

TOUR OPERATIONS AND SITE USE AGREEMENT

This Tour Operations and Site Use Agreement ("**Agreement**") is made on [DATE] ("**Effective Date**") between Flagg Ranch Company, a Colorado corporation ("**Company**") and [ENTITY NAME] ("**Permittee**").

BACKGROUND

A. Company is an authorized concessioner of the National Park Service within John D. Rockefeller, Jr. Memorial Parkway for the Headwaters Lodge & Cabins (the "**Resort**").

B. Permittee is authorized by the National Park Service ("**NPS**") to conduct guided interpretive oversnow vehicle tours ("**OSV Tours**") and desires to use certain portions of property located at the Resort (the "**Premises**").

C. This Agreement governs the Permittee's series of OSV Tour from the Resort to Yellowstone National Park's south boundary.

AGREEMENT

The parties agree:

1. SCOPE OF USE. Permittee may access the Premises solely for the purposes described in the NPS concession agreement with contract number [CONCESSION CONTRACT NO.] ("**NPS Contract**"). Permittee may access the Premises solely for the purposes described in the NPS Contract ("**Permitted Use**"), and as described on Exhibit A attached hereto.

2. PERMITTEE OBLIGATIONS. Permittee must comply with all applicable requirements and obligations set forth in the NPS Contract, including without limitation, Permittee's obligations to hold applicable information confidential, to carry and maintain applicable insurance policies, and to obtain all licenses and permits that may be required in connection with the Permitted Use. If Permittee engages any subcontractors in connection with this Agreement, Permittee will contractually obligate those subcontractors to comply with the terms of this Agreement.

3. INDEMNIFICATION. Permittee will defend and indemnify Company, each of its affiliated entities, and their respective employees, officers, directors, owners, agents and assignees and each of their successors-in-interest (each, an "**Indemnified Party**") from all losses, damages or liabilities in any way arising from Permittee or its subcontractors' use of the Premises or their acts or omissions. Permittee releases and will indemnify each Indemnified Party from liability for any injuries and losses to Permittee or its employees, officers, directors, owners, affiliates, agents and assignees and each of their successors-in-interest in any way arising from this Agreement except to the extent arising from an Indemnified Party's gross negligence or willful misconduct. Upon notice from an Indemnified Party claiming indemnity for a claim or threatened claim, and upon Company's written request, Permittee will assume defense of the claim and retain counsel reasonably satisfactory to Indemnified Party. Indemnified Party will cooperate as reasonably requested in the defense and any costs and expenses incurred by Indemnified Party will be reimbursed by Permittee. Permittee will have the sole authority to settle any indemnified claim; provided, however, that Permittee will first obtain written consent from Company for any settlement that requires an Indemnified Party to pay any money, or take, or refrain from taking, any action. Company may participate in the defense of any indemnified claim with counsel of its choice, at its own expense. If Permittee does not assume defense of the claim, Indemnified Party may retain counsel of its choice at Permittee's expense and Indemnified Party will have control over the defense and authority to resolve the claim. This Section will survive any termination or expiration of this Agreement.

4. TERM; TERMINATION. This Agreement starts on the Effective Date and will expire on the termination date set forth in the NPS Contract (the “**Term**”), so long as Company remains the concessioner in the NPS concession agreement with contract number CC-JDOR002-11 (the “**Company NPS Contract**”). Should the Company NPS Contract be terminated for any reason, this Agreement shall also automatically terminate. Company and Permittee may terminate this Agreement for any reason by providing the other party thirty days’ (30) prior written notice. At the end of the Term or upon termination of this Agreement for any reason, Permittee will vacate the Premises. At the end of the Term, at the direction of Company, Permittee will, at its expense, take all action necessary to return the Premises to the condition it was in at the start of the Permitted Use.

5. INSURANCE. Permittee will carry and maintain applicable insurance policies as required under the NPS Contract. Notwithstanding anything to the contrary in the NPS Contract, all of Permittee’s insurance policies, with the exception of Workers’ Compensation, will name Company and the National Park Service, as additional insured. Permittee’s insurance coverage shall not cover liability in connection with or arising out of the wrongful or negligent acts or omissions of the Additional Insureds. Permittee will (i) provide Company with certificates of insurance evidencing the policies required under the NPS Contract; and (ii) provide Company with a copy of any carrier notice of cancellation or notice of material changes to policy conditions within five business days after the notice is received. If Permittee engages any subcontractors in connection with this Agreement, Permittee must require the subcontractor to provide the insurance required under this Section 5.

6. GENERAL PROVISIONS.

6.1. Compliance with Law. Permittee will comply with all applicable laws, ordinances, rules and regulations applicable to the Permitted Use and will comply with all Resort policies in effect during the Term. Without limitation on the foregoing, Permittee specifically agrees that Permittee will be solely responsible for complying with the Occupational Safety and Health Act, and any similar federal, state or local laws, rules and regulations pertaining to workplace safety.

6.2. Authority. Each party warrants that (i) it has the authority to enter into and perform this Agreement; and (ii) execution or performance of this Agreement does not breach any other agreement.

6.3. Force Majeure. Neither party will be deemed to be in default for any delay or failure to perform any of its obligations under this Agreement to the extent that the delay or failure to perform results directly from an occurrence that is not reasonably foreseeable, caused by, or under the control of, the performing party, and occurs despite reasonable efforts to prevent, avoid, delay or mitigate the effect of that occurrence, including (i) acts of God, fire, flood, explosion or extraordinary and destructive weather conditions directly affecting the performing party; (ii) injunctions; (iii) restraint or acts of domestic government; (iv) pandemics or epidemics; or (v) terrorism, war, sabotage, vandalism, accident, civil disorder or riots occurring within the United States or directly affecting the performing party.

6.4. Governing Law; Jurisdiction and Venue. This Agreement, and all claims that arise out of or relate to this Agreement, will be governed by the laws of the State where the applicable Resort is located, including its statutes of limitations, without regard to conflicts of laws principles. Exclusive jurisdiction and venue for any legal action under this Agreement is the State District Court or the U.S. District Court in whose county or district the Resort is located.

6.5. Jury Waiver. The parties waive their rights to trial by jury in any legal action under this Agreement.

6.7. Severability. If any provision of this Agreement is deemed to be illegal, invalid, or unenforceable, that provision will be excluded to the extent of the invalidity or unenforceability, and all other provisions will remain in full force and effect. To the extent permitted, the invalid or unenforceable provision will be deemed replaced by a provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable provision.

6.9. Notices. All notices under this Agreement will be in writing and delivered to the notice address below: (i) by registered, express, or certified mail; (ii) by courier or messenger service; or (iii) by electronic mail with acknowledgement of receipt. Notice is deemed given on the date received or, if acceptance is refused, the date of attempted delivery. Either party may change its notice address by following the requirements in this Section.

With a copy to: [NOTICE INFORMATION]

If to Permittee: [NOTICE INFORMATION]

6.11. Amendment. The parties may alter this Agreement only by written amendment signed by the parties.

6.12. Further Assurances. If reasonably requested, each party will sign and deliver any document or take other action necessary to carry out the intent of or to perfect any of the rights granted in this Agreement.

6.13. Time of the Essence. Time is of the essence with regard to all dates and time periods in this Agreement.

6.14. Captions. The captions of each section are for reference only and do not affect the interpretation of this Agreement.

6.15. No Presumption Against Drafter. This Agreement expresses the mutual intent of the parties. Each party has had the opportunity to consult with counsel. Any rule of construction that ambiguities will be resolved against the drafting party does not apply.

6.16. Relationship of Parties. Nothing in this Agreement creates a partnership, joint venture, or similar relationship between the parties. Neither party may bind the other party or hold itself out as having authority to bind the other party.

6.17. Third-Party Beneficiary. This Agreement is for the sole benefit of the parties and their successors and permitted assigns, and no other person or entity has any right under this Agreement except to the extent identified in this Agreement.

6.18. Assignment; Successors. Permittee may not assign or delegate its rights or duties under this Agreement. This Agreement is binding on the successors and permitted assigns of either party.

6.19. Entire Agreement. This Agreement contains the entire understanding between the parties relating to the subject matter described herein and supersedes all prior agreements, whether written or oral, relating to the same subject.

6.20. Counterparts. This Agreement may be executed in counterparts, which taken together form one agreement. Signatures provided by facsimile or other electronic methods are equivalent to original signatures.

6.21. No Exclusivity. This Agreement does not grant any exclusive rights to either party and each party may enter into similar agreements with any other third parties providing the same or similar services or operations.

The parties have executed this Agreement as of the Effective Date.

FLAGG RANCH COMPANY

Name: _____

Title: _____

Signature: _____

PERMITTEE

Name: _____

Title: _____

Signature: _____

EXHIBIT A

Permitted Use

Permittee is granted access to the Premises for the Permitted Use. Permittee will provide its guests and tour customers transportation to and from the Premises.

Dates: December 1 to April 1, annually during the Term of this Agreement (“**Permitted Use Term**”)

Site Use

- Company will charge Permittee a Site Use Fee of \$[DOLLAR AMOUNT], each year during the Term. Permittee must pay the Site Use Fee to Company no later than January 15 each year. The Site Use Fee shall be adjusted annually using the Consumer Price Index for all Urban Consumers (CPI-U) for “all items”, U.S city average.

Services Provided

- Vehicle Staging Areas. Company will provide Permittee with access to the Permitted Use area set forth in the NPS Contract for snowmobile, snowcoach, support vehicle staging, overnight parking and limited electric use.
- Snow Removal Activities. Company is responsible for plowing the south parking lot for visitor use. Permittee is responsible for shoveling and/or clearing snow for individual use and OSV Tours within the permitted staging area.
- Electric Hookups. Company will make available to Permittee for shared use at least six (6) RV hookups (plugs) within the designated staging area.
- Headwaters Lodge. Company will make available to Permittee access to the Headwaters Lodge and designated interior shared space, including bathroom access for Permittee’s visitors, employees, contractors and subcontractors, between 7a.m. and 5p.m. Company will designate and provide interior space, such as the meeting room and adjacent bar area, to Permittee for pre- and post-trip activities, including safety briefings and snow suiting. Company will allow Permittee to access its Wi-Fi network, subject to Company’s use policies.

Overnight Stays

The National Park Service periodically closes Highway 89 due to adverse weather conditions. If a closure stays in effect overnight preventing Permittee from transporting its guests back to Jackson, Company will charge Permittee a base rate, plus applicable taxes for an overnight stay, dinner, and a continental breakfast. The base rate for the first Permitted Use Term shall be \$100 per person, per night, and shall automatically increase annually based on the Consumer Price Index for all Urban Consumers (CPI-U) for “all items”, U.S city average. Company reserves the right to increase the base rate in advance of any upcoming Permitted Use Term, in its sole and absolute discretion. Overnight stays will be offered in Company’s dormitory accommodations, which generally include two (2) queen beds per room. Permittee will purchase all additional meals through the Company Convenience Store/Headwaters Lodge at retail price.