cure the breach or to prepare a plan to cure the breach that is approved by the Regional Office and 30 days to implement the plan. If the breach is not cured within this specified period of time, the Refuge Manager may terminate this Contract for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Refuge Manager may suspend the Concessionaire's operation as appropriate.

The Refuge Manager may terminate this Contract upon the filing or the execution of a petition in bankruptcy by or against the Concessionaire; a petition seeking relief of the same or a different kind under and provision of the Bankruptcy Act or its successor; an assignment by the Concessionaire for the benefit of creditors; a petition or other proceeding against the Concessionaire for the appointment of a trustee, receiver or liquidator; or the taking by any

person or entity of the rights granted by this Contract or any part thereof upon execution, attachment, or other process of law or equity. The Refuge Manager may terminate this Contract if the Refuge Manager determines that the Concessionaire is unable to perform the terms of the Contract because of bankruptcy or insolvency.

(b) In the event of termination of this Contract when necessary for the protection of visitors or area resources or for default, the Government will provide no compensation to the Concessionaire for such termination. The United States is not responsible for losses and expenses incurred by the Concessionaire due to conditions beyond its control. Closure of the Refuge or concession facilities for longer than a day because of a natural disaster, natural phenomenon, or because of the risk to public health and safety are examples. The United States only provides the opportunity for Concessionaires to supply visitor services to the general public; we do not guarantee it. No compensation is due the Concessionaire from the Secretary or a successor Concessionaire for the Concessionaire's personal property used in operations under this Contract. However, the Refuge Manager or a successor Concessionaire may wish to purchase such personal property from the Concessionaire. If personal property is sold, the purchase price of the personal property shall be determined by mutual agreement between the Concessionaire holding this Contract and the successor Concessionaire and the Refuge Manager.

Personal property not removed from the area by the Concessionaire in accordance with the terms of this Contract shall be considered abandoned property subject to disposition by the Refuge Manager.

(c) In the event it is deemed necessary to suspend operations hereunder in whole or in part to protect the visitors or resources of the area, the Refuge Manager shall not be liable for any compensation to the Concessionaire for losses occasioned thereby, including but not limited to lost income, profit, wages, or other monies which may be claimed.

(d) To avoid interruption of service to the public upon the expiration or termination of this Contract for any reason, the Concessionaire upon the request of the Refuge Manager, will:

- (1) Continue to conduct the operations authorized hereunder for a reasonable time to allow the Refuge Manager to select a successor; or
- (2) Consent to the use by a temporary operator, designated by the Refuge Manager, of the Concessionaire's improvements and personal property, if any, not including current or intangible assets, used in the operations authorized hereunder upon fair terms and conditions, provided that the Concessionaire shall be entitled to an annual fee for the use of such improvements and personal property, pro-rated for the period of use, in the amount of the annual depreciation on such improvement and personal property plus a return on the book value of such improvements and personal property equal to the prime lending rate, effective on the date the temporary operator assumes managerial and operational responsibilities, as published by the Federal Reserve System Board of Governors or as agreed upon by the parties involved. In this instance, the method of depreciation used shall be either straight line depreciation or depreciation shown on Federal Tax Returns.

(e) The Refuge Manager may temporarily suspend operations under this Contract in whole or in part, as deemed necessary for reasons including but not necessarily limited to the following: to protect area visitors; or to protect, conserve, and preserve area resources. This Contract may be suspended in whole or in part for Contract violations that include, but are not limited to, administrative deficiency, operational deficiency, health and safety, employee problems, or issues, and environmental regulation noncompliance as deemed necessary by the Refuge Manager. No compensation of any nature shall be due the Concessionaire by the Refuge Manager 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.

Section 9. Requirements in the Event of Termination or Expiration. Upon termination or expiration of this Contract for any reason, and except as otherwise provided, the Concessionaire shall, at the Concessionaire's expense, promptly vacate the area, remove all the Concessionaires' personal property, repair any injury occasioned by installation or removal of such property, and ensure that concession facilities are in at least as good condition as they were at the beginning of the term of this Contract, reasonable wear and tear excepted. The removal of such personal property must occur within 30 days after the termination of this Contract or its expiration, unless the Refuge Manager, in particular circumstances, requires immediate removal. At the end of 30 days, if the subject property is not removed, it will be considered abandoned property and may become the property of the United States Government or removed by the Government. The former Concessionaire will be billed and responsible for all costs of removal.

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

Section 10. Work Standards. Except as otherwise stated herein, the Concessionaire agrees to equip and maintain the buildings, utilities, and other facilities described in this Contract. The Concessionaire will also comply with codes and governing regulations, as applicable to the work, including, but not limited to, that which is either required by law or imposed hereby for the following:

- (a) OSHA – Occupational Safety and Health Administration, 29 CFR Parts 1910 and 1926.
- (b) UBC – Uniform Building Code.
- (c) UMC – Uniform Mechanical Code.
- (d) NEC – National Electric Code.
- (e) NFPA – National Fire Code.
- (f) UPC – Uniform Plumbing Code.
- (g) ADA – Americans with Disabilities Act

Section 11. Contract operations. During the term of this Contract the Concessionaire shall provide all services for the public under the guidelines set forth in the Concessionaire's Marina and Development Plan (See Exhibit B).

Section 12. Disputes. All disputes arising under or relating to this Contract shall be resolved under this clause.

(a) "Claim," as used in this clause, means a written demand or written assertion by the Concessionaire, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of Contract terms, or other relief arising under or relating to this Contract. However, a written demand or written assertion by the Concessionaire seeking the payment of money exceeding \$100,000 is not a claim under this Contract until certified as required in subparagraph b(1) below.

(b) A claim by the Concessionaire must be made in writing and submitted to the Refuge Manager for a written decision. A claim by the Government against the Concessionaire shall be subject to a written decision by the Regional Director.

- (1) For Concessionaire claims exceeding \$100,000, the Concessionaire shall submit with the claim a certification that:
 - (A) The claim is made in good faith;
 - (B) Supporting data are accurate and complete to the best of the Concessionaire's knowledge and belief; and
 - (C) The amount requested accurately reflects the Contract adjustment for which the Concessionaire believes the Government is liable.
- (2) If the Concessionaire is:
 - (A.) An individual, the certificate shall be executed by that individual.
 - (B.) Not an individual, the certification shall be executed by:
 - (I) A senior company official in charge of the concession facility involved; or
 - (II) An officer or general partner of the Concessionaire having overall responsibility of the conduct of the Concessionaire's affairs.

(c) For Concessionaire claims of \$100,000 or less the Refuge Manager must, if requested in writing by the Concessionaire, render a decision within 60 days of the request. For Concessionaire-certified claims over \$100,000, the Refuge Manager must, within 60 days, decide the claim or notify the Concessionaire of the date by which the decision will be made.

- (d) The Refuge Manager's decision shall be final.
- (e) At the time a claim by the Concessionaire is submitted to the Refuge Manager, or a claim by the Government is presented to the Concessionaire, the parties by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in b(1) of this clause, and executed in accordance with b(2) of this clause.
- (f) The Government must pay interest on the amount found due and unpaid by the Government from:
- (1) The date the Refuge Manager received the claim (properly certified if required); or
 - (2) The date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, which is applicable to the period during which the Refuge Manager receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- (g) The Concessionaire shall proceed diligently with the performance of the Contract, pending final resolution of any request for relief, claim, appeal, or action arising under the Contract, and comply with any decision of the Refuge Manager.

Section 13. Accident Prevention. The Concessionaire shall comply with all Occupational Safety and Health Administration (OSHA) regulations. In addition to OSHA, the Concessionaire shall adhere to the requirements set forth within the solicitation provision and Contract clauses; and all current local, Federal, and State safety requirements. In the event any safety standard referenced herein conflicts with another, the more stringent shall govern.

The United States is not responsible for any costs associated with losses and/or injuries to Concessionaire employees.

The Concessionaire shall initiate and maintain, throughout the performance of this Contract, an effective safety program that provides adequate systematic, policies, procedures, and practices to protect its employees from and allow them to recognize job-related safety and health hazards. The program shall include provisions from the systematic identification, evaluation, prevention and control of general work site hazards, specific job hazards, and potential hazards that may arise from foreseeable work methods and conditions, as well as providing a competent person to conduct frequent and regular inspections. Each employee must be instructed in the recognition and avoidance of unsafe conditions and the regulations applicable to the work environment.

The Concessionaire shall immediately notify the Refuge Manager of any accident, incident or exposure resulting in a fatality, lost-time injury, or property loss/damage of \$2,500 or more arising out of work performed under this Contract. The Concessionaire shall investigate all work-related accidents/incidents to the extent necessary to determine their cause(s) and furnish the Refuge Manager an investigation of the accident/incident and submit a comprehensive report of findings and recommendations to the Refuge Manager. The Refuge Manager shall consult with the Refuge Manager and Regional Safety Officer in reviewing the investigation report and

corrective action. If the Concessionaire fails or refuses to institute prompt corrective action, as required by this clause, the Refuge Manager may invoke any remedy available to the Government. Any delay or cost resulting from a safety related suspension of work shall be borne by the Concessionaire.

In the event of an accident/incident, the Concessionaire shall be responsible for providing and obtaining appropriate medical and emergency assistance. Except for rescue and emergency measures, the scene of the accident/incident shall not be disturbed, or the operation resumed, until the on-site aspect of the investigation has been completed.

Regional Safety Officer and representatives from Federal, State, and local government agencies shall have the right to examine and conduct an investigation at sites or areas where work under the Contract is being performed. The absence of such investigations shall not relieve the Concessionaire of their safety program responsibilities.

The Refuge Manager and/or the Regional Safety Officer shall have the authority to request immediate correction of unsafe conditions and safety violations. If the Concessionaire is unable to immediately correct the situation, the Concessionaire shall halt work until the situation is corrected. The Refuge Manager or the Regional Safety Office shall immediately notify the Refuge Manager of the situation.

Section 14. Inspections: The Refuge Manager, or his designee, will conduct inspections to ensure that the Concessionaire provides safe, sanitary, and high-quality visitor services and facilities. The evaluations will consider the following: (1) operation and facilities; (2) safety and environmental; and (3) contract compliance.

Inspection responsibilities are allocated to the local Refuge staff to conduct the most accurate and efficient evaluations possible. Local Refuge reviewers, because of their familiarity with the concession operation, are well-suited to conduct the highly detailed operation and facilities evaluation. Non-local reviewers may be used periodically to provide an objective overall evaluation of the Concessionaire, the property, and the operations of the concession.

The operation and facilities evaluation will be conducted semi-annually by staff from the Refuge. Inspections by non-local staff will occur at least once, midterm, for contracts with a term of five (5) years or less period. The safety and environmental evaluations will be conducted by Service “reviewers,” who are staff members with expertise in safety and environmental evaluations, as well as the Illinois Department of Public Health and Franklin-Williamson Bi-County Health Department.

Section 15. Non-Discrimination. The Concessionaire shall not discriminate against any person or person or exclude them from participation in the Concessionaire's operations, programs, or activities on Service property because of age, race, color, religion, sex, sexual orientation, disability, or national origin. Please see Exhibit G for Executive Orders 11246, as amended by 11375.

Section 16. Construction Standards. All facility construction and improvements must be coordinated with the Regional Engineering Office and the Refuge Manager. These improvements must be approved by the Service and meet all applicable laws and regulations. Title to all permanent improvements and/or fixtures erected or otherwise furnished by the Concessionaire shall vest in the United States at the end of the Contract term and will become the property of the Service when completed. No compensation will be given to the Concessionaire for the improvement.

Section 17. Right of Entry by Authorized Officer or Designated Representative.

Concessionaires will cooperate with authorities in the event of emergencies, investigations, and other events. The Refuge Manager or his/her designated representative shall have the right at any time to enter upon any lands within the concession area for any purpose deemed reasonable and necessary for the administration of the area and the services therein. This right shall include periodic and unscheduled inspections. However, since it is the general intent of the inspections to increase the quality of concession operations and to document compliance without disadvantage to the Concessionaire, the Refuge Manager shall make reasonable attempts to include the Concessionaire in the inspection process.

Section 18. General Obligations of the Concessionaire. The Concessionaire shall:

- (a) Comply with all applicable Federal, State, and local laws, ordinances, and regulations set by the Refuge Manager, not limited to the regulations, cited herein, but also as promulgated by the Refuge Manager as part of the Concession inspections.
- (b) Comply with State standards for public health and safety, environmental protection, and operation and maintenance of, or for, such use if those standards are more stringent than applicable Federal standards.
- (c) Comply with air and water quality standards established pursuant to applicable Federal and State laws.
- (d) Minimize damage to scenic, cultural and aesthetic values, and fish and wildlife habitat and otherwise protect the environment.
- (e) Weed and Pest Management. The Concessionaire shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice, and other pests in and around concession facilities assigned to the Concessionaire under this Contract. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Refuge Manager.
- (f) Protect Federal property and economic interests.
- (g) Manage efficiently the public lands which are subject to the use under this Contract or are adjacent to or occupied by the use under this Contract.
- (h) Protect lives and property.

(i) Groundskeeping. Maintain concession facility grounds in a neat and clean manner using materials and techniques to provide an attractive landscape for visitors to use. Trash service pickup is required at least weekly or more often, if necessary, during periods of heavy use. The grounds should be checked for litter at least twice daily.

(j) Facilities. Paint and/or clean buildings and facilities, as needed. Public restrooms should be cleaned at least twice daily and additionally, as needed.

(k) Otherwise protect the public interest.

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

(m) Not use the public lands for any purposes other than those specified in this Contract without the approval of the Refuge Manager.

(n) The Concessionaire agrees that the concession facility is at all times subject to the dominant use and regulation of the Secretary of the Interior in his/her control and conservation of fish and wildlife and the Concessionaire shall not do or suffer to be done by the agents or employees any act intended to interfere with the Secretary's control over the same. The Concessionaire specifically waives any and all claims for damage resulting from activities of the Secretary or his representatives or employees in connection with the program of fish and wildlife conservation. The Secretary reserves the right to enter the area at any time and further right to construct, maintain, and operate roads, trails, paths, bridges, automobile parking space, comfort stations and other sanitary facilities, electric, telephone, water, and area lines provided the same do not damage or interfere with the improvements and facilities operated by the Concessionaire.

(o) The Concessionaire shall have the privilege of ingress and egress through and across the lands of the Refuge adjacent to the concession facility for the purpose of complying with this Contract.

(p) The Service requires the Concessionaire to attend certain meetings and workshops. Additional meetings identified by the Refuge Manager may be required. The Service does not pay for the cost for attendance by the Concessionaire or his/her employees at such meetings. These meetings may be local or may require travel to the Midwest Regional Office in Bloomington, Minnesota. These meetings will not be required more than one time a year.

(q) The Concessionaire will provide Federal employees conducting official business reduced rates for essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Refuge Manager.

Note: The Refuge will be responsible for signage, major road repairs, and water and sewer main issues.

Section 19. Prohibited Uses. The Service is responsible for ensuring the safe operation and maintenance of the land, water, and facilities located at the Crab Orchard Marina. To facilitate this, the following uses are prohibited:

- (a) No gambling devices or games shall be operated on the premises.
- (b) The Concessionaire must refuse services or accommodations to drunk or disorderly persons and any difficulty with such shall be reported to law enforcement officials and/or the Refuge Officer in charge.
- (c) The Concessionaire shall not provide, sell, distribute, manufacture, or allow any substances or activities considered illegal by the State of Illinois on the concession facility.
- (d) The Concessionaire shall not publicize any facility operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of age, race, creed, sex, sexual orientation, disability, color, ancestry, or national origin.
- (e) The Concessionaire shall not discriminate by segregation or other means against any person because of age, race, creed, sex, sexual orientation, disability, color, ancestry, or national origin in furnishing or refusing to furnish such person the use of any such facility.

Section 20. Notices. All notices required by this Contract shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service.

- (a) Notices sent to the Refuge Manager shall be sent to the following mailing address:

U.S. Fish and Wildlife Service
Attn: Refuge Manager
8588 Route 148
Marion, IL 62959

- (b) Notices sent to the Concessionaire shall be sent to the following address:

Crab Orchard Marina
Attn: (name of concessionaire)
762 Playport Road
Carbondale, IL 62901

Section 21. Miscellaneous.

(a) **Condition of Concession Facilities.** The Concessionaire has inspected the concession facilities and any assigned government-owned personal property, is thoroughly acquainted with the condition, and accepts the concession facilities, and any assigned government-owned personal property, "as is."

(b) **Indemnification.** The Concessionaire 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 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 Concessionaire, its employees, agents, or contractors under this Contract. This indemnification shall survive the termination or expiration of this Contract.

(c) **Release of Information.** All information required to be submitted to the Refuge Manager by the Concessionaire pursuant to this Contract is subject to public release by the Refuge Manager to the extent provided by Applicable Laws.

(d) **Negotiating Rights.** The Concessionaire is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this Contract.

(e) **State Taxes.** Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessionaire shall be paid promptly by the Concessionaire.

(f) **Members of Congress Not to Benefit.** No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit that may arise from this Contract, but this restriction shall not be construed to extend to this Contract if made with a corporation or company for its general benefit.

(g) **Entire Agreement.** 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 Refuge Manager and the Concessionaire.

(h) **Third Party Rights.** This Contract does not grant rights or benefits of any nature to any third party.

(i) **Invalidity of Specific Provision.** The invalidity of a specific provision of this Contract shall not affect the validity of the remaining provisions of this Contract.

(j) Waiver. Waiver by the Refuge Manager or the Concessionaire of any breach of any of the terms of this Contract by the other party shall not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the Contract. The subsequent acceptance of any payment of money or other performance required by this Contract shall not be deemed to be a waiver of any preceding breach of any term of the Contract.

Section 22. Environmental Protection Program.

(a) Environmental Management Objectives. The Concessionaire shall meet the following environmental management objectives (hereinafter "Environmental Management Objectives") in the conduct of its operations under this Contract:

- (1) The Concessionaire, including its employees, agents and contractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.
- (2) The Concessionaire shall incorporate Best Management Practices (BMPs) in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this Contract.

(b) Environmental Plan

- (1) The Concessionaire shall develop, document, implement, and comply fully with, to the satisfaction of the Refuge Manager, a comprehensive written Environmental Plan. The initial Plan shall be developed and submitted to the Refuge Manager for approval within sixty days of the effective date of this Contract.
- (2) The Environmental Plan shall account for all activities with potential environmental impacts conducted by the Concessionaire or to which the Concessionaire contributes. Its scope and complexity may vary, based on the type, size and number of Concessionaire activities under this Contract.
- (3) The Environmental Plan shall include, without limitation, the following elements:
 - (i) Policy. The Environmental Plan shall provide a clear statement of the Concessionaire's commitment to the Environmental Management Objectives.
 - (ii) Goals and Targets. The Environmental Plan shall identify environmental goals established by the Concessionaire consistent with all Environmental Management Objectives. The Environmental Plan shall also identify specific targets (i.e., measurable results and schedules) to achieve these goals.
 - (iii) Responsibilities and Accountability. The Environmental Plan shall identify environmental responsibilities for Concessionaire employees and contractors. The Environmental Plan shall include the designation of an environmental program manager. The Environmental Plan shall include procedures for the Concessionaire to

implement the evaluation of employee and contractor performance against these environmental responsibilities.

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

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

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

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

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

(ix) Monitoring, Measurement, and Corrective Action. The Environmental Plan shall describe how the Concessionaire will comply with the Environmental Plan and how the Concessionaire will self-assess its performance under the Environmental Plan, at least annually, in a manner consistent with inspections requirements at Service sites. The self-assessment should ensure the Concessionaire's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The Environmental Plan shall also describe procedures to be taken by the Concessionaire to correct any deficiencies identified by the self-assessment.

(c) Environmental Performance Measurement. The Concessionaire shall be evaluated by the Refuge Manager on its environmental performance under this Contract, including, without limitation, compliance with the approved Environmental Plan, on at least an annual basis.

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

(1) Inventory of Hazardous Substances and Inventory of Waste Streams. The Concessionaire shall submit to the Refuge Manager, at least annually, an inventory of Federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessionaire. The Refuge Manager may

prohibit the use of any OSHA designated hazardous chemical by the Concessionaire in operations under this Contract. The Concessionaire shall obtain the Refuge Manager'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 Concessionaire shall also submit to the Refuge Manager, at least annually, an inventory of all waste streams generated by the Concessionaire under this Contract. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.

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

(3) Notification of Releases. The Concessionaire shall give the Refuge Manager immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area (whether solid, semi-solid, liquid or gaseous in nature), of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) Notice of Violation. The Concessionaire shall give the Refuge Manager 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 Concessionaire, its agents or employees.

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

(e) Corrective Action.

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

of any release, discharge or violation, the Concessionaire shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.

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

(f) Indemnification and Cost Recovery for Concessionaire Environmental Activities.

(1) The Concessionaire shall indemnify the United States in accordance with Section 21. of this Contract from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines, and penalties), and expenses (including, without limitation, attorneys' fees, and experts' fees) arising out of the activities of the Concessionaire, its employees, agents, and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this Contract.

(2) If the Concessionaire does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessionaire, 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 Refuge Manager may, in its sole discretion and after notice to the Concessionaire, take any such action consistent with Applicable Laws as the Refuge Manager 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 Concessionaire shall be liable for and shall pay to the Refuge Manager any costs of the Refuge Manager associated with such action upon demand. Nothing in this section shall preclude the Concessionaire from seeking to recover costs from a responsible third party.

In Witness Whereof, the duly authorized representatives of the parties have executed this Contract as of the _____ day of _____, 2022.

Concessionaire:

U.S. DEPARTMENT OF THE INTERIOR

By: _____
Title: _____
Date: _____

By: _____
Title: Regional Chief, NWRS, Region 3
Date: _____

BY: _____
Title: _____
Date: _____

BY: _____
Title: Regional Director, Region 3
Date: _____

Notary:

BY: _____
Title: Refuge Manager,
Crab Orchard National Wildlife Refuge
Date: _____

BY: _____
Date: _____
Seal:

Notary:

BY: _____
Date: _____
Seal:

Appendix F

Executive Order 11246 - Equal Employment Opportunity

SOURCE: The provisions of Executive Order 11246 of Sept. 24, 1965, appear at 30 FR 12319, 12935, 3 CFR, 1964-1965 Comp., p.339, unless otherwise noted.

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Part I - Nondiscrimination in Government Employment

[Part I superseded by EO 11478 of Aug. 8, 1969, 34 FR 12985, 3 CFR, 1966-1970 Comp., p. 803]

Part II - Nondiscrimination in Employment by Government Contractors and Subcontractors

Subpart A - Duties of the Secretary of Labor

SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

[Sec. 201 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Subpart B - Contractors' Agreements

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

During the performance of this Contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor 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 or national origin. 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 contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

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

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

(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

(7) The contractor 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, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States." [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 203. Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

[Sec. 203 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684; EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 204 (a) The Secretary of Labor may, when the Secretary deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this **Order** in any specific contract, subcontract, or purchase **order**.

(b) The Secretary of Labor may, by rule or regulation, exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier.

(c) Section 202 of this **Order** shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this **Order**.

(d) The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor that are in all respects separate and distinct from activities of the contractor related to the performance of the contract: provided, that such an exemption will not interfere with or impede the effectuation of the purposes of this **Order**: and provided further, that in the absence of such an exemption all facilities shall be covered by the provisions of this **Order**."

[Sec. 204 amended by EO 13279 of Dec. 16, 2002, 67 FR 77141, 3 CFR, 2002 Comp., p. 77141 - 77144]

Subpart C - Powers and Duties of the Secretary of Labor and the Contracting Agencies

SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

[Sec. 205 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 206. The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

[Sec. 206 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 207. The Secretary of Labor shall use his/her best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any

such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

[Sec. 207 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 208. The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(6) shall be made without affording the contractor an opportunity for a hearing.

Subpart D - Sanctions and Penalties

SEC. 209. In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the Contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

[Sec. 209 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

[Sec. 210 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

[Sec. 211 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the Contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

[Sec. 212 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Subpart E - Certificates of Merit

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

Part III - Nondiscrimination Provisions in Federally Assisted Construction Contracts

SEC. 301. Each executive department and agency, which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

[Sec. 301 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 302. "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the

effective date of this Part, and it includes such an applicant after he/she becomes a recipient of such Federal assistance.

SEC. 303. The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

[Sec. 303 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

Part IV - Miscellaneous

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[Sec. 401 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Office of Personnel Management and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

[Sec. 403 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p, 264]

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.