

UNITED STATES DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

MOUNT RUSHMORE NATIONAL MEMORIAL

RETAIL AND FOOD AND BEVERAGE VISITOR SERVICES

CONCESSION CONTRACT NO. MORU001-05

Xanterra Parks & Resorts, Inc.  
14001 E. Iliff Avenue  
Suite 600  
Aurora, Colorado 80014

Covering the Period

January 1, 2005 through December 31, 2014

**CONCESSION CONTRACT  
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THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Midwest Region, (hereinafter referred to as the "Director"), and **Xanterra Parks & Resorts, Inc.**, a corporation organized and existing under the laws of the State of Delaware ( hereinafter referred to as the "Concessioner"):

**WITNESSETH:**

**THAT WHEREAS**, Mount Rushmore National Memorial is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

**WHEREAS**, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

**WHEREAS**, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director; and

**WHEREAS**, the Director desires the Concessioner to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship, and leadership;

**NOW, THEREFORE**, pursuant to the authority contained in Public Law 105-391, and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

## SEC. 1. TERM OF CONTRACT

This Concession Contract No. MORU001-05 ("CONTRACT") shall be effective as of January 1, 2005, and shall be for the term of **Ten (10) years** until its expiration on December 31, 2014, if the Concessioner satisfactorily completes the Concession Facilities Improvement Program described in Section 9(d) of this CONTRACT. If the Concessioner fails to complete this program to the satisfaction of the Director within the time specified, then this CONTRACT shall be for the term of approximately four (4) years until its expiration on December 31, 2008. The Director may extend this shortened term (but not beyond the original date of expiration of this CONTRACT) in circumstances where the Director determines that the delay resulted from events beyond the control of the Concessioner.

## SEC. 2. DEFINITIONS

The following terms used in this CONTRACT will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

- (a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (e.g., 36 CFR Part 51), whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.
- (b) "Area" means the property within the boundaries of MOUNT RUSHMORE NATIONAL MEMORIAL.
- (c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this CONTRACT. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner's operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.
- (d) "Capital Improvement" shall have the meaning set forth in Exhibit A to this CONTRACT.
- (3) (e) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this CONTRACT and all real property improvements assigned to or constructed by the Concessioner under this CONTRACT. The United States retains title and ownership to all Concession Facilities.
- (f) "Days" shall mean calendar days.
- (g) "Director" means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and his duly authorized representatives.
- (h) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this CONTRACT, each of which is hereby made a part of this CONTRACT.

(i) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this CONTRACT, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:

- (1) intracompany earnings on account of charges to other departments of the operation (such as laundry);
- (2) charges for employees' meals, lodgings, and transportation;
- (3) cash discounts on purchases;
- (4) cash discounts on sales;
- (5) returned sales and allowances;
- (6) interest on money loaned or in bank accounts;
- (7) income from investments;
- (8) income from subsidiary companies outside of the Area;
- (9) sale of property other than that purchased in the regular course of business for the purpose of resale;
- (10) sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;
- (11) receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether provided by the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

(j) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by a subconcession contract. A subconcessioner will report all of its gross receipts to the Concessioner without allowances, exclusions, or deductions of any kind or nature.

(k) "Leasehold Surrender Interest" shall have the meaning set forth in Exhibit A to this CONTRACT.

(l) "Leasehold Surrender Interest Value" or the "value" of a Leasehold Surrender Interest shall have the meaning set forth in Exhibit A to this CONTRACT.

(m) "Major Rehabilitation" shall have the meaning set forth in Exhibit A to this CONTRACT.

(n) "Possessory Interest" shall have the meaning set forth in Exhibit A to this CONTRACT.

(o) "Real Property Improvements" shall have the meaning set forth in Exhibit A to this CONTRACT.

(p) "Subconcessioner" means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

(q) "Superintendent" means the manager of the Area.

(r) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by section 3(a) of this CONTRACT.

**SEC. 3. SERVICES AND OPERATIONS**

**(a) Required and Authorized Visitor Services**

During the term of this CONTRACT, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

(1) Required Visitor Services. The Concessioner is required to provide the following visitor services during the term of this CONTRACT:

<i>Service</i>	<i>Scope</i>	<i>Additional details</i>
Food and beverage service Restaurant operations	Breakfast, lunch, and dinner	Scattered-style service with multiple points of sale.
Retail Operation	Apparel, Souvenirs and gifts, books and educational materials as allowed by NPS in consideration of its commitments to the Mount Rushmore National Memorial Cooperating Society, and basic sundry items	Includes sales of native handcraft items.

(2) Authorized Visitor Services. The Concessioner is authorized but not required to provide the following visitor services during the term of this CONTRACT:

<i>Service</i>	<i>Scope</i>	<i>Additional details</i>
Food and beverage service	Catering	Approval by Superintendent
Alcoholic beverage service	Dinner, Catering	Approval by Superintendent
Binocular rentals	For visitor use	Location approved by Supt
Vending Machines	Various locations	
Digital Imaging Service	Production of souvenirs bearing digital images taken at the memorial.	
Internet Based Retail Sales	Sale of Mount Rushmore related merchandise that takes place via the internet	

**(b) Operation and Quality of Operation**

(1) The Concessioner shall provide, operate and maintain the required and authorized visitor services and any related support facilities and services in accordance with this CONTRACT to such an extent and in a manner considered satisfactory by the Director. Except for any such items that may be provided to the Concessioner by the Director, the Concessioner shall provide the plant, personnel, equipment, goods, and

commodities necessary for providing, operating and maintaining the required and authorized visitor services in accordance with this CONTRACT. The Concessioner's authority to provide visitor services under the terms of this CONTRACT is non-exclusive.

(2) The concessioner is required to provide housing for employees and an onsite employee dining program.

**(c) Operating Plan**

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this CONTRACT in the form of an Operating Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating Plan is attached to this CONTRACT as Exhibit B. The Director in his discretion, after consultation with the Concessioner, may make reasonable modifications to the initial Operating Plan that are in furtherance of the purposes of this CONTRACT and are not inconsistent with the terms and conditions of the main body of this CONTRACT.

**(d) Merchandise and Services**

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this CONTRACT, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.

(2) All promotional material, regardless of media format (i.e. printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this CONTRACT must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(3) The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

**(e) Rates**

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this CONTRACT. The Concessioner's rates and charges to the public must be approved by the Director in accordance with Applicable Laws and guidelines promulgated by the Director from time to time.

**(f) Impartiality as to Rates and Services**

(1) Subject to Section (f)(2) and (f)(3), in providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit C.

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this CONTRACT. However, the Director reserves the right to review and modify the Concessioner's complimentary or reduced rate policies and practices as part of its rate approval process.

(3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

#### **SEC. 4. CONCESSIONER PERSONNEL**

##### **(a) Employees**

(1) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this CONTRACT.

(2) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit C.

(3) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

(4) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessioner.

(5) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(6) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to correct the situation.

(7) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any Concessioner employee housing, within the Area.

(8) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the

danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.

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

**(b) Employee Housing and Recreation**

(1) If the Concessioner is required to provide employee housing under this CONTRACT, the Concessioner's charges to its employees for this housing must be reasonable.

(2) If the visitor services required and/or authorized under this CONTRACT are located in a remote or isolated area, the Concessioner shall provide appropriate employee recreational activities.

**SEC. 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE**

**(a) Legal, Regulatory and Policy Compliance**

This CONTRACT, operations thereunder by the Concessioner and the administration of it by the Director, shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this CONTRACT at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this CONTRACT. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this CONTRACT.

**(b) Notice**

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or contractors, and, at its sole cost and expense, must promptly rectify any such violation.

**(c) How and Where to Send Notice**

All notices required by this CONTRACT shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

Superintendent  
Mount Rushmore National Memorial  
P. O. Box 268  
Keystone, South Dakota 57751

Notices sent to the Concessioner shall be sent to the following address:

Xanterra Parks and Resorts, Inc.  
14001 E. Iliff Avenue, Suite 600  
Aurora, Colorado 80014  
Attention: Mr. Andrew Todd

## SEC. 6. ENVIRONMENTAL AND CULTURAL PROTECTION

### (a) Environmental Management Objectives

The Concessioner shall meet the following environmental management objectives (hereinafter "Environmental Management Objectives") in the conduct of its operations under this CONTRACT:

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

### (b) Environmental Management Program

- (1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this CONTRACT incorporating all targets and goals presented in the Concessioners proposal. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.
- (2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and complexity of the EMP may vary based on the type, size and number of Concessioner activities under this CONTRACT.
- (3) The EMP shall include, without limitation, the following elements:
  - (i) Policy. The EMP shall provide a clear statement of the Concessioner's commitment to the Environmental Management Objectives.
  - (ii) Goals and Targets. The EMP shall identify environmental goals established by the Concessioner consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (i.e. measurable results and schedules) to achieve these goals.
  - (iii) Responsibilities and Accountability. The EMP shall identify environmental responsibilities for Concessioner employees and contractors. The EMP shall include the designation of an environmental program manager. The EMP shall include procedures for the Concessioner to implement the evaluation of employee and contractor performance against these environmental responsibilities.
  - (iv) Documentation. The EMP shall identify plans, procedures, manuals, and other documentation maintained by the Concessioner to meet the Environmental Management Objectives.

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

(vi) Reporting. The EMP shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Director under this CONTRACT.

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

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

(ix) Monitoring, Measurement, and Corrective Action. The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will self-assess its performance under the EMP, at least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The self-assessment should ensure the Concessioner's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the Concessioner to correct any deficiencies identified by the self-assessment.

### **(c) Environmental Performance Measurement**

The Concessioner shall be evaluated by the Director on its environmental performance under this CONTRACT, including, without limitation, compliance with the approved EMP, on at least an annual basis.

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

(1) Inventory of Hazardous Substances and Inventory of Waste Streams. The Concessioner shall submit to the Director, at least annually, an inventory of federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the Concessioner in operations under this CONTRACT. The Concessioner shall obtain the Director's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this CONTRACT. The Concessioner shall also submit to the Director, at least annually, an inventory of all waste streams generated by the Concessioner under this CONTRACT. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.

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

accordance with Applicable Laws.

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

(4) Notice of Violation. The Concessioner shall give the Director in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.

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

#### **(e) Corrective Action**

(1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the Concessioner's operations under this CONTRACT, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.

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

#### **(f) Indemnification and Cost Recovery for Concessioner Environmental Activities**

(1) The Concessioner shall indemnify the United States in accordance with section 12 of this CONTRACT from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts' fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this CONTRACT.

(2) If the Concessioner does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any

such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section shall preclude the Concessioner from seeking to recover costs from a responsible third party.

**(g) Weed and Pest Management**

The Concessioner shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice and other pests on Concession Facilities assigned to the Concessioner under this CONTRACT. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Director.

**(h) Protection of Cultural and Archeological Resources.**

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

**SEC. 7. INTERPRETATION OF AREA RESOURCES**

**(a) Concessioner Obligations**

- (1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area as reflected in Area planning documents, mission statements and/or interpretive prospectuses.
- (2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this CONTRACT.
- (3) The Concessioner is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessioner.

**(b) Director review of content**

The Concessioner must submit the proposed content of any interpretive programs, exhibits, displays or materials, regardless of media format (i.e. printed, electronic, or broadcast media), to the Director for review and approval prior to offering such programs, exhibits, displays or materials to Area visitors.

**SEC. 8. CONCESSION FACILITIES USED IN OPERATION BY THE CONCESSIONER****(a) Assignment of Concession Facilities**

(1) The Director hereby assigns the following Concession Facilities to the Concessioner for the purposes of this CONTRACT:

(i) certain parcels of Area land as described in Exhibit D upon which, among other matters, the Concessioner may be authorized to construct real property; and

(ii) certain real property improvements described in Exhibit D in existence as of the effective date of this CONTRACT, as may be modified from time to time to include additional real property improvements completed in accordance with the terms and conditions of this CONTRACT.

(2) The Director shall from time to time amend Exhibit D to reflect changes in Concession Facilities assigned to the Concessioner, including, without limitation, amending Exhibit D to reflect the addition of real property improvements completed in accordance with the terms and conditions of this CONTRACT and to reflect the withdrawal of concession facilities as set forth below.

**(b) Concession Facilities Withdrawals**

The Director may withdraw all or portions of these Concession Facilities assignments at any time during the term of this CONTRACT if:

(1) the withdrawal is necessary for the purpose of conserving, preserving or protecting Area resources or visitor enjoyment or safety;

(2) the operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or

(3) land or real property improvements assigned to the Concessioner are no longer necessary for the concession operation.

**(c) Effect of Withdrawal**

Any permanent withdrawal of assigned Concession Facilities which the Director or the Concessioner considers to be essential for the Concessioner to provide the visitor services required by this CONTRACT will be treated as a termination of this CONTRACT pursuant to Section 16. The Concessioner will be compensated pursuant to Section 17 for the value of any Leasehold Surrender Interest it may have, if any, in permanently withdrawn Concession Facilities. No other compensation is due the Concessioner in these circumstances.

**(d) Right of Entry**

The Director shall have the right at any time to enter upon or into the Concession Facilities assigned to the Concessioner under this CONTRACT for any purpose he may deem necessary for the administration of the Area.

**(e) Personal Property**

(1) Personal Property Provided by the Concessioner. The Concessioner shall provide all personal property, including without limitation removable equipment, furniture and goods, necessary for its operations under this CONTRACT, unless such personal property is provided by the Director as set forth in subsection (e)(2).

(2) Personal Property Provided by the Government. The Director may provide certain items of government personal property, including without limitation removable equipment, furniture and goods, for the Concessioner's use in the performance of this CONTRACT. The Director hereby assigns government personal property listed in Exhibit E to the Concessioner as of the effective date of this CONTRACT. This Exhibit E will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property assigned to it and shall be responsible for maintaining the property as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

**(f) Condition of Concession Facilities**

The Concessioner has inspected the Concession Facilities and any assigned government personal property, is thoroughly acquainted with their condition, and accepts the Concession Facilities, and any assigned government personal property, "as is."

**(g) Utilities Provided by the Director.**

The Director may provide utilities to the Concessioner for use in connection with the operations required or authorized hereunder when available and at rates to be determined in accordance with Applicable Laws.

**(h) Utilities not provided by the Director**

If the Director does not provide utilities to the Concessioner, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area or shall install the utilities within the Area with the written permission of the Director, subject to the following conditions:

(1) Any water rights deemed necessary by the Concessioner for use of water on Area or other federal lands must be acquired at the Concessioner's expense in accordance with applicable State procedures and law. Upon expiration or termination of this CONTRACT for any reason, the Concessioner must assign these water rights to the United States without compensation, and these water rights will become the property of the United States;

(2) If requested by the Director, the Concessioner must provide to the Director any utility service provided by the Concessioner under this section to such extent as will not unreasonably restrict anticipated use by the Concessioner. Unless otherwise agreed by the Concessioner and the Director in writing, the rate per unit charged the Director for such service shall be approximately the average cost per unit of providing such service; and

(3) All appliances and machinery to be used in connection with the privileges granted in this subsection, as well as the plans for location and installation of such appliances and machinery, shall first be approved by the Director.

## **SEC. 9. CONSTRUCTION OR INSTALLATION OF REAL PROPERTY IMPROVEMENTS**

### **(a) Construction of Real Property Improvements**

The Concessioner may construct or install upon lands assigned to the Concessioner under this CONTRACT only those real property improvements that are determined by the Director to be necessary and appropriate for the conduct by the Concessioner of the visitor services required and/or authorized under this CONTRACT. Construction or installation of real property improvements may occur only after the written approval by the Director of their location, plans, and specifications. The form and content of the application and the procedures for such approvals, as may be modified by the Director from time to time, are set forth in Exhibit F. All real property improvements constructed or installed by the Concessioner will immediately become the property of the United States and be considered Concession Facilities.

### **(b) Removal of Real Property Improvements**

(1) The Concessioner may not remove, dismantle, or demolish real property improvements in the Area without the prior approval of the Director.

(2) Any salvage resulting from the authorized removal, severance or demolition of a real property improvement within the Area shall be the property of the United States.

(3) In the event that an assigned real property improvement is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concessioner, at its expense, shall promptly, upon the request of the Director, restore the site as nearly as practicable to its original condition.

### **(c) Leasehold Surrender Interest**

(1) This CONTRACT hereby provides the Concessioner, subject to all applicable definitions, requirements and limitations of this CONTRACT and Exhibit A, a Leasehold Surrender Interest in Capital Improvements constructed by the Concessioner under the terms of this CONTRACT, including, but not limited to, those Capital Improvements constructed as part of the Concession Facilities Improvement Program and those Capital Improvements which result from the Major Rehabilitation of an existing real property improvement. Upon completion of a Major Rehabilitation by the Concessioner, an existing real property improvement assigned to the Concessioner in which the Concessioner had no Leasehold Surrender Interest prior to the Major Rehabilitation shall be considered as a Capital Improvement for all purposes of this CONTRACT.

(2) This CONTRACT may provide the Concessioner a Leasehold Surrender Interest in real property improvements resulting from possessory interest obtained under the terms of a possessory interest concession contract. Exhibit G describes the real property improvements, if any, in which the Concessioner has such a Leasehold Surrender Interest and states the value of this Leasehold Surrender Interest as of the effective date of this CONTRACT.

(3) The Concessioner shall not obtain Leasehold Surrender Interest under this CONTRACT except as may be provided in Exhibit A and Exhibit F. Among other matters, no Leasehold Surrender Interest shall be obtained as a result of expenditures from the Repair and Maintenance Reserve described in this CONTRACT, and this CONTRACT does not provide a Leasehold Surrender Interest as a result of expenditures for repair and maintenance of Concession Facilities of any nature.

**(d) Concession Facilities Improvement Program**

(1) The Concessioner shall undertake and complete an improvement program (hereinafter "Concession Facilities Improvement Program") costing no more than \$906,000 (in constant 2003 dollars) as adjusted for each project to reflect par value in the year of actual construction in accordance with the appropriate indexes of the Department of Labor's CPI-U Index, as published by the Department of Labor.

(2) The Concession Facilities Improvement Program shall include:

PROJECT	ESTIMATED PROJECT COST UNINFLATED	START DATE	COMPLETION DATE
Deferred Maintenance	\$39,000	2005	12/31/2005
Visitor Food and Beverage Servery Dining Area Remodel	\$772,000	2006	1/1/2007
Installation of Wood Paneling	\$95,000	2006	1/1/2007
<b>Total</b>	<b>\$906,000</b>		

The size, scope and location of each project may be adjusted to address planning and other circumstances. However, the requirements set forth in Section 9 (d) (1) shall not change.

(3) The Concessioner shall commence construction under the Concession Facilities Improvement Program as identified in Section 9. (d) (2) in a manner that demonstrates to the satisfaction of the Director that the Concessioner is in good faith carrying the Concession Facilities Improvement Program forward reasonably under the circumstances. No construction may begin until the Concessioner receives written approval from the Director of plans and specifications in accordance with Exhibit F. During the period of construction, the Concessioner shall provide the Director with such evidence or documentation, as may be satisfactory to the Director, to demonstrate that the Concession Facilities Improvement Program duly is being carried forward.

(4) The Concessioner shall complete and have the real property improvements available for public use as identified in Section 9. (d)(2). The Director may extend this date in circumstances where the Director determines that the delay resulted from events beyond the control of the Concessioner.

## SEC. 10. MAINTENANCE

### (a) Maintenance Obligation

The Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and groundskeeping for all Concession Facilities to the satisfaction of the Director.

### (b) Maintenance Plan

For these purposes, the Director, acting through the Superintendent, shall undertake appropriate inspections, and shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. The initial Maintenance Plan is set forth in Exhibit H. The Director in his discretion may make reasonable modifications to the Maintenance Plan from time to time after consultation with the Concessioner. Such modifications shall be in furtherance of the purposes of this CONTRACT and shall not be inconsistent with the terms and conditions of the main body of this CONTRACT.

### (c) Repair and Maintenance Reserve

(1) The Concessioner shall establish and manage a Repair and Maintenance Reserve. The funds in this Reserve shall be used to carry out, on a project basis in accordance with Exhibits F and H, repair and maintenance of Concession Facilities that are non-recurring within a seven-year time frame. Such projects may include repair or replacement of foundations, building frames, window frames, sheathing, subfloors, drainage, rehabilitation of building systems such as electrical, plumbing, built-in heating and air conditioning, roof replacement and similar projects. Projects will be carried out by the Concessioner as the Director shall direct in writing in advance of any expenditure being made and in accordance with project proposals approved by the Director. No projects may be commenced until the Concessioner receives written approval from the Director.

(2) Projects paid for with funds from the Repair and Maintenance Reserve will not include routine, operational maintenance of facilities or housekeeping and groundskeeping activities. Nothing in this section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Concession Facilities or housekeeping and groundskeeping responsibilities as required by this CONTRACT from Concessioner funds exclusive of the funds contained in the Repair and Maintenance Reserve.

(2) (3) The Concessioner shall establish within its accounting system a Repair and Maintenance Reserve. The Concessioner shall debit to this Reserve, within fifteen (15) days after the last day of each month that the Concessioner operates a sum equal to: **ONE percent (1%)** of the Concessioner's gross receipts for the previous month. If the Concessioner fails to make timely debits to the Repair and Maintenance Reserve, the Director may terminate this CONTRACT for default or may require the Concessioner to post a bond in an amount equal to the estimated annual Repair and Maintenance Reserve allocation, based on the preceding year's gross receipts.

(4) The balance in the Repair and Maintenance Reserve shall be available for projects in accordance with the Reserve's purpose. For all expenditures made for each project from the Repair and Maintenance Reserve, the Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Director. Failure to expend Repair and Maintenance Reserve

Funds when directed by the Director shall be considered as a material breach of this CONTRACT for which the Director may seek monetary damages and other legal relief, including, without limitation, termination of this CONTRACT.

(5) Repair and Maintenance Reserve funds shall not be used for a major rehabilitation as defined in this CONTRACT. The Concessioner shall obtain no ownership, Leasehold Surrender Interest, or other compensable interest as a consequence of the expenditure of Repair and Maintenance Reserve funds.

(6) Any Repair and Maintenance Reserve funds not duly expended by the Concessioner as of the termination or expiration of this CONTRACT shall be retained by the Concessioner (subject to otherwise applicable terms and conditions of this CONTRACT).

## **SEC. 11. FEES**

### **(a) Franchise Fee**

(1) For the term of this CONTRACT, the Concessioner shall pay to the Director for the privileges granted under this CONTRACT a franchise fee equal to **NINETEEN PERCENT (19%)** of the Concessioner's gross receipts for the preceding year or portion of a year.

(2) Neither the Concessioner nor the Director shall have a right to an adjustment of the fees except as provided below. The Concessioner has no right to waiver of the fee under any circumstances.

### **(b) Payments Due**

(1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees. In the event of termination or expiration of this CONTRACT, overpayments will first be offset against any amounts due and owing the Government, and the remainder will be paid to the Concessioner.

(3) All franchise fee payments consisting of \$10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

### **(c) Interest**

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

**(d) Adjustment of Franchise Fee**

- (1) The Concessioner or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this CONTRACT, a reconsideration and possible subsequent adjustment of the franchise fee established in this section. For the purposes of this section, the phrase "extraordinary, unanticipated changes" shall mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this CONTRACT which have or will significantly affect the probable value of the privileges granted to the Concessioner by this CONTRACT. For the purposes of this section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this CONTRACT.
- (2) The Concessioner or the Director must make a request for a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this CONTRACT.
- (3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fee.
- (4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, prospectively as of the date of agreement.
- (5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee in accordance with this section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.
- (6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel shall establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.
- (7) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee (up, down or unchanged) that is consistent with the probable value of the privileges granted by this CONTRACT within sixty (60) days of the presentations.
- (8) Any adjustment to the franchise fee resulting from this Section shall be prospective only.
- (9) Any adjustment to the franchise fee will be embodied in an amendment to this CONTRACT.

(10) During the pendency of the process described in this Section, the Concessioner shall continue to make the established franchise fee payments required by this CONTRACT.

## **SEC. 12. INDEMNIFICATION AND INSURANCE**

### **(a) Indemnification**

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessioner, its employees, agents or contractors under this CONTRACT. This indemnification shall survive the termination or expiration of this CONTRACT.

### **(b) Insurance in General**

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

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

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

### **(c) Commercial Public Liability**

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

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this CONTRACT, as more specifically set forth in Exhibit I. Furthermore, the commercial general liability package shall provide no less than the coverages and limits described in Exhibit I.

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

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

**(d) Property Insurance**

(1) In the event of damage or destruction, the Concessioner will repair or replace those Concession Facilities and personal property utilized by the Concessioner in the performance of the Concessioner's obligations under this CONTRACT.

(2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on Concession Facilities for all or part of their replacement cost as specified in Exhibit I in amounts no less than the Director may require during the term of the CONTRACT. The minimum values currently in effect are set forth in Exhibit I.

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

(4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities and/or personal property utilized in the Concessioner's operations under this CONTRACT, as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 13 shall apply to such insurance proceeds. The Concessioner shall not be relieved of its obligations under subsection (d)(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

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

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

**SEC. 13. BONDS AND LIENS**

**(a) Bonds**

The Director may require the Concessioner to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Director, in order to ensure faithful performance of the Concessioner's obligations under this CONTRACT.

**(b) Lien**

As additional security for the faithful performance by the Concessioner of its obligations under this CONTRACT, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the CONTRACT hereunder within the Area and any Leasehold Surrender Interest of the Concessioner.

**SEC. 14. ACCOUNTING RECORDS AND REPORTS****(a) Accounting System**

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this CONTRACT, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are \$500,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this CONTRACT, the Concessioner shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this CONTRACT by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

**(b) Annual Financial Report**

(1) The Concessioner shall submit annually as soon as possible but not later than one hundred twenty (120) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

(2) If the annual gross receipts of the Concessioner are in excess of \$1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between \$500,000, and \$1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than \$500,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

**(c) Other Financial Reports**

(1) Balance Sheet. Within ninety (90) days of the execution of this CONTRACT or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this CONTRACT. The balance sheet shall be audited or reviewed, as determined by the annual gross receipts, by an independent Certified Public Accountant. The balance sheet shall be accompanied by a schedule that identifies and provides details for all capital improvements in which the Concessioner claims a Leasehold Surrender Interest. The schedule must describe these capital improvements in detail showing for each such capital improvement the date acquired, constructed or installed

(2) Statements of Reserve Activity. The Concessioner shall submit annually, not later than one hundred twenty (120) days after the end of the Concessioner's accounting year, a statement reflecting total activity in the Maintenance Reserve for the preceding accounting year. The statement must reflect monthly inflows and outflows on a project by project basis.

**SEC. 15. OTHER REPORTING REQUIREMENTS**

The following describes certain other reports required under this CONTRACT:

**(a) Insurance Certification**

As specified in Section 12, the Concessioner shall, at the request of the Director, provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this CONTRACT. The Concessioner shall give the Director immediate written notice of any material change in its insurance program, including without limitation, any cancellation of required insurance coverages.

**(b) Environmental Reporting**

The Concessioner shall submit environmental reports as specified in Section 6 of this CONTRACT, and as otherwise required by the Director under the terms of this CONTRACT.

**(c) Miscellaneous Reports and Data**

The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the CONTRACT or otherwise, including, but not limited to, operational information.

**SEC. 16. SUSPENSION, TERMINATION, OR EXPIRATION****(a) Suspension**

The Director may temporarily suspend operations under this CONTRACT in whole or in part in order to protect Area visitors or to protect, conserve and preserve Area resources. No compensation of any nature shall be due the Concessioner by the Director in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

**(b) Termination**

(1) The Director may terminate this CONTRACT at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit visitor services in the Area to those that continue to be necessary and appropriate.

(2) The Director may terminate this CONTRACT if the Director determines that the Concessioner has materially breached any requirement of this CONTRACT, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only those visitor services required or authorized by the Director pursuant to this CONTRACT, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program, the requirement to duly expend funds from the repair and maintenance reserve and the requirement to comply with Applicable Laws.

(3) In the event of a breach of the CONTRACT, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the CONTRACT for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the CONTRACT for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 16(a).

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

(5) Termination of this CONTRACT for any reason shall be by written notice to the Concessioner.

**(c) Notice of Bankruptcy or Insolvency**

The Concessioner must give the Director immediate notice (within five (5) days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, NPS considers that this CONTRACT is not a lease but an executory contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 365.

**(d) Requirements in the Event of Termination or Expiration**

(1) In the event of termination of this CONTRACT for any reason or expiration of this CONTRACT, the total compensation due the Concessioner for such termination or expiration shall be as described in Section 17 of this CONTRACT. No other compensation of any nature shall be due the Concessioner in the event of a termination or expiration of this CONTRACT, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this CONTRACT for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner shall, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, repair any injury occasioned by installation or removal of such property, and ensure that Concession Facilities are in at least as good condition as they were at the beginning of the term of this CONTRACT, reasonable wear and tear excepted. The removal of such personal property must occur within thirty (30) days after the termination of this CONTRACT for any reason or its expiration (unless the Director in particular circumstances requires immediate removal).

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

**SEC. 17. COMPENSATION****(a) Just Compensation**

The compensation provided by this Section shall constitute full and just compensation to the Concessioner for all losses and claims occasioned by the circumstances described below.

**(b) Compensation for CONTRACT expiration or termination**

If, for any reason, including CONTRACT expiration or termination, the Concessioner shall cease to be authorized by the Director to conduct operations under this CONTRACT, the Concessioner shall convey to a person designated by the Director (including the Director if appropriate) any Leasehold Surrender Interest it has under the terms of this CONTRACT and the Director shall, subject to the terms and conditions of this CONTRACT, assure that the Concessioner is paid the Leasehold Surrender Interest Value.

**(c) Procedures for Establishing the Value of a Leasehold Surrender Interest**

At any time during the term of this CONTRACT, the Concessioner shall, when requested by the Director, enter into negotiations with the Director as to the value of the Concessioner's Leasehold Surrender Interest under this CONTRACT. In the event that such negotiations fail to determine an agreed upon value within a reasonable period of time as determined by the Director, the Director or the Concessioner may initiate arbitration proceedings to determine such value upon written request to the other party. Such arbitration proceedings shall be conducted in accordance with the arbitration procedures set forth in Exhibit A. In these circumstances, the Concessioner and the Director shall each select an arbiter. The two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel in accordance with Exhibit A. The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and shall determine the value of the Leasehold Surrender Interest consistent with the terms of this CONTRACT, including without limitation Exhibit A. The arbitration panel shall also provide a means to calculate the change in the value of such Leasehold Surrender Interest as may occur for up to two (2) years from the date of the initial determination. The determination of the arbitration panel shall be binding on the Director and the Concessioner.

**(d) Compensation for Personal Property**

No compensation is due the Concessioner from the Director or a successor concessioner for the Concessioner's personal property used in operations under this CONTRACT. However, the Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner in accordance with the terms of this CONTRACT shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.

**SEC. 18. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS**

(a) This CONTRACT is subject to the requirements of Applicable Laws, including, without limitation, 36 CFR Part 51, with respect to proposed assignments and encumbrances, as those terms are defined by Applicable Laws. Failure by the Concessioner to comply with Applicable Laws is a material breach of this CONTRACT for which the Director may terminate this CONTRACT for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this CONTRACT of any nature, including, but not limited to, Leasehold Surrender Interest or operating rights under this CONTRACT, if obtained in violation of Applicable Laws.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to Applicable Laws, including without limitation, 36 CFR Part 51, of the requirements of Applicable Law and this CONTRACT.

**SEC. 19. GENERAL PROVISIONS**

- (a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by the terms of Applicable Laws.
- (b) All information required to be submitted to the Director by the Concessioner pursuant to this CONTRACT is subject to public release by the Director to the extent provided by Applicable Laws.
- (c) Subconcession or other third party agreements, including management agreements, for the provision of visitor services required and/or authorized under this CONTRACT are not permitted, unless approved in writing by the Director.
- (d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this CONTRACT.
- (e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.
- (f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this CONTRACT or to any benefit that may arise from this CONTRACT but this restriction shall not be construed to extend to this CONTRACT if made with a corporation or company for its general benefit.
- (g) This CONTRACT is subject to the provisions of 43 CFR, Subtitle A, Subpart D, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.
- (h) This CONTRACT contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this CONTRACT. This CONTRACT may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.
- (i) This CONTRACT does not grant rights or benefits of any nature to any third party.
- (j) The invalidity of a specific provision of this CONTRACT shall not affect the validity of the remaining provisions of this CONTRACT.
- (k) Waiver by the Director or the Concessioner of any breach of any of the terms of this CONTRACT by the other party shall not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the CONTRACT. The subsequent acceptance of any payment of money or other performance required by this CONTRACT shall not be deemed to be a waiver of any preceding breach of any term of the CONTRACT.

(1) Claims against the Director (to the extent subject to 28 U.S.C. 2514) arising from this CONTRACT shall be forfeited to the Director by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this CONTRACT as of the 7 day of Dec., 2024.

CONCESSIONER

UNITED STATES OF AMERICA

BY Andrew N. Todd  
Mr. Andrew N. Todd  
President & CEO  
Xanterra Parks & Resorts, Inc.

BY James R. [Signature]  
Director,  
National Park Service

ATTEST:

BY: Kyle [Signature]  
TITLE: VICE President  
+ secretary

## EXHIBIT A

### LEASEHOLD SURRENDER INTEREST

This Exhibit A to this CONTRACT establishes certain terms and conditions of the CONTRACT regarding the nature, scope and applicable conditions of leasehold surrender interest. In event of any inconsistency between this Exhibit A and Exhibit F of this CONTRACT this Exhibit A shall prevail.

#### Section 1. Definitions

**“Arbitration”** means binding arbitration conducted by an arbitration panel. All arbitration proceedings conducted under the authority of this Exhibit A will utilize the following procedures unless otherwise agreed by the Concessioner and the Director. One member of the arbitration panel will be selected by the Concessioner, one member will be selected by the Director, and the third (neutral) member will be selected by the two party-appointed members. The neutral arbiter must be a licensed real estate appraiser. The expenses of the neutral arbiter and other associated common costs of the arbitration will be borne equally by the Concessioner and the Director. The arbitration panel will adopt procedures that treat each party equally, give each party the opportunity to be heard, and give each party a fair opportunity to present its case. Determinations must be made by a majority of the members of the panel and will be binding on the Concessioner and the Director.

A **“capital improvement”** is a structure, fixture, or non-removable equipment provided by the Concessioner pursuant to the terms of this CONTRACT and located on lands of the United States within the area. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in this Exhibit A.

**“Construction cost”** of a capital improvement means the total of the incurred eligible direct and indirect costs necessary for constructing or installing the capital improvement that are capitalized by the Concessioner in accordance with Generally Accepted Accounting Principals (GAAP).

**“Consumer Price Index”** means the national “Consumer Price Index--All Urban Consumers” published by the Department of Labor. If this index ceases to be published, the Director will designate another regularly published cost-of-living index approximating the national Consumer Price Index.

**“Depreciation”** means the loss of value in a capital improvement as evidenced by the condition and prospective serviceability of the capital improvement in comparison with a new unit of like kind.

**“Eligible direct costs”** means the sum of all incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project), that are necessary both for the construction of a capital improvement and are typically elements of a construction contract. Eligible direct costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): building permits;

materials, products and equipment used in construction; labor used in construction; security during construction; contractor's shack and temporary fencing; material storage facilities; power line installation and utility costs during construction; performance bonds; and contractor's (and subcontractor's) profit and overhead (including job supervision, worker's compensation insurance and fire, liability, and unemployment insurance).

**“Eligible indirect costs”** means, except as provided in the last sentence of this definition, the sum of all other incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project) necessary for the construction of a capital improvement. Eligible indirect costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): architectural and engineering fees for plans, plan checks; surveys to establish building lines and grades; environmental studies; if the project is financed, the points, fees or service charges and interest on construction loans; all risk insurance expenses and ad valorem taxes during construction. The actual capitalized administrative expenses (in amounts no higher than those prevailing in the locality of the project did) of the Concessioner for direct, on-site construction inspection are eligible indirect costs. Other administrative expenses of the Concessioner are not eligible indirect costs.

**“Fixtures and non-removable equipment”** are manufactured items of personal property of independent form and utility necessary for the basic functioning of a structure that are affixed to and considered to be part of the structure such that title is with the Director as real property once installed. Fixtures and non-removable equipment do not include building materials (e.g., wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, paint, etc.). Because of their special circumstances, floating docks (but not other types of floating property) that may be constructed by the Concessioner pursuant to the terms of this CONTRACT are considered to be non-removable equipment for leasehold surrender interest purposes only. Except as otherwise indicated in Exhibit A, the term “fixture” includes the term “non-removable equipment.”

**“Leasehold surrender interest”** solely means a right to payment in accordance with this CONTRACT for related capital improvements that the Concessioner makes or provides within the area on lands owned by the United States pursuant to the terms and conditions of this CONTRACT. The existence of a leasehold surrender interest does not give the Concessioner, or any other person, any right to conduct business in a park area, to utilize the related capital improvements, or to prevent the Director or another person from utilizing the related capital improvements. The existence of a leasehold surrender interest does not include any interest in the land on which the related capital improvements are located.

**“Leasehold surrender interest value”** means the amount of compensation the Concessioner is entitled to be paid for a leasehold surrender interest in capital improvements in accordance with this CONTRACT. The leasehold surrender interest value in existing capital improvements under the terms of this CONTRACT is an amount equal to:

- 1) The initial construction cost of the related capital improvement;
- 2) Adjusted by (increased or decreased) the same percentage increase or decrease as the percentage increase or decrease in the Consumer Price Index from the date the Director approves the substantial completion of the construction of the related capital improvement to the date of payment of the leasehold surrender interest value;

- 3) Less depreciation of the related capital improvement on the basis of its condition as of the date of termination or expiration of this CONTRACT, or, if applicable, the date on which the Concessioner ceases to utilize a related capital improvement (e.g., where the related capital improvement is taken out of service by the Director pursuant to the terms of this CONTRACT).

**“Major rehabilitation”** means a planned, comprehensive rehabilitation of an existing structure that:

- 1) The Director approves in advance and determines is completed within 18 months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances); and
- 2) The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure.

**“Pre-rehabilitation value”** of an existing structure means the replacement cost of the structure less depreciation.

**“Real property improvements”** means real property other than land, including, but not limited to, capital improvements.

**“Related capital improvement”** or **“related fixture”** means a capital improvement in which the Concessioner has a leasehold surrender interest.

**“Replacement cost”** means the estimated cost to reconstruct, at current prices, an existing structure with utility equivalent to the existing structure, using modern materials and current standards, design and layout.

**“Structure”** means a building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (e.g., water, power and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. Landscaping that is integral to the construction of a structure is considered as part of a structure. Interior furnishings that are not fixtures are not part of a structure.

**“Substantial completion of a capital improvement”** means the condition of a capital improvement construction project when the project is substantially complete and ready for use and/or occupancy.

## **Section 2. Obtaining a Leasehold Surrender Interest**

The Concessioner will obtain leasehold surrender interest in capital improvements constructed in accordance with the terms and conditions of this CONTRACT, including, without limitation, the terms and conditions of this Exhibit A to the CONTRACT.

### **Section 3. Authorizing the Construction of a Capital Improvement**

The Director may only authorize or require the Concessioner to construct capital improvements on area lands in accordance with the terms and conditions of this CONTRACT and for the conduct by the Concessioner of visitor services, including, without limitation, the construction of capital improvements necessary for the conduct of visitor services.

### **Section 4. Requirements for Beginning To Construct a Capital Improvement**

Before beginning to construct any capital improvement, the Concessioner must obtain written approval from the Director in accordance with the terms of this CONTRACT, including the terms and conditions of this Exhibit A and Exhibit F. The request for approval must include appropriate plans and specifications for the capital improvement and any other information that the Director may specify. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total construction cost must specify all elements of the cost in such detail as is necessary to permit the Director to determine that they are elements of construction cost as defined in this Exhibit. (The approval requirements of this and other sections of this CONTRACT also apply to any change orders to a capital improvement project and to any additions to a structure or replacement of fixtures as described in this CONTRACT.)

### **Section 5. Requirements After Substantial Completion of a Capital Improvement**

Upon substantial completion of the construction of a capital improvement in which the Concessioner is to obtain a leasehold surrender interest, the Concessioner must provide the Director a detailed construction report in accordance with the terms and conditions of this CONTRACT, including without limitation Exhibit A and Exhibit F. The construction report must be supported by actual invoices of the capital improvement's construction cost together with, if requested by the Director, a written certification from a certified public accountant. The construction report must document, and any requested certification by the certified public accountant must certify, that all components of the construction cost were incurred and capitalized by the Concessioner in accordance with GAAP, and that all components are eligible direct or indirect construction costs as defined in this Exhibit. Invoices for additional construction costs of elements of the project that were not completed as of the date of substantial completion may subsequently be submitted to the Director for inclusion in the project's construction cost.

### **Section 6. Determining Construction Cost for Purposes of Leasehold Surrender Interest Value**

After receiving the detailed construction report (and certification, if requested), from the Concessioner, the Director will review the report, certification and other information as appropriate to determine that the reported construction cost is consistent with the construction cost approved by the Director in advance of the construction and that all costs included in the construction cost are eligible direct or indirect costs as defined in this Exhibit A. The construction cost determined by the Director will be the final determination of construction cost

for purposes of the leasehold surrender interest value in the related capital improvement unless the Concessioner requests arbitration of the construction cost under Section 7 of this Exhibit A. The Director may at any time review a construction cost determination (subject to arbitration under Section 7 of this Exhibit A) if the Director has reason to believe that it was based on false, misleading or incomplete information.

### **Section 7. Arbitrating the Construction Cost of a Capital Improvement**

If the Concessioner requests arbitration of the construction cost of a capital improvement determined by the Director, the request must be made in writing to the Director within 3 months of the date of the Director's determination of construction cost under Section 6 of this Exhibit A. The arbitration procedures are described in Section 1 of this Exhibit A. The decision of the arbitration panel as to the construction cost of the capital improvement will be binding on the Concessioner and the Director.

### **Section 8. Actions the Concessioner May or Must Take Regarding Leasehold Surrender Interest**

The Concessioner:

- 1) May encumber a leasehold surrender interest in accordance with the terms of this CONTRACT;
- 2) Where applicable, must transfer its leasehold surrender interest in connection with any assignment, termination or expiration of this CONTRACT; and
- 3) May waive or relinquish a leasehold surrender interest.

### **Section 9. Extinguishment of a Leasehold Surrender Interest**

A leasehold surrender interest may not be extinguished by the expiration or termination of this CONTRACT and a leasehold surrender interest may not be taken for public use except on payment of just compensation. Payment of leasehold surrender interest value pursuant to the terms of this CONTRACT will constitute the payment of just compensation for leasehold surrender interest within the meaning of this CONTRACT and for all other purposes.

### **Section 10. Leasehold Surrender Interest Under a New Concession Contract**

If the Concessioner under this CONTRACT is awarded a new concession contract by the Director, and the new concession contract continues a leasehold surrender interest in related capital improvements, then the Concessioner's leasehold surrender interest value (established as of the date of expiration or termination of this CONTRACT) in the related capital improvements will be continued as the initial value of the Concessioner's leasehold surrender interest under the terms of the new concession contract.

**Section 11. Payment for Leasehold Surrender Interest if the Concessioner is not Awarded a New Concession Contract**

- 1) If the Concessioner is not awarded a new concession contract after expiration or termination of this CONTRACT, or, the Concessioner, prior to such termination or expiration, ceases to utilize under the terms of this CONTRACT capital improvements in which the Concessioner has a leasehold surrender interest, the Concessioner will be entitled to be paid its leasehold surrender interest value in the related capital improvements. The leasehold surrender interest will not be transferred until payment of the leasehold surrender interest value. The date for payment of the leasehold surrender interest value, except in special circumstances beyond the Director's control, will be the date of expiration or termination of this CONTRACT, or the date the Concessioner ceases to utilize related capital improvements under the terms of this CONTRACT. Depreciation of the related capital improvements will be established as of the date of expiration or termination of this CONTRACT, or, if applicable, the date the Concessioner ceases to utilize the capital improvements under the terms this CONTRACT.
- 2) In the event that extraordinary circumstances beyond the control of the Director prevent the Director from making the leasehold surrender interest value payment as of the date of expiration or termination of this CONTRACT, or, as of the date the Concessioner ceases to utilize related capital improvements under the terms of this CONTRACT, the payment when made will include interest on the amount that was due on the date of expiration or termination of this CONTRACT or cessation of use for the period after the payment was due until payment is made (in addition to the inclusion of a continuing Consumer Price Index adjustment until the date payment is made). The rate of interest will be the applicable rate of interest established by law for overdue obligations of the United States. The payment for a leasehold surrender interest value will be made within one year after the expiration or termination of this CONTRACT or the cessation of use of related capital improvements under the terms of this CONTRACT.

**Section 12. Process for Determining Leasehold Surrender Interest Value**

In the event that the Concessioner and the Director cannot reach agreement as to a leasehold surrender interest value where required by the terms of this CONTRACT, the Director's determination of leasehold surrender interest value will be final unless binding arbitration as to the value is requested by the Concessioner. The arbitration procedures are described in Section 1. A prior decision as to the construction cost of capital improvements made by the Director or by an arbitration panel in accordance with this Exhibit A are final and not subject to further arbitration.

**Section 13. Payment of Leasehold Surrender Interest by a New Concessioner**

A new concession contract awarded to a new Concessioner will require the new Concessioner to pay the prior Concessioner its leasehold surrender interest value in existing capital improvements as determined under Section 12.

**Section 14. Obtaining Additional Leasehold Surrender Interest by Undertaking a Major Rehabilitation or Adding to a Structure in Which the Concessioner has a Leasehold Surrender Interest**

If the Concessioner, with the written approval of the Director, undertakes a major rehabilitation or adds a new structure (e.g., a new wing to an existing building or an extension of an existing sidewalk) to an existing structure in which the Concessioner has a leasehold surrender interest, the Concessioner will increase its leasehold surrender interest in the related structure, effective as of the date of substantial completion of the major rehabilitation or new structure, by the construction cost of the major rehabilitation or new structure. The Consumer Price Index adjustment for leasehold surrender interest value purposes will apply to the construction cost as of the date of substantial completion of the major rehabilitation or new structure. Approvals for major rehabilitations and additions to structures are subject to the same requirements and conditions applicable to new construction as described in this CONTRACT.

**Section 15. Obtaining Additional Leasehold Surrender Interest by Replacing a Fixture in Which the Concessioner has a Leasehold Surrender Interest**

If the Concessioner replaces an existing fixture in which the Concessioner has a leasehold surrender interest with a new fixture, the Concessioner will increase its leasehold surrender interest by the amount of the construction cost of the replacement fixture less the construction cost of the replaced fixture.

**Section 16. Obtaining a Leasehold Surrender Interest in Existing Real Property Improvements in which no Leasehold Surrender Interest Exists**

- 1) If the main body of this CONTRACT requires the Concessioner to replace fixtures in real property improvements in which there is no leasehold surrender interest (e.g., fixtures attached to an existing government facility assigned by the Director to the Concessioner), a leasehold surrender interest will be obtained by the Concessioner in such replacement fixtures subject to the approval and determination of construction cost and other conditions contained in CONTRACT.
- 2) If the main body of this CONTRACT requires the Concessioner to undertake a major rehabilitation of a structure in which there is no leasehold surrender interest (e.g., a

government-constructed facility assigned to the Concessioner), upon substantial completion of the major rehabilitation, the Concessioner will obtain a leasehold surrender interest in the

structure. The initial construction cost of this structure shall be the construction cost of the structure as of the date of substantial completion of the major rehabilitation or new structure. The Consumer Price Index adjustment for leasehold surrender interest value purposes will apply to the construction cost as of the date of substantial completion of the major rehabilitation or new structure. Approvals for major rehabilitations and additions to structures are subject to the same requirements and conditions applicable to new construction as described in this CONTRACT.

**Section 14. Obtaining Additional Leasehold Surrender Interest by Undertaking a Major Rehabilitation or Adding to a Structure in Which the Concessioner has a Leasehold Surrender Interest**

If the Concessioner, with the written approval of the Director, undertakes a major rehabilitation or adds a new structure (e.g., a new wing to an existing building or an extension of an existing sidewalk) to an existing structure in which the Concessioner has a leasehold surrender interest, the Concessioner will increase its leasehold surrender interest in the related structure, effective as of the date of substantial completion of the major rehabilitation or new structure, by the construction cost of the major rehabilitation or new structure. The Consumer Price Index adjustment for leasehold surrender interest value purposes will apply to the construction cost as of the date of substantial completion of the major rehabilitation or new structure. Approvals for major rehabilitations and additions to structures are subject to the same requirements and conditions applicable to new construction as described in this CONTRACT.

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**Section 16. Obtaining a Leasehold Surrender Interest in Existing Real Property Improvements in which no Leasehold Surrender Interest Exists**

- 1) If the main body of this CONTRACT requires the Concessioner to replace fixtures in real property improvements in which there is no leasehold surrender interest (e.g., fixtures attached to an existing government facility assigned by the Director to the Concessioner), a leasehold surrender interest will be obtained by the Concessioner in such replacement fixtures subject to the approval and determination of construction cost and other conditions contained in CONTRACT.
- 2) If the main body of this CONTRACT requires the Concessioner to undertake a major rehabilitation of a structure in which there is no leasehold surrender interest (e.g., a government-constructed facility assigned to the Concessioner), upon substantial completion of the major rehabilitation, the Concessioner will obtain a leasehold surrender interest in the structure. The initial construction cost of this leasehold surrender interest will be the construction cost of the major rehabilitation. Depreciation for purposes of leasehold surrender interest value will apply only to the rehabilitated components of the related structure.

**Section 17. No Leasehold Surrender Interest Results from Repair and Maintenance of Real Property Improvements**

The Concessioner will not obtain initial or increased leasehold surrender interest as a result of repair and maintenance of real property improvements unless a repair and maintenance project is a major rehabilitation.

**Exhibit B**  
**OPERATING PLAN**

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## INTRODUCTION

This Operating Plan between Xanterra Parks & Resorts, Inc. (hereinafter referred to as the "Concessioner") and Mount Rushmore National Memorial (hereinafter referred to as the "Memorial") will serve as a supplement to Concession CONTRACT CC-MORU001-05 (hereinafter referred to as the "CONTRACT"). It describes specific operating responsibilities of the Concessioner and the Memorial with regard to those lands and facilities within the Memorial that are assigned to the Concessioner for the purposes authorized by the CONTRACT.

In the event of any conflict between the terms of the CONTRACT and this Operating Plan, the terms of the CONTRACT, including its designations and amendments, will prevail. Key elements of the Concessioner's proposal accepted and awarded by the National Park Service (NPS) have been incorporated into this Operating Plan. The NPS reserves the right to incorporate any further elements of the proposal throughout the term of the Contract. The Concessioner's proposal (hereinafter referred to as the "Proposal") is the proposal submitted by the Concessioner for contracting action MORU001-05.

This plan will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of the Memorial.

Any revisions will be consistent with the main body of this CONTRACT. Any revisions must be reasonable and in furtherance of the purposes of the CONTRACT.

### 1) Responsibilities

#### A) Concessioner

To achieve an effective and efficient working relationship between the Concessioner and the Memorial, the Concessioner will designate an on-site general manager who:

- (1) Has the authority and the managerial experience for operating the authorized concessions facilities and services within the Memorial,
- (2) Will employ a staff with the expertise and training to operate all services authorized under this CONTRACT,
- (3) Has full authority to act as a liaison in all concession administrative and operational matters within the Memorial, and,
- (4) Has the responsibility for implementing the policies and directives of the National Park Service.

#### B) Memorial

The Superintendent of Mount Rushmore National Memorial is the Memorial manager with responsibility for all Memorial operations, including concession operations. The Superintendent carries out the policies and directives of the National Park Service, including concession program management. Directly, or through designated representatives, the Superintendent reviews, directs, and coordinates Concessioner activities relating to the Memorial. This includes:

- (1) Evaluation of Concessioner services and facilities;
- (2) Inspection of Concessioner facilities;

- (3) Review and approval of rates charged for all commercial services;
- (4) Review and approval of construction and all improvements to facilities; and,
- (5) Review of the qualifications of the General Manager, prior to hiring.

**2) Scope of Operations**

The scope of operations for this concession is described in the CONTRACT. Any changes to the scope of operations must receive written approval from the Superintendent and be reflected in a CONTRACT Amendment.

**3) General Operating Standards and Requirements**

**A) Schedule of Operation**

(1) *Obligation.* The Concessioner will provide the required services for Memorial visitors during the following minimum hours and days of operation. The Concessioner may not reduce the minimum hours of operation unless changes are requested and approved, in writing, by the Superintendent. The Concessioner may expand upon the minimum hours of operation with prior approval from the Superintendent. Dates are also subject to change in the event of a Memorial emergency or severe weather. Hours of operation are at a minimum to be as follows. Approved Operating Schedules will be posted in conspicuous locations at the place of business and all signs, informational folders, and advertisements will accurately reflect current approved operating schedules.

SERVICE	SUMMER	SHOULDER AND WINTER SEASONS
	May 10 – September 20	September 21 – May 9
Retail Store	8:00 a.m. to 10:00 p.m., daily	8:00 a.m. to 6:00 p.m., daily
Carver's Dining Room	8:00 a.m. to 9:00 p.m., daily	8:00 a.m. to 4:30 p.m., daily

- (2) *Proposed Changes.* The Concessioner will submit a written schedule of proposed changes to opening and closing dates and operating hours for all concession facilities and programs for the Superintendent's approval prior to April 1 of each year.
- (3) For "after hour" emergencies, a prominently displayed phone number will be posted at all facilities.

**B) Rate Determination and Approval Process**

- (1) *Rate Determination.* It is the objective of the Memorial to ensure that the Concessioner's rates and charges to the public are commensurate with the level of services and facilities provided, and are reasonable, justified, and comparable with similar facilities and services provided by the private sector. Reasonableness of rates will be determined in accordance with current Concessions Management Guidelines.
- (2) *Request Submittal for Annual Rate Changes.* All requests will be submitted in writing, at least 45 days prior to anticipated implementation dates and/or brochure publication dates. Successful requests will be supported by providing all necessary

information to enable NPS to assess rates for comparison, i.e., portion size, food cost percentage, type of service, wholesale cost, transportation cost, etc. The information to be included in the request is outlined in current NPS guidelines. If the format of the request is unsatisfactory, the Concessioner will be required to resubmit the proposal and the date of submittal will begin upon the receipt of the revised proposal. The Superintendent will accept one rate change request (per offered service) per year barring any extenuating circumstances. The timing of the requests should take into account the seasonal aspects of the service and plan the approval timing accordingly.

*(3) Food and Beverage Rates*

- (a) Rates for food and beverage items must be approved in writing by the Superintendent and will be submitted in accordance with the NPS guidelines, including but not limited to, Core Menu Guidelines, included as an attachment to this Exhibit. After an initial core menu is established, only those core menu items regularly on the menu are subject to comparability analysis. Non-core items will not be included in the rate requests. All menus are subject to Superintendent approval prior to finalization.

*(4) Rate Approval, other than F&B*

- (a) Approval Timing. The Service will approve, disapprove or adjust rates and will inform the Concessioner within 30 days of the rate request submittal. It is the responsibility of the Concessioner to submit rate requests in a timely manner.
- (b) Approval Method. For the gift shop, the Competitive Market Declaration (CMD) rate method should be used for all merchandise items without Manufacturer Suggested Retail Prices. For the CMD method, the concessioner must provide a Competitive Market Declaration which must be reviewed annually. An example of a CMD:

Mount Rushmore Gifts is a retail store located at Mount Rushmore National Memorial that sells a variety of merchandise, including t-shirts, coffee mugs, key chains, jewelry, and a variety of other souvenirs and gifts. The town of Keystone, South Dakota, is approximately 2 miles from Mount Rushmore's gift shop and has a variety of gift and retail shops selling similar products.

The use of a Competitive Market Declaration for approving rates for merchandise items at Mount Rushmore would be appropriate. Rates can be adjusted without the specific administration of the superintendent, but they are subject to review to ensure that they remain comparable to similar items offered outside Mount Rushmore National Memorial. The CMD must be submitted and reviewed annually. The use of this method could be rescinded if the superintendent determines that the situation has changed. The decision to change rate administration methods is at the discretion of the superintendent.

Example of CMD for annual submittal:

**Merchandise Items – Competitive Market Declaration.** Merchandise items sold at Mount Rushmore by Xanterra Parks and Resorts are vended in a competitive market. The gift shop at Mount Rushmore must compete with other business which ensures market pricing. In consideration of these factors, it is

declared that the rates charged by the concessioner for merchandise are comparable and approved. Xanterra Parks and Resorts may price merchandise competitively at the Mount Rushmore gift shop without further approval from the NPS.

This declaration is for \_\_\_\_\_ (insert inclusive dates).

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Superintendent

- (c) **Approved Rate Posting.** The Concessioner will prominently post all rates for goods and services provided to the visiting public. Approved rates are to be the maximum charged the visiting public. Under no circumstances will higher prices be charged.

*(5) Rate Compliance*

- (a) The Superintendent or his/her designated representative will periodically conduct on-site comparability studies with follow-up telephone calls to update rate information for a rate review. Rate compliance will be checked during periodic operation evaluations and throughout the year. Approved rates will remain in effect until superseded by written changes approved by the Superintendent.

*(6) Reduced Rates for Government Employees*

- (a) **Eligibility.** Goods and services may not be provided to government employees or their families without charge or at reduced rates that are not available to the general public.

**C) Purchasing**

- (1) **Competitive Purchasing.** The Concessioner will engage in competitive specification purchasing. Purchases may be made from a facility operated or owned by the Concessioner or a parent company, provided the product is comparable in quality and price.
- (2) **Discounts.** The Concessioner will take advantage of all available trade, cash and quantity discounts and rebates and pass them through to the consumer or the operation.

**D) Use of National Park Service Authorized Concessioner Mark**

- (1) **The Service has an approved Mark it allows concessioners to use to advertise the official relationship between the Service and the Concessioner. The Mark consists of the official NPS Arrowhead and the words "Authorized Concessioner."**
- (2) **Authorized Users.** The Concessioner is authorized to use the Mark at the start of the Contract in accordance with the approval procedures below. The Concessioner must have received a satisfactory or marginal rating in the previous Annual Overall Review to use the Mark following the first year of the Contract.
- (3) **Authorized Uses of the Mark.** The Concessioner may use the Mark in publications, written advertising, brochures, web-based information, interpretive materials,

broadcasts (television, film or other audio/visual), associated with required or authorized services; facility signs designed, constructed, or commissioned for official Concessioner functions or purposes; and signs placed on visitor transportation systems, vessels and aircraft.

- (4) Prohibited Uses of the Mark. The Concessioner may not use the Mark on merchandise, souvenirs and clothing presented for sale to the public; Concessioner employee uniforms; or Concessioner equipment and transportation equipment not specifically providing required or authorized visitor services.
- (5) Artwork, Layout and Use. The Concessioner must use official artwork provided by the Service. Layout and use must be in accordance with the Authorized Concessioner Mark Guidelines available on the NPS Commercial Services web site under the Concessioner Tools tab.
- (6) Approval Procedures. The Concessioner must submit a written request to the Service for approval to use the Mark. The submittal must include proposed applications and sample layouts. The Concessioner may not use the Mark until the Service has approved the request and the Concessioner's proposed layouts in writing.

#### E) Evaluations

- (1) The Concessioner will manage operations and services to ensure protection of resources, compliance with public health and safety requirements and provide satisfactory services for Memorial visitors within the assigned areas of responsibility. The operation of facilities, and services required by this CONTRACT will conform to the evaluation standards set forth in the National Park Service Concessions Management Guidelines and with this Operating Plan.
- (2) The Memorial and/or its representatives and the Concessioner will separately evaluate and monitor concession facilities and services with respect to NPS policy, applicable standards, authorized rates, safety, public health, environmental management impacts on cultural and natural resources, identified maintenance and operating deficiencies, and visitor satisfaction, concerns, and reactions.
- (3) The Concessioner will meet with Memorial officials to prioritize and schedule the correction of deficiencies and the implementation of improvement programs resulting from these inspections. The Concessioner will be responsible for correction of deficiencies and abatement plans within dates assigned by the Memorial.
  - (a) Frequency of Operational Evaluations. A minimum of two operational evaluations, one conducted before the peak season, will be conducted annually. These evaluations will use standards established by the National Park Service.
  - (b) Periodic Operations Inspections. The Memorial will conduct unannounced periodic inspections of Concession facilities and services to ensure conformance to operational standards. Location managers will be contacted at the time of evaluation so that a representative of the Concessioner may accompany the Memorial evaluator. The Memorial reserves the right to enter the Concessioner's facilities at any reasonable time for any evaluation or when otherwise deemed necessary.

*(4) Health and Safety Inspections*

- (a) Concessioner Safety Inspection. The Concessioner's Safety Manager will perform periodic interior and exterior safety inspections of all concession facilities, including Employee Housing, in accordance with its documented Risk Management Plan. The Concessioner's Safety Manager has the responsibility for both health and safety inspections in employee housing areas. The Safety Manager will assure employee compliance with health, fire, and safety code regulations as well as the Memorial's policies and guidelines
- (b) NPS Safety Inspections. The Memorial will conduct at least one annual comprehensive safety and occupational health evaluation of all operations and facilities in addition to the review of the Concessioner's Risk Management Program. Periodic facility evaluations will also be conducted.
- (c) Public Health Inspections. The Public Health Service Sanitarian will conduct unannounced periodic evaluations of the Concessioner's food and beverage and merchandise facilities. Pennington County also periodically inspects facilities, and the Concessioner will be required to satisfactorily meet Pennington County requirements
- (d) Food and Beverage Operations. The Concessioner will develop and follow a Hazard Analysis Critical Control Point ("HACCP") Plan, consistent with the current Food Code published by the US Public Health Service, which will be available from the Memorial upon request. The Memorial may help develop and update the program as necessary.

*(5) Fire Inspections*

- (a) The National Park Service. The Midwest Region of the NPS is the jurisdiction having authority ("JHA") for all fire codes on federal lands administered by the Memorial. The NPS will conduct periodic inspections.
- (b) The Concessioner. The Concessioner will have a qualified professional perform interior and exterior fire inspections of all concession buildings within 30 days of initial occupancy and on an annual basis thereafter. Written records, verifying the completion of such inspections, will be maintained by the Concessioner and available to the Memorial upon request.
- (c) Fire Drills. The Concessioner will conduct routine fire drills of all concession facilities as required by the National Fire Prevention Association ("NFPA") standards. All employees shall be familiar with evacuation plans, emergency exits, emergency lighting, and fire reporting procedures. Employee training shall include a fire drill.
- (d) Employee Housing Inspections. The Concessioner will inspect/evaluate all quarters for fire and safety compliance within 30 days of an employee's initial occupancy. Occupancy levels will be recommended by the Concessioner and approved by the Superintendent. The Concessioner will ensure that occupancy levels are not exceeded.

- (6) *Visitor Comments.* The Concessioner will make Memorial-approved comment cards available to visitors to measure service and quality standards, product mix, pricing and overall Memorial experience.
  - (a) The Concessioner will investigate and respond to all visitor complaints regarding Concessioner services. Visitor comments that allege misconduct by Concession employees, pertain to the safety of visitors or other Memorial employees, or concern the safety of Memorial resources will be provided to the Memorial upon receipt.
  - (b) The Memorial will forward to the Concessioner any comments and/or complaints received regarding Concessioner facilities or services. The Concessioner will investigate and respond to any complaints in a timely manner. The Concessioner will provide a copy of any such responses to the Superintendent, and a copy of any Superintendent responses will be forwarded to the Concessioner.
- (7) *Interpretive Audit Program.* The Memorial will annually evaluate interpretive and informational efforts to ensure interpretive appropriateness, accuracy, quality, and the relationship of interpretive presentations to Memorial themes.
- (8) *Environmental Audit.* The NPS has established a Concession Environmental Audit System to facilitate concessioner compliance with all applicable environmental requirements; implementation of best management practices; promotion of sound environmental practices; and awareness and accountability for environmental management. The scope of the audit includes applicable federal, state and local laws and regulations, applicable DOI and NPS policies and regulations, including but not limited to, criteria as contained within the current NPS Environmental Audit System Operating Guide and the Concession Environmental Audit System (CEAS) Guide. Audits will be conducted at least every five years.

#### **F) General Policies**

- (1) *Facilities Use.* Concession facilities may not be used for activities or services that do not directly and exclusively support contractual services authorized by the concession CONTRACT without written permission from the Superintendent.
  - (a) Smoking Policy. Smoking is prohibited at the Memorial except in the visitor parking garages. The Superintendent has designated the visitor parking facility as the only area in the park where visitors are allowed to smoke. Cigarette receptacles will be made available in the parking garage, on all levels, near the garbage/recycling containers, and at the bus parking and RV parking areas. Other locations may be necessary, as determined by the NPS, in managing proper capture and disposal of cigarette butts. Concession employees are allowed to smoke on the concrete area immediately outside the employee entrance near the dock, and on the concrete area in front of the dormitory, at least 25 feet from the entrance, and at the employee gazebo located in the overflow lot.
  - (b) Quiet Hours. Quiet hours will be enforced between the hours of 10:00 p.m. and 6:00 a.m. in all Concessioner employee-housing areas.

- (2) *ADA Compliance.* The Concessioner will ensure that all public areas are in accordance with, and meet, accessibility and hospitality guidelines and standards unless specifically exempted by the Superintendent.
- (3) *Lost and Found.* The Concessioner will establish and provide an effective program for handling lost and found or unattended property in facilities and upon lands assigned to the Concessioner. Procedures for handling of lost and found property will conform to DO #44, Personal Property Management, which can be found at <http://www.nps.gov/refdesk/DOrders/DOrder44.html>, and the revised Personal Property Management Handbook No. 44.
- (a) Memorial Involvement. Items are to be turned over to concession personnel responsible for administering the lost and found program and tagged with a lost and found report (Form 10-166) to identify the item, date, location, and name of finder. Items of value will be reported to the Memorial as soon as possible and assigned a reference control number. All items will be delivered to the nearest ranger station within 72 hours or not less than two times per week.
- (b) Return of Property. Once property is turned in to the Memorial, it will be the Memorial's responsibility to return the property to the owners.
- (4) *Credit Cards.* Government-issued credit cards will be honored and at a minimum, American Express, MasterCard, Visa, and Discover will be honored. The Concessioner will accept debit cards at its discretion or at the direction of the Superintendent.
- (5) *Vending.*
- (a) Vending Sources. Vending machines will be conveniently located, and of a design and color that complements the aesthetics of the building and surroundings. The Memorial will approve all locations.
- (b) Standards. All machines will be clean, properly stocked, and in good working condition. Signing on the machine may relate to Memorial interpretive themes or will be generic in nature. Brand information will only be visible when at the machine. The machines will be adequately illuminated, but will not contribute to night light pollution. Vending machine beverages will be dispensed in cans or plastic containers only with adequate trash/recycling containers provided for disposal.
- (c) Out-Of-Service. Any vending machines that are temporarily out of order will have a sign posted with appropriate information that will direct patrons to the closest available unit.
- (d) Cigarettes. Cigarette vending machines will not be located anywhere within the Mount Rushmore National Memorial.
- (6) *Vehicles*
- (a) Licensing, Insurance, Maintenance and Registration. All vehicular equipment used by the Concessioner will be properly registered, licensed, insured, and maintained in accordance with federal and state law and regulations.

- (b) Transportation of Employees: The Concessioner must obtain all permits or licenses of state or local governments, as applicable, to conduct employee transportation services and must operate in compliance with all Applicable Laws. The Concessioner shall ensure that vehicles used to transport employees receive periodic safety inspections and that any necessary repairs are performed immediately.
- (c) Parking. The Concessioner will ensure that Memorial-approved designated areas are used to park and store vehicles and equipment in a safe, organized manner.
- (d) Identification. Concessioner transportation and vehicles will be identified with the company name and logo.

*(7) Employee Housing and Food*

- (a) The Concessioner will provide adequate housing, cooking facilities, and food storage facilities where appropriate. Food storage facilities will be vermin-proof. Preventive measures will be in place for Hantavirus.
- (b) The Concessioner will ensure that the Standard Operating Procedures relating to the ownership of pets is followed within Mount Rushmore National Memorial for both full-time and seasonal employees.
- (c) Employee rooms will be adequately furnished to serve the number of occupants. The Concessioner will ensure that occupancy levels are not exceeded.
- (d) The Concessioner will notify the Memorial of abandoned vehicles within its land assignment, which may include employee vehicles. Employee vehicles will be towed at the expense of the owner, or if the owner cannot be located, at the expense of the Concessioner. The Concessioner will take the necessary steps to remove abandoned property in a timely manner.
- (e) Concessioner employees residing in the Concessioner's employee housing area will be informed of Service regulations and policies, including but not limited to residency within the Memorial, through newsletters, and official advisories and notices provided by the Concessioner or the Memorial.
- (f) The content of the employee housing lease agreement and the employee housing rules and regulations are subject to the approval of the Superintendent.

*(8) Interactions with Wildlife*

- (a) The feeding of wildlife within a National Park Service area is not permitted. The Concessioner will not encourage the feeding of wildlife at any facility within its land assignment by displaying food, such as popcorn and bread, in such a manner that may imply approval of the feeding of wildlife. In the event that merchandise such as bird or other small animal feeders are offered for sale by the Concessioner, they will not be labeled in such a way as to encourage visitors to use them within the Memorial.

*(9) Signs*

- (a) All signs will be professionally made and not hand-painted.

- (b) All merchandise will be clearly labeled with the selling price. Identical items may be marked by display area, rather than on each item.

#### **G) Human Resources Management**

- (1) *Employee Identification and Appearance.* At a minimum all employees will be issued an employee photo identification card that includes their name and an expiration date based on the employees anticipated departure date or the end of the current calendar year, whichever occurs first. These identification cards will be collected by the Concessioner upon termination of employment or at the end of the season for seasonal employees. The Concessioner will ensure that all employees wear uniforms or standardized clothing with a personal nametag and/or photo identification. Employees must maintain a neat and clean appearance and project a hospitable, positive, friendly and helpful attitude. The Superintendent must approve uniforms at the beginning of this Contract and changes shall require written approval from the Superintendent before being implemented.
- (2) *Park Service Notification:* The Concessioner will provide the Chief Ranger's office with a list of all concession employees and will update the list monthly to reflect changes. Physical examinations and health cards must be current at all times.
- (3) *Check-in and Check-out Procedures.* The Concessioner will implement and utilize a standardized daily check-in and check-out system for every employee. The use of an automated time clock system is encouraged.
- (4) *Recreation Program.* The Concessioner will develop and support an employee recreation program. The Concessioner will offer a variety of appropriate recreational activities for employees. The Concessioner may make these activities available to other community members. Within 120 days following award of the Contract, and annually thereafter, the Concessioner will submit for the Superintendent's approval, a description of its employee recreation program.
- (5) *Employee Hiring Procedures*
  - (a) Staffing Requirements. The Concessioner will hire a sufficient number of employees to ensure satisfactory visitor services throughout the year. The Concessioner will attempt to offer its employees a full work week whenever possible. Prior to employment, the Concessioner will inform employees of salary, schedules, holiday pay, overtime requirements, and the possibility that less-than-full-time employment may occur during slow periods.
  - (b) Drug-free Environment. The Concessioner will maintain, to the greatest extent possible, a drug free workplace environment. The Concessioner will conduct educational program(s) for its employees to deter substance and alcohol abuse. The Concessioner will ensure that those employees who are in safety sensitive positions such as loss prevention or equipment operators will be required to participate in random drug testing. Should any illegal drug use occur, it must be promptly reported by the Concessioner to the Memorial.
  - (c) Background Checks. The Concessioner will establish hiring policies that include satisfactory completion of a background check. The NPS will provide background check services to the Concessioner at no charge. A typical

background review will consist of a current wants and warrants check and criminal history check. The Concessioner will not hire, or retain, any person known to have an outstanding felony warrant for arrest.

- (d) Driver Requirements. Drivers of Concessioner owned vehicles will have a valid State operators license for the size and class of vehicle being driven.
- (e) Equal Opportunity. The Concessioner and its employees shall not discriminate against any individual because of race, creed, color, sex, national origin, or physical or mental handicap and shall comply with equal opportunity and accessibility standards and requirements.
- (f) Memorial Employees. The Concessioner will not employ in any status a Memorial employee, his/her spouse, or minor children of Memorial employees without the Superintendent's written approval.
- (g) Firearms. Concessioner employees may not possess firearms while on duty. The superintendent, in his or her sole discretion, may grant exceptions to this prohibition upon consideration of a written request from the concessioner's general manager with a thorough explanation of the basis of the request. The superintendent's response to the concessioner must be in writing. The Concessioner is responsible for determining whether state and local laws allow the possession of firearms by customers or off-duty employees. The Concessioner should consult applicable state attorney general's office for access to the relevant state firearms laws.

(6) *Training*

- (a) Orientation. The Concessioner will provide mandatory employee orientation and training and will inform employees of Memorial regulations and requirements that affect their employment and activities while working in the Memorial.
  - The Memorial may provide orientation training to managers, emphasizing the operational review program, on an as-needed basis. All concessioner employees will attend mandatory Memorial sponsored training as directed by the Superintendent.
  - As part of orientation, the Memorial will be given adequate time to review Concessions regulations and Memorial policy with employees and managers.
- (b) Job Training. The Concessioner will provide appropriate job training to each employee prior to duty assignments and working with the public.
- (c) Sanitation Training. The Concessioner will provide sanitation training to food service personnel at the start of their employment in a food service facility and as needed to comply with the most recent edition of the U. S. Public Health Service Food Code.
- (d) Environmental Training. The Concessioner must provide sufficient training on environmental issues.
- (e) Interpretive Training. The Concessioner will provide interpretive skills training for all employees who provide interpretive, informational and safety orientation

information and/or efforts. The Concessioner will work closely with the Memorial to improve the methods of preparing and presenting effective interpretive information. Training will be coordinated with the Memorial on location. The Memorial will evaluate interpretive visitor services to ensure appropriateness, accuracy, and the relationship to Memorial interpretive themes.

- Employees will be expected to provide information about the general history of the area, significant features and formations, as well as some of the more common plants and animals inhabiting the area. Employees shall direct visitors to the Mount Rushmore National Memorial visitor center for additional information.
- (f) Employees shall be encouraged to attend any NPS-sponsored training relating to concession operations in the Memorial. Employees, especially managers, may attend other NPS training as space permits and determined appropriate by the NPS.
- (g) Employee Handbook. The Concessioner will provide all employees with a copy of the Concessioner's employee handbook, which will specifically identify the policies and regulations of the Concessioner and the Memorial. Any employee handbooks will be provided to the Memorial for a 30-day review prior to distribution to employees. An updated copy will be forwarded to the Park upon revision.

#### 4) Utility Responsibility

##### A) Concessioner

###### *(1) Responsibility*

- (a) The Concessioner is responsible for contracting independent suppliers to provide utility services not provided by the Memorial. The Concessioner is responsible for direct payment to these suppliers.
- (b) The Concessioner is liable for prompt payments of electricity, fuel, refuse collection, telephone, sewage disposal, water or any other utility or service, whether made by governmental authority, public or community service company.

##### B) National Park Service

###### *(1) Responsibility*

- (a) The NPS will provide water, sewer, and propane. The Concessioner will be billed in accordance with NPS guidelines, including but not limited to, Special Directive 83-2, which requires that utility rates charges to the Concessioner reflect actual costs incurred by the NPS. The Memorial will review operating costs for utility systems and services annually and will notify the Concessioner in writing by January 1 of the rates for the next year. A rate comparability study is to be done by the Memorial, and rates will be based on both the study and results of the preceding fiscal year's actual costs.

#### 5) Risk Management

A Risk Management Program will be maintained by the Concessioner to ensure a safe and risk-free employee and visitor environment. This plan will be reviewed and approved by the Superintendent annually, in accordance with all Applicable laws, including without limitation, OSHA, NFPA and NPS guidelines. The program will include, at a minimum, the following components:

- (1) *Administration*
- (2) *Inspections*
- (3) *Deficiency Classification and Hazard Abatement Schedules*
- (4) *Accident Reporting and Investigation*
- (5) *Public Safety Awareness*
- (6) *Training*
- (7) *Emergency Procedures*

**6) Protection and Security**

**A) Law Enforcement**

*(1) The National Park Service*

- (a) The NPS will provide resource, employee and visitor law enforcement protection.
- (b) Concessioner-employed security personnel may act as private citizens but have no authority to take law enforcement action or carry firearms, unless possession of a firearm is authorized by the Superintendent following appropriate procedures requesting such authorization.
- (c) The NPS will provide law enforcement services for issues that extend beyond the appropriate duties of Concessioner personnel.
- (d) The NPS will handle all violations of Federal, State, or National Park Service law and regulations.

*(2) Concessioner Security Personnel*

- (a) Security. The Concessioner is responsible for providing sufficient security personnel so that the employee housing area is secure. These security personnel will handle in-house employee issues and check concession facilities for security purposes on, seven-day per week schedule. Concessioner-employed security personnel must be empowered to enforce the Concessioner's employee policies and housing regulations. The Concessioner will prepare a security and risk management staffing plan and submit the plan for Superintendent approval within 120 days of the award of the Contract.
- (b) Authority. Concessioner-employed security personnel have only the authority of private citizens in their interaction with Park visitors. They have no authority to take law enforcement action or to carry firearms.
- (c) Reporting. The Concessioner shall immediately report hazardous material spills and discharges, fatalities, injuries and illnesses, fires, vehicle accidents, property

damage, and illegal drug and controlled substance abuse to the Memorial by contacting dispatch.

## **B) Fire Protection**

The Keystone Volunteer Fire Department provides fire protection under a cooperative agreement with the Memorial.

### *(1) Concessioner*

- (a) Fire prevention, protection and suppression will be primary considerations at all facilities. Structural fires will be suppressed to prevent the loss of human life and limit damage to real property and to cultural or natural resources.
- (b) The Concessioner has the responsibility to ensure that all facilities within its assigned area meet Federal, State and Local codes and that fire detection and appropriate suppression equipment is installed, operated, and maintained in accordance with applicable National Fire Protection Association standards.
- (c) It is the Concessioner's responsibility to report all structural fires immediately.

## **C) Emergency Medical Care**

- (1) The Memorial will provide emergency response medical services. First aid kits shall be prominently displayed and available for use by employees at the concession building and employee dormitory and must include Personal Protective Equipment for giving CPR.
- (2) *Training.* The Concessioner is encouraged to allow employees to attend emergency medical training, including CPR and First Response courses.
- (3) *Emergency Reporting Procedures*
  - (a) In the event of an emergency in the area, concession employees must take direction from NPS employees. This may include actions such as helping with radio communications and/or evacuating the store.
  - (b) All concession employees will be trained in proper emergency reporting procedures and will be instructed to provide essential information, e.g. a call back number at their location. Memorial Dispatch will dispatch rangers and emergency personnel as needed.
  - (c) The following numbers will be made available to all employees and posted at appropriate locations.
    - Life-threatening emergencies: 605-574-3120, if no answer, call 911
    - Non-emergencies: 605-574-3120

## **7) Public Relations**

### **A) Required Notices**

The following notice will be prominently posted at all Concessioner cash registers and payment areas:

“This service is operated by (Concessioner’s name), a Concessioner under contract with the U.S. Government and administered by the National Park Service. The Concessioner is responsible for conducting these operations in a satisfactory manner. Prices are approved by the National Park Service.”

Please address comments to: Superintendent  
Mount Rushmore National Memorial  
13000 Hwy. 244, Bldg. 31, Ste. 1  
Mount Rushmore National Memorial, SD 57751

## **B) Public Statements**

All media inquiries concerning the Memorial will be referred to the Superintendent. Advertisements and Promotional Material

### *(1) Promotional Material*

- (a) Approval. The Superintendent must approve all promotional material prior to publication, distribution, broadcast, etc. The Concessioner will contact the Memorial well in advance to establish specific time frames for each project review. The Service may require unapproved promotional material removed from circulation.
- (b) Changes. All promotional media (including websites) changes and layout should be submitted to the Superintendent for review at least 30 days prior to projected need/printing dates. The Superintendent will make every effort to respond to minor changes to brochure and other texts within 15 days. Longer periods may be required for major projects or where NPS assistance is required to help develop the product. The Concessioner should contact the Memorial well in advance to establish specific time frames for each project.

### *(2) Statements*

- (a) Authorization. Advertisements must include a statement that the Concessioner is authorized by the NPS and the Department of the Interior, to serve the public at Mount Rushmore National Memorial.

## **8) Volunteers in the Park (VIP) Program**

The Concessioner will encourage and permit its employees to participate in the Memorial's Volunteers in Parks (VIP) program. All volunteers recruited by the Concessioner are required to attend Memorial volunteer core training. The Concessioner will make arrangements for this training with the Memorial Volunteer in Parks (VIP) coordinator.

## **9) Specific Operating Standards And Requirements**

All services are to be provided in a consistent, quality manner. Memorial standards provided by the NPS guidelines are considered service minimums. The Concessioner is expected to make every effort to exceed these standards. The Concessioner will be responsible for monitoring and evaluating their operations to assure that quality standards are met.

### **A) Food and Beverage Service**

- (1) *Food menus.* All menus will maintain prices that accommodate the general range of Memorial visitors. The Concessioner will follow the Memorial Core Menu Guidelines that will include snacks, quick serve meals, and cafeteria style dining. Menus will have a focus on healthy, wholesome foods with limited evidence of convenience or canned foods. The Concessioner will offer “grab and go” items including freshly prepared sandwiches and salads.
- (2) *Beverages*
  - (a) The Concessioner will offer a variety of drinks including water, sports drinks, soft drinks, and other items as agreed upon by the Memorial and Concessioner. The Concessioner may also operate a soda fountain system and will serve hot beverages such as coffee, tea, hot chocolate, etc.
  - (b) The Concessioner is authorized to serve alcoholic beverages as part of dinner and during catered functions.
- (3) *Operations*
  - (a) The Carver’s Dining Room will provide for three meals (breakfast, lunch and dinner) daily during the peak season. During the shoulder season, breakfast and lunch will be served.
  - (b) Service standards include, but are not limited to, service line waits will not exceed 10 minutes.
- (4) *Reduction of Service.* In consultation with the Superintendent, the concessioner may reduce some dining services during the shoulder or slow seasons.
- (5) *Facility Use.* The Concessioner will not use the facilities assigned within the CONTRACT to provide any food and beverage service outside the Memorial boundaries.
- (6) *Management.* The Concessioner will ensure that a Manager and/or other key personnel are visible in the food service outlet during the peak serving hours.
- (7) *Regulation.* The Concessioner will ensure that both facilities and employees comply with applicable South Dakota State laws and regulations, with regard to health and safety.
  - (a) Food Safety Certification. The Concessioner will have at least one full-time certified food safety manager. The manager will be certified as a ServSafe Food Protection Manager by the National Restaurant Association. The Concessioner is required to train all employees involved in food preparation in compliance with all Applicable Laws.
- (8) *Product Specifications.* The Concessioner will use the following specifications as a guide when purchasing products to be served at the Memorial.
  - (a) Meat
    - Beef USDA Prime and Choice
    - Pork USDA Number 1



- (g) A description of any requests for special services to be provided by the Memorial such as law enforcement or interpretive presentations
- (h) Any fundraising type event, or any event that will be using space outside the concessioner's land assignment area, and/or any weddings will require a Special Use Permit. Special Use Permit Guidelines and Applications are available on the park's website: [www.nps.gov/moru](http://www.nps.gov/moru).

## B) Retail

(1) The following general retail categories will be permitted:

- (a) Apparel
- (b) Gifts and Souvenirs
- (c) Native Handcraft
- (d) Basic Sundry

The addition of retail categories outside of these will require the approval of the Memorial

(2) *Guideline Compliance.* All retail services will comply with the guidelines established by the National Park Service.

- (a) Pricing labels shall not conceal country of origin if foreign made.

(3) *Locations.* The sale of souvenirs, handcrafts, and sundry items is limited to those locations necessary and appropriate to serve the demand of the visitor. These sales locations and the extent of merchandise to be offered therein are subject to the approval of the Superintendent.

- (a) Merchandise Plan. The Concessioner will develop and implement a merchandise plan that reflects the Memorial's interpretive themes and incorporate them into the operation of all merchandise areas. The plan will incorporate environmentally preferable purchasing and environmentally preferred products will be made available for sale to Memorial visitors. The merchandise plan should integrate pollution prevention and waste-reduction objectives and strategies. The Merchandise Plan will be submitted to the Park not later than 120 days after the effective execution date of the CONTRACT.

## C) Gifts and Souvenirs

(1) *Items to be Sold.* The purpose of the Gift Shop at Mount Rushmore is to provide the visitor the opportunity to purchase mementos of the Memorial and to understand more fully the Memorial's purpose. The gift shop will offer items that have a direct relationship to Mount Rushmore National Memorial, its history, or other related natural or cultural topics.

- (a) The images of the Memorial and gift shop are intertwined. The gift shop is an integral part of the Memorial's interaction with its visitors and should exemplify quality and professionalism.

- (b) Gifts and souvenirs representing the desired themes will be sought within a broad price range, providing visitors with the opportunity to purchase items from both expensive and inexpensive categories.
- (c) The gift shop will be uncluttered and neatly display merchandise. A gift shop mission statement will be developed based on the Memorial's interpretive themes. Emphasis will be placed on:
- Natural Resources:
    - ◆ Black Hills regional mountains and forested areas
    - ◆ Memorial wildlife and vegetation
  - Cultural Resources
  - Geology
    - ◆ Granite Peaks
    - ◆ Minerals and rock samples
  - Gutzon Borglum and Mount Rushmore
    - ◆ Native Americans in the Black Hills
    - ◆ European Americans in the Black Hills
    - ◆ Establishment of the Memorial
    - ◆ Role of concessioners
  - Memorial Experience: Enjoying the special attributes of Mount Rushmore
    - ◆ Activities in Mount Rushmore
    - ◆ Materials that relate to Memorial activities
    - ◆ Memorial information materials
  - Environmental Topics
    - ◆ General topics/issues of importance to all NPS areas (air quality, water quality, etc.)
    - ◆ Relationship between Memorials and their environs, role of Memorials as indicators of this relationship
    - ◆ The national park movement
    - ◆ The conservation/environmental movement
    - ◆ Environmental ethics
- (d) Wherever possible and appropriate, informational tags will be attached to sales items to show their relationship to Memorial themes.
- (e) In keeping with the NPS guidelines, including but not limited to, Souvenir and Native Handcraft Policy, handcraft items representing Memorial and regional themes, including crafts by local and Native American artists, will be actively

sought and prominently displayed. Some handcrafts offered for sale should focus specifically on the Native American tribes indigenous to the Black Hills region. Handcrafts should be physically separated from "western goods," which may appear to the visitor to be Native American in origin. A separate area for handcrafts only is recommended.

- (f) The Concessioner has the responsibility to select specific merchandise items that comply with the gift shop Mission Statement and NPS guidelines, including but not limited to, merchandising guidelines found in Director's Order #48.

*(2) Items Not to be Sold.*

- (a) Articles which persons of normal taste or sensitivity might consider obscene, offensive, profane, or items that reflect a lack of concern for the environment or a culture.
- (b) Archaeological specimens or objects of American Indian origin over 100 years old regardless of their origin.
- (c) Plant materials and other natural materials from NPS areas.
- (d) Fossils or other earth products (such as petrified wood) whose origin is from public lands.
- (e) Animal skins or taxidermy specimens, or items containing animal parts. OR Animal skins or parts of animals that are obtained illegally or are from threatened and/or endangered species. These items must also not be incorporated into merchandise or used in displays.
- (f) Articles that are mislabeled as to character or origin, or otherwise misrepresented.
- (g) Merchandise which is subject to spoilage and has exceeded the producer's specific "Do not sell after" date
- (h) Items that may, by their nature, encourage violation of Memorial regulations, i.e. collecting kits, peanuts, birdseed, wildflower or plant seeds, etc.
- (i) Tobacco products
- (j) Toy guns.

**D) Interpretive Services**

*(1) Personal Interpretive Knowledge*

- (a) **Memorial Knowledge.** Employees will demonstrate their knowledge of the Memorial's resources and history before beginning employment. They should be able to answer basic questions from visitors and refer visitors to the appropriate resources at the Memorial interpretive offices.

*(2) Non-Personal Interpretive Services*

- (a) **Non-Personal Interpretive Items.** The Concessioner will actively pursue a non-personal interpretive program. The Concessioner will explore a wide array of methods for conveying interpretive messages to visitors on Memorial-related themes and topics such as resource protection, appreciation of Memorial values,

and NPS goals. In retail and food service facilities interpretive messages will be included on a variety of items, including hangtags, receipts, menus, placemats, paper cups, and comment cards. The Memorial will review and approve all interpretive materials for public distribution.

- (3) *Locations.* Memorial interpretive themes will be integrated into the interior decor at retail and food service facilities. Appropriate areas within the land assignment, both interior and exterior locations, will be made available to provide Memorial interpretive and safety messages in various mediums, including bulletin boards and kiosks. The Concessioner will provide an Interpretive staging area for craft demonstrations.

## 10) Reporting Requirements

### A) Memorial Reports

- (1) *Utility Costs.* The Memorial will conduct an annual review of the operating costs for utility systems and services and the Concessioner will be notified in writing of the rates for the upcoming year.
- (2) *Annual Performance Evaluation.* The Superintendent will prepare the Concessioner's annual performance evaluation during February for the preceding calendar year. The Concessioner will meet with the Superintendent and/or his/her representative(s) to discuss the annual evaluation, which includes contractual, operational, public health, and safety components.

### B) Concessioner Reports

The following reports are in addition to those mandated by the CONTRACT. These reports will be delivered to the Superintendent's Office. The Superintendent and/or his/her designated representatives will be allowed to review supporting documentation for all operational reports upon request.

#### (1) *General*

- (a) Management Listing. The on-site General Manager will provide the Memorial a list identifying key concession management and supervisory personnel by department with their job titles, and office and emergency phone numbers by April 1 of each year.
- (b) Incident Reports. The Concessioner will immediately report the following to Memorial Dispatch:
- Any fatalities or visitor-related incidents
  - Property damage estimated to be over \$500
  - Employee or visitor injuries requiring first aid treatment
  - Any fires
  - Any motor vehicle accidents
  - Any incident that affects Memorial resources
  - Any known or suspected violations of the law

- Any threats or suspicious behavior
- (c) Human Illness Reporting. Information on all human communicable illnesses, whether employees or guests, is to be promptly reported to Memorial Dispatch. This information, along with other information received, may be inspected by the Public Health Service Sanitarian to help identify outbreaks of illness associated with contaminated water or food sources, or caused by other adverse environmental conditions. Initial reports may be made by telephone.
- (d) Survey and Visitor Response Data. All consumer research data collected by a third party that is provided to the Concessioner will be readily available on-site for review by the Park.

*(2) Monthly Asset Monitoring Report*

- (a) The Concessioner will maintain a management information system to document visitor use patterns and impacts. A monthly Asset Monitoring Report will be provided to the National Park Service. The following information will be included in this report. The report will be due to the Memorial by the 15th day of the following month. Reports are required during the operating season only and should be delivered to the Memorial Concessions Office.
  - Financial and Operational Statistics. The Concessioner will provide operational statistics and financial information for each revenue-producing outlet. The statistics and information provided will be in a mutually agreed upon format. (See section 5.C and 5.D.)
  - Utility Pass-Through Revenues. The Concessioner will provide the Superintendent with reports on revenue related to add-on's during the reporting month. The Concessioner will track add-on revenue and may have to adjust rates if the Concessioner determines a substantial shortage or excess of revenues may result, based on past and current records. Annually, the Concessioner will recommend changes to the Superintendent subsequent to the receipt of following year utility rates to bring the recouped revenue within the required range (five percent or less of utility costs).
  - Maintenance Reserve Expenditure Report. A monthly status report on all on-going maintenance reserve projects funded by the Maintenance Reserve.
  - Facilities Improvement Program Report. A monthly status report on all on-going Concessioner Facilities Improvement Program projects.
  - Visitor Comments. The Concessioner will provide tabulated summaries of all visitor comments to the Memorial, including a year-to-date tabulation

*(3) Annual Plans*

- (a) Annual Utility Pass-Through/Add-On Reconciliation: due when a pass-through/add-on rate increase is submitted as part of the rate review process
- (b) Annual Risk Management Plan: due by February 1.

**C) Concessioner Operational Reports**

All operational statistics for the individual land uses will be included in the monthly asset monitoring report. An annual summary report will be due by January 30 for the preceding year, unless otherwise agreed upon by the Superintendent. This data should be presented in a concise spreadsheet format. Industry specific management software could be operated for each operating business.

*(1) Food and Beverage*

- (a) Weekly revenues by outlet
- (b) Number of covers served to visitors broken down by breakfast (opening – 11:00 am), lunch (11:01 am– 2:00 pm), and late lunch/dinner (2:01 pm – close) with corresponding revenues by week.
- (c) Summary report listing each catering event held during the year. The report should include the name of the organization holding the event, date, time, attendance (if available), menu, and event revenues. This report will be provided on a quarterly basis by the 15th of the month following the end of the preceding quarter.

*(2) Merchandising*

- (a) Weekly revenue by merchandise category (i.e. Native American handicraft, gifts and souvenirs, grocery, apparel). The Superintendent and Concessioner will mutually agree upon merchandise categories.
- (b) Transaction counts by week
- (c) The Concessioner is required to maintain adequate records to verify the adjustments made to gross receipts related to the sale of United States and Native American handcraft items. These records shall provide verification of actual sales through use of a separate cash register key or a similar system. The Concessioner shall maintain and provide for review, upon the request of the Superintendent, certification of authenticity of all handcraft items for which an exception to franchise fee is claimed. The procedures to meet this requirement will be submitted upon request of the Superintendent or prior to the operating season following a change from the previous year's procedures.

**D) Concessioner Financial Reporting**

- (1)* In addition to the Annual Financial Report (“AFR”) required in the CONTRACT, the following financial reports will also be required.
- (a) Annual Budget. Including detailed utilization and revenue and expense projections, due by December 1 for the next year.
  - (b) Financial Forecast. A pre- and mid-season financial forecast for each business activity compared to annual budget
  - (c) Monthly Franchise Fee Reporting. By the 15<sup>th</sup> of the month as part of the monthly reporting, the Concessioner shall report on the franchise fee deposit made from the preceding month. Reporting documentation shall include a copy of the wire transfer identifying the account and the amount transferred.

- (d) Monthly Maintenance Reserve Reporting. By the 15<sup>th</sup> of the month as part of the monthly reporting, the Concessioner shall report on the maintenance reserve deposit made from the preceding month. Reporting documentation shall include a copy of the wire transfer identifying the account and the amount transferred.

The following summarizes the preceding reporting requirements and details other reports, plans, payments, and inspections that will be the responsibility of the Concessioner per this operating plan. The CONTRACT outlines additional reporting requirements that are *not* outlined below.

SUMMARY			
INITIAL AND RECURRING DUE DATES			
Title	Schedule	Due Date	Reference
Budget	Annual	Date to be determined by the Park and the Concessioner	Operating Plan, Sec 5 D (a)
Employee Handbook	Initial	All handbooks will be provided 30 days prior to release; updated copies will be provided when changes are made	Operating Plan, Sec. 3.F.6. (f)
Financial Forecast	Semi-annually	Dates to be determined by the Park and the Concessioner	Operating Plan, Sec 5 D (b)
Merchandise Plan	Initial	Within 120 days of the effective date of contract execution	Operating Plan, Sec. 4 B (2) (a)
Monthly Asset Monitoring Report	Monthly	Within 15 days after the last day of each month that the Concessioner operates	Operating Plan, Sec. 5 B (2) (a)
Management Listing	Initial/ & When Changes Occur	Within 30 days of the effective date of CONTRACT execution and by April 1 thereafter.	Operating Plan, Sec. 5 B (1) (a)
Risk Management Plan	Initial/ Annually	Within 60 days of the effective date of CONTRACT execution; Updates due by April 1 of each year.	Operating Plan, Sec. 7
Utility Pass-through Revenue Report	Annually	Submitted when a pass-through rate increase is submitted as part of the rate review process	Operating Plan, Sec. 5 B (3) (a)
Security Staffing Plan	Initial	Within 120 days of the effective date of contract execution.	Operating Plan, Sec. 6 A (2) (a)
Employee Recreation Program	Initial	Within 120 days of the effective date of contract execution.	Operating Plan, Sec. 3 F (4)

Updated 3-16- , 2015.

By: Cheryl A. Schreier  
Cheryl A. Schreier, Superintendent  
Mount Rushmore National Memorial

Received by Marty LaMontagne  
Marty LaMontagne, General Manager  
Xanterra Parks & Resorts, Inc. – Mount Rushmore

**EXHIBIT C**  
**NONDISCRIMINATION**

**Section I: Requirements Relating to Employment and Service to the Public**

**A. EMPLOYMENT**

During the performance of this CONTRACT the Concessioner agrees as follows:

- 1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provision of this nondiscrimination clause.
- 2) The Concessioner will, in all solicitations or advertisements for employees placed by on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disabling condition.
- 3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed \$50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.
- 5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- 7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this CONTRACT or with any of such rules, regulations, or orders, this CONTRACT may be canceled, terminated or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

## **B. CONSTRUCTION, REPAIR, AND SIMILAR CONTRACTS**

The preceding provisions A(1) through A(8) governing performance of work under this CONTRACT, as set out in Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this CONTRACT, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this CONTRACT, and for that purpose the term "CONTRACT" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

## **C. FACILITIES**

### **(1) Definitions: As used herein:**

- a) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner;
- b) Facility shall mean any and all services, facilities, privileges, accommodations, or activities available to the general public and permitted by this agreement.

### **(2) The Concessioner is prohibited from:**

- a) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition;

- b) discriminating by segregation or other means against any person.

## **Section II: Accessibility**

Title V, Section 504, of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the service or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law, and calls for consultation with disabled persons in determining what is reasonable and feasible.

No disabled person shall, because a Concessioner's facilities are inaccessible to or unusable by disabled persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

### **A. DISCRIMINATION PROHIBITED**

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of a disability:

- 1) Deny a qualified disabled person the opportunity to participate in or benefit from the aid, benefit, or service;
- 2) Afford a qualified disabled person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- 3) Provide a qualified disabled person with an aid, benefit, or service that is not as effective as that provided to others;
- 4) Provide different or separate aids, benefits, or services to disabled persons or to any class of disabled persons unless such action is necessary to provide qualified disabled persons with aid, benefits, or services that are as effective as those provided to others;
- 5) Aid or perpetuate discrimination against a qualified disabled person by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program;
- 6) Deny a qualified disabled person the opportunity to participate as a member of planning or advisory boards; or
- 7) Otherwise limit a qualified disabled person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

### **B. EXISTING FACILITIES**

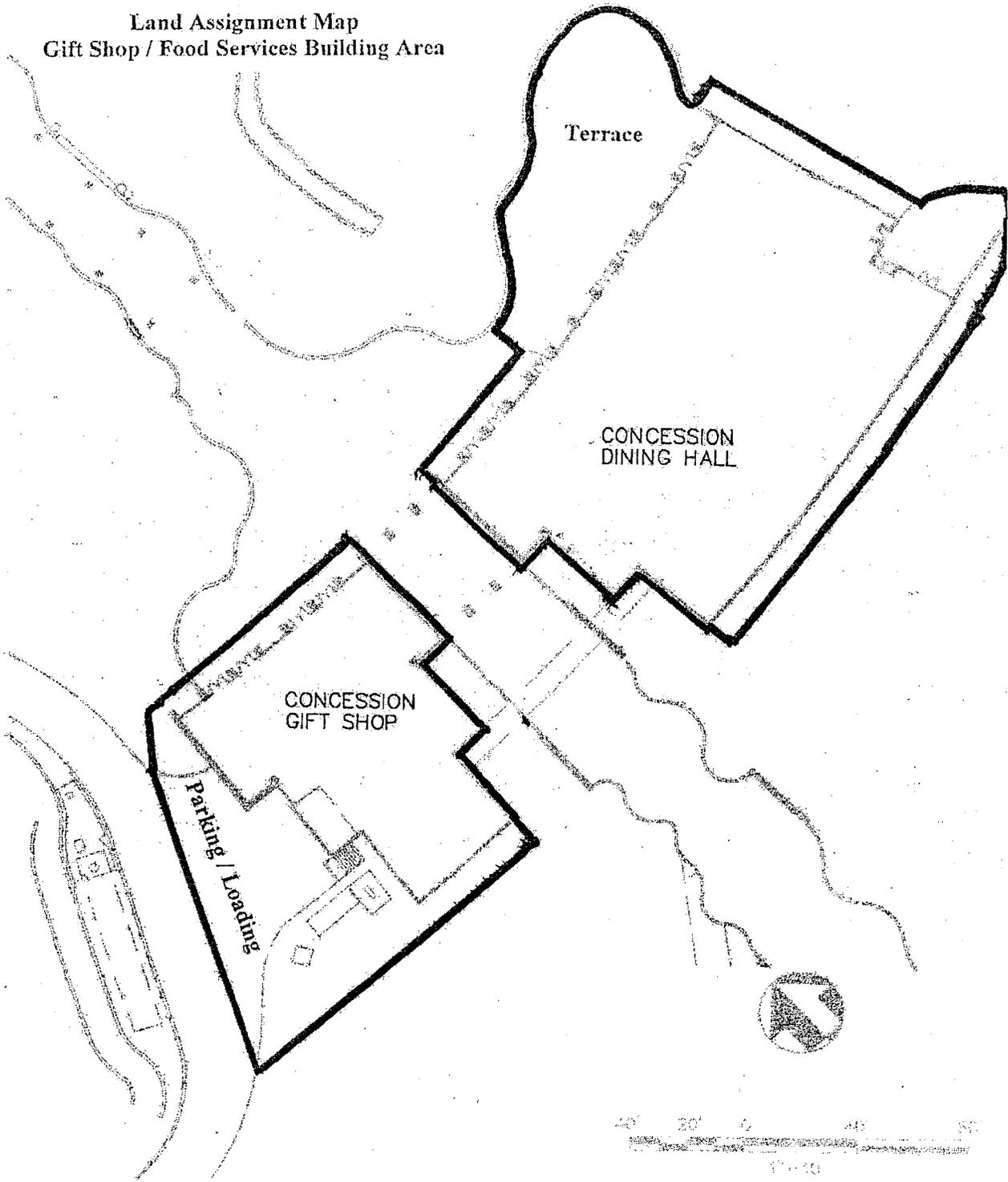
A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by disabled persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by disabled persons.

**EXHIBIT D  
ASSIGNED LAND AND REAL PROPERTY IMPROVEMENTS  
(CONCESSION FACILITIES)**

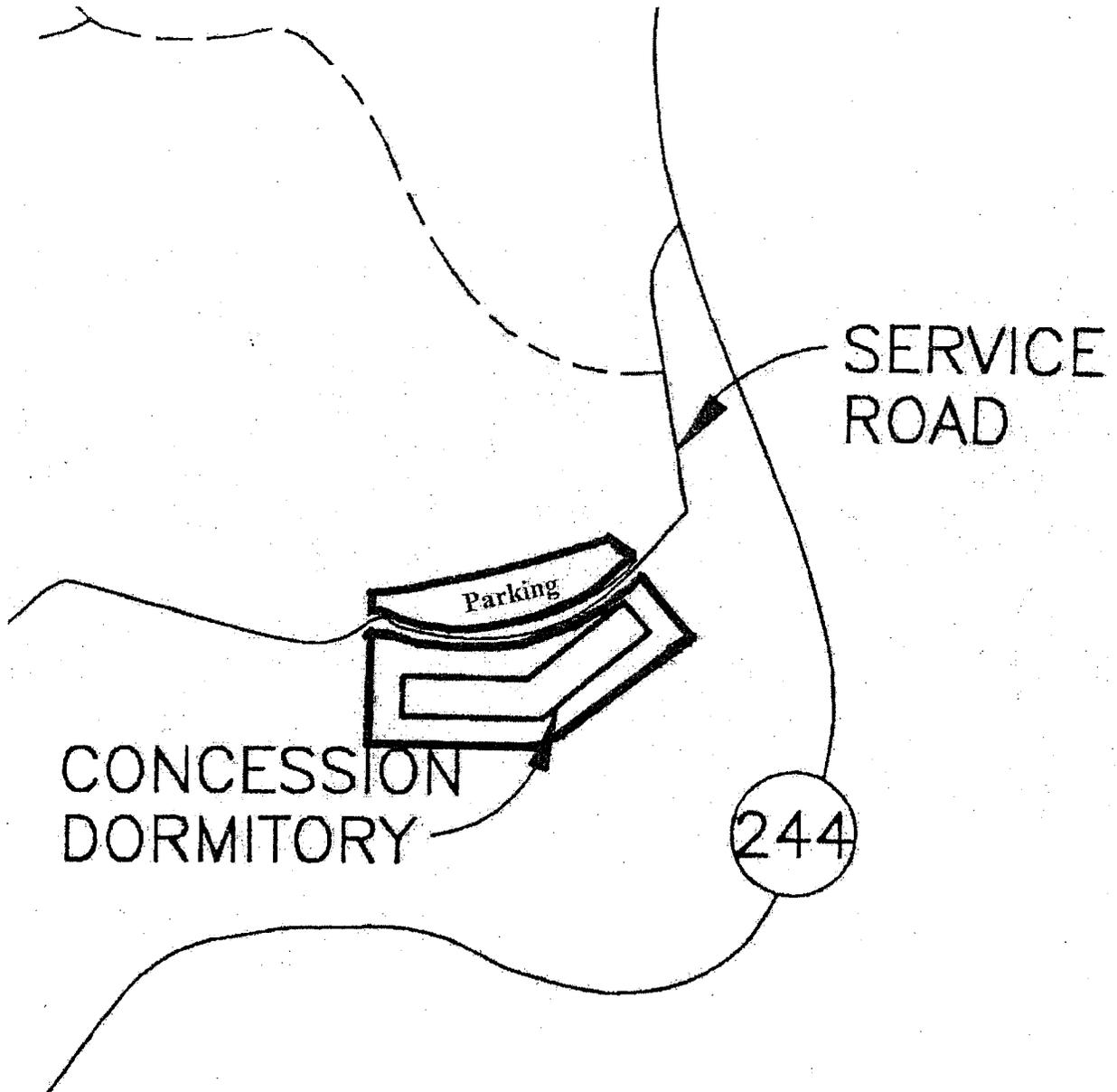
**LAND ASSIGNED:**

Land is assigned in accordance with the boundaries shown on the enclosed land assignment maps.

**Land Assignment Map  
Gift Shop / Food Services Building Area**



Land Assignment Map  
Dormitory Area



## REAL PROPERTY IMPROVEMENTS ASSIGNED:

The following real property improvements are assigned to the concessioner for use in conducting its operations under this CONTRACT:

Building Name	Description	Area (sq. ft.)	Insurance Full Replacement Costs as of 1/1/03
Restaurant/Gift Shop	One structure	50,000	\$5,689,000
Concession Dormitory	Employee housing	28,500	\$3,158,400
<b>Total Cost:</b>			<b>\$8,847,400</b>

Approved, effective Dec. 7, 2004

By:   
Regional Director, Midwest Region

**EXHIBIT E**  
**ASSIGNED GOVERNMENT PERSONAL PROPERTY**

Government personal property is assigned to the Concessioner for the purposes of this CONTRACT as follows:

Property Number	Description of Item
-----------------	---------------------

\*\*\*None\*\*\*

Effective, this 7 day of December, 2004.

By:   
Regional Director, National Park Service

## EXHIBIT F

### CONCESSIONER CONSTRUCTION, MAJOR REHABILITATION, AND REPAIR AND MAINTENANCE PROJECT PROCEDURES

#### A. Introduction

This exhibit presents step-by-step procedures for the administration of Concessioner building projects (construction, major rehabilitation, and repair and maintenance projects) within the park Area. Important terms are defined first. Project planning and design are presented second, guidelines for project supervision are presented third. All projects undertaken by the Concessioner require a coordinated effort between the Concessioner and the Superintendent. This exhibit applies to the building of new structures or facilities, major rehabilitations, and the repair and maintenance ("R&M projects") of existing Concession Facilities that change the nature, appearance or value of existing Concession Facilities. Rehabilitation projects that are not major rehabilitations as defined in the Contract are considered as R&M projects. Facility operations, custodial and preventive maintenance and maintenance needed for facility operations are not considered R&M projects subject to these procedures. Repair and maintenance is also not to be considered as a project subject to these procedures when the activity does not change the nature, appearance or value of existing Concession Facilities. All projects must be proposed, approved, and accomplished under these procedures. In the event of any inconsistency between this exhibit and the main body of this CONTRACT and Exhibit A, the main body of the CONTRACT and Exhibit A will prevail.

In accordance with the Contract, only certain new construction and major rehabilitation projects may qualify for leasehold surrender interest (LSI). Following these administrative procedures for all projects will enable the NPS to approve LSI in accordance with these contract terms.

In addition, these procedures will enable the appraisal of LSI to occur in an orderly way. The documentation collected and organized by the use of these guidelines will provide a record of decision or "paper trail" of project development and implementation that will assist the park and concessioner in future planning and facility appraisal.

All project activities shall be directed and managed as presented in the "Annual Construction and Repair and Maintenance Management Plan" (CMP). In addition to these activities, the CMP is also to present scheduled project development and implementation, as presented below under Item C, Project Planning and Design, paragraph 1. Individual projects included in the CMP will be authorized by NPS through an approved Project Statement (PS).

Projects may be required to be reviewed under the National Environmental Policy Act (NEPA) of 1969, as amended. Projects within historic and culturally significant areas may require certain building management methods established under the National Historic Preservation Act of 1966, as amended. All construction shall comply with codes and building requirements adopted by NPS, including without limitation and where applicable, the most recent International Building

Code (IBC), National Fire Protection Association (NFPA) codes, the Americans with Disabilities Act (ADA) requirements, the Historic Preservation Act of 1966, and NPS management policies.

The Concessioner is responsible for all aspects of project development and implementation. The role of the NPS is to provide direction, authorization and oversight. The Concessioner and the Park staff must work closely together to successfully complete construction projects in a manner that achieves the goals and objectives of the park Area and the NPS.

## **B. Definition of Terms**

“Annual Construction and Repair and Maintenance Management Plan” (CMP): A written document presenting all construction, major rehabilitation and R&M projects to be undertaken by the Concessioner during the following calendar year after the final submittal date.

“Approved Project Documents”: Project drawings and specifications approved by the Park Superintendent and used by the Concessioner to direct a contractor in the type, size and quality of projects.

“Change Order”: A written agreement between the “Construction Supervisor” and the Contractor or Consultant that changes the contract documents or scope of project work as agreed upon contractually.

“Construction”: The removal or assembly of a building, road, utility or any other facility part or material that changes the nature, appearance, or value of that facility.

“Construction Supervisor”: A Concessioner employee designated to administer and coordinate day-to-day projects representing the interests of the Concessioner and NPS and assuring quality work is performed that meets the design and specifications of the project. This person must have the authority to direct the contractor in any way that may change the contractual agreement between the Concessioner and the contractor.

“Conventional Design-Bid-Build Methods”: Construction developed and implemented under several separate agreements managed and coordinated directly by the Concessioner.

“Contact Person”: A Concessioner employee designated as the person to contact with regard to a specific matter, concern, or issue.

“Facilitator”: A Concessioner employee designated to have the role of providing structure and agendas for meetings with NPS and who records meeting discussions and outcomes.

“Guaranteed Maximum Price Design-Build Construction Methods”: An industry recognized type of construction where project consultants and contractors form an agreement to work as one entity providing facility construction in response to a developed request for proposal issued by the Concessioner. (Reference: Design Build Institute of America).

“Licensed Contractor”: An entity performing construction shall be certified or licensed by a valid governmental authority to perform construction services.

“Major Rehabilitation”: (Defined in the CONTRACT).

“Project Coordinator”: A Concession employee vested with the authority to direct consultants and contractors in the expenditure of construction and R&M funds.

“Project Statement” (PS): An agreement between NPS and the Concessioner approved by the Park Superintendent that authorizes the development and implementation of individual projects identified in a CMP.

“Registered Technical Professionals”: Architects, engineers, or any subject area expert either certified or licensed by the State to perform specialized services or certified by a widely recognized industry regulator held responsible for quality and standard application of technical subject matter.

“Substantially Complete”: (Defined in the CONTRACT).

“Total Project Cost”: The total of all actual project expenditures (invoiced and paid) for completion of a project.

“Total Project Price”: The total of all estimated project expenditures for completion of a project.

### **C. Project Planning and Design**

(1) Submit an Annual Construction and Repair and Maintenance Plan (CMP). Before approval to proceed with any project is granted by NPS, the Concessioner must submit a CMP for implementation the following year. Some projects may require several years of planning and design before construction. The purpose of the plan is to identify the need and tentative scope of projects a complete year in advance of actual work to allow adequate time to prepare for project commencement. The CMP should include any intended projects. Projects shown in the plan must include at least a project title; project concept description; a brief statement of justification; and anticipated NEPA and Section 106 planning and compliance established in collaboration with NPS staff.

(2) Notify NPS of Intent-to-Proceed. The Concessioner shall formally notify the Park Superintendent in writing of intent to proceed with any facility planning, design and/or projects. The project must be identified in the CMP the calendar year before to assist the NPS in sequencing and scheduling necessary support staff. The time of notification shall be sufficiently in advance of any Concessioner budget formulation to assure the requirements of the Park Superintendent are included in the project scope before the project is funded.

(3) Identify a Project Coordinator. The Concessioner project coordinator must be identified for each project. This person should have the authority to obligate project expenditures and hire and direct consultants and contractors, and concessioner support staff.

(4) Prepare a proposed Project Statement (PS). Arrange and facilitate a project planning conference with NPS staff and prepare a proposed PS to be submitted to the Park Superintendent for review. The conference should be performed on the proposed project site, if needed.

(a) Conference goal and product. The primary goal of the conference is to clearly identify the project concepts and scope at sufficient detail to carry the project through to completion without significant deviation from an approved PS. The product of the conference should be an approved PS prepared by the Concessioner resulting from collaboration between the Concessioner and the Park Superintendent.

(b) Project Statement Content. The PS shall include the following as a minimum: Project description; justification; scope of work, including NEPA and Section 106 planning and compliance; estimated Total Project Price; proposed schedule; milestones of NPS design review and third party project inspection and certification. The elements of the PS will function as check points of accountability and will vary in frequency and scope, contingent upon the nature, complexity and scope of the proposed project.

(c) Leasehold Surrender Interest. If the Concessioner seeks leasehold surrender interest as a result of a construction project, the Concessioner must request and receive the written approval of the proposed construction project by the Park Superintendent in accordance with the terms of this leasehold surrender interest concession contract. An estimate of the amount of leasehold surrender interest shall be identified in advance if the Concessioner requests leasehold surrender interest. The estimated leasehold surrender interest costs shall be separately identified as part of the Total Project Price and substantiated, if requested, with written and competitively acquired price proposals or construction contracts. Not all projects qualify for LSI. LSI is only granted under the terms of this CONTRACT, including, without limitation, its Exhibit A.

(d) Methods of Establishing the Expected Value of Leasehold Surrender Interest. A number of methods are available to estimate the Concessioner's leasehold surrender interest as long as eligible direct and indirect costs are specified. The methods of identifying the expected value of leasehold surrender interest include guaranteed maximum price design-build construction methods, conventional design-bid-build methods, and construction price estimates professionally prepared by subject area experts.

(e) Professional Services and Construction. The Concessioner must assure the park in its project statement that for any project requiring professional services, such services shall be acquired from appropriate registered technical professionals. Licensed contractors shall perform all project work unless otherwise approved in writing by the Superintendent. The Concessioner shall provide for registered technical professionals to perform project inspection and/or facility certification, or any other service needed for project implementation at the request of the Park Superintendent.

(f) NPS Operations. Any aspect of the proposed project where the scope of work interfaces with NPS operations such as utility service connections or road maintenance operations must be clearly identified in the PS.

(5) Submit Resource Compliance Documents for Review and Approval. During development of the project statement, responsibility for compliance work will be established. The Concessioner must request the participation of NPS staff early in project planning to assure uninterrupted project implementation. Development of compliance documentation must occur as soon as possible. Every effort shall be made to perform compliance document preparation tasks concurrently with project planning and design.

(a) Historic/cultural compliance. Historic and cultural compliance document approval is required for property listed in or eligible for inclusion in the National Register of Historic Places. Any undertaking affecting property listed shall be performed in accordance with The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings". The Concessioner must document proposed actions using the "XXX Form" (available from the National Park Service) before any work occurs for any project that may affect a historic structure, historic district, cultural landscape, archeological site or historic object or furnishing. Compliance will usually require the preparation of at least "assessment of effect" drawings and specifications to the level of final documents if required. Compliance shall carry through to submission of the "Construction or R&M Completion Report" for many projects where significant changes are made to the historic structure and/or landscape. Therefore, compliance document approval usually will not occur until after submission of project documents. In-park historic compliance review and approval will require at least several weeks from date of submittal. Where submittal is made to the State Historic Preservation Officer or the Advisory Council on Historic Preservation, additional time will be required before approval may be given. This may be performed concurrently with approval of project documents.

(b) Ground disturbance. Where ground disturbance will take place submittal of drawings that show area and depth of proposed ground disturbance will be required. Submittal of this document early in project planning is recommended. All project documents that include soil disturbance shall have the following specification included within them:

"Petroglyphs, artifacts, burial grounds or remains, structural features, ceremonial, domestic, and archeological objects of any nature, historic or prehistoric, found within the project area are the property of and will be removed only by the Government. Should Contractor's operations uncover or his/her employees find any archeological remains, Contractor shall suspend operations at the site of discovery; notify the Government immediately of the findings; and continue operations in other areas. Included with the notification shall be a brief statement of the location and details of the findings. Should the temporary suspension of work at the site result in delays, or the discovery site require archeological studies resulting in delays of additional work for Contractor, he/she will be compensated by an equitable adjustment under the General Provisions of the contract."

(c) Archeological Monitoring. Monitoring project activity is a requirement of cultural compliance when significant ground disturbance occurs during project work. Any cultural resource monitoring required shall be performed under the direction of the NPS. The NPS shall be notified sufficiently in advance of the need for a monitor and will assist the Concessioner in

making arrangements for the services of an archeological monitor at the expense of the Concessioner, if the NPS is unable to provide the expertise.

(d) National Environmental Policy Act (NEPA) compliance. NEPA compliance document approval is required before any construction or R&M project occurs for any project that has an impact on the environment. Projects requiring compliance will be identified by the NPS early during project planning. The actual review period length may vary widely depending on the nature, scope, and complexity of the project elements that relate to resource compliance. Projects that have no measurable impacts on park resources usually require a "categorical exclusion" determination--a process that may require sufficient extended lead-time from submittal of review documents. Projects that have potential significant impacts on park resources or projects that are not part of other NEPA compliance documentation will require additional environmental analysis and may also require a longer period of implementation.

(6) Submit Project Statement for NPS Review. The proposed PS shall be submitted in written correspondence from the Concessioner to the Park Superintendent requesting review. A PS signed by the Park Superintendent constitutes official authority for the Concessioner to continue further project development to the level specified in written correspondence from the Superintendent. The Concessioner may obtain authority to complete a project when sufficient planning and design has been completed to meet the interests of the park. Projects that do not have the level of required planning are likely to receive only conceptual approval with authorization to proceed with further planning and/or design as required to assure park objectives are met.

(a) Project Statements Containing Claims for Leasehold Surrender Interest. A PS must present an estimate of project expenditures to be claimed for LSI purposes. The eligibility of any expenditures for LSI will not be identified until all project planning is complete to the satisfaction of the Park Superintendent, including NEPA and Section 106 compliance, if required. An approved PS serves only as a guide for further project development to the level specified in the PS. The Park Superintendent shall only approve final LSI costs after project completion and written project close-out.

(b) Design Required for Leasehold Surrender Interest Eligibility and Value. The Park Superintendent may require an appropriate level of design to determine whether a project is eligible for LSI, and if so, its estimated cost. The level of project planning and design required may include completion of concept design, schematic design, or preliminary engineering design, to clearly identify the elements eligible for LSI. Some projects may require the completion of construction drawings and specifications before the proposed LSI is documented to the satisfaction of the Park Superintendent. All improvements for which LSI is claimed must be defined in record "as-built" construction drawings and specifications when the Concessioner submits its request for LSI at Project Close-out.

(7) Establish a Project File. A file of all project documents shall be held by the Concessioner as a chronological audit trail of all project decision-making activity for each project from concept development to completion and NPS acceptance. Each project shall be identified with a unique

project number assigned by the Park. All documents entered into the file should have the project identification number clearly displayed on it as part of document identity.

(a) Leasehold Surrender Interest Project File. The Project File will become an LSI project file when the Concessioner requests approval of LSI. It shall be established and maintained by the Concessioner and shall include all of the documents identified in section 6(C) of this Exhibit. This file shall be submitted at the time of Project Close-out to the Park Superintendent as the basis for the leasehold surrender interest request. As part of this file, the Concessioner must maintain auditable records of all expenditures attributable to each project and have them available for review if requested by NPS personnel. Invoices shall contain sufficient information to identify the tasks completed or products delivered as agreed upon in contracts presenting a full scope of work. The file shall clearly provide a "paper trail" between expenditures eligible for LSI purposes and the payment of those expenses.

(b) Typical Project File. The organization of a typical project file is presented in the following sections:

Section A. Project Statement. The approved PS, scope of work, and a copy of the notice-to-proceed letter, authorizing planning and design, sent to the Concessioner by the Park Superintendent should be filed in this section.

Section B. Planning. This section should contain documents pertaining to any project planning. Typical documents include those produced for NEPA and Section 106 compliance. Also contained in this section should be any concept design, preliminary design, or schematic design correspondence and documents. When the Park Superintendent grants approval for any of the above stages of project development, correspondence from the Park Superintendent should be filed in this section.

Section C. Assessment. This section should contain a record of any assessment performed during project implementation. Soil, vegetation, floodplain, structural, electrical assessments, for example, should be filed in this section. Any other existing site or facility investigative reports, and all quality assurance documents such as third party project inspection, testing and certification should also be filed in this section.

Section D. Design. This section should contain a record of documents produced and decisions made during the design phase of a project. The design phase typically occurs when project activity has shifted from conceptual discussion to organizing detailed direction provided to a contractor for construction. Correspondence from the Park Superintendent providing design approval should be in this section.

Section E. Project Work. This section should contain a record of decisions made during project work. The letter from the Park Superintendent granting notice-to-proceed with the project should be in this section. All contractor proposals, change-orders, design modification documents, daily construction activity records, weekly meeting minutes, etc. should be in this section. Documentation for larger projects should be organized according to subcontractor activity or

standard specification enumeration. The final document filed in this section should be the NPS correspondence sent to the Concessioner providing project acceptance and close-out.

Section F. Financial. This is a very important section where a copy of all contracts and contract modifications should be filed. It is important to assure that all expenditures are accounted for. All expenditures must have sufficient supporting documentation cross-referenced with documents in other file sections, if necessary. Monthly financial detail reports shall be prepared and filed in this section with copies of all project budget documents. This section must contain all correspondence supporting LSI with appropriate cross-reference to other sections for clarity of the LSI "paper trail." (For example, cross reference tabs). Also contained in this section shall be a copy of the project acceptance and close-out letter from the Park Superintendent that specifies the amount of leasehold surrender interest, if any, applicable to the project.

Section G. Photo Documentation. Complete documentation, including before-and-after photos, records of any special situations or conditions requiring changes, documentation of methods used, etc., should be kept to support requests for LSI and to assist future maintenance and/or appraisal efforts. Photographic documentation is also usually required for modifications to "listed" historic structures. To be most useful, photos should be filed with the documents they support.

(8) Submit Project Documents (PDs) for Review and Approval. The Concessioner shall submit PDs for review and approval to establish project activity for approval by the Superintendent. Approved PDs establish the full scope of the project and the quality of work to be performed by the Concessioner. The scope of the documents required will be identified in the PS. The scope and detail of the documents will vary depending on the nature and complexity of the project. "Manufacturer's cut-sheets" may be all that is required for some R&M projects, and for others, complete detailed drawings and specifications may be required. The Concessioner is responsible for the technical accuracy and completeness of PDs and shall provide the technical review as needed to assure compliance with all applicable federal, state and local statutes, codes, regulations and appropriate industry standards. Any exception to this will be by written authorization from the Superintendent.

(9) Submit a Project Estimate and Schedule. An estimate of the Total Project Price and completion schedule shall be submitted to the Superintendent before work begins. This is a revision of the Total Project Price and completion schedule estimated in the Project Statement. It is based on the best information available identified during project planning and design.

#### **D. Project Management Procedures**

(1) Identify a Project Supervisor. A Project Supervisor shall be identified and vested with the authority to direct the contractor on behalf of the Concessioner. The NPS will direct its communication concerning the nature and progress of day-to-day project activity to this person. This person should have full responsibility for assuring that all construction complies with the approved Project Documents and specified code compliance. The NPS should not take any responsibility for projects until Project Close-out and Acceptance when the NPS receives

certification of completed work performed in compliance with Project Documents and all specified codes.

(2) Submit a Total Project Price for Review.

(a) All projects completed under the terms of this Contract where LSI is requested shall include submittal of a Total Project Price in writing to the Superintendent for review.

(b) Where no LSI is requested, the Total Project Price is provided as an informational item. Formal approval by the Superintendent is not required.

(3) Notice-to-Proceed with a Project. A "Notice-to-Proceed" with a project will be issued when all submittals requested by the Park Superintendent have been reviewed and approved. The Notice-to-Proceed must be received by the Concessioner in writing before any project work occurs.

(4) Hold a Pre-Project Conference with the Contractor. The Concessioner shall arrange and facilitate a pre-project conference as needed or as requested by the NPS with the Contractor. The purpose of the conference is to provide the NPS the opportunity to meet the Contractor and confirm that the Contractor has full understanding and knowledge of all work to be performed. In addition, the conference provides the opportunity to confirm established communication linkages between the Concessioner, the Contractor and the NPS. Any questions the Contractor may have regarding any matter of the project or anything about Area access, rules and regulations may also be discussed.

(5) Submit Project Activity Reports (as required). A record of project activity shall be provided by the Concessioner on all approved projects. The scope and frequency of performing this documentation shall be identified upon submittal of PDs for Park approval. The Concessioner is responsible for the accuracy and completeness of all design and completed projects.

(a) Content. Project activity reports shall summarize daily project activity recording important observations and decisions. It shall also identify project expenditures to date if required for leasehold surrender interest purposes. The reports shall identify any changes to the approved PDs either by change order or any other variance from approved PDs. The NPS shall be notified immediately, if a change is likely to occur in the Total Project Price where the project involves LSI. (See discussion below for review and approval of change orders and contract modifications.)

(b) Regulatory code compliance and project inspection (as required). Inspection reports specifically addressing regulatory code compliance and adherence to PDs will be required, at the request of the Superintendent, during certain stages of the work. Independent industry certified inspectors or registered professional subject area experts shall perform all inspections and project component certification. Inspection reports shall be prepared that include all findings and results of code compliance inspection. Section and paragraph of applicable codes shall be referenced when deficiencies are noted. Recommendations presenting remediation shall accompany line

item deficiencies in the report. All inspection reports shall be included in the final project completion report submitted before project acceptance by the Superintendent.

(6) Submit Requests for Changes in Approved Project Documents. The Superintendent's approval will be required before any significant changes are made to the project scope during the completion of projects, as identified in the approved PDs. The Concessioner shall provide the NPS with written notification immediately upon identifying the need for a change in project scope that effects any of the items listed below. The written notification shall include a request for change in the approved PDs complete with justification and explanation of effect of change on all other aspects of project design and work. Requests for any significant changes in the approved PDs shall be reported in project activity reports with attachment of any documentation requested. Changes in approved project scope during the work that will require review and approval of the Superintendent include the following:

- (a) Changes affecting natural, cultural and/or historic resources;
- (b) Changes in designated visual appearance;
- (c) Changes in the interface with NPS utility and/or road facility maintenance operations;
- (d) Changes in project scope and/or the estimated leasehold surrender interest, as required for facility improvement projects.
- (e) Proposed changes where natural or cultural/historic resources are involved may require a significant period of review depending on the complexity of the concern.

(7) Submittal of Change Orders for Review and Approval (for Leasehold Surrender Interest only). When one of the five factors listed above exists, the Concessioner shall submit, for the review and approval of the Park Superintendent, documentation justifying the proposed changes. The Concessioner shall also submit a revised Total Project Price for each proposed change, as needed, indicating the proposed change in estimated LSI. All change orders or any other means of directing the Contractor that may have the effect of increasing the Total Project Price will require the Park Superintendent's review and approval, if the project has LSI implications.

(8) NPS Project Inspection. The project will be inspected periodically by a representative of the Park Superintendent. The purpose of these inspections is not in lieu of or in any way a substitute for project inspection provided by the Concessioner. The responsibility to assure safe, accountable project activity and for providing the contractor with direction to fulfill the full scope of approved work is the responsibility of the Concessioner.

(9) Project Supervision Documents. Project drawings and specifications must be kept on the project site complete with any design or project modifications, in a well-organized form. The Construction Supervisor shall keep a current "red-line" copy of approved PDs updated daily showing any changes. In addition, a well-organized file of submittals required in the approved PDs and approved where required by professional Architects and/or Engineers must also be kept on the project site with the PDs for periodic inspection by NPS staff.

(10) Substantial Completion Inspection and Occupancy. Joint inspection by the NPS and the concessioner will occur upon notification that the project is substantially complete. A "punch list" of work items will be formulated and performed to "close-out" the project. The Superintendent, in writing will accept the project, when the "punch-list" items are completed. The Concessioner is not to occupy the facility until authorized in writing by the Park Superintendent.

(11) Requesting Approval of Leasehold Surrender Interest. Upon substantial completion of a project, as determined by the Park Superintendent, the Concessioner must provide the Superintendent a written schedule of requested LSI eligible costs incurred, which becomes the Concessioner's request for LSI approval. The project file, containing actual invoices and the administrative record of project implementation, must support these expenditures and shall be submitted to the Park Superintendent for review with the request. If requested by the Park Superintendent, the Concessioner shall also provide written certification from a certified public accountant regarding the LSI costs. The certification must comply with the requirements of Exhibit A of this Contract.

(12) Project Completion Report. Upon completion of any project, the Concessioner shall submit a Project Completion Report to the NPS. The completion report shall include the Total Project Cost; before-and-after photo documentation; warranties; operation and maintenance manuals, if required; all inspection and certification reports; and "as-constructed" drawings (see item section C(13) below). Projects where LSI is requested may require the submittal of any other similar documents deemed by the NPS necessary to establish complete project documentation. The level of documentation requested may also include adequate photo-documentation provided during construction to record significant unforeseen site and construction conditions resulting in changes to approved PDs and the approved Total Construction Price.

(13) "As-Constructed Drawings". The "as constructed" drawings (as-builts) included with the Project Completion Report for all projects shall be full-size archival quality prepared in accordance with NPS management policies and must be submitted before project acceptance by the National Park Service. At least two half-size sets of drawings shall also be provided, in addition to a copy of the drawings on a CD in AutoCAD format. The drawings establishing LSI shall provide a full and complete record of all "as-constructed" facilities including reproduction of approved submittals and manufacturer's literature documenting quality of materials, equipment and fixtures in addition to a record set of project specifications approved for construction.

(14) Request Project Acceptance and Close-out by the Superintendent. The Concessioner shall request project acceptance by the Park Superintendent either at the time of submittal of the Project Completion Report or at any time thereafter. Project acceptance will be contingent upon fulfillment of all requested project completion work tasks and submittal of all project documentation in accordance with these guidelines and as requested by the NPS. Until receiving formal written project acceptance and close-out from the Park Superintendent, the Concessioner retains full responsibility for all project construction activity and liability for both completed and uncompleted work. For LSI projects, the project close-out letter issued by the Superintendent will specify the granted amount of LSI value resulting from the project.

## EXHIBIT G

LEASEHOLD SURRENDER INTEREST AS OF THE EFFECTIVE DATE OF THIS  
CONTRACT

Pursuant to Section 9(c)(2), the Concessioner's leasehold surrender interest in real property improvements as of the effective date of this CONTRACT, if any, is as follows:

Building Number	Description	Value
	Restaurant/Gift Shop	
	Concession Dormitory	
	Total:	\$9,647,199

Exhibit G Approved Effective Dec. 7, 2004

CONCESSIONER

UNITED STATES OF AMERICA

BY: Andrew J. Zell

BY: Ernest Runtana

TITLE: President + CEO

Regional Director, National Park Service

**EXHIBIT H  
MAINTENANCE PLAN**

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## INTRODUCTION

This Maintenance Plan between Xanterra Parks & Resorts, Inc. (hereinafter referred to as the "Concessioner") and Mount Rushmore National Memorial, (hereinafter referred to as the "Memorial") will serve as a supplement to Concession CONTRACT MORU001-05 (hereinafter referred to as the "CONTRACT"). It describes maintenance responsibilities of the Concessioner and the Memorial with regard to those lands and facilities within the Memorial, which are assigned to the Concessioner for the purposes authorized by the CONTRACT.

In the event of any conflict between the terms of the CONTRACT and this Maintenance Plan, the terms of the CONTRACT, including its designations and amendments, will prevail.

This plan will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of Mount Rushmore National Memorial.

Any revisions will not be inconsistent with the main body of this CONTRACT. Any revisions must be reasonable and in furtherance of the purposes of the CONTRACT.

### 1) Definitions

In addition to all the defined terms contained within the CONTRACT, it's Exhibits, and 36 CFR Part 51, the following definitions apply to this Maintenance Plan:

- (1) *Operations* refers to all aspects of Concessioner activity authorized under the CONTRACT. Operations include all services provided to the public and also includes all non-public measures necessary to support those authorized services.
- (2) *Exterior* refers to structures, the foundations, exterior walls and surfaces, roofs, porches, stairways, and other structural attachments. This includes all the equipment, sidewalks, walkways, parking lots, landscaping, and utilities within the Concessioner Facilities.
- (3) *Interior* refers to the area of structures inside the external walls and under the roof, including doors and window frames. This also includes all equipment, appurtenances, and utility systems that penetrate the walls, roof, or foundation.
- (4) *Maintenance* is the preservation and repair of concession facilities, to the greatest practical extent, to the originally constructed condition or its subsequently improved condition. Maintenance includes operational cyclic repair and rehabilitation to address health, life and safety and provide a positive environment for park visitors and employees.
- (5) *Cyclic Maintenance* is work activities that reoccur on a periodic cycle of greater than one year but less than seven years.
- (6) *Preventative Maintenance* is planned, schedule servicing, inspection, adjustment, and replacement that results in continued service, fewer breakdowns and prevents premature replacement of equipment and materials.

- (7) *Repair* is correcting an unsatisfactory or substandard physical condition. Repair is an aspect of maintenance and the objective of repair is the same as the objective of the general act of maintenance as defined above.
- (8) *Replacement* is an aspect of repair and may be a necessary and/or an economically sound approach to repairs.

## 2) General Maintenance Standards and Requirements

These general maintenance standards and requirements apply to all concession service types and any work performed by Concessioner contractors, as applicable.

### A) General

- (1) *Land Assignment.* The Concessioner is responsible for all maintenance and repair of all Concession Facilities and personal property as shown in Exhibits D, except as noted in Section 4 under "Memorial Responsibilities."
- (a) Lands within the Memorial, as defined by Land Assignment Maps in Exhibit D to the CONTRACT are the responsibility of the Concessioner and are considered Concession Facilities. These lands contain improvements, roads, parking areas, trails, and walkways used by the Concessioner. The Concessioner has specific responsibilities for Concession Facilities as defined below.
- (b) Any National Park Service approved change resulting from construction of buildings, modification of buildings, or changes to land use within the Concessioner's land assignment will result in a corresponding change in the land assignment maps.
- (2) *Responsibilities.* The Concessioner will be responsible for all preventative maintenance, and repairs to all Concession Facilities. The Concessioner will correct any deficiencies and complete this work on a timely basis to achieve the basic goals described in the most current Concession Management Guidelines.
- (a) The current Concession Management Guidelines provide the general direction, expectations and standards on all aspects of concession operations. The operational performance standards provide the general standards for interior and exterior maintenance.
- (3) *Standards of Performance for Maintenance*
- (a) All maintenance will be conducted in compliance with all Applicable Laws, including but not limited to, the following referred sections of the 2012 version Concessof the International Property Maintenance Code ("IPMC"), and the manufacturer's recommendations and/or specifications. The following sections of the IPMC are adopted by the Maintenance Plan and incorporated herein by reference. In the event of any conflict between Applicable Laws and the IPMC, the Applicable Laws will prevail. The IPMC is published by the International Code Council. Copies of the IPMC are available from the ICC at [www.iccsafe.org](http://www.iccsafe.org)

- In the referenced sections, the terms “property owner,” “owner” and “occupant” refer to the Concessioner.
  - In the referenced sections, the term “code official” shall be changed to “Superintendent.”
  - Reference Chapter 1, Section 102; Applicability, the following paragraphs: 102.3 through 102.8.
  - Reference Chapter 1, Section 105; Approval, the following paragraphs: 105.2 through 105.4. In Section 105.3, “jurisdiction” shall be changed to “NPS.”
  - Reference Chapter 3, Section 301; General.
  - Reference Chapter 3, Section 302; Exterior Property Areas.
  - Reference Chapter 3, Section 303; Exterior Structure, the following paragraphs: 303.1 – 303.2, 303.4 – 303.17 (in paragraph 303.14; the following shall be changed in the first sentence; replace “During the period from [DATE] to [DATE]” with “During the operating period.”
  - Reference Chapter 3, Section 304; Interior Structure.
  - Reference Chapter 3, Section 305; Rubbish and Garbage, the following paragraphs: 305.1, 305.2 (not including 305.2.1) and 305.3 (not including 305.3.1).
  - Reference Chapter 3, Section 306; Extermination, the following paragraph: 306.1.
  - Reference Chapters 4 through 7.
    - ♦ In reference to Chapters Four through Seven, in circumstances that existing buildings do not meet the minimum requirements, as identified by both the Service and the Concessioner, the Service and Concessioner shall mutually agree to projects that would bring the building into compliance where deemed necessary.
    - ♦ In reference to paragraphs 401.2, 501.2, 601.2 and 701.2, if the requirements are not met, the Service and Concessioner shall determine if the building may be occupied.
    - ♦ The Exception under paragraph 403.3 shall be changed to “Where specifically approved in writing by the Superintendent.”
  - Reference Chapter 8.
- (b) Environmental Management. The Concessioner will seek ways to develop quality facilities and services. The Concessioner will encourage companies and businesses it does business with to provide cleaner technologies and safer alternatives to toxic and hazardous materials, and to develop innovative technology.
- Sustainable Design. The Concessioner will incorporate sustainable design practices to the maximum extent practical. These practices will be consistent

with current NPS guidelines, including but not limited to, National Park Service Guiding Principles of Sustainable Design (September 1993) and other approved guidance as provided to the Concessioner.

- (4) *Computer Maintenance Management System (CMMS)*. The Concessioner will implement a CMMS in coordination with the Memorial. This system will schedule and track completion of all preventative, cyclic, scheduled and unscheduled maintenance items for assigned facilities/areas and associated expenditures.
- (a) The CMMS will have the capability of exporting electronic files, in Microsoft Excel, Access, or Word. These files will contain a record of all maintenance items completed (PM, cyclic, scheduled and unscheduled maintenance items) and expenditures for each item.

## **B) Plans, Reports and Inspections**

- (1) *Annual Routine Maintenance Report*. The Concessioner is to provide the Memorial with an updated "Annual Routine Maintenance Report" that covers all Concession Facilities and personal property. The Report will be delivered to the Superintendent on or before October 1. The Superintendent will provide written response thereto within 45 days from receipt thereof. The Report will include:
- (a) Preventative Maintenance (PM) Schedules. PM schedules will be developed by the Concessioner to ensure that all Concession Facilities are properly maintained. At a minimum, PM schedules will include detailed PM schedules for each building system (including but not limited to roofs, building envelopes and mechanical equipment). At a minimum, the PM schedules will adhere to the manufacturer's recommendations. The PM schedule will list what PM tasks will be completed and their frequency. Also included in the plan will be the Concessioner's quality control process to ensure that the PM's are being completed as scheduled.
- (b) Cyclic Maintenance Schedules. Programmed cyclic maintenance items will be included in the plan. Typical items in this category include carpet and paint.
- (c) Scheduled and Unscheduled Maintenance Items. A plan will be developed to schedule other (unscheduled maintenance items, deferred maintenance, etc) maintenance requirements during the year. The plan will include a service call procedure and method to prioritize service calls. An inspection plan will be included that describes the process by which the concessioner will ensure that the Concession Facilities are being maintained properly and that deferred maintenance items are being corrected in a timely manner.
- (d) Furniture and Removable Equipment. The planned systematic replacement of furniture and removable equipment for the following year.
- (e) The previous CMMS reports will be submitted to the Service with the annual maintenance report (the previous year's report).
- (f) Proposed costing to accomplish the items in the Maintenance Report.

(2) *Annual Fixture Reports.* The Concession is to provide an Annual Fixture Replacement Report (form provided by NPS) providing documentation for any fixture replacements.

The crediting and documentation requirements are:

- Pre-replacement:
  - Fixture replacements must be approved by the superintendent prior to replacement of the fixture.
  - Parks should reference current LSI guidance documents to determine if the replacement qualifies as an LSI eligible fixture replacement.
  - Parks should contact their region or WASO if current LSI guidance does not provide sufficient information to determine if the replacement qualifies as an LSI eligible fixture replacement.
- Post-replacement:
  - Concessioners must submit fixture replacements to the superintendent annually on the NPS provided "Annual Fixture Replacement Report" (NPS provided form).
  - In addition to the documents required pursuant to Exhibit F (Contract: Facility Improvement Procedures), the superintendent must require the concessioner provide Certified Public Accountant (CPA) certification at the end of every calendar year itemizing all applicable costs (fixture replacement costs and the original construction costs of the replaced fixtures) and verifying that the fixture replacement costs submitted for LSI credit have been capitalized according to Generally Acceptable Accounting Practices (GAAP).

(3) *Repair and Maintenance Reserve Plan.* The Concessioner is to provide the Service with an updated "Repair and Maintenance Reserve Plan" that covers all Concession Facilities. The Plan will be delivered to the Superintendent, Mount Rushmore National Memorial on or before October 1. The Superintendent will provide written response thereto within 30 days from receipt thereof. The plan will include:

- (a) A forecast, by year, of projects that will use Repair and Maintenance Reserve funds over the remaining life of the CONTRACT;
- (b) A three-year plan showing what projects are scheduled to be completed with Repair and Maintenance Reserve funds;
  - The plan will describe what year projects are scheduled to be designed (if needed) and constructed. An estimated cost will also be included in the plan.
- (c) Projects that are scheduled to be complete during the next year; and,
  - These projects should have a detailed scope, schedule on when construction will begin and cost estimate. Written approval from the service is required before these projects may begin.

- (d) The Service reserves the right to require the Concessioner to replace any component or building system at the end of its useful life or when the item presents a quality, safety, or environmental issue.
- (4) *Deferred Maintenance Report.* Within 60 days of the effective date of the CONTRACT execution, an initial list of all maintenance deficiencies and items of deferred maintenance will be formulated and documented by the NPS and reviewed with the Concessioner. Within 45 days of this review, the Concessioner will develop a program to address all such items, including a timeline and cost to cure. Any costs in excess of the amount stated in accordance with the CONTRACT will only be incurred as funds become available.
- (5) *Operational Evaluation* Subsequent to the aforementioned initial inspection and ongoing thereafter, the Memorial reserves the right to and the Concessioner will conduct an annual inspection and review of the assigned Concession Facilities to determine what maintenance is needed, and if the facilities comply with applicable federal and state laws, regulations, guidelines, rules, codes and policies. This review will occur on a schedule to be submitted by the Concessioner and approved by the Memorial. Based upon the identified needs, the Memorial and the Concessioner will develop a timeline to cure the deficiencies.
- (6) *Pesticide Use Log.* A pesticide use log will be submitted to the Superintendent annually not later than October 1 of each year.
- (7) *Incidental Projects.* At its discretion, the Memorial or the Concessioner may enter into agreements with the other party, upon mutual agreement, to complete incidental projects that support the mission of Mount Rushmore National Memorial. The rates charged for such projects will approximate the actual cost of the work completed.

The following table summarizes the preceding reporting requirements and details other reports, plans, and inspections that will be the responsibility of the Concessioner per the CONTRACT and this Maintenance Plan.

SUMMARY OF REPORTING REQUIREMENTS			
INITIAL AND RECURRING DUE DATES			
Title	Schedule	Due Date	Reference
Deferred Maintenance Plan	Initial	Within 60 days of the effective date of contract execution	
Annual Maintenance Report	Annual	On or before October 1 of each year.	
Annual Fixture Report	Annual	Before April 1 / with Annual Overall Rating	Policy Memo 2009-03 dated June 16, 2009
Repair and Maintenance Reserve Plan	Annual	On or before October 1 of each year.	
Annual Inspection Reports	Annual	To Be Determined by Concessioner and Memorial	
Pesticide Use Log	Annual	On or before October 1 of each year	

### C) Facility Maintenance

- (1) *Qualified Personnel.* All maintenance and repair work will be done by qualified personnel as defined by applicable codes.
- (2) *Specifications and Written Approval.* Repairs or replacements will be done in accordance with National Park Service regulations.
- (3) *Painting.* Unless required more frequently per the manufacturer's recommendation, or the IPMC, interior paintable surfaces will be painted on a regular cycle of not less than seven years. Exterior paintable surfaces will be painted on a regular cycle of not less than five years. Paint products will be of a "best quality" from a major manufacturer and a type and color that is readily available on the open market. Any changes to paint colors from the color range provided by the Superintendent must be approved by the Superintendent. Whenever possible, the Concessioner will utilize reprocessed, low volatile organic content (VOC), latex coatings when technically feasible and appropriate. When oil based paints are used, solvent use will be minimized by means of thinner settling and reuse whenever possible.
- (4) *Carpet.* Unless required more or less frequently per the manufacturer's recommendation, carpeting located in offices and public areas will be replaced at a minimum of seven years. Manufacturers that offer carpet made with recycled and/or recyclable materials should be considered.
- (5) *Buildings.* Any changes in the architecture, building interior or exterior, including color and material must be approved in advance by the Memorial.
- (6) *Exterior Lighting.* All lights must be shielded to cast light downward only to protect night skies and without sending the directed light outside the area of need. New installations will incorporate state of the art technology and must be approved by the Memorial.
- (7) *Independent Inspections.* All inspection fees for operation of elevators, et. al., will be borne by the Concessioner.

- (8) *Damage to Concession Facilities.* The Concessioner will be responsible for repairing any damage caused to any assigned structure due to negligence on the part of a Concessioner employee or supplier.
- (9) *Fire Escapes and Exits.* Installations of fire escapes and emergency exit hardware and signs will receive prior written approval from the superintendent.
- (10) *Furniture and Removable Equipment*
- (a) The Memorial reserves the right to require the Concessioner to replace furniture and removable equipment at the end of its useful life or when the item presents a quality, safety or environmental issue.
- (b) All FF&E in Concession Facilities will be on a replacement schedule and be replaced every eight to ten years, or sooner if the condition of the item has more than minor defects and/or is determined to be unsafe.
- (c) All equipment used in food service operations, including but not limited to dishwashers, refrigerators, freezers, and serving tables, will be in compliance with all Applicable Laws, including but not limited to, the most current Food and Drug Administration's Food Code.
- (d) All Concessioner-operated appliances, machinery, and equipment, including parts, supplies, and related materials will be maintained, serviced, and repaired per the manufacturer's recommendations, and replaced as necessary.

**D) Utilities:**

*(1) General*

- (a) The Concessioner is responsible for obtaining electricity, gas, trash pick-up, and all other utility services not provided by the Memorial from local utility companies and for payment directly to them for their services
- (b) The Concessioner will repair or replace any damage to all utility systems arising out of the negligence of the Concessioner and/or its employees, agents or contractors.
- (c) As systems or equipment need to be replaced, serious consideration shall be given to the use of products and technologies that reduce impacts, conserve resources, and improve efficiencies.

*(2) Water*

- (a) The Concessioner will maintain and repair to NPS standards all water service and building plumbing systems within five feet of and inside Concession Facilities.
- (b) The NPS operates and maintains the park's water / waste water system, and it is critical that any changes that could potentially impact the system in any way, flow levels, flow volume, etc., be discussed with the NPS prior to implementing said changes.

- (c) Alterations, additions, or extensions to the water system owned by the NPS are not permitted without prior written approval from the Superintendent.
- (d) The Concessioner will ensure that the water distribution system, including all water spigots, will have backflow preventers and backflow prevention equipment installed. Said equipment must be tested by a certified backflow assembly tester annually and certification card attached to each assembly.
- (e) Due to the increasing costs of producing tested domestic water, and treating wastewater, the Concessioner will install water conserving and landscape irrigation systems in all new construction, and when existing irrigation systems need to be replaced. Water conservation in landscaping includes selecting drought tolerant species, minimizing lawns, and using drip irrigation systems for trees and shrubs.
- (f) In areas where excavation through a road or paved area is required to repair a Concessioner line, the Concessioner shall be responsible for restoring the paved area to at least the original condition. The Concessioner shall replace topsoil and revegetate any ground disturbed by repairs. The Concessioner shall disinfect any repairs.

*(3) Sewage*

- (a) The Concessioner will repair and maintain all sewage lines, connections, disposal systems, and appurtenances within Concession Facilities to the connection to the Memorial sewer system.
- (b) The Concessioner will maintain, repair, and replace fixtures attached to the sewage disposal system, including sinks, toilets, urinals, and dishwashing equipment.
- (c) The Concession Facilities are not attached to an operational grease trap and due to the building's design, it is expected that the installation of a grease trap in the future will not be possible. To assist the Memorial in maintaining its wastewater treatment plant, the Concessioner will dispose of all grease and food products as solid waste in accordance with the solid waste disposal requirements contained herein.
- (d) The Memorial will bill the Concessioner to recoup costs for clearing or replacing clogged sewer lines and cleaning lift station wet wells due to heavy grease accumulation, when directly related to the Concessioner's operations.

*(4) Electrical*

- (a) The Concessioner shall maintain all electrical lines and equipment (conduit, fuses, panels, switches, transformers, lines, etc.) down line from the meter.
- (b) The Concessioner will not be responsible for electrical lines or equipment that are owned and serviced by Black Hills Power and Light, or its successors or assignees. The Concessioner will not be responsible for electrical lines or equipment that does not solely service the Concession Facilities. Electrical lines and equipment which service both Concession and Memorial facilities will be the joint responsibility of both entities.

- (c) Any repairs, remodeling, installations and/or upgrading will be installed by a South Dakota licensed electrician.
- (d) The Concessioner shall develop and implement a plan to reduce its consumption of electrical energy including alternative energy sources. This plan shall be annually submitted to the service for review and approval.

*(5) Natural and Liquefied Petroleum Gas Systems*

- (a) The Concessioner will maintain, according to the applicable element of NFPA guidelines, including but not limited to NFPA 58, all liquid petroleum gas (LPG) systems in their assigned areas. This includes, but is not limited to, tanks, valves, regulators, and piping. Placement of new or additional tanks will be subject to written approval from the Superintendent.
- (b) The Concessioner will conduct and document semi-annual inspections of its gas storage and distribution systems. A Memorial representative will be included in the inspection. All gas installations will require a licensed South Dakota LPG installer. A certified independent inspector must inspect all installations at the Concessioner's expense.
- (c) Warning signs reading "flammable" and "no smoking" will be prominently posted at or near all LPG systems.
- (6) *Telephone.* The Concessioner will be responsible for all on-premise telephone equipment and wiring.

**E) Signs**

- (1) The Concessioner will ensure that all of its signs are compatible with Memorial sign standards. Sign size, style, color, and location will be submitted for Memorial approval prior to installation. No handwritten signs will be permitted within Concession Facilities, except on a short-term, interim basis
- (a) Public signs, for which the Concessioner is responsible, must be appropriately located, accurate, and well maintained. Signs of a permanent nature will be prepared in a professional manner, appropriate for the purpose they serve, and consistent with NPS guidelines, including but not limited to, NPS Directors Order 52, Park Signage
- (b) The Concessioner will install, maintain, and replace all interior and exterior signs relating to its operations and services within its Concession Facilities. Examples include the Concessioner's operating services and hours, rules or policies, and identifying location of facilities.
- (c) The Concessioner will install, maintain, and replace all signs, including directional signs outside Concession Facilities that specifically relate to its operations and services.
- (d) The National Park Service may install signs within the areas assigned to the Concessioner.

**F) Snow and Ice Control**

- (1) The Concessioner shall clear ice and snow, and sand all walkways and approaches, within five feet of the retail and food services building and the employee dormitory, as necessary to make access reasonably safe for the visiting public, Concessioner and Memorial employees. The use of chemical or foreign material de-icers must be pre-approved by the Service.

## G) Solid Waste

### (1) Guidelines

#### (a) Responsibility

- The Concessioner will be responsible for the collection and disposal of all solid waste associated with the operations. The Concessioner will keep all assigned areas free of abandoned equipment, vehicles, furniture, or fixtures.

#### (b) Receptacles

- Memorial approved bins and garbage cans will be conveniently located within the Concessioner's land assignment and in sufficient quantity to handle the needs of the assigned area.
- Receptacles will be waterproof, vermin-proof and covered with working lids. Working lids will remain closed when not in use to minimize the attraction of insects and wildlife.
- Visual screening is required.
- The Concessioner will be responsible for the placing and daily cleaning of cigarette receptacles in the assigned areas, as appropriate.

#### (c) The Concessioner will maintain and operate a compactor at the main concession building that is of sufficient size to accommodate compactable refuse generated by the Xanterra Concession operations and the National Park Service at the Memorial.

#### (d) Sites will be free of spills, waste, and odors. All wet garbage from concession operations will be adequately bagged and tied or stored in sealed containers to prevent pest attraction and breeding. Waste must not accumulate in trash containers to the point of overflowing.

#### (e) All materials generated as solid waste by the Xanterra concession operations and the National Park Service must be removed from the Memorial at the Concessioner's expense and disposed of in a timely manner at an approved site in accordance with all Applicable Laws and codes.

### (2) Garbage Collection

- (a) Pick up and Collection. The Concessioner is responsible for solid waste pick up and removal in and around Concession Facilities including the employee dormitory. With approval from the Superintendent, the Concessioner may contract with an independent provider of waste removal services to fulfill its obligations. The Concessioner may set the frequency of pick up at its

discretion but must not allow trash containers to overflow, become malodorous, or otherwise negatively impact visitor experience at the Memorial. Trash pick-up is limited to the hours between 6:00 a.m. and 5:00 p.m. in areas where trash and garbage pick-up noise may disturb visitors.

## H) Recycling, Pollution Prevention, And Conservation

### *(1) Recycling Programs*

- (a) The Concessioner will implement a recycling program. Products to be recycled include, but are not limited to, paper, newsprint, cardboard, bimetals, plastics, aluminum, glass, used oil, antifreeze, and batteries. Such program will include, but not be limited to, the following:
- The provision of recycling collection bins at locations in accordance with the CONTRACT and the Operating Plan. Bins shall be clearly marked as recycling bins (vs. un-recyclable refuse).
  - Processing and compaction equipment for the items collected.
  - Removal from the Memorial area and transportation to a recycling center.
  - Storage of recyclables in appropriate secure storage containers to protect against odors that could attract animals.
  - These services may be provided by contractor, with the approval of the Memorial.

### *(2) Use of Recycled Products*

- (a) The Concessioner will implement a source reduction program designed to minimize its use of disposable products in its operations. Reusable and recyclable products are preferred over "throwaways." Where disposable products are needed, products will be used which have the least impact on the environment. Easily biodegradable products are preferred. The use of post-consumer recycled products whenever possible is required.

### *(3) Environmentally Safe Products*

- (a) The Concessioner will implement a hazardous waste source reduction program to minimize and eventually eliminate use of hazardous chemicals in its operation. Where practical, the Concessioner will use environmentally safe "green" products and practices that enhance sustainable operations and development, promote use of recycled oils, tires (re-treads), construction materials, etc.

### *(4) Energy and Water Conservation*

- (a) The Concessioner will incorporate water and energy efficiency in all maintenance practices and integrate water and energy conserving measures whenever feasible. Energy efficient products, such as those certified by the United States Environmental Protection Agency Energy Star Program, must be

installed to replace less efficient products and to minimize energy consumption when replacement is needed

*(5) Environmentally Preferable Purchasing*

- (a) Where feasible and available, the Concessioner will utilize products or materials that are less toxic, contain post-consumer recycled content, are naturally or minimally processed products, and/or use other materials that have additional environmentally preferable attributes.

**I) Fuel Storage Tank, Hazardous Materials and Hazardous Waste Program**

- (1) The Concessioner will maintain health and safety standards and take necessary mitigative and corrective measures to assure healthy working and living environments in all Concession Facilities.
- (2) *Training.* If requested by the National Park Service at the Memorial, the Concessioner will designate employees to attend hazardous materials and waste management training as made available by the Memorial or through outside sources. Training will include Hazardous Communication Standard for employees who may be exposed to chemical hazards on the job site and Hazardous Waste Operations and Emergency Response Standard for employees who may be exposed to hazardous substances in certain specific job-related duties.
- (3) *Underground and Above Ground Storage Tank.* The Memorial must approve all plans for any work involving underground storage tanks, tracer probes, monitoring wells, removal of contaminated soil, ground water remediation work, etc. The Concessioner must comply with all Federal, State and local laws, regulations and policies regarding said storage tanks. Furthermore, the NPS is committed to the prevention of discharges of oil to navigable waters and the environment, and maintain the highest standards for Spill Prevention Control and Countermeasure (SPCC) through regular review, updating, and implementation of the Memorial's SPCC Plan. (Copy provided to concessioner.) The concessioner will perform monthly visual inspections of all concessioner owned Above Ground Storage Tanks (ASTs). Inspections of the ASTs include examining the tanks for signs of corrosion or damage to piping and valves, inspecting tank supports and secondary containment for damage or irregularity, and observing the tank and surrounding area for any evidence of leakage. In addition to monthly visual inspections of the ASTs, (tanks and emergency generators), the annual inspection log must be completed each year for all concessioner tanks and containers. The Monthly Visual Inspection and Annual Inspection Logs form are provided by the NPS. If any response requires elaboration, concessioner should provide further description and comments directly on the form or on a separate sheet of paper and attach to the log. Reporting documentation is due to the Park annually, by January 15 each year. Documentation must include a copy of all monthly inspection reports in addition to the "Annual Inspection Log." Copies of Inspections Reports/Logs will be maintained at the park for a period of at least five years. Copies of the Monthly Visual and Annual Inspection logs have

been provided to the concessioner, but are available by contacting the NPS if additional copies are needed.

*(4) Hazardous Waste Management*

- (a) Hazardous materials will be handled in accordance with OSHA 29 CFR, 1910 and 1926.
- (b) The Concessioner will submit an Emergency Action Plan (EAP), which will include:
  - Actions that will be taken in response to incidental and non-incidental hazardous substance spills and in accordance with Title 29 CFR 1910.38
- (c) The Concessioner will obtain Memorial approval prior to using chemicals, pesticides, and toxic materials. Applications and methods of use will conform to all Applicable Laws.
- (d) The Concessioner will maintain health and safety standards, as outlined by OSHA, when conducting maintenance and/or rehabilitation of buildings and/or areas that may contain asbestos, PCBs and lead-based paint materials.
- (e) The Concessioner will immediately notify the Memorial's Communication/Dispatch Center when a release of hazardous or non-hazardous chemical or biological product occurs, allowing the Memorial to properly mitigate and remedy all unauthorized discharges of hazardous materials or non-hazardous chemical or biological products within their means, or to notify the HazMat Division of the Rapid City Fire Department if they determine the quantity or contents of the release require outside mitigation. The Memorial will respond to all non-incidental spills or incidental spills coordinating proper corrective, cleanup, and safety actions immediately. The Concessioner will be responsible for all costs associated with the incident.
  - Response will be consistent with guidelines established within applicable Federal, State, and local laws, regulations, and policies and as outlined within the Concessioner's EMP.
  - The Concessioner will be responsible for purchasing a pre-assembled spill response kit (e.g.: NewPig, item #KIT211) or for the costs associated with assembling a spill response kit to include, at a minimum: 4-3" x 48" PIG Blue socks, 1-3" x 10' PIG Blue sock, 15-20" x 15" PIG Universal Mat Pads, 2-21" x 17" PIG Pillows 5-disposal bags and ties, 6-tamper-proof labels, 1-emergency response guidebook, and will pre-position the kit on the loading dock, and maintain it in that location at all times.
- (f) Individual fleet and public service vehicles with a load rating greater than two tons should carry, at minimum, enough absorbent materials to effectively immobilize the total volume of fluids contained within the vehicle. Vehicles and operators transporting hazardous materials must be DOT certified and/or registered, and operators must be knowledgeable of local emergency response and personal safety protocol.

## **J) Grounds, Landscaping, And Pest Management**

### *(1) Landscaping Guidelines*

- (a) The Concessioner will conduct its business and daily activities in such a manner as to minimize impacts on the natural scene. This will involve protecting native vegetation and controlling erosion.
- (b) Adequate steps will be taken to prevent the introduction and importation of exotic plants and species into the Memorial.
- (c) As part of on-going maintenance, all non-native plant material will be removed as necessary.

### *(2) Integrated Weed and Pest Management*

- (a) The Memorial and the Concessioner will agree to an Integrated Weed and Pest Management Program that defines the nature and frequency of treatment, approved chemical lists, etc. The application of any herbicide, pesticide, or the engagement of any pest control or non-native species activity in buildings, residences, or in grounds/landscape materials will be in accordance with the Integrated Weed and Pest Management Program and requires advanced written approval from the Superintendent.
- (b) The Memorial will provide guidance on best management practices to prevent infestation by exotic species, and on control of infestations of exotic species. The Concessioner will review specific issues with the Memorial's integrated pest management coordinator.
- (c) A licensed pest control contractor will inspect all Concession Facilities under the CONTRACT on a regular cycle not less than every five years, after an initial inspection. The initial inspection is to be performed within one year of the awarding of this CONTRACT. Inspection reports will be submitted to the Superintendent.

## **K) Roads, Trails, Parking Areas and Walkways**

### *(1) Guidelines*

- (a) The Concessioner will complete all pavement preservation projects for parking lots and access roads within its assignment on a cyclic basis.
- (b) Construction or installation of additional path or parking area lighting will occur only with written permission of the Superintendent.
- (c) The Concessioner will provide safety railings on steps and hazardous walkways.
- (d) The Concessioner is responsible for complying with the Uniform Federal Accessibility Standards (UFAS) in its assigned areas. All designs must meet NPS, ADA, and UFAS standards.

## **3) Concessioner Responsibility (By Land Use)**

### **A) Retail Operation**

*(1) General Maintenance*

- (a) Cleaning. All public areas will be well maintained and cleaned with a minimum frequency of two times per day. The area will be kept free of clutter and debris at all times

**B) Food and Beverage Operation**

*(1) General Maintenance*

- (a) Cleaning. All public areas will be well maintained and cleaned with a minimum frequency of two times per day. The area will be kept free of clutter and debris at all times.
- (b) Public Restrooms. All Concessioner Facility restrooms will be well maintained and cleaned with a minimum frequency of two times per day. A posted log will be maintained. Fixtures and equipment will be fixed immediately upon notification of any problems. No bathroom fixture will be left out of order for more than two weeks.
- (c) Windows. There are a substantial number of windows in the food and beverage dining area. These windows shall be kept clean to such a level that visitors within the building may clearly view the area outside the concessions building.

**4) Memorial Responsibilities**

The Memorial assumes no responsibility for the execution of physical maintenance work on Concession Facilities assigned to the Concessioner except as stated below. The Memorial will assist the Concessioner in its maintenance program by assuming and executing the following responsibilities subject to the availability of appropriated funds.

**A) Memorial Responsibilities**

*(1) Exterior Fire Equipment*

- (a) Fire Hydrants. The Memorial will maintain all fire hydrants within the Concessioner's land assignment, including the maintenance, repair, replacement, testing, and painting of all fire hydrants on water mains within the Concessioner's land assignment.

*(2) Roads, Trails, Parking Lots, And Walkways*

- (a) The Memorial will maintain all roads, parking areas, parking islands, curbing, sidewalks, walkways, and trails that are outside the assigned Concession Facilities.
- (b) The Memorial will review the Concessioner's maintenance plans, provide standards as needed, review and approve proposed work where appropriate, and monitor Concessioner projects. Use of assigned trails by the Concessioner is subject to specific terms and conditions as may be developed by the Superintendent for mitigation of impacts by the Concessioner resulting from the Concessioner's use.

*(3) Utilities*

## (a) Electrical

- The Memorial will repair or replace any damage occurring to utility systems assigned to the Concessioner within its land assignment that is due to the negligence of the Memorial and/or its employees.
- The Memorial, or the utility company with the easement, will be responsible for all utility systems running through, but not providing service to Concession Facilities.

## (b) Water

- The NPS will provide water, sewer, and propane. The Concessioner will be billed in accordance with NPS Special Directive 83-2 which requires that utility rates charges to the Concessioner reflect actual costs incurred by the NPS or comparability, whichever is greater. The Memorial will review operating costs for utility systems and services annually and will notify the Concessioner in writing by January 1 of the rates for the next year. A rate comparability study is to be done by the Memorial, and rates will be based on both the study and results of the preceding fiscal year's actual costs.
- The NPS will be responsible for maintaining the water supply system to the NPS water meter on the line providing service to the Concessioner.
- The Memorial will provide bacteriological monitoring and chemical analysis of potable water as required by all Applicable Laws.
- The Memorial will furnish water service, connections, meters and shut-off valves. All piping and appurtenances down flow from the meter or as shown on/or described on Land Assignment Maps shall be the responsibility of the Concessioner to operate, repair, and maintain. The Memorial will assist with the location and identification of water and sewer lines and make repairs if the damaged section is within an area of Memorial responsibility.

## (c) Sewage

- The Memorial will be responsible for maintaining the main sewer trunk line running through and servicing the concession area.

## (4) Signs

- (a) The Memorial is responsible for constructing, obtaining, installing, and maintaining all regulatory, traffic control, safety, operational, directional, or informational signs that serve the interest of the Government or that affect the safety and well-being of the visitor or the area. Examples include information signs along roadways, directional signs along Memorial trails, and interpretive signing. All roadway and parking signs are the responsibility of the Memorial.
- (b) The Memorial will provide direction and assistance to the Concessioner as the latter designs and installs signage that is the Concessioner's responsibility.

Approved, dated this 16th day of March, 2015.

By: Cheryl A. Schreier

Cheryl A. Schreier, Superintendent  
Mount Rushmore National Memorial

Received By: Marty LaMontagne

Marty LaMontagne, General Manager  
Xanterra Parks & Resorts, Inc.

## EXHIBIT I INSURANCE REQUIREMENTS

### I. INSURANCE REQUIREMENTS

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

With the exception of statutory Workers' Compensation insurance protection, the National Park Service shall be named as an additional insured under all insurance policies issued or arranged in support of this agreement. The coverage provided for the benefit of the National Park Service is not to be impaired by any act of the Concessioner, its agents, servants or employees. The National Park Service shall, solely for its benefit, be provided *an unconditional 30 day advance* notice of cancellation, non-renewal or material change in coverage or policy terms. The term National Park Service shall by definition and where appropriate and legally permissible, also include the term United States Government/United States of America.

The amounts of insurance and coverage terms *indicated are not intended as a limitation* of the concessioner's responsibility or liability under this agreement, but rather an indication as to the minimum amount and minimum scope of insurance that the National Park Service considers necessary to allow the operation of the concession facilities at its park. Nevertheless, if the concessioner purchases insurance in addition to the limits illustrated herein, the National Park Service is to receive benefit of the additional amounts of insurance without additional cost to the National Park Service.

### II. LIABILITY INSURANCE

The following Liability Coverages are to be maintained at a minimum, all of which are, unless noted herein, to be written on an occurrence form of coverage by **an insurance company licensed to do business within the State of South Dakota and having an A.M. Best's rating of no less than A- and a financial category rating of no less than VII**. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or "Umbrella" Liability (See item #3 excess or umbrella liability insurance policy).

#### 1) Commercial General Liability Insurance

A) Coverage will be provided for bodily injury, property damage, personal or advertising injury liability, contractual liability (including contractual liability arising out of personal injury and advertising injury liability) and products/completed operations liability insurance protection. The following minimum limits of liability \* are to be provided:

- |   |              |
|---|--------------|
| (1) General Aggregate                         | \$10,000,000 |
| (2) Products & Completed Operations Aggregate | \$10,000,000 |

- |  |                    |
|--|--------------------|
| (3) Per Occurrence                                 | \$10,000,000       |
| (4) Personal Injury & Advertising Injury Liability | \$10,000,000       |
| (5) Medical Payments                               | \$5,000 per person |
| (6) Fire Legal Liability                           | \$50,000 per fire  |

**\*or those minimum limits required by the Umbrella/excess liability insurer**

B) The liability coverages may not contain the following exclusions/limitations:

(1) *Explosion, Collapse and Underground Property Damage exclusion*

C) The "pollution exclusion" must be amended to admit liability for pollution damage caused by smoke, vapors, fumes, soot, etc. from a hostile fire

D) The policy must be the standard commercial general liability as is currently issued by the insurance services office within the State of South Dakota.

E) The General Aggregate must apply on a "per location" basis.

F) Garagekeepers Legal Liability must be included on a direct basis, \$200,000 per vehicle

## 2) Automobile Liability Insurance

Coverage will be provided for bodily injury or property damage arising out of the ownership, maintenance or use of "any auto," Symbol 1. (Where there are no owned autos, coverage applicable to "hired" and "non-owned" autos, "Symbols 8 & 9," shall be maintained.)

A) Bodily Injury and Property Damage (combined) \$10,000,000 per occurrence \*.

**\*or those minimum limits required by the Umbrella/excess liability insurer**

## 3) Liquor Liability

A) Coverage will be provided for bodily injury or property damage including damages for care, loss of services, or loss of support arising out of the selling, serving or furnishing of any alcoholic beverage

## 4) Excess Liability or Excess "Umbrella" Liability Insurance

A) Minimum Limits: Bodily Injury & Property Damage \$10M/occurrence & aggregate.

**Note:** An excess or "umbrella" liability policy may be used to achieve the commercial general liability and automobile liability limits outlined above. However, if a lower limit of liability is used for a subordinate policy, then the limit of liability under the umbrella policy must be that limit necessary to achieve the full limit of liability required for the subject policy. For instance, the General Liability policy requires a \$10M limit of liability. If the limit of liability provided under the General liability policy is \$1M, then the umbrella policy must provide a limit of at least \$9M to provide the total requirement of \$10M. Since the Umbrella/Excess policy applies over both the automobile and the commercial general liability policy, a single limit under the excess policy is all that will be required.

The umbrella liability policy coverage shall be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance shall be sufficient to

prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Excess "Umbrella" Liability policy. If the coverage afforded by the excess or umbrella policy results in limits greater than the limits required hereunder, then the greater limit shall be available to the NPS in the event of a loss.

**5) Environmental Impairment Liability**

Coverage will be provided for bodily injury, personal injury or property damage arising out of pollutants or contaminants (on site and/off site)

- A) Each Occurrence or Each Claim Limit-Same as general liability limits
- B) Aggregate Limit-Same as general liability limits

**6) Special Provisions for Use of Aggregate Policies**

If at any time the aggregate limit of any required policy is (or if it appears that it will be) reduced or exhausted, the Concessioner may be required to reinstate such limit or purchase additional coverage limits. The General Aggregate under the Commercial General Liability policy must apply on a "per location" basis. The Certificate of Insurance required herein will note compliance with this aggregate provision.

**7) Self-Insured Retentions**

Self-insured retentions on any of the above described Liability insurance policies (other than Excess "Umbrella" Liability, if maintained) may not exceed \$10,000 without prior approval of the Director.

**8) Workers Compensation & Employers' Liability Insurance**

Coverage will comply with the statutory requirements of the state(s) in which the Concessioner operates. The State of South Dakota must be specifically addressed within the policy.

**III. PROPERTY INSURANCE**

**1) Building(s) and/or Contents Coverage**

1. Amount of Insurance (Building) \$100% of replacement value as listed in Exhibit D
  2. Amount of Insurance (Contents) \$100% of replacement value (\$666,000)
  3. Amount of Insurance (Inventory) \$ 100% selling price
- A) Insurance shall cover buildings, structures, improvements & betterments and/or contents for all Concession Facilities, as more specifically described in Exhibit D of this CONTRACT.
  - B) Coverage shall apply on an "All Risk of loss" or "Special Coverage" basis.

- C) The policy shall provide for loss recovery on a Replacement (new for old) Cost basis.
- D) The amount of insurance, except for inventory, should represent no less than 100% of the Replacement Cost value of the sum total of all insured property. Inventory shall be insured at 100% of the selling price of the products held for sale.
- E) The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
- F) Coverage is to be provided on a blanket basis, real and personal property.
- G) The vacancy and unoccupancy restriction, if any, must be eliminated for property that will be vacant or unoccupied beyond any time period specified in the policy.
- H) Flood Coverage shall be maintained with a limit of not less than \$. Not Applicable
- I) Earthquake Coverage shall be maintained with a limit of not less than the building replacement costs listed in Exhibit D.
- J) Ordinance or Law, demolition and increased cost of construction coverage shall be maintained with a limit of not less than the building replacement costs listed in Exhibit D.

**2) Boiler & Machinery Coverage**

- A) Insurance coverage shall apply on the "comprehensive" basis of coverage including all objects within the Concession Facilities.
- B) The policy shall provide for loss recovery on a Replacement (new for old) Cost basis.
- C) The amount of insurance should represent no less than 90% of the Replacement Cost value of the sum total of all of the insured property.
- D) The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
- E) Coverage is to be provided on a blanket basis.
- F) If insurance is written with a different insurer than the Building(s) and Contents insurance, both the Property and Boiler insurance policies must be endorsed with a joint loss agreement.
- G) Ordinance or Law, demolition and increased cost of construction coverage shall be maintained with a limit of not less than the building replacement costs listed in Exhibit D.

**3) Builders Risk Coverage (only applicable if for construction of new structures)**

- A) Insurance shall cover new buildings or structures under construction at the Concession Facilities, including rehabilitation and restoration operations and include coverage for property that has or will become a part of the project while such property is at the project site, at temporary off-site storage and while in transit. Coverage should also apply to temporary structures such as scaffolding and construction forms. (It is permissible to include this coverage as an endorsement to the master property policy required above.)
- B) Coverage shall apply on an "All Risk of loss" or "Special Coverage" basis.

- C) The policy shall provide for loss recovery on a Replacement Cost basis.
- D) The amount of insurance should represent no less than 90% of the Replacement Cost value of the insured property.
- E) The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
- F) Any occupancy restriction must be eliminated.
- G) Any collapse exclusion must be eliminated.
- H) Any exclusion for loss caused by faulty workmanship must be eliminated.
- I) Flood Coverage shall be maintained with a limit to be determined at the time of construction.
- J) Earthquake Coverage shall be maintained with a limit of not less than the building replacement costs listed in Exhibit D.
- K) Coverage is to be arranged on a "completed value" form.

#### 4) **Business Interruption and Extra Expense Insurance**

Business Interruption and extra expense insurance is to cover the loss of income and continuation of fixed expenses in the event of damage to or loss of Concession Facilities, including, without limitation and with respect to the interests of the National Park Service, the loss (or reduction) of franchise fee payments to the National Park Service by the Concessioner. Extra Expense insurance shall cover the extra expenses above normal operating expenses to continue operations in the event of damage or loss to covered property. The coverage to be provided shall be at least that calculated as follows:

Anticipated annual Gross revenue from operations	\$	_____
Less non-continuing expenses	(\$	_____)
Total:	\$	_____
Times exposure (# of days of operations/365)		X
Business Interruption limit	\$	_____

#### 5) **Deductibles**

Property Insurance coverages described above may be subject to deductibles as follows:

- A) Direct Damage deductibles shall not exceed the lesser of 10% of the amount of insurance or \$25,000 (except Flood & Earthquake coverage may be subject to deductibles not exceeding \$50,000).
- B) Extra Expense deductibles (when coverage is not combined with Business Interruption) shall not exceed \$25,000.

## 6) Required Clauses

### A) Loss Payable Clause:

A loss payable clause similar to the following must be added to Buildings and/or Contents, Boiler and Machinery, and Builders Risk policies, including any Business Interruption coverage agreement:

“In accordance with Concession Contract No.MORU001-05 dated January 1, 2005, between the United States of America and Xanterra Parks & Resorts, Inc., payment of insurance proceeds resulting from damage or loss of structures insured under this policy is to be disbursed directly to the Concessioner without requiring endorsement by the United States of America.”

## IV. CONSTRUCTION PROJECT INSURANCE

Concessioners entering into contracts with outside contractors for various construction projects, including major renovation projects, rehabilitation projects, additions or new buildings/facilities will be responsible to ensure that all contractors retained for such work maintain an insurance program that adequately covers the construction project.

The insurance maintained by the construction and construction-related contractors shall comply with the insurance requirements stated herein (for Commercial General Liability, Automobile Liability, Workers' Compensation and, if professional services are involved, Professional Liability). Except for the workers' compensation insurance coverage, the interests of the Concessioner and the United States shall be covered in the same fashion as required in the Commercial Operator Insurance Requirements. The amounts/limits of the required coverages shall be determined in consultation with the Director taking into consideration the scope and size of the project. Any project in excess of \$1,000,000, shall be reviewed by the NPS for additional conditions.

## V. INSURANCE COMPANY MINIMUM STANDARDS

All insurance companies providing the above described insurance coverages must meet the minimum standards set forth below:

- 1) All insurers for all coverages must be rated no lower than A- by the most recent edition of Best's Key Rating Guide (Property-Casualty edition).
- 2) All insurers for all coverages must have a Best's Financial Size Category of at least VII according to the most recent edition of A.M. Best's Key Rating Guide (Property-Casualty edition).
- 3) All insurers must be admitted (licensed), or approved in the state in which the Concessioner is domiciled.

## VI. CERTIFICATES OF INSURANCE

All certificates of Insurance required by this CONTRACT shall be completed in sufficient detail to allow easy identification of the coverages, limits, and coverage amendments that are described above. In addition, the insurance companies must be accurately listed along with their A.M. Best Identification Number ("AMB#"). The name, address and telephone number of the issuing insurance agent or broker must be clearly shown on the certificate of insurance as well.

Due to the space limitations of most standard certificates of insurance, it is expected that an addendum will be attached to the appropriate certificate(s) in order to provide the space needed to show the required information.

In addition to providing certificates of insurance, the Concessioner, upon written request of the Director, shall provide the Director with a complete copy of any of the insurance policies (or endorsements thereto) required herein to be maintained by the Concessioner.

**The Certificate of Insurance shall contain a notation that the insurance coverage represented therein complies with the provisions of this agreement as outlined in Exhibit I.**

The **notice of cancellation provision** of the certificate shall have any and all qualifying language such as: *"We will endeavor to provide"* or *"failure to provide said notice will not place any liability upon the company or its representative"* deleted from its terms.

## VI. STATUTORY LIMITS

In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit is to be considered the minimum to be maintained.