

CONCESSION CONTRACT CC-MORU002-96

Amendment No. 1

This Amendment No. 1 to NPS Concession Contract CC-MORU002-96 (Contract) entered into by the United States of America acting in this matter by the Secretary of the Interior through the Midwest Regional Director of the National Park Service (NPS) and the Mount Rushmore Memorial Society, a corporation organized and existing under the laws of the District of Columbia (Society) -

Witnesseth:

That Whereas, NPS and the Society entered into the Contract effective as of October 15, 1996; and

Whereas, the NPS and the Society have engaged in a franchise fee reconsideration under the terms of Section 9(e) of the Contract; and

Whereas, NPS and the Society have determined as the conclusion of such franchise fee reconsideration that adjustment of the franchise fee and certain other provisions of the Contract are appropriate;

Now Therefore, NPS and the Society agree, in consideration of the mutual premises set forth below, that the Contract is amended, effective as of January 1, 2009, as follows:

1. Section 9(a)(2) of the Contract is amended to read as follows:

(a)(2) In addition to the foregoing, a franchise fee equal to ONE PERCENT (1%) of the Concessioner's gross receipts, as herein defined, for the preceding year, or portion of a year, provided that such fee shall apply only to gross receipts of the Concessioner received by the Concessioner after the effective date of this Amendment No. 1 to the CONTRACT.

2. Section 9(e) of the Contract is deleted in its entirety.

3. Section 13(b)(3) of the Contract is amended to read as follows:

The fair value of all Possessory Interest in Concessioner Improvements and Government Improvements made after the effective date of this contract (October 15, 1996), including all engineering and design cost associated with the improvements whether or not incurred prior to such effective date, was Twelve Million, Six Hundred Thousand Dollars (\$12.6 million) as of October 15, 2006. This sum (\$12.6 million) shall be amortized on a monthly straight line basis from October 15, 2006 through the remaining term of this CONTRACT so that as of the expiration of the CONTRACT on October 14, 2016, the fair value of all Possessory Interest in Concessioner Improvements and Government Improvements, no matter when constructed or provided, shall be Zero Dollars (\$0) for all

purposes of this CONTRACT and applicable law, including, without limitation, the payment of just compensation for Possessory Interest, notwithstanding any provisions of this CONTRACT to the contrary. In the event of termination of this CONTRACT prior to its expiration, the fair value of all Possessory Interest of the Concessioner as of the date of such termination for all purposes of this CONTRACT and applicable law, notwithstanding any provision of this CONTRACT to the contrary, shall be \$12.6 million as reduced as of the date of termination by the straight line amortization of this figure as described above. Attachment A to this Amendment No. 1 sets forth the agreed upon amortization schedule. The Concessioner, except as provided in this subsection, hereby relinquishes and waives any and all Possessory Interest or other rights to compensation for real property improvements made by the Concessioner during the term of this CONTRACT, notwithstanding any provisions of this CONTRACT to the contrary.

4. Section 13(d) of the Contract is amended to read as follows:

(d) Notwithstanding the terms of subsection 13(b)(3) above, the Concessioner, notwithstanding the terms of Amendment No. 1 to this CONTRACT, shall continue to fully repair and maintain all Concessioner Improvements as required by the terms of this CONTRACT.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals as of the dates set forth below.

Concessioner

By: *Donald Shaw*

President, Mount Rushmore

National Memorial Society

Date: *Apr 7, 2009*

United States of America

By: *Lucretia Denton*

NPS Regional Director

Midwest Region

Date: *April 8, 2009*

Attest:

By: *Francine Judson*

Title: *Notary Public LS*

Date: *04-07-09*

CONCESSION CONTRACT CC-MORU002-96						
Amendment 1						
Attachment A - Possessory Interest Amortization Schedule						
						Remaining
					Monthly	Possessory
Day	Mo	Year			<u>Amortization</u>	<u>Interest</u>
15	10	2006				12,600,000.00
15	11	2006	1		105,000.00	12,495,000.00
15	12	2006	2		105,000.00	12,390,000.00
15	1	2007	3		105,000.00	12,285,000.00
15	2	2007	4		105,000.00	12,180,000.00
15	3	2007	5		105,000.00	12,075,000.00
15	4	2007	6		105,000.00	11,970,000.00
15	5	2007	7		105,000.00	11,865,000.00
15	6	2007	8		105,000.00	11,760,000.00
15	7	2007	9		105,000.00	11,655,000.00
15	8	2007	10		105,000.00	11,550,000.00
15	9	2007	11		105,000.00	11,445,000.00
15	10	2007	12		105,000.00	11,340,000.00
15	11	2007	13		105,000.00	11,235,000.00
15	12	2007	14		105,000.00	11,130,000.00
15	1	2008	15		105,000.00	11,025,000.00
15	2	2008	16		105,000.00	10,920,000.00
15	3	2008	17		105,000.00	10,815,000.00
15	4	2008	18		105,000.00	10,710,000.00
15	5	2008	19		105,000.00	10,605,000.00
15	6	2008	20		105,000.00	10,500,000.00
15	7	2008	21		105,000.00	10,395,000.00
15	8	2008	22		105,000.00	10,290,000.00
15	9	2008	23		105,000.00	10,185,000.00
15	10	2008	24		105,000.00	10,080,000.00
15	11	2008	25		105,000.00	9,975,000.00
15	12	2008	26		105,000.00	9,870,000.00
15	1	2009	27		105,000.00	9,765,000.00
15	2	2009	28		105,000.00	9,660,000.00
15	3	2009	29		105,000.00	9,555,000.00
15	4	2009	30		105,000.00	9,450,000.00
15	5	2009	31		105,000.00	9,345,000.00
15	6	2009	32		105,000.00	9,240,000.00
15	7	2009	33		105,000.00	9,135,000.00
15	8	2009	34		105,000.00	9,030,000.00
15	9	2009	35		105,000.00	8,925,000.00
15	10	2009	36		105,000.00	8,820,000.00
15	11	2009	37		105,000.00	8,715,000.00
15	12	2009	38		105,000.00	8,610,000.00
15	1	2010	39		105,000.00	8,505,000.00
15	2	2010	40		105,000.00	8,400,000.00
15	3	2010	41		105,000.00	8,295,000.00

					Monthly	Remaining
Day	Mo	Year			<u>Amortization</u>	<u>Possessory Interest</u>
15	4	2010	42		105,000.00	8,190,000.00
15	5	2010	43		105,000.00	8,085,000.00
15	6	2010	44		105,000.00	7,980,000.00
15	7	2010	45		105,000.00	7,875,000.00
15	8	2010	46		105,000.00	7,770,000.00
15	9	2010	47		105,000.00	7,665,000.00
15	10	2010	48		105,000.00	7,560,000.00
15	11	2010	49		105,000.00	7,455,000.00
15	12	2010	50		105,000.00	7,350,000.00
15	1	2011	51		105,000.00	7,245,000.00
15	2	2011	52		105,000.00	7,140,000.00
15	3	2011	53		105,000.00	7,035,000.00
15	4	2011	54		105,000.00	6,930,000.00
15	5	2011	55		105,000.00	6,825,000.00
15	6	2011	56		105,000.00	6,720,000.00
15	7	2011	57		105,000.00	6,615,000.00
15	8	2011	58		105,000.00	6,510,000.00
15	9	2011	59		105,000.00	6,405,000.00
15	10	2011	60		105,000.00	6,300,000.00
15	11	2011	61		105,000.00	6,195,000.00
15	12	2011	62		105,000.00	6,090,000.00
15	1	2012	63		105,000.00	5,985,000.00
15	2	2012	64		105,000.00	5,880,000.00
15	3	2012	65		105,000.00	5,775,000.00
15	4	2012	66		105,000.00	5,670,000.00
15	5	2012	67		105,000.00	5,565,000.00
15	6	2012	68		105,000.00	5,460,000.00
15	7	2012	69		105,000.00	5,355,000.00
15	8	2012	70		105,000.00	5,250,000.00
15	9	2012	71		105,000.00	5,145,000.00
15	10	2012	72		105,000.00	5,040,000.00
15	11	2012	73		105,000.00	4,935,000.00
15	12	2012	74		105,000.00	4,830,000.00
15	1	2013	75		105,000.00	4,725,000.00
15	2	2013	76		105,000.00	4,620,000.00
15	3	2013	77		105,000.00	4,515,000.00
15	4	2013	78		105,000.00	4,410,000.00
15	5	2013	79		105,000.00	4,305,000.00
15	6	2013	80		105,000.00	4,200,000.00
15	7	2013	81		105,000.00	4,095,000.00
15	8	2013	82		105,000.00	3,990,000.00
15	9	2013	83		105,000.00	3,885,000.00
15	10	2013	84		105,000.00	3,780,000.00
15	11	2013	85		105,000.00	3,675,000.00
15	12	2013	86		105,000.00	3,570,000.00
15	1	2014	87		105,000.00	3,465,000.00

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					Monthly	Remaining
Day	Mo	Year			<u>Amortization</u>	<u>Possessory</u>
						<u>Interest</u>
15	2	2014	88		105,000.00	3,360,000.00
15	3	2014	89		105,000.00	3,255,000.00
15	4	2014	90		105,000.00	3,150,000.00
15	5	2014	91		105,000.00	3,045,000.00
15	6	2014	92		105,000.00	2,940,000.00
15	7	2014	93		105,000.00	2,835,000.00
15	8	2014	94		105,000.00	2,730,000.00
15	9	2014	95		105,000.00	2,625,000.00
15	10	2014	96		105,000.00	2,520,000.00
15	11	2014	97		105,000.00	2,415,000.00
15	12	2014	98		105,000.00	2,310,000.00
15	1	2015	99		105,000.00	2,205,000.00
15	2	2015	100		105,000.00	2,100,000.00
15	3	2015	101		105,000.00	1,995,000.00
15	4	2015	102		105,000.00	1,890,000.00
15	5	2015	103		105,000.00	1,785,000.00
15	6	2015	104		105,000.00	1,680,000.00
15	7	2015	105		105,000.00	1,575,000.00
15	8	2015	106		105,000.00	1,470,000.00
15	9	2015	107		105,000.00	1,365,000.00
15	10	2015	108		105,000.00	1,260,000.00
15	11	2015	109		105,000.00	1,155,000.00
15	12	2015	110		105,000.00	1,050,000.00
15	1	2016	111		105,000.00	945,000.00
15	2	2016	112		105,000.00	840,000.00
15	3	2016	113		105,000.00	735,000.00
15	4	2016	114		105,000.00	630,000.00
15	5	2016	115		105,000.00	525,000.00
15	6	2016	116		105,000.00	420,000.00
15	7	2016	117		105,000.00	315,000.00
15	8	2016	118		105,000.00	210,000.00
15	9	2016	119		105,000.00	105,000.00
15	10	2016	120		105,000.00	0.00

CONCESSION CONTRACT

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

-00000-

MOUNT RUSHMORE NATIONAL MEMORIAL
MOUNT RUSHMORE NATIONAL MEMORIAL SOCIETY

-00000-

CONTRACT CC-MORU002-96 EXECUTED 10/15/96

COVERING THE PERIOD

OCTOBER 15, 1996 THROUGH OCTOBER 14, 2016

CONCESSION CONTRACT
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EXHIBIT "B": Land Assignment
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EXHIBIT "F": Maintenance Plan
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THIS CONTRACT made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and the Mount Rushmore National Memorial Society, a corporation organized and existing under the laws of the District of Columbia, doing business as the Mount Rushmore National Memorial Society, hereinafter referred to as the "Concessioner":

WITNESSETH:

THAT WHEREAS, Mount Rushmore National Memorial (hereinafter referred to as the "Area") is administered by the Secretary 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, the accomplishment of these purposes requires that facilities and services that have been determined to be necessary and appropriate for the public use and enjoyment of the area be provided for the public visiting the area; and

WHEREAS, the United States has not itself provided such necessary facilities and services and desires the Concessioner to establish and operate certain of them at reasonable rates under the supervision and regulation of the Secretary; and

WHEREAS, pursuant to law the Secretary is required to exercise his authority hereunder in a manner consistent with a reasonable opportunity by the Concessioner to realize a profit on the operations conducted hereunder as a whole commensurate with the capital invested and the obligations assumed:

NOW, THEREFORE, pursuant to the authority contained in the Acts of August 25, 1916 (39 Stat. 535; 16 U.S.C. § 1, 2-4), and October 9, 1965 (79 Stat. 969; 16 U.S.C. § 20 et seq.), and other laws supplemental thereto and amendatory thereof, the Secretary and the Concessioner agree as follows:

SEC. 1. TERM OF CONTRACT (a) This CONTRACT shall be for the term of TWENTY (20) years from October 15, 1996 through October 14, 2016.

*** Mount Rushmore National Memorial ***
**** Midwest Field Area - National Park Service ****

(b) The Concessioner shall undertake and complete an improvement and building program (hereinafter "Improvement Program") costing not less than \$18,000,000 as adjusted per project to reflect par value in the year of actual construction in accordance with the appropriate indexes of the Department of Commerce's "Construction Review." It is agreed that such investment is consistent with Section 3(a) hereof. The Improvement Program shall include:

1. Construction of a parking facility with not less than 1,000 or more than 1,200 spaces for cars, recreational vehicles, and buses in accordance with the approved construction documents. Construction will be in the same area as the current parking facility. Facility shall be constructed to provide for fee collection activities. Construction shall be phased to ensure adequate parking during construction. Parking for 200 vehicles shall be available from September 15, through Memorial Day and a minimum of 500 spaces shall be available from Memorial Day through September 15 for each year of construction.

(c) The Concessioner shall commence construction under the Improvement Program on or before November 1, 1996, in such a manner as to demonstrate to the satisfaction of the Secretary that it is in good faith carrying the Improvement Program forward reasonably under the circumstances. After written approval of plans and specifications, the Concessioner shall provide the Secretary with such evidence or documentation, as may be satisfactory to the Secretary, to demonstrate that the Improvement Program duly is being carried forward, and shall complete and have the improvements and buildings available for public use on or before July 1, 1998.

(d) The Concessioner may, in the discretion of the Secretary, be relieved in whole or in part of any or all of the obligations of the Improvement Program for such stated periods as the Secretary may deem proper upon written application by the Concessioner showing circumstances beyond its control warranting such relief.

(e) In addition to the Improvement Program described above, the Concessioner shall accomplish such additional improvement projects as may be funded from the account(s) established in Section 10 hereof.

SEC. 2. ACCOMMODATIONS, FACILITIES AND SERVICES (a) The Secretary hereby requires and authorizes the Concessioner during the term of this CONTRACT to provide accommodations, facilities and services for the public within the Area, as follows:

*** Mount Rushmore National Memorial ***
**** Midwest Field Area - National Park Service ****

The design, construction and operation of a parking facility at Mount Rushmore National Memorial in the location of the existing parking facility at the Memorial containing not less than 1,000 or more than 1,200 spaces.

(b) The Secretary reserves the right to determine and control the nature, type and quality of services described herein to be furnished by the Concessioner within the Area.

(c) This CONTRACT and the administration of it by the Secretary shall be subject to the laws of Congress governing the Area and rules, regulations and policies promulgated thereunder, whether now in force or hereafter enacted or promulgated, including but not limited to United States Public Health Service requirements. The Concessioner must also comply with applicable requirements promulgated by the United States Department of Labor's Occupational Safety and Health Act of 1970 (OSHA) and those provisions outlined in the National Park Service's Safety and Occupational Health Policy associated with visitor safety and health.

(d) In order to implement these requirements the Secretary, acting through the Superintendent and in consultation with the Concessioner, shall establish and revise as circumstances warrant, specific operating requirements in the form of an Operating Plan which shall be adhered to by the Concessioner. The initial Operating Plan is attached hereto as Exhibit "G" and hereby made a part hereof. The Operating Plan established by the Superintendent of Mount Rushmore National Memorial shall not amend or alter the material rights and liabilities of the parties to this CONTRACT.

SEC. 3. PLANT, PERSONNEL AND RATES (a)(1) The Concessioner shall maintain and operate the accommodations, facilities and services described above to such extent and in such manner as the Secretary may deem satisfactory, and shall provide the plant, personnel, — equipment, goods, and commodities necessary therefor, provided that the Concessioner shall not be required to make investments inconsistent with a reasonable opportunity to realize a profit on its operations under this CONTRACT commensurate with the capital invested and the obligations assumed. The Concessioner agrees that the terms of this CONTRACT provide the Concessioner this reasonable opportunity to realize a profit.

(a)(2) All rates and prices charged to the public by the Concessioner for accommodations, services or goods furnished or sold shall be subject to regulation and approval by the Secretary. Reasonableness of rates and prices will be judged generally by comparison with those currently charged for comparable accommodations, services or goods

furnished or sold outside of the areas administered by the National Park Service under similar conditions, with due allowance for length of season, provision for peak loads, accessibility, availability and cost of labor, materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given to such other factors as the Secretary may deem significant.

(a)(3) The Concessioner shall require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner may, subject to the prior approval of the Secretary, grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted hereunder. The concessioner will provide Federal employees conducting official business reduced rates for essential specified services in accordance with procedures established by the Secretary.

(b)(1) The Concessioner may be required to have its employees who come in direct contact with the public, so far as practicable, to wear a uniform and badge by which they may be known and distinguished as the employees of the Concessioner. The Concessioner shall require its employees to exercise courtesy and consideration in their relations with the public.

(b)(2) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Secretary to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to fully correct the situation.

(b)(3) The Concessioner shall, in addition to other laws and regulations which may be applicable to its operations, comply with applicable requirements of:

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

(ii) Title V, Sections 503 and 504 of the Rehabilitation Act of September 26, 1973, P.L. 93-112 as amended in 1978,

(iii) 41 C.F.R. Part 60-2 which prescribes affirmative action requirements for contractors and subcontractors,

(iv) the Age Discrimination in Employment Act of December 15, 1967 (P.L. 90-202), as amended by (P.L. 95-256) of April 6, 1978, and

(v) the Architectural Barriers Act of 1968 (P.L. 90-480) and the Americans with Disabilities Act, 42 U.S.C. Section 12102 et seq. (ADA), and 49 C.F.R. Section 37 and 38 Subpart (A, B, G, and H). The Concessioner shall also comply with regulations heretofore or hereafter promulgated, relating to nondiscrimination in employment and providing accessible facilities and services to the public including those set forth in Exhibit "A" attached hereto and made a part hereof.

SEC. 4. GOVERNMENT LAND AND IMPROVEMENTS (a)(1) The Secretary hereby assigns for use by the Concessioner during the term of this CONTRACT, certain parcels of land, (as described in Exhibit "B" hereto), and Government Improvements, as described in Exhibit "C" hereto), appropriate to conduct operations hereunder.

(a)(2) The Secretary reserves the right to withdraw such assignments or parts thereof at any time during the term of this CONTRACT if, in his judgement,

(i) such withdrawal is for the purpose of enhancing or protecting area resources or visitor enjoyment or safety, or

(ii) the operations utilizing such assigned lands or buildings are terminated pursuant to Section 12 hereof.

(a)(3) Any withdrawal in excess of one (1) year of assigned lands or Government Improvements which are essential for conducting the operation authorized hereunder will be considered by the Secretary as a termination of this CONTRACT pursuant to Section 12 hereof. The Secretary shall compensate the Concessioner for any Possessory Interest it may have in such properties permanently withdrawn pursuant to Section 13 hereof.

(b)(1) "Government Improvements" as used herein, means the buildings, structures, utility systems, fixtures, equipment, and other improvements affixed to or resting upon the lands assigned hereunder in such manner as to be part of the realty, if any, constructed or acquired by the Secretary and assigned to the Concessioner by the Secretary for the purposes of this CONTRACT.

(b)(2) The Concessioner shall have a Possessory Interest to the extent provided elsewhere in this CONTRACT in capital improvements (as hereinafter defined) it makes to Government Improvements (excluding improvements made from funds from any Section 10 accounts) with the written permission of the Secretary. In the event that such Possessory Interest is acquired by the Secretary or a successor concessioner at any time, the Concessioner will be compensated for such Possessory Interest pursuant to Section 13 hereof.

(c) The Secretary shall have the right at any time to enter upon the lands and improvements utilized by the Concessioner hereunder for any purpose he may deem reasonably necessary for the administration of the Area.

(d) The Concessioner may construct or install upon assigned lands such buildings, structures, and other improvements as are necessary for operations hereunder, subject to the prior written approval by the Secretary of the location, plans, and specifications thereof. The Secretary may prescribe the form and contents of the application for such approval. The desirability of any project as well as the location, plans and specifications thereof will be reviewed in accordance with applicable provisions of the National Environmental Policy Act of 1969 and the National Historic Preservation Act of 1966, among other requirements.

(e) If, during the term of this CONTRACT, a Government Improvement requires capital improvement (major repairs and/or improvements that serve to prolong the life of the Government Improvement to an extent requiring capital investment for major repair), such capital improvements shall be made by the Concessioner at its expense if consistent with a reasonable opportunity for the Concessioner to realize a profit as described above. Where capital improvements to other Government facilities which directly support the Concessioner's operations under this CONTRACT are determined by the Secretary to be necessary for the accommodation of Area visitors, such improvements shall be made by the Concessioner at its expense unless the Secretary determines that expenditures for such improvements are inconsistent with a reasonable opportunity for the Concessioner to realize a profit as described above.

SEC. 5. MAINTENANCE (a) Subject to Section 4(e) hereof, the Concessioner will physically maintain and repair all facilities (both Government Improvements and Concessioner Improvements) used in operations under this CONTRACT, including all maintenance of assigned lands and all necessary housekeeping activities associated with such operations, to the satisfaction of the Secretary.

(b) In order to implement these requirements, the Secretary, acting through the Superintendent, shall undertake appropriate inspections, and, in consultation with the Concessioner, shall establish and revise as circumstances warrant a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. However such Maintenance Plan shall not amend or alter the material rights and liabilities of the parties to this CONTRACT.

SEC. 6. CONCESSIONER'S IMPROVEMENTS (a)(1) "Concessioner Improvements," as used herein, means buildings, structures, fixtures, equipment, and other improvements, affixed to or resting upon the lands assigned hereunder in such manner as to be a part of the realty, provided by the Concessioner for the purposes of this CONTRACT (excluding improvements made to Government Improvements and improvements made from funds in any Section 10 accounts), as follows:

(i) such improvements upon the lands assigned at the date hereof as described in Exhibit "D" hereto; and

(ii) all such improvements hereafter constructed upon or affixed to the lands assigned to the Concessioner with the written consent of the Secretary.

(a)(2) Concessioner Improvements do not include any interest in the land upon which the improvements are located.

(a)(3) Any salvage resulting from the authorized removal, severance or demolition of a Concessioner Improvement or any part thereof shall be the property of the Concessioner.

(a)(4) In the event that a Concessioner 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 Secretary, restore the site as nearly as practicable to its original condition.

(b)(1) The Concessioner shall have a Possessory Interest, as defined herein, in Concessioner Improvements to the extent provided by this CONTRACT.

(b)(2) Possessory Interest in Concessioner Improvements or Government Improvements shall not be extinguished by the expiration or other termination of this CONTRACT, and may not be terminated or taken for public use without just compensation as

determined in accordance with Section 13. Performance of the obligations assumed by the Secretary under Section 13 hereof shall constitute just compensation with respect to the taking of Possessory Interest.

(c)(1) Possessory Interest, as the term is used in this CONTRACT, shall consist of all incidents of ownership in capital improvements made by the Concessioner, except legal title which shall be vested in the United States and subject to other limitations as set forth in this CONTRACT. Particularly, among other matters, the existence of Possessory Interest shall not be construed to include or imply any authority, privilege, or right to operate or engage in any business or other activity, and the use or enjoyment of any structure, fixture or improvement in which the Concessioner has a Possessory Interest shall be wholly subject to the applicable provisions of this CONTRACT and to the laws and regulations relating to the Area.

(c)(2) Notwithstanding any provision of this contract or law to the contrary, any funds expended by the concessioner for improvement of SD 244, or for any other improvements in the area not within the assigned lands under exhibit "B", shall not be considered as expenditures made pursuant to this contract, and the concessioner shall not obtain any possessory interest or any other compensable interest in such improvements under this contract, or otherwise.

SEC. 7. UTILITIES (a) The Secretary may furnish utilities to the Concessioner for use in connection with the operations authorized under this CONTRACT when available at reasonable rates to be fixed by the Secretary in his discretion. Such rates which shall at least equal the actual cost of providing the utility or service unless a reduced rate is provided for in an established policy of the Secretary in effect at the time of billing.

(b) Should the Secretary not provide such utilities, the Concessioner shall, with the written approval of the Secretary and under such requirements as the Secretary shall prescribe, secure necessary utilities at its own expense from sources outside the Area or shall install the same within the Area with the written permission of the Secretary, subject to the following conditions:

(i) Any water rights deemed necessary by the Concessioner for use of water on Federal lands shall be acquired at its expense in accordance with applicable State procedures and law. Such water rights, upon expiration or termination of this CONTRACT for any reason shall be assigned to and become the property of the United States without compensation;

(ii) Any utility service provided by the Concessioner under this Section shall, if requested by the Secretary, be furnished to the Secretary to such extent as will not unreasonably restrict anticipated use by the Concessioner. The rate per unit charged the Secretary for such service shall be approximately the average cost per unit of providing such service; and

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

SEC. 8. ACCOUNTING RECORDS AND REPORTS (a) The Concessioner shall maintain an accounting system whereby its accounts can be readily identified with its system of accounts classification. The Concessioner shall submit annually as soon as possible but not later than Ninety (90) days after the 30th day of September a financial statement for the preceding year or portion of a year as prescribed by the Secretary, and such other reports and data, including, but not limited to, operations information, as may be required by the Secretary. Such information is subject to public release to the extent authorized by law or established policies and procedures of the Secretary. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Secretary. 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 or by an independent licensed public accountant certified or licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountants. If annual gross receipts are between \$250,000, and \$1,000,000, the financial statements shall be reviewed by an independent certified public accountant or by a licensed public accountant certified or licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountants. If annual gross receipts are less than \$250,000, the financial statements may be prepared without involvement by an independent certified or licensed public accountant, unless otherwise directed by the Secretary.

If the Concessioner is required to have its annual financial statement (Concessioner Annual Financial Report) audited or reviewed, the Concessioner must use the accrual accounting method. In addition, it must include in its annual financial statement (Concessioner Annual

Financial Report) a footnote that reconciles its annual financial statement to its Federal income tax returns.

(b) Within ninety (90) days of the execution of this Contract or its effective date, whichever is later, the Concessioner shall submit to the Secretary a balance sheet as of the beginning date of the term of this CONTRACT. The balance sheet shall be audited by an independent certified public accountant or by an independent licensed public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. The balance sheet shall be accompanied by a schedule that identifies and provides details for all assets in which the Concessioner claims a Possessory Interest. The schedule must describe these assets in detail showing for each such asset the date acquired, useful life, cost and book value.

(c) The Secretary and Comptroller General of the United States, or any of their duly authorized representatives, shall at any time up until the expiration of five (5) calendar years after the expiration of this Contract, have access to and the right to examine any of the Concessioner's pertinent books, documents, papers, and records, including Federal and State income tax returns (collectively "documents"), and such documents of any subconcessioner related to this Contract, and, such documents of any proprietary or affiliate companies of the Concessioner.

SEC. 9. FEES For the term of this CONTRACT, the Concessioner shall pay to the Secretary for the privileges granted herein, fees as follows:

(a)(1) An annual fee for the use of Government Improvements assigned to the Concessioner, if any. Such fee and related Government Improvement shall be identified in Exhibit "C" hereto, and the fee may be adjusted annually by the Secretary to equal the fair annual value of the related Government Improvement as determined by the Secretary.

(a)(2) In addition to the foregoing, a franchise fee equal to ZERO PERCENT (0 %) of the Concessioner's gross receipts, as herein defined, for the preceding year or portion of a year.

(b) 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 payment shall be received by the Secretary within 15 days after the last day of each month that the Concessioner operates. Such monthly payment shall include the annual use fee for assigned Government Improvements, as

set forth in Exhibit "C" hereto, divided by the expected number of operating months, as well as the specified percentage of gross receipts for the preceding month. The payment of any additional amounts due at the end of the operating year as a result of adjustments shall be paid at the time of submission of the Concessioner's annual financial statement. Overpayment shall be offset against the following year's franchise fees due. All franchise fee payments consisting of \$10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

(c) An interest charge will be assessed on overdue amounts for each 30-day period, or portion thereof, that payment is delayed beyond the 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.

(d)(1) The term "gross receipts" as used in this CONTRACT shall mean the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, made pursuant to the rights granted by this CONTRACT, including gross receipts of subconcessioner as herein defined and commissions earned on contracts or agreements with other persons or companies operating in the Area, intracompany earnings on account of charges to other departments of the operation (such as laundry), charges for employees' meals, lodgings, and transportation, interest on money loaned or in bank accounts, income from investments, income from subsidiary companies outside of the Area, sale of property other than that purchased in the regular course of business for the purpose of resale, and sales and excise taxes that are added as separate charges to approved 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,¹ and amounts received as a result of an add-on to recover utility costs above comparable utility charges. 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.

(d)(2) The term "gross receipts of subconcessioner" as used in this CONTRACT shall mean the total amount received or realized by, or accruing to, subconcessioner from all sources, as a result of the exercise of the rights conferred by subconcession contracts hereunder without allowances, exclusions or deductions of any kind or nature whatsoever and

the subconcessioner shall report the full amount of all such receipts to the Concessioner within 45 days after the 30th day of September each year or portion of a year. Subconcessioner shall maintain an accurate and complete record of all items listed in Subsection (d)(1) of this Section as exclusions from the Concessioner's gross receipts and shall report the same to the Concessioner with the gross receipts. The Concessioner shall be entitled to exclude items listed in Subsection (d)(1) in computing the franchise fee payable to the Secretary as provided for in Subsection (a) hereof.

(e)(1) Within one hundred twenty (120) days at the end of each five year period of this CONTRACT, the amount and character of the franchise fees described in this Section and/or contributions to any accounts described in Section 10 hereof (Section 10 contributions) shall be reconsidered for a period of one hundred and eighty (180) days. During this reconsideration period, the Secretary or the Concessioner may propose adjustments to such franchise fees and/or Section 10 contributions (which shall reflect their position as to the then current probable value of the privileges granted by this CONTRACT based upon a reasonable opportunity for profit in relation to both gross receipts and capital invested) by mailing written notice to the other party of such proposal before the end of the reconsideration period. If no such notices are duly mailed, the reconsideration shall end and the fees and contributions shall remain the same until the occurrence of the next reconsideration period.

(e)(2) If the Secretary or the Concessioner duly makes a proposal to adjust the franchise fees and/or Section 10 contributions before the end of the reconsideration period, they shall, commencing the day after the end of the reconsideration period, undertake a good faith negotiation of the proposal. If such negotiation does not result in an agreement as to adjustments to the fees and/or contributions within sixty (60) days of its commencement, this negotiation period shall end and any adjustments determined by the Secretary as of that time shall go into effect, provided that, the Concessioner may extend this negotiation period by appealing such adjustments to the Secretary. Such appeal must be received by the Secretary within thirty (30) days after the end of the sixty day negotiation period. The appeal must be in writing and include the Concessioner's detailed position as to the validity of such adjustments to the fees and/or contributions. The Secretary, acting through a designee other than the official who determined the adjustments from which the Concessioner duly has appealed, shall consider the position of the Concessioner and related documents as appropriate, and, if applicable, the written views of the mediator as described below. The Secretary shall then make a written final determination of appropriate adjustments to franchise fees and/or Section 10 contributions consistent with the probable value to the concessioner of the privileges granted by this contract based upon a reasonable opportunity for profit in relation to both gross

receipts and capital invested. This final determination, or, where applicable, a determination as to adjustments made at the end of the sixty day negotiation period described above from which the Concessioner fails to timely appeal, shall be conclusive and binding upon the parties to this CONTRACT.

(e)(3) Adjustments to franchise fees and/or Section 10 contributions resulting from the process described herein shall be retroactive to the commencement of the applicable contract period for which a notice of reconsideration was given. Payments or contributions made in arrears shall include interest at a per cent based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The adjustments shall also be effective for the remaining term of this CONTRACT, subject to the results of any further reconsideration periods. If an adjustment to franchise fees and/or Section 10 contributions results in higher fees and/or contributions, the Concessioner will pay all back franchise fees due (with applicable interest) and make all Section 10 contributions due (with applicable interest) at the time of the next regular franchise fee payment or Section 10 contribution respectively. If an adjustment results in lower fees and/or contributions, the Concessioner may withhold the difference from future franchise fee payments or Section 10 contributions until the Concessioner has recouped the overpayment. Adjustments to franchise fees and/or Section 10 contributions will be embodied in an amendment to this Contract unless resulting from a determination of the Secretary without the agreement of the Concessioner in which event a copy of such determination shall be attached to this Contract and become a part hereof as if originally incorporated herein. During the pendency of the process described herein, the Concessioner shall continue to make the established franchise fee payments and/or Section 10 contributions required by this CONTRACT.

(e)(4) In connection with an appeal to the Secretary hereunder, the Concessioner may request mediation of appropriate adjustments to franchise fees and/or Section 10 contributions by providing a written request for mediation with its appeal to the Secretary as described above. The mediation will be conducted by the American Arbitration Association (AAA) or a similar organization chosen by the Secretary and take place in Washington D.C. The purpose of the mediation shall be to provide for the Secretary's consideration during such appeal the views of the mediator as to appropriate adjustments of franchise fees and/or Section 10 contributions consistent with the probable value to the Concessioner of the privileges granted by this CONTRACT based upon a reasonable opportunity for profit in relation to both gross receipts and capital invested. The written views of the mediator shall be provided to the Secretary within ninety (90) days of the request for mediation unless, because of extenuating circumstances, the Secretary determines that an extension of this time period is warranted. If

such views are not provided within this time period (or a duly extended time period), the advisory mediation shall terminate and the Secretary shall make a determination on the appeal as if the mediation had not been requested. The Concessioner and the Secretary shall cooperate in good faith to permit the views of the mediator to be provided within the applicable time period. The Secretary and the Concessioner shall share equally the costs of the services of the mediator and the mediation organization. The views of the mediator are advisory only.

(e)(5) The mediator shall be selected by agreement between the Concessioner and the Secretary from a list provided by the mediation organization within ten (10) days of receipt. Promptly following the selection, the Secretary shall schedule a date for the mediation meeting to take place at which time the written positions of the Concessioner and the Secretary shall be presented to the mediator along with appropriate oral presentations unless advance submissions are agreed upon. The mediator shall not have the power to compel the production of documents or witnesses and shall not receive or take into account information or documents concerning positions taken by the Concessioner or the Secretary in the negotiations which preceded the request for mediation. The mediator shall consider the written submissions and any oral presentations made and provide his or her written views as described above to the Secretary within ninety (90) days of the request for mediation, or, if applicable, by the last day of a duly extended time period.

SEC. 10. ACCOUNTS No Government Improvement or Capital Improvement Accounts are currently included in this CONTRACT but upon written agreement of parties could be established by amendment to this contract.

SEC. 11. BOND AND LIEN The Secretary may, in his discretion, require the Concessioner to furnish a surety bond or other security acceptable to the Secretary conditioned on the faithful performance of this CONTRACT, in such form and in such amount as the Secretary may deem adequate, not in excess of Five thousand dollars (\$5,000). As additional security for the faithful performance by the Concessioner of all 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 such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area.

SEC. 12. TERMINATION (a)(1) The Secretary may terminate this CONTRACT in whole or part for default at any time and may terminate this CONTRACT in whole or part when

necessary for the purpose of enhancing or protecting Area resources or visitor enjoyment or safety.

(a)(2) Operations under this CONTRACT may be suspended in whole or in part at the discretion of the Secretary when necessary to enhance or protect Area resources or visitor enjoyment or safety, provided however, if operations are suspended for more than one year, the contract is deemed terminated.

(a)(3) Termination or suspension shall be by written notice to the Concessioner and, in the event of proposed termination for default, the Secretary shall give the Concessioner a reasonable period of time to correct stated deficiencies.

(a)(4) Termination for default may be utilized in circumstances where the Concessioner has breached any requirement of this CONTRACT, including, but not limited to, failure to maintain and operate accommodations, facilities and services to the satisfaction of the Secretary in accordance with the Secretary's requirements hereunder.

(b) In the event of termination or expiration of this CONTRACT, the total compensation to the Concessioner for such termination or upon expiration shall be as described in Section 13 ("Compensation") of this CONTRACT.

(c) In the event it is deemed by the Secretary necessary to suspend operations under this CONTRACT in whole or in part to enhance or protect Area resources or visitor enjoyment or safety, the Secretary shall not be liable for any compensation to the Concessioner for losses occasioned thereby, including but not limited to, lost income, profit, wages, or other monies which may be claimed.

(d) To avoid interruption of services to the public upon the expiration or termination of this CONTRACT for any reason, the Concessioner, upon the request of the Secretary, shall:

(i) continue to conduct all operations hereunder for a reasonable period of time to allow the Secretary to select a successor concessioner, or

(ii) consent to the use by a temporary operator, designated by the Secretary, of Concessioner Improvements and personal property, if any, not including current or intangible assets, used in operations hereunder upon fair terms and conditions,

provided that the Concessioner shall be entitled to an annual fee for the use of such improvements and personal property, prorated for the period of use, in the amount of the annual depreciation of such improvements and personal property, plus a return on the book value of such improvements and personal property equal to the prime lending rate, effective on the date the temporary operator assumes managerial and operational responsibilities, as published by the Federal Reserve System Board of Governors or as agreed upon by the parties involved. In 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.

SEC. 13. COMPENSATION (a) Just Compensation: The compensation described in this Section shall constitute full and just compensation to the Concessioner from the Secretary for all losses and claims occasioned by the circumstances described below.

(b) Contract expiration or termination where operations are to be continued: (b)(1) If, for any reason, including CONTRACT expiration or termination as described herein, the Concessioner shall cease to be required by the Secretary to conduct operations hereunder, or substantial part thereof, and, at the time of such event the Secretary intends for substantially the same or similar operations to be continued by a successor, whether a private person, corporation or an agency of the Government;

(i) the Concessioner shall sell and transfer to the successor designated by the Secretary its Possessory Interest in Concessioner Improvements and Government Improvements, if any, as defined under this CONTRACT, and all other tangible property of the Concessioner used or held for use within the Area in connection with such operations; and,

(ii) the Secretary will require such successor to purchase from the Concessioner such Possessory Interest, if any, and such other property, and to pay the Concessioner the fair value thereof as described hereinafter.

(b)(2) The initial fair value of any Possessory Interest in Concessioner Improvements in existence before the effective date of this Contract shall be \$0.

(b)(3) The fair value of Possessory Interest in Concessioner Improvements and Government Improvements, made after the effective date of this contract including all engineering and design cost associated with the improvements whether or not incurred prior to

the effective date of the contract shall be, unless calculated in accordance with Section 13(d) hereof, the original cost of the improvements less straight line depreciation over the estimated useful life of the asset according to Generally Accepted Accounting Principles, provided, however, that in no event shall any such useful life exceed 39 1/2 years. In the event that such possessory interest is acquired by a successor, the successor will not be permitted to revalue such Possessory Interest, or, alter its depreciation schedule or useful life.

(b)(4) The fair value of merchandise and supplies shall be actual cost including transportation.

(b)(5) The fair value of equipment shall be its book value.

(c) Contract expiration or termination where operations are to be discontinued: If for any reason, including CONTRACT expiration or termination as described herein, the Concessioner shall cease to be required by the Secretary to conduct operations hereunder, or substantial part thereof, and the Secretary at the time chooses to discontinue such operations, or substantial part thereof, within the Area, and/or to abandon, remove, or demolish any Concessioner Improvements, if any, then the Secretary will take such action as may be necessary to assure the Concessioner of compensation for

(i) its Possessory Interest in Concessioner Improvements and Government Improvements, if any, in the applicable amount as set forth in Section 13(b) hereof;

(ii) the cost to the Concessioner of restoring any assigned lands to a natural condition, including removal and demolition, (less salvage) if required by the Secretary; and

(iii) the cost of transporting to a reasonable market for sale such movable property of the Concessioner as may be made useless by such determination. Any such property that has not been removed by the Concessioner within a reasonable time following such determination shall become the property of the United States without further compensation therefor.

(d) Contract Termination for Default for Unsatisfactory Performance. Notwithstanding any other provision of this CONTRACT to the contrary, in the event of termination of this CONTRACT for default for failure to maintain and operate accommodations, facilities and services hereunder to the satisfaction of the Secretary in

accordance with the Secretary's requirements, compensation for Possessory Interest in Concessioner Improvements, if any, except for Possessory Interest in Concessioner Improvements in existence before the effective date of this CONTRACT, shall be as set forth in Section 13(b) hereof or at book value, whichever is less.

SEC. 14. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS (a) Pursuant to this Section and 36 C.F.R. Part 51, the Concessioner and/or any person or entity which owns a controlling interest (as is or as may be defined in 36 C.F.R. Part 51) in a Concessioner's ownership, (collectively defined as the "Concessioner" for the purposes of this Section) shall not assign or otherwise sell or transfer responsibilities under this CONTRACT or concession operations hereunder, or the Concessioner's assets in the concession operation, nor sell or otherwise assign, transfer or encumber (including, without limitation, mergers, consolidations, reorganizations, other business combinations, mortgages, liens or collateral) a controlling interest in such operations, this CONTRACT, or a controlling interest in the Concessioner's ownership or assets (as is or as may be defined in 36 C.F.R. Part 51), without the prior written approval of the Secretary.

(a)(2) Such approval is not a matter of right and is further subject to the requirements of 36 C.F.R. Part 51 (as are or as may be set forth therein). The Secretary will exercise his discretion as to whether and/or under what conditions a proposed transaction will be approved in accordance with established policies and procedures.

(a)(3) Failure to comply with this provision or the procedures described herein shall constitute a material breach of this CONTRACT for which this CONTRACT may be terminated immediately by the Secretary without regard to the procedures for termination for default described in Section 12 hereof, and, the Secretary shall not be obliged to recognize any right of any person or entity to an interest in this CONTRACT or to own or operate operations hereunder acquired in violation hereof.

(b) The Concessioner shall advise the person(s) or entity proposing to enter into a transaction which is subject to this Section that the Secretary shall be notified and that the proposed transaction is subject to review and approval by the Secretary. The Concessioner shall request in writing the Secretary's approval of the proposed transaction prior to consummation and shall promptly provide the Secretary all relevant documents related to the transaction, and the names and qualifications of the person(s) or entity involved in the proposed transaction. The relevant documents shall be as described in 36 C.F.R. Part 51 but shall also include other documents as the Secretary may require.

(c) The Concessioner may not enter into any agreement with any entity or person except employees of the Concessioner to exercise substantial management responsibilities for operations hereunder or any part hereof without the written approval of the Secretary given at least thirty (30) days in advance of such transaction.

(d) No mortgage shall be executed, and no bonds, shares of stock or other evidence of interest in, or indebtedness upon, the rights and/or properties of the Concessioner, including this CONTRACT, in the Area, shall be issued without prior written approval of the Secretary. Approval of such encumbrances shall be granted only for the purposes of installing, enlarging or improving, plant equipment and facilities, provided that, such rights and/or properties, including possessory interests, or evidences of interests therein, in addition, may be encumbered for the purposes of purchasing existing concession plant, equipment and facilities. In the event of default on such a mortgage, encumbrance, or such other indebtedness, or of other assignment, transfer, or encumbrance, the creditor or any assignee thereof, shall succeed to the interest of the Concessioner in such rights and/or properties but shall not thereby acquire operating rights or privileges which shall be subject to the disposition of the Secretary.

SEC. 15. APPROVAL OF SUBCONCESSION CONTRACTS All contracts and agreements (other than those subject to approval pursuant to Section 14 hereof) proposed to be entered into by the Concessioner with respect to the exercise by others of the privileges granted by this CONTRACT in whole or part shall be considered as subconcession contracts and shall be submitted in advance of execution to the Secretary for his approval and shall be effective only if approved. However, agreements with others to provide vending or other coin-operated machines shall not be considered as subconcession contracts. In the event any such subconcession contract or agreement is approved the Concessioner shall pay to the Secretary within 45 days after the 30th day of September each year or portion of a year a sum equal to FIFTY PERCENT (50%) of any and all fees, commissions or compensation payable to the Concessioner thereunder, which shall be in addition to the franchise fee payable to the Secretary on the gross receipts of subconcessioners as provided for in Section 9 of this contract.

SEC. 16. INSURANCE AND INDEMNITY (a)(1) General. The Concessioner shall save, hold harmless, defend and indemnify the United States of America, its agents and employees for losses, damages or judgments and expenses 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, arising out of the activities of the Concessioner, its employees, subcontractors or agents under this CONTRACT.

(a)(2) The types and amounts of insurance coverage purchased by the Concessioner shall be approved by the Secretary.

(a)(3) At the request of the Secretary, the Concessioner shall annually, or at the time insurance is purchased, provide the Secretary with a Statement of Concessioner Insurance and Certificate of Insurance as evidence of compliance with this section and shall provide the Secretary thirty (30) days advance written notice of any material change in the Concessioner's insurance program hereunder.

(a)(4) The Secretary will not be responsible for any omissions or inadequacies of insurance coverage and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(b) Property Insurance. (b)(1) The Concessioner will, in the event of damage or destruction, repair or replace those buildings, structures, equipment, furnishings, betterments and improvements and merchandise determined by the Secretary to be necessary to satisfactorily discharge the Concessioner's obligations under this CONTRACT and for this purpose shall provide fire and extended insurance coverage on both Concessioner Improvements and Government Improvements in such amounts as the Secretary may require during the term of the CONTRACT. Those values currently in effect are set forth in Exhibit "E" to this CONTRACT. This exhibit will be revised at least every 3 years, or sooner, if there is a substantial increase in value.

(b)(2) Such insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear. In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concessioner Improvements and Government Improvements, equipment, furnishings and other personal property hereunder, as directed by the Secretary. The lien provision of Section 11 shall apply to such insurance proceeds.

The Concessioner shall purchase the following additional property coverage in the amounts set forth in Exhibit "E":

1. BUILDERS' RISK

*** Mount Rushmore National Memorial ***
**** Midwest Field Area - National Park Service ****

(c) Additional Property Damage Requirements - Government Improvements, Property and Equipment. The following additional requirements shall apply to structures all or any part of which are Government Improvements as defined in this CONTRACT.

(c)(1) The insurance policy shall contain a loss payable clause approved by the Secretary which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States.

(c)(2) The use of insurance proceeds for repair or replacement of Government Improvements will not alter their character as Government Improvements and, notwithstanding any provision of this CONTRACT to the contrary, the Concessioner shall gain no Possessory Interest therein.

(d) Public Liability. (d)(1) The Concessioner shall provide Commercial General Liability insurance against claims occasioned by actions or omissions of the Concessioner in carrying out the activities and operation authorized hereunder.

(d)(2) Such insurance shall be in the amount commensurate with the degree of risk and the scope and size of such activities authorized herein, but in any event, the limits of liability shall not be less than \$1,000,000 per occurrence covering both bodily injury and property damage. If claims reduce available insurance below the required per occurrence limits, the Concessioner shall obtain additional insurance to restore the required limits. An umbrella or excess liability policy, in addition to a Commercial General Liability Policy, may be used to achieve the required limits.

(d)(3) From time to time, as conditions in the insurance industry warrant, the Secretary reserves the right to revise the minimum required limits.

(d)(4) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America or shall provide that the United States of America is named an additional insured.

(d)(5) The Concessioner shall also obtain the following additional coverage at the same limits as required for Commercial General Liability insurance unless other limits are specified below:

*** Mount Rushmore National Memorial ***
**** Midwest Field Area - National Park Service ****

- (1) Automobile Liability - To cover all owned, non-owned, and hired vehicles
- (2) Workers' Compensation It is the policy of the United States that all persons engaged in providing the services authorized by this contract must be provided with Workers' Compensation insurance in accordance with the provisions of South Dakota Law

SEC. 17. PROCUREMENT OF GOODS, EQUIPMENT AND SERVICES In computing net profits for any purposes of this CONTRACT, the Concessioner agrees that its accounts will be kept in such manner that there will be no diversion or concealment of profits in the operations authorized hereunder 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.

SEC. 18. GENERAL PROVISIONS (a) Reference in this CONTRACT to the "Secretary" shall mean the Secretary of the Interior, and the term shall include his duly authorized representatives.

(b) 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.

(c) Notwithstanding any other provision hereof, the Secretary reserves the right to provide directly or through cooperative or other non-concession agreements with non-profit organizations, any accommodations, facilities or services to Area visitors which are part of and appropriate to the Area's interpretive program.

(d) That any and all taxes which 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.

(e) 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 herefrom but this restriction shall not be construed to extend to this CONTRACT if made with a corporation or company for its general benefit.

(f) This CONTRACT may not be extended, renewed or amended in any respect except when agreed to in writing by the Secretary and the Concessioner.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at Omaha, Nebraska this 15th day of October, 1996.

CONCESSIONER

UNITED STATES OF AMERICA

BY Charles E. Clay
President,
Mount Rushmore National
Memorial Society

BY William R. Schenk
Director/Regional Director
National Park Service

CORPORATION

ATTEST:

BY Gordon Browder

EXHIBIT "A"

CONCESSION AUTHORIZATION NO: CC-MORU002-96

NONDISCRIMINATION

SECTION I

Requirements relating to Employment and Service to the Public.

A. EMPLOYMENT: During the performance of this concession 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 provisions of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by or 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 11246 of September 24, 1965, as amended by Executive Order 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 or more 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 Secretary 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 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 concessions contract or with any of such rules, regulations, or orders, this concession contract may be cancelled, terminated, or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contract 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 such litigation to protect the interests of the United States.

B. CONSTRUCTION, REPAIR, AND SIMILAR CONTRACTS: The preceding provisions A(1) through (8) governing performance of work under this contract, as set out in Section 202 of Executive Order No. 11246, dated 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: (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, and contractors, and the successors in interest of the Concessioner; (ii) facility shall mean any and all services, facilities, privileges, and accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from: (i) 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; (ii) discriminating by segregation or other means against any person because of race, color, religion, sex, age, national origin or disabling condition in furnishing or refusing to furnish such person the use of any such facility.

(3) The Concessioner shall post a notice in accordance with Federal regulations to inform the public of the provisions of this subsection, at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges. Such notice will be furnished the Concessioner by the Secretary.

(4) The Concessioner shall require provisions identical to those stated in subsection C herein to be incorporated in all of the Concessioner's contracts or other forms of agreement for use of land made ion pursuance of this agreement.

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 handicapped person shall, because of a Concessioner's facilities are inaccessible to or unusable by handicapped 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 United States Postal Service.

PART 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 handicap:

1. Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
2. Afford a qualified handicapped 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 handicapped 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 handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
5. Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or services to beneficiaries of the recipient's program;
6. Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
7. Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving an aid, benefit, or service.

PART 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 useable by handicapped 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 handicapped persons.

EXHIBIT "B"

CONCESSION AUTHORIZATION NO: CC-MORU002-96

LAND ASSIGNMENT

Land Assignment

The lands assigned to the concessioner for use in carrying forward the responsibilities of this contract are displayed on the drawing attached to this Exhibit (the "Land Assignment Map") and are generally described as follows:

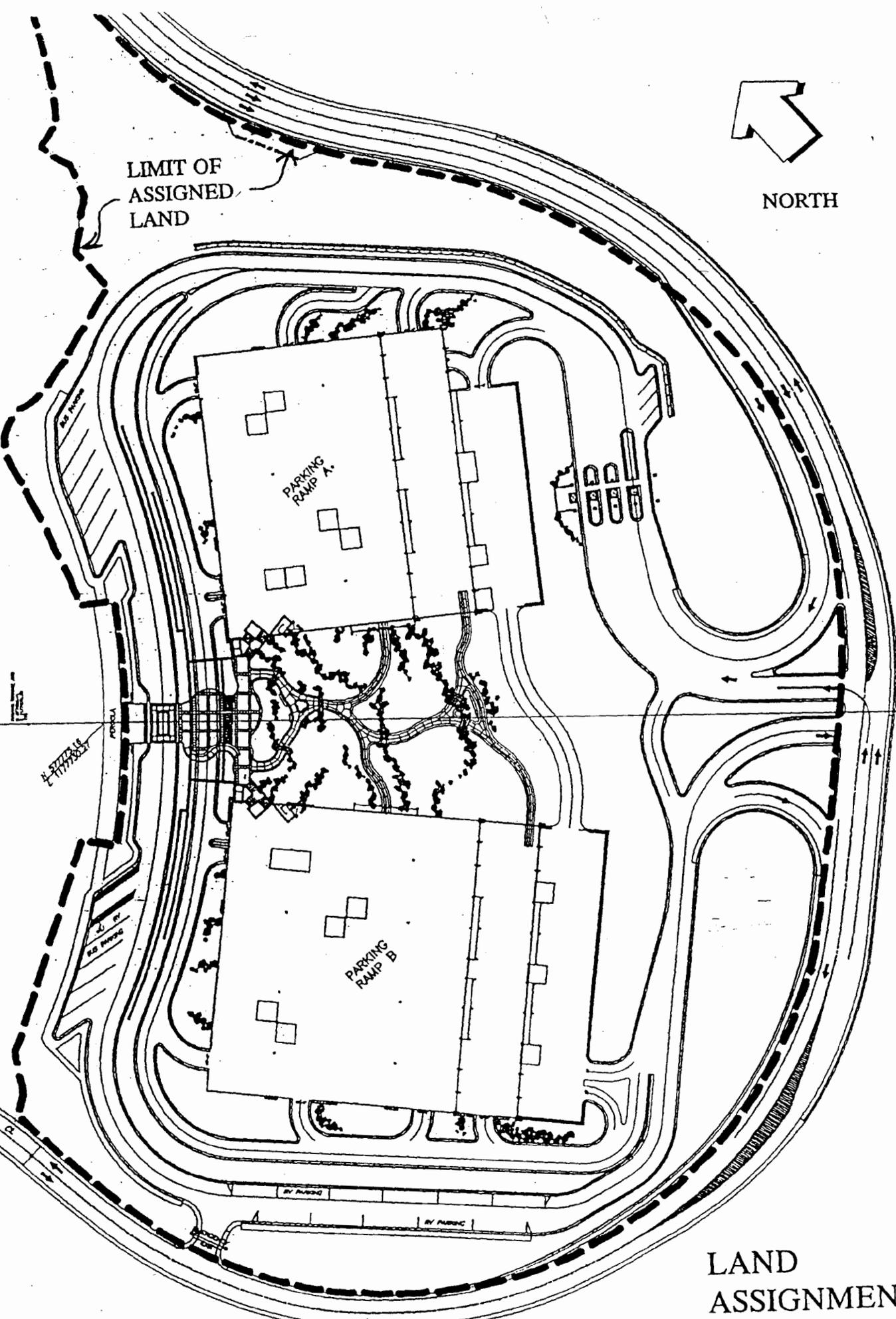
The northerly and westerly boundaries are a line parallel to the center line at the road shoulder edge of South Dakota Highway 244 from Station 0+00 to Station 25+98.47, as described on the construction documents titled Mount Rushmore National Memorial Parking Facility and Adjacent Roadwork Volume I. This includes all acceleration and deceleration lanes, entrance and exit roads to the parking area from South Dakota Highway 244.

The southerly and easterly boundaries are identical to the construction limits shown adjacent to the Pergola on construction documents titled Mount Rushmore National Memorial Parking Facility and Adjacent Roadwork Volume II, between South Dakota Highway 244 Station 0+00 and Station 25+98.47 sheets L1.1 and L1.2.



NORTH

LIMIT OF
ASSIGNED
LAND



LAND
ASSIGNMENT
MAP

EXHIBIT "C"

CONCESSION AUTHORIZATION NO: CC-MORU002-96

GOVERNMENT IMPROVEMENTS ASSIGNED

Government Improvements Assigned

All government improvements within the area defined by Exhibit B, "Land Assignment" and "Land Assignment Map" are included.

Surface Parking Area, 530 spaces

Entrance Booth, 60 square feet

Concrete Stairs to center of Pergola

Asphalt walkways at the east and west ends of Pergola connecting to parking area.

These government Improvements will be removed by the concessioner during the construction of the parking facility described in the contract.

Total amount due pursuant to subsection 9.(a)(1) \$0.

EXHIBIT "D"

CONCESSION AUTHORIZATION NO: CC-MORU002-96

CONCESSIONER IMPROVEMENTS

The Concessioner shall construct the parking facility and road improvements in accordance with the approved set of construction documents titled, Mount Rushmore National Memorial Parking Facility and Adjacent Roadway Work Volumes I and II.

Concessioner Improvements for the purposes of Section 6(c)(2) are defined as follows:

All improvements made within the area described in Exhibit "B" and extending downward parallel to the in-slope of South Dakota Highway 244 as shown on the approved construction documents.

The engineers estimate for these improvements is attached to this exhibit for both South Dakota 244 and the parking facility and related interior improvements. A summary of the estimates is as follows:

South Dakota Highway 244	\$ 2,318,460
Parking Facility Interior Improvements	\$13,050,540

Possessory Interest in Concessioner Improvements will be established in accordance with Section 13(b)(3).

EXHIBIT "E"

CONCESSION AUTHORIZATION NO: CC-MORU002-96

BUILDING REPLACEMENT COST FOR INSURANCE PURPOSES

The replacement cost are established for the sole purpose of insuring adequate property insurance coverage and shall not be construed as having application for any other purpose.

I. Government Buildings

Description	Insurance Replacement Value
Parking Facility 530 spaces	\$0
Entrance Booth, 60 square feet	\$0
Concrete Stairs	\$0
Asphalt Paths	\$0

II. Concessioner Improvements

To be established prior to the release of construction contractor requirements.

EXHIBIT F MAINTENANCE PLAN

I. INTRODUCTION

This Maintenance Plan between the Mount Rushmore National Memorial Society (hereinafter referred to as the "Concessioner") and Mount Rushmore National Memorial, National Park Service (hereinafter referred to as the "Memorial") will serve as a supplement to Concession CONTRACT MORU002-96 (hereinafter referred to as the "CONTRACT"), but it is not to be used to amend the authorization or to alter the rights and liabilities of the parties to the contract. In the event of any apparent conflict between the terms of the concessions contract and this Maintenance Plan, the terms of the concessions contract will prevail. This plan will remain in effect until superseded or amended.

The Park Superintendent or their designated representative shall have reasonable access to all Concession facilities to conduct periodic evaluations and inspections. The Superintendent's representative is the Commercial Services Program Manager.

This Maintenance Plan may be amended from time to time by the Superintendent in consultation with the Concessioner.

II. GENERAL MAINTENANCE RESPONSIBILITIES

- A. Miscellaneous – The concessioner is responsible for the operation, general maintenance and repair and upkeep of all buildings and facilities, grounds, roads, utility systems, and related equipment, furniture, carpeting and fixtures within their assigned areas and structures. Routine maintenance items such as plumbing corrections, repair of broken facilities, replacement of filters, etc., are included as cyclic maintenance and are the responsibility of the concessioner.
- B. Buildings –
 1. Structural – The structural integrity of the buildings shall be maintained in a state of good repair; positive appearance; and structurally sound.
 2. Finished – All finished, interior and exterior, of structures shall be maintained using the same colors and types of materials initially on the structure.
 3. Architectural – No changes may be made in the architectural integrity of the building without prior approval. The concessioner is responsible for any repairs to the current structures.
 4. Health, Life, Safety – The concessioner shall maintain structures in accordance with National Fire Prevention Association (NFPA – 101) and applicable OSHA standards.
- C. Grounds and Landscaping – The Concessioner is responsible for maintaining the grounds and landscaping in their land assignment area.
 1. Litter, Debris and Safety Hazard Control – The Concessioner shall provide personnel and equipment to pick up and remove litter and debris and safety hazards within assigned area. Litter and debris shall be disposed of properly.

2. **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 smoking is allowed. 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 consultation with the concessioner, in managing proper capture and disposal of cigarette butts.
 3. **Vegetation** – The Concessioner is responsible for all mowing, weeding, planting, and fertilizing on area defined under Exhibit “B” Land Assignment. The Concessioner shall, on an annual basis, provide an itemization and application plan of chemicals used for fertilizers, pesticides, and herbicides, and shall receive NPS written approval prior to application of any chemical applications.
- D. **Public Signs** – The Concessioner is responsible for the installation, maintenance, and replacement of all interior and exterior signs relating to operation and services within their assigned area. Public signs must be appropriately located, accurate, attractive, and meet standards of the NPS Sign Plan, where applicable.
- E. **Pest Control** – The Concessioner is required to notify the NPS of pest problems such as marmots, swallows, bats, and other wildlife or insects that may invade buildings. Upon notification, the NPS will provide an approved Integrated Pest Management (IPM) strategy that the Concessioner will implement. Results of the strategy will be provided to the NPS upon request. Coordination with NPS efforts in given areas may be required.

III. SNOW REMOVAL

Building and Services Access – The Concessioner shall be responsible for snow removal from assigned buildings, roofs, entrance ways, and walkways. Ice buildup on walkways shall be sanded or salted to aid safe passage. All winterkeeping operations in closed facilities are the responsibility of the Concessioner. To better clarify the operating relationship between the Memorial and the Concessioner regarding snow removal, while the Concessioner’s responsibility for snow removal is constant, at the request of the Concessioner, the Memorial has agreed to augment the Concessioner with snow removal on the roads surrounding the parking garage. The Memorial will also continue to remove snow on the upper levels of the parking ramps as it determines necessary; however, the Memorial will not charge cost recovery to the concessioner for snow removal on the upper level ramps. The Memorial will continue to charge the concessioner for snow removal on the roadways within its land assignment on a cost reimbursable basis, billable by the hour, invoiced on a quarterly basis, as applicable. The Memorial will not include the steps to the lower levels of the parking facility. Likewise, the Memorial will not include the steps and walkways through the greenway beyond the flagpole terrace area.

The Concessioner is responsible for blocking access and providing appropriate signage of area closures of the greenway walking surfaces.

IV. INFRASTRUCTURE

- A. Electrical – All electrical supply lines from the power company exterior transformers into the assigned buildings and areas and all the interior wiring are the responsibility of the Concessioner to maintain, repair and replace. Concessioner is responsible for repair and maintenance of all electrical components and fixtures within the assigned buildings and areas.
- B. Phone – The Concessioner is responsible for all on premise equipment and inside wiring.
- C. Potable Water
1. Interior – All interior plumbing and appliances are to be maintained, repaired or replaced by the Concessioner.
 2. Exterior – Supply lines from the water mains to the assigned buildings are the responsibility of the Concessioner. The Memorial will be informed of all major repairs to service lines. In areas where excavation through a road or paved area is required to repair a Concessioner's line, the Concessioner shall be responsible for repairing the paved area to at least the original condition. The Concessioner shall replace topsoil and re-vegetate any ground disturbed by repairs. The Concessioner shall disinfect any repairs.

Lines providing water for sprinkler fire service are included in the Concessioner responsibility.
 3. Memorial Water System Usage – The concessioner may have a need to use the Memorial Water System / fire hydrant system from time to time. To provide for said usage, proper protocols have been established and must be followed to ensure the integrity of the hydrant unit and the water system. The Memorial is legally responsible for the water system and requires that notice be provided to the Memorial prior to using the system, and that the system be managed per Memorial instruction and by following the established protocols. Protocols include but are not limited to: opening the hydrant valve all the way and adjusting back slightly - approx. a 1/4 turn, and use of a gate or ball valve secondary to the hydrant to regulate water flow. The hydrant unit being used must also have a back-flow preventer, valve unit and metering system in place, which the Memorial will provide whenever the system is needed, upon notification by the concessioner requesting use of the water/fire hydrant system. All water consumed by the concessioner for grounds and facility maintenance projects, and used in the parking facility office building, will be metered and invoiced to the concessioner on a quarterly or project-specific basis.
- D. Sewer
1. Interior – Interior plumbing, fixtures and appliances are to be maintained, repaired and replaced when necessary by the Concessioner.
 2. Exterior – Exterior sewer lines and laterals from the assigned buildings to the mains are the responsibility of the Concessioner. Repairs and area restoration are to be performed as in IV, part C: Potable Water.

- E. Materials / Supplies – Concessioner will establish and maintain a bench stock of commonly used materials and supplies used in facility management operation.
- F. Propane (L.P.) – L.P. tanks shall be tested and maintained in accordance with NFPA 58, and will include applicable inspections, as required, by a qualified system inspector. Propane farms shall be fenced and maintained vegetation free.
- G. Hazardous Materials (Haz-Mat) – Haz-Mats shall be handled in accordance with OSHA 29 CFS, 1910 and 1926. This shall be part of the Safety and Loss Control Program, updated and submitted annually by the Concessioner.
1. Safety and Loss Control Program will include an Emergency Action Plan specifically noting actions that will be taken in response to incidental and non-incident hazardous substance spills and in accordance with Title 29 CFR 1910.38.
 2. 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 the Memorial officials will 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-incident spills or incidental spills coordinating proper corrective, cleanup, and safety actions immediately. The Concessioner will be responsible for all costs associated with the incident.
- H. Spill Prevention, Control and Countermeasures Plan (SPCC) – The NPS is committed to the prevention of discharges of oil to navigable waters and the environment, and maintaining the highest standards for Spill Prevention Control and Countermeasure (SPCC) through regular review, updating, and implementation of the Memorial's SPCC Plan. 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, and are available by contacting the Memorial, if additional copies are needed.

This amended Concession Contract CC-MORU002-96 Exhibit F: Maintenance Plan dated this 16th day of March, 2015, will update and supersede any previous CC-MORU002-96 Exhibit F: Maintenance Plan documents.

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

By: Shirley M. Mudgett 3-10-15
Mount Rushmore National Memorial Society
Concessioner – CC-MORU002-96

EXHIBIT G OPERATING PLAN

INTRODUCTION

The Concessioner is authorized to provide a parking facility to Mount Rushmore National Memorial under Contract No. CC-MORU002-96, allowing for not less than 1,000 and not more than 1,200 parking spaces. The parking facility consists of two multiple level ramps: The Washington Ramp includes: 248 parking spaces on level 4; 222 on level 5; 169 on level 6; plus 14 RV spots. The Lincoln Ramp includes: 188 spaces on level 1; 163 on level 2; 118 on level 3, plus 12 RV spots. In addition 26 new parking spaces were approved: 8 spaces on Circulation Drive and 18 spaces on Ring Road (as detailed on new Parking Layout drawing, stamped and approved by Registered Professional Engineers at Kadrmas Lee & Jackson, dated October 26, 2010, Project No. 10610112), plus 12 bus/long RV parking spots near the main pergola. Total parking spots: 1,172.

This Operating Plan generally describes the operation authorized under Concessions Contract between the Mount Rushmore National Memorial Society and Mount Rushmore National Memorial, National Park Service. This plan is not to be used to amend the Contract or to alter the rights and liabilities of the parties to the Contract. In the event of conflict between the terms of the Concessions Contract and this Operating Plan, the terms of the Contract will prevail. This plan will remain in effect until superseded or amended.

The initial Operating Plan may be amended from time to time by the Superintendent in consultation with the Concessioner.

I. MANAGEMENT ORGANIZATION AND RESPONSIBILITIES

For all purposes of the Concession Contract and this Plan, and the carrying out of all duties and responsibilities thereof and hereof, the Concessioner and the NPS shall at all times maintain a duly qualified and acting Authorized Representative for purposes of representing the Concessioner and the NPS, respectively, hereunder and thereunder. The Authorized Representative for either party may be changed only upon written notification to the other party. The initial Authorized Representative for each party shall be, as follows:

For the Concessioner:

President
Mount Rushmore National Memorial Society
P O Box 1524
Rapid City, South Dakota 57709

For the National Park Service:

Superintendent
Mount Rushmore National Memorial
13000 Hwy. 244, Bldg. 31, Ste. 1
Keystone, South Dakota 57751

The Authorized Representative of the Concessioner will, among other things, serve as site manager for the facility and employ or cause to be employed staff with the appropriate expertise to fulfill the Concessioner's obligations under the Concession Contract and this Plan.

The Authorized Representative of the NPS will be the Superintendent, and will be assisted, to the extent necessary or desirable, by the Commercial Services Program Manager.

II. CONCESSION OPERATIONS

A. Operational

1. At all times during the term of the Concession Contract, the NPS will have the right to take any and all actions necessary or desirable to enforce its rights under and to monitor compliance by the Concessioner of its obligations under the concession Contract and this Plan, including, but not limited to, conducting inspections of the parking facility to ensure public safety and identify maintenance and operating deficiencies.
2. The Concessioner will cooperate with the NPS in scheduling these inspections or in accompanying Park Service staff in conducting the required inspections. Further, the Concessioner will be required to be responsive to dates assigned for correction or deficiencies or for responding to abatement plans for correction of identified deficiencies.
3. The Concessioner will meet with Park Service officials to schedule and prioritize correction of deficiencies and improvement programs resulting from these inspections.

B. Season of Operation

1. Generally, the season for full operation is May through September. Hours of operation typically include:
7:00 a.m. – 10:00 p.m., May through mid-August
7:00 a.m. – 9:00 p.m., mid-August through September
7:30 a.m. – 9:00 p.m., September
7:30 a.m. – 5:00 p.m., October to May

Any changes to hours of operation are subject to review and approval, to be granted in writing by the NPS authorized representative.

C. Staffing and Employment

1. Concessioner shall hire sufficient employees to ensure compliance with the provisions of the Concession Contract, Maintenance Plan, and this Plan, not only during peak visitor season but also during shoulder seasons.

2. Concession employees will be informed of any park regulations and guidelines affecting their employment and activities while working at Mount Rushmore. To whatever extent necessary or desirable to enforce or monitor obligations of the Concessioner under the Concession Contract or this Plan, the Authorized Representative of the NPS will be permitted to participate in orientation sessions with new employees of Concessioner. In any event, the Concessioner will, to whatever extent necessary or desirable to ensure compliance with applicable laws and regulations and the provisions of the Concession Contract and this Plan, provide adequate training applicable to each employee prior to job assignments and working with the public.
3. The Concessioner shall not employ spouses or minor children of National Park Service employees without the Superintendent's approval.
4. All concession employees dealing with the general public shall wear uniforms or standardized clothing and name badge to distinguish concession employees from NPS personnel.

D. Risk Management Program

Per the Occupational Safety and Health Act of 1970 and the "National Park Service Loss Control Management Program" Guideline DO 50, it is the responsibility of the Concessioner to provide a safe and healthful environment for all of its employees and visitors.

1. The Concessioner will develop, maintain and implement a documented safety program to be approved by the Superintendent. The program will include:
 - a. Procedures to be taken to identify and correct safety deficiencies.
 - b. Measures to assure safety awareness, training of hazards recognition and prevention.
2. The program will be reviewed annually and coordinated with the Park Documented Safety Program.
3. Risk Management Program guidelines and requirements will be provided to the Concessioner by the National Park Service.

E. Security and Protection

1. Concessioner Responsibilities
 - a. Concessioner is responsible for securing assigned buildings, equipment and facilities.
 - b. Concessioner, not the NPS, is responsible for training employees of Concessioner in basic fire equipment use and building evacuation procedures and that personnel are knowledgeable in their roles in the case of a fire emergency.
2. NPS Rights

- a. The NPS is authorized to respond to fires in and around the facility, to provide basic fire suppression training to concession employees, and to review and approve Concessioner-developed fire plans.
 - b. The NPS is authorized to respond to emergencies involving public safety, civil disturbances, and violation of the law, including the provision of security patrols of the parking facility as part of the routine area patrol when scheduling and available work force allow.
- F. 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 smoking is allowed. 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 consultation with the concessioner, in managing proper capture and disposal of cigarette butts.
- G. Lost and Found Policy - Pursuant Personal Property Management Information Notice 05-01 under the authority of Section 3.2(a) of Director's Order #44):
1. Personal items found or turned in to concessions will be safeguarded and turned over to the National Park Service (NPS) daily. Each item will be tagged describing the item, date, location, and name of finder.
 2. All found property will be documented and secured by the NPS following Personal Property Management policies that stipulate the proper storage and salvage of found items. The NPS will use DOI Form 10-166 to document lost/found property. Federal regulations do not permit the NPS to return property to the finder. Property must be held for a period of 60 days. Items not claimed within 30 days will be considered abandoned and automatically transferred to the NPS.
 3. The NPS is responsible for documenting and returning lost articles in person or using certified mail. Owners claiming lost property should be directed to the Memorial's Communications/Dispatch Center.
- H. Motor Vehicle Regulations / Golf Cart Usage
Concessioner must follow all laws related to Motor Vehicle Traffic Regulations (SDCL 32-14) and 36 CFR 4 Vehicles and Traffic Safety. Golf carts may be used by the concessioner and its subcontractor within the concessioner's land assignment area when following the designed flow of traffic; however, when golf carts are used in a manner that is against the designed flow of traffic, golf carts must be operated within the confines of the agreed upon golf cart paths. The golf cart paths are defined in the layout drawings on file dated 07/23/12. The Park Superintendent will provide the required permission for use of the golf carts in writing to the Concessioner. Said

permission will be reviewed and renewed annually in conjunction with the contract Operating and Maintenance Plan updates, unless otherwise terminated. Any such termination would be communicated to the Concessioner in writing.

H. Visitor Comments.

1. The Concessioner will investigate and respond to all visitor complaints or comments regarding Concessioner services, and will provide copies of visitor communication and concessioner response to the Memorial. 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 immediately upon receipt.
2. 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 all complaints, if applicable and as requested by the NPS, 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.

- I. Firearms Policy – Concessioner employees may not possess firearms while on duty. The superintendent, in his or her 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.

- J. Credit Cards – The NPS and the concessioner agree that allowing for credit card use as a form of payment for the parking fee is a necessary and appropriate visitor service. Concessioner has installed and will maintain the appropriate equipment, installing computer hardware and software upgrades, as necessary, to accommodate credit cards services.

K. Use of National Park Service Authorized Concessioner Mark (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.

This amended Concession Contract CC-MORU002-96 Exhibit G: Operating Plan dated this 16th day of March, 2015, will update and supersede any previous CC-MORU002-96 Exhibit G: Operating Plan documents.

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

By: Philip Rupert 3-10-15
Mount Rushmore National Memorial Society
Concessioner – CC-MORU002-96