

**Use Management Agreement
Between
Maricopa County
And
Southwest Wildlife Conservation Center
For the Promotion, Development, Management, Operation, and Maintenance of a Nature and Wildlife
Conservation Center located at McDowell Mountain Regional Park**

#C _____

This Use Management Agreement (hereinafter referred to as “Agreement”) is entered into between Maricopa County, a political subdivision of the State of Arizona (hereinafter referred to as “County”), acting through its Parks and Recreation Department (hereinafter referred to as “MCPRD”) and Southwest Wildlife Conservation Center, an Arizona nonprofit 501 (c) (3) tax-exempt corporation (hereinafter referred to as “Concessionaire”). The County and the Concessionaire are collectively referred to as “Parties” or individually as a “Party.”

RECITALS

WHEREAS, the County is authorized to enter into this Agreement pursuant to A.R.S. §§11-201, 11-251 and 11-933; and

WHEREAS, it is in the public interest for the County to arrange contract operation of a nature and wildlife conservation center at McDowell Mountain Regional Park (“Park”) which comprises a portion of the Maricopa County Regional Parks System; and

WHEREAS, in 1963, the United States of America, acting through its Bureau of Land Management (“BLM”), leased a total of 620 acres to the County for establishment of the Park and in 1964, the County was granted a land patent from the United States of America for the same lands pursuant to the Recreation and Public Purposes Act (“R&PP”) of 1926. Through further land acquisition under the R&PP, the Park has been expanded to encompass 21,099 acres; and

WHEREAS, this Agreement is the result of a notification (“180143-LOI Request for Expressions of Interest for Development, Permitting, Construction, Operation, Management and Maintenance of a Native Wildlife Rescue Conservation and Nature Center”) released by County on August 24, 2017 (“LOI”); and

WHEREAS, Concessionaire submitted a response to the LOI described immediately above and desires to design and develop a new (up to eight thousand square foot) nature center (“Nature Center”) for the Park and Concessionaire’s shared use and, in addition, design and develop the Concessionaire’s conservation and veterinary medicine, wildlife rescue/rehabilitation, and wildlife sanctuary, and related office and administrative space (“Southwest Wildlife Conservation Center Facility” or “SWCC Facility”) on approximately one hundred (100) acres at the Park, collectively, the “Complex, as described in Concessionaire’s LOI response (“LOI Response”); and

WHEREAS, the Parties agree the intent of this Agreement is solely for the development, operation, maintenance, management and future improvement of the Complex and does not convey any interests in land or any property rights; and

WHEREAS, as a result of the construction, development and operation by Concessionaire of the Complex and infrastructure pursuant to this Agreement, County expects expansion of recreational opportunities and programs at the Park, as well as an increase in the number of Park visitors, and therefore increased revenue.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements herein contained and other good and valuable consideration, the sufficiency, and adequacy of which the Parties acknowledge, the County and the Concessionaire agree as follows:

1. **Recitals.** The Recitals, by this reference, shall be incorporated herein and made a part of this Agreement.

2. **Definitions.**
 - A. **Annual Management Plan (AMP):** The AMP is an annual review conducted jointly by the County and Concessionaire to review present, and next year's plan for, development and/or operations of the Complex.
 - B. **Contract Year:** A Contract Year is from January 1st through December 31st, except the first Contract Year of this Agreement, which will be from the Effective Date (as defined in **Section 5(A)** below), through December 31, 2020.
 - C. **Opening Date:** The Opening Date is the date the Complex, or a portion thereof, initially opens to the public.
3. **Incorporation of LOI.** The LOI and the LOI Response are incorporated herein and made part of this Agreement by reference. If there is any conflict between the provisions of the LOI, LOI Response and this Agreement, the provisions of this Agreement shall supersede and control.
4. **Scope of the Complex.**
 - A. The County hereby grants the Concessionaire the right to design and develop the Complex with the improvements illustrated in **Exhibit 1 – Complex Conceptual Site Plan**, which is more fully described in **Exhibit 2 – Complex Activities and Parameters**.
 - B. The Complex shall conform, at a minimum, to each of the descriptions, terms, and conditions set forth in **Exhibits 1 through 11** of this Agreement, all of which Exhibits are attached hereto and incorporated herein by this reference, and shall comply with the requirements of the pertinent land patents, the Park's master plan and any approved amendments thereto.
 - C. The Concessionaire shall not use the Complex for any purposes other than the uses permitted under the terms of this Agreement without the express written consent and approval of the County.
 - D. The Concessionaire shall pay and be responsible for obtaining all applicable permits, environmental compliances, taxes, assessments, fees and other expenses of any nature associated with the construction and use of the Complex, as well as improvement, management, operation and maintenance of the Complex, as more fully described in **Exhibits 1 through 11** attached hereto and made a part hereof.
 - E. At the time of execution of this Agreement, Concessionaire anticipates the cost of Complex construction, including infrastructure, to be approximately ten million dollars (\$10,000,000.00). MCPRD acknowledges Concessionaire's need to raise capital funding for the Complex on a much larger scale than Concessionaire has raised in the past, and that the success of the Complex depends on successful fundraising activities by Concessionaire.
 - F. Concessionaire shall complete the design and construction of the Complex in accordance with the schedule below and **Exhibit 3 – Development of the Complex**:

Phasing Schedule	
Years	Description
1-4	Fundraising and design
1-3	Conceptual drawings, site master planning, design
3-4	Construction drawings and permitting of the nature center and the initial phase of the SWCC Facility (wildlife rescue/rehabilitation, wildlife sanctuary, and education center)
4-5	Construction of permitted facilities
8-9	Design and permitting of conservation medicine facility (may require additional fundraising)
10	Construction of permitted conservation medicine facility
13-14	Design and permitting of intern dormitories
15	Construction of permitted intern dormitories

- 1) If development impediments described in **Exhibit 3 – Development of the Complex** and/or the inability to raise sufficient capital funds cause the Concessionaire to revise their conceptual site plan and/or experience construction delays that will cause the development to extend past the years set forth in the Phasing Schedule in this Section F, the County may, but is not required to, grant a reasonable extension of the construction completion year, not to exceed two (2) years.
- 2) If Concessionaire concludes, in its reasonable judgment, that it will be unable to build all of the improvements proposed on **Exhibit 1 – Complex Conceptual Site Plan** and/or develop and use a significant portion of the land due to development impediments as noted in **Exhibit 3 -**

Development of the Complex, then, in the County's sole discretion, either: (i) the Concessionaire shall immediately cease using the portion of the land that cannot be developed and, within sixty (60) calendar days of Concessionaire's notification to the County that the land cannot be developed as set forth in this Agreement, the Parties shall amend this Agreement to reflect the reduction in the size of the Complex and the revised Complex elements; or (ii) the County may terminate the Agreement in accordance with **Section 6** of this Agreement.

- G. Concessionaire shall not occupy the Complex in any manner that requires an occupancy or partial occupancy permit until an occupancy permit or partial occupancy permit is issued by the jurisdictional authorities, along with the written consent and approval of the County. Concessionaire shall commence operations and maintenance of the Complex, or portions of the Complex approved for occupancy, within six (6) months from receipt of the final occupancy permit and the written consent of the County.
- H. The Concessionaire shall not commence with any modifications to the Complex, permitted plans, or any new construction, development or improvements after Complex completion, without the express prior written consent and approval of the County.

5. **Term and Fees.**

- A. The term of this Agreement shall be twenty five (25) years ("Term") . The Parties recognize that there currently exist governmentally-imposed restrictions on the ability of Concessionaire to perform under this Agreement due to the presence of the Covid-19 pandemic. Therefore, the Term of this Agreement shall not commence unless and until the current public health emergency declared by the State of Arizona, or any extension thereof, has been rescinded, revoked, repealed or otherwise cancelled ("Effective Date").
- B. **Renewal Term.** Upon Concessionaire's request, at the County's sole discretion, this Agreement may be renewed for a period of up two (2) twenty five (25) year terms ("Renewal Term") subject to each of the following conditions:
 - 1) The Concessionaire shall provide written notice of a request to renew not later than one hundred and eighty (180) calendar days prior to the date the Term or Renewal Term, as the case may be, is scheduled to expire; and
 - 2) The Renewal Term shall be upon the same terms and conditions as the final year of the initial Term, or the prior Renewal Term, as the case may be; and
 - 3) The Renewal Term shall be approved by the County; and
 - 4) The Parties hereby agree that the County shall not be liable to the Concessionaire or any of its officers, employees, agents or contractors at law or in equity for not approving a Renewal Term.
- C. There currently exist governmentally imposed restrictions on the ability of Concessionaire to perform under this Agreement. In the event, at any time during the Term similar governmental restrictions are imposed that prevent performance by Concessionaire that remain in place for a period of one hundred eighty (180) days or fewer, then and in such event, the Term and Phasing Schedule (as referenced in Section 4F and Exhibit 3) shall be extended one day for every day such restrictions are in place up to a maximum of one hundred eighty days. In the event any such restrictions are imposed that exceed one hundred eighty (180) days, the Term and Phasing Schedule may only be extended by mutual agreement of the Parties.
- D. **Fees.** Visitors to the Park shall pay the MCPRD published Park entry fees, regardless of which facility they will be visiting. The Park entry fees shall be retained by MCPRD in lieu of the Complex Use Fee, as defined and administered in **Exhibit 8 - Accounting and Fees.**

6. **Termination**

- A. This Agreement may be terminated for cause in whole or in part, at any time, by the County, upon sixty (60) calendar days prior notice to the Concessionaire without any penalty or liability to County. Concessionaire and its employees, agents, officers, directors, members, successors, or assigns hereby waive any and all rights to bring any claim against County or its employees, agents, officers, directors, members, successors or assigns from or relating in any way to County's termination of this Agreement. Representative reasons "for cause" include, but are not limited to: (i) the real property, or a portion thereof, reverts to the agency from which any patent was received; (ii) the real property is no longer useful for recreational purpose; and (iii) new requirements imposed upon the County make a continuation of the Agreement unreasonable.
- B. The Parties acknowledge that this Agreement is subject to cancellation pursuant to the provisions of A.R.S. §38-511.
- C. This Agreement may be terminated without cause with the mutual agreement of the Parties. The Party requesting the termination must submit its request, in writing, a minimum of one hundred eighty (180) calendar days in advance of the requested termination date. Notice of the request for

termination shall be sent to the other Party pursuant to the notice provisions set forth in **Section 16** of this Agreement. If the request for termination is initiated by the Concessionaire, the County may select an interim operator (or may choose to become the interim operator) to act as the Concessionaire until a replacement concessionaire has been selected. Within forty-five (45) calendar days of the date the interim operator commences operations, or sooner if the Parties agree, the Concessionaire shall pro-rate any fees paid for a future service or other fees and shall pay such pro-rated amount to the interim operator. The Concessionaire shall pay to the interim operator all security deposits received by Concessionaire for events or functions be held at the Complex that are scheduled after the agreed-upon termination date of this Agreement.

- D. Should the Concessionaire, with the consent of the County, continue to provide the services described hereinafter the expiration of the Term and/or any Renewal Term, without having entered into a subsequent agreement of like nature and content to this Agreement, this shall be deemed a holdover of this Agreement on a month-to-month basis, not to exceed a period of six (6) months, with all of the terms and conditions of this Agreement to continue in full force and effect. If the Parties have not entered into a new agreement by the end of the six (6) month period, the Concessionaire is required to vacate and may no longer holdover.

7. **Default.**

- A. It shall be a default and breach of this Agreement by Concessionaire if any of the following shall occur at any time during the Term or Renewal Term:

- 1) Failure to make payment of any monetary sums specified to be paid by the Concessionaire under this Agreement no later than the date the same shall become due, and such failure continues for a period of thirty (30) calendar days after notice of such default is given to the Concessionaire.
- 2) Failure to make satisfactory progress, in the County's sole discretion, to meet the mutually agreed-upon annual milestones set forth for each Contract Year.
- 3) Failure to operate and maintain the Complex, as more fully described in **Exhibits 2 through 11**, attached hereto and made a part hereof, pursuant to the terms and conditions of this Agreement, where such failure continues for a period of thirty (30) calendar days after notice of such default is given to the Concessionaire, provided, however, that if such default is of a nature that it cannot reasonably be cured within said thirty (30) calendar days, then the cure period may be extended by the County, in writing, for such longer time as may be reasonably necessary, so long as the Concessionaire commences to cure the failure within said thirty (30) day period, in good faith and with due diligence, and thereafter diligently and continuously pursues the same to completion.
- 4) A breach of Concessionaire's representations and warranties set forth in **Section 14** of this Agreement.
- 5) Institution or filing by or against the Concessionaire of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Concessionaire's debts that are not dismissed within ninety (90) calendar days from the date of such filing or institution.
- 6) Appointment of a receiver, guardian, conservator, trustee or assignee, or any other similar officer or person to take charge of all of the property or businesses of the Concessionaire and such appointment is not vacated within ninety (90) calendar days after the date of appointment.
- 7) Any general assignment for the benefit of creditors by Concessionaire.
- 8) All of the Concessionaire's assets located at the Complex or interest in the Complex being subjected to attachment, execution or other judicial seizure.
- 9) Insolvency of the Concessionaire.
- 10) Concessionaire's dissolution or ceasing to do business.

- B. Upon determination by the County that the Concessionaire is in default, the County shall be entitled, at its sole discretion and selection, to exercise the following remedies:

- 1) Terminate this Agreement, without penalty or liability to County, by giving the Concessionaire notice of termination. Upon the issuance of the notice of termination, all of the Concessionaire's rights in the Complex and under this Agreement shall terminate immediately. Within the notice of termination, the County, in its sole discretion, shall direct the Concessionaire to: (i) surrender and vacate the Complex, and the County may enter and take possession of the Complex and eject all parties in possession, or eject some and not others, or eject none; and/or (ii) at Concessionaire's sole cost and expense, demolish and/or remove all, or a portion of, improvements on the Complex and return the balance property, or a portion of the property, to a condition as similar as possible to the condition of the property at the time of execution of this Agreement; and/or (iii) remove all wildlife, personal property, trade fixtures, equipment, and

inventory owned or held by Concessionaire, and repair any damage caused to the Complex as a result of the removal of built-in fixtures; and/or (iv) remove all garbage and debris, to include inoperable or obsolete equipment, from the Complex, all by the date(s) specified by the County.

- a) Termination under this Section shall not relieve the Concessionaire of the obligation for payment of any sums then due to the County or from any claim for damages previously accrued or then accruing against the Concessionaire. In addition, if the Concessionaire fails to remove all personal property, wildlife and garbage/debris from the Complex in the timeframes specified by the County, Concessionaire shall pay all costs incurred by the County to remove and dispose of such property, or re-home wildlife, in any manner it may deem desirable, within thirty (30) calendar days of receipt of invoice from the County.
- b) If the Agreement is terminated for default, the Concessionaire shall, and hereby covenants to, peaceably and quietly surrender the Complex to the County and to execute and deliver to the County such instruments as shall be required by the County, to properly evidence termination of the Concessionaire's rights hereunder, its interest herein, and to certify that the Concessionaire has not encumbered the Complex.

2) The County may exercise any other remedy available at law or in equity.

- C. It shall be a default and breach of this Agreement by County if the County fails to perform any of its material obligations hereunder and such failure to perform continues for a period of thirty (30) calendar days after written notice thereof from the Concessionaire to the County (unless such failure cannot reasonably be cured within thirty (30) calendar days, in which event the County shall have commenced curing said breach or failure within said thirty (30) calendar day period and shall diligently pursue cure of the failure or breach to completion to avoid being in default). Should the County continue to be in default without the pursuit of a cure, the Concessionaire may terminate this Agreement with a ninety (90) calendar day written notice to the County.

8. **Surrender.**

Upon the expiration date or termination date for reasons other than the default of the Concessionaire, the Concessionaire shall, unless otherwise approved by the County, within sixty (60) calendar days from the expiration date or termination date of this Agreement, at the County's sole discretion, conduct three (3) or more of the following tasks:

- A. Execute a Certificate of Acknowledgement that the Concessionaire has vacated and relinquished all possessory rights to the Complex to the County as well as represent and warrant that the Concessionaire has not encumbered the Complex; and/or
- B. Demolish and/or remove all, or a portion of, the improvements on the Complex as specified by the County and return the property to a condition as similar as possible to the condition of the property at the time of execution of this Agreement; and
- C. Remove wildlife, personal property, trade fixtures, equipment, and inventory owned or held by Concessionaire from the Complex and repair any damage caused to the Complex as a result of the removal of built-in fixtures. Any such items not removed within the specified timeframe shall be deemed to be abandoned by Concessionaire. Concessionaire shall pay all costs incurred by the County to remove and dispose of such property, or re-home wildlife, in any manner it may deem desirable, within thirty (30) calendar days of receipt of invoice from the County; and
- D. Remove all garbage and debris, to include inoperable or obsolete equipment, from the Complex. If Concessionaire fails to remove all garbage and debris (including inoperable or obsolete equipment) within such timeframe, Concessionaire shall pay all costs incurred by the County to remove and dispose of said items within thirty (30) calendar days of receipt of invoice from the County.

9. **Dispute Resolution.**

- A. Any dispute that is not resolved by the Parties arising out of or relating to this Agreement shall be submitted to mandatory, binding arbitration. Notice of the dispute must be in writing, made pursuant to **Section 16** of this Agreement, and shall provide a summary of the issue of the dispute. The Parties shall confer within thirty (30) calendar days of the Party's receipt of such notice and must, within ten (10) calendar days after conferring, agree on a mutually acceptable arbitrator. If the Parties cannot agree, each Party shall name one (1) arbitrator, who shall together select a third arbitrator. Any decisions made shall be made by a majority of the panel of three (3) arbitrators. Such arbitration shall be binding and subject to enforcement action.
- B. The Party not prevailing in the arbitration shall pay to the prevailing Party a sum which the arbitrator or panel determines is reasonable for attorneys' fees and costs.

10. **Financing.**

- A. The Concessionaire may not mortgage or encumber any improvements that are permanently affixed to the land or any lands upon which the Complex lies. Improvements that can be disassembled and

removed without damage to the underlying real estate are not considered permanently affixed (e.g. above ground water treatment). Thus, equipment financing or loans secured by charitable pledges are permitted so long as no lien attaches to the real property.

- B. The Concessionaire or any of its contractors or subcontractors shall not have any authority to create any lien against the County for labor, materials, or services furnished by the Concessionaire, its contractors or subcontractors. If, because of any act or omission (or alleged act or omission) of the Concessionaire, any mechanic's, materialman's or other lien, charge or order for the payment of money shall be filed or recorded against the County (whether or not such lien, charge or order is valid or enforceable as such), the Concessionaire shall immediately notify the County. The Concessionaire shall, at its own expense, cause the same to be canceled and discharged of record within thirty (30) calendar days after the Concessionaire received notice of the filing thereof, or the Concessionaire may, within said period of time, furnish to the County a bond satisfactory to the County against said lien, charge or order, in which case the Concessionaire will have the right in good faith to contest the validity or amount thereof, as provided by law.

11. Indemnification and Insurance.

- A. Concessionaire, for itself, its agents, officers, directors, partners, vendors, contractors, employees, assignees, sub-concessionaires, licensees, invitees, or any and all other persons claiming rights through the Concessionaire, shall, to the fullest extent permissible by law, indemnify, defend and hold harmless the County, including agents, officers, directors, and employees thereof, from and against any and all loss or expense of any nature whatsoever, except only negligence or fault by the County, incurred as a result of any claim or suit of any nature whatsoever, which arises in any way, either by neglect, willfulness, action, omission to act or other failure of any nature whatsoever pursuant to this Agreement. Concessionaire shall be liable and responsible for, including but not limited to, reasonable attorneys' fees, court costs, awards and other expenses relating to the defense against claims or litigation, incurred by the County. This clause shall, in all instances, be interpreted to find that the obligation to defend, indemnify, and hold harmless in such circumstances does fall to Concessionaire.
- B. The Concessionaire shall secure and maintain the following insurance coverage within five (5) business days of the Effective Date:
 - 1) Public liability insurance, including bodily injury/property damage, auto liability, products and completed operations liability, liquor liability, and contractual liability, providing limits of no less than two million dollars (\$2,000,000) per claim and four million dollars (\$4,000,000) aggregate limits, or evidence of self-insurance acceptable to the County, for injuries or damage received or sustained by any person(s), or property at the Complex.
 - 2) Waiver of Subrogation/recovery against the County shall be included in all policies.
 - 3) Environmental cleanup and pesticide/herbicide coverage shall be included unless documentation provided by the Concessionaire that this is not available or feasible.
 - 4) Worker's Compensation, if applicable, with limits not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.
 - 5) The County reserves the right to revise the minimum required limits of insurance during the term of this Agreement provided the changes are consistent with market conditions, prudent business judgment, and industry standards.
- C. The County shall be named as "additional insured" under all policies of insurance. Copies of all insurance policies or certificates thereof shall be made available to the County upon request. Copies of the Certificate of Insurance shall be furnished annually to the County. The County shall be given thirty (30) calendar days advance written notice of cancellation of a policy, non-renewal, or change in coverage or limits.
- D. Property insurance shall be in an amount sufficient to rebuild the improvements in case of a casualty loss, less only a commercially reasonable deductible amount. In the event that Concessionaire files an insurance claim for the SWCC Facility, Concessionaire shall notify the MCPRD's Contract Administrator immediately upon any property insurance claim submission. County shall be an "additional payee" pursuant to such policy. The Concessionaire will be entitled to receive and shall be obligated to apply insurance proceeds to repair or reconstruct damaged improvements. Insurance proceeds shall be disbursed pursuant to customary construction lending practices in the Phoenix, Arizona area, as such repair and restoration are being made and subject to such procedures as the County may reasonably require monitoring the application of such proceeds.
 - A. SWCC Facility. The Concessionaire assumes all risk of loss and shall be responsible for any and all losses to the SWCC Facility and all improvements, acquired or developed within the SWCC Facility during the Term (and any Renewal Term) of this Agreement. The loss to the

SWCC Facility may result from, but is not limited to, theft, vandalism, fire and any fire-fighting activities (including prescribed burns), floods, droughts, landslides, rising waters, winds, falling limbs or trees and acts of God. If, prior to commencement of, or during the Term or Renewal Term of this Agreement, any property, real or personal, under the control of the Concessionaire or any buildings or improvements or such fixtures or equipment on, below, above, or appurtenant to the Complex at the commencement of the Term or Renewal Term or thereafter erected, installed or placed thereon shall be destroyed or damaged in whole or in part by any cause except condemnation, the Concessionaire will notify the County immediately. The Concessionaire will immediately secure the area to prevent injury, vandalism or further damage to persons, improvements, and contents thereof, and direct its insurer to make any payment to the appropriate Party. If the destroyed or damaged buildings, improvements, fixtures or equipment under the control of the Concessionaire are capable of restoration, in the reasonable judgment of the County and Concessionaire, this Agreement shall continue in full force and effect. The Concessionaire will, as soon after the damage as reasonably possible, apply for all required permits required to restore damaged improvements, and complete restorations or other agreed-upon improvements within a date mutually agreeable to the Parties. Should such damage or destruction occur within thirty-six (36) months of this Agreement's scheduled Term expiration date or Renewal Term expiration date, or if the damage destroys in excess of fifty percent (50%) of the value of the SWCC Facility on the date of loss (as determined by agreement of the parties, or if they are unable to agree within 30 days, then by an independent appraiser, the cost of which shall be shared equally by the parties), then the Concessionaire or the County shall have the option to terminate this Agreement. If this Agreement is terminated pursuant to this provision, any insurance proceeds shall be applied first to remove any damaged or destroyed improvements and second to pay any loans to the Concessionaire secured by its interest in this Agreement or any property covered hereby. The balance of the proceeds shall be divided by the County and the Concessionaire in equal proportions.

- B. Nature Center. The County and Concessionaire shall share all risk of loss and be jointly responsible for any losses to the Nature Center and all improvements acquired or developed within the Nature Center after the Effective Date. Concessionaire and County shall each provide casualty insurance for the Nature Center. County casualty coverage for the Nature Center is provided through Self-Insurance. A loss to the Nature Center may result from, but is not limited to, theft, vandalism, fire and any fire-fighting activities (including prescribed burns), floods, droughts, landslides, rising waters, winds, falling limbs or trees and acts of God. If, prior to commencement of, or during the Term or Renewal Term of this Agreement, any property, real or personal, under the control of the Parties or any buildings or improvements or such fixtures or equipment on, below, above, or appurtenant to the Nature Center at the commencement of the Term or Renewal Term or thereafter erected, installed or placed thereon shall be destroyed or damaged in whole or in part by any cause except condemnation, the observing Party shall notify the other Party immediately. The Parties will immediately secure the area to prevent injury, vandalism or further damage to persons, improvements, and contents thereof, and direct their insurers to make any payment to the appropriate Party or Parties. If the destroyed or damaged buildings, improvements, fixtures or equipment under the control of the Parties are capable of restoration, in the reasonable judgment of the County and Concessionaire, this Agreement shall continue in full force and effect. The County will, as soon after the damage as reasonably possible, apply for all required permits required to restore damaged improvements, and complete restorations within a date mutually agreeable to the Parties. Should such damage or destruction occur within thirty-six (36) months of this Agreement's scheduled Term date or Renewal Term, or if the damage destroys in excess of fifty percent (50%) of the value of the Nature Center on the date of loss (as determined by agreement of the parties, or if they are unable to agree within 30 days, then by an independent appraiser, the cost of which shall be shared equally by the parties), then the Concessionaire or the County shall have the option to terminate this Agreement in whole or in part. If this Agreement is terminated pursuant to this provision, any insurance proceeds shall be applied first to remove any damaged or destroyed improvements.

12. **Assignment.**

- A. The Concessionaire shall not assign, sell, transfer or subcontract, in whole or in part, the Concessionaire's rights or interests in the Agreement without the prior written approval of the County.

- B. The Concessionaire shall provide, at least ninety (90) calendar days' prior to the date of proposed transfer, written notice of a sale, transfer or assignment of this Agreement so any requested analysis, study, and subsequent County approval can be completed prior to the effective date of the sale or transfer.
 - 1) The Concessionaire shall deposit with the County a minimum nonrefundable administrative transfer fee ("Administrative Fee") of five thousand dollars (\$5,000.00) upon notification of a potential sale, transfer or assignment to reimburse County for administrative costs associated with the transaction.
 - 2) In connection with a full sale, transfer or assignment to a designated assignee, the Concessionaire shall provide the County, for review, any information requested by the County for purposes of transfer, sale or assignment of this type of business operation including, but not limited to, the following:
 - a) Business and management capability of the designated assignee; and
 - b) A financial analysis of the Complex operation, including an appraisal of real property improvements and/or furniture, fixtures and equipment that are included in the transaction, be conducted before approving a sale, transfer, or assignment; and
 - c) A background check including financial profile and criminal history of the key individuals of the designated assignee.
 - C. The Concessionaire, upon no fewer than ninety (90) calendar days' prior written notice to the County, may partner or subcontract with other entity(ies) to operate units of the Complex, provided that, all gross revenues from partners, subcontractors, vendors and events shall be included in the Annual Financial Statement as defined in **Exhibit 8 - Accounting and Fees**. Concessionaire is responsible for all actions, liabilities, and damages of partners, subcontractors, and other entity(ies).
13. **Compliance Requirements.**
- A. The Concessionaire, for itself and all subcontractors, if any, shall not discriminate against any employee or applicant for employment because of race, age, handicap, disability, color, religion, sex, sexual orientation or national origin. The Concessionaire shall comply with Title VI and Title VII of the Federal Civil Rights Act; the Federal Rehabilitation Act; the Age Discrimination in Employment Act; the Americans with Disabilities Act of 1990 ("ADA"), except that Concessionaire and County shall be jointly responsible for the Nature Center building's compliance with the ADA; A.R.S. §41-1461 et. seq.; A.R.S. §41-1492 et. seq.; 29 U.S.C. §721 (Section 504); and Arizona Executive Order 75-5 which mandates that all persons shall have equal access to employment opportunities.
 - B. The Concessionaire, for itself and all subcontractors, if any, agrees to comply with the Immigration Reform and Control Act (I.R.C.A.) and Arizona statutes, in the performance of this Agreement and, upon request, permit the County to inspect personnel records to verify such compliance.
 - C. The Concessionaire, for itself and all subcontractors, if any, shall comply, and warrants full compliance with, all federal immigration laws and regulations that relate to their employees, and their compliance with A.R.S. §23-214 et seq. A breach of this warranty shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement. The County retains the right to inspect the papers of Concessionaire or sub-concessionaire employee(s) who work on the Complex to ensure that the Concessionaire and sub-concessionaire are complying with the warranty provided above. The Concessionaire shall make all papers and employment records of the said employee(s) available during normal working hours in order to facilitate such an inspection. Nothing herein shall make any Concessionaire or sub-concessionaire an agent or employee of the County.
 - D. The Concessionaire for itself and all subcontractors, if any, warrants that it complies with verification of employment eligibility and E-Verify Program.
 - E. If Concessionaire engages in for-profit activity and has ten (10) or more employees, and if this Agreement has a value of one hundred thousand dollars (\$100,000) or more, Concessionaire certifies it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
14. **Concessionaire's Representations.** Concessionaire represents and warrants to the County that the following statements are true and correct:
- A. No person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingency fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Concessionaire for the purpose of securing business. For breach or violation of this warranty,

County shall have the right to recover the full amount of such commission, percentage, brokerage or contingency fee.

- B. This Agreement does not to constitute, create, give rise to, or otherwise recognize a joint venture agreement or partnership or formal business organization of any kind between the County and the Concessionaire and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement.
- C. No person(s) supplied by the Concessionaire in the performance of obligations under the Agreement is/are considered to be the County's employees, and no rights of the County's civil service, retirement, or personnel rules apply to such person(s).
- D. The Concessionaire has sole responsibility for determining employee eligibility, all salaries, wages, insurance of any type, bonuses, retirement withholdings, worker's compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning persons supplied by Concessionaire and shall save and hold the County harmless with respect thereto.
- E. The Concessionaire will ensure full compliance with all applicable terms and conditions of this Agreement by its agents, employees, vendors, and contractors (including subcontractors of any tier) and their respective employees. Failure or refusal of the Concessionaire or its agents, employees, vendors, contractors, sub-contractors, or their employees to comply with these terms and conditions will be deemed a breach of this Agreement.
- F. The Concessionaire has not been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
- G. The Concessionaire has not, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- H. The Concessionaire is not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with the commission of any of the offenses enumerated in paragraph (G) of this certification.
- I. The Concessionaire has not, within a three (3) year period preceding this Agreement, had any transactions terminated for default.

The Concessionaire shall include, without modification, **Sections 14(F)** through **14(I)** above in all lower tier covered transactions (e.g., transactions with vendors, contractors) and in all solicitations for lower tier covered transactions related to this Agreement.

15. **Representation of County.**

County represents that the existing land and improvements are being presented "as-is, where-is" as of the Effective Date. The County does not imply or provide any warranty with respect to the physical aspects or site conditions of the Complex except as set forth herein.

16. **Notices.**

All notices required under this Agreement shall be in writing and given by email delivery with read receipt, United States Post Office certified mail with return receipt requested, or by commercial courier served with a receipt, or by hand delivery with a receipt, to each Party's following address, or to such other address as either Party may notify the other in writing as provided herein. Any such notice shall be considered served when communication is received and signed for, or delivery is refused or returned to sender as unclaimed.

For the County:

Maricopa County Parks & Recreation Department
Attn: Contract Administrator
41835 N. Castle Hot Springs Road
Morristown, AZ 85342
Email: emily.miller@maricopa.gov
Phone: (602) 506-9500

For the Concessionaire:

Southwest Wildlife Conservation Center
Attn: Linda Searles
8711 E. Pinnacle Peak Rd, PMB 115
Scottsdale, AZ 85255
Email: linda.searles@southwestwildlife.org
Phone: (480) 471-9109

17.

General Provisions.

- A. The waiver by either Party of any breach of any one or more of the covenants, conditions or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of said covenants, conditions or provisions of this Agreement. Any failure on the part of either Party to require or exact full and complete compliance with any of the covenants, conditions or provisions of the Agreement shall not be construed to, in any manner, change the terms hereof or preclude such Party from enforcing the full provisions of this Agreement.
- B. The paragraph or section headings used in this Agreement are for the purpose of convenience or reference only. They shall not be construed in any manner, or to any extent, to limit or to extend the effect or meaning of the terms and provisions contained thereunder.
- C. The Parties intend for this Agreement to comply with applicable laws. If any provision of this Agreement is determined to be invalid, void, or illegal, then such determination shall not affect, impair, or invalidate any other provision hereof, and the remaining provisions shall remain in full force and effect and the Parties shall use their commercially reasonable efforts to restate the invalid provision to the end that it complies with applicable laws.
- D. The Parties agree to act in good faith and with fair dealing with one another in the execution, performance, and implementation of the terms and provisions of this Agreement. Whenever the consent, approval or other action of a Party is required under any provision of this Agreement, such consent, approval or other action shall not be unreasonably withheld, delayed or conditioned by a Party unless the provision in question expressly authorizes such Party to withhold or deny consent or approval or decline to take action in accordance with a different standard, in which case the consent or approval or the decision to not take action may be withheld, delayed or conditioned in accordance with the different standard.
- E. Except as may be otherwise expressly and specifically set forth in this Agreement, no person or entity shall be deemed a third party beneficiary of any of the provisions of this Agreement.
- F. The Concessionaire agrees to collect data related to recreation uses occurring within the Complex. The County, or its designated representative, will provide the forms on which to collect the data. The Concessionaire will not be required to collect or release data to the County that violates any privacy statutes, regardless of the originator, or is of a nature that identifies specific individuals as users of the Complex.
- G. There is reserved to the County and their successors or agents, the right of the officers, agents, employees, licensees, and permittees, or the designees of public bodies, at all proper times and places, freely to have ingress to, passage over, and egress from all of said lands, for the purpose of exercising, enforcing, and protecting their rights and the terms and conditions described in and reserved by this Agreement, including the right of physical entry to the area for inspection, monitoring, or any other purpose consistent with any right or obligation of the County under any law or regulation, or for the purposes of surveying Park users and customers at the Complex. Unless there is an emergency, right of entry by County must be coordinated with the Concessionaire to ensure safe entry and reasonable flow of business and protection of wildlife at the Complex.
- H. The Concessionaire shall not commit or permit any illegal, morally questionable nuisance or unsafe condition to be created or maintained on the Complex. The Concessionaire shall not operate or knowingly permit the operation of any illegal acts upon the Complex.
- I. The Concessionaire hereby agrees and shall provide, obtain and maintain at its sole cost and expense all operating permits and licenses and shall comply with all applicable federal, state, county, local and city statutes, laws, ordinances, rules, regulations, and instructions, including MCPRD's rules and regulations (see **Exhibit 11 - Park Rules**), in effect now or as may be amended or added, which apply to the development, management, operation and maintenance of the Complex, as more fully described in **Exhibits 1 through 11**, attached hereto and made a part hereof, and to keep fully informed of, and in compliance with, any changes or revisions thereto. Upon the securing of appropriate permits and licenses to sell liquor, the Concessionaire shall provide, at its sole cost and expense, all insurance required for liquor sales. In addition to compliance with legal requirements, the Concessionaire shall exercise prudent, responsible and experienced judgment in the serving of liquor for consumption in designated areas at the Complex.
- J. This Agreement shall be deemed to be made under, and shall be construed in accordance with and shall be governed, interpreted and regulated by, the laws of the State of Arizona. Any litigation that occurs as a result of this Agreement shall be brought in the Superior Court of the State of Arizona, Maricopa County, and for this purpose each Party hereby expressly and irrevocably consents to the jurisdiction of said Court.

- K. If suit or action is commenced to enforce compliance with any term, covenant or condition of this Agreement, including any action undertaken in the context of bankruptcy proceedings, the Party not prevailing shall pay to the prevailing party a sum which the trial judge or arbitrator(s) determines is reasonable as attorneys' fees and costs to be allowed in the suit or action, and if appeal is taken from any judgment or decree in the suit or action, the Party not prevailing on the appeal shall pay the prevailing Party such further sum as the appellate court shall adjudge reasonable as attorneys' fees on appeal and court costs.
- L. The occurrence of any of the following events shall excuse performance of such obligations of a Party as are rendered impossible or reasonably impracticable to perform while such continues: strikes; lockouts; acts of God; governmental restrictions; enemy or hostile governmental action; fire or other casualty; and other causes beyond the reasonable control of the Party obligated to perform (each an event of "Force Majeure").
- M. Concessionaire covenants and warrants that the person executing this Agreement on behalf of Concessionaire will be duly authorized to sign this Agreement and agrees to provide proof of such authorization, for example bylaws or a resolution, prior to execution of this Agreement.
- N. This Agreement does not create a leasehold estate, and County shall at all times remain the title holder of the real property.
- O. Since this Agreement will require administrative action from time to time to carry out the intent of the Agreement, the MCPRD Director is hereby given the authority and charged with the responsibility for proper administration of this Agreement, whether or not specific authority is granted in any provision of this Agreement.
- P. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Faxed, electronically transmitted, and copied signatures are acceptable as original signatures.
- Q. Time is of the essence of this Agreement. If the date for performance of any obligation hereunder or the last day of any time period provided herein shall fall on a Saturday, Sunday or legal holiday, then said date for performance or time period shall expire on the first day thereafter which is not a Saturday, Sunday or legal holiday.
- R. This Agreement, together with any amendments and exhibits attached hereto, constitutes the entire Agreement between the Parties and sets forth all of the covenants, promises, agreements, conditions or understandings, either oral or written, between the Concessionaire and the County, and those agreements that are executed contemporaneously herewith. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the Party drafting this Agreement. This Agreement cannot be modified or changed except by a written instrument executed by the Concessionaire and the County. The Concessionaire and the County have reviewed this Agreement and have had the opportunity to have it reviewed by legal counsel.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE(S) FOLLOW

IN WITNESS WHEREOF the Parties have executed this Agreement on the dates set forth below.

CONCESSIONAIRE

SOUTHWEST WILDLIFE CONSERVATION CENTER, an Arizona nonprofit 501(c)(3) tax-exempt corporation

Signature Date

By: _____
Printed Name

Its: _____
Title

COUNTY

RECOMMENDED BY:

RJ Cardin Date
Director, Maricopa County Parks & Recreation Dept.

MARICOPA COUNTY

Chairman, Board of Supervisors Date

ATTEST

Clerk of the Board Date

Approved as to Form:

Deputy County Attorney

**Exhibit 1 – Complex Conceptual Site Plan
(Not to Scale)**

SWCC - please provide conceptual site plan of facility layout

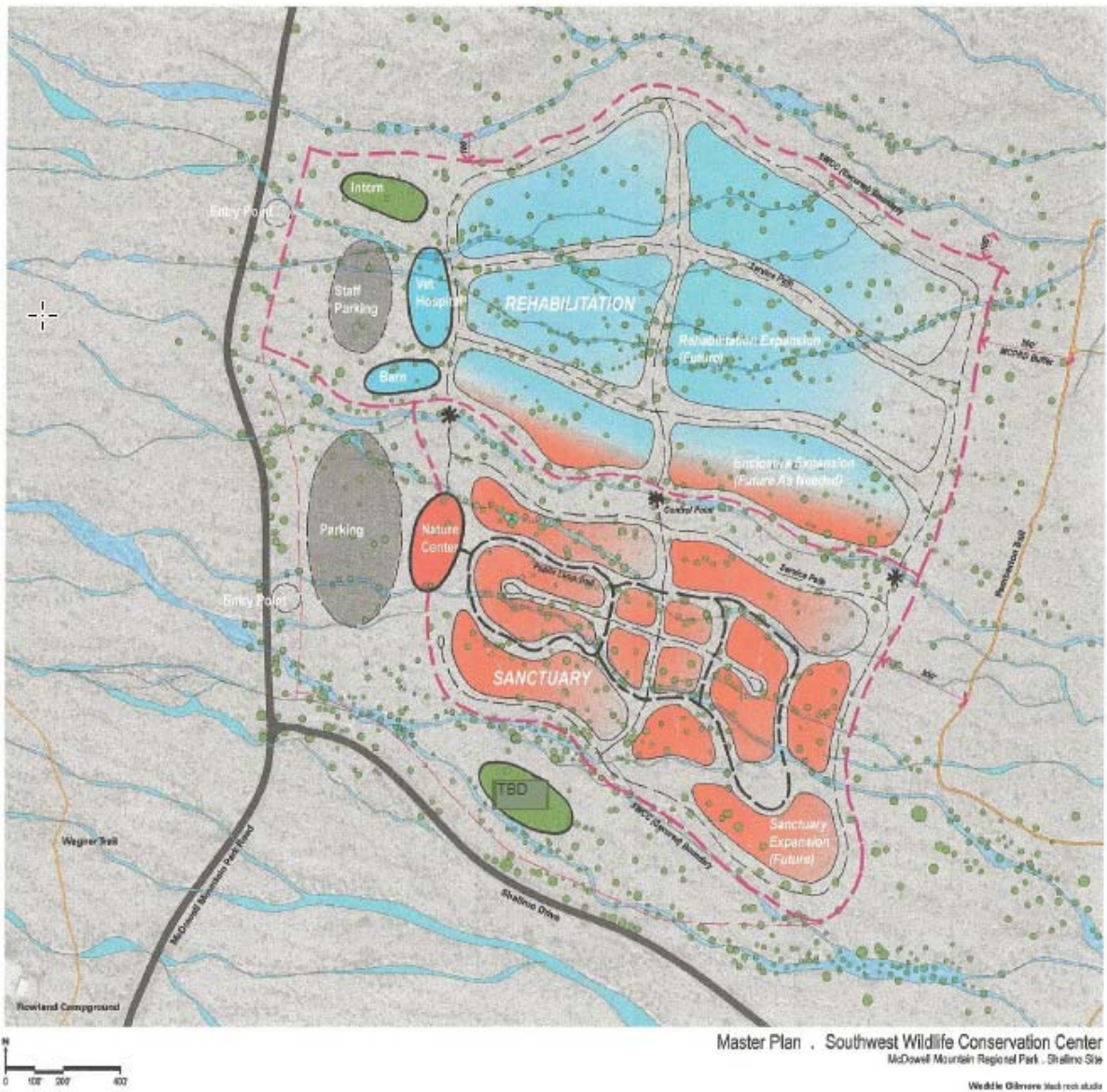


Exhibit 1 (continued)
Complex Conceptual Site Plan - within McDowell Mountain Regional Park
(Not to Scale, acreage indicated is approximate)

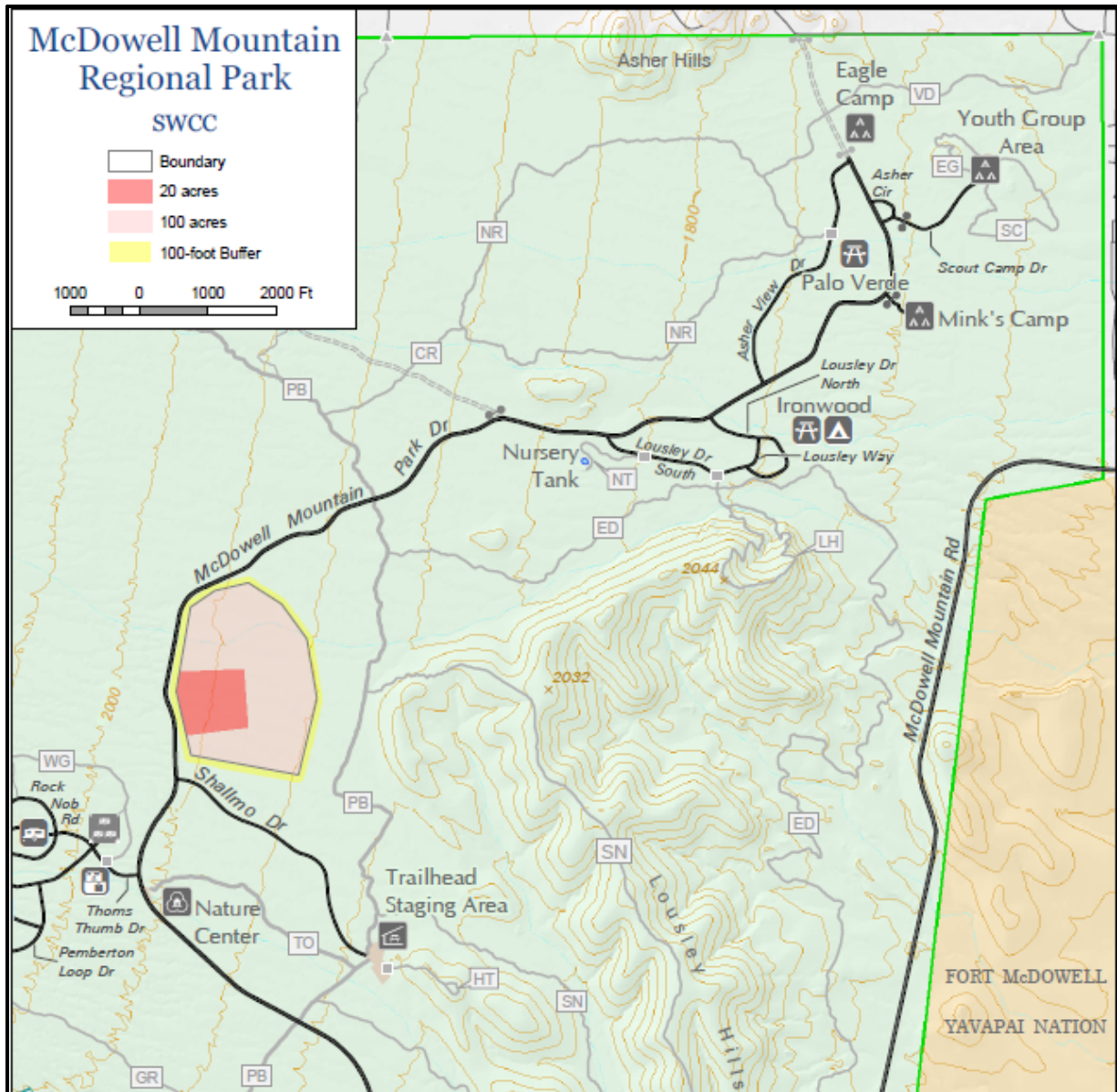


Exhibit 2 - Complex Activities and Parameters

Exhibit 2 - Complex Activities and Parameters, as stated herein, sets forth the allowable uses of the Complex. This Exhibit will be reviewed annually, no later than December 31 of each year, as part of the AMP pursuant to the terms of the Agreement.

The Concessionaire is authorized to organize, administer, and supervise wildlife education, viewing, rescue, and rehabilitation activities, as well as provide nature and wildlife programs and clinics at the Complex. The anticipated Complex use and activities are as follows:

1. Complex Use. Concessionaire shall have the exclusive right to conduct events within, and schedule use of, the SWCC Facility
2. SWCC Facility Access. The Concessionaire will have access to the SWCC Facility outside of regular Park hours as set forth on **Exhibit 11 – Park Rules**, attached hereto and made a part hereof, for the care of wildlife, animal drop-offs, emergencies, and other mission-related purposes.
3. Complex Activities. The Complex shall be open to the public during regular Park hours and the Concessionaire is anticipated to provide or construct the following structures, support facilities, and infrastructure associated with educational, wildlife, and recreational activities:
 - A. Nature Center
 - B. Wildlife Animal Enclosures
 - C. Wildlife Rehabilitation and Sanctuary Space which may include:
 - i. Veterinary Hospital/Clinic or veterinary activities
 - ii. Conservation Medicine Center or conservation medicine activities
 - D. Intern Dormitories (domiciles to be utilized for temporary intern staff and not be used for permanent residency.)
 - E. Warehouse, office, and food storage space or structures.
 - A. Other Complex Activities. These activities shall be coordinated with the Park Supervisor.
 - B. Sponsored Community Events. These events are community-based opportunities that benefit the Complex which include, but are not limited to, wildlife education, recreation programs, fundraising, and community outreach programs.
 - C. Special Events. These events are defined as events which include, but are not limited to, events that include evening programming, an extension of Park hours of operation, special pricing days, use of multipurpose/classroom(s) and/or other Park facilities not within the Complex (i.e., ramadas).

Exhibit 3 – Development of the Complex

Exhibit 3 – Development of the Complex, as stated herein, sets forth the guidelines for the planning, design, permitting, and construction of the Complex. This Exhibit will be reviewed annually, no later than December 31 of each year, as part of the AMP pursuant to the terms of the Agreement.

1. Planning.
 - A. In Contract Years one (1) through four (4), in accordance with the Phasing Schedule set forth in **Section 4(F)** of this Agreement, the Concessionaire, at its sole cost and expense, shall retain a qualified and experienced firm(s) acceptable to MCPRD to conduct site viability and financial feasibility study(ies) for the Complex development that, at a minimum, address the following:
 - 1) Site viability studies shall demonstrate the ability to construct the Complex contemplated in the LOI Response.
 - 2) Financial feasibility studies shall include identification of sources and uses of all funds, including detailed estimates of projected revenues, expenses, debt, and construction costs, including identification of all permits and approvals required for the development of the Complex as phased along with a timeline for obtaining each permit or approval identified. The study(ies) shall also include a projection of annual operating expenses and annual entry fees and/or fundraising activities required to continue to operate the Complex contemplated in the LOI Response.
 - B. The Concessionaire's Conceptual Transition Plan identified and made a part hereof as **Exhibit 3 - Development of the Complex Appendix One – (Concessionaire Conceptual Transition Plan)**, provides details of the fundraising timeline and anticipated Complex design and construction during Contract Years one (1) through five (5).
 - C. The Concessionaire shall provide conceptual site plans to identify specific Complex Elements and infrastructure requirements for each proposed phase of development. As defined, Complex Elements are those proposed elements identified in the LOI Response that are supported by the County at the time of the execution of this Agreement, and any other facilities that may be agreed upon from time-to-time between Concessionaire and the County.
 - 1) Conceptual site plans should be sufficiently detailed and include information on land use and construction (i.e., locations of public/non-public access, buildings, cages, fences.); and
 - 2) Identify and provide to MCPRD studies that outline the infrastructure needs for the Complex. The studies shall include an analysis of infrastructure capacity, ownership and operation of any systems, and identification of all permitting and agreements needed to provide required infrastructure.
 - D. The Concessionaire, at its sole cost and expense, may provide and install initial Complex signage at the Park, upon approval of sign location and sign content, size and layout.
 - E. Within sixty (60) days prior to the onset of each Contract Year set forth in the Phasing Schedule in **Section 4(F)** of this Agreement, the Concessionaire shall submit a detailed timeline of the Concessionaire's proposed milestones for the upcoming Contract Year for MCPRD review and approval. In addition to the timeline submittal:
 - 1) Concessionaire shall meet with representatives of MCPRD upon notice from MCPRD, but in no event on less than a quarterly basis, to discuss the Concessionaire's progress in achieving the Contract Year goals. Nothing contained herein shall be construed as prohibiting any meeting from occurring via telephone or other electronic forum, upon mutual agreement of the Parties, unless the circumstances necessitate in person meeting(s).
 - 2) Not fewer than five (5) business days prior to each such meeting, Concessionaire shall provide written reports to MCPRD that provide a progress update on each of Concessionaire's responsibilities and identify compliance with the approved timeline.
 - F. In the event Concessionaire does not make satisfactory progress, in the County's sole discretion, to meet the mutually agreed-upon annual milestones set forth for each Contract Year, it shall be considered a default of this Agreement.
2. Development.
 - A. The Concessionaire, at its sole cost and expense, shall pay all costs associated with the Complex design, plan preparation, and obtaining all permits from applicable jurisdictions and all associated costs and fees thereof.
 - B. The Concessionaire shall design and develop the Complex, at its sole cost and expense, as a co-located single structure or compound with the improvements set forth in **Exhibit 2 - Complex Activities and Parameters**. The Complex will consist of two main facilities:

- 1) Nature Center.
 - a) The shared use Nature Center shall contain approximately eight thousand (8,000) square feet which, at a minimum, includes interpretive space, a gift shop, office space, multi-purpose rooms, classrooms, and restrooms. Space within the gift shop will be shared between the Parties (an approximately equal amount of space for each) for Concessionaire and MCPRD sale of souvenirs. MCPRD shall also share the use of multipurpose and classrooms as more fully detailed in **Exhibit 7 – Administrative Functions**.
 - b) The configuration of the Nature Center shall be further defined during the design process in a collaborative process between the Parties. The Nature Center shall be comparable, in terms of construction standards and appearance, to the Cave Creek Regional Park Nature Center. Concessionaire is responsible for the entire cost of construction of the Nature Center. MCPRD will share in the costs of the Nature Center’s exterior site improvements (for example, parking, landscaping, and signage) if funding is available from County budget appropriation.
 - c) Upgrades to the Nature Center will be the sole responsibility of the Party requesting the upgrades, unless it is for safety or regulatory compliance, then upgrade costs shall be shared proportionally.
- 2) SWCC Facility. The SWCC Facility shall, at a minimum, include wildlife viewing and rescue/rehabilitation enclosures, sanctuary space (may include veterinary hospital/clinic or veterinary activities and conservation medicine center or conservation medicine activities), intern dormitories, and all associated infrastructure.
- C. The Concessionaire shall work to procure commodities, services, and facilities that protect and enhance the overall environment in a diligent, professional, and credible manner within reasonable fiscal constraints. Practices should include sustainable design features, water conservation practices, and recycling programs where applicable.
- D. Development or improvements may require the completion of National Environmental Policy Act (“NEPA”) reviews, cultural resource compliance, or other permits before any improvements or construction activities commence. The Concessionaire must plan its activities and provide MCPRD, and relevant permitting agencies, sufficient time to review all drawings and proposals, prepare NEPA documentation, as well as prepare and review other documentation as required. Refer to **Exhibit 4 - Resource Management** for additional compliance parameters.
- E. The Concessionaire shall participate, as deemed appropriate by MCPRD, in any effort to amend the McDowell Mountain Park Master Plan, including, without limitation, participation in public outreach or public meetings.
- F. The Parties may partner to undertake future improvement projects within the Complex that are mutually beneficial.
- G. The Concessionaire agrees to schedule and conduct any improvements or construction activity on the Complex in a manner that minimizes hazards and inconvenience to the public.
- H. Proposed construction materials stockpiling and/or equipment staging areas are subject to the prior approval of the MCPRD. A plan that, at a minimum, specifies the quantity, type, and location of the materials/equipment to be stored/staged, the proposed safety and security for the staging area(s), and a storm water protection plan, shall be submitted for approval to MCPRD a minimum of sixty (60) calendar days in advance of the proposed activity. Stockpiling of material on the streets or in the public right-of-way is not allowed at any time.
3. Plan Approval. All development and improvement plans for new construction or improvements shall be submitted, in writing, to MCPRD for its prior review and written approval at the conceptual level, thirty percent (30%), sixty percent (60%) and ninety percent (90%) stages with final stamped sets as required by the respective permitting agency. Final stamped sets will include the budget, construction schedule, and anticipated dollar expenditures. Any deviation from the final plans which is material must be approved in writing by MCPRD. The Concessionaire may commence construction upon MCPRD’s written notice to proceed after MCPRD has received approved plans and specifications, and the Concessionaire has secured the necessary permits, licenses, and all other approvals required for the construction of the Complex.
4. Infrastructure. Required infrastructure improvements, which include, but are not limited to the following, shall be developed as necessary to serve the development and/or accommodate traffic to and from the Complex:
 - A. Roads.

- 1) The County-maintained existing road(s) to and within the Park are shown in black on **Exhibit 1 – Complex Conceptual Site Plan**, attached hereto and made a part hereof. The Concessionaire shall pay for all costs associated with the addition of new road(s) and/or modifications to the existing road(s) to and from the Complex, as dictated by traffic impact studies prepared, and standard engineering performed, by the Concessionaire. The scope of road work shall be determined during the design stage and before the Concessionaire begins construction at the Complex.
 - 2) The use and final design of any new road(s), and/or modifications to the existing road(s) to/from the Complex are subject to the approval of all agencies having authority over Parklands, the adjoining properties (as applicable), and rights-of-way.
 - 3) The County shall use its best efforts to assist the Concessionaire with identifying acceptable and feasible Complex access corridors and facilitate discussions to memorialize land rights and/or agreements necessary to construct and maintain the required roads.
 - 4) The Concessionaire shall pay for all costs associated with acquiring necessary land rights for the roads.
- B. Water. County expressly disclaims all warranties, whether express or implied, and makes no representations concerning the availability, quality, or sufficiency of water for present or future use.
- 1) Potable Water.
 - a) Water is currently extended into the Park and provided by EPCOR, a private water company.
 - b) The Concessionaire, at its sole cost and expense, shall pay for all costs associated with delivering potable water to the new facilities within the Complex, to include the installation of meter(s) to separate the water usage reporting for the SWCC Facility from the Nature Center.
 - i. Establishing a new account with EPCOR for the potable water at the SWCC Facility is the responsibility of the Concessionaire.
 - ii. Establishing a new account with EPCOR for the potable water at the Nature Center is the responsibility of MCPRD.
 - 2) Non-potable Water. The Concessionaire, at its sole cost and expense, shall pay for all costs associated with obtaining an alternate source of non-potable water (if applicable), distribution of non-potable water to and within the Complex, incorporating the use of non-potable water for irrigation or non-potable water needs at the Complex, and tracking water usage (i.e. metering).
 - a) Non-potable water at the Park is a limited source of water per an annual allocation. According to the Arizona Department of Water Resources (“ADWR”), the Annual Allocation of non-potable water is limited to ten (10) acre feet from January 1 through December 31 of each year (“Annual Allocation”). The County shall not be financially responsible for finding or providing water from other sources if the non-potable water is not available.
 - b) The Concessionaire shall provide an alternate source of water if the existing non-potable water is not available or not adequate to fulfill the needs of the Complex. Concessionaire may drill a well on-site, so long as it complies with all applicable permitting and ADWR requirements. Any well installed will be registered in the name of the County since the County has water use rights available for the Park. The County will file any required annual ADWR reports associated with any new well(s).
 - 3) Water Management Plan. The Concessionaire will develop a Water Management Plan (“Water Management Plan”) to accompany the Complex’s conceptual preliminary design details and describe management of the non-potable water supply system.
 - 4) The Concessionaire shall provide to MCPRD during the design phase of the project, a finalized Water Management Plan that forecasts daily, weekly, and monthly water demand use. The plan shall illustrate water usage that does not exceed the ten (10 acre feet) acre feet Annual Allocation.
- C. Waste Water System.
- 1) Concessionaire shall be responsible for all costs for waste water disposal, to include all costs associated with the design, permitting, construction, purchase, and maintenance of the system(s) to be used in support of disposal of waste water, unless otherwise stated in this Agreement. Hazardous materials may not be disposed of in sewer or septic systems (See **Exhibit 4 - Resource Management**).
 - 2) Waste water will need to be disposed of through a septic system or use of chemical toilets depending upon the planning and permitting restrictions.

- D. Electrical. The Concessionaire, at its sole cost and expense, shall pay for all costs associated with the installation and delivery of electrical service to and within the Complex to include the installation of meter(s) to separate the SWCC Facility service from the Nature Center service, as more fully described in **Exhibit 8 – Accounting and Fees**.
- 1) Establishing a new account with the provider for the electrical service at the SWCC Facility is the responsibility of Concessionaire.
 - 2) Establishing a new account with the provider for the electrical service at the Nature Center is the responsibility of MCPRD.
- E. Easements. The County reserves the right to establish or modify access or utility easements through the Complex:
- 1) If the proposed new or modified easement is solely for the benefit of County, then the costs of design, permitting, construction and maintenance of the easement, and improvements located therein, will be the responsibility of the County. Reasonable notice will be provided to the Concessionaire of the location of the proposed easement(s) and improvements. Construction will be coordinated with Concessionaire.
 - 2) If Concessionaire requests relocation of any existing utilities or new utility installation and/or a new or modified access, Concessionaire shall submit the proposed location(s) of the easement(s) and improvement(s) to MCPRD for MCPRD and County review and approval prior to submission to the appropriate planning and permitting authorities. The Concessionaire shall be responsible for all costs associated with the aforementioned relocation/installation of utilities and/or access to include all fees, permits, and construction.
- F. Impediments to Development. The Parties recognize that the Concessionaire has not had the benefit of a contingency period under this Agreement which would enable it to confirm: (i) the ability to obtain all permits required to complete the improvements contemplated by this Agreement and this **Exhibit 3 – Development of the Complex**; (ii) that there are no obstacles to development such as unfavorable soil conditions, soil contamination, access limitations, and similar matters; and (iii) that there are no other unanticipated impediments to development such as neighborhood opposition or political opposition to any aspect of the proposed projects to be undertaken in the Complex, therefore, the Parties agree that the development of the Complex may be limited and that the elements and features of the Complex are subject to reasonable change by the Concessionaire to accommodate directives from regulatory agencies, changes in the marketplace, changes in federal or state statutes or policy, changes dictated by planning and permitting guidelines or restrictions, changes dictated by opposition to any proposed development, the inability to obtain utility services or materials to operate any proposed element of the Complex; and the need to remodel and renovate features. If any of the aforementioned items impede the proposed development set forth in the LOI Response and the Agreement, Concessionaire shall promptly notify MCPRD of the impediment and coordinate in good faith with MCPRD to address a possible solution which may include an amendment to this Agreement. The County will, in its sole discretion, make the decision(s) pertaining to whether development may deviate from the LOI Response and Agreement, and such decision(s) cannot be appealed.
- G. As-Built Plans. As defined, As-Built Plans shall be a final drawing produced at the completion of the Complex.
- 1) As-Built Plans will be submitted to the permitting agencies upon completion of construction of the Complex or any future improvements.
 - 2) One (1) electronic copy of As-Built Plans and specifications shall be furnished to MCPRD within sixty (60) calendar days of completion of construction of the Complex or future improvements. The Concessionaire will be responsible for the costs incurred for additional plans as may be required.
- H. Legal Description. The Concessionaire will furnish to MCPRD a full site survey in paper and GIS formats along with a legal description of the Complex as a whole and separate legal descriptions of the lands considered to be within the SWCC Facility and the Nature Center sites respectively, within sixty (60) calendar days of completion of construction of the Complex, at no cost to the County.

Exhibit 3 - Development of the Complex
Appendix One – (Concessionaire Conceptual Transition Plan)

Southwest Wildlife Conservation Center Transition Plan Adopted of 05/20/2019 - Updated 2/26/2020						
Activity	2020	2021	2022	2023	2024	Measure
County Parks relationship						
Complete and sign County agreement	↑					Use Management Agreement completed by Spring 2020
Signs, other presence in county park						Beginning in 2020 w/signage at minimum
Operational management agreement						By 2023, agreement on shared operations and maintenance
Board, Volunteer, Staff Leadership						
Board of Directors expansion	↑					10 to 12 Board members by mid 2020
Staff Leadership/structure	↑					ED transition, initial staff additions by 12/20
Advisory Committees/Teams						Lists developed of who might be helpful in Fall 2019 (and ongoing); additional community involvement in planning, advisory groups, committees started during 2020
Strategic Planning/Transition Financial Planning						
	↑					Preliminary business/financial plan completed by 12/30/20
Capital Campaign						
Planning/camp. committee formation	↑					Planning and positioning: 12 months Spring 2020 - Spring 2021
Quiet Phase		↑				Spring 2021 - end of 2022
Public Phase					↑	January 2023 - mid 2024
Facility Design and Construction						
Conceptual drawings & sketches	↑					Completed and available by mid-2020
Site master planning	↑					9 months, completed by end of 2020
Architectural design/approval			↑			18 months, completed mid-2022
Construction drawings/permits				↑		12 months, completed by mid-2023
Construction					↑	18 months, completed by end of 2024

Exhibit 4 - Resource Management

Exhibit 4 - Resource Management, as stated herein, provides the resource management and environmental compliance parameters. This Exhibit will be reviewed annually, no later than December 31 of each year, as part of the AMP pursuant to the terms of the Agreement.

The Concessionaire is responsible for ensuring that adequate resource management and environmental practices are adhered to as set forth herein. The Concessionaire agrees to comply with all environmental laws and regulations and to take such other actions as may be reasonably required to protect against environmental liabilities.

1. Environmental Compliance.
 - A. Environmental Review. The Concessionaire, at the Concessionaire's sole expense, shall be responsible for the completion of all applicable environmental studies or assessments, and obtaining all applicable permits, licenses as well as conducting any type of environmental mitigation that may be required within the Complex.
 - B. Air Quality. The Concessionaire, at the Concessionaire's sole expense, shall be responsible for obtaining all air quality permits, and/or licenses to ensure compliance with the Maricopa County air and dust control, water and waste control regulations, as well as any other applicable federal, state and local statutes, regulations and ordinances as they pertain to environmental protection.
 - C. Hazardous and Regulated Materials.
 - 1) For the purposes of this Agreement, the term "regulated substances" shall include substances defined as "regulated substances," "hazardous waste," "hazardous substances," "hazardous materials," "toxic substances" or "pesticides" in the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, as amended in 1986 to include Superfund Amendments and Reauthorization Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the relevant local and state environmental laws, and the regulations, rules and ordinances adopted and publications promulgated pursuant to the local, state and federal laws.
 - 2) Management and proper disposal of all regulated substances is the responsibility of the Concessionaire. Any such regulated substances must be disposed of pursuant to and in compliance with all required laws and regulations concerning the use and disposal of such regulated substances. The Concessionaire must keep appropriate and required documentation relating to the management and disposal of all regulated substances.
 - 3) If the Concessionaire's activities result in a release of any regulated substances or any adverse environmental impacts, the Concessionaire shall be solely responsible for any and all resulting site assessment(s), studies, remediation and clean-up costs required to restore the property to as close to its original condition as possible.
 - 4) The Concessionaire may use commercially reasonable amounts of cleaning, office, and veterinary supplies which may be regulated substances in its operations at the Complex, so long as used, stored, and disposed of in compliance with law and required documentation for use and safety are properly posted (i.e. Safety Data Sheets).
 - D) Regulated Use.
 - 1) The Concessionaire will provide to County upon the start of any construction activities, and within ninety (90) calendar days of the Opening Date, a complete list identifying all regulated substances including, but not limited to, hazardous material or petroleum products to be stored at the Complex. Changes from the initial list shall be provided by the Concessionaire to the County, in writing, as they occur. The Concessionaire shall keep safety data sheets on site for all regulated substances as required by law.
 - 2) The Concessionaire shall prepare and implement any necessary remediation action plan in accordance with all applicable federal, state, county and city statutes, laws, ordinances, rules and regulations in the event that Concessionaire causes any contamination of the Complex or the Park.
 - 3) The Concessionaire shall provide, within twenty-four (24) hours of its knowledge, verbal notification to the County, in accordance with **Section 16** of this Agreement, information on any event or occurrence at the Complex which may or does result in pollution or contamination affecting lands, water or facilities owned or managed by the County or adjacent properties.
2. Pest / Weed Control and Animal Salvage.

- A. The Concessionaire, at the Concessionaire's sole expense, shall be responsible for managing vermin and other pests, including weeds, on all lands and facilities within the SWCC Facility. In the event of visible evidence of pest(s) infestation, Concessionaire will restore the area to as close to its original condition as possible. Thirty (30) calendar days prior to Opening Date, the Concessionaire shall develop and submit for MCPRD approval, a Pest Management Plan, defined as a plan that details a safe and environmentally sensitive control or eradication of potential pests at the SWCC Facility. At a minimum, the Pest Management Plan needs to include the product name and solution ratio that will be used at the SWCC Facility. The Pest Management Plan will be evaluated annually by MCPRD. Pest/weed control on the lands and facilities within the Nature Center shall be the responsibility of MCPRD.
 - B. The Concessionaire, at the Concessionaire's sole expense, shall be responsible for complying with all training (federal, state, county and local), operational and licensing requirements pertinent to and required for the application of pesticides in Arizona. The applicator shall hold all necessary licenses and registrations required for lawful application of pesticides, herbicide, fungicide, fertilizer, and similar chemicals/substances. The Concessionaire shall keep safety data sheets on site for those materials and products set forth above as required by law.
 - C. The Concessionaire, at the Concessionaire's sole expense, shall be responsible for securing all permits and plans for the protection and/or relocation of endangered, threatened, or protected species of wildlife in any area(s) of land disturbance (including potholing associated with construction or operation of the Complex), per State/Federal guidelines. Two resources that may assist Concessionaire with their research to determine required permits are: i) Environmental Review from Arizona Game and Fish <https://azhgis2.esri.com/>; and ii) the US Fish & Wildlife Services <http://ecos.sws.gov/ipac/>.
3. Historic and Archeological Resources. The County has no knowledge of the presence of any artifacts, antiquities, human remains or other items of archeological, scientific or cultural interest which would impede the development of the Complex. However, the Concessionaire shall take all reasonable and necessary precautions to protect and preserve any and all antiquities or other objects of archeological, paleontological, cultural, historic or scientific interest that it finds on County lands within the Complex. These objects include, but are not limited to, historic or prehistoric ruins, human remains, funerary objects, and other artifacts. Should such sites or objects, or evidence of sites or objects, be discovered, the Concessionaire shall:
- A. Immediately suspend all work involving the area in question, make a reasonable effort to protect and stabilize such discovery and provide a verbal notification to MCPRD's Contract Administrator, in accordance with **Section 16** of this Agreement, of the existence of such discovery.
 - B. Forward a written report of their findings to MCPRD's Contract Administrator in accordance with **Section 16** of this Agreement, and not resume work until written authorization to proceed is issued by the County.
 - C. At its sole cost and expense, have the area inspected to determine its historical significance and required next action (e.g. salvage, test excavations, and resumption of construction). If the property has been determined to be a site of archeological significance, the removal of the artifacts will be the responsibility of the County. All objects salvaged from public lands are the property of the United States Government and will be turned over to County for disposition.

Exhibit 5 – Preventative Maintenance and Capital Improvements

Exhibit 5 – Preventative Maintenance and Capital Improvements, as stated herein, provides the preventative maintenance and capital improvement parameters for the Complex. This Exhibit will be reviewed annually, no later than December 31 of each year, as part of the AMP pursuant to the terms of the Agreement.

The Concessionaire shall perform Complex preventative maintenance and capital improvements as stated herein and in the Agreement and as identified in **Exhibit - 5 Preventative Maintenance and Capital Improvements Appendix One**, attached hereto and made a part hereof, in a diligent and professional manner satisfactory to the County in compliance with all applicable statutes, laws, ordinances, rules, and regulations.

SWCC Facility

1. Preventative Maintenance and General Repairs. Concessionaire shall be responsible for the preventative maintenance and general repairs of all infrastructures, roadways, structures, wet utilities (potable/non-potable), dry utilities, equipment, and facilities/amenities within, or associated with/within the SWCC Facility. By definition, “Preventative Maintenance” means those activities that are completed to maintain an area, facility or piece of equipment in a safe, properly functioning condition that complies with commercial operating standards for that specific amenity and/or equipment as applicable. Preventative Maintenance, as used in this **Section**, does not refer to those activities defined below in **Section 2**.
 - A. The Concessionaire is responsible for all Preventative Maintenance costs.
 - B. The Concessionaire, within ninety (90) calendar days of the Opening Date of the SWCC Facility, shall develop and submit to MCPRD a Preventative Maintenance Plan (“PMP”) incorporating the Concessionaire’s PMP responsibilities, as referenced in **Section 1** above, pertaining to the SWCC Facility.
2. Capital Improvements. Capital Improvements are defined as new construction or major repair and/or replacement of building components which substantially extend the useful life of existing facilities. Concessionaire shall be responsible for all Capital Improvement costs and shall maintain the SWCC Facility in a commercially reasonable manner to prevent disrepair within, or associated with, the SWCC Facility.
 - A. Beginning with Contract Year two (2) and within ninety (90) calendar days after the end of each Contract Year thereafter, the Concessionaire shall provide to the County, for its review, an Annual Capital Improvement Project (“ACIP”) Plan for the ensuing year. The ACIP Plan shall include a budget which details any planned Capital Improvement expenditures from the Capital Improvement Project fund (CIP) as defined in **Exhibit 8 – Accounting and Fees**.
 - B. In the event the County and the Concessionaire disagree on the proposed Capital Improvement expenditures for any Contract Year, then the determination of Concessionaire shall control so long as it is consistent with the provisions of this **Section 2**.

Nature Center

1. Preventative Maintenance and General Repairs. County and Concessionaire shall share the responsibilities and costs proportionately, based on each Party’s square foot use of the Nature Center, for the preventative maintenance and general repairs of all infrastructures, roadways, structures, wet utilities (potable/non-potable), dry utilities, equipment, and facilities/amenities within the Nature Center. County and Concessionaire shall also share the responsibility and costs proportionately, based on each Party’s square foot use of the Nature Center, for maintaining the Nature Center in a commercially reasonable manner to prevent disrepair, as well as to conduct major maintenance and repair of existing facilities which will substantially extend the useful life of said existing facilities
2. Capital Improvements. County and Concessionaire shall also share the responsibility and costs proportionately for Capital Improvements within, or associated with, the Nature Center.

**Exhibit 5 – Preventative Maintenance and Capital Improvements
Appendix One**

MAINTENANCE MATRIX

Operation and Maintenance Items	SWCC Facility	Nature Center Shared Space	Nature Center County Space
Waste Water System	SWCC	N/A	MCPRD
Water System Potable	SWCC	Proportionately	MCPRD
Water System Non-potable	SWCC	N/A	N/A
Electric Service (mainline), Meter and Monthly Charges	SWCC	Proportionately	MCPRD
Parking Lots	SWCC	Proportionately	MCPRD
Irrigation, Landscaping, and Pest/dust/weed control	SWCC	N/A	MCPRD
Restroom Facilities	SWCC	Proportionately	MCPRD
Repair of Storm or Casualty Damage	SWCC	Proportionately	MCPRD
Inspections of Facilities – yearly (County, Concessionaire and Third Party Inspector)	SWCC/MCPRD Third Party Inspector	N/A	MCPRD
Spill Plan (including equipment)	SWCC	Proportionately	MCPRD
Capital Improvements (incl. Major Repairs/Replacements)	SWCC	Proportionately	MCPRD

Note: “Proportionately” means based on each Party’s square foot use of the Nature Center.

Exhibit 6 - Marketing and Media

Exhibit 6 - Marketing and Media, as stated herein, provides the marketing and media parameters for the Complex. This Exhibit will be reviewed annually, no later than December 31 of each year, as part of the AMP pursuant to the terms of the Agreement.

The Concessionaire is responsible for ensuring that all Complex media, advertising materials, and marketing is family oriented and is reviewed and/or approved by MCPRD as noted herein. Subject to Maricopa County Board of Supervisors' final decision and in its sole discretion, which may be withheld, delayed or conditioned, Concessionaire is provided the opportunity to name the Complex, or a portion thereof for up to the Term of the Agreement. The parties agree that the County reserves the right at any time to rename the Complex, or any portion thereof, if, in its sole discretion, it determines that such name is no longer appropriate.

1. Press Releases and Media Distribution. Prior to distribution, the Concessionaire will provide the Contract Administrator, via email, a courtesy copy of all media releases relating or referring to the Complex.
2. Marketing & Advertising.
 - A. Advertisements, signs, circulars, brochures, letterheads, and other media or materials shall not misrepresent in any way the accommodations or services provided.
 - B. All printed advertising and co-branding relating or referring to the Complex shall include a statement to the effect that the Complex is being operated as "A Concessionaire of Maricopa County at McDowell Mountain Regional Park."
 - C. The Concessionaire is authorized to accept family oriented advertising from other Park concessionaires and vendors not located at the Park ("Outside Vendors") that desire to advertise their particular business to visitors of the Complex.
 - D. The Concessionaire is authorized to assess a fee for advertising requested by Outside Vendors.
3. Signage. Signs or other advertising posted on County land outside the Complex will be subject to County and any other applicable administrative agency approvals as to location, design, size, color, and content prior to construction or use.
 - A. The Concessionaire shall control signage within the SWCC Facility,
 - B. The MCPRD shall control signage within the Nature Center
 - C. The Parties shall collaborate on signage for the shared use portions of the Nature Center.

Exhibit 7 - Administrative Functions

Exhibit 7 - Administrative Functions, as stated herein, provides the procedures for the daily administration of the Complex. This Exhibit will be reviewed annually, no later than December 31 of each year, as part of the AMP pursuant to the terms of the Agreement.

The Concessionaire shall provide administrative functions as stated herein and in the Agreement in a diligent, professional and credible manner satisfactory to the County and in compliance with all applicable state, federal and local statutes, laws, ordinances, rules, and regulations.

1. The Concessionaire shall pay, at its sole cost and expense, for all costs associated with employment and management of all of Concessionaire's personnel, including volunteers for the operation of the Complex. The Concessionaire is fully responsible for the proper supervision of all its employees, volunteers, contractors, subcontractors, vendors, and all patrons using the Complex.
2. Schedules.
 - A. Shared Use. The Parties shall collaborate on scheduling the use of all shared space (i.e., gift shop, multipurpose rooms, and classrooms) in the Nature Center.
 - B. Operating Schedule. Within sixty (60) calendar days of the Opening Date and by January 2nd of each calendar year thereafter, the Concessionaire shall submit to MCPRD for review and comment, and as part of the AMP, an annual operating schedule showing the intended hours and days of operation. The Concessionaire may modify the annual operating schedule, based on their prudent business judgment; however, Concessionaire shall provide MCPRD notice, in writing, of such changes thirty (30) calendar days prior to their effective date or as soon as reasonably practicable. Hours of operation may be adjusted by Concessionaire or County; however, no event will begin before 6:00 a.m. or proceed past posted Park closing hours without written authorization from MCPRD. The Concessionaire will have access to the SWCC Facility outside of regular Park hours for the care of wildlife, wildlife drop-offs, emergencies, and other mission-related purposes.
 - C. Rate Schedule(s). Within sixty (60) calendar days of the Opening Date and by January 2nd of each calendar year thereafter, the Concessionaire will submit to MCPRD, for review and comment and as part of the AMP, a general price list for goods and services that will be charged to the public at the SWCC Facility and gift shop. Concessionaire may modify the rates and prices based on their prudent business judgment; however, the Concessionaire shall provide MCPRD notice, in writing, of such change within thirty (30) calendar days prior to their effective date or as soon as reasonably practicable. The Concessionaire will post, and at all times keep on public display, the prices, rates, and charges for goods (excluding public display items at the Nature Center) and services at the Complex, as well as the acceptable forms of payment.
3. Complex Annual Evaluation. An annual evaluation (see **Exhibit 7 – Administrative Functions Appendix One - Complex Annual Visual Evaluation Template**, attached hereto and made a part hereof) by MCPRD's Contract Administrator in cooperation with appropriate County staff, will be made of the quality of operation and maintenance of the Concessionaire's operation within the Complex and of compliance with all terms of this Agreement to determine if there are areas of deficiency to be addressed and corrected.
 - A. As an integral part of the evaluation process, and as a demonstration of the Concessionaire's commitment to public safety and its long term investment and interests, the Concessionaire shall obtain, starting in Contract Year two (2), or two (2) calendar years after completion of construction timeline (as defined in Agreement **Section 4(F)**), whichever occurs later, annual inspections done by third-party inspectors of the Complex (e.g. building structures, roofing, foundations, electrical and fire systems) and shall provide MCPRD a copy of said inspections, at no cost to the County.
 - B. The Concessionaire shall fully cooperate with County in this evaluation process, and any deficiency determination shall be at the County's discretion. County will afford Concessionaire thirty (30) calendar days to respond to such evaluation and provide a timeline, not to exceed ninety (90) calendar days from date of evaluation, to correct any deficiencies that are required to be made to comply with this Agreement. Failure to correct deficiencies identified by County shall be considered an event of default that is curable in accordance with the provisions set forth in **Section 7(A)(2)** of this Agreement.
 - C. The County shall administer this Agreement diligently and professionally. The Concessionaire may also evaluate County, on an annual basis, as to compliance with all terms of this Agreement to determine if there are areas of deficiency to be addressed and corrected. The County shall fully cooperate with the Concessionaire in this evaluation process.

Exhibit 7 - Administrative Functions
Appendix One – Complex Annual Visual Evaluation
Please refer to Complex Annual Third-Party Inspection for Specific Conditions of the Complex Template

Name of Complex: Southwest Wildlife Conservation Center Facility
Location: McDowell Mountain Regional Park
Date of Evaluation: _____
Name of Concessionaire: _____
Concessionaire's Representative Present: _____

A. Nature Center and Public Areas Conditions:

1. Main buildings:
2. Exterior public auxiliary facilities and concessions:
3. Walkways, trails, and sidewalks:
4. Play equipment (if any):
5. Public parking areas:
6. Litter and trash control:

B. SWCC Facility:

1. Appearance/maintenance of enclosures, etc:
2. Complex lighting (common areas) is adequate and sufficiently shielded to eliminate/reduce "spill" light from emanating above the horizontal plane:
3. Fencing/cages are well-maintained:
4. Fire extinguishers readily available:
5. Dust control measures evident and effective:

D. Maintenance and Repair Facility Observations

1. Equipment Buildings / Storage Areas conditions:
2. SDS "Right-To-Know" Station in Place; SDS sheets posted:
3. Manifests kept and logged on all contained/disposed of petroleum-based products, tires, or batteries:
4. OSHA notices and Hazmat placards posted as applicable:
5. Evidence of run-off controlled for containment of petroleum/hazmat:
6. All oils and fossil fuels stored on-site per environmental standards:

D. Customer Service

1. Examples of customer comments about service, pricing, policies, and quality of Complex (attach):
2. Example of a complaint that was received and how it was resolved:

F. Compliance:

1. Is the Concessionaire compliant with provisions of A.R.S. §41-4401 applicable to contractors:
2. Annual Operating Permits and Licenses (food, liquor, etc.) copies provided (permanent permits which do not renew periodically do not need to be provided):
3. Annual third-party inspections (building, roofing, foundations, electrical & fire) copies provided:

G. Comments:

Confirmation:

Signature of Person Conducting Evaluation MCPRD Date

Signature of Person Conducting Evaluation County FMD Date

Exhibit 8 – Accounting and Fees

Exhibit 8 - Accounting and Fees, as stated herein, provides administrative procedures for payments of annual and minimum fees, payment of utilities, as well as provides procedures for the establishment of a Capital Improvement Fund (defined below in **Section 5**) for the Complex. This Exhibit will be reviewed annually, no later than December 31 of each year, as part of the AMP pursuant to the terms of the Agreement.

The Concessionaire shall maintain an accounting system and pay all fees as stated herein and in the Agreement promptly and in compliance with all applicable statutes, laws, ordinances, rules, and regulations.

1. **Complex Use Fees.** By definition, Complex Use Fees are fees paid by the Concessionaire to County for the use of the Complex. In lieu of the Complex Use Fee, visitors to the Complex shall pay the MCPRD published Park entry fees, which shall be retained by MCPRD. Prior to the Complex Opening Date, the Parties shall collaborate to devise a mutually agreed upon system of entry fee collection and memorialize the system in the AMP.
2. **SWCC Facility Entry Fees.** The Concessionaire is responsible for the management and collection of all SWCC Facility Entry Fees. By definition, SWCC Facility Entry Fees are fees paid by the visitors to the Concessionaire for entry into the SWCC Facility. SWCC Facility Entry Fees shall be retained by the Concessionaire. MCPRD shall not charge separate entrance fees for access to SWCC Facility.
3. **Sales Revenue Collection.** Prior to the Complex Opening Date, the Parties shall collaborate to devise a mutually agreed upon system of sales revenue collection and memorialize the system in the AMP.
4. **GAAP.** The Concessionaire will maintain an accounting system which conforms to the Generally Accepted Accounting Principles (GAAP) and which accurately reflects an accounting of the Concessionaire's entire operation within the Complex. These financial records will be retained for a seven (7) year period from each current Contract Year (January 1 through December 31). These financial records will also be made available for an annual inspection or audit by county, federal, or state government, their agents or employees.
 - A. **Annual Financial Report.** Within one hundred twenty (120) calendar days of the end of each fiscal year (January 1 through December 31), the Concessionaire, at its own expense, will prepare and submit to County an Annual Financial Report ("AFR") stating the income and expenses, including a balance sheet, of the Concessionaire's entire operation within the Complex for the calendar year just completed. The financial statements shall be audited by a Certified Public Accountant prior to submittal. The AFR shall include a statement that the amounts shown in the financial report are consistent with those included by the Concessionaire's federal and any state information or income tax returns relating to the Concessionaire's operation within the Complex. If these are not the same, a statement explaining any differences shall be included. If the Concessionaire's books, records and other documents relevant to this Agreement are not sufficient to support and document fiscal activity, the Concessionaire will, within twenty (20) calendar days of the auditor's report, make payment to the County, if required due to any amounts not adequately supported and documented.
 - B. **Attendance Statement.** Within thirty days (30) calendar days of the end of the each calendar year (January 1 through December 31), the Concessionaire shall prepare and submit to the County an annual attendance statement for the SWCC Facility for the calendar year just completed.
 - C. **Audit.** The County, at its own expense, has the right to audit monthly attendance reports and AFR timeliness and accuracy.
5. **Other Fees.** Invoices generated by the County for utilities or other fees to be paid by the Concessionaire no later than twenty (20) calendar days after the date submitted to Concessionaire ("Due Date").
 - A. **Signage.** The Concessionaire, at its sole cost and expense, is responsible for all costs associated with costs of signs used in support of the SWCC Facility.
 - 1) The Parties will share the cost of signage for the gift shop in the Nature Center proportionately.
 - 2) MCPRD will provide off-premises and directional signage to the Complex at the Park (i.e., Park entrance).
 - B. **Parking Lot.** The County will invoice Concessionaire for its portion of the cost of maintenance of the parking lot at the Complex proportionately, based on each Party's estimated visitation of the Complex.
 - C. **Other Maintenance.** The County will invoice Concessionaire for its portion of the cost for maintenance of the restroom facilities, repairs of storm or casualty damage, and spill prevention plan at the Nature Center based on each Party's square foot use of the Nature Center.
 - D. **Electrical Fees.**
 - 1) Concessionaire, at its sole cost and expense, shall pay the electrical provider directly for the fees associated with the use of electrical service at the SWCC Facility.

- 2) The County shall invoice the Concessionaire for fees associated with the proportionate share for the use of electricity for delivery of the County's potable water through a booster pumping system to the point of connection for the Complex, based on monthly water meter readings.
 - 3) The County shall invoice the Concessionaire for SWCC's portion of the electricity service charges for the Nature Center based on each Party's square foot use of the Nature Center.
- E. Water Fees.
- 1) Concessionaire, at its sole cost and expense, shall pay the potable water provider directly for the fees associated with the use of potable water at the SWCC Facility.
 - 2) The County shall invoice the Concessionaire for SWCC's portion of the fees for potable water usage at the Nature Center associated with the proportionate share for the use of potable water used in the Nature Center, based on each Party's square foot use of the Nature Center.
 - 3) The County will not charge the Concessionaire for the use of up to the Annual Allocation of non-potable water used at the SWCC Facility (see **Exhibit 3 – Development of the Complex**).
 - 4) The County shall be responsible for submission of all annual use reports as required by the ADWR for the withdrawal of more than ten (10) acre-feet of non-potable water used during the calendar year. ADWR fees are determined based upon the ADWR published fee schedule and the metered use of non-potable water during the calendar year. The County shall invoice Concessionaire for water use over the ten (10) acre-feet of non-potable water used based on the ADWR published fee schedule.
- F. All reports, fees, and payments due to the County will be sent to:
- | | |
|-----------------------------------|---|
| Reports: | Email: emily.miller@maricopa.gov |
| Fees/Payments, if by credit card: | Phone 602-506-9500 |
| Reports/Fees/Payments, if mailed: | Maricopa County Parks and Recreation Department
c/o Finance Department
41835 N. Castle Hot Springs Road
Morristown, AZ 85342 |
- G. Late Payment Fee. A late payment fee shall be ten percent (10%) of the invoiced amount or amount due for payments not made within twenty (20) calendar days of the due date.
6. Capital Improvement Project Fund ("CIP Fund"). Concessionaire agrees to set up a CIP Fund for capital improvements and/or major maintenance and repair of existing facilities, structures and other improvements to substantially extend the useful life of the SWCC Facility and SWCC's portion of the Nature Center. (See **Exhibit 5 - Preventative Maintenance and Capital Improvements**, and its **Appendix One**).
- A. Beginning thirty (30) calendar days after issuance of the annual audit beginning after the first full year of operation after the Opening Date of the SWCC Facility, the Concessionaire shall deposit annually two and one-half percent (2.5%) of their annual operating budget toward the CIP Fund for capital improvements and/or major maintenance and repair of existing facilities for each upcoming Calendar Year. The CIP Fund after year two (2) of operation, shall not fall below fifty thousand dollars (\$50,000.00) in any calendar year.
 - B. The Concessionaire may direct the investment of the CIP Fund until needed for capital improvements and/or major repairs.
 - C. The funds in the CIP Fund shall be transferred to the County in the event that the Concessionaire defaults or upon the termination of this Agreement.

Exhibit 9 - Safety

Exhibit 9 - Safety, as stated herein, provides the safety parameters for the Complex. This Exhibit will be reviewed annually, no later than December 31 of each year, as part of the AMP pursuant to the terms of the Agreement.

The Concessionaire is responsible for ensuring that adequate safety measures and personnel are on-site at all times during Complex operating hours. All activities and events conducted by the Concessionaire will be conducted in conformance with all relevant industry standards and in compliance with all applicable federal, state and local statutes, regulations, and ordinances relating to safety.

1. Security. The Concessionaire, at its sole cost and expense, shall provide appropriate security measures to protect the Complex, its employees, volunteers and/or contractors, and the public.
2. Safety Program.
 - A. The Concessionaire shall develop and implement a written safety program thirty (30) calendar days prior to the scheduled Opening Date, and provide a copy of the program to MCPRD. All activities and events conducted by the Concessionaire shall be conducted in conformance with all relevant industry standards for safety and in compliance with all applicable federal, state, local safety, occupational health regulations, statutes, laws, and ordinances.
 - B. The safety program shall include a self-inspection of all equipment, facilities, and work processes by qualified personnel to verify compliance with established federal, state, county and local safety and occupational health regulations. Changes or amendments to the safety program will be submitted to MCPRD as they occur.
 - C. The County has the authority to immediately suspend any of the Concessionaire's operations if it is determined that there is an imminent risk or threat to the public, employees, or Park staff. Such suspension shall remain in effect until the risk or threat has been resolved to the reasonable satisfaction of the County. Such suspension will be without liability to County for any Concessionaire losses, including, but not limited to, lost income, wages or other compensation which may be claimed by the Concessionaire.
3. Reporting.
 - A. The Concessionaire shall immediately report to the County any event which results in death, serious injury, or medical transport. Reports shall be submitted to the Contractor Administrator, Park Supervisor, and the Regional Superintendent as per the MCPRD organizational flow chart set forth in **Exhibit 10 - MCPRD Organizational Chart**, as amended by MCPRD from time to time.
 - B. The Concessionaire shall annually provide the Contract Administrator copies of all insurance claims (to include but not limited to incident reports) within thirty (30) calendar days after the end of each calendar year.
4. Park Access and Closure.
 - A. The Concessionaire reserves the right to deny any person use of portions of the Complex when it reasonably believes that such use poses a direct threat to the health or safety of others or the Complex.
 - B. The Concessionaire may restrict public access within the Complex during hours of operation and non-operation for reasons of security, health and safety, or protection of animals.
 - C. The County reserves the right to close any area of the Park, including the area in which the Complex is located, when deemed necessary for public safety and health purposes without any liability to County for any Concessionaire losses, including, but not limited to, lost income, wages or other compensation which may be claimed by the Concessionaire. Prior to taking such action, MCPRD will attempt to coordinate said actions with the Concessionaire to minimize adverse impact to the Complex operation.
 - D. The County may establish limits of visitation at any portion of the Complex, based on public health and safety, or any other reason deemed by the County to be in the public interest (defined below), in the judgment of the County, without any liability to County for any Concessionaire losses, including, but not limited to, lost income, wages or other compensation which may be claimed by the Concessionaire. By definition, "public interest" means, among other things, any action taken by the County necessary to ensure public safety and health as well as safety of Park property, curb civil unrest, for fire prevention, for flood prevention/clean-up or for other natural events which could adversely impact the Park or users thereof. Prior to taking such action, MCPRD will attempt to coordinate said actions with the Concessionaire to minimize adverse impact to the Complex operation.

5. Emergency Evacuation Plan (“EEP”). The purpose of an EEP is to provide emergency evacuation guidelines in the event emergency evacuations are necessary. The Contract Administrator will provide the Concessionaire an EEP template for their use as soon as possible after the Effective Date of this Agreement.
- A. The Concessionaire shall, upon the Effective Date, provide the Contract Administrator with the name and phone numbers of a primary and secondary point-of-contact to be notified in the event of an evacuation.
 - B. The Concessionaire shall provide two (2) EEPs to the Contract Administrator. The requirements for the submittals are set forth below:
 - 1) The EEP(s) shall pertain only to portions of McDowell Mountain Regional specific to the Concessionaire.
 - 2) Construction. The first EEP shall be submitted prior to any work or construction at the site and shall describe emergency evacuation procedures from the date that Complex construction starts through the issuance of the final Certificate of Occupancy. The EEP for this timeframe shall, at a minimum, set forth evacuation procedures and accessible routes for all personnel on-site during construction as well as a procedure for notifying personnel of a change in the evacuation plan/route due to construction materials or equipment staging.
 - 3) Occupancy. The second EEP shall be submitted prior to the issuance of a Certificate of Occupancy and shall describe the emergency evacuation procedures for the Complex that will become effective on the date the Opening Date of the SWCC Facility. The EEP shall, at a minimum, set forth evacuation procedures and routes for all persons on site during normal daily operations, although the EEP may provide for personnel on site until all animals can be evacuated.
 - C. Each EEP requires the approval of the County. MCPRD will coordinate County approval of the EEP.
 - D. The Concessionaire shall train all contractors, vendors, employees, and regular volunteers of the Complex regarding the details of the EEP within fourteen (14) calendar days of their first day of employment, volunteering or working at the Complex. Volunteers may volunteer at the Complex twice without needing training on the EEP, but regular volunteers must receive training prior to volunteering a third time at the Complex.
 - E. The Concessionaire shall update the point-of-contact list as changes occur and shall provide a copy of the list within seven (7) calendar days of contact change to the Contract Administrator.

Exhibit 10 - MCPRD Organizational Chart

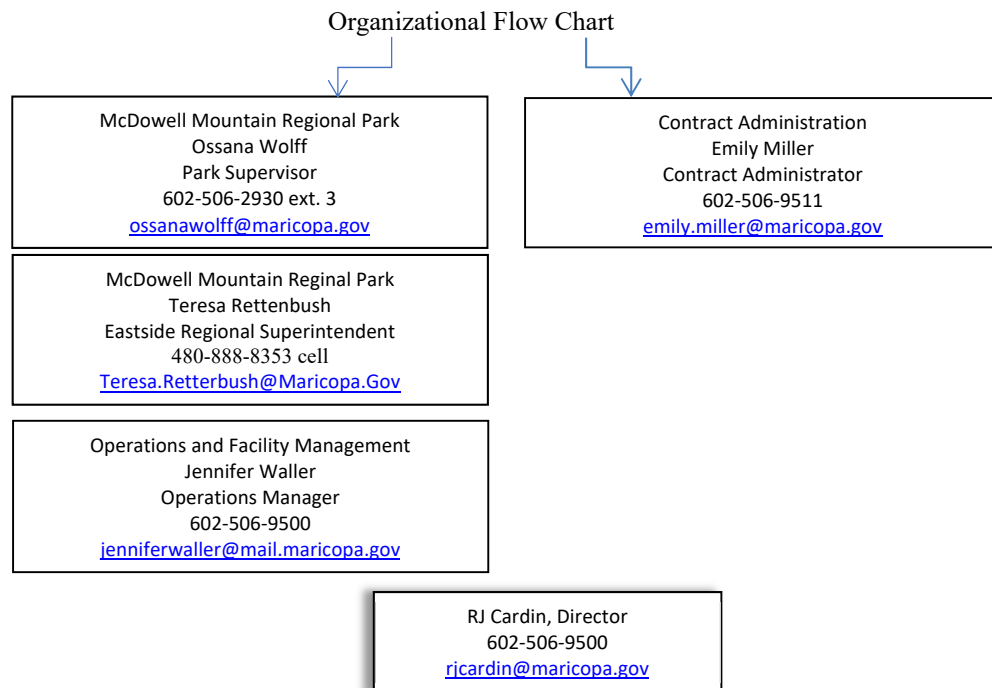




Exhibit 11 – Park Rules

MARICOPA COUNTY PARKS AND RECREATION PARK RULES

*Adopted August 13, 2003 by the Maricopa County Board of Supervisors
Revised January 13, 2016 by the Maricopa County Board of Supervisors*

R-101 DEFINITIONS

The following definitions shall determine meanings for certain facilities, objects, entities or activities.

1. "Abandoned Vehicle" means any vehicle, boat, trailer, or structure, which shows evidence of being left unattended for a period of 48 hours unless displaying an official permit indicating a stay in excess of 48 hours.
2. "Aircraft" means a structure or device for navigation of the air that is supported either by its own buoyancy or by the dynamic action of the air against its surface.
3. "Camping" means erecting a tent or shelter or arranging bedding, or both, for the purpose of, or in such a way as will permit, overnight use; or parking a trailer camper or other vehicle for the purpose of remaining overnight.
4. "Commission" means the Maricopa County Parks and Recreation Commission.
5. "County" means Maricopa County.
6. "Department" means the Maricopa County Parks and Recreation Department.
7. "Loudspeaker or public address system" means a device to amplify or direct sound.
8. "Maricopa County Park(s)" means any land or areas under the control of the Maricopa County Board of Supervisors which has been designated as a Park, Recreation Area or Conservation Area.
9. "Roads" means the entire width between the boundary lines of every way when any part thereof is open, kept or maintained for use by the public for purposes of vehicular travel.
10. "Special Use Permit" means commercial or non-commercial permits issued by the Department for activities outside a park's activity design or which excludes the general public or for which there is monetary gain.
11. "Swimming" means to propel one's self in water by natural means; consequently aquatic activities including the full or partial use of inner tubes, air mattresses or personal support devices.
12. "Designated Trail" means an authorized recreational trail designed, constructed, and maintained according to standards within the county manual; it is within Maricopa County Parks' boundaries and has been included in the Maricopa County Park trail system inventory.

R-102 SPECIAL USE PERMITS, FEES AND APPROVALS

1. Special Use Permits shall be required for eligible non-profit, government or private, as well as commercial uses.
2. For eligible non-profit uses, a Special Use Permit is required of any person or group for any activity outside each park's activity design, or for the use of specific park areas that require the exclusion of general public usage.
3. A Special Use Permit shall also be obtained in advance by any person or group wishing to use a Maricopa County Park for eligible commercial uses.
4. Park Impact Fees for Special Use Permits shall be negotiated by the Department based on the expenses related to the administration of the activity, protection of the park and visitors, and in accordance with established fee schedules when applicable.
5. The Department may require commercial applicants to enter into an agreement with the County for a negotiated percentage of gross receipts not to exceed twenty (20) percent.
6. The Department may require the permittee to post a deposit against damage and clean-up expense, provide a certificate of insurance naming the department as additionally insured, and/or provide for adequate medical, sanitary and security services.
7. A performance and payment bond may be required from any permittee who is providing a service that was solicited to provide any event or activity sponsored by the department.
8. The Department may impose conditions on the conduct of any activity, which are necessary to protect the area and maintain its availability as a public park.
9. A Special Use Permit is not required for any person operating under the provisions of a valid special use or commercial management concessions agreement with the department.
10. Special Use Permit applications, which are compatible with the management objectives of the individual park, may be refused for health and safety reasons or to protect the park from significant damages. With respect to competing non-profit uses, the use of park space shall be granted on a first-come, first-served basis. With respect to competing commercial uses, informal Proposals shall be solicited and the Special Use Permit awarded to that concessionaire which offers to provide the County with the highest potential revenue and/or best recreational value to park patrons, provided the concessionaire does not have a poor performance history on any prior permits.
11. All persons entering a park under a Special Use Permit are subject to all entrance and/or use fees, and all rules and regulations concerning park resource and facility use. The total amount of entrance fees owed by persons entering a park under a Special Use Permit, may be calculated in advance and paid in accordance with terms negotiated as part of the Special Use Permit.
12. A decision by the Department concerning any Special Use Permit may be appealed to the Commission.
13. Applications for Special Use Permits may be obtained from an authorized representative of the Department.

R-103 VIOLATIONS AND PENALTIES

1. Any person who violates any of these rules shall be guilty of a Class 2 misdemeanor.
2. Any person who violates any of these rules may also be evicted for failure to comply.

THE FOLLOWING ACTS ARE PROHIBITED IN MARICOPA COUNTY PARKS:

R-104 ENTRY, USE, OCCUPANCY, FEES

1. Entering, using, or occupying of a Maricopa County Park or its facilities, designated trails or waterways under the supervision and control of the Department for any purpose when said parks or areas are posted against such entrance, use, occupancy or where barriers exist.
2. Entering upon or using for any purpose, the land, water or facilities within the boundaries of Maricopa County Parks when a fee, rental, admission or other consideration has been established for such land, water or facilities, unless the person entering or using such land, water or facility has paid said fee, rental, admission or other consideration.

Exhibit 11 – Park Rules

(Continued)

R-105 ANIMALS AND PETS

1. Riding, permitting or allowing livestock, saddle, pack, or draft animals except on designated trails or areas under special permit issued by the Department or by special provisions of a use management agreement.
2. Possessing, allowing or permitting a dog and/or other pets in a Maricopa County Park, unless the same shall be under immediate control on a leash not exceeding 6 feet in length, except the leash requirement shall not apply to dogs while being used in hunting, or in field trials, or while being trained, when upon lands open to such uses and it does not interfere with other park activities.
3. Possessing, allowing or permitting a dog in a Maricopa County Park without a current dog license.
4. Allowing dogs or other pets, other than seeing-eye or hearing guide dogs, within the confines of public park buildings.
5. Allowing dogs and/or other animals to create a nuisance, noise or disturbance in any area.
6. Failure of owners of pets to properly remove and dispose of any waste.
7. Scattering and/or depositing the ashes of any animal.

R-106 DISCHARGE OF FIREARMS, HUNTING AND TRAPPING

1. Except as provided by state law, discharging a firearm, shooting with bow and arrow, or setting traps except in locations provided for that purpose and as permitted by Arizona Game and Fish rules.

R-107 MOTOR VEHICLES AND BICYCLES

1. Operating any motorized vehicle except on roads and parking areas designated by the Department for such purpose.
2. Abandoning any vehicle in any area of a Maricopa County Park. Vehicles violating this section may be towed at the owner's expense.
3. Parking a motor vehicle or trailer or other device towed by a motor vehicle in such a manner whereby roads, parking areas or other traffic ways or traffic are blocked or otherwise impeded. Vehicles violating this section may be towed at the owner's expense if such violation constitutes blockage of any emergency lane or otherwise interferes with park operations.
4. Operating a bicycle in a careless or reckless manner, or in disregard of the safety of any person or property.
5. Utilizing bike ramps in non-designated areas.
6. Operating, without permission from the County, any motorized skateboard, motorized scooter, moped or like device.

R-108 WATERCRAFT AND SWIMMING

1. Bringing into, or operating any watercraft upon any body of water, except at such places and in such manner as designated for such use or purpose by the Department.
2. Storing or leaving any watercraft without first obtaining a permit issued by the Department or its authorized concessionaire.
3. Swimming in areas posted against such use.
4. Cliff jumping.

R-109 VANDALISM

1. Destroying, damaging, or removing any tree, shrub, wildflower, cactus, or any other vegetation, or any other vegetative product or by-products without first obtaining a written permit from the Department.
2. Destroying, damaging, defacing or removing any County property or property administered by the Department.

R-110 LITTERING

1. Depositing or abandoning garbage, sewage, refuse, trash, waste, or other obnoxious material, except in receptacles or containers provided for such purposes.
2. Throwing or breaking any glass, plastic or ceramic object leaving shards or other fragments on park property.

R-111 PUBLIC BEHAVIOR

1. Conducting one's self in a disorderly or intoxicated manner, or using threatening, abusive, or boisterous or insulting language, or conducting or participating in a disorderly assembly, or to solicit for any purpose.
2. Engaging in noisy conduct, operating generators or motors, operating radios, or otherwise making loud or disturbing noises that may disturb the peace of the area between the hours of 10:00 p.m. and 6:00 a.m.
3. Public urination or public defecation.
4. Engaging in noisy conduct that disturbs the peace.

R-112 CAMPING

1. Camping without first obtaining a written permit issued by the Department
2. Failure to obey all written or posted camping regulations.

R-113 FIRES

1. Building fires except in designated places.
2. Building fires in any area posted against such use.
3. Building wood or charcoal fires at any time posted against such activity (during fire ban).
4. Use of gas or propane stove or grills when use is prohibited (during extreme fire ban).
5. Abandoning any fire without completely extinguishing it.
6. Allowing a fire to escape from control.

R-114 PUBLIC OR COMMERCIAL ACTIVITIES

1. Conducting any activity or assembly outside the individual park's activity design or requiring the use of park areas which exclude the use by the general public without first obtaining a Special Use Permit from the Department.
2. Posting, placing, or distributing advertising material; erecting a fence or barrier (except under specific use management or lease agreements), constructing or occupying improvements; or enclosing County administered lands without first obtaining a Special Use Permit from the Department.

Exhibit 11 – Park Rules

(Continued)

3. Using a loudspeaker, or public address system, or amplifier without first obtaining a Special Use Permit from the Department.
4. Using County administered lands for a commercial purpose without first obtaining a Special Use Permit or use management or lease agreement from the Department.

R-115 GLASS BOTTLES

1. Possessing glass, ceramic or hard frangible plastic beverage bottles.

R-116 AIRCRAFT AND ENGINE POWERED MODELS

1. Operating any passenger carrying aircraft of any nature or parachute, including parasailing, except in areas designated for such use by the Department or in an emergency situation.
2. Operating engine powered models and/or toys in any park area not designated for such use or in such a manner that it could be a hazard to the public.

R-117 INTERFERENCE WITH A PARK RANGER OR A PARK POLICE OFFICER

1. Interfering with any Park Ranger and/or Park Police Officer in the discharge of the Park Ranger's and/or Park Police Officer's duties.
2. Failing or refusing to obey any lawful command of any Park Ranger and/or Park Police Officer or other Certified Peace Officer.

R-118 TRAILS

1. Damaging, blocking, restricting or otherwise interfering with the use of a trail.
2. Throwing or rolling rocks or other items into valleys or canyons, down hillsides, mountainsides or trails.
3. Leaving a designated trail or walkway between trailheads.
4. Operating a bicycle, riding a horse, or hiking, except on trails designated for that use.
5. Failure to follow any sign that dictates the use or behavior on a trail.