APPENDIX E

MEMORANDUM OF AGREEMENT

BETWEEN THE

OGLALA SIOUX TRIBE OF SOUTH DAKOTA

AND THE

NATIONAL PARK SERVICE OF THE DEPARTMENT OF THE INTERIOR

TO FACILITATE ESTABLISHMENT, DEVELOPMENT,

ADMINISTRATION, AND PUBLIC USE OF THE

OGLALA SIOUX TRIBAL LANDS, BADLANDS NATIONAL MONUMENT

 This Agreement, which shall take effect upon its approval by the Secretary of the Interior, is between the Oglala Sioux Tribe of South Dakota (hereinafter referred to as “Tribe”), and the National Park Service of the Department of the Interior (hereinafter referred to as “Service”).

 That wherever in this Agreement the Service is referred to, the term shall include the duly authorized representatives of the Service and wherever the Tribe is referred to, the term shall include the duly authorized representatives of the Oglala Sioux Indian Tribe, including the Oglala Sioux Parks Board, Inc.

 WITNESSETH:

 WHEREAS, the Congress has by Public Law 90-468 authorized the additions to Badlands National Monument (hereinafter referred to as “Badlands South Unit”), consisting of lands within the exterior boundaries of the Pine Ridge Indian Reservation in the State of South Dakota, which will be held by the United States in trust for the Tribe, all as depicted on the drawing entitled “Proposed Additions of Badlands National Monument” No. NM-BL-7021B, which is on file in the office of the National Park Service, Department of the Interior; and authorized the Service to administer the lands included in the grant hereunder pursuant to the provisions of Public Law 90-468 in accordance with applicable laws and Department of the Interior regulations; and

 WHEREAS, pursuant to Public Law 90-468, the Secretary of the Interior is, simultaneous with the execution of this Agreement, conveying to the Oglala Sioux Tribe, to be held hereafter by the United States in trust for the Oglala Sioux Tribe, all Federal lands and interests in lands within the former Badlands Air Force gunnery range, subject to the provisions of Public Law 90-468.

 The Tribe and the Service hereby agree:

1. The service may include the Tribal lands within the boundaries of the Badlands National Monument as authorized by Public Law 90-468. The right of administration herein granted by the Tribe to the Service is granted solely for the purpose of providing public recreation and for the development and administration by the Service of administrative and public use facilities, subject to the limitations and conditions contained in this Agreement. Nothing contained in this Agreement shall be construed as impairing the ownership of any of these lands by the United States in trust for the Oglala Sioux Tribe.
2. The Tribe and persons duly authorized by the Tribe may make such use of all the land within the Badlands South Unit in the same manner as the Tribe and its members now have the right to make use of that portion of the land within the South Unit which has heretofore been held by the United States in trust for the Oglala Sioux Tribe, subject to the express relinquishments contained in this Agreement and the following limitations:
	1. The existing rights of the holders of life estates under Public Law 90-468 shall not be impaired; b) the Tribe does not have the right to develop minerals on land reacquired under Public Law 90-468; c) hunting rights within the Monument may be exercised only by members of the Oglala Sioux Tribe, and then only in accordance with the provisions of Section 3.
3. The right of the Tribe to hunt on the Reservation lands is recognized. No hunting on the Badlands South Unit by non-members will be allowed. In the interest of promoting, perpetuating, and preserving the species of animals which do exist within the Badlands South Unit the rules set forth in Appendix A are agreed to as governing the exercise of Tribal hunting rights. The Service intends to reintroduce species of animals, including but not limited to buffalo and antelope, into the Badlands South Unit. Any surplus animals will be given to the Tribe for restocking purposes outside the Monument boundaries.
4. The Tribe shall have the preferential right to contract for, develop, and/or operate concession facilities which may be included within the Badlands National Monument, provided that upon written notice duly given to the Tribe by the Service of the need for such facilities, the Tribe shall within six months of receipt of such notice inform the Service of its intent to exercise the preferential right.
5. Grazing and other agricultural uses of the land within the Badlands South Unit will be maintained at the present level, subject to existing rules and regulations, except that responsibility for enforcement of these regulations shall be vested in the Service. Changes in the existing uses or carrying capacity will be subject to the applicable regulations of the Bureau of Indian Affairs.
6. The Tribe will study the possibility of phasing out livestock grazing within the Badlands South Unit and replacing it through reintroduction of the buffalo. If it is concluded that the value of surplus buffalo would make it economically advantageous for the Tribe to reduce or eliminate livestock grazing within the Badlands South Unit, it will consider doing so.
7. The Service and the Tribe will work toward the objective of having members of the Tribe fill all Service positions in the Badlands South Unit. To achieve that end, the Service will encourage and assist Tribal members to train and qualify for all positions in the Badlands South Unit and within the Badlands North Unit as well, which are established pursuant to Civil Service regulations. Special emphasis will be given by the Service to the training of Oglala Sioux employees to fill vacancies in professional positions. Furthermore, qualified members of the Tribe will be given preferential rights to employment in the Badlands South Unit where the Service contracts for the performance of services, as permitted under Section 703 (i) of the Civil Rights Act of 1964, as amended.
8. The Tribe and duly authorized members of the Tribe shall have the right to produce and sell native handicraft objects at public recreational facilities which are located within the Badlands National Monument in accordance with concession contracts. The service will encourage concessioners in the Badlands National Monument to purchase available handicraft items from the Tribe.
9. The Service shall render advisory assistance to the Tribe in the planning of recreation facilities or development on Pine Ridge Reservation lands outside the Badlands South Unit to the extent that appropriated funds and personnel are available therefore. Moreover, and in accordance with the terms of Section 6 of Public Law 90-468, if the Tribe offers to convey to the Secretary of the Interior certain tribal lands within the Pine Ridge Indian Reservation, but outside of the Badlands National Monument for the purpose of erecting thereon a visitors center, the Service shall accept such land and shall thereafter, subject to the availability of appropriated funds and approval of building plans by both the Tribe and the Service, which approval shall not unreasonably be withheld, proceed to erect the visitors center at the earliest reasonable date. To this context the Service shall cooperate with the Tribe to amending the exisiting[sic] Master Plan for the Badlands National Monument to include recognition of development and recreational facilities in the Reservation area, subject to agreement between the Service and the Tribe.
10. The Service shall administer the lands included in the Badlands South Unit in accordance with the laws applicable to the Badlands National Monument and the rules in effect there now, or such amendments thereto as may be mutually agreed upon, to provide for the care, maintenance, preservation, and restoration of features of prehistoric, historic, scientific, or scenic interest on such included Tribal lands, and to develop upon the said lands such roads, trails or other structures or improvements as may be necessary in connection with the administration, vistor[sic] use, and protection of the Badlands South Unit, in accordance with the Master Plan, including subsequent mutually agreed upon amendments thereto.
11. Members of the Tribe who seek entry to the Badlands South Unit will be admitted without charge, even if entrance fees are required of non-members.
12. The Tribe and its duly authorized members may transport livestock, supplies, or materials through the Badlands South Unit, except that the Service may, by agreement with the Tribe, which shall not unreasonably be withheld, impose reasonable conditions as to time and locations so that there will be no interference with public safety or reasonable public recreation use.
13. The Service shall cooperate with the Tribe in training programs designed to develop an understanding between representatives of both parties to this Agreement. Such programs shall cover the fields of interpretation, conservation, fire protection, search and rescue, law enforcement, and local history. The objectives of such programs shall be to improve the skills of Service personnel and Tribal members and enhance their employment opportunities.
14. The Service recognizes and respects the Tribe’s spiritual and religious beliefs. Members of the Tribe shall have unrestricted access in perpetuity to all areas of spiritual importance, which are identified in Appendix B, and which shall not be developed by the Service except with the Tribe’s consent.
15. The Service shall, upon request of the Tribe, assist the Tribe in controlling public use of Tribal lands adjacent to the Badlands South Unit, within the framework of the Service’s legal authority and subject to its available fund limitations and manpower ceilings.
16. The Service shall, upon request of the Tribe, cooperate in any efforts of the Tribe to obtain grants or loans, and to provide information relative to the Tribe’s eligibility under any Federal programs for grants for concession development purposes with the Badlands National Monument.
17. a) 1) If the Solicitor of the Department of the Interior shall determine that a dual entrance fee for visiting the Badlands National Monument may be charged by the Tribe and the United States under present law and this determination is not objected to by the cognizant Congressional committees within 60 days after submission thereto; or if the Solicitor rules that such dual fee may not be charged under present law but a statute is enacted by the United States authorizing the charging of such a dual fee; and

2) if a Federal entrance fee is actually imposed; the following rules shall govern:

i) Commencing with the tourist season of calendar year 1976, the Service shall collect a Tribal fee of $.50 per vehicle from all persons entering the Badlands National Monument by private non-commercial vehicle and $.25 from all persons entering the Monument by other means, if not exempted from the payment of such fee under the provisions of this Agreement. For the purposes of this Agreement the term “tourist season” shall mean, at least, the period from May 1 – October 31, except when mitigating circumstances exist which make collections during said period infeasible.

ii) Persons exempted from paying a National Park Service entrance fee because they exhibit, or accompany a person who exhibits a valid Golden Age passport, shall to the same extent be exempt from paying the Tribal entrance fee.

iii) Persons exempted from paying a National Park Service entrance fee by reason of their inclusion in one of the exceptions, exclusions, or exemptions set forth in 43 C.F.R. § 18.13 and all members of the Oglala Sioux Tribe shall be exempt from payment of the Tribal entrance fee.

iv) Persons exempted from paying a National Park Service single-visit entrance fee because they hold a valid Golden Eagle Passport, or because they accompany, or occupy the same private non-commercial vehicle as a person holding a valid Golden Eagle Passport shall be admitted without payment of a Tribal entrance fee. The Service shall keep a record of the number of admissions to the Monument pursuant to Golden Eagle Passports.

v) In 1977 and thereafter the Tribal entrance fee may, from time to time, as of the beginning of the tourist season, by agreement between the Tribe and the Service, be adjusted to reflect improvements in the programs offered to visitors to the Badlands National Monument and/or changes in the Consumer Price index, but the Tribal fee shall never be less than the Federal fee.

vi) The Tribe and the Service shall bear, in equal shares, the direct costs (i.e. salaries and other costs directly attributable to fee collection) of collecting the entrance fees.

vii) If the percentage of entrances to the Badlands National Monument pursuant to the Golden Eagle Passports should in any one tourist season exceed 25% of the total number of otherwise non-exempt entrances, the Tribal fee in the following year shall be fixed at such a level as would in the base year have resulted in the payment to the Tribe of 37.5% of the total net (i.e. – after deduction of direct collection costs) amount of Federal and Tribal fees which would have been collected if holders of Golden Eagle Passports and those accompanying them had paid the same entrance fees that were paid by other non-exempt visitors. Nothing contained in this subparagraph shall be construed to require the Service to make payments to the Tribe from any funds other than the entrance fees collected under the provisions of this paragraph.

1. However, if, in any tourist season, entry point net cash receipts do not suffice to prove the Tribe with its current year share plus any adjustments due from the previous season, this paragraph 17 shall be subject to renegotiation between the parties hereto in order to secure for the Tribe a fair share of the entry revenue which would be derived in the absence of Golden Eagle Passports.

viii) The Tribe’s share of fees collected at the Badlands National Monument shall be paid over to the Oglala Sioux’s Parks Board Inc. in semi-annual installments for use in the development for recreation purposes of the Badlands National Monument and the Pine Ridge Indian Reservation and the operation of recreational facilities therein. The Board shall, after consultation with the Service, prepare an annual budget projecting its activities, revenues and expenditures for each year and shall submit copies of this budget to the Service and the Tribal Council for comments and suggestions. The Board shall also have prepared an annual audit of its operation and shall provide copies of this audit to the Service and the Tribal Council.

b) 1) As long as a dual fee may not lawfully be charged, or 2) if the Service does not impose a Federal Fee, the following rules shall govern:

i) Between May 1 and October 31 annually except when mitigating circumstances exist which make collections during said period infeasible, and commencing with the calendar year 1976, the Service shall collect a Tribal fee of $1.00 per vehicle from all persons entering the South Unit of the Badlands National Monument by private non-commercial vehicle and $.50 from all persons entering the South Unit by other means, if not exempted from the payment of such fee under the provisions of this Agreement.

ii) Persons exempted from paying a National Park Service entrance fee by reason of their inclusion in one of the exceptions, exclusions, or exemptions set forth in 43 C.F.R. §18.13 and all members of the Oglala Sioux Tribe shall be exempt from payment of the Tribal entrance fee.

iii) The Tribe shall receive all proceeds of the Tribal fee collection except that the Service may deduct from the amount which it pays over to the Tribe the direct cost (i.e. salaries and other costs directly attributable to fee collection) of collecting the Tribal fee.

iv) In 1977 and thereafter the Tribal entrance fee may, from time to time, as of the beginning of the tourist season, be adjusted by the Tribe to reflect improvements in the programs offered to visitors to the South Unit of the Badlands National Monument and/or changes in the Consumer Price Index.

18. Authorized representatives of the Tribe and the Service shall meet at least twice each year to review mutual objectives and programs, and to consider other matters of mutual concern which affect the development, protection and management of the Badlands South Unit. Such review shall take into account the Master Plan objectives of the Service and the Tribe.

19. The Tribe and the Service, subject to available fund limitations and manpower ceilings, shall use their resources cooperatively to develop an interpretive program for and the public recreation resources of the Pine Ridge Indian Reservation, including the Badlands South Unit, which will make the maximum use of the prehistoric, historic, scenic, scientific, and human resources of the region for public understanding and application. The program shall, when possible; use qualified members of the Tribe for interpretation and shall carry out the Oglala Sioux theme or motif.

20. The parties shall agree on wildlife control measures and land use practices related thereto designed to preserve indigenous species, including but not limited to the black-footed ferret, in accordance with the Endangered Species Act of 1973 as amended or as it may hereafter be amended. The parties, in administering wildlife control measures shall make every effort not to interfere unreasonably with the economic use of the land. The understandings between the parties as to prairie dog control are set forth in Appendix C.

21. Any part or parts of this Agreement, including any Appendix, may be amended or modified by mutual written consent at any time.

22. No member of, or Delegate to, Congress, or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

 IN WITNESS WHEREOF, the said parties have hereunto subscribed their names and affixed their seals.

[signatures in original]