

**CROW TRIBAL LEGISLATURE**  
**APRIL 27<sup>th</sup>, 2018 - SPECIAL SESSION**

**JOINT ACTION RESOLUTION NO. JAR 18-01**

INTRODUCED BY ALVIN NOT AFRAID, JR., CHAIRMAN  
CROW TRIBAL EXECUTIVE BRANCH

JOINT ACTION RESOLUTION OF THE CROW TRIBAL LEGISLATURE AND THE  
CROW TRIBAL EXECUTIVE BRANCH ENTITLED:

**“RESOLUTION APPROVING THE CROW TRIBE’S LIMITED WAIVER OF  
SOVEREIGN IMMUNITY IN THE LITTLE BIGHORN BATTLEFIELD  
NATIONAL MONUMENT GUIDED INTERPRETIVE MOTORIZED TOURS  
CONCESSION CONTRACT WITH THE NATIONAL PARK SERVICE”**

**WHEREAS**, pursuant to Article V, Section 2(a) of the 2001 Crow Tribal Constitution, the Crow Tribal Legislature (hereinafter, the “Legislature”) is vested with the power and duty to promulgate and adopt laws, resolutions, ordinances, codes, regulations, and guidelines in accordance with the 2001 Crow Constitution and federal laws; and

**WHEREAS**, the United States Department of Interior National Park Service entered into a Concessioner Agreement Institute with Micro-Business Development/Little Big Horn College (“Concessioner”) were granted Concessionaire status for the Little Big Horn Battlefield National Monument;; and

**WHEREAS**, the Crow Tribe has negotiated with the United States Department of Interior National Park Service to exercise its right through a ten-year contract as the concessioner of the Little Bighorn Battlefield National Monument; and

**WHEREAS**, the United States Department of Interior National Park Service has prepared the attached “Concession Contract No. CC-LIBI003-18” (hereinafter, the “Concession Contract”) for the Tribe to provide guided interpretive motorized tours, and step-on guide service, year-round; and

**WHEREAS**, the United States Department of Interior National Park Service required a limited waiver of sovereign immunity provision in the Concession Contract in order to enforce the Contract and allow for claims by visitors; and

**WHEREAS**, the Crow Tribe Department of Economic Development has done extensive research and found the project would be profitable for the Tribe; and

April 27<sup>th</sup>, 2018 - Special Session

Resolution Approving the Crow Tribe’s Limited Waiver of Sovereign Immunity in the Little bighorn battlefield national monument guided interpretive motorized tours Concession Contract with the National Park Service

Page 1 of 3

**WHEREAS**, the Chairman of the Executive Branch has authority and responsibility pursuant to the “enumerated powers” in Article IV, Section 3 of the Constitution and Bylaws of the Crow Tribe of Indians to represent the Crow Tribe in negotiations with Federal, State and local governments and other agencies, corporations, associations, or individuals in matters of economic development affecting the Crow Tribe, and to “negotiate and approve limited waivers of sovereign immunity when such a waiver is necessary for business purposes in accordance with Article V, Section 2(f) of [the] Constitution;” and

**WHEREAS**, the Chairman of the Executive Branch has negotiated the terms of the limited waiver of the Crow Tribe’s sovereign immunity as set forth in Section 1(b) of the Concession Contract; and

**WHEREAS**, the Legislative Branch has authority and responsibility pursuant to its “powers and duties” in Article V, Section 2(f) of the Constitution to “grant final approval or disapproval of limited waivers of sovereign immunity by the Executive Branch when waivers are necessary for business purposes;” and

**WHEREAS**, entering into the Concession Contract is in the best interests of the Crow Tribe and the limited waiver of sovereign immunity is necessary for the business purpose of entering into the Concession Contract;

**NOW, THEREFORE, BE IT RESOLVED BY THE CROW TRIBAL LEGISLATURE AND THE CROW TRIBAL EXECUTIVE BRANCH:**

**Section 1. That the limited waiver of sovereign immunity in the form set forth in the Concession Contract No. CC-LIBI1003-18 Section 1(b), attached hereto and incorporated herein by reference, is hereby approved.**

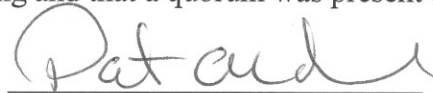
**Section 2. Reporting to the Legislative Branch on the Revenue and Expenditure Revenues.**

**Section 3. That the approval granted herein is effective on the date of execution of the Concession Contract.**

**[Remainder of page intentionally left blank.]**

## CERTIFICATION

I hereby certify that this Joint Action Resolution entitled “**RESOLUTION APPROVING THE CROW TRIBE’S LIMITED WAIVER OF SOVEREIGN IMMUNITY IN THE LITTLE BIGHORN BATTLEFIELD NATIONAL MONUMENT GUIDED INTERPRETIVE MOTORIZED TOURS CONCESSION CONTRACT WITH THE NATIONAL PARK SERVICE**” was duly enacted by the Crow Tribal Legislature with a vote of 14 in favor 1 opposed, and 0 abstaining and that a quorum was present on this 27<sup>th</sup>, day of April, 2018.



Senator Pat Alden, Jr.  
Speaker of the House  
Crow Tribal Legislature

### ATTEST:



Senator Lawrence DeCrane  
Secretary  
Crow Tribal Legislature

## EXECUTIVE ACTION

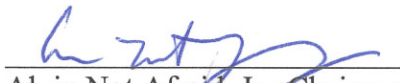
I hereby

X approve or

\_\_\_\_\_ veto.



This Joint Action Resolution entitled “**RESOLUTION APPROVING THE CROW TRIBE’S LIMITED WAIVER OF SOVEREIGN IMMUNITY IN THE LITTLE BIGHORN BATTLEFIELD NATIONAL MONUMENT GUIDED INTERPRETIVE MOTORIZED TOURS CONCESSION CONTRACT WITH THE NATIONAL PARK SERVICE**” pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 and Article IV, Section 3(k) of the Constitution and Bylaws of the Crow Tribe of Indians, on this 27 day of April, 2018.



Alvin Not Afraid, Jr., Chairman  
Crow Tribal Executive Branch

April 27<sup>th</sup>, 2018 - Special Session

Resolution Approving the Crow Tribe’s Limited Waiver of Sovereign Immunity in the Little bighorn battlefield national monument guided interpretive motorized tours Concession Contract with the National Park Service

Page 3 of 3

**JAR "RESOLUTION APPROVING THE CROW TRIBE'S LIMITED WAIVER OF SOVEREIGN IMMUNITY IN THE  
LITTLE BIGHORN BATTLEFIELD NATIONAL MONUMENT GUIDED INTERPRETIVE MOTORIZED TOURS  
CONCESSION CONTRACT WITH THE NATIONAL PARK SERVICE"**

**Bill or Resolution:** JAR18-01 **Introduced by:** Chairman Alvin Not Afraid **Date of Vote:** 4/27/2018  
**Number**

<b>REPRESENTATIVE:</b>	<b>Yes</b>	<b>No</b>	<b>Abstained</b>
M. White Clay	<u>X</u>	<u>          </u>	<u>          </u>
D. Spotted	<u>X</u>	<u>          </u>	<u>          </u>
F. White Clay	<u>X</u>	<u>          </u>	<u>          </u>
L.Hogan, III	<u>          </u>	<u>          </u>	<u>          </u>
B. Brown	<u>X</u>	<u>          </u>	<u>          </u>
S. Real Bird	<u>X</u>	<u>          </u>	<u>          </u>
V. Nomee	<u>X</u>	<u>          </u>	<u>          </u>
T. Yellowtail	<u>X</u>	<u>          </u>	<u>          </u>
T. Gros Ventre	<u>          </u>	<u>X</u>	<u>          </u>
M. Not Afraid	<u>X</u>	<u>          </u>	<u>          </u>
Vacant	<u>          </u>	<u>          </u>	<u>          </u>
J. Demontiney	<u>X</u>	<u>          </u>	<u>          </u>
B. Hugs	<u>          </u>	<u>          </u>	<u>          </u>
N. Old Crow, Jr.	<u>X</u>	<u>          </u>	<u>          </u>
B. Good Luck	<u>X</u>	<u>          </u>	<u>          </u>
H. Stone, Jr.	<u>X</u>	<u>          </u>	<u>          </u>
L. DeCrane, <i>Secretary of the House</i>	<u>X</u>	<u>          </u>	<u>          </u>
P. Alden, Jr., <i>Speaker of the House</i>	<u>X</u>	<u>          </u>	<u>          </u>
<b>Total:</b>	<u>14</u>	<u>1</u>	<u>0</u>

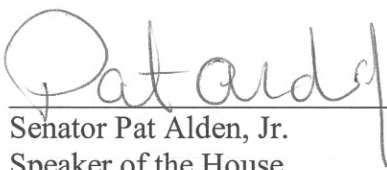
Result of Vote:

**Passed**

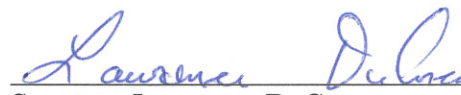
**Not Passed**

**Tabled**

**Veto-Override**

  
\_\_\_\_\_  
Senator Pat Alden, Jr.  
Speaker of the House  
Crow Tribal Legislative Branch

5-3-18  
Date

  
\_\_\_\_\_  
Senator Lawrence DeCrane  
Secretary of the House  
Crow Tribal Legislative Branch

5-3-18  
Date





United States Department of the Interior

NATIONAL PARK SERVICE  
INTERMOUNTAIN REGION  
12795 West Alameda Parkway  
P.O. Box 25287  
Denver, Colorado 80225-0287



IN REPLY REFER TO:  
IMR-ACM  
CC-LIBI003-18

OCT 16 2017

Mr. Alvin Not Afraid Jr., Chairman  
Crow Tribe of Indians  
#1 Bacheeitch Avenue  
Crow Agency, MT 59022

Dear Chairman:

Enclosed for your records is the fully awarded Concession Contract CC-LIBI003-18 to provide guided interpretive motorized tours within Little Bighorn Battlefield National Monument.

We still require your agreement to a limited waiver of sovereign immunity with respect to contracts and tort claims arising out of or in connection with this Contract (see Contract, Sec. 1. Term of Contract). Similar to the CC-BICA007-17 contract, we have given you 60 days to secure this waiver. Please provide a copy of the waiver at your earliest convenience.

The Superintendent at Little Bighorn Battlefield National Monument will work with you to understand the requirements of the new Contract. Please direct questions to the Superintendent at: (406) 638-2621 or the Concessions Specialist at: (406) 638-3216.

Sincerely,

Sue E. Masica  
Regional Director

Enclosure

cc: Superintendent, Little Bighorn Battlefield National Monument

**CATEGORY III CONTRACT**

**UNITED STATES DEPARTMENT OF THE INTERIOR**

**NATIONAL PARK SERVICE**

**LITTLE BIGHORN BATTLEFIELD NATIONAL MONUMENT**

**GUIDED INTERPRETIVE MOTORIZED TOURS**

**CONCESSION CONTRACT NO. CC-LIBI003-18**

Crow Tribe of Indians

P.O Box 159  
Bacheeitché Avenue  
Crow Agency, MT 59022

[AJ.NotAfraid@crow-nsn.gov](mailto:AJ.NotAfraid@crow-nsn.gov)  
(406) 702-0428

Doing Business As Crow Tribe

Covering the Period January 1, 2018 through December 31, 2027

**CONCESSION CONTRACT****TABLE OF CONTENTS**

<b>SEC. 1.</b>	<b>TERM OF CONTRACT.....</b>	<b>1</b>
<b>SEC. 2.</b>	<b>SERVICES AND OPERATIONS.....</b>	<b>1</b>
(a)	Required and Authorized Visitor Services .....	1
(b)	Operation, Maintenance and Quality of Operation.....	2
(c)	Operating Plan.....	2
(d)	Rates .....	2
(e)	No Capital Improvements .....	2
<b>SEC. 3.</b>	<b>CONCESSIONER PERSONNEL.....</b>	<b>2</b>
<b>SEC. 4.</b>	<b>ENVIRONMENTAL .....</b>	<b>2</b>
<b>SEC. 5.</b>	<b>FEES.....</b>	<b>3</b>
(a)	Franchise Fee .....	3
(b)	Payments Due.....	3
(c)	Interest .....	3
<b>SEC. 6.</b>	<b>INSURANCE.....</b>	<b>3</b>
<b>SEC. 7.</b>	<b>RECORDS AND REPORTS .....</b>	<b>3</b>
(a)	Accounting System .....	3
(b)	Annual Financial Report .....	4
(c)	Other Reports .....	4
<b>SEC. 8.</b>	<b>SUSPENSION, TERMINATION, OR EXPIRATION.....</b>	<b>4</b>
(a)	Termination and Suspension .....	4
(b)	Requirements in the Event of Suspension, Termination or Expiration.....	5
<b>SEC. 9.</b>	<b>ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS .....</b>	<b>5</b>
<b>SEC. 10.</b>	<b>GENERAL PROVISIONS – SEE ADDENDUM 1.....</b>	<b>5</b>

**Attachments:**

Exhibit A	Nondiscrimination
Exhibit B	Operating Plan
Exhibit C	Assigned Government Personal Property
Exhibit D	Insurance
Exhibit E	Transition to a New Concessioner
Exhibit F	Intellectual Property Licensed Marks

This Contract is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Intermountain Region, hereinafter referred to as the "Director", and The Crow Tribe of Indians, (hereinafter referred to as "Concessioner"), a Native American Tribe, doing business as Crow Tribe under the authority of 54 U.S.C. §§ 101911 et seq., including 54 U.S.C. §§ 100901 et seq., and other laws that supplement and amend these laws. The Director and the Concessioner agree:

## SEC. 1. TERM OF CONTRACT

- (a) This Contract will have a term of ten years from January 1, 2018 until its expiration on December 31, 2027.
- (b) As a condition to this term, however, the Concessioner agrees to grant voluntarily a limited waiver of its sovereign immunity with respect to claims arising out of or in connection with this Contract as provided in subsection below, retroactive to the effective date of the Contract. Should the Concessioner fail to provide documentation establishing such a waiver to the Director in a timely manner, the Contract shall terminate automatically on the 60th day after the effective date.

The Crow Tribe as Concessioner hereby grants a limited waiver of its sovereign immunity for contract and tort claims arising out of or in connection with the Contract, provided, however that:

- (i) With respect to contract claims, this limited waiver shall only extend to claims by the United States, visitors or others for a period until ninety (90) days after the termination of this Contract as necessary to enforce the rights and obligations hereunder, visitor contract claims shall be limited to the amount of \$10,000 and only be enforceable in a court of competent jurisdiction located within the State of Montana, and the monetary relief available under this contract waiver shall not include any indirect, consequential, tort, punitive or noncompensatory damages; and
- (ii) With respect to tort claims, this limited waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the Concessioner's liability insurance policies as specified in Section 11, and shall not extend to any claims for punitive damages; and provide further
- (iii) In no event shall any judgment or other relief awarded pursuant to the limited waiver in this subsection (b) result in the encumbrance of any Tribal property or assets which are held in trust for the Crow Tribe by the United States of America, unless required to do so by law.

The limited waiver in this subsection (b) shall be subject to approval by the Crow Tribal Legislature as required by the Crow Tribe's Constitution and Bylaws. This waiver of immunity, and the United States' acceptance of the limits of this waiver, is exclusive to this Contract.

## SEC. 2. SERVICES AND OPERATIONS

### (a) Required and Authorized Visitor Services

- (1) The Concessioner must provide the following required Visitor Services within the Area:

	Required Service	Location
i.	Guided interpretive motorized tours	Battlefield tour road

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

	Authorized Service	Location
i.	Step-on guide service, year-round	Public access areas within the Monument

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

The Concessioner must provide, operate and maintain the Visitor Services in accordance with this Contract in a manner considered satisfactory by the Director, including the nature, type and quality of the Visitor Services. The Concessioner's authority to provide Visitor Services under the terms of this Contract is nonexclusive. The Concessioner's operations and contract compliance will be evaluated on at least an annual basis.

**(c) Operating Plan**

The Director will establish and revise, as necessary, after consultation with the Concessioner, specific requirements for the operations of the Concessioner under this Contract in the form of an Operating Plan. The initial Operating Plan is attached to this Contract as Exhibit B.

**(d) Rates**

All rates and charges to the public by the Concessioner for Visitor Services must be reasonable and appropriate and must be approved by the Director.

**(e) No Capital Improvements**

The Concessioner may not construct any Capital Improvements upon Area lands.

**SEC. 3. CONCESSIONER PERSONNEL**

- (a) The Concessioner must ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public.
- (b) The Concessioner must establish appropriate screening, hiring, training, safety, employment, termination and other policies and procedures.
- (c) The Concessioner must review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and must take such actions as are necessary to correct the situation.
- (d) The Concessioner must maintain, to the greatest extent possible, a drug free work environment.

**SEC. 4. ENVIRONMENTAL**

The Concessioner must utilize appropriate best management practices (practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this Contract) in its provision of Visitor Services and other activities under this Contract.



**SEC. 5. FEES****(a) Franchise Fee**

(1) The Concessioner must pay a franchise fee to the Director as follows:

One percent (1%) of the Concessioner's gross receipts for the preceding year or portion of a year or a flat fee of \$500, whichever is greater.

(2) The Concessioner has no right to waiver of the fee under any circumstances.

**(b) Payments Due**

(1) The minimum franchise fee of 1% is due on October 1. Any additional amount due to equal 1% of gross receipts is due within 60 days after the end of the normal operating season. This quarterly payment must include the franchise fee equal to the specified percentage of gross receipts for the preceding three months.

(2) All franchise fees shall be deposited electronically by the Concessioner in accordance with all Applicable Laws.

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

**(c) Interest**

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

**SEC. 6. INSURANCE**

The Concessioner must obtain and maintain during the entire term of this Contract at its sole cost and expense, coverage necessary to fulfill the obligations of this Contract. The insurance requirements are set forth in Exhibit D.

**SEC. 7. RECORDS AND REPORTS****(a) Accounting System**

(1) The Concessioner must maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system must be capable of providing the information required by this Contract. The Concessioner's system of accounts classification must be directly related to the Concessioner Annual Financial Report Form issued by the Director.

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

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

**(b) Annual Financial Report**

(1) The Concessioner must submit annually as soon as possible but not later than ninety days (90) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

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

(3) If annual gross receipts are between \$500,000, and \$1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Statements on Standards for Accounting and Review Services (SSARS) and procedures promulgated by the American Institute of Certified Public Accountants.

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

**(c) Other Reports**

(1) Balance Sheet. If requested by the Director, within ninety (90) days of the execution of this Contract or its effective date, whichever is later, the Concessioner must submit to the Director a balance sheet as of the beginning date of the term of this Contract. The balance sheet must be audited or reviewed, as determined by the annual gross receipts, by an independent Certified Public Accountant.

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

**SEC. 8. SUSPENSION, TERMINATION, OR EXPIRATION**

**(a) Termination and Suspension**

(1) The Director may temporarily suspend operations under this Contract in whole or in part or terminate this Contract in writing at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit Visitor Services in the Area to those that continue to be necessary and appropriate.

(2) The Director may terminate this Contract if the Director determines that the Concessioner has materially breached any requirement of this Contract.

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

of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 8(a).

**(b) Requirements in the Event of Suspension, Termination or Expiration**

(1) In the event of suspension or termination of this Contract for any reason or expiration of this Contract, no compensation of any nature will be due the Concessioner, including, but not limited to, compensation for personal property, or for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this Contract for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner must, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, and repair any injury caused by removal of the property. This removal must occur within thirty (30) days (unless the Director in particular circumstances otherwise determines). Personal property not removed from the Area will be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner.

(3) Prior to and upon the expiration or termination of this Contract for any reason, and, in the event that the Concessioner is not to continue the operations authorized under this Contract after its expiration or termination, the Concessioner shall comply with all applicable requirements of Exhibit E to this Contract, "Transition to a New Concessioner." This section and Exhibit E shall survive the expiration or termination of this Contract.

**SEC. 9. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS**

This Contract may not be assigned [e.g. sold] or encumbered [e.g. mortgaged] without the approval of the Director in accordance with 36 CFR Part 51 with respect to proposed assignments and encumbrances.

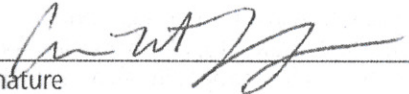
**SEC. 10. GENERAL PROVISIONS – SEE ADDENDUM 1.**

Addendum 1 attached to this Contract is made a part of this Contract.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Contract on the dates shown below.

## CONCESSIONER

## UNITED STATES OF AMERICA

By   
Signature

By   
Sue E. Masica  
Director, National Park Service

Alvin Not Afraid Jr.  
Crow Tribe

DATE: October 3, 2017

DATE: 10/16, 2017

## **ADDENDUM 1 GENERAL PROVISIONS**

### **1. DEFINITIONS**

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

(a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws, whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.

(b) "Area" means the property within the boundaries of Little Bighorn Battlefield National Monument.

(c) "Days" means calendar days.

(d) "Director" means the Director of the National Park Service, and his duly authorized representatives.

(e) "Exhibit" means the various exhibits, which are attached to this Contract, each of which is hereby made a part of this Contract.

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

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

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

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



(h) "Visitor Services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by this Contract.

## **2. LEGAL AND REGULATORY COMPLIANCE**

This Contract, operations under it by the Concessioner, and its administration by the Director, are subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this Contract at the Concessioner's sole cost and expense. The Concessioner must give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or Contractors, and must promptly correct any violation.

## **3. SERVICES AND OPERATIONS**

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

(b) The Concessioner will provide Federal employees reduced rates, in accordance with guidelines established by the Director, when conducting necessary official business. Complimentary or reduced rates and charges may otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

(c) The Director and Comptroller General of the United States, or any of their duly authorized representatives, will have access to the records of the Concessioner as provided by the terms of Applicable Laws.

(d) Subconcession or other third party agreements, including management agreements, for the provision of Visitor Services required and/or authorized under this Contract, whether in consideration of a percentage of revenues or otherwise, are not permitted.

(e) The Concessioner will ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner's activities. Discoveries of any archeological resources by the Concessioner will be promptly reported to the Director.

## **4. ENVIRONMENTAL DATA, REPORTS, NOTIFICATIONS, AND APPROVALS**

### **(a) Inventory of Hazardous Substances and Inventory of Waste Streams**

The Concessioner must submit to the Director, upon request, an inventory of hazardous chemicals used and stored in the Area by the Concessioner. The Concessioner must obtain the Director's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this Contract. The Concessioner must also submit to the Director, upon request, an inventory of all waste streams generated by the Concessioner under this Contract.

### **(b) Reports**

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

**(c) Notification of Releases**

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

**(d) Notice of Violation**

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

**(e) Communication with Regulatory Agencies**

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

**(f) Cost Recovery for Concessioner Environmental Activities**

If the Concessioner does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and Contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner will be liable for and must pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section precludes the Concessioner from seeking to recover costs from a responsible third party.

**5. FEES****(a) Adjustment of Franchise Fee**

(1) The Concessioner or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this Contract, a reconsideration and possible subsequent adjustment of the franchise fee established in this section. For the purposes of this section, the phrase "extraordinary, unanticipated changes" will mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this Contract which have or will significantly affect the probable value of the privileges granted to the Concessioner by this Contract. For the purposes of this section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this Contract.

(2) The Concessioner or the Director must make a request for a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this Contract.

- (3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fee.
- (4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, prospectively as of the date of agreement.
- (5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee in accordance with this section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.
- (6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director will each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel will establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.
- (7) The arbitration panel will consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee (up, down or unchanged) that is consistent with the probable value of the privileges granted by this Contract within sixty (60) days of the presentations.
- (8) Any adjustment to the franchise fee resulting from this section will be prospective only.
- (9) Any adjustment to the franchise fee will be embodied in an amendment to this Contract.
- (10) During the pendency of the process described in this section, the Concessioner will continue to make the established franchise fee payments required by this Contract.

## **6. INDEMNIFICATION**

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

## **7. NOTICE OF BANKRUPTCY OR INSOLVENCY**

The Concessioner must give the Director immediate notice (within five (5) days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this Contract or any part thereof upon execution, attachment or other process of law or equity.

For purposes of the bankruptcy statutes, NPS considers that this Contract is not a lease but an executory Contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 365. The Director may terminate this Contract if the Director determines that the Concessioner is unable to perform the terms of Contract due to such bankruptcy or insolvency action.

## **8. ADDITIONAL PROVISIONS**

- (a) This Contract contains the sole and entire agreement of the parties, except for survival of the Concessioner's commitments as set forth in its Offeror's Transmittal Letter in response to the solicitation for this Contract. No oral representations of any nature form the basis of or may amend this Contract. This Contract may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.
- (b) This Contract does not grant rights or benefits of any nature to any third party.
- (c) The invalidity of a specific provision of this Contract will not affect the validity of the remaining provisions of this Contract.
- (d) Waiver by the Director or the Concessioner of any breach of any of the terms of this Contract by the other party will not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the Contract. The subsequent acceptance of any payment of money or other performance required by this Contract will not be deemed to be a waiver of any preceding breach of any term of the Contract.
- (e) No member of, or delegate to, Congress or Resident Commissioner will be admitted to any share or part of this Contract or to any benefit that may arise from this Contract but this restriction will not be construed to extend to this Contract if made with a corporation or company for its general benefit.
- (f) This Contract is subject to the provisions of 2 C.F.R. Part 1400, as applicable, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.
- (g) Nothing contained in this Contract shall be construed as binding the Director to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year or administratively allocated for the subject matter of this Contract, or to involve the Director in any contract or other obligation for the future expenditure of money in excess of such appropriations.

## **9. NATIONAL PARK SERVICE TRADEMARK LICENSE**

### **(a) License Grant**

The unique nature of a National Park Service concession blends commercial enterprise with the treasured historic, cultural, and, natural assets that the Director is responsible for protecting. The Director hereby grants to the Concessioner a royalty-free, non-exclusive, non-transferable license to use the marks as listed in Exhibit F ("Marks"), for use solely to carry out the services described under this Contract in manner that promotes National Park Service goals and values as stated herein. The Concessioner has the right to sub-license Marks in order to carry out services described under this Contract upon written approval of the Director and under same or substantially similar terms as contained herein. Any use of any Mark intended to identify the National Park Service, or one of the Concession Facilities, shall inure to the benefit of the National Park Service. This license shall cease upon termination or expiration of the Contract, or as otherwise determined by the Director or by law. This license does not constitute a compensable interest to the Concessioner.

**(b) Quality Control and Goodwill**

The Concessioner acknowledges that the maintenance of the high quality of the services, materials, products, and merchandise produced, sold or otherwise prepared for public dissemination pursuant to or in order to carry out services required under this Contract, as well as the control by the Director over their nature, quality, and manner of delivery or distribution, are material conditions of this Contract. The Concessioner shall maintain the distinctiveness of the Marks, the image of the National Park Service brand, and the image and high quality of the services, materials, products, and merchandise bearing the Marks licensed herein. Marks may be used and appear together with other marks used in connection with concession-related goods and services but must stand by themselves. The Concessioner shall immediately cease use of a Mark used in association with the services provided under this Contract on request of the National Park Service.

**(c) Rights and Ownership**

The Concessioner acknowledges that the National Park Service is the sole and exclusive owner of all right, title and interest in and to its Marks, including those licensed under this agreement, as well as to all combinations, forms, and derivatives which must be approved by the Director. The Concessioner further acknowledges, represents and warrants that it has not acquired and shall not acquire (whether by operation of law, by this Contract, or otherwise) any right, title, interest or ownership (collectively "Ownership Rights") in or to any National Park Service Marks or any part thereof. Should any Ownership Rights become vested in the Concessioner, the Concessioner agrees to assign, and hereby assigns, all such Ownership Rights to the Director free of consideration. The Concessioner shall immediately provide and execute all documents reasonably requested by the Director to effectuate and record each such assignment. The Concessioner shall not, during the term or at any time thereafter, do anything which, in the Director's sole judgment, could in any way damage the validity and subsistence of the Marks. The Concessioner shall not attack, dispute, or challenge the National Park Service's Ownership Rights in or to the Marks or the validity of this Contract, nor shall the Concessioner assist others in so doing.



**EXHIBIT A  
NONDISCRIMINATION**

**SEC. 1 REQUIREMENTS RELATING TO EMPLOYMENT AND SERVICE TO THE PUBLIC**

**(a) Employment**

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

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provision of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, age, national origin, or disabling condition.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed \$50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.

(5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) The Concessioner will comply with all provisions of Executive Order 13658- Establishing a Minimum Wage for Contractors, and its implementing regulations, including the applicable contract clause, which are incorporated by reference into this Contract as if fully set forth in this Contract. The applicable contract clause is available at <https://federalregister.gov/a/2014-23533>.

(8) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in

whole or in part and the Concessioner may be declared ineligible for further Government concession contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(9) The Concessioner will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

#### **(b) Construction, Repair, and Similar Contracts**

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

#### **(c) Facilities**

(1) Definitions: As used herein:

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

(2) The Concessioner is prohibited from:

- (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, sexual orientation, gender identity, age, national origin, or disabling condition;
- (ii) discriminating by segregation or other means against any person.

### **SEC. 2 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 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 U.S. Postal Service.

**(a) Discrimination Prohibited**

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

**(b) Existing Facilities**

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by 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.



**OPERATING PLAN**

<b>1) INTRODUCTION.....</b>	<b>1</b>
<b>2) REQUIRED AND AUTHORIZED VISITOR SERVICES .....</b>	<b>1</b>
A) DESCRIPTION.....	1
B) SCHEDULE OF OPERATION .....	1
C) SCOPE OF SERVICES .....	1
<b>3) GENERAL OPERATING STANDARDS AND REQUIREMENTS .....</b>	<b>3</b>
A) RESPONSIBILITIES .....	3
B) RATE DETERMINATION AND APPROVAL PROCESS.....	3
C) RATE APPROVAL PROCESS.....	4
D) EVALUATIONS.....	4
E) VISITOR COMMENTS AND COMPLAINTS .....	6
F) GENERAL POLICIES .....	6
G) HUMAN RESOURCES MANAGEMENT .....	7
H) EMERGENCY MEDICAL CARE.....	8
I) ENVIRONMENTAL MANAGEMENT PROGRAM .....	9
J) RESOURCE PROTECTION.....	9
K) RISK MANAGEMENT (SAFETY) PROGRAM .....	9
L) ACCIDENT AND INCIDENT REPORTING .....	9
M) PUBLIC RELATIONS.....	9
<b>4) REPORTING REQUIREMENTS.....</b>	<b>10</b>
A) CONCESSIONER OPERATIONAL REPORTS .....	10
B) SUMMARY OF INITIAL AND RECURRING DUE DATES .....	11
<b>ATTACHMENT B-4: GUIDED LAND TOUR OPERATING STANDARDS.....</b>	<b>12</b>



## 1) INTRODUCTION

This Operating Plan between Crow Tribe of Indians (hereinafter referred to as the "Concessioner") and the National Park Service (hereinafter referred to as the "Service") describes specific operating responsibilities of the Concessioner and the Service for the purposes authorized by the Contract within Little Bighorn Battlefield National Monument (hereinafter referred to as the "Area").

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

This plan will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of the Area. Any revisions shall be consistent with the main body of this Contract. Any revisions must be reasonable and in furtherance of the purposes of the Contract.

## 2) Required and Authorized Visitor Services

### A) Description

- (1) As set forth in the Contract, the Concessioner is required to provide guided interpretive motorized tours. The Concessioner must use a minimum of one vehicle.
- (2) Additionally, the Concessioner is authorized to provide guided interpretive motorized tours using up to two additional vehicles.
- (3) As set forth in the Contract, the Concessioner is authorized to provide step-on guide services similar in duration, scope, and quality as the guided interpretive motorized tours outlined in Section A) (1) above, year round, in public access areas within the Area.

### B) Schedule of Operation

- (1) The Concessioner must provide the required services for Area visitors on a seasonal basis from Memorial Day to Labor Day.
- (2) Each tour will be one hour in duration and depart the visitor center parking lot at 9 a.m., 10:30 a.m., 12 noon, 2 p.m. and 3:30 p.m.
- (3) The Concessioner must submit any proposed changes in tour schedules to the Chief of Interpretation for review prior to April 15 of each operating year.

### C) Scope of Services

The Concessioner must provide all services in a consistent, environmentally-sensitive, and quality manner. Standards provided by current Service Concession Management Guidelines are service minimums. The Concessioner must monitor and evaluate its operations to ensure that they meet quality standards. When in conflict, standards and guidelines described in this Operating Plan supersede those identified on the Website.

- (1) *Service Standards.* See the Commercial Services Website at [https://concessions.nps.gov/tools\\_others.htm](https://concessions.nps.gov/tools_others.htm) for the Guided Land Tour Standards, which are also provided as an Attachment to this Operating Plan. Additional general standards regarding guided land tour operations are outlined below.
- (2) *Route.* Tours originate at the Monument's Visitor Center parking lot and travel by bus approximately five miles south on an established route to the Reno-Benteen Battlefield, where the Battle of the Little Bighorn began. Tour guides provide interpretation of the events surrounding the battle. The tour concludes at Last Stand Hill and visitors are then returned to the Visitor Center parking lot.
- (3) *Interpretive Services.* The Concessioner must submit to the Service for review Tour Outlines and Interpretive Materials **within 90 days of Contract effective date** and updated as needed.
- (4) The Concessioner's authority to provide Visitor Services under the terms of this Contract is nonexclusive.

- (5) The Concessioner must base its operations outside the Area. With the exception of a reservation desk located inside the Visitor Center, the Service will not provide any facilities for this operation within the Area.
- (6) The Concessioner must provide all personal property necessary for its operations under this Contract.
- (7) Drivers may lead or accompany passengers during walking tours of the sites.
- (8) Any and all "step-on" guided tours provided by the Concessioner that enter the Park at any point during the tour must be included in the Concessioner's gross receipts under this Contract.
- (9) *Motorized Tour Vehicles*
  - (a) Vehicles used to provide the motorized tours will be universally accessible with a passenger capacity of 14-24 seats.
  - (b) The Concessioner must ensure that all vehicles are equipped with approved safety belts for all seats, and that the driver and all passengers are properly restrained with the seat belt assembly at all times when the vehicle is in motion, as required by 49 CFR § 392.16 and as described by FMCSA Part 392.
  - (c) Each vehicle must meet all federal and state transportation certification standards, particularly those regulations administered by the Montana Department of Transportation (DOT) for transportation of passengers for hire.
  - (d) The Concessioner must ensure that the original vehicle registration certificate, proof of insurance and safety inspection is carried in each vehicle.
  - (e) Each vehicle must have a two-way radio connecting with a base station at the visitor center.
  - (f) Each vehicle must be in sound mechanical condition and have an overall well maintained and clean appearance. The interior and exterior must be in good physical condition. Vehicles must be free of rust and chipped or discolored paint.
  - (g) Each vehicle must be free of fluid leaks and be maintained for minimum emissions.
  - (h) Each vehicle must be maintained in a safe operating condition, in accordance with manufacturer's recommendations, including tire pressure.
  - (i) The Concessioner may not perform any vehicle maintenance within the Area.
  - (j) The Concessioner must remove its disabled vehicles from the Park immediately.
  - (k) The Concessioner must ensure its drivers keep vehicle idling to a minimum during passenger pick up and drop off or at stopping points.
  - (l) Vehicles must not exceed their passenger capacities under any circumstances.
  - (m) Touring bus will be replaced in year 5.
  - (n) Tour Vehicle Parking
    - During business hours, the Concessioner must park tour vehicles at the NPS-designated locations, marked by traffic cones.
    - After the close of business, the Concessioner must park the tour vehicles in the NPS-designated employee parking lot.
- (10) *Driver Qualifications and Operating Procedures.*
  - (a) Guides must be on the Concessioner's payroll and covered by its insurance policies and Workers Compensation Policy.
  - (b) Non-employee guides may only be allowed at the discretion of the Superintendent.
  - (c) The Concessioner must ensure that the driver has their safety belt securely fastened whenever the bus is in motion. Standing during operation is prohibited.
  - (d) The use of a cell phone by the driver of the vehicle is prohibited while the vehicle is in motion.

- (e) *First Aid and CPR Training.* All drivers must possess current First Aid and CPR certification, or an equivalent or higher level of certification. In order to be considered equivalent, the course must include classroom/hands-on instruction and must be accredited.
- (f) Defensive driving safety training will be part of training for CDL drivers.
- (11) The Concessioner guides must stay on maintained trails and ensure tour visitors also stay on maintained trails.
- (12) Exclusions. The following Guided Land Tours standards as found on the Commercial Services Website at [https://concessions.nps.gov/tools\\_others.htm](https://concessions.nps.gov/tools_others.htm) do not apply to this operation.
  - (a) Standards #1-23: since the Concessioner has no land assignment.
  - (b) Standards #26-38: since the Concessioner has no land assignment.
  - (c) Standards #57-62: since the services are not required or authorized under the Contract.

### **3) General Operating Standards and Requirements**

The operation of services required and authorized by this Contract will be in accordance with NPS interpretive standards, the evaluation standards set forth by the Concession Review Program, and with this Operating Plan. The Concessioner must monitor its concession services with respect to Park policy, applicable standards, authorized rates, safety, public health, impacts on cultural and natural resources, and visitor concerns and reactions.

#### **A) Responsibilities**

- (1) Concessioner. The Concessioner must designate a manager(s) as a point of contact who has the responsibility for carrying out the policies and directives of the Service as well as those of the Concessioner in the operation of the authorized concession services in the Area.
- (2) Service. The Superintendent manages the Area with responsibility for all operations, including oversight responsibility of concession operations. The Superintendent carries out Service Policy, including concession contract management. Directly, or through designated representatives including the Chief of Interpretation, the Superintendent reviews, directs, and coordinates Concessioner activities relating to the Area including evaluation of Concessioner services, and review and approval of rates charged for all services.

#### **B) Rate Determination and Approval Process**

- (1) *Rate Determination.* All rates and charges to the public by the Concessioner must comply with the provisions of Section 3(e) of the Contract, including (without limitation) Section 3(e)'s requirements regarding approval by the Service of the rates and charges set. The reasonableness and appropriateness of rates and charges under this Contract must be determined, unless and until a different rate determination is specified by the Service, using the methodologies set out below. As used in this Operating Plan, each of the specified methodologies has the same meaning as that set out in the National Park Service Concession Management Rate Approval Guide (February 2017) ("Rate Approval Guide") (a copy which can be obtained by contacting the Service), as it may be amended, supplemented, or superseded throughout the term of this Operating Plan.
- (2) *Requests for Rate Changes*
  - (a) The Concessioner's rate requests must list a maximum requested rate. The Concessioner must submit requests for rate changes thirty days prior to desired implementation.
  - (b) To avoid delays in review and approval, the Concessioner must provide comparability data to support proposed rates with the rate request, including a detailed description of the proposed comparable operator's product or service, and other pertinent information as required by current Service guidance.
  - (c) Under no circumstance may the Concessioner implement price increases prior to the specific written approval of the Superintendent.
- (3) *Deposits, Payments, Cancellations and Refunds*

- (a) The Concessioner must develop a Cancellation, Refund, Deposit and Payment Policy consistent with industry practice. This policy must be submitted to the Service for review and approval. Initial submittal of this policy is **due 60 days after the Contract effective date**, and any subsequent revisions to this policy must also be submitted to the Service for review before the Concessioner can implement any changes.
- (b) At minimum, the Concessioner must provide full refunds of deposits if cancellations are received seven days in advance of the intended service date.
- (c) The Concessioner must post cancellation, refund reservation, deposit and payment policies prominently on its website and include in rate brochures and advertisements as appropriate.

### C) Rate Approval Process

- (1) *Approval Timing.* The Service will approve, disapprove or adjust rates and will inform the Concessioner within 45 days of the rate request submittal. If a longer response period is needed, the Service will inform the Concessioner of the altered response date. All rate increase requests must be made in accordance with the Rate Administration Guide and provide information to substantiate the requested rate in sufficient detail for the Service to replicate results using the applicable methodology specified in the Rate Administration Guide.
- (2) *Approved Rate Posting.* The Concessioner must make approved rates for goods and services available to visitors. The Service will check rate compliance during periodic evaluations throughout the year.
- (3) *Rate Compliance*
  - (a) The Service checks rate compliance during periodic operation evaluations and throughout the year. Approved rates will remain in effect until superseded by written changes approved by the Superintendent.
  - (b) The Concessioner is responsible for ensuring no published rates exceed the maximum rate approved by the Service. Rate compliance includes, but is not limited to, concessioner website, concessioner telephone reservations system, and third-party booking agents and intermediaries (e.g. Expedia, Travelocity, Orbitz).
  - (c) *Approved Rate Effective Period.* Approved rates must remain in effect until superseded by changes approved in writing by the Service.
  - (d) *Advance Rate Approvals.* The Concessioner may advertise and charge a higher advance rate for its upcoming season prior to completion of formal rate approvals in accordance with the Service's Rate Administration Guide.
- (4) *Reduced Rates for Federal Government Employees*
  - (a) *Transportation.* Federal employees on official business and others on park-related business, as designated by the Superintendent, may receive reduced rates (i.e., complimentary or reduced price tickets) for transportation. Reduced rates may only be given if extra seats are available and may not take the place of a paying customer.
  - (b) Other goods and services may not be provided to government employees or their families without charge or at reduced rates unless they are equally available to the general public.

### D) Evaluations

- (1) *Concessioner Monitoring Program.* The Concessioner must inspect and monitor its services with respect to Applicable Laws, Service policy and standards, authorized rates, life and fire safety, public health, environmental management and impacts on cultural and natural resources, responsiveness to visitor comments, compliance with the Contract including all of its Exhibits and other operational performance as appropriate. The Concessioner is responsible for developing and implementing corrective action plans to respond in a timely manner to any operating deficiencies it identifies. Specific inspection and testing requirements are described in later sections of this Operating Plan.

- (2) *Service Concession Review Program.* The Service will evaluate the Concessioner's services to assess and rate Concessioner performance in accordance with the NPS Concession Review Program. The results of the individual program evaluations are used to prepare an Annual Overall Rating Report. These activities may be conducted by Service personnel. The Service may request the assistance of third-party subject matter experts. The findings of such experts may be fully incorporated in Service evaluations. The Concessioner must provide full access to management, property, documentation, and other resources necessary for the Service to conduct these evaluations. The Concessioner must work with Service officials to prioritize, schedule and correct deficiencies and implement improvement programs resulting from these activities. The Concessioner's performance in addressing deficiencies on schedule and in a timely manner may be a consideration in determining the Concessioner's rating.
  - (a) Periodic Operational Evaluations. The Service will conduct both announced and unannounced periodic operational evaluations of services to ensure conformance to applicable operational standards.
- (3) *Annual Overall Rating.* The Service will determine and provide the Concessioner by March 1 an Annual Overall Rating Report based upon the Service evaluation for the preceding calendar year. The Annual Overall Rating will roll up the following individual reports and include one score and rating for the entire operating year: Administrative Compliance Report, Operational Performance Rating Report, Public Health Program Evaluation Report, Risk Management Program Evaluation Report, Environmental Management Program Evaluation Report, and Asset Management Program Evaluation Report.
  - (a) *Administrative Compliance Evaluation and Report.* The Administrative Compliance Report and rating considers the Contract compliance criteria, including timely submission of the annual financial report, timely and accurate submission of franchise fees, timely submission of proof of general liability, automobile, workers compensation insurance.
  - (b) *Operational Performance Report.* The Operational Performance Report and rating considers the individual periodic operational evaluations, and weights them if necessary.
  - (c) *Risk Management Program Evaluation.* The Service will annually conduct a comprehensive evaluation of the Concessioner's Risk Management Program (RMP). This evaluation will consider performance in complying with NPS risk management standards, implementing life safety and fire safety programs, and operating in accordance with the Concessioner's documented RMP. The results of any life or fire safety inspections conducted by the Service will also be a component of this evaluation and a component of Periodic Operational Evaluations.
  - (d) *Environmental Management Program Evaluation.* The Service will conduct an annual evaluation of the Concessioner's Environmental Management Program (EMP). The evaluation will consider performance in complying with NPS risk management standards, protecting natural resources, meeting environmental compliance requirements, and operating in accordance with the Concessioner's documented EMP. Performance in addressing Concessioner environmental audit findings will also be a component of this evaluation.
- (4) *Other Audits or Inspections*
  - (a) Environmental Audits. The Service may conduct environmental audits to evaluate the operations with respect to environmental compliance and environmental Best Management Practices in accordance with the current Service Concession Environmental Audit Program Operating Guide. Performance in closing audit findings is considered in the annual EMP Evaluation.
  - (b) Integrated Pest Management Inspections. The Service may conduct integrated pest management inspections of Concessioner operations which may consider issues such as vector control and exclusion practices, pesticide application practices and others.
  - (c) Interpretive Program Review. The Service may evaluate the Concessioner's interpretive and informational services to ensure appropriateness, accuracy, quality, and the relationship of



interpretive presentations to Area themes in addition to service-specific reviews that occur during periodic evaluations.

#### **E) Visitor Comments and Complaints**

- (1) The Concessioner must investigate and respond in writing to written visitor complaints about Concessioner services and operations. The Concessioner must answer all written complaints within 10 days. The Concessioner must provide the Service with copies of the complaint and the Concessioner's response as soon as possible, but no later than five days after the Concessioner has issued the response.
- (2) The Service will promptly forward to the Concessioner any comments or complaints the Service received regarding the Concession services for Concessioner response.
- (3) The Concessioner must cooperate with any Service investigations into the basis of complaints.
- (4) The Concessioner must, within 24 hours of receipt, provide to the Service any visitor comments (written or verbal) that allege misconduct by Concession or Service employees, pertain to the safety of visitors or Concessioner or Service employees, or concern the safety of Area resources.
- (5) In order to facilitate the solicitation of visitor comments, the Concessioner must prominently display the following notice within each tour vehicle and on the Concessioner's website:

"This service is operated by \_\_\_\_\_, a Concessioner under contract with the U.S. Government and administered by the National Park Service. The Concessioner is responsible for conducting these operations in a satisfactory manner. Services and prices are approved by the National Park Service.

Please address comments to:

Superintendent  
Little Bighorn Battlefield National Monument  
P.O. Box 39  
Crow Agency, Montana 59022-0039

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

- (1) *Entrance Fees.* Little Bighorn Battlefield National Monument is a designated federal recreation area. All guided interpretive motorized tour passengers must pay the appropriate entrance fee or show visual verification of other appropriate entrance permits upon entering the Area.
  - (a) Guides leading trips will identify themselves. The guide's entrance fees will be waived.
  - (b) Guides entering the Park for personal activities must possess proof of paying applicable entrance fees.
- (2) *External Regulatory Agencies.* Any notices of violation, requests for corrective action, or any other type of performance/non-performance notices from external regulatory agencies must be submitted to the Service as soon as possible, but not later than 10 days after receipt by the Concessioner. External regulatory agencies are any agencies having authority and/or jurisdiction over any facet of the Concessioner's operations or facilities in the Area. These agencies include, but are not limited to, Montana Department of Environmental Quality, Montana Department of Transportation, Occupational Safety and Health Administration, Department of Labor, Helena Montana.
- (3) *Firearms and Weapons*
  - (a) On-duty employees must not possess or use weapons or firearms while providing visitor services with the Area. The Superintendent may grant exceptions to this prohibition upon consideration of a written request from the Concessioner with a thorough explanation of the basis of the request. The Superintendent will provide a written response to the Concessioner and the Concessioner must have written approval from the Superintendent before implementing any exceptions.

- (c) Within ninety 90 days of the Contract effective date, the Concessioner must develop and provide to the Service policies concerning visitor firearms on board Concessioner operated vehicles.
- (4) *Area Roads.* The Service may close Area roads at any time due to weather, construction activities, road conditions, emergencies, or wildlife concerns.
- (5) *Lost and Found*
  - (a) If a visitor loses or finds an item while on the Concessioner's tour, the Concessioner must refer the visitor to a ranger station or visitor center to make a report.
  - (b) If the Concessioner finds a lost item, the item must be turned in to a ranger or visitor center as soon as possible.
- (6) *Pets and Service Animals*
  - (a) The Concessioner must prohibit pets on tours as part of their policies and standard operating procedures.
  - (b) The Concessioner must develop policies or standard operating procedures and submit a Pet Service Animal Policy to the Service **within 90 days of the Contract effective** date, for Service review, regarding how the Concessioner will accommodate visitors with service animals.
  - (c) The Concessioner's policy must be in accordance with current American with Disability Act (ADA) provisions.
- (9) *Reservations*
  - (a) The Concessioner must establish a method for accepting reservations for both the regularly scheduled tours and step-on guide services (if the Concessioner choses to operate this authorized service).
  - (b) The Concessioner must provide the Park with a description of its reservation system for review.
- (10) *Parking.* While on duty, Concessioner employees will park their personal vehicles in the designated employee parking lot located near the maintenance area, next to the library and government housing.
- (11) *Smoking.* The Concessioner must prohibit smoking in and around vehicles and must post international no-smoking signs on each vehicle.

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

- (1) *Equal Opportunity.* Concessioner advertisements for employment must state that the Concessioner is an equal opportunity employer.
- (2) *Employee Appearance.* Employees must be neat and clean in appearance and must wear a uniform shirt and employee nametag.
- (3) Concession employees, when not actively serving visitors, will refrain from congregating in Park facilities such as behind the visitor desk and in Park offices.
- (4) *Employee Qualifications.* All employees must be knowledgeable and supportive of the requirements and procedures of their job as well as specific Area regulations and the purposes for these regulations. All employees must project a hospitable, friendly, helpful, positive attitude and be capable of answering visitor questions about the Concessioner's services, as well as general Area information. All information provided by staff to the public must be accurate, complete, appropriate to the audience, and interpretive information must relate to Area themes.
- (5) *Drug and Alcohol Abuse.*
  - (a) The Concessioner must provide its employees with a statement of its policies regarding drug and alcohol abuse.
  - (b) The Concessioner must maintain, to the greatest extent possible, a drug-free workplace environment.



- (c) All Concessioner employees are prohibited from possessing or using alcohol and tobacco products while on duty.
- (6) *Driver List.* Within 120 days of the Contract's effective date, and no later than **May 1 of each year annually**, the Concessioner must provide the Park with a list of employees and relevant certifications. This must include:
  - (a) Employee name;
  - (b) Type of driver's license, including all endorsements and expiration date (do not include driver's license numbers) for all tour drivers;
  - (c) First aid and CPR certifications (with expiration date) for all tour drivers.During the operating season, the Concessioner must notify the Park within five (5) days of any changes in its list of driver's.
- (7) *Employment of Service Employees or their Family Members*
  - (a) The Concessioner may not employ in any status a Service employee, his/her spouse, or his/her dependent child without prior Superintendent written approval. The Superintendent will determine, in accordance with applicable Service policies and procedures, if conflicts of interest exist. If approval is given, the Concessioner must retain the approved request as part of the employee's personnel file.
  - (a) The Concessioner may not employ in any status the following: the Superintendent, Chief of Interpretation, Safety Officer, Chief Ranger, District Ranger, or their spouses or dependent children.
- (8) *Training Program*
  - (a) The Concessioner must provide employee orientation and training that includes information on Park regulations and requirements that affect their employment and activities while working in the Park. Employee training will include:
    - Understanding provisions of the Contract, including the Operating Plan.
    - First-hand knowledge of the routes to be traveled.
    - Knowledge of the nature and purpose of the Service in general and the Park in particular.
    - The natural and cultural resources of the Park and regulations protecting these resources.
    - Hours of operation and location of various services within the Park.
  - (b) The Concessioner must provide appropriate training to each employee prior to job assignments and working with the public.
  - (c) The Concessioner must provide hospitality training for employees who have direct visitor contact and/or who provide visitor information prior to job assignments.
  - (d) The Concessioner must design and provide interpretive training for all employees who provide interpretive and/or informational services. The Park will work closely with the Concessioner to refine the methods of preparing and conducting effective interpretive programs. The Concessioner will participate in training programs provided by the Park. The Park will evaluate interpretive visitor services to ensure appropriateness, accuracy, and the relationship of interpretive presentations to Park themes.

#### **H) Emergency Medical Care**

- (1) *First Aid/Medical Care to Area Visitors.* Concessioner employees with current first aid or higher level of emergency medical training and certification must provide initial emergency care commensurate with their level of training while waiting for Service response personnel, and may provide care in conjunction with Service response personnel, if their continued assistance is requested.
- (2) *Visitor Transportation.* The Service is responsible for arranging for emergency transportation of visitors to medical facilities.

- (3) Non-emergency medical treatment is available within the local communities.

**I) Environmental Management Program**

- (1) The Concessioner must develop, maintain and implement an Environmental Management Program ("EMP") in accordance with Section 6 of the Contract and the Service Environmental Management Program Standards for Concessioners located on the NPS Commercial Services website. The plan must be updated annually.
- (2) Further environmental specifications and requirements are found in other sections of this Operating Plan. The Concessioner will comply with the Service Environmental Management Standards for Concessioners.

**J) Resource Protection**

The Service expects its Concessioner to join the Service in fulfilling the NPS mission and to give special attention to the preservation, conservation, and protection of Park resources and the environment in its operations.

- (1) The Concessioner must conduct routine business operations, educational activities, and employee programs in a manner that minimizes negative impacts on our environment and encourages others to do so as well.
- (2) Tour guides must stay on maintained trails and ensure tour visitors also stay on maintained trails.

**K) Risk Management (Safety) Program**

- (1) The Concessioner must develop, maintain, and implement a Concessioner Risk Management Program that is in accordance with Service Risk Management Program Standards for Concessioners located on the Commercial Services Website at: [https://concessions.nps.gov/tools\\_others.htm](https://concessions.nps.gov/tools_others.htm). The Concessioner must submit its initial plan to the Superintendent within 120 days of the Contract effective date and annually thereafter by April 1<sup>st</sup> of each year. The Concessioner must update its Concessioner Risk Management Program to comply with Applicable Laws. The Concessioner must comply with the Service Risk Management Standards for Concessioners.

**L) Accident and Incident Reporting**

- (1) Incident Reports. The Concessioner must report all accidents/incidents involving employees or visitors to the Superintendent's office within 24 hours. The Concessioner must immediately report accidents/incidents that are life threatening or involving serious injuries or death. A Ranger will investigate all visitor and employee accidents requiring attention. The Concessioner and concession employees must fully cooperate in all investigations.

**M) Public Relations**

- (1) Advertisements and Promotional Material
  - (a) The Concessioner must submit all promotional material, including electronic media for Service review **at least 30-days prior to publication**, distribution, or broadcast. The Concessioner may not use any such material until receiving written approval from the Superintendent.
  - (b) Statements in Promotional Materials. Advertisements must include a statement that the Concessioner is an authorized concessioner of the National Park Service or must incorporate the Authorized Concessioner Mark.
- (2) *Use of National Park Service Authorized Concessioner Mark (Mark).*
  - (a) 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."

- (b) 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 at least a marginal rating in the previous Annual Overall Review to use the Mark following the first year of the Contract.
  - (c) 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.
  - (d) 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.
  - (e) 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 website.
  - (f) 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.
- (3) Public Statements. All media inquiries concerning operations within the Area, questions about the Area, or concerning any incidents occurring within the Area, must be referred to the Public Affairs Officer. This includes all media interviews. However, media interviews and visits to the Area to report on Concessioner operations may be done with a courtesy notification to the Public Affairs Officer.

#### 4) Reporting Requirements

##### A) Concessioner Operational Reports

- (1) Annual Financial Report. The Annual Financial Report is due no later than 90 days after the end of the Concessioner's fiscal year. (See Contract, Section 7(b)).
- (2) Insurance Certificate. The Certificate of Insurance is due annually prior to beginning operations. Requirements are outlined in the Contract, Exhibit D. Insurance Requirements.
- (3) Visitor Use Report. The Concessioner must submit its Visitor Use Reports by the fifth (5th) day of each month during the months of operation, even if the reported use is zero. The Visitor Use Report must include the number of groups and the number of participants per day for each activity. The Park will provide a report form, if needed.
- (4) Incident Reports. The Concessioner must report to a Park Ranger or to Park Dispatch any incident resulting in (or with the potential to result in) personal injury requiring more than minor first aid treatment, any fire, any fatalities, any motor vehicle accidents, any property damage exceeding \$300, incidents that affect Park resources, and any known or suspected violations of the law as soon as possible after the incident occurs. A Park Ranger will investigate all visitor and concession employee accidents or incidents. The Concessioner and its employees will fully cooperate in any accident/incident investigation. In case of an emergency, the Concessioner must call Park Dispatch or 911.

**B) Summary of Initial and Recurring Due Dates**

The following table summarizes most of the reporting responsibilities of the Concessioner.

Initial	Reference	Schedule	Due Date
Balance Sheet	Contract Sec 7)(c)(1)	Initial	Within 90 days of execution of Contract, or Contract effective date
Driver List	Op Plan Sec. 3)G)(6)	Initial and Annually	Within 120 days of Contract effective date and annually by May 1
Risk Management (Safety) Program	Op Plan Sec. 3)K)(1)	Initial and Annually	Within 120 days of Contract effective date and annually by April 1
Service Animal Policy	Op Plan Sec. 3)F)(6)(b)	Initial	Within 90 days of Contract effective date and updated as needed
Cancellation, Refund, Deposit and Payment Policy	Op Plan Sec. 3)B)(3)(a)	Initial	Within 60 days of Contract effective date and updated as needed.
Tour Outlines and Interpretive Materials	Op Plan Sec. 2)C)(3)	Initial	Within 90 days of Contract effective date and updated as needed
Request for Approval of Advertisement or Promotional Material	Op Plan Sec. 3)M)(1)(a)	Prior to publication or updates	At least 30 days prior to publication
Franchise Fee Payment	Contract Sec. 5(b)(1)	Annually	The minimum franchise fee of \$500 is due by Oct. 1, with the balance, if any, due within 60-days after the end of the normal operating season
Annual Financial Report	Contract Sec. 7)(b)(1)	Annually	90 days after the last day of the fiscal year

**Attachment B-4: Guided Land Tour Operating Standards**

**Description** - Land tours include motorized transport, such as busses, jeeps, snowmobiles, and vans; and non-motorized transport, such as bicycles and hiking. Trips vary in length from hours to days and may involve camping and meal services. Ticket offices and departure embarkation points may be located within the park; applicable standards to facilities outside the Park will depend on the contract. Repairs and maintenance may be performed in the park. The Department of Transportation conducts vehicle inspections; these standards evaluate visitor services.

The Service will evaluate the Concessioner under CC-LIBI003-18 only on those standards that are applicable to its operation, as described in the main body of the Operating Plan. As the Operating Plan states, items 1-23, 25-38, and 57-62 are not applicable, and therefore, the Concessioner will not be evaluated on these standards.

In general, the following definitions apply to these terms throughout the standards:

Appropriate:	Suitable to the level of service or as specified in the operating plan
Clean:	Free from dirt, marks, stains, or unwanted matter
Neat:	Arranged in an orderly, tidy manner
Operational:	In use or ready for use
Well-maintained:	Kept in good order or condition

Standard Number		A, B, C Ranking	Primary Focus Area
	<b>FACILITY STANDARDS</b>		
	<b>Ticket Office— Exterior</b>		
4	<b>Building Structure</b> —Building exterior is well-maintained and surfaces are treated to protect against deterioration. Roofs, gutters and downspouts are well-maintained and clear of obstructions. Rooftop ventilation and other systems are well-maintained and operational.	B	CC
2	<b>Landscaping</b> —Landscaping conforms to park standards. Noxious weeds and invasive plants are removed in accordance with an approved landscape plan.	C	CC
3	<b>Parking</b> —Paved parking is well-maintained and spaces are marked. Gravel or dirt parking is graded to remove drainage ruts and holes.	B	CC
4	<b>Pathways, Sidewalks, Ramps, Steps and Stairs</b> —Pathways, sidewalks, ramps, steps, and stairs are unobstructed. Surfaces are well-maintained and free of tripping hazards. Hand railings are well-maintained and sturdy enough to support	A	LS
5	<b>Lighting/Illumination</b> —Lighting is adequate and appropriate. Light fixtures are well-maintained and operational.	B	LS
6	<b>Public Signs</b> —Public signs are appropriately located, accurate, and well-maintained. Permanent signs are consistent with NPS standards, and were approved prior to installation. Temporary signs are professional in appearance. Signage is neatly arranged.	B	VS
7	<b>Utilities</b> —Service areas are neat and well-maintained. Utility lines are neat and protected from foot or vehicular traffic, and hidden from view as much as possible. Electrical panels are secured and unobstructed.	B	CC



Standard Number		A, B, C Ranking	Primary Focus Area
8	<b><u>Trash and Recycling</u></b> —Sufficient trash containers are conveniently located throughout the parking area. Waste does not accumulate in trash containers to the point of overflowing. Refuse is stored in covered, waterproof receptacles in accordance with NPS standards. Market available recyclable products are collected and recycled. Central refuse collection sites are screened from public view.	B	RP
9	<b><u>Flags</u></b> —National, state, or park flags displayed are in good condition and adhere to the display guidelines of the United States Flag Code. Flags are a minimum size of 3'x 5'. Flags of a maritime or nautical nature are displayed below the National Flag. Decorative flags and banners are appropriate and well maintained.	C	VS
10	<b><u>Vending</u></b> —Vending machines are well maintained and operational. Machine displays relate to park themes or are generic in nature. Out of service machines have computer-generated signage. Machines must accept \$1 coins and applicable	C	VS
	<b>Ticket Office – Interior</b>		
11	<b><u>Ticketing/Waiting Area</u></b> —Ticket office entrance and waiting area furnishings are clean and well maintained. Literature racks are neat, stocked, well maintained, and include park, safety, and concession information.	B	CC
12	<b><u>Payment Stations</u></b> - Adequate Point of Sale (POS) stations are operational and well- maintained.	B	VS
13	<b><u>Windows, Doors, Walls, Ceilings, Floors, and Screens</u></b> —Floors, walls, and ceilings are clean and well maintained. Doors, windows, and screens are clean, operational, and fit adequately to exclude rodents and insects. Windows and doors do not have excessive signage.	B	CC
14	<b><u>Public Restrooms</u></b> —Restrooms are clean, ventilated, well illuminated, and well-maintained. Restrooms have hot and cold running water. Toilets, sinks, and urinals are clean, free of stains and chips, and operational. Toilet tissue and disposable towels or hand dryers are available. Soap is provided in bulk dispensers. Women's or unisex restrooms have a covered waste receptacle in every stall. The disposal containers are clean and emptied at least daily. A cleaning inspection log is	B	CC
15	<b><u>Public Signs</u></b> - Public signs are appropriately located, accurate, and well-maintained. Permanent signs are consistent with NPS standards, and were approved prior to installation. Temporary signs are professional in appearance. Signage is neatly arranged.	B	VS
16	<b><u>Lighting</u></b> —Lighting is adequate and appropriate. Light fixtures are clean and operational, with no burned-out bulbs.	B	VS
17	<b><u>Ventilation/Climate Control</u></b> —Public spaces are adequately ventilated and maintained at a temperature consistent with visitor comfort.	B	VS
18	<b><u>Drinking Fountains</u></b> —Water fountains are clean, operational, and well-maintained. Water bottle filling stations are preferred.	C	CC
19	<b><u>Emergency Lighting/Exit Lights/Emergency Exits</u></b> —Exit lights are on emergency circuits and operating at all times. Emergency exits and routes are adequately marked and unblocked.	A	LS
20	<b><u>Fire Extinguishers</u></b> —Fire extinguishers are accessible, signed and correctly located, with operating instructions and current inspection tags.	A	LS

Standard Number		A, B, C Ranking	Primary Focus Area
21	<b>Smoke Detectors</b> —Operational single station, hard-wired smoke detectors are present and in compliance with NFPA standards. Battery-operated detectors are tested monthly and batteries are replaced yearly.	A	LS
22	<b>Fire Alarms and Pull Boxes</b> —Fire alarms and pull boxes are visible and accessible.	A	LS
23	<b>First Aid Kit</b> —A first aid kit is available, stocked, marked, and staff can easily locate the kit.	B	LS
	<b>Boarding</b>		
24	<b>Pre-Boarding Areas</b> - Waiting areas are appropriate, adequate, and as safe as possible. Queuing areas are designed to facilitate boarding.	A	VS
25	<b>Boarding Signs</b> - Accurate schedule and boarding times are displayed. Chalk or dry erase boards are acceptable if neatly designed, hand writing is legible, and the park has approved use.	B	VS
	<b>Vehicle Maintenance Area/Building</b>		
26	<b>Building Structure</b> —Maintenance buildings are well-maintained and surfaces are treated to protect against deterioration. Roofs, gutters and downspouts are well-maintained and clear of obstructions. Rooftop ventilation and other systems are well-maintained and operational.	B	EE
27	<b>Garbage and Trash/Recycling</b> —Sufficient trash containers are conveniently located throughout the maintenance area. Waste does not accumulate in trash containers to the point of overflowing. Dumpster drain holes are plugged. All market-available recyclable products are collected and recycled.	B	RP
28	<b>Site Utilities and Equipment</b> —Service and delivery areas are neat, well-maintained, and hidden from public view as much as possible.	C	EE
29	<b>Garage Bay Doors</b> —Bay doors are operational, well-maintained, and equipped with exhaust escape and safety operating devices. Garage is secure.	A	EE
30	<b>Lifts</b> —Vehicle lifts are operational and well-maintained. A lift inspection log is maintained.	A	EE
31	<b>Organization</b> —The maintenance area is neat, and tools and equipment are stored in orderly fashion.	B	EE
32	<b>Storage</b> —Parts and supplies are stored in neatly and securely. Parts are stored off the floor on industrial shelves suitable for the weight of the parts and physical environment in which the shelves are used.	B	EE
33	<b>Floors</b> —The maintenance area floor is free of clutter and tripping hazards such as extension cords, power hoses, etc. Floor cracks are filled to prevent seepage.	B	LS
34	<b>Shop Lighting</b> —Lighting is adequate to perform vehicle maintenance activities safely. Fixed ceiling lighting and portable lights are clean and operational with no burned out bulbs. Fluorescent light bulbs are contained in a clean protective cover.	B	EE
35	<b>Hazardous Materials</b> —Hazardous materials are collected, stored, and disposed of in compliance with state and federal laws, and in accordance with park-approved risk and environmental management plans.	A	LS
36	<b>Safety Data Sheets</b> —Current safety data sheets are visible, legible and readily accessible.	A	LS



Standard Number		A, B, C Ranking	Primary Focus Area
37	<b>Fire Extinguishers</b> - Operational fire extinguishers are accessible and located in compliance with NFPA standards and local codes. Fire extinguishers are appropriately signed, with operating instructions and current inspection tags.	A	LS
38	<b>Eye-Wash Stations</b> - Eyewash stations are placed in chemical work areas with instructions clearly posted.	A	LS
	<b>VEHICLE STANDARDS</b>		
	<b>Vehicles</b>		
39	<b>Condition</b> - Vehicles are operational, clean, and well-maintained.	A	CC
40	<b>Registration, Licensing and Insurance</b> - Vehicles and operators are licensed, registered, and insured in accordance with federal and state laws and regulations.	A	AL
41	<b>Identification</b> - Vehicle identification is in accordance with federal (Department of Transportation), state, or local laws. The company name and logo are visible.	A	AL
42	<b>Windows</b> - Windows are operational, clean, and well-maintained. Windows do not leak.	B	CC
43	<b>Doors</b> - Doors are operational and well-maintained.	B	CC
44	<b>Seats</b> - Seats are clean and well-maintained. Exposed seats are weather proof.	B	CC
45	<b>Storage</b> - Storage is adequate and appropriate.	B	CC
46	<b>Floors</b> - Surfaces are non-slip, clean, well-maintained, and free of trip hazards.	B	CC
47	<b>Public Signs</b> - Public signs are appropriately located, accurate, and well-maintained. Permanent signs are consistent with NPS standards, and were approved prior to installation. Temporary signs are professional in appearance.	C	VS
48	<b>Public Address System</b> - PA systems are operational, and announcements can be heard over the vehicle engines.	A	VS
49	<b>Ventilation/Climate Control</b> - Interiors are adequately ventilated and maintained at a temperature consistent with visitor comfort.	B	VS
	<b>Vehicle Safety</b>		
50	<b>Emergency Exits</b> - Emergency exits are marked, operational, and unobstructed.	A	LS
51	<b>Fire Extinguishers</b> - Fire extinguishers are accessible, appropriate, marked, and correctly located, with operating instructions and current inspection tags.	A	LS
52	<b>Communication</b> - Emergency radios, satellite telephones, mobile telephones are adequate and operational.	A	LS
53	<b>Vehicle Capacity</b> - DOT maximum passenger limits are not exceeded.	A	AL

Standard Number		A, B, C Ranking	Primary Focus Area
	<b>Passenger Safety</b>		
54	<b>Visitor Safety Orientation</b> - Safety briefing includes: <ul style="list-style-type: none"> <li>• Nature and demands of trip</li> <li>• Movements (standing, arms out of windows, etc.) while driving</li> <li>• How to get on and off the vehicle</li> <li>• Proper use of safety belts</li> <li>• Emergency exit locations</li> <li>• Hydration</li> <li>• Sanitation</li> <li>• Park regulations (natural and cultural resources, trash, etc.)</li> <li>• Briefing content is approved by the park.</li> </ul>	A	LS
55	<b>Safety Belts</b> - Safety belts are appropriate, adequate, and well-maintained.	A	LS
56	<b>First Aid Kit</b> - A first aid kit is appropriate, available, and stocked. Motion sickness remedies are available.	B	LS
	<b>Camping Equipment – Overnight Trips</b>		
57	<b>Overnight Camping</b> - Overnight gear and equipment is appropriate, adequate, clean, and well-maintained. Overnight F&B is in accordance with Backcountry F&B	B	CC
58	<b>Water Purification</b> - Water purifying kits are appropriate, adequate, and operational. Water storage is adequate for the duration of the trip and the number of passengers and staff.	A	LS
59	<b>Overnight Emergency Equipment</b> - Appropriate emergency medical equipment is adequate, well-maintained, and operational. Equipment may include back boards, neck restraints, splints, inflatable casts, etc., for medical stabilization and	A	LS
	<b>Food and Beverage – Day Trips</b>		
60	<b>Tableware/Drinkware</b> - Tableware and drinkware are disposable. Recyclable/ compostable/ bio-degradable materials are preferred. Styrofoam is not permitted.	B	VS
61	<b>Temperatures</b> - Food and beverages are maintained at appropriate temperatures, and are properly labeled and packaged.	A	AL
62	<b>Healthy Foods</b> - Appropriate food and beverage items are available that meet the NPS Healthy Foods requirements.	B	VS
	<b>Environmental Protection</b>		
63	<b>Noise</b> - Radios or similar entertainment devices are not allowed. Noise levels are kept to a minimum so as not to impair the experience of others or impact wildlife.	B	VS
64	<b>Grounds</b> - Grounds are monitored prior to leaving a site to ensure that no garbage or debris is left in the vicinity.	A	RP
65	<b>Garbage and Trash/Recycling</b> - Trash is maintained to not attract wildlife or vermin. Trash is collected after each meal service, contained in a water- and wildlife-proof container, and transported off-site. Recyclables are separated, and refuse is disposed of in accordance with public health, state and local codes.	A	RP
66	<b>Sanitation</b> - Appropriate river toilet boxes (or equivalent) are water- and wildlife proof, and well-maintained. Adequate toilet paper and hand-washing or hand sanitizer are appropriate. Human waste disposal procedures are followed in accordance with park and public health requirements.	A	RP

Standard Number		A, B, C Ranking	Primary Focus Area
67	<b>Smoking Policy</b> - No smoking is permitted on or within 25' of the vehicle. A portable weather and windproof receptacle is provided at stops.	A	AL
	<b>OPERATIONAL STANDARDS</b>		
	<b>Accessibility</b>		
68	<b>Accessibility</b> - Vehicles, facilities, and services meet the requirements of the Americans with Disabilities and Architectural Barriers Acts and all other applicable laws related to accessibility.	A	AL
	<b>Ticketing Services</b>		
69	<b>Availability</b> - Reservations are available via telephone, mail, and fax during business hours.	B	VS
70	<b>Knowledge of Ticketing Staff</b> - Staff provide accurate information about rates, cancellation policies, departure and arrival times, amenities and services, local attractions, access, etc. Matching information is available on the concessioner's website.	B	VS
71	<b>Confirmation</b> - Reservation calls include a confirmation number. E-mail is sent to confirm the reservation and provide park information.	B	VS
72	<b>Payment Methods</b> - Credit cards are honored and include MasterCard, Visa, American Express, and Discover. Debit cards and other payment methods (travelers' checks, personal checks, and gift cards) are accepted at the concessioner's discretion or at the direction of the Service.	B	VS
73	<b>Cancellations</b> - Visitor cancellation and refund policy is clearly stated in the reservation, and is approved by the park.	B	VS
74	<b>Trip Cancellation</b> - Trip cancellation policy includes notification and refund procedures, and is approved by the park.	A	VS
75	<b>Lost and Found</b> - Items found are logged and secured in a designated location. Records are maintained and procedures established to ensure prompt, accurate responses to passenger inquiries concerning lost articles.	B	VS
	<b>Park Requirements</b>		
76	<b>Idling</b> - Park vehicle idling rules are obeyed.	B	RP
77	<b>Restricted Areas and Protection of Natural and Cultural Resources</b> - Access regulations to restricted areas are enforced. Natural and cultural resources or artifacts are not disturbed or removed.	A	RP
78	<b>Use Allocation</b> - Park use allocation requirements (carrying capacities) are adhered to.	A	RP
79	<b>Wildlife</b> - Park regulations prohibiting the feeding or disturbing of wildlife is enforced. Passengers are briefed regarding how to avoid unwanted interactions. If required, staff report wildlife sightings to the park.	A	RP
80	<b>Trip Log and Reporting Requirements</b> - Trip logs are appropriate, accurate, and well-maintained. Trip logs are provided to the park upon request, or submitted according to schedule.	B	VS
	<b>Interpretive Services</b>		

Standard Number		A, B, C Ranking	Primary Focus Area
81	<b>Interpretive Services Content</b> - Interpretive formats and content are approved by the park.	B	VS
82	<b>Interpretive Presentations</b> - Presentations are appropriate, accurate, and organized. Guide staff have NPS required interpretive training and certifications.	B	VS
83	<b>Activities</b> - Advertised activities are available. Visitor acknowledgment of risk form is approved by the park. Waivers of liability are not used.	C	VS
	<b>Personnel</b>		
84	<b>Staffing Levels</b> - Facilities and services are sufficiently staffed to prevent avoidable delays in service.	A	VS
85	<b>Licenses</b> - Appropriate class drivers licenses are current.	A	LS
86	<b>Employee Attitude</b> - Employees project a friendly and helpful attitude, and are capable and willing to answer customer questions (about both job and general park information).	B	VS
87	<b>Employee Appearance</b> - Employees wear a uniform or name tag identifying them as concession staff. Uniforms are commensurate with the type of service provided and approved by the park. Employees present a neat, clean, and	B	VS
88	<b>Employee Training Programs</b> - An active training program for employees in the development of necessary skills and procedures is implemented. Training emphasizes work performance and, as appropriate to the position, covers requirements such as technical training, emergency response, cleanliness, employee attitude, NPS philosophy and policy. Training is documented.	B	VS
	<b>Rates</b>		
89	<b>Approved Rates</b> - Rates and other customer charges do not exceed those approved by the superintendent.	A	VS

### **Ranking Definitions**

**Major:** First Priority (A) conditions or practices create or have the potential to exert a **significant** impairment to visitor or employee health and safety, park resources, visitor services or visitor enjoyment, Concession Facilities, or associated personal property.

**Moderate:** Second Priority (B) conditions or practices create or have the potential to exert a **moderate** impairment to visitor or employee health and safety, park resources, visitor services or visitor enjoyment, Concession Facilities, or associated personal property.

**Minor:** Third Priority (C) conditions or practices create or have a potential to exert a **minor** impairment to visitor or employee health and safety, park resources, visitor services or visitor enjoyment, Concession Facilities, or associated personal property.

### **Focus Area Acronyms**

LS Life Safety/ Health  
 RP Resource Protection  
 VS Visitor Satisfaction  
 CC Cleanliness/Condition  
 AL Accessibility/Legal Requirement





## EXHIBIT C

## ASSIGNED GOVERNMENT PERSONAL PROPERTY

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

Property Number	Description of Item
NONE	NONE

Approved, effective 16 OCT, 2017

By: Sue E. Masica  
Sue E. Masica  
Regional Director, Intermountain Region





## EXHIBIT D INSURANCE REQUIREMENTS

### SEC. 1. INSURANCE REQUIREMENTS

The Concessioner shall obtain and maintain during the entire term of this Contract, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of the Contract. No act of the Concessioner, its agents, servants, or employees may impair any and all insurance coverage provided for the benefit of, or evidenced to the Service. The Concessioner must provide the Service with an unconditional 30-day advance notice of cancellation of coverage or policy terms on all liability and workers' compensation insurance policies.

The amounts of insurance, limits of liability, and coverage terms included are not intended as a limitation of the Concessioner's responsibility or liability under the Contract, but rather an indication as to the minimum types, amounts, and scope of insurance that the Service considers necessary to allow the operation of the concession at the Area. Nevertheless, if the Concessioner purchases insurance in addition to the limits set forth herein, the Service will receive the benefit of the additional amounts of insurance without cost to the Service.

### SEC. 2. LIABILITY INSURANCE

The Concessioner must maintain the following minimum liability coverages, all of which, unless noted herein, are to be written on an occurrence form of coverage. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with excess or umbrella liability as explained below.

#### (a) Commercial General Liability

- (1) The Concessioner must obtain coverage for bodily injury, property damage, contractual liability, personal and advertising injury liability, and products and completed operations liability. The Concessioner must provide the following minimum limits of liability:

Per Occurrence	\$2,000,000
Personal and Advertising Injury Liability	\$2,000,000
General Aggregate	\$3,000,000
Products and Completed Operations Aggregate	\$3,000,000
Medical Payments	\$1,000

- (2) The liability coverages may not contain the following exclusions/limitations:

Athletic or Sports Participants  
Contractual Liability  
Personal and Advertising Injury exclusion or limitation  
Products and Completed Operations

#### (b) Automobile Liability

The Concessioner must provide coverage for bodily injury and property damage arising out of the ownership, maintenance or use of "any auto," Symbol 1. Use of Symbol 7, "specifically described autos," is acceptable when an insurer will not provide Symbol 1 because that insurer does not provide coverage for all of the Concessioner's owned "autos." Where there are no owned autos, the Concessioner will provide coverage for "hired autos" and "non-owned autos," Symbols 8 and 9. Garage-keepers' liability is to be included on a "direct" basis for all Concessioner operations handling, parking or storing automobiles owned by others for a fee.

Combined Single Limit Each Accident

\$3,000,000

**(c) Excess Liability or Umbrella Liability**

The Concessioner may use an Excess or Umbrella Liability policy to achieve the commercial general liability and automobile liability limits set forth above. The limit of liability under the excess policy must be in an amount that together with the subordinate policy meets the minimum limit of liability required.

The Concessioner is not required to provide excess liability or umbrella liability coverage, but may use it to supplement any insurance policies obtained to meet the minimum requirements of the Contract. If maintained, the Concessioner will provide coverage for bodily injury, property damage, personal injury, or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage must be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance must be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Umbrella Liability policy.

**(d) Liquor Liability (not applicable)**

The Concessioner must provide coverage for bodily injury and property damage including damages for care, loss of services, or loss of support arising out of the selling, serving, or furnishing of any alcoholic beverage.

Each Common Cause Limit

\$

Aggregate Limit

\$

**(e) Watercraft Liability (or Protection and Indemnity) (not applicable)**

The Concessioner must provide coverage for bodily injury and property damage arising out of the use of any watercraft.

Each Occurrence Limit

\$

Tower's liability shall be maintained at the same each occurrence limit if the Concessioner tows or transports non-owned vessels by water.

**(f) Environmental Impairment Liability (or Pollution Liability) (not applicable)**

The Concessioner will provide coverage for bodily injury and property damage arising out of pollutants or contaminants on-site and off-site and for cleanup.

Each Occurrence or Each Claim Limit

\$

Aggregate Limit

\$

**(g) Aircraft Liability (not applicable)**

The Concessioner must provide coverage for bodily injury (including passengers) and property damage arising out of the use of any aircraft.

Each Person Limit

\$

Property Damage Limit

\$

Each Accident Limit

\$

The Concessioner must maintain airport liability insurance at a limit of at least \$ if the Concessioner maintains landing facilities for use by third parties. Hangerkeeper's liability shall be maintained

at a limit sufficient to cover the maximum estimated value of non-owned aircraft in the Concessioner's care, custody or control if the Concessioner provides aircraft storage to third parties.

**(h) Professional Liability, e.g. dive instructor, massage therapist (not applicable)**

The Concessioner must maintain, or cause professionals working on its behalf to maintain, professional liability insurance for all professional services provided by or on behalf of the Concessioner.

Each Occurrence Limit	\$
Aggregate Limit	\$

**(i) Deductibles/Self-Insured Retentions**

The Concessioner's self-insured retentions or deductibles on any of the above described liability Insurance policies (other than umbrella liability, environmental impairment liability or professional liability, if maintained) may not exceed \$5,000 without the prior written approval of the Director. Deductibles or retentions on umbrella liability, environmental impairment liability and professional liability may be up to \$25,000.

**(j) Workers' Compensation and Employers' Liability**

The Concessioner must obtain coverage that complies with the statutory requirements of the state(s) in which the Concessioner operates. The employer's liability limit will not be less than \$1,000,000.

If the Concessioner's operations include use of watercraft on navigable waters and employ persons in applicable positions, a Maritime Coverage Endorsement must be added to the Workers' Compensation policy, unless coverage for captain and crew is provided in a Protection and Indemnity policy.

If Concessioner operations are conducted in proximity to navigable waters and employ persons in applicable positions, United States Longshore and Harbor Workers' Compensation Act coverage must be endorsed onto the Workers' Compensation policy.

**SEC. 3. INSURANCE COMPANY MINIMUM STANDARDS**

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

- (1) All insurers for all coverages must be rated no lower than A- by the most recent edition of Best's Key Rating Guide (Property-Casualty edition), unless otherwise authorized by the Service.
- (2) All insurers for all coverages must have a Best's Financial Size Category of at least VII according to the most recent edition of Best's Key Rating Guide (Property-Casualty edition), unless otherwise authorized by the Service.

**SEC. 4. THIRD PARTY INSURANCE**

Concessioners entering into contracts with third parties for various services or activities that the Concessioner is not capable of providing or conducting, must ensure that each third party retained for such work maintain an insurance program that adequately covers the activity and comply with all the requirements applicable to that party's own insurance.

**SEC. 5. CERTIFICATES OF INSURANCE**

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

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

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

The certificate of insurance shall contain a notation by the Concessioner's insurance representative that the insurance coverage represented therein complies with the provisions of the Contract, including this Exhibit.

#### **SEC. 6. STATUTORY LIMITS**

In the event that a statutorily required limit exceeds a limit required herein, the Concessioner must maintain the higher statutorily required limit, which shall be considered as the minimum to be maintained. In the event that the statutorily required limit is less than the limits required herein, the limits required herein apply.

## **EXHIBIT E TRANSITION TO A NEW CONCESSIONER**

### **SEC 1. GENERAL**

The Director and the Concessioner hereby agree that, in the event of the expiration or termination of this Contract for any reason (hereinafter "Termination" for purposes of this Exhibit) and the Concessioner is not to continue the operations authorized under this Contract after the Termination Date, the Director and the Concessioner in good faith will fully cooperate with one another and with the new concessioner or concessioners selected by the Director to continue such operations ("New Concessioner" for purposes of this exhibit), to achieve an orderly transition of operations in order to avoid disruption of services to Area visitors and minimize transition expenses.

### **SEC. 2. COOPERATION PRIOR TO THE TERMINATION DATE**

At such time as the Director may notify the Concessioner that it will not continue its operations upon the Termination of this Contract, the Concessioner, notwithstanding such notification, shall undertake the following tasks.

#### **(a) Continue Operations**

The Concessioner shall continue to provide visitor services and otherwise comply with the terms of the Contract in the ordinary course of business and endeavor to meet the same standards of service and quality that were being provided previously with a view to maintaining customer satisfaction.

#### **(b) Continue Bookings**

(1) The Concessioner shall continue to accept all future bookings for any hotel, lodging facilities, or other facilities and services for which advance reservations are taken. The Concessioner shall not divert any bookings to other facilities managed or owned by the Concessioner or any affiliate of the Concessioner. The Concessioner shall notify all guests with bookings for any period after the Termination Date that the New Concessioner will operate the facilities and services.

(2) Promptly following notification to the Concessioner by the Director of the selection of the New Concessioner, the Concessioner shall provide the New Concessioner with a copy of Concessioner's reservation log for visitor services as of the last day of the month prior to the selection of the New Concessioner. The Concessioner thereafter shall update such log on a periodic basis (but no less frequently than 30 days) until the Termination Date. The reservation log shall include, without limitation, the name of each guest, and the guest's address, contact information, dates of stay, rate quoted, amount of advance deposit received, and confirmation number, if applicable.

#### **(c) Designating a Point of Contact and Other Actions**

(1) The Concessioner shall designate one of the Concessioner's executives as the point of contact for communications between the Concessioner and the New Concessioner.

(2) The Concessioner shall provide the New Concessioner with access to all Concession Facilities, including "back-of-house areas". The Concessioner also shall provide the New Concessioner copies of the keys to all Concession Facilities.

(3) The Concessioner shall provide the Director and the New Concessioner full access to the books and records, licenses, and all other materials pertaining to all Concession Facilities and the Concessioner's operations in general.

(4) The Concessioner shall provide the Director and the New Concessioner with copies of all maintenance agreements, equipment leases (including short-wave radio), service contracts, and supply contracts, including contracts for on-order merchandise (collectively "contracts"), and copies of all liquor licenses and other licenses and permits (collectively "licenses").

(5) The Concessioner shall allow the New Concessioner to solicit and interview for employment all of the concessioner's salaried and hourly employees, including seasonal employees, through a coordinated process implemented by the Concessioner.

(6) The Concessioner shall not enter into any contracts or agreements that would be binding on any Concession Facilities or concession operations in general after the Termination Date without the prior written agreement of the New Concessioner.

#### **(d) Financial Reports**

Within 30 days after receipt of the notification of the selection of the New Concessioner, The Concessioner shall provide the New Concessioner with a financial report with respect to the operation of the Concession Facilities and the Concessioner's operations in general as of the last day of the month prior to receipt of such notification. The Concessioner, thereafter, shall update such financial report on a periodic basis (but no less frequently than 30 days) until the Termination Date. Such financial report shall include, at a minimum: a balance sheet for the Concession Facilities, if any; a schedule of pending accounts payable; and a schedule of pending accounts receivable.

#### **(e) Personal Property List**

The Concessioner shall provide the New Concessioner with a complete, detailed, and well-organized list of physical inventory, supplies, and other personal property owned or leased by the Concessioner in connection with its operations under the Contract (including a list of such items that are on order). The Concessioner must provide the list to the New Concessioner within 30 days following receipt of the notification of the selection of the New Concessioner. The Concessioner, thereafter, shall update the list on a monthly basis. The Concessioner shall designate those items that the Concessioner believes are essential to maintaining the continuity of operations or the special character of the concession operations. The Concessioner shall assist the New Concessioner in reviewing and validating the list.

#### **(f) Other Information and Reports**

The Concessioner shall provide the New Concessioner with all other information and reports as would be helpful in facilitating the transition, including, without limitation, a list of maintenance records for the Concessioner's operations for the period of one year prior to notification of the selection of the New Concessioner. The Concessioner must also provide complete information on the following to the New Concessioner: utilities, including gas and electric; telephone service; water service; and specific opening and closing procedures. The Concessioner must provide all such information within 30 days after receipt of notification of the selection of the New Concessioner and update the information periodically (but no less frequently than 30 days) until the Termination Date.

#### **(g) Other Cooperation**

The Concessioner shall provide the Director and the New Concessioner with such other cooperation as reasonably may be requested.

### **SEC. 3. COOPERATION UPON THE TERMINATION DATE**

Upon the Termination Date, the Concessioner shall undertake the following activities.

**(a) Transfer of Contracts and Licenses**

The Concessioner shall cooperate with the transfer or assignment of all contracts and licenses entered into by the Concessioner that the New Concessioner elects to assume.

**(b) Reservation Systems**

The Concessioner shall cooperate with the transfer of reservation information by:

- (i) Providing the New Concessioner with an update of the reservation log through the Termination Date;
- (ii) Disconnecting its operations from the Concessioner's centralized reservation system, if any; and
- (iii) Assisting the New Concessioner in transitioning to the New Concessioner's reservation system.

**(c) Fees and Payments**

No later than 10 days after the Termination Date, the Concessioner shall provide the Director with an itemized statement of all fees and payments due to the Director under the terms of the Contract as of the Termination Date, including, without limitation, all deferred, accrued, and unpaid fees and charges. The Concessioner, within 10 days of its delivery to the Director of this itemized statement, shall pay such fees and payments to the Director. The Concessioner and the Director acknowledge that adjustments may be required because of information that was not available at the time of the statement.

**(d) Access to Records**

The Concessioner shall make available to the Director for the Director's collection, retention, and use, copies of all books, records, licenses, permits, and other information in the Concessioner's possession or control that in the opinion of the Director are related to or necessary for orderly and continued operations of the related facilities and services, notwithstanding any other provision of this Contract to the contrary.

**(e) Removal of Marks**

The Concessioner shall remove (with no compensation to Concessioner) all items of inventory and supplies as may be marked with any trade name or trademark belonging to the Concessioner within 30 days after Termination.

**(f) Other Cooperation**

The Concessioner shall provide the Director and the New Concessioner with such other cooperation as reasonably may be requested.





**EXHIBIT F**  
**INTELLECTUAL PROPERTY LICENSED MARKS**

Little Bighorn Battlefield National Monument  
Reno-Benteen Battlefield  
Last Stand Hill  
Custer's Last Stand  
Deep Ravine Trail

