

Oregon Parks and Recreation Commission

April 9, 2014

Agenda Item: 10 a

Action

Topic: Cottonwood Canyon Cooperative Management Agreement

Presented by: MG Devereux

Background:

In July of 2011 the Oregon Parks and Recreation Commission adopted the Comprehensive (Master) Plan for Cottonwood Canyon State Park. At that time the Commission also directed staff to pursue a Recreation Public Purposes (RPP) application to convey approximately 10,000 acres of Bureau of Land Management (BLM) property to OPRD ownership. The goal of this action was to create a seamless recreation and management approach to Cottonwood Canyon and the surrounding public land. During the planning process OPRD staff has been in close contact with BLM staff from the Prineville District office, and BLM staff were aware of the department's intent to pursue the RPP application. Discussions prior to the application submission revealed several issues:

- While OPRD hoped for an outright conveyance of property, because of the Wild and Scenic Designation of the John Day River BLM believed that only a lease would be possible under an RPP
- The cost of environmental review for the RPP was not budgeted by BLM, if OPRD wanted to complete the process within a year of park opening, OPRD would need to at least partially fund the process

Even with these limitations, the OPRD director authorized the work and funding necessary to continue on moving the lease forward. This action was within the directive of the Commission and with the ultimate goal to connect the 8000 acres of OPRD property to the surrounding 10000 acres of BLM property. In mid-2012 the RPP application was submitted. To date a significant amount of work has been done on the environmental analysis, including two public meetings as part of a scoping process to evaluate the lease.

Current Status

In late February BLM staff met with OPRD staff to discuss a challenge to moving forward with the RPP. In a recent review of the application, BLM received a legal opinion that the Wild and Scenic lands were not eligible for lease. This opinion significantly changes the approaches that are available to create the seamless recreation experience.

OPRD could withdraw from the RPP and management discussions with BLM. In effect this would create two separate land management profiles at Cottonwood Canyon. OPRD would manage the three large fee title areas as a main park with two satellite parks. The two satellite areas would have limited access for both staff and visitors. Under this alternative the long term

OPRD development and management costs will be reduced, as most of the trail connections will not be possible. This alternative would however be a deviation from the long term goals of restoration and recreation enhancement expressed in the park master plan. This alternative makes the resources invested in the RPP a sunk cost.

A second alternative would be to pursue a joint management approach by expanding the Cooperative Management Agreement (CMA) that is already in place. This agreement was originally entered into so that interim management objectives could be addressed during the planning process. The CMA does move closer to the concept of seamless management, but does not transfer control of the property. Expansion of the CMA will require additional time and staff effort to work through details such as enforcement strategies, restoration priorities, and priority trail development. This effort will utilize environmental analysis work started under the RPP. This alternative may extend the proposed development timeline, as BLM and OPRD jointly approach future development options.

Under either alternative, there may be some public reaction to the time and effort that both agencies have spent pursuing the RPP.

Staff Recommendation

Staff recommends that the Commission authorize staff to formally withdraw the RPP application and pursue an expanded Cooperative Management Agreement. The vision for Cottonwood Canyon State Park has always been one that uses the landscape scale opportunity to develop a unique opportunity for recreation in Oregon. The inability to complete the RPP does potentially represent a setback to that vision. The vision however, can be achieved through the CMA. This alternative also realizes the resource investment already expended, and provides public assurance that the plan for Cottonwood Canyon State Park has not significantly changed.

Prior Action by Commission: Approval of Cottonwood Canyon State Park Comprehensive Plan and Recreation Public Purposes application July 2011

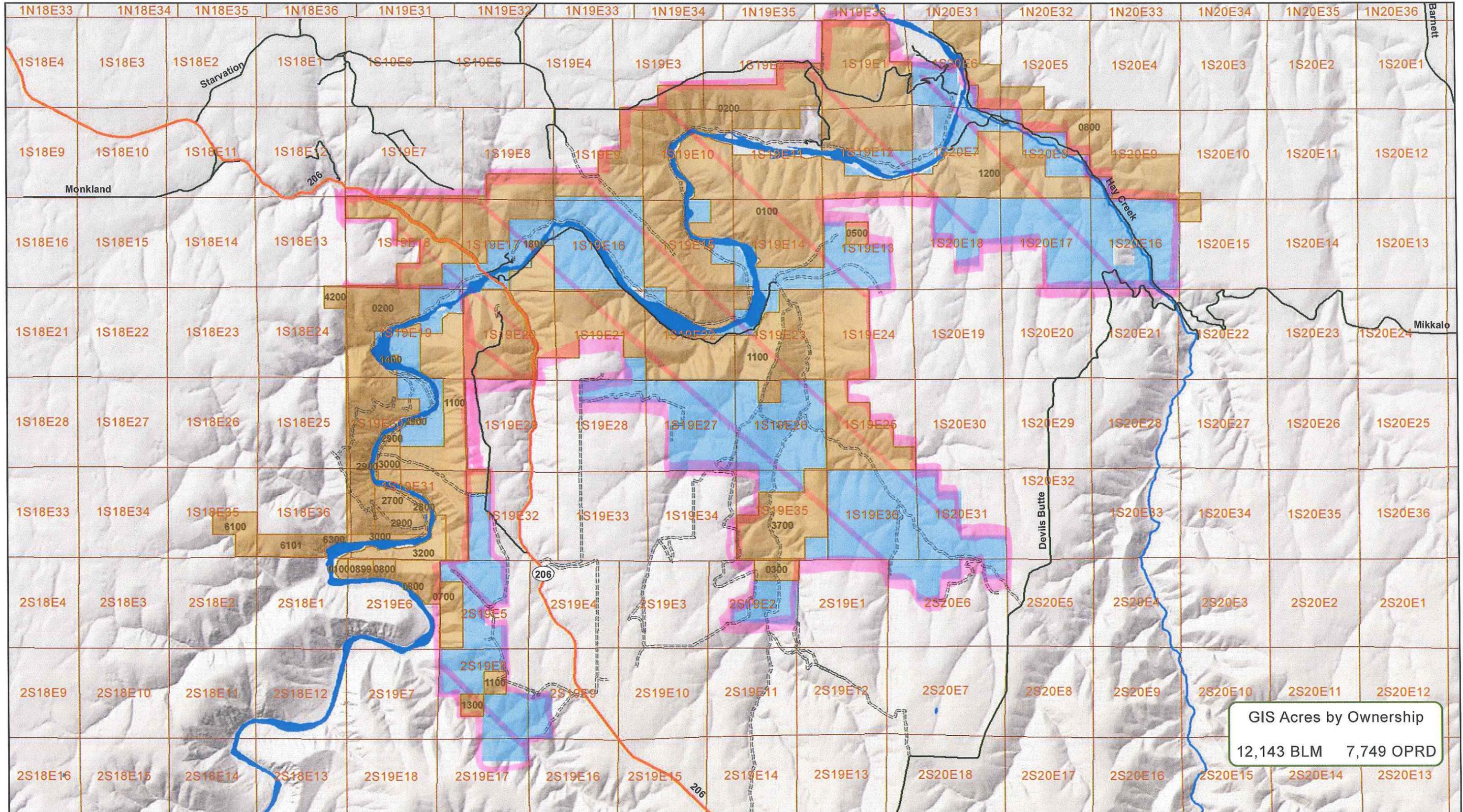
Action Requested: Withdraw of RPP application, approval of expanded Cooperative Management Agreement

Attachments: Property Map Cottonwood Canyon State Park; Cooperative Management Agreement BLM/OPRD

Prepared by: MG Devereux

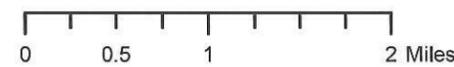
Cottonwood Canyon State Park & Adjacent Federal Ownership

Oregon Parks & Recreation Dept.
725 Summer St. NE, Suite C
Salem OR, 97301



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**COOPERATIVE MANAGEMENT AGREEMENT
BETWEEN THE
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
PRINEVILLE DISTRICT OFFICE
AND THE
OREGON PARKS AND RECREATION DEPARTMENT**

I. Introduction

This Cooperative Management Agreement (CMA) is hereby entered into by the United States Department of the Interior (DOI), Bureau of Land Management (BLM), Prineville District Office, hereinafter referred to as the "BLM," and the Oregon Parks and Recreation Department, hereinafter referred to as "OPRD." Jointly, the BLM and OPRD are hereinafter referred to as the "Parties."

II. Background

This CMA will offer guidance for management of lands cooperatively managed by the Parties in and around Cottonwood Canyon State Park and other OPRD/BLM properties located between Clarno and Hay Creek on the John Day River. This CMA will be used to facilitate management strategies that protect and enhance the John Day Wild and Scenic River and the resources of the John Day River Watershed.

III. Purposes

This CMA is to:

- A. provide the foundation for a cooperative working relationship between the OPRD and the BLM.
- B. provide a seamless recreation opportunity and resource protection on lands in and around Cottonwood Canyon State Park (including properties owned by both parties on both the riverfront and uplands between approximately River Mile 29 and River Mile 48).
- C. demonstrate best practices in land management through a variety of strategies.
- D. leverage public and private resources to maximize resource protection throughout the John Day Basin.
- E. improve education and understanding of the landscape in North Central Oregon.

F. provide opportunities for recognition of traditional uses (regional lifeways) and cultural and ecological corridors of the regional landscape.

G. cooperate in areas of management which may include:

- Wild and Scenic River Management
- Cultural Resource Management and Protection
- Tribal Consultation
- Weed Control
- Fire Protection
- Watershed Restoration
- Recreation Management
- Grazing Management (as defined mutually, vetted through public process, and compliant with Federal regulations and public law)
- Communications
- Initiating and Maintaining Local Government Relationships
- Initiating and Maintaining Partnerships
- Administering Zones of Management and Ownership Boundaries

H. cooperatively identify, for the above areas of management:

- areas of mutual interest and concern
- agency or organizational expertise
- agreed upon best practices
- resources for leveraging funding and support
- communication strategies between parties and relevant stakeholders

IV. Authorities

Nothing in this CMA alters or supersedes the authorities and responsibilities of any of the Parties on any matter under their respective jurisdictions.

A. The authorities of the BLM to enter into this CMA include but are not limited to:

1. Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq.

a. For lands outside the John Day Wild and Scenic River corridor, Section 302 of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1732, requires the Secretary of the Interior to manage public lands under the principles of multiple use and sustained yield. Multiple use includes managing for, among other things, recreation, watershed, wildlife and fish, natural scenic values, and range.

b. Section 307 of FLPMA, 43 U.S.C. 1737, authorizes the Secretary of the Interior to cooperate with others in conducting studies; accept contributions, donations, and volunteer services; and enter into contracts and cooperative agreements involving the management, protection, development, and sale of public lands.

2. The Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271-1287 – 16 U.S.C. § 1282(b)(1) authorizes the Secretary of the Interior to assist, advise, and cooperate with States or their political subdivisions, landowners, private organizations, or individuals to plan, protect, and manage river resources.

3. Watershed Restoration and Enhancement (16 U.S.C. § 1011(a)) – The Wyden Amendment authorizes the BLM to use appropriated funds to enter into and implement cooperative agreements with public and private entities to restore and enhance watersheds, including those outside public lands if appropriate criteria are met. (16 U.S.C. § 1011(a), as modified by the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. 105-277, Div. A, Title I, § 136, 112 Stat. 2681-266 (Oct. 7, 1998))

4. Fire Protection (42 U.S.C. § 1856) – Section 2 of the Reciprocal Fire Protection Agreements Act authorizes the head of any agency, which provides fire protection to property of the United States, to sign cooperative agreements with nearby fire protection agencies for mutual aid and support.

5. Range Improvements (43 U.S.C. § 315c) – Section 4 of the Taylor Grazing Act authorizes the Secretary of the Interior to enter into cooperative agreements or grant permits for the construction of fences, wells, reservoirs, or other improvements necessary to the care and management of livestock that are permitted to graze on public lands managed by the BLM.

6. Challenge Cost-share Authority (31 U.S.C. § 6305 note) – Under this authority, the BLM implements a challenge cost-share program that enables the BLM to provide payments to public and private agencies, organizations, institutions, and individuals who provide cash, materials, or in-kind work in furtherance of a public purpose. Activities of partners under this program typically include resource monitoring, habitat improvement, and enhancement of recreational experiences.

B. The authorities of the OPRD (Department) to enter into this CMA include, but are not limited to:

1. 736-010-0020 (2) General Regulations – The director, by written agreement, may cooperatively exercise jurisdiction and authority over a park area with a county, city, or political subdivision thereof for the purposes of enforcing park rules and applicable state, county, or city laws.

2. 736-070-0070 Coordination with Affected State and Federal Agencies and Special Districts – The Department shall coordinate with state and Federal agencies and special districts on the Department's projects or actions affecting land use as listed in OAR 736-070-0030 and in Section IV of the Department's State Agency Coordination Program and when determined to be necessary. Additionally, the Department will coordinate with state agencies, Federal agencies, and others on land use issues of concern to the Department. Generally, this type of coordination is to provide to state agencies, Federal agencies, and others the

Department's perspective on the compatibility of programs or actions that others have proposed with the policies and programs of the Department. Department contacts for interagency coordination will be determined by the type of program or action and may include the involvement of the Assistant Administrator of Programs and Planning, the Outdoor Recreation Planner, a representative from the affected Department program, and the regional supervisor or coordinator.

V. Roles and Responsibilities

A. BLM responsibilities:

1. BLM resource professionals will provide guidance and support in the form of policy interpretation to OPRD, as appropriate, in furtherance of the BLM's mission to manage the public lands.
2. Provide monitoring and, through separate agreements, administrative support to OPRD, as appropriate, in furtherance of its mission of managing the public lands.
3. Support the development of and implement specific plans of action for cooperative management of activities on public land that can benefit the natural resources and/or the visitor experience.

B. OPRD responsibilities:

1. Provide a program of work that addresses mutual, best management practices for management actions that may have regulatory implications, specifically in the areas of Federal Wild and Scenic Rivers, Endangered Species Act, cultural resource protection, and various Federal and State laws protecting cultural resources. The OPRD will report annually to the John Day River Core Team on the progress and status of Best Management Practice (BMP) actions.
2. Support the mutual management objectives on the ground with the appropriate measures of planning, field work, and administrative oversight required.

C. The Parties' cooperative responsibilities:

1. Development and review of a mutually beneficial program of work that incorporates the conditions and requirements of implementing this CMA.
2. Provide outreach to partners, non-governmental organizations, the public, and stakeholder groups as required.
3. Conduct bi-annual strategy meetings to assess current status, project future needs, and assign appropriate action.

4. Initiate joint planning studies and demonstration projects, as appropriate. However, no party will take an action associated with this CMA that would commit another party to action without prior written consent.

VI. Reporting and Communication

- A. Accomplishments will be reported to the John Day River Core Team.
- B. An annual program of work will be developed mutually between the coordinating parties and presented as an informational briefing to the John Day River Core Team.
- C. This cooperative management effort will be adapted mutually if changes occur in administration, budget, legislation, or ground effects that warrant adaptation.
- D. Effective communication will be ensured through mutual participation on the John Day River Core Team.

VII. Representatives

The Parties shall designate liaisons and/or points of contact at the local level, as appropriate, through individual BLM District and/or Field Managers and the applicable Cooperative Partner.

VIII. Funding

- A. This CMA does not obligate any funds from any Party.
- B. Subject to the availability of funds, each Party agrees to fund its own expenses associated with the implementation of this CMA.
- C. Nothing contained herein shall be construed as obligating any Federal Party to any expenditure or obligation of funds in excess or in advance of appropriations, in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341.

IX. Implementation, Amendment, and Termination

- A. This CMA is effective upon signature by the final approving official indicated below.
- B. This CMA will expire on 12/31/2020, unless terminated, extended, or renewed in writing. The terms or conditions of such extension or renewal will be in writing and require the signature of the BLM State Director and OPRD Director.

C. This CMA may be amended through written agreement of all signatories. Copies of the amendment must be provided to the Parties of this agreement and to the BLM Oregon State Office, Central Files, for inclusion in the official file.

D. This CMA may be terminated prior to the expiration date by providing 30 calendar days written notice of termination to the other Party.

E. During the performance of this CMA, the participants agree to abide by the terms of Executive Order 11246 of September 24, 1965, (as amended) on non-discrimination and will not discriminate against any person because of race, age, color, religion, gender, national origin, or disability.

F. No member of or delegate to Congress shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom, but these provisions shall not be construed to extend to this agreement if made with a corporation for its general benefits.

G. Nothing in this agreement may be interpreted as an official endorsement of any OPRD policy, process, or publication by the United States or the BLM. The OPRD will not take any action or make any statement, issue press releases, and/or publish advertisements which suggest or imply such an endorsement.

H. Issuance of any statements, press releases, advertisements, public service announcements, and similar communications regarding this CMA and activities hereunder will be done jointly between the BLM and OPRD and be approved by both Parties prior to release. Such coordination is to ensure compliance with the provisions of Executive Order 12731 and applicable regulations regarding endorsement, including 5 C.F.R. 2635.702.

X. Records

A. Any records or documents generated as a result of this CMA shall become part of the official record maintained and controlled by the Party that originated creation of the document or that has ownership of the information.

B. Neither Party shall retain, use, sell, or disseminate copies of any data that contains information covered by the Privacy Act of 1974 or that which is generally protected by the Freedom of Information Act.

C. Any requests for release of records (including document in the custody of the BLM) associated with the implementation of this CMA to anyone other than the Parties to this CMA must be determined based on applicable laws, the Freedom of Information Act, and the Privacy Act.

XI. Signatures

All signatories have delegated authority to enter into this CMA. The Parties hereto have executed this CMA on the dates shown below.

Bureau of Land Management:



for Edward W. Shepard
State Director, Oregon/Washington

2/8/12
Date

Oregon Parks and Recreation Department:



Tim Wood
Director

November 18, 2011
Date

Oregon Parks and Recreation Commission

April 9, 2014

Agenda Item: 10b

Action

Topic: Silver Falls concession contract

Presented by: Chris Havel and Scott Nebeker

Concessions are one way state parks provide the extra services people desire. Since 1979, a concession operator – the DeShaw House Company – has operated the conference center and café at Silver Falls State Park, but their contract is expiring.

Companies compete for the right to provide for-profit services at Silver Falls. They must deliver good service, generate revenue to improve the park for public enjoyment, and actively help the Oregon Parks and Recreation Department motivate people to enjoy Oregon’s world-class state park system. Since the old contract for the Silver Falls conference concession is expiring, we requested proposals in October 2013. The request closed in February 2014 and produced three proposals – from DeShaw, Milholland Construction, and Urban Park Concessionaires.

Urban Park Concessionaires scored more than 10% higher than the next closest proposer (see attached Exhibit A). Scores were based on mostly on experience, available financial resources to do the work, proposed compensation back to the state, and alignment with OPRD’s mission. Owing to their extensive experience in California successfully delivering – and expanding – extra services to state and national park visitors, Urban Park Concessionaires has been offered the contract, pending approval of the Commission. The contract produces net revenue to the Oregon Parks and Recreation Department, and the minimum expected revenue over the 10 year life of the contract is \$1.4 million.

Exhibit B contains the negotiated contract. Assuming the commission approves the contract and the Oregon Department of Justice approves the final contract language, Urban Park Concessionaires (soon to start doing business as the Silver Falls Recreation Company) expects to take over basic concession services—a café, meeting rooms and overnight accommodations—May 1. [Exhibit B will be provided prior to the meeting; when the draft language is complete]

The previous contractor has done very good work at the park, and the department thanks them for their service to park visitors.

Prior Action by Commission: None

Action Requested: Approve award of contract to successful proposer, contingent on final approval from the Oregon Department of Justice.

Attachments: Item 10b – Silver Falls concession contract Exhibit A scores
Item 10b – Silver Falls concession contract Exhibit B draft language

Prepared by: Chris Havel

Item 10b - Silver Falls concession contract Exhibit A scores

EVALUATION SUMMARY FOR RFP 6925 (ORPIN OPPORTUNITY OPRD-3081-13)

MANAGEMENT AND OPERATION OF RENTABLE AND CONCESSION FACILITIES AT SILVER FALLS STATE PARK

PROPOSERS

		Milholland Construction 583 Golf View Drive Medford, OR 97504				Urban Park Concessionaires 2150 Main Street, Suite 5 Red Bluff CA 96080				The DeShaw House Company 20022 Silver Falls Hwy. SE Sublimity, OR 97385						
MAX POINTS		EVALUATORS				EVALUATORS				EVALUATORS						
		1	2	3	4	1	2	3	4	1	2	3	4			
3.5 SCORING OF PROPOSALS																
3.5.1 Relevant Experience and References	40	0	29	5	8	40	37	40	40	30	33	40	25			
3.5.2 Alignment with OPRD Mission	10	1	6	5	0	9	8	10	10	7	8	9	5			
3.5.3 Site Utilization and Integration	10	1	6	7	2	10	9	10	10	7	7	8	5			
3.5.4 Business and Marketing Strategies	15	3	9	5	2	15	14	15	15	8	12	12	6			
3.5.5 Financial Resources	25	5	18	10	3	25	23	25	20	25	20	25	7			
	100	10	68	32	15	99	91	100	95	77	80	94	48			
AVERAGE SCORE OF ALL EVALUATORS					31.25				96.25				74.75			
3.5.6 Proposed Compensation	25	22.07% of gross revenue*				25	10.5% of gross revenue				11.9	16.4% of gross revenue*				18.6
Total Scores Section 3.5	125				56.25				108.15				93.35			
3.6 Preliminary Ranking of Proposals					3				1				2			

*Actual proposed compensation for OPRD is not based on a single percentage of gross revenue; however, proposer has confirmed that the listed percentage is intended to be used for evaluation purposes.

OREGON PARKS AND RECREATION DEPARTMENT
CONTRACT FOR MANAGEMENT AND OPERATION OF
RENTABLE AND CONCESSION FACILITIES AT
SILVER FALLS STATE PARK

This Contract (“**Contract**”) is between the State of Oregon, acting by and through its Oregon Parks and Recreation Department (“**OPRD**”), and Urban Park Concessionaires, a California corporation, doing business as Silver Falls Recreation Company (“**Contractor**”). OPRD and Contractor are referred to collectively as “Parties” and individually as “Party.”

OPRD issued a Request for Proposals for the Management and Operation of the Rentable and Concession Facilities at Silver Falls State Park (OPRD Procurement No. 6925 and ORPIN Opportunity No. OPRD-3081-13) seeking proposals from qualified and responsible proposers to provide the Services described in this Contract. Contractor submitted a proposal in response to the Request for Proposals offering to provide the Services pursuant to the terms and conditions set forth herein. OPRD desires to award the Contract to Contractor.

The State Parks and Recreation Commission deems it necessary to enter this contract, for the operation of the Silver Falls State Park facilities. OPRD has authority to enter into this Contract pursuant to ORS 390.121. OPRD has authority to enter into procurement contracts pursuant to ORS 279A.050(6)(d).

NOW, THEREFORE, in consideration of the foregoing recitals and subject to the covenants, terms, and conditions set forth below, the Parties agree as follows:

1. CONTRACT DOCUMENTS

1.1 Documents. This Contract consists of the following documents, which are listed in descending order of precedence, in the event of conflicts or discrepancies: this Contract less all exhibits; Exhibit A (Statement of Services); Exhibit B (Compensation and Reporting Provisions); Exhibit C (Insurance Requirements); Exhibit D (Facilities and Equipment List); and Exhibit E (Map). Exhibits A through E are attached and incorporated by this reference.

1.2 Definitions. The following definitions apply to the Contract and Exhibits.

“**Advanced Deposits**” means monies received by Contractor to reserve Rentable Facilities which is not recorded as revenue until the service is delivered to the customer.

“**Caterings**” means food services provided by the Contractor, inside the Park or at other approved locations, which are separate from food services provided at the Rentable or Concession Facilities specified in this Contract.

“**Concession**” or “**Concession Facility**” means any OPRD-owned facilities or areas, other than Rentable Facilities, identified in Exhibit D that are provided by OPRD to Contractor under the terms of this Contract for the purpose of providing approved food, beverage or other services to the public.

“**Conference Center**” means the OPRD-owned facilities and areas located at Silver Falls State Park to be occupied, maintained or operated by the Contractor for the purpose of providing approved hospitality, lodging, food, and beverage services under the Contract and more specifically described in Exhibit D (Facilities and Equipment List) and shown in Exhibit E (Map).

“Gross Revenue” Gross revenue means the total amount received or realized by, or accruing to Contractor from all sales for cash or credit, of services, accommodations, materials or other merchandise made pursuant to the rights granted under this Contract, including receipts of sub-concessionaires as herein allowed, commissions earned on Contracts or agreements with other persons or companies operating in service to the local operations and receipts earned from electronic media sales, but excluding:

1. Intra-company earnings on account of charges to other departments of the operation (such as laundry);
2. Charges for employee meals, lodgings and transportation
3. Cash discounts on purchases
4. Cash discounts on sales
5. Returned sales and allowances
6. Interest on money loaned or in bank accounts
7. Income from investments or the sale of personal property
8. Income from subsidiary companies for work unrelated to this Contract
9. Sale of property other than purchased in the regular course of business for resale
10. Sales taxes, transient occupancy taxes and excise taxes that are added as separate charges to sales prices and paid to another governmental jurisdiction including gasoline taxes (from sale of fuel), fishing license fees, postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies
11. Reservation Fees collected in accordance with section 2.2.2.B of Exhibit A.

“OAR” means Oregon Administrative Rule;

“ORS” means the Oregon Revised Statutes;

“Park” means Silver Falls State Park, a recreational property with overnight and day use facilities located at 20024 Silver Falls Highway SE, Sublimity, Oregon, and which is owned and managed by the Oregon Parks and Recreation Department.

“Park Manager” or **“PM”** means the OPRD employee who supervises all operations and OPRD employees of Silver Falls State Park and who is the liaison between OPRD and the Contractor. The PM, or person delegated by the PM to act in his capacity, is responsible for overseeing the performance of this Contract and ensuring compliance with the terms of the Contract.

“Point of Sale Items” means all enhanced meals, alcohol sales, gift items, snacks, beverages, miscellaneous sales items and various rental items that generate revenue for the Contractor;

“Registered Guest” means an individual who reserves or rents a Rentable Facility.

“Rentable Facility” means any of the OPRD-owned facilities and areas identified in Exhibit D which are provided by OPRD to the Contractor under the terms of this Contract for the purpose of renting to the public.

“Services” means all work required to be performed by Contractor under this Contract, including those services more specifically described in Exhibit A, Statement of Services.

2. CONTRACT TERM

- 2.1 Initial Term.** This Contract is effective on the date it has been signed by all parties and all required State of Oregon approvals have been obtained. Unless extended or terminated earlier, this Contract terminates on **April 30, 2024**.

- 2.2 Extension Terms.** The Parties may extend the term of this Contract by written amendment in accordance with Section 5 below. The maximum term of the Contract may not exceed **ten** years.

Notwithstanding the foregoing, OPRD reserves the right in its sole discretion to extend this Contract for a maximum period of six months beyond the current term to prevent a lapse in services until a new contract is executed. OPRD shall notify Contractor in writing of the extension prior to the expiration of the current term.

3. STATEMENT OF SERVICES

Contractor shall provide the services as set forth in the attached Exhibit A (Statement of Services). OPRD shall from time to time evaluate and assign additional services as developed in accordance with the Master Plan 2009, including services at the North Falls Day Use Visitor Center and Group camping complex, the Ranches and Equestrian Center and the Central Entrance Visitor Center.

4. COMPENSATION

- 4.1** Contractor shall be compensated for services performed based on the provisions set forth in the attached Exhibit B (Compensation Provisions) subject to the terms of this Contract.

- 4.2** OPRD's payment obligations under this Contract are conditioned upon OPRD's receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OPRD, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract. OPRD represents that it has sufficient appropriations and limitation for the current biennium to continue the operation of the Park and any other OPRD facilities or properties related to this Contract, and to make payments under this Contract. OPRD shall employ good-faith efforts to request and seek funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OPRD to continue the operation of the Park and any other OPRD facilities or properties related to this Contract, and to make payments under this Contract throughout the remaining term of this Contract.

- 4.3** Contractor is not entitled to receive payment under the Contract from any part of Oregon state government other than OPRD. Nothing in the Contract is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

5. AMENDMENTS

- 5.1** This Contract may be amended to the extent allowed by applicable law and Oregon Administrative Rule 137-047-0800.
- 5.2** No amendment to this Contract is effective unless it is in writing signed by the Parties and all required State of Oregon approvals have been obtained.

6. NOTICES

All Notices required under this Contract will be in writing and addressed to the party's appropriate Authorized Representative, as identified below. Mailed Notices are deemed received five (5) days after mailing when properly addressed and deposited prepaid into the U.S. postal service. Faxed Notices are deemed received upon electronic confirmation of successful transmission to the designated fax number. E-mail Notices are deemed received

upon electronic confirmation of receipt. Notices delivered by personal delivery are deemed received when delivered to the Authorized Representative personally or to the Authorized Representative's physical address specified below.

6.1 Contractor's Authorized Representatives

A. Contract Representative:

Mike Han, Northern Operations

Cell: 530-355-4990

E-mail: mhan@calparksco.com

B. Point of Contact for on-site, day-to-day operations:

Mike Han, Acting General Manager

Cell: 530-355-4990

E-mail: mhan@calparksco.com

C. Point of Contact for administration and records:

Michele Silva Lane, Controller

Phone: 530-529-1512

E-mail: msilvalane@calparksco.com

D. Address for all contacts:

2150 Main Street, Suite 5

Red Bluff, CA 96080

Office Phone: 530-529-1512

Fax: 530-529-4511

6.2 OPRD's Authorized Representatives

A. Contract Representative:

Dennis Wiley, District Manager

Willamette District

10991 Wheatland Road NE, Gervais, OR 97026

Office: 503-390-0639 x221

Fax: 503-304-2953

E-mail: dennis.wiley@oregon.gov

B. Point of Contact for on-site, day-to-day operations:

Kevin Strandberg, Park Manager

Silver Falls State Park

20024 Silver Falls Hwy SE, Sublimity, OR 97385

Office: 503-873-8681 x26

Fax: 503-873-8925

E-mail: kevin.strandberg@oregon.gov

7. CONTRACTORS REPRESENTATIONS AND WARRANTIES

7.1 The warranties specified in this Section 7 are in addition to, and not in lieu of, any other warranties provided. All warranties are cumulative and will be interpreted broadly to give OPRD the greatest warranty protection available.

7.2 Contractor represents and warrants that:

- A. Contractor has the authority to enter into and perform in accordance with this Contract, and that this Contract, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms;
- B. Contractor shall perform the Services in a timely, professional and workmanlike manner in accordance with the highest standards applicable to Contractor's industry, trade or profession;
- C. Contractor is and shall be, at all times during the term of this Contract, qualified, professionally competent, and duly licensed, if applicable, to perform the Services; and
- D. Contractor shall ensure that all Goods and Services provided under this Contract comply with all applicable federal and state health and safety standards, including but not limited to those of the Occupational Safety and Health Administration (OSHA), the State Workers' Compensation Division, Oregon OSHA; Oregon Department of Agriculture; Oregon Department of Environmental Quality, and the State Fire Marshall.

8. TIME IS OF THE ESSENCE

Contractor agrees that time is of the essence in relation to its performance of its obligations under this Contract.

9. COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS

- 9.1 Contractor shall comply with all federal, state, and local laws, regulations, and ordinances applicable to this Contract or to Contractor's obligations under this Contract, as those laws, regulations and ordinances may be adopted or amended from time to time. Without limiting the foregoing, Contractor shall:
- A. Comply with all state, federal and local health regulations and all regulations of the State Fire Marshall and the requirements of Title VI of the Civil Rights Act of 1964, and of the Vocational Rehabilitation Act of 1973, P.L. 93-112, 87 Stat 390.
 - B. Not discriminate against any employee or applicant for employment or patron of the premises because of race, creed, color, sex or national origin.
 - C. Meet all ADA requirements for customer services (food service, publications, reservation system, meeting room materials and conference services supplied by the Contractor) and minor facility modifications as part of Contractor's janitorial and maintenance services.
 - D. Comply with all applicable requirements relating to food preparation, packaging and service.
 - E. Comply with all applicable OPRD rules and policies.
 - F. Obtain and maintain during the term of the Contract, at its own expense, all necessary licenses and permits required for the successful performance of the Services.
- 9.2 Contractor shall comply with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230, and 279B.235 (if applicable to this Contract), which are incorporated by reference. Contractor shall, to the maximum extent economically feasible in the performance of this contact, use recycled paper (as defined or ORS 279A.010(1)(gg)), recycled PETE products (as defined or ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

10. RECORDS; RIGHT TO AUDIT; PERSONAL INFORMATION

- 10.1 Records Generally.** Contractor shall retain, maintain, and keep accessible all records relevant to this Contract (“Records”) for a minimum of six (6) years, or a longer period as may be required by applicable law, following Contract termination or full performance, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever ending is later (“Record Retention Period”).
- 10.2 Financial Records.** The Records must include true and complete books and accountings of all financial transactions of the operation of all business activities resulting from this Contract. The Records must be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, reservation bookings, or other documents as necessary to allow OPRD to easily determine all monthly Gross Revenue and annual Gross Revenue. Unless otherwise approved by OPRD, all sales or charges must be recorded by means of cash register or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. Register totals must be recorded at the beginning and end of each business day.
- 10.3 Access to Records.** During the Record Retention Period, Contractor shall permit OPRD, its duly authorized representatives, and the federal government access to the Records at reasonable times and places for purposes of examination and copying.
- 10.4 Right to Audit.** OPRD shall have the right to inspect and audit Contractor’s business activities related to this Contract.
- 10.5 Personal Information**
- A.** Contractor shall not breach or permit breach of the security of any Personal Information, as that term is used in ORS 646A.602(11), that is contained in any document, record, compilation of information or other item to which Contractor receives access, possession, custody or control under this Contract. Contractor shall not disclose, or otherwise permit access of any nature, to any unauthorized person, of any such Personal Information. Contractor shall not use, distribute or dispose of any Personal Information other than expressly permitted by OPRD, required by applicable law, or required by an order of a tribunal having competent jurisdiction.
- B.** Contractor shall report to OPRD, as promptly as possible, any breach of security, use, disclosure, theft, loss, or other unauthorized access of any document, record, compilation of information or other item that contains Personal Information to which the Contractor receives access, possession, custody or control in the performance of this Contract.
- 10.6 Public Records.** OPRD’s obligations under this section 10 shall be subject to the Oregon Public Records Laws, ORS 192.410 through ORS 192.505.

11. INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES, WITHHOLDING

- 11.1** Contractor shall perform all Services as an independent contractor. Although OPRD has the right (i) to determine and modify the delivery schedule for Services to be performed and (ii) to evaluate the quality of the completed performance, OPRD cannot and will not control the means or manner of contractor’s performance, except to the extent that the means and manner in which the Services are to be provided is specifically set forth in the Statement of

Services in Exhibit A. Contractor is responsible for determining the appropriate means and manner of performing any Services required under this Contract. Contractor certifies, represents and warrants that Contractor is an independent contractor of OPRD under all applicable State and federal law. Contractor is not an “officer”, “employee” or “agent” of the State of Oregon or OPRD as those terms are used in ORS 30.265. Neither Party shall make any statements, representations, or commitments of any kind or take any action binding on the other Party except as provided for herein or authorized in writing by the Party to be bound.

11.2 If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Contract represents and warrants: Contractor’s performance of this Contract creates no potential or actual conflict of interest as defined by ORS 244 and that no rules or regulations of Contractor’s employing agency (state or federal) would prohibit Contractor’s performance of this Contract.

11.3 Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract or its possession of OPRD real property including personal and real property taxes assessed by any government entity. OPRD will not withhold from compensation or payments to Contractor any amount(s) to cover Contractor’s federal or state tax obligations unless Contractor is subject to backup withholding. Contractor is not eligible for any social security, unemployment insurance or workers’ compensation benefits from compensation or payments paid to Contractor under this Contract.

12. INDEMNIFICATION; INSURANCE; SECURITY

12.1 General Indemnity. Contractor shall defend, save, hold harmless, and indemnify the State of Oregon, its agencies, officers, directors, agents, and employees from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever (“Claims”) resulting from, arising out of, or related to the acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Contract.

12.2 Defense and Counsel. OPRD shall reasonably cooperate in good faith, at Contractor’s reasonable expense, in the defense of claims, and Contractor shall select counsel reasonably acceptable to the Oregon Attorney General to defend such claims and all costs of such counsel shall be borne by the Contractor. Counsel must accept appointment as a Special Assistant Attorney General under ORS Chapter 180 before such counsel may act in the name of, or represent the interests of, the State of Oregon, its agencies, officers, employees or agents. OPRD may elect to assume its own defense with an attorney of its own choice and its own expense at any time OPRD determines important governmental interests are at stake. OPRD agrees to promptly provide Contractor with notice of any claim that may result in an indemnification obligation hereunder. Subject to the limitations noted above, Contractor may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of OPRD.

12.3 Insurance. Contractor shall obtain the insurance set forth in Exhibit C (Insurance Requirements) prior to performing under this Contract and shall maintain insurance, as required by OPRD, throughout the duration of this Contract.

12.4 Security. Contractor shall obtain security in the amount of **\$100,000** in the form of a certificate of deposit or a performance bond prior to performing under this Contract and shall maintain such security for such duration as is necessary at OPRD's sole discretion.

12.5. Personal Property. Contractor agrees that OPRD will not be responsible for the safekeeping of any personal property belonging to Contractor that is stored or kept on OPRD property. Contractor agrees to not hold OPRD liable for any personal property belonging to Contractor that is destroyed by any fire, flood, earthquake or any other natural disaster. Contractor shall be responsible for obtaining insurance to cover any and all personal property.

13. FORCE MAJEURE

Neither OPRD nor Contractor are responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by an unallocated risk such as fire, riot, acts of God, terrorism, war, or by any other cause not within the control of the party whose performance is interfered with, and, which by the exercise of reasonable diligence, the party is unable to prevent. In the event of any such delay, Contractor's obligations are suspended to the extent of and for the duration of such causes. Contractor shall, however, make all reasonable efforts to remove or eliminate the cause of Contractor's delay or breach and shall, upon the cessation of the cause, continue performing under this Contract with all reasonable diligence. OPRD may terminate this Contract upon written Notice to Contractor after OPRD reasonably determines that the delay or beach will likely prevent successful performance of this Contract.

14. EVENTS OF BREACH

14.1 Breach by Contractor. Contractor breaches this Contract if:

- A.** Contractor institutes or has instituted against it, insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- B.** Contractor (a) no longer holds a license or certificate that is required for Contractor to perform its obligations under this Contract and (b) fails to obtain the license or certificate within thirty (30) days after OPRD delivers Notice of breach to Contractor or a longer period as OPRD may specify in the Notice; or
- C.** Contractor (a) commits a material breach of this Contract by failing to comply with any covenant, warranty, obligation or certification under this Contract, and (b) fails to cure the breach within 14 days after OPRD delivers Notice of breach to Contractor or a longer period as OPRD may specify in the Notice.

14.2 Breach by OPRD. OPRD breaches this Contract if OPRD (a) commits a material breach of this Contract by failing to comply with any covenant, warranty, or obligation under this Contract, and (b) fails to cure the breach within 14 days after Contractor delivers Notice of breach to OPRD or a longer period as Contractor may specify in the Notice.

14.3 Notice of Breach and Opportunity to Cure. OPRD shall notify Contractor upon learning of a breach by Contractor. Upon Notice of breach, Contractor shall have the opportunity to cure the breach (or submit a plan to OPRD with a timeline to cure the breach) within the time defined in Section 14.1 above and thereby remove the effect of Notice.

15. REMEDIES

15.1 OPRD's Remedies. If Contractor is in breach under Section 14, then OPRD may, at its option, pursue any or all of the remedies available under this Contract and at law or in equity, including, but not limited to, the remedies set forth below. These remedies are cumulative to the extent the remedies are not inconsistent, and OPRD may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in breach under Section 14, the rights and obligations of the Parties shall be the same as if this Contract was terminated pursuant to Section 16. Remedies available under this Contract include:

- A.** Termination of this Contract under Section 16;
- B.** Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief;
- C.** Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor in an amount equal to OPRD's setoff right, without penalty; or
- D.** Assessment of liquidated damages as set forth below.
 - (i). Because actual damages to OPRD will be difficult to determine, Contractor agrees to pay OPRD, as liquidated damages and not as a penalty, the amount(s) set forth below:
 - (a) the sum of \$9,000 per month for any month the Rentable Facilities are closed; and
 - (b) the sum of \$1,000 per month for any month the Concession Facilities are closed.
 - (ii). Liquidated damages continue to accrue until the earliest of the following dates:
 - (a) The date OPRD executes a new Contract for the management and operation of the Rentable and Concession Facilities, or
 - (b) The date this Contract would have naturally expired if not terminated due to Contractor default, or
 - (c) A date not to exceed six months past the termination date of this Contract.
 - (iii) The parties hereby agree, in good faith, that the amounts set forth above are reasonable amounts to represent liquidated damages. The amount of liquidated damages shall be pro-rated for any portion of a month in which the Rentable or Concession Facilities are closed under this section.
 - (iv) Liquidated damages under this section shall be cumulative and not mutually exclusive. Liquidated damages under this section shall be in addition to, and not in lieu of, any other damages, liquidated or otherwise, that may be assessed or payable under this Contract. OPRD may, at its option, deduct amounts due OPRD as liquidated damages from any money payable to Contractor, or may bill Contractor for the liquidated damages as a separate item.

15.2 Contractor's Remedies

If OPRD is in breach under Section 14, then Contractor may, at its option, pursue any or all of the remedies available under this Contract and at law or in equity, including, but not limited to, the remedies set forth below:

- A.** Termination of this Contract under Section 16;

- B.** Recovery of money owed to Contractor by OPRD for past work performed, which was satisfactory to OPRD, including Leasehold Surrender interest, as further described in Exhibit A, Section 3.2.5(C).

15.3 Limitation of Liability. Except as provided in Section 12 and Section 15 of this Contract, neither Party is liable to the other for any indirect, consequential, special, incidental, reliance, or punitive damages of any kind or nature whatsoever (including, but not limited to, any lost profits, lost revenues, lost savings, or harm to business), regardless of the foreseeability thereof. Each Party hereby releases the other Party, its subsidiaries and affiliates, and their respective officers, directors, managers, employees, and agents from any such claim.

15.4 Attorneys' Fees. Except as provided in Section 12 of this Contract, neither OPRD nor Contractor is entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to this Contract.

16. TERMINATION

16.1 Expiration of Term. This contract will automatically terminate upon the expiration of the Term provided in Section 2, if not terminated earlier as provided in this Section.

16.2 OPRD's Right to Terminate

- A.** OPRD may, in its sole discretion, terminate this Contract immediately upon written Notice, or at a later date as OPRD may establish in the Notice, upon the occurrence of any of the following events:
- i) OPRD fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow OPRD, in the exercise of its reasonable administrative discretion, to continue the operation of the Park or any other OPRD facilities or properties, or to meet its payment obligations under this Contract; or
 - ii) Federal or state laws, regulations or guidelines are modified or interpreted in a way that the purchase of services by OPRD under this Contract is prohibited.
- B.** OPRD may, in its sole discretion, terminate this Contract immediately upon written Notice, or at a later date as OPRD may establish in the Notice, if Contractor is in breach under Section 14.
- C.** OPRD may, in its sole discretion, terminate this Contract, or any portion of this Contract, immediately upon written Notice, or at a later date as OPRD may establish in the Notice, upon the occurrence of any of the following events:
- i) Any or all of the facilities provided by OPRD under the Contract are destroyed or damaged by any cause, to the point that they are no longer suitable for conducting the activities contemplated by this Contract, and OPRD elects not to reconstruct, restore or replace the facilities; or
 - ii) Any significant failure of utilities, such as, but not limited to sewer, water or electrical power, causes the facilities or areas provided by OPRD under this Contract, to be no longer suitable for conducting the activities contemplated by this Contract, and OPRD elects not to restore such utilities.

- 16.3 Contractor's Right to Terminate.** Contractor may terminate this Contract upon 90 days written Notice, or at a later date as Contractor may establish in the Notice, if OPRD is in breach under section 14.
- 16.4 Cessation of Rights and Activities.** Upon receiving a Notice of termination of the Contract:
- A.** Contractor shall immediately cease all activities under the Contract, unless OPRD expressly directs otherwise in the Notice;
 - B.** Contractor shall deliver to OPRD all documents, information, work-in-progress and other property that are or would be deliverables had the Contract been completed and surrender to anyone OPRD designates, all documents, research or objects or other tangible things needed to complete the Services;
 - C.** Contractor shall provide to OPRD a check for the total amount of Advanced Deposits collected by Contractor for reservation dates occurring after the termination of the Contract along with the list of customers, including contact information, and who submitted the Advanced Deposits; and
 - D.** Any right of Contractor in or to the OPRD facilities and operations described in this Contract, including the facilities, the name(s) of the Conference Center, any Rentable Facilities, or any Concessions Facilities, the web domain if owned by OPRD, the associated business phone number(s), and the contact information of Registered Guests, and any associated marketing and advertising, shall cease.
- 16.5 Return and Removal of Property.** Upon receiving a Notice of termination of the Contract:
- A.** Contractor shall return all OPRD facilities and equipment to OPRD in as good a condition as when received, excepting reasonable wear and tear or damage by the elements as determined by the PM; and
 - B.** Contractor shall remove all personal property belonging to Contractor within 30 days, unless OPRD expressly allows otherwise in the Notice. If Contractor fails to remove its personal property within the required timeframe, it becomes the property of OPRD to dispose of in a manner calculated to bring the greatest benefit to OPRD.

17. GOVERNING LAW; VENUE; CONSENT TO JURISDICTION

- 17.1** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.
- 17.2** Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County.

However, if a Proceeding must be brought in a federal forum, then unless otherwise prohibited by law, it shall be brought and conducted within the United States District Court for the District of Oregon. This section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. Nothing in these provisions shall be construed as a waiver of the State of Oregon's or OPRD's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or a waiver of any defenses to Proceedings or jurisdiction based thereon.

CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THE FORUM IS AN INCONVENIENT FORUM.

18. SUBCONTRACTS; ASSIGNMENT; SUCCESSORS

- 18.1** Contractor shall not enter into any subcontracts for any Services required under this Contract without OPRD's prior written consent. In addition to any other provisions OPRD may require, Contractor shall include in any permitted subcontract under the Contract provisions to ensure that OPRD will receive the benefit of subcontractor's performance as if the subcontractor were the Contractor with respect to Exhibit A (Statement of Services), Exhibit B (Compensation), Exhibit C (Insurance Requirements), and sections 7 (Representations and Warranties), 8 (Time is of the Essence), 10 (Records; Right to Audit; Personal Information), 12 (Indemnification), 17 (Governing Law) and 18 (Subcontracts; Assignments; Successors). OPRD's written consent to any subcontract does not relieve Contractor of any of its duties or obligations under this Contract, and any subcontractor is considered Contractor's agent.
- 18.2** Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without OPRD's prior written consent. OPRD's written consent does not relieve Contractor of any duties or obligations under this Contract, and any assignee, transferee, or delegate is considered Contractor's agent.
- 18.3** The provisions of this Contract are binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, if any.

19. THIRD PARTY BENEFICIARIES

OPRD and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or will be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

20. SEVERABILITY

If for any reason a court of competent jurisdiction finds any provision of this Contract, or portion thereof, to be unenforceable, that provision of the Contract will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the remainder of this Contract will continue in full force and effect.

21. COUNTERPARTS

This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute an original.

22. INTEGRATION AND MERGER

This Contract, together with the Exhibits attached hereto, constitutes the entire agreement between the Parties on the subject matter thereof, and merges all prior and contemporaneous communications with respect to the Services. There are no

understandings, agreements, or representations, oral or written, not specified herein regarding this Contract.

23. WAIVER

No waiver of or consent to terms of this Contract binds either Party unless in writing and signed by OPRD and Contractor, and all necessary approvals have been obtained. Waivers and consents are effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Contract is not a waiver by such Party of that or any other provision.

24. SURVIVAL

In addition to all provisions which by their nature extend beyond Contract termination or full performance, the following provisions remain in effect beyond any Contract termination or full performance: Exhibit B (Compensation Provisions), Exhibit C (Insurance Requirements) and sections 7 (Representations and Warranties), 10 (Records; Right to Audit; Personal Information), 12 (Indemnification), 15 (Remedies) and 17 (Governing Law; Venue; Consent to Jurisdiction).

25. CONTRACTOR'S CERTIFICATIONS

The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

- The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor.
- The undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.
- To the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.
- Contractor is bound by and will comply with all requirements, terms and conditions contained in the Contract.

**Urban Park Concessionaires doing business as Silver Falls Recreation Company
(Contractor)**

By Name/Title

Date

**State of Oregon acting by and through its Oregon Parks and Recreation Department
(OPRD)**

By Name/Title

Date

Approved as to Legal Sufficiency by Matt B. DeVore, Assistant Attorney General, by email dated April 3, 2014.

ATTACHED CONTRACT EXHIBITS:

- Exhibit A (Statement of Services)
- Exhibit B (Compensation and Reporting Provisions)
- Exhibit C (Insurance Requirements)
- Exhibit D (Facilities and Equipment)
- Exhibit E (Map)

FINAL

EXHIBIT A
STATEMENT OF SERVICES

1. GENERAL INFORMATION

1.1 PURPOSE AND SCOPE OF SERVICES

Contractor shall manage and operate the Rentable Facilities and Concession Facilities provided by OPRD and described in Exhibit D for the purpose of providing hospitality and concession services to the public at Silver Falls State Park.

1.2 CONTRACT IMPLEMENTATION

OPRD and Contractor shall work collaboratively to transition Services from the previous provider in a manner that results in minimum disruption of Services to visitors and a seamless experience for those visitors with existing reservations for the facilities. OPRD and Contractor shall make all reasonable efforts to adhere to the following implementation schedule.

May 1, 2014

- Contractor assumes full operation of the Conference Center facilities.
- Contractor honors existing reservations at quoted rates through October 31, 2014
- Contractor coordinates with PM to fill individual lodging vacancies as needed.
- OPRD reviews, and if accepted by OPRD, approves Contractor's new pricing structure, including modified American Plan, for immediate implementation for new summer reservations and all group reservations beyond October 31, 2014.

May 23, 2014 (Memorial Day Weekend)

- Contractor begins full operation of the South Falls Lodge café concession with new menu and pricing as approved by OPRD.
- Contractor begins marketing Conference Center facilities and services under new brand as approved by OPRD.

June 13, 2014

- OPRD places ten picnic tables at South Falls beach concession area per section 3.2.5.B of this Exhibit.
- Contractor begins full operation of South Falls beach concession with new menu and pricing as approved by OPRD.

October 31, 2014

- Contractor and OPRD meet for operations review and debrief.

2. CONTRACTOR'S OBLIGATIONS

2.1 GENERAL OPERATIONS

Contractor shall manage and operate all facilities, Rentable Facilities, and approved concession areas in accordance with the general provisions set forth in this section 2.1.

2.1.1 OPRD Property; Use and Access.

- A. Contractor shall use the OPRD facilities and areas for the purpose of providing approved Services under the Contract.
- B. Contractor shall allow OPRD and its authorized representatives to access the facilities and areas for purposes of: (a) determining or securing Contractor compliance with the terms of this Contract; (b) inspecting, maintaining, repairing, constructing and protecting OPRD property, and (c) carrying out the normal operational functions of the Park. Contractor shall allow OPRD and its authorized representatives to access the facilities and areas pursuant to this section anytime the facilities are open to the public and at other reasonable times.
- C. Contractor shall not attempt to encumber, or allow to be encumbered, or allow any third party to acquire, any interest in the property of OPRD.

2.1.2 Equipment and Supplies. Except for the facilities and equipment to be provided by OPRD as set forth in Exhibit D, Contractor shall supply and maintain all equipment, vehicles, tools, supplies and any other items necessary to provide the required Services under the Contract. Without limiting the foregoing, Contractor is specifically responsible for complying with the following:

- A. **Transportation:** Contractor shall supply its own transportation and fuel.
- B. **Expendable Items; Supplies:** Unless otherwise provided for elsewhere in this Contract, Contractor shall furnish, at Contractor's expense, all necessary expendable items to be used in the normal operation of the facilities. These items include, but are not limited to, washing equipment, detergents and soaps, toilet paper, paper towels, light bulbs, disinfectants, brooms, brushes, mops and other janitorial supplies, dishes, glassware, cutlery, small appliances, kitchen pots, pans and utensils.
- C. **Hazardous Materials.** Contractor shall maintain any required Freon certification and shall properly handle and document any other hazardous material.
- D. **Recycling and Sustainability:** Contractor shall use recyclable products to the maximum extent economically feasible in the performance of the Services. All cleaning agents, soaps, laundry detergent and disinfectants to be used in OPRD-owned equipment or to be used in cleaning OPRD-owned facilities must be biodegradable. Use of Styrofoam products is prohibited. Contractor shall work with park staff to establish a recycling program. Contractor is responsible for depositing recyclables (paper, plastic, cardboard, glass, aluminum, etc.) into containers provided by OPRD.

2.1.3 Staffing Standards. Contractor shall staff the facilities with personnel who are trained and experienced in providing the Services required under this Contract and at staffing levels sufficient to meet customer needs during all times the facilities are open to the public.

- A. **Background Checks.** Contractor shall conduct, at its own expense, criminal records checks on its officers and employees who will perform Services under the Contract or otherwise act on behalf of the Contractor in the Park in a position that requires frequent, intentional interaction with the public. Contractor shall not permit any officer or employee of Contractor to perform Services in such a position under this Contract unless the person meets the following minimum criminal history clearance:

- (i) No convictions for person felonies or person misdemeanors as defined in OAR 213-003-0001, and
- (ii) No parole or probation restrictions that would impair the officer or employee from working with the public.

B. Uniforms; Appearance. Contractor shall provide uniform clothing that is clean, neat in appearance, and clearly identifies the individual as being employed by Contractor. Contractor's employees shall wear uniforms and name tags at all times while performing Services under the Contract.

C. First Aid; Safety. Contractor shall ensure that its officers and employees performing services under this Contract are trained in State Park emergency procedures, as outlined by the PM. Contractor shall designate as first responder(s) at least one officer or employee who is trained in basic Red Cross First Aid and C.P.R. and is on site at the Conference Center at all times the facilities are open to the public. Contractor shall ensure that its designated first responder(s) receive the required training within 30 days of hire, and maintain their current First Aid and C.P.R. card throughout the time they are performing Services under this Contract. Contractor shall ensure that Red Cross First Aid kits are available in each kitchen area, at Contractors expense.

2.1.4 Service Standards

- A.** Contractor shall promote a positive image of OPRD.
- B.** Contractor shall, to the extent practicable, inform customers of Park rules; however, Contractor shall not be responsible for enforcement of Park rules.
- C. Marketing.** Contractor shall submit to PM an annual marketing strategy. Contractor shall provide and maintain a website and any printed material and brochures necessary for successful marketing, administration and operation of The Conference Center and the South Falls Lodge café concession in accordance with the marketing strategy.
- D. Sanitary Conditions.** Contractor shall maintain at all times the area of Contractor's responsibility in a clean, wholesome and sanitary condition in compliance with any and all applicable federal, state, park, local or other laws or regulations and to the satisfaction of the PM. No garbage or other refuse matter, or any substance constituting an unnecessary, unreasonable or unlawful fire hazard, or material hazard to the public health will be permitted to be or remain in the area of Contractor responsibility.

2.1.5 Food and Beverage Standards

- A. Health Standards; Licensing.** Contractor shall maintain the food service facilities and the services and practices performed therein according to standards required by the State Health Division and in such a manner that qualifies the facilities to receive and retain an "Approved" restaurant license classification as defined by the Marion County Health Department throughout the term of this Contract.
- B. Food Quality:** Contractor shall ensure that all food items purchased must be of good quality. Meats must be U.S.D.A. Choice or better. Contractor is encouraged to purchase locally grown produce, meats and organically grown products.

- C. **Catering Services.** Contractor may provide Caterings as approved by the PM. The Parties shall mutually agree upon the approval process and compensation provisions for Caterings.
- D. **Alcohol Service:** Contractor may, upon obtaining appropriate licensing and insurance, serve beer and wine in accordance with their OLCC permit. An additional Special Activities Permit may be required by OPRD for larger events.

2.1.6 Utilities

Contractor shall pay utility costs associated with the Services provided under the Contract as set forth below.

- A. **Propane.** Contractor shall pay for all propane usage at all Facilities identified in Exhibit D.
- B. **Garbage.** Contractor shall pay for all garbage service at all Facilities identified in Exhibit D except Concession Facilities.
- C. **Electricity.** Contractor shall pay for electricity used at all Facilities identified in Exhibit D. Specifically for the South Falls Lodge café concession, electrical usage is tracked by a sub-meter located in the basement of the South Falls Lodge. Contractor agrees to pay for the electricity calculated as follows: Kilowatts used Multiplied by the Cost per Kilowatt = Monthly Surcharge

Contractor shall be responsible for recording and reporting the monthly meter readings from the sub-meter on Contractor's monthly report of operation.

2.1.7 Contractor's Inventory and Pricing

- A. Contractor may sell Goods and Services approved by OPRD in accordance with Section 3.4 of this Exhibit.
- B. Contractor shall submit to the PM, annually on a date to be negotiated by the Parties or as otherwise directed by the PM in writing, the Contractor's proposed inventory and pricing of Goods and Services to be offered for sale by the Contractor at the Rentable and Concession Facilities along with supporting documentation for the items and pricing.
- C. The Contractor shall work with the PM to ensure that the inventory of Goods and Services is appropriate for each location and to establish competitive pricing for all Goods and Services to be provided at each location.
- D. Contractor may submit to the PM, at any time during the term of the Contract, requests to introduce additional products or services along with supporting documentation for the items and pricing.

2.2 RENTABLE FACILITIES

In addition to the general provisions set forth in section 2.1 above, Contractor shall operate the Rentable Facilities in accordance with the provisions set forth in this section 2.2.

- 2.2.1 **Periods of Operation.** Contractor shall operate the Rentable Facilities year-round, excepting the closure periods mutually agreed upon in accordance with section 3.2 of this Exhibit.

Contractor shall be on the site 24 hours per day when an event is in session, or may appoint a representative who is responsible and experienced in all phases of this type of

operation to fulfill this requirement. Contractor's authorized representative or designee must live at the Conference Center complex in the caretaker's house provided by OPRD at no charge to Contractor.

2.2.2. Reservations and Fees.

- A. Contractor shall use a reservation system approved by OPRD to reserve Rentable Facilities under this Contract.
- B. If Contractor uses OPRD's contracted reservation system, Contractor shall collect a non-refundable reservation fee (currently in the amount of \$8.00) for each reservation made by a group or individual. Contractor shall account for the reservation fee in the monthly revenue report during the month the fee is collected.
- C. Contractor shall charge the rates approved by OPRD in accordance with section 3.4 of this Exhibit.
- D. Contractor shall collect directly from Registered Guests all fees, including lodging tax when applicable, for all meals, lodging and day use rentals scheduled by Contractor.
- E. Contractor shall establish reservation fees, deposits, cancellations and refund policies after consultation with OPRD.

2.2.3 Meals. Contractor shall purchase, prepare and serve all meals and beverages scheduled for all overnight groups and all day user groups.. Contractor will make arrangements for special dietary needs as reasonably requested by Registered Guests (i.e., vegetarian meals).

2.2.4 Gift Items and Vending Machines. Contractor may offer retail items for the benefit of Registered Guests at its gift shop. Contractor may sell sundry items including aspirin, antacid, toiletries, Oregon wine gift baskets, etc.

Contractor may install vending equipment, at its own expense, at locations approved by the PM. Such machines can provide non-alcoholic beverages, gum, candy and newspapers. Contractor understands and agrees that under ORS 346.530, the Commission for the Blind has the right to make an offer to OPRD to operate vending facilities at Silver Falls State Park.

2.2.5 Laundry. Contractor shall provide all linens and laundry equipment, including commercial grade wash/dryer units, required for the performance of Services. Contractor shall launder towels, sheets and bedding, pillow cases, bath mats and wash cloths to be issued to Registered Guests. One clean bath towel, bath mat, hand towel and wash cloth will be issued to each Registered Guest daily. Contractor shall develop a system to encourage Registered Guests to launder towels only when needed to reduce water consumption. Contractor shall change sheets and pillow cases every three days and make beds daily when a group is occupying the facility overnight for more than three consecutive nights. Otherwise, Contractor shall supply fresh sheets and pillow cases to each new overnight Registered Guest. Contractor is responsible for replacing existing towels, sheets, bedding, pillowcases, bath mats, wash cloths and other linens as needed. Contractor shall replace, at Contractor's expense, all frayed, torn, thread-bare or permanently stained linens with new linens of a quality at least equal to those replaced when they were new. At the termination of the contract, these items will remain the property of Contractor.

2.2.6 Firewood. Contractor shall maintain a stock of firewood in all areas requiring wood for heating or aesthetic purposes, including but not limited to: the four Smith Creek group

lodges, the Big Leaf dining hall and the Upper Smith Creek Meeting Hall. Contractor will notify OPRD at least 10 days in advance of a need for additional firewood. OPRD will provide firewood at no cost and firewood will be made available for Contractor to pick up at the central wood storage location at the Park.

2.3 CONCESSION OPERATIONS

In addition to the general provisions set forth in section 2.1 above, Contractor shall operate approved Concession areas in accordance with the provisions set forth in this section 2.3.

2.3.1 **Approved Concessions.** OPRD approves the following Concessions for Contractor operation under the Contract:

- A. South Falls Lodge café concession
- B. South Falls beach area concession.

Additional Concession operations may be added during the term of the Contract as mutually agreed upon by the Parties and approved by OPRD.

2.3.2 **Periods of Operation.** Contractor shall operate each Concession in accordance with the operating schedule proposed by Contractor and approved by the PM. Contractor shall post the approved operating schedule at each Concession location.

2.4 MAINTENANCE STANDARDS

Contractor shall perform those activities necessary to maintain all areas and facilities occupied, managed and operated by Contractor in condition and appearance that is acceptable to OPRD, including but not limited to the following:

2.4.1 **General.** Contractor is responsible for the early identification and reporting to the PM of all maintenance requirements including impending and actual failures, malfunctions and hazards of or on all equipment and facilities which are provided by OPRD for Contractor's use, of which Contractor has or should have knowledge or suspicion. Contractor shall be solely responsible for maintaining any equipment and furnishings provided by Contractor.

2.4.2 **Exterior Maintenance.** Contractor shall conduct routine inspections to ensure facilities are in good condition and properly maintained. Contractor shall maintain the general exterior of all facilities, including cleaning of windows. Contractor shall protect OPRD property from rodent damage including, but not limited to gophers, mice and rats. Contractor shall protect all OPRD property from vandalism, theft, power, water or fuel wastage, fire or other loss by securing unoccupied building and storage areas, locking gates, reporting suspicious occurrences and conserving utilities.

2.4.3 **Interior Maintenance.** Contractor shall maintain all facility interiors including, but not limited to, painting of all interior surfaces and finishing of interior wood work. The maintenance schedule for painting, staining and finishing will be mutually established by the Parties. All maintenance work must be of professional quality.

2.4.4 **Cleaning/Janitorial Requirements:** Contractor shall be responsible for routine cleaning and minor repairs. Contractor shall dispose of all trash and recyclables in dumpsters and receptacles provided by OPRD. Contractor shall furnish all necessary janitorial service and

maintenance supplies. Contractor will perform all janitorial duties in the Contractor's areas of responsibility according to the cleaning schedule approved by the PM.

2.4.5 Grounds Maintenance. Contractor shall provide equipment and perform ground maintenance as follows and according to the maintenance schedule approved by the PM:

- A. Irrigation and mowing of all lawns at the Conference Center.
- B. Weeding and pruning of planting beds as needed.
- C. Planting native plants in planting beds for replacement,
- D. Identifying hazard trees for removal by OPRD.
- E. Clean all decks, walkways and repair decks as needed.
- F. Maintain all exterior lights on walkways and facilities in good working order.
- G. Litter removal within the immediate grounds of all Rentable and Concession Facilities.

2.4.6 Swimming Pool.

- A. **Supplies:** Contractor shall, at Contractor's expense, maintain swimming pool cleaning supplies and chemicals as needed.
- B. **Pool Maintenance:** Contractor shall, from approximately June 15 to September 15, be responsible daily for the following: open and close the swimming pool for use by Registered Guests; check pH, chlorine residual, water temperature and add chemicals as needed; keep accurate records of chlorine residual, chemicals used, pH and temperature; clean deck, pool and filter building; back flush filters monthly and vacuum weekly or more often if needed. Contractor is solely responsible for the administration and controlling the use of, and for ensuring safety in and around the swimming pool, including securing pool area during evening and off-season periods.
- C. **Pool Safety.** Contractor shall operate the pool in accordance with all applicable requirements of ORS 448.005 to 448.100 and the rules of the Oregon State Public Health Division that govern public swimming pools, OAR 333-060-0005 to 333-060-0515, as those statutes and rules may be amended from time to time. Contractor shall submit, prior to commencing its operations, a safety plan for pool operations that includes signage, gate control, monitoring of water quality, inspection and replacement of filters, appropriate use and storage of chlorine products, and adherence to OR-OSHA and Oregon State Public Health Division requirements.

2.5 REPAIRS

- A. **Ordinary Repairs.** Ordinary repairs are repairs to floors, walls, ceilings, plumbing, electrical fixtures, septic, and other parts of the facilities and systems that become damaged or worn as a result of Contractor's authorized activities under this Contract. This includes damage by Registered Guests and Concession customers and vandalism to the facility. Contractor is responsible for the cost of ordinary repairs up to **\$500** for each single item. Any questions as to what constitutes a single item shall be determined by OPRD.
- B. **Damage Caused by Contractor.** Notwithstanding OPRD's responsibility for repairs established in section 3.2 of this Exhibit, Contractor is responsible for 100% of the cost to repair any damage that results from the negligent, reckless or intentional actions of Contractor, its officers, employees or agents.

- C. Notification.** Contractor shall notify OPRD before undertaking any repair work for which OPRD may be partially or totally responsible.
- D. Repair Standards.** All repairs, whether paid for by OPRD or Contractor, shall be made in a manner satisfactory to OPRD. Failure by Contractor to make such corrections or repairs will result in OPRD making the necessary corrections or repairs and the full cost therefore, including all labor, materials and equipment charges, will be charged to Contractor.
- E. Repair Records.** Contractor shall keep records documenting all repairs and associated costs. Contractor shall submit repair records to the PM whenever OPRD is asked to participate in payment for needed repairs. Contractor shall make all repair records available to OPRD upon OPRD's request.

2.6 EMERGENCY PROCEDURES; REPORTING

- 2.6.1** Contractor shall immediately contact the PM or designee and emergency services, if appropriate, to report any incidents or situations that jeopardize public health or safety.
- 2.6.2** Contractor shall contact the PM or designee as soon as practical to report any incidents or situations that result in damage to State property or personal property damage or injury.
- 2.6.3** Contractor will promptly report to the PM unusual or suspicious activities, Park rule violations, any operational problems or malfunctions.

2.7 LIMITATIONS ON CONTRACTOR'S ACTIVITIES

- 2.7.1 Restricted Activities.** Contractor shall obtain written approval from OPRD prior to engaging in any of the activities set forth below.
 - A.** Installation, placement or display of signs, banners, advertising materials, notices, billboards, sandwich boards, or other outdoor advertisements on the grounds.
 - B.** Operation or installation of any loudspeaker or mechanical, electrical or electronic sound amplification device on the grounds.
 - C.** Storage of personal property on the grounds that is not related to the performance of Services under the Contract. Personal property includes but is not limited to such items as construction materials, inoperable vehicles, recreation vehicles, boats, etc.
 - D.** Construction of any new facilities (temporary or permanent) or any addition to, enhancement to, changes to or relocation of the existing facilities ("Improvements") unless approved by OPRD in accordance with section 3.2 of this Exhibit. Any approved Improvement must comply with all applicable federal, state and local laws and regulations.
 - E.** Storage of any fuels or flammable materials outside of the designated flammable storage area(s).
 - F.** Storage of bulk fuels such as gas or oil.
 - G.** Entering into agreements with product sponsors
- 2.7.2 Prohibited Activities.** Contractor shall not engage in any of the activities set forth below.
 - A.** Releasing any Hazardous Substance into the air or into or on any land or waters except as authorized by a valid permit issued under applicable laws and regulations.

- B. Installing or operating pinball machines or any gaming devices whether used for gambling, amusement, or other purposes.
- C. Displaying or selling any merchandise considered to be offensive in nature to the general public. OPRD reserves the right in its sole discretion to determine whether an item is offensive.
- D. Accessing or using the designated interpretive resource room within the South Falls Lodge.
- E. Smoking outside of designated area(s).
- F. Consuming alcohol while performing Services under the Contract.
- G. Using illicit drugs or firearms on OPRD property.

3. OPRD'S RIGHTS AND OBLIGATIONS

3.1 GENERAL OPERATIONS

3.1.1 Performance Standards. OPRD shall regularly inspect Contractor's operations to assess performance of Services and compliance with standards. OPRD shall inform Contractor in writing of any deficiencies and provide an expected cure date or timeline for such deficiencies. Failure of OPRD to object to a deficiency or violation by Contractor of any of the terms or conditions of this agreement shall not be deemed a waiver by OPRD of OPRD's right to demand strict performance by Contractor of the provisions of this Contract.

3.1.2 Emergency Procedures. OPRD shall provide a fire prevention, suppression and emergency medical procedures plan, which will be posted by OPRD at the Conference Center.

3.2 OPRD PROPERTY

3.2.1 OPRD-owned Facilities and areas. OPRD shall provide the areas, facilities and equipment described in Exhibit D (Facilities and Equipment List) and Exhibit E (Map) for Contractor's use while providing Services under the Contract. All OPRD-owned facilities and equipment shall remain the property of OPRD during the term of this Contract and after Contract termination.

3.2.2 Inspections. OPRD shall inspect the facilities and areas on a monthly basis and communicate with Contractor, in writing or in person, regarding any issues that require attention or action by Contractor or OPRD.

3.2.3 Ordinary Repairs: OPRD may, at its discretion, provide funding for the cost of ordinary repairs required under section 2.5 that exceed Contractor's cost threshold set forth in that section.

3.2.4 Major Maintenance and Repairs: OPRD may, at its discretion, provide all necessary major repairs to the facilities except those repairs required by Contractor under section 2.5.B. OPRD shall be responsible for major maintenance of the exteriors of the facilities including such items as roofing and painting.

3.2.5 Improvements. OPRD may, at its discretion, approve Improvements requested by Contractor and elect to contribute funding, staff time or other resources toward an approved Improvement. Contractor is not obligated to complete the Improvements listed in this

section, but may make such Improvements, as approved by OPRD. Any approved Improvement will become the property of OPRD upon Contract termination unless otherwise approved by OPRD.

- A.** Contractor will have resources available upon award to accomplish improvements to OPRD rentable facilities as specified in its Proposal Section Capital Investment “Master Plan Items Phase 2” (page 80) phased in as OPRD approval and supplementary capital funding is committed. The committed capital investment resources shall not exceed \$300,000 for projects. All projects require approval of both Contractor and OPRD before Contractor may begin making such Improvements. The projects proposed are specific and include:
- 1) Up to 10 rustic accommodations of which 3 will be historic renovations of existing structures in the lower cabin meadow and 7 will be temporary seasonal structures with canvas wall and top constructed on a wooden deck (also referred to as “glamping” structures). Maximum resources by Contractor is \$120,000.
 - 2) Rehabilitate and bring into service the Restroom/Shower house in the lower cabin meadow. Funds will be used primarily for interior finishing, fixtures, flooring and tile or water membrane for showers. Funds will not be used for roofing, exterior siding, or all below grade water, sewer and electrical connections. Maximum resources by Contractor is \$60,000.
 - 3) Replace the chainlink fencing, install a suitable slab with utilities stubbed (water, sewer, electrical), and place a hard roof over approximately 18’ x 50’ on support pillars. Add a commercial grade spa (above or below grade to be determined) with accessibility lift, boost heat and circulation pumps. Add screened canvas siding for up to two side enclosures for open air massage and personal spa treatment space. Maximum resources by Contractor is \$80,000.
 - 4) Construct free standing gazebo/bandstand structure on location proximate to the Main Dining Lodge utilizing site materials for timber and stone work in a design appropriate to the historic fabric determination for the Smith Creek Conference Center. Maximum resources by Contractor is \$30,000.
- B.** OPRD will construct appropriately designed service deck at the South Falls Picnic Area to allow walk-up service, table seating and leisure space connected to the Contractor provided South Falls Beach mobile concession equipment (truck or trailer). OPRD will fund the deck project through OPRD’s approved mechanism including appropriated capital procurement, its reserve capital account or, if provided by Contractor, as a credit to Fees due during the year in which funds are dispersed. Until deck structure is completed, OPRD agrees to place 10 hex-shaped concrete picnic tables with seating attached and a preformed “umbrella hole” to accommodate proposed needs.
- C.** Improvements made by Contractor, as identified in Section A above, will be erected by Contractor as soon as possible within the 10 year term of the Contract, creating a leasehold surrender interest in the Improvements. The value of the leasehold surrender interest equals the amount of resources spent by Contractor on the individual Improvement and will begin to amortize over a fixed ten-year period beginning on the date that both Contractor and OPRD agree that the improvement is complete and acceptable. On each annual anniversary after completion of the Improvement, OPRD will retire 10% of the Contractor’s leasehold surrender interest. Contractor will retain the leasehold surrender interest percentage as a declining balance. Upon expiration of the term of this Contract (including early termination, but excluding termination due to

Contractor's breach), Contractor will be compensated by OPRD for the remaining leasehold surrender interest in the individual Improvement as a non-interest bearing return of capital as its salvage value of the investment. During the final year of this Contract, OPRD may elect, with at least 6 months written notice, to allow Contractor to retain a prorata portion of the salvage value due at termination from Fees due to OPRD, thereby reducing OPRD's final burden reconciled to the termination date. Upon retiring all leasehold surrender interest, Contractor shall have no further claim of compensation including any fair market or appreciated value then existing.

3.2.6 Annual Maintenance Closure. OPRD reserves the right to close the facilities to perform necessary preventative maintenance and repairs or service upgrades during two separate, one-week work periods, the dates of which will be mutually agreed upon by the Parties.

3.3 SERVICES; SUPPLIES

3.3.1 Utilities. OPRD shall provide, at no cost to Contractor, the utility services set forth below.

A. Water and sewer at all Facilities.

B. Garbage service at all Concession Facilities.

C. OPRD shall provide Contractor access to the electrical sub-meters for purposes of recording and reporting electrical usage in accordance with section 2.1.6 of this Exhibit.

3.3.2 Firewood. OPRD shall provide, at no cost to Contractor, firewood of usable size for use at the Rentable Facilities. OPRD shall make the firewood available for Contractor to pick up from the central wood storage location in the Park.

3.4 APPROVAL OF GOODS, SERVICES AND PRICING

3.4.1 During the Term of the Contract, on a date or date(s) to be determined by OPRD, OPRD will annually review Contractor's list of Goods and Services to be offered for sale and schedule of prices and fees submitted by Contractor in accordance with section 2.1.7 of this Exhibit. The PM will work with the Contractor to ensure that the Goods and Services to be offered to the public are appropriate and consistent with OPRD's goals and objectives for the operation of the facilities. The PM will work with the Contractor to resolve any issues related to the Goods, Services and related pricing. The OPRD District Manager has final approval authority regarding any Goods, Services and pricing issues.

3.4.2 OPRD shall review and respond in a timely manner to any additional requests by Contractor to introduce new products or services.

3.4.3 OPRD reserves the right to disallow sale of any items if OPRD in its sole discretion determines that such items are inappropriate for sale at the Park.

3.4.4 In the event OPRD determines the prices charged for Goods or Services are inconsistent with prevailing standards of trade in the State of Oregon and in the locality, OPRD may provide Notice in writing to Contractor to adjust the price or discontinue the sale of the Goods or Services.

EXHIBIT B

COMPENSATION AND REPORTING PROVISIONS

1. COMPENSATION TO CONTRACTOR

Subject to the terms of the Contract, Contractor may retain as compensation for Services provided under the Contract, all Gross Revenue received during any periods of operation authorized under sections 2.2.1 and 2.3 of Exhibit A less any amounts described in Section 2 below.

2. FEES TO OPRD

The amount due to OPRD is based on a percentage of Gross Revenue as set forth below.

Contractor shall pay to OPRD, for each calendar month during the term of the Contract, an amount equal to 10.5% of the monthly Gross Revenue as defined in Contract section 1.2.

Beginning January 2015, if the total of the monthly amounts paid by Contractor to OPRD in a full calendar year is less than \$140,000, Contractor shall make a final reconciliation payment to OPRD in the amount of \$140,000 minus the total payments for that calendar year.

3. REVENUE REPORTS**3.1 Monthly Revenue Report**

Contractor shall prepare a statement, in form and content approved by OPRD, of Contractor's operations for each month during the term of the Contract.

3.2 Annual Revenue Report

Contractor shall prepare a statement, in form and content approved by OPRD, of Contractor's operations for each calendar year during the term of this Contract.

If OPRD requests, Contractor shall provide a statement prepared by a CPA, certified and licensed by the State of Oregon attesting to the accuracy and completeness of the report.

4. REMITTANCE OF FEES AND REPORTS

Contractor shall submit all fees required in section 2 above and all reports required in section 3 above to OPRD as follows:

- 4.1** The Monthly Revenue Report and associated fee are due within 15 days after the end of the month being reported.
- 4.2** The Annual Revenue Report and reconciliation payment, if applicable, is due within 60 days after the end of the calendar year being reported or within 60 days of termination of this Contract.
- 4.3** All fees and reports must be submitted to:

Oregon Parks and Recreation Department
Attn: Accounts Receivable

725 Summer Street NE, Suite C
Salem, OR 97301

- 4.4** A copy of each report must be submitted to OPRD's Authorized Representative designated in section 6.2 of the Contract.

FINAL

EXHIBIT C
INSURANCE REQUIREMENTS

1. REQUIRED INSURANCE

Contractor shall obtain at Contractor's expense the insurance specified in this section prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to OPRD.

1.1 WORKERS COMPENSATION

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

1.2 COMMERCIAL GENERAL LIABILITY

Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverage that is satisfactory to the State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts:

Per occurrence limit for any single claimant:

Bodily Injury/Death:

From July 1, 2013 to June 30, 2014:\$1,900,000

From July 1, 2014 to June 30, 2015:\$2,000,000

From July 1, 2015 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.273(3).

Property Damage:

From July 1, 2013 to June 30, 2014:\$ 106,700

From July 1, 2014 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.273(3).

Per occurrence limit for multiple claimants:

Bodily Injury/Death:

From July 1, 2013 to June 30, 2014:\$3,800,000

From July 1, 2014 to June 30, 2015:\$4,000,000

From July 1, 2015 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.273(3).

Property Damage:

From July 1, 2013 to June 30, 2014:\$ 533,400

From July 1, 2014 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.273(3).

1.3 LIQUOR LIABILITY

Liquor liability coverage in the form of an endorsement on Commercial General Liability policy or a separate policy with a coverage limit of not less than the following amount.

Per occurrence limit for any single claimant:.....\$2,000,000

Per occurrence limit for multiple claimants:.....\$4,000,000

1.4 AUTOMOBILE LIABILITY

Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for “Commercial General Liability” and “Automobile Liability”).

Contractor shall provide proof of insurance of not less than the following amounts:

Per occurrence limit for any single claimant:Bodily Injury/Death:

From July 1, 2013 to June 30, 2014:\$1,900,000

From July 1, 2014 to June 30, 2015:\$2,000,000

From July 1, 2015 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.273(3).

Property Damage:

From July 1, 2013 to June 30, 2014:\$ 106,700

From July 1, 2014 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.273(3).

Per occurrence limit for multiple claimants:Bodily Injury/Death:

From July 1, 2013 to June 30, 2014:\$3,800,000

From July 1, 2014 to June 30, 2015:\$4,000,000

From July 1, 2015 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.273(3).

Property Damage:

From July 1, 2013 to June 30, 2014:\$ 533,400

From July 1, 2014 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.273(3).

2. EXCESS/UMBRELLA INSURANCE

A combination of primary and excess/umbrella insurance is acceptable to meet the minimum insurance requirements. If Excess/Umbrella coverage is used, the Certificate of Insurance must include a list of the policies that fall under the Excess/Umbrella insurance. For example: "The Excess/Umbrella policy is excess over General Liability, Auto Liability, etc."

3. ADDITIONAL INSURED

The liability insurance required under this Contract shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

4. CERTIFICATE(S) OF INSURANCE

Contractor shall provide to OPRD, at the following address, Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract.

**Oregon Parks and Recreation Department, Procurement Division
725 Summer Street NE Suite C, Salem, OR 97301**

OR FAX (503) 986-0648

The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any. **Contractor shall immediately notify OPRD of any change in insurance coverage.**

EXHIBIT D
FACILITIES AND EQUIPMENT

1. FACILITIES

1.1 Rentable Facilities at the Conference Center

- A. Big Leaf Dining Hall
- B. Smith Creek Meeting Hall
- C. Upper Smith Creek Meeting Hall
- D. Swimming Pool and Restroom
- E. Four Group Lodges (Alder, Blueberry, Cedar, Dogwood)
- F. Two Duplex Cabins (Raccoon, Chickaree)
- G. Eight Rustic Cabins (Upper Smith 1 – 8)

1.2 Other Facilities at the Conference Center for Contractor's Use

- A. Office/Gift Shop
- B. Caretaker's Cottage (residence)
- C. Maintenance Shop with Laundry Area
- D. Storage building
- E. Other non-rentable Facilities as identified by the PM

1.3 Concession Facilities at the South Falls Lodge

- A. Kitchen facilities, freezer area
- B. Indoor dining room
- C. Outdoor patio/seating area
- D. Lobby office at southwest corner of South Falls Lodge

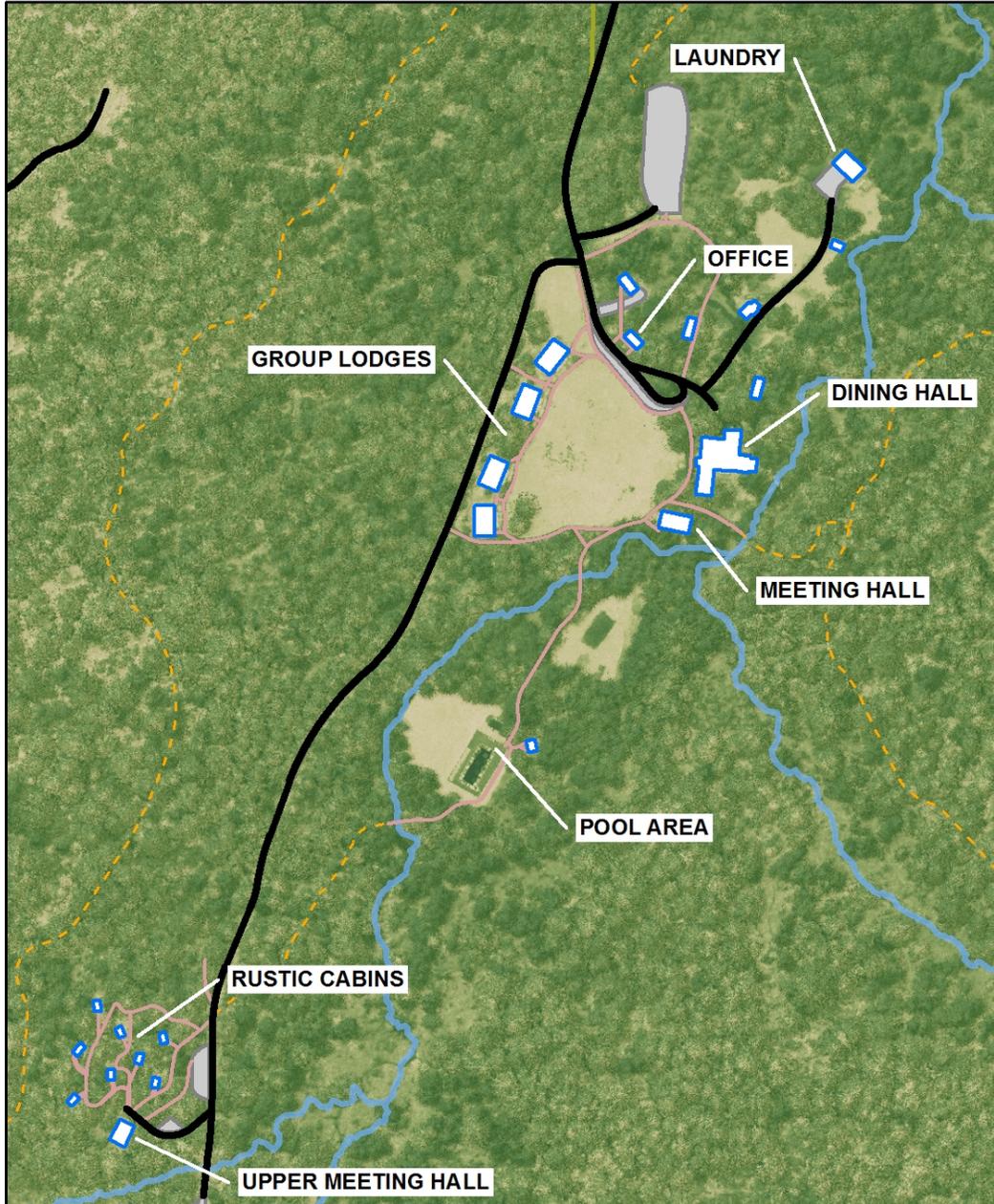
2. EQUIPMENT

The PM will provide Contractor with a detailed listing of specific equipment and assets available for Contractor's use at each facility, by May 1, 2014. On an annual basis, OPRD and Contractor will review the list, update it as needed and mutually endorse it.

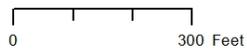
EXHIBIT E
MAPS

Conference Center

Oregon Parks & Recreation Dept.
725 Summer St. NE, Suite C
Salem OR, 97301



This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

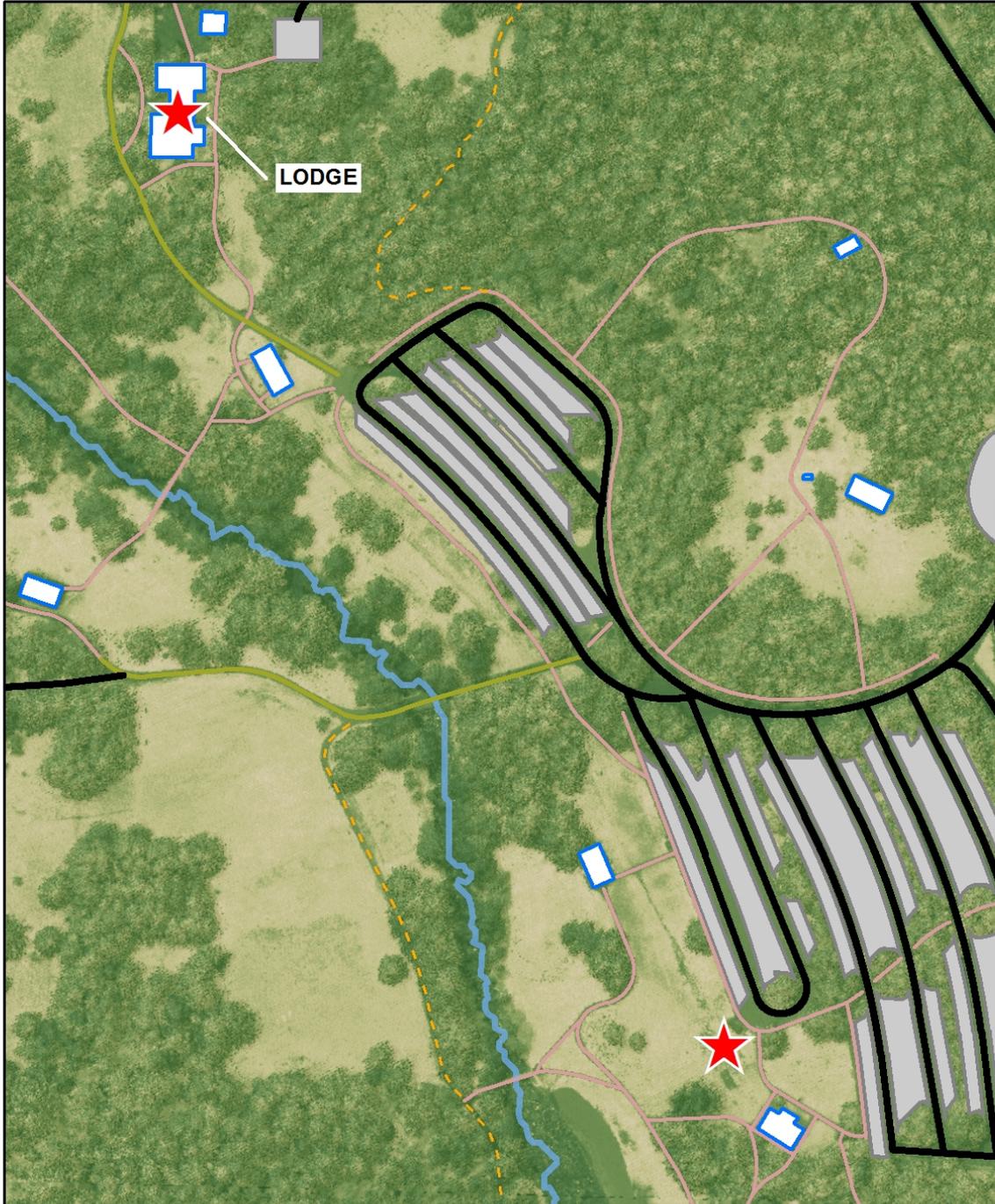


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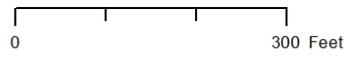


South Falls Lodge/Day Use

Oregon Parks & Recreation Dept.
725 Summer St. NE, Suite C
Salem OR, 97301



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