

LEGISLATIVE SUMMARY SHEET

Tracking No. 0293-16

DATE: June 8, 2016

TITLE OF RESOLUTION: AN ACTION RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; APPROVING THE MASTER AGREEMENT FOR THE DEVELOPMENT OF THE GRAND CANYON ESCALADE PROJECT; APPROVING THE FUNDING APPLICATION OF SIXTY FIVE MILLION DOLLARS (\$65,000,000) FOR THE DEVELOPMENT OF THE OFFSITE INFRASTRUCTURE TO THE GRAND CANYON ESCALADE PROJECT; AUTHORIZING THE NAVAJO NATION HOSPITALITY ENTERPRISE TO ENTER INTO A DEVELOPMENT AND OPERATING AGREEMENT; ACCEPTING THE APPROVAL OF THE WITHDRAWAL OF LAND IN THE BODAWAY/GAP CHAPTER; APPROVING A COVENANT NOT TO COMPETE; WAIVING CERTAIN PROVISIONS OF 7 N.N.C. §§ 1101 - 1118

PURPOSE: This resolution, if approved, will approve a Master Agreement with accompanying legal documents for the development of the Grand Canyon Escalade Project in the Bodaway/Gap Chapter, approve a funding application and negotiation of \$65,000,000 by the Navajo Nation for the development of the off-site infrastructure of the Project, authorize the Navajo Nation Hospitality Enterprise to enter into a development and operating agreement in the Project area, accept the land withdrawal for the development of the Project in the Bodaway/Gap Chapter, approve a covenant not to compete in the development of the Project and waive certain provision of the Navajo Nation Code relative to the Nation's dispute resolution law.

NOTE: waiver of 7 N.N.C. §§ 1101 – 1118 requires a 2/3rds vote of the Navajo Nation Council

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: None
Website Posting Time/Date: 5:31pm 8/29/14
Posting End Date: 9/3/2014
Eligible for Action: 9/4/2014

Law & Order Committee

THENCE

Resources & Development Committee

THENCE

Budget & Finance Committee

THENCE

Naa'bik'iyáti' Committee

THENCE

Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
23RD NAVAJO NATION COUNCIL—SECOND YEAR, 2016

INTRODUCED BY



Primary Sponsor

TRACKING NO. 0293-14

AN ACTION

RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT, BUDGET AND
FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL;
APPROVING THE MASTER AGREEMENT FOR THE DEVELOPMENT OF THE GRAND
CANYON ESCALADE PROJECT; APPROVING THE FUNDING APPLICATION OF SIXTY
FIVE MILLION DOLLARS (\$65,000,000) FOR THE DEVELOPMENT OF THE OFFSITE
INFRASTRUCTURE TO THE GRAND CANYON ESCALADE PROJECT; AUTHORIZING
THE NAVAJO NATION HOSPITALITY ENTERPRISE TO ENTER INTO A
DEVELOPMENT AND OPERATING AGREEMENT; ACCEPTING THE APPROVAL OF
THE WITHDRAWAL OF LAND IN THE BODAWAY/GAP CHAPTER; APPROVING A
COVENANT NOT TO COMPETE; WAIVING CERTAIN PROVISIONS OF 7 N.N.C. §§ 1101

- 1118

Section One. Authority

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §102 (A).
- B. The Naabik'iyati' Committee of the Navajo Nation Council is empowered to review all proposed legislation which requires final action by the Navajo Nation Council. 2 N.N.C. §164(A)(9).
- C. The Budget and Finance Committee of the Navajo Nation Council is empowered to review and recommend to the Navajo Nation Council the budgeting, appropriation, investment, and management of all funds. 2 N.N.C. §300(8)(2).

1 D. The Resource Development Committee of the Navajo Nation Council is empowered to
2 exercise oversight authority over economic and community development, commerce and
3 trade, and public utilities and telecommunications. 2 N.N.C. §500 (C).

4 E. The Law and Order Committee of the Navajo Nation Council has oversight of law
5 enforcement to enhance the operations and coordination of all departments within the
6 Navajo Division of Public Safety. 2 N.N.C. § 601(B)(14)
7

8 **Section Two. Findings**

9 A. For the last 48 years, many Bodaway/Gap Chapter members and their families have
10 suffered extreme economic hardship and physical dislocation due to the U.S. Government
11 imposed Bennett Freeze, which has prevented the Bodaway/Gap Chapter and much of the
12 Western Navajo Agency from achieving adequate community and economic
13 development.

14 B. The members of the Bodaway/Gap Chapter considered the positive aspects and the
15 negative aspects of the Grand Canyon Escalade Project with the Confluence Partners,
16 L.L.C. and on October 3, 2012 the Bodaway/Gap Chapter approved the withdrawal of up
17 to 420 acres of land within the Bodaway/Gap Chapter for the purposes of development of
18 the Grand Canyon Escalade Project by Confluence Partners, L.L.C., including a tram to
19 the bottom of the Grand Canyon, the adjacent business development and the
20 accompanying rights of way necessary to provide access and utilities. *See* Bodaway/Gap
21 Chapter Resolution, Exhibit A.

22 C. The need for employment and economic development in the Bodaway/Gap Chapter and
23 the entire Bennett Freeze Area is overwhelming.

24 D. The Grand Canyon Escalade Project ("Escalade Project") is a prospective tourism
25 destination featuring a gondola tramway from the rim to the floor of the Grand Canyon, a
26 Riverwalk, amphitheater, food pavilion and is located on the western edge of the Navajo
27 Nation at the confluence of the Colorado River and Little Colorado River. *See* Grand
28 Canyon Escalade Council Briefing Book (Briefing Book), Exhibit B.

29 E. The Escalade Project estimates, that at build out, basic operations, including the
30 Navajoland Discovery Center, will require 800 to 1,100 employees with an estimated \$28

1 to \$38.5 million payroll for all levels of the various skills and experience required to
2 operate a world class venue. This estimate does not include employment from the Lease
3 Pads for the hotels, RV-park or convenience store, which are anticipated to generate
4 another 1,300 jobs onsite. The total estimated job creation for onsite and offsite is an
5 estimated 3,500 jobs. *See Briefing Book, Tab 3, Exhibit B.*

6 F. Confluence Partners, L.L.C. possess specialized experience in the tourism industry and
7 tourism business performance as is evidenced in the track record of its individual
8 members with projects comparable in complexity and scope to the tourism facility which
9 the Nation desires to develop and operate.

10 G. The Confluence Partners, L.L.C. propose a Master Agreement with the Navajo Nation
11 that includes a Development and Operating Agreement with the Navajo Hospitality
12 Enterprise, the Navajo Nation funding the cost of constructing the road, electric, water
13 and communications to the site (estimated at \$65 million) with an option for the
14 Confluence Partners to secure funding, and for the Navajo Nation to have ownership of
15 all improvement within the Operator Area. *See Master Agreement, Exhibit C.*

16 H. The Navajo Nation Hospitality Enterprise, ("Enterprise") a wholly-owned enterprise of
17 the Navajo Nation, will act as the Nation's representative to enable development and
18 operation of the Grand Canyon Escalade Project.

19 I. The Enterprise, through the Master Agreement, will enter into a Development and
20 Operating Agreement with the Confluence Partners for design, permitting and
21 construction of the road, electric, water, communications to, and the development of the
22 420 acre project site. *See Master Agreement (Exhibit E and F), Exhibit C.*

23 J. The Confluence Partners, L.L.C. will fund \$20 million for and manage the conceptual
24 design, permitting and construction of the road, electric, water and communications to,
25 and development of the 420 acre project site; will fund \$145 million for and manage the
26 development of the 420 acre project site; and will manage the entire 420 acre project site,
27 including managing the Operator Area and leasing of the Lease Pads. *See Briefing Book,*
28 *Tab 1, Exhibit B.*

29 K. The Navajo Nation will receive a franchise fee of eight percent (8%) to 18% of gross
30 revenues based on various visitor attendance levels and the Navajo Nation will receive

1 50% of the leasing rental revenues from the development pads outside of the Operator
2 Area. *See* Master Agreement, Article 6, Exhibit C.

3 L. The Navajo Nation and the National Park Service's Grand Canyon National Park share a
4 common border as set out in the Navajo Boundary Act of 1934 and the National Park
5 Service has expressed concerns about the effects of the Escalade project.

6 M. The Navajo Nation has authority for environmental protection of its lands and the federal
7 government, through the Navajo Nation Trust Land Leasing Act of 2000 (25 U.S.C. §
8 415), has authorized the Navajo Nation to conduct business site leasing without
9 subsequent federal approval and the Escalade project environmental review will comply
10 with Navajo laws, including but not limited to:

- 11 1. Navajo Nation Cultural Resources Protection Act – 19 N.N.C. § 1001;
- 12 2. Navajo Nation Policy to Protect Traditional Cultural Properties – 19 N.N.C. § 1021;
- 13 3. Navajo Nation Endangered Species List - 17 N.N.C. § 507 (Endangered species as
14 determined by RCS-41-08);
- 15 4. Navajo Nation Biological Resource Land Use Clearance Policies and Procedures
16 (which incorporates the federal Endangered Species Act) – RCS-44-08;
- 17 5. Navajo Nation Environmental Protection Act - 4 N.N.C. § 901; and,
- 18 6. Navajo Nation Clean Water Act – 4 N.N.C. § 1301.

19 N. The Confluence Partners, L.L.C. will initiate the process for the 420 acre land withdrawal
20 and the required right-of-way with the Navajo Nation Land Department pursuant to
21 RDCJN-33-15, in which the Resources and Development Committee delegated authority
22 to the Director of the Navajo Land Department to approve land withdrawals on the
23 Navajo Nation.

24 O. Pursuant to RDCJN-33-15 the Resources and Development Committee approved the
25 Administrative Rules and Regulations for Land Withdrawals; Section One states *[t]he*
26 *purpose of a Land Withdrawal Designation is to designate an area of land for future*
27 *development by, a. Ensuring that the rights of grazing permittees, who are in compliance*
28 *with their grazing permits, are properly addressed as applicable and as required under*
29 *16 N.N.C. §§ 401 et seq. and to prevent subsequent claims to the land; and b. Ensuring*
30 *that the affected Chapter supports the Land Withdrawal Designation and use of the land.*

- 1 P. The Navajo Nation Office of the Controller, in memoranda dated October 17, 2014 and
2 November 17, 2014, raised concern of the project funding with no loan in place which
3 had a stated interest rate or number of years but acknowledged that the project funding
4 will be provided by a third party and with the Navajo Nation pledging its franchise fee
5 revenue (see Paragraph K above) to repay the loan. *See* Office of Controller Memoranda,
6 October 17, 2014 and November 17, 2014 attached as Exhibit D-1 and D-2. The Navajo
7 Division of Economic Development responded to the concerns raised by the Office of the
8 Controller. *See* Letter from Albert Damon, Jr., Division Director, Division of Economic
9 Development attached as Exhibit D-3.
- 10 Q. The Navajo Nation Office of Management and Budget, in a memorandum dated August
11 19, 2014, raised a concern of the source of the \$65 million project funding but
12 acknowledged that the project funding will be provided by a third party. *See* Office of
13 Management and Budget Memorandum, August 19, 2014 attached as Exhibit E.
- 14 R. The Navajo Nation Department of Justice, in a memorandum dated December 18, 2014,
15 raised several concerns including financing of the project, no identified source of funds to
16 provide public safety services, a challenged boundary with the National Park Service,
17 master lease terms, formal determination on the estimate of damage completed by the
18 Navajo Land Department, compliance matters under the Navajo Business Opportunity
19 Act, and Master Lease terms that conflict or violate Navajo Nation law; however, the
20 then-Executive Director, Division of Economic Development and the then-Special
21 Advisor to the President, in a memorandum dated January 14, 2015, responded to each of
22 the concerns raised by the Navajo Nation Department of Justice above. *See* Department
23 of Justice Memorandum, December 18, 2014 attached as Exhibit F-1 and Division of
24 Economic Development Memorandum, January 14, 2015 attached as Exhibit F-2.
- 25 S. The Master Agreement, Article 15, Covenant Not to Compete, provides that neither the
26 Navajo Nation, nor any of its political subdivisions, agencies, departments or
27 instrumentalities, shall authorize or engage in a Nation Competing Business within the
28 Restricted Area defined as the Navajo Reservation within 15 miles of the Escalade
29 Project and within two and one-half (2.5) miles on either side of the access road to the
30

1 Escalade Project and the entrance to the Escalade Project's access at US 89. The
2 Confluence Partners may waive the prohibitions on a case-by-case basis.

3 T. The Master Agreement, Article 12, Dispute Resolution, provides for arbitration of any
4 controversy, claim or dispute arising out of or related to the Master Agreement and
5 provides that the governing law with respect to the validity, meaning and effect of the
6 Master Agreement shall be in accord with Navajo Nation law; however, certain
7 provisions of Article 12 will require a waiver of 7 N.N.C. §§ 1101 – 1118.

8 U. The Master Agreement, Article 8, Operation of the Project, provides that the Navajo
9 Nation will provide law enforcement services to and from, as well as within, the Escalade
10 Project area.

11 V. The Grand Canyon Escalade Project will provide:

- 12 1. Hundreds of onsite jobs with millions of dollars in annual payroll at built-out;
- 13 2. Millions of dollars of annual revenue to the Navajo Nation;
- 14 3. Millions of dollars in tax revenue;
- 15 4. Millions of dollars in infrastructure development for the Bennett Freeze area;
- 16 5. Access for on the ground monitoring and law enforcement protection of sacred
17 sites;
- 18 6. A brighter future for the families and youth of Bodaway/Gap and the Western
19 Navajo Agency; and
- 20 7. Help realize the Grandparents' hopes of families moving back to Bennett Freeze
21 area.

22 W. On July 20, 2015 the Navajo Nation Branch Chiefs signed the historic Navajo Nation
23 Three Branch Agreement, declaring One Nation, One Voice by establishing the common
24 priorities of the Navajo Nation Government. The development of the Grand Canyon
25 Escalade Project meets the objectives in the Economy Priority of creating jobs and
26 business opportunity and in the Infrastructure Development and Improvements Priority
27 the Grand Canyon Escalade Project addresses the recovery of the Former Bennett Freeze
28 Area; in addition the development of the Grand Canyon Escalade Project will provide the
29 fiscal freedom for the Navajo Nation to achieve the Common Priorities of the Navajo
30 Nation Three Branch Agreement.

1 X. Development of the Grand Canyon Escalade Project is in the best interests of the Navajo
2 Nation, the Western Navajo Agency and the Bodaway/Gap Chapter.

3
4 **Section Three. Approvals, Acceptance and Authorizations**

5 A. The Master Agreement appended hereto is hereby approved.

6 B. The Development Agreement and the Operating Agreement appended hereto as Exhibits
7 E and F of the Master Agreement are hereby approved. The Enterprise is hereby
8 authorized to enter into the Development Agreement and the Operating Agreement.

9 C. The Enterprise and the President of the Navajo Nation are authorized to enter into
10 Business Site Leases for the Project, the Offsite Infrastructure-Road and the Offsite
11 Infrastructure-Utilities, by and between the Nation as lessor and the Enterprise as lessee,
12 for a term of twenty-five (25) years, with automatic renewals for two (2) subsequent
13 twenty-five (25) year terms, in substantially the forms attached as Exhibits to the Master
14 Agreement.

15 D. The Enterprise is hereby authorized to grant to Confluence Partners, L.L.C. a non-
16 revocable license to market and use the Enterprise's Marks in accordance with the
17 License Agreement appended as an Exhibit to the Master Agreement.

18 E. The Master Agreement is hereby accepted in the event the Navajo Nation Land
19 Department approves the land withdrawal of 420 acres of land and the right-of-way,
20 within the Bodaway/Gap Chapter, for the purposes of development of the Grand Canyon
21 Escalade Project, including a tram to the bottom of the Grand Canyon and the adjacent
22 businesses, as described in the Master Agreement.

23 F. The Conditional Use Permits between the Navajo Nation and Confluence Partners,
24 L.L.C. for the Project Area and for the Offsite Infrastructure Study Corridors, attached as
25 Exhibits to the Master Agreement, are approved for the purposes of conducting
26 preliminary and final design and engineering work, and environmental, archeological and
27 cultural clearances for the location of the Project Improvements and the Business Site
28 Leases for the Project Area and the Offsite Infrastructure.

29 G. Confluence Partners, L.L.C. is hereby appointed and engaged as the developer and
30 operator of the Project in accordance with the terms of, and having the duties,

1 obligations, and authorities set forth in the Master Agreement, the Development
2 Agreement and the Operating Agreement.

3 H. Confluence Partners, L.L.C. is hereby granted a non-revocable license and right to enter
4 upon and occupy the Project Area in order to develop and operate the Project in
5 accordance with the Master Agreement.

6 I. The Covenant Not to Compete, Article 15 of the Master Agreement, is approved. Any
7 construction or operation of any businesses in violation of those covenants shall be
8 resolved under the Dispute Resolution, Article 12 of the Master Lease Agreement and by
9 applicable Navajo Nation law.

10 J. Any revenues received by the Enterprise from the Project will not be subject to Navajo
11 Nation taxes.

12 K. Article 12 of the Master Agreement concerning Dispute Resolution is hereby approved
13 and the Navajo Nation waives the necessary sections of 7 N.N.C. §§ 1101 – 1118 to
14 effectuate the terms of Article 12..

15 L. The expenditure of Navajo Nation funds, or third party financing, to meet the obligations
16 of Article 9.2 of the Master Agreement for the construction of the Offsite Infrastructure
17 to the Project, presently estimated at Sixty-five Million Dollars (\$65,000,000.00), is
18 hereby authorized. However, the substitution of Navajo Nation funds can be used,
19 subject to future Navajo Nation Council appropriations or direction. The Navajo Nation
20 Office of the Controller, the Navajo Nation Office of Management and Budget with the
21 Navajo Nation Council's Budget and Finance Committee, and other appropriate
22 Committees, are directed to negotiate the terms and conditions of financing the Navajo
23 Nation's obligations for the development of the Grand Canyon Escalade Project; on
24 agreement of the Navajo Nation's obligations, the terms and conditions shall be presented
25 to the appropriate Standing Committees and the Navajo Nation Council for approval.

26 M. The Navajo Nation Division of Economic Development is hereby directed to budget the
27 annual fee the Division is to receive from the Navajo Nation pursuant to the Master
28 Agreement.
29
30

1 N. The Navajo Nation Division of Public Safety is hereby directed to budget the annual cost
2 of providing law enforcement services to the Escalade Project area and adjacent right-of-
3 way.

4 O. The President of the Navajo Nation is hereby authorized to execute, on behalf of the
5 Navajo Nation, all documents necessary to effectuate the intent of this resolution.
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7 **Section Four. Effective Date**

8 The Action is effective upon its approval pursuant to 2 N.N.C. §221(B).
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BODAWAY/GAP CHAPTER

An Enterprise of the Navajo Nation

P.O. Box 1546 - The Gap, AZ 86020
 Phone: (928) 283-3493 Fax: (928) 283-3496
 Email: bodaway@navajochapters.org

*Billy Arizawa, Jr., President
 Marie L. Williams, Vice-President
 Gervin J. Begay, Secretary/Treasurer
 Jonathan Flaherty, Council Member
 Denise S. Tshelgins, Council Delegate*

*Dorothy Lee, Chapter Manager
 Ronica Tarpley, Admin. Assistant*



THE NAVAJO NATION RESOLUTION OF THE BODAWAY/GAP CHAPTER

RESOLUTION NO. BA-09- 092 -12

RESCINDING ALL PRIOR RESOLUTIONS RELATING TO THE DEVELOPMENT OF THE GRAND CANYON ESCALADE PROJECT AND CONFLUENCE PARTNERS, L.L.C. AND APPROVING THE WITHDRAWAL OF UP TO 420 ACRES OF LAND WITHIN THE BODAWAY/GAP CHAPTER FOR THE GRAND CANYON ESCALADE PROJECT.

WHEREAS:

1. The Bodaway/Gap Chapter has been certified by the Transportation and Community Development Committee of the Navajo Nation Council pursuant to the Local Governance Act, 26 N.N.C. Section 102 (B) and is vested with the authority and responsibility to address local matters and concerns within its community.
2. For the last 46 years, many Bodaway/Gap Chapter members and their families have suffered extreme economic hardship and physical dislocation due to the U.S. Government imposed Bennett Freeze, which had prevented the Bodaway/Gap Chapter from achieving adequate community and economic development.
3. The need for employment and economic development in the Bodaway/Gap Chapter and the entire Bennett Freeze Area is overwhelming.
4. On July 22, 2012, a proposed resolution directing that all development from Confluence (Rim of Grand Canyon) to Marble Canyon and in the area be stopped.
5. The proponents of the proposed resolution presented an inaccurate picture of what has been proposed for the Grand Canyon Escalade Project by the Confluence Partners, L.L.C., refused to allow representatives of the Grand Canyon Escalade Project/Confluence Partners, L.L.C. to answer the questions presented, amended the proposed resolution without sharing those amendments, in writing, with those present, and forced through a vote on a confusing "Yes means No" proposal, thereby denying those members present an opportunity to make an informed decision.

RESOLUTION # BA-09-092-12: RESCINDING ALL PRIOR RESOLUTIONS RELATING TO THE DEVELOPMENT OF THE GRAND CANYON ESCALADE PROJECT AND CONFLUENCE PARTNERS, L.L.C. AND APPROVING THE WITHDRAWAL OF UP TO 420 ACRES OF LAND WITHIN THE BODAWAY/GAP CHAPTER FOR THE GRAND CANYON ESCALADE PROJECT.

Page Two

6. A number of public meetings have been held since that July 22, 2012 meeting, where the Chapter members were informed about the Grand Canyon Escalade Project and the Confluence Partners, L.L.C.
7. At the public meetings, the opponents of the Project turned people away and attempted to bully and intimidate the Chapter members from hearing about the Project.
8. The Grand Canyon Escalade Project will provide:
 - *2,000 onsite jobs with a \$70 million annual payroll at built-out
 - *An estimated \$50 to \$95 million of annual revenue to the Navajo Nation
 - *Millions in tax revenue for the Bodaway/Gap and local area chapters
 - *Millions in revenue for rehabilitating the Bennett Freeze area
 - *Access for on the ground monitoring and law enforcement protection of sacred sites
 - *A brighter future for the families and youth of Bodaway/Gap and Western Navajo
 - *Help realize the Grandparents' hopes of families moving back to Bennett Freeze area
9. The members of the Bodaway/Gap Chapter have now had an opportunity to consider the positive aspects and the negative aspects of the Grand Canyon Escalade Project and Confluence Partners, L.L.C.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Bodaway/Gap Chapter hereby rescinds all prior Resolutions concerning development of the Grand Canyon Escalade Project and Confluence Partners, L.L.C.
2. The Bodaway/Gap Chapter approves the withdrawal of up to 420 acres of land within the Bodaway/Gap Chapter for the purposes of development of the Grand Canyon Escalade Project by Confluence Partners, L.L.C.; including a tram to the bottom of the Grand Canyon, the adjacent business development and the accompanying rights of way necessary to provide access and utilities.
3. The Bodaway/Gap Chapter directs and requests that all governmental entities, including the Bureau of Indian Affairs, county, state and local governments and agencies, assist in carrying out the intent and purpose of this resolution and in the designation of land for utilities, roads and all communications right of way.

RESOLUTION # BA-09-092-12: RESCINDING ALL PRIOR RESOLUTIONS RELATING TO THE DEVELOPMENT OF THE GRAND CANYON ESCALADE PROJECT AND CONFLUENCE PARTNERS, L.L.C. AND APPROVING THE WITHDRAWAL OF UP TO 420 ACRES OF LAND WITHIN THE BODAWAY/GAP CHAPTER FOR THE GRAND CANYON ESCALADE PROJECT.

Page Three

*****CERTIFICATION*****

WE HEREBY CERTIFY THAT THE FOREGOING RESOLUTION WAS DULY CALLED MEETING AT THE BODAWAY/GAP CHAPTER HOUSE, (NAVAJO NATION), ARIZONA, AT WHICH A QUORUM WAS PRESENT AND THE SAME WAS PASSED BY A VOTE OF 59 IN FAVOR, 52 OPPOSED, AND 17 ABSTAINED; ON THIS DAY OF October 03, 2012.

MOTION:

Perry Slim Sr
Leonard Sloan

SECOND:

Larry Hanks
Karen West Barney

Billy Arizona Jr

President

Marie L. Williams

Vice-President

Jonathan Haskie

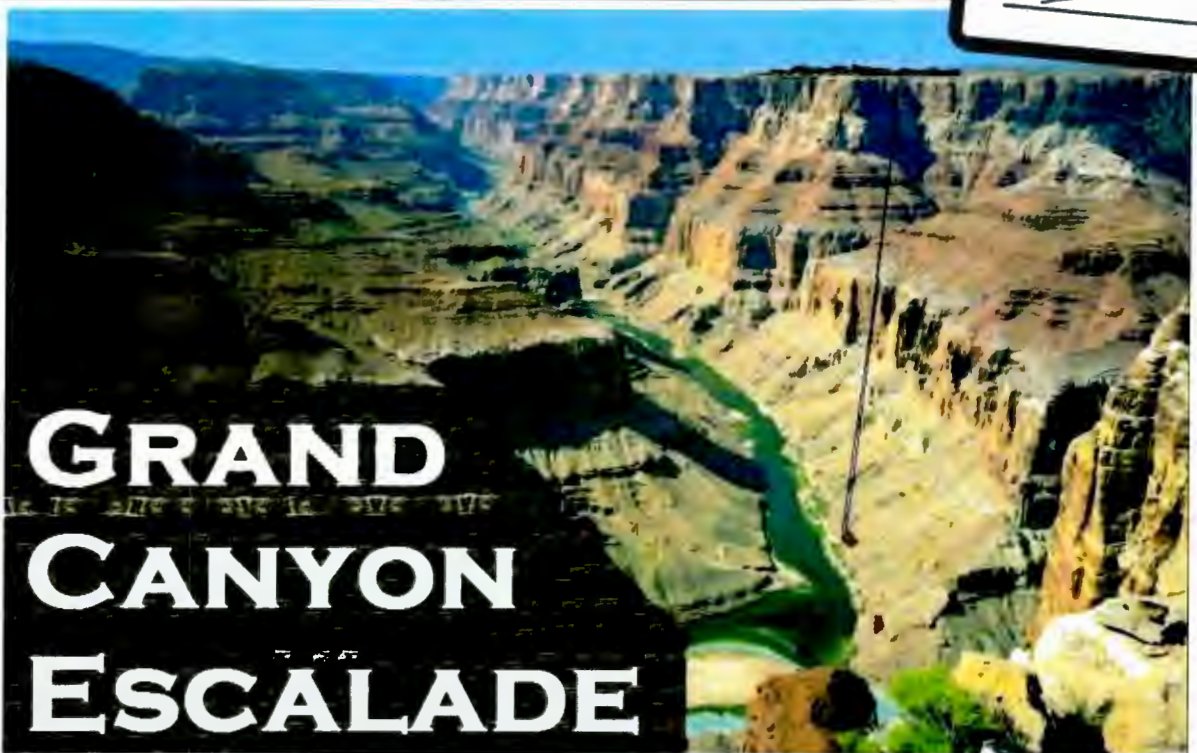
Grazing Member

Duane S. Tsinigine

Council Delegate

Gevern J. Begay

Secretary/Treasurer



**A Tourism Destination on the
NAVAJO NATION featuring a
Gondola Tramway to
the floor of the Grand Canyon**

**NAVAJO NATION
COUNCIL
BRIEFING BOOK
AUGUST 2016**

Dear Council Delegate:

This briefing book contains detailed information to assist you in understanding the proposed Grand Canyon Escalade project and enable you to make an informed decision on the legislation that will be coming before you. The book is full of technical details, facts and figures. This letter provides an overview of our vision for Grand Canyon Escalade, why we are proposing this location, and why the Project is important.

Our vision for the Grand Canyon Escalade is a world class tourist destination offering a once in a lifetime trip to the bottom of the Grand Canyon surrounded by the Navajoland Discovery Center, a series of guest experiences of art, music, dining, shopping, sightseeing, and interactive film entertainment. All of this set in buildings and landscaped outdoor settings designed to be a part of the Grand Canyon scenery and experience and constructed of traditional native materials and utilizing sustainable and renewable resources. No McDonalds here, no cheap strip malls, no casinos, no bright lights shining into the Canyon. The project will be surrounded by hotels offering everything from affordable family accommodations to an upscale five-star resort with world class spa facilities, making the Project a true destination and not a "drive by" Grand Canyon experience.

The location was chosen because it is the only viable location for the Gondola Tramway on the Navajo Nation along with the best available views of the Grand Canyon. It is the best location for attracting the most visitors and creating the maximum jobs possible. The Grand Canyon National Park is the most successful and popular destination in the entire National Park System with 4.6 million visitors each year and serves as a hub for visitors to Glen Canyon, Zion, Bryce, Canyonlands, Navajo National Monument, Wupatki, and Walnut Canyon National Parks. Hwy 89 is a main corridor for tourists to and from the Grand Canyon to the other National Parks within the Grand Circle. The Grand Canyon Escalade will be a main destination point for both casual tourists and families seeking a weekend getaway as well as tourists and travelers worldwide.

This Project is important for several reasons. First and foremost, this Project will provide a significant source of jobs, wages and tax revenues in the Western Agency and Bennett-Freeze area, wages that can be used for new housing made possible by the Project's construction of an all-weather road, water and electricity. Second, the Project is important as a long-term source of revenues to the Navajo Nation providing diversity from an economy based on coal and power plant revenues. And finally, this Project will establish the Navajo Nation's right to develop and utilize their land and property rights without interference from outside forces and agencies. Put bluntly, will the Navajo Nation decide what they can and can't do with their land or will the Federal Government, National Park Service or Sierra Club and Grand Canyon Trust make those decisions?

We fully understand that Grand Canyon Escalade will be criticized and opposed by some. They will point out that the Project is not perfect, and has drawbacks and risks. Some will point out that they want to return to the days when their families ran sheep or cattle in the area and had homesites and ranches. They speak from their hearts and are sincere in their opposition. But we ask you, how will going back to the past help Navajos feed and support their families?

*Grand Canyon tourism jobs and tourist money continue to flow past Navajo to other areas of Arizona!
Isn't it time that the Navajo Nation gets a fair share of Grand Canyon tourism?*

Sincerely,

Confluence Partners L.L.C.

TABLE OF CONTENTS

EXECUTIVE SUMMARY.....	Page 1
------------------------	--------

ROLES AND RESPONSIBILITIES	TAB 1
---	--------------

FINANCIAL TERMS AND PROJECTIONS	TAB 2
--	--------------

JOB CREATION AND OPERATIONAL CONSIDERATIONS	TAB 3
--	--------------

PROJECT MANAGEMENT TEAM MEMBERS	TAB 4
--	--------------

PROJECT DEVELOPMENT CONSIDERATIONS	TAB 5
---	--------------

BOUNDARY	Page 12
----------------	---------

PROJECT SCHEDULE	Page 12
------------------------	---------

CULTURAL AND ENVIRONMENTAL COMPLIANCE	Page 13
---	---------

PRELIMINARY DESIGN & PERMITTING.....	Page 13
--------------------------------------	---------

CONSTRUCTION.....	Page 15
-------------------	---------

PROJECT MAPS & EXHIBITS	TAB 6
--	--------------

ESCALADE LOCATION MAP.....	Page 16
----------------------------	---------

LAND USE PLAN	Page 17
---------------------	---------

VICINITY MAP WITH EXISTING ROADS AND HOMES.....	Page 19
---	---------

GRAND CANYON NATIONAL PARK vs ESCALADE	Page 20
--	---------

PHASE ONE DEVELOPMENT COMPONENTS.....	Page 21
---------------------------------------	---------

GRAND CANYON MARKET DYNAMICS	TAB 7
---	--------------

MARKET COMPETITION	Page 23
--------------------------	---------

COMPARISON OF GRAND CANYON PRODUCTS	Page 26
---	---------

MARKET POTENTIAL.....	Page 27
-----------------------	---------

MARKETING STRATEGY	Page 27
--------------------------	---------

VISITOR VOLUME PROJECTIONS.....	Page 29
---------------------------------	---------

PROJECTED VISITOR CAPTURE RATES & VOLUMES	Page 30
---	---------

PROJECTED VISITOR EXPENDITURES.....	Page 30
-------------------------------------	---------

ASSORTED SITE PHOTOGRAPHS.....	TAB 8
---------------------------------------	--------------

Business Overview

Grand Canyon Escalade ("Escalade") is a tourism destination featuring a gondola tramway to the floor of the Grand Canyon. Escalade is located on the western edge of the Navajo Nation reservation at the Confluence of the Colorado River and the Little Colorado River located about 100 miles by road from Interstate-40 and Flagstaff, Arizona.

Grand Canyon Escalade L.L.C. will develop, manage and operate Grand Canyon Escalade on a 50-year franchise operating agreement. Confluence Partners L.L.C. ("Company") intends to form Grand Canyon Escalade L.L.C. to raise the equity capital to fund development and ramp-up operating expenses of Escalade.

The Company's vision for Escalade is to be the premier tourist destination for the 5 million plus annual visitors going to the Grand Canyon.

MISSION STATEMENT

Our mission is to use the collective experience of our partners and our team of designers, architects, engineers, contractors and consultants to develop Grand Canyon Escalade into the dominant Grand Canyon tourism destination, and thereby produce significant employment for the surrounding area, and considerable revenue for the Navajo Nation and the local chapters as well as financial returns to our investors.

Objectives

The Company's objectives in sequence are:

- Navajo Nation Council approvals.
- Raise \$20 million of venture capital.
- Form Grand Canyon Escalade L.L.C. to be the funding vehicle, development entity, and manager/operator for Grand Canyon Escalade.
- Begin permitting and design process.
- Raise \$50 million of equity funding and \$95 million of debt for the initial ("Phase One") development of Escalade (the gondola tramway, restaurants, and retail facilities, along with the on-site infrastructure and other development pads for other end users).
- Market the unfinished development pads beginning prior to the start of operations and thereafter.
- Establish a marketing program to increase visitation during the nonpeak seasons.
- Begin operations.

Success Factors

Grand Canyon Escalade is uniquely qualified to succeed due to the following reasons:

- **Existing Stable Visitor Volumes with Growth Potential:** Since 1992 Grand Canyon National Park has averaged 4.37 million annual visitors. With the 2007 opening of the Skywalk at Grand Canyon West, the Grand Canyon tourism market has averaged more than 5.1 million annual visitors.
- **Lack of Competition and Viable Development Sites:** In the Grand Canyon visitor marketplace, with the exception of Grand Canyon West on the Hualapai Indian Reservation, there are no other viable development sites. The National Park is incapable of making improvements to draw and/or accommodate increased visitor volumes.
- **Key Personnel and Expertise:** The Company's Members understand the complexities and needs of the Navajo Nation and the Grand Canyon market dynamics. Together with the design, engineering and construction team, they have participated in the financing, design, construction, and operations of numerous successful developments and ventures.

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Escalade's Competitive Advantage

ESCALADE will gain a key competitive advantage, and generate significant market buzz from tourists experiencing a 10 minute Gondola ride to the Canyon floor.

Escalade will offer visitors the ability to:

- Enjoy arguably the best panoramic view of the Grand Canyon.
- Take a tramway ride to the floor of the Grand Canyon instead of hiking or the trouble of a mule ride.
- Learn about the Navajos' and other area tribes' cultures, stories and relationship with the Canyon.
- Have contact with already recognized and up-and-coming Native American Artists.

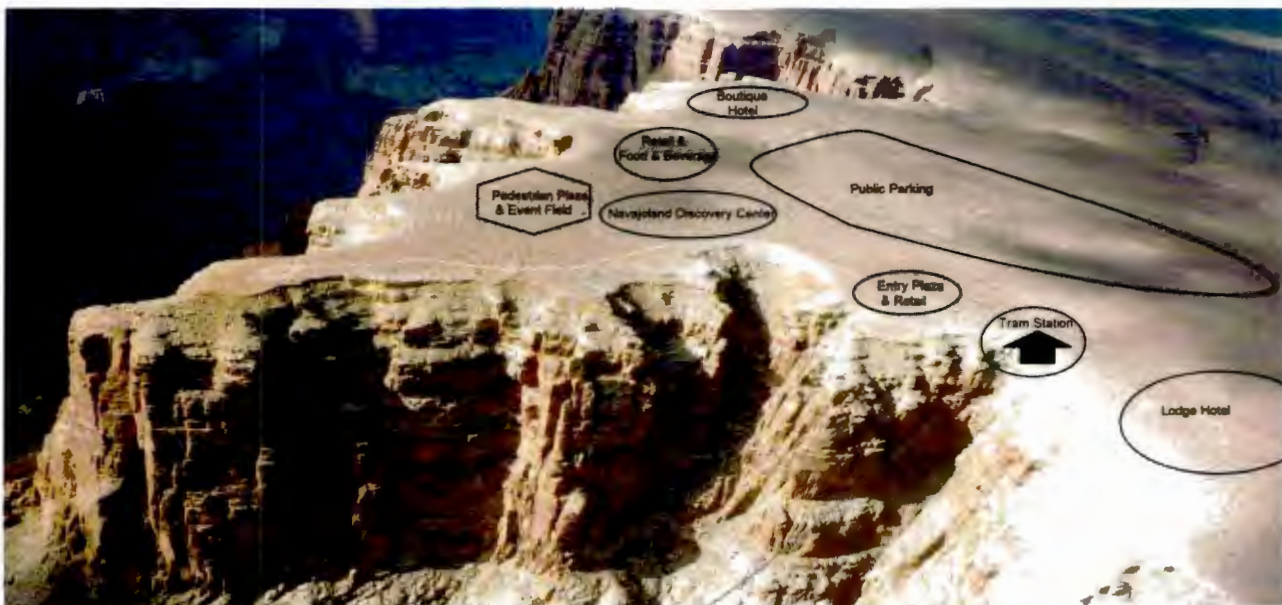
Escalade's Primary Business Challenges

Environmental and Regulatory Permitting

The Project will be required to comply with Navajo Nation environmental laws and regulations. Based upon other environment assessments in the Grand Canyon area, the Company is highly confident that the environmental assessments can be completed within our development schedule. However we cannot warrant that such will occur. Additionally, the possibility of third party litigation will be mitigated to the extent possible, but we cannot warrant that litigation will not occur, and that such litigation may cause delays in the development schedule.

Development Budget Increases

As to not underestimate construction costs and expenses, the Company used 2007 (height of the last building boom) construction costing factors to estimate the project development budget. While the Company is highly confident that the Project can be completed within our development budget and schedule, we cannot warrant that such will occur and that delays could cause an increase in costs that could exceed our development budget.



Aerial photograph of site with identified land uses.

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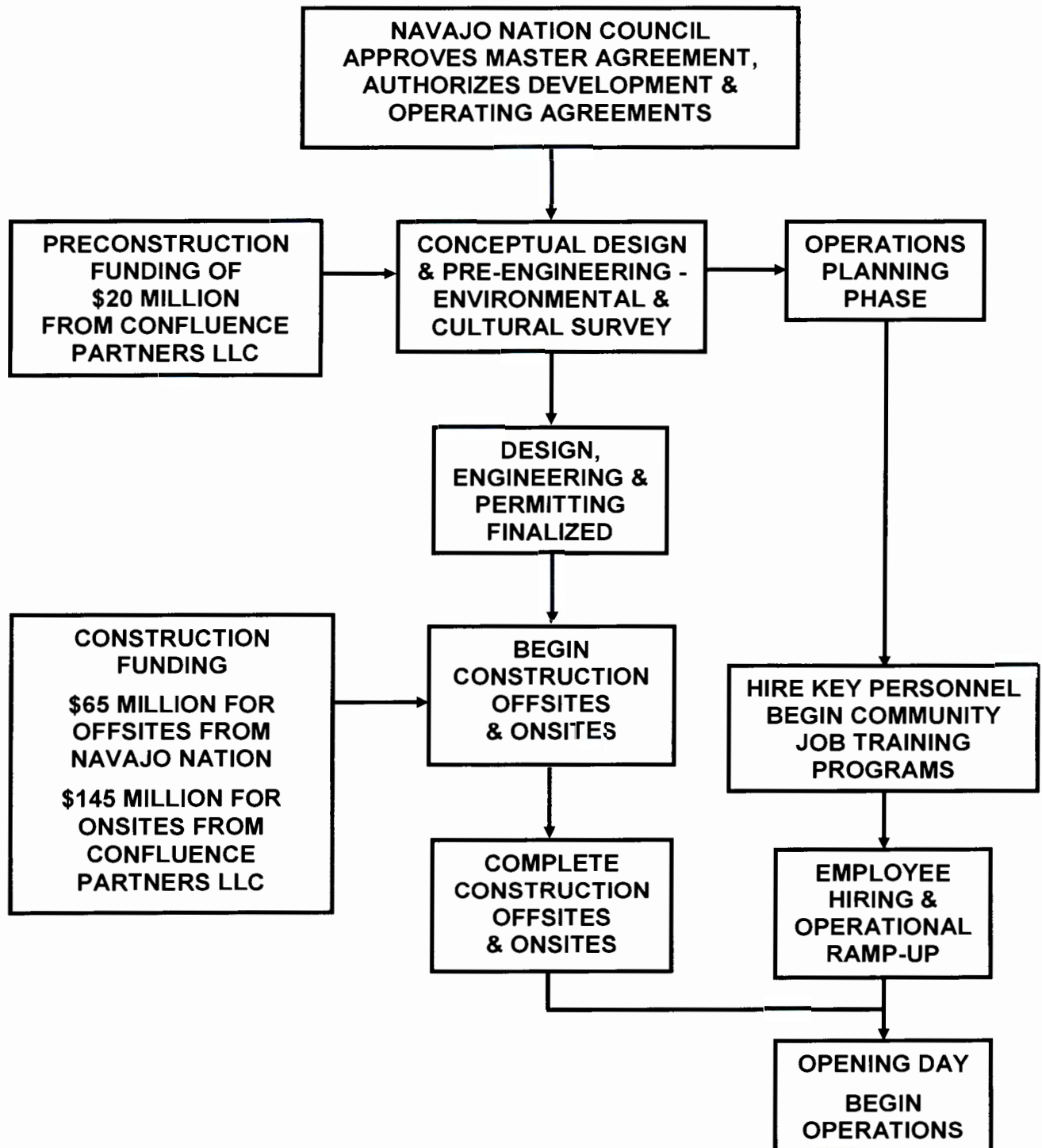
ROLES AND RESPONSIBILITIES

NAVAJO NATION	<p>Enters into a Master Agreement with Confluence Partners and Navajo Hospitality Enterprise. Authorizes Navajo Hospitality Enterprise to execute a Development and Operating Agreement with Confluence Partners.</p> <p>Enters into three 25-year leases with Navajo Hospitality Enterprise for the Grand Canyon Escalade 420 acre project site and rights of ways for the access road, electric, water and communications.</p> <p>Funds the costs (estimated at \$65 million) of constructing the road, electric, water and communications to the site.</p> <p>If the Nation chooses not to fund the offsites, Confluence has the option of securing the funding.</p> <p>Have ownership to all improvement within the Operator Area (see page18).</p>
NAVAJO HOSPITALITY ENTERPRISE	<p>Enters into a Development Agreement with Confluence Partners for design, permitting and construction of the road, electric, water and communications, and the development of the 420 acre project site.</p> <p>Enters into a 50 year Operating Agreement with Confluence Partners to manage and operate Grand Canyon Escalade.</p>
CONFLUENCE PARTNERS LLC	<p>Funds \$20 million for and manage the conceptual design, pre-engineering , environmental and cultural surveys for the road, electric, water and communications, and the development of the 420 acre project site.</p> <p>Funds \$145 million for and manage the development of the 420 acre project site.</p> <p>Manages the entire the 420 acre project site, including running the Operator Area and leasing of the Lease Pads (see pages 17 & 18).</p>

Estimated Development Costs	2016/17	2017/18	2018/19	TOTAL
Offsite water, sewer, road, & communications	\$4,225,910	\$43,838,066	\$16,327,434	\$64,391,410
Project Permitting, Design & Engineering	6,086,373	3,009,087		9,095,460
Construction and Outfitting Costs				
Rim Level Site and Civil		7,417,053	22,251,160	29,668,213
Discovery Center & Multimedia Complex		3,000,000	15,904,000	18,904,000
Rim Level Commercial Facilities		1,770,826	9,767,485	11,538,311
Administrative & Back-of-House Facilities		3,681,537	12,471,336	16,152,873
River Level Facilities			13,608,747	13,608,747
Gondola Tramway		5,915,463	20,432,709	26,348,172
Construction Administration, Testing & Inspection		337,100	974,400	1,311,500
Soft Costs (Feasibility, Legal, Insurance, & Other	1,027,667	1,952,667	1,952,667	4,933,001
Operating Expenses and Overhead	1,190,000	1,240,000	1,540,000	3,970,000
Pre-Opening and Working Capital Costs			8,750,000	8,750,000
Financing Costs and Reserves		300,000	2,848,396	3,148,396
Development Contingency	735,673	3,997,207	13,627,644	18,360,524
Total Project Costs	\$13,265,623	\$76,459,006	\$140,455,978	\$230,180,607

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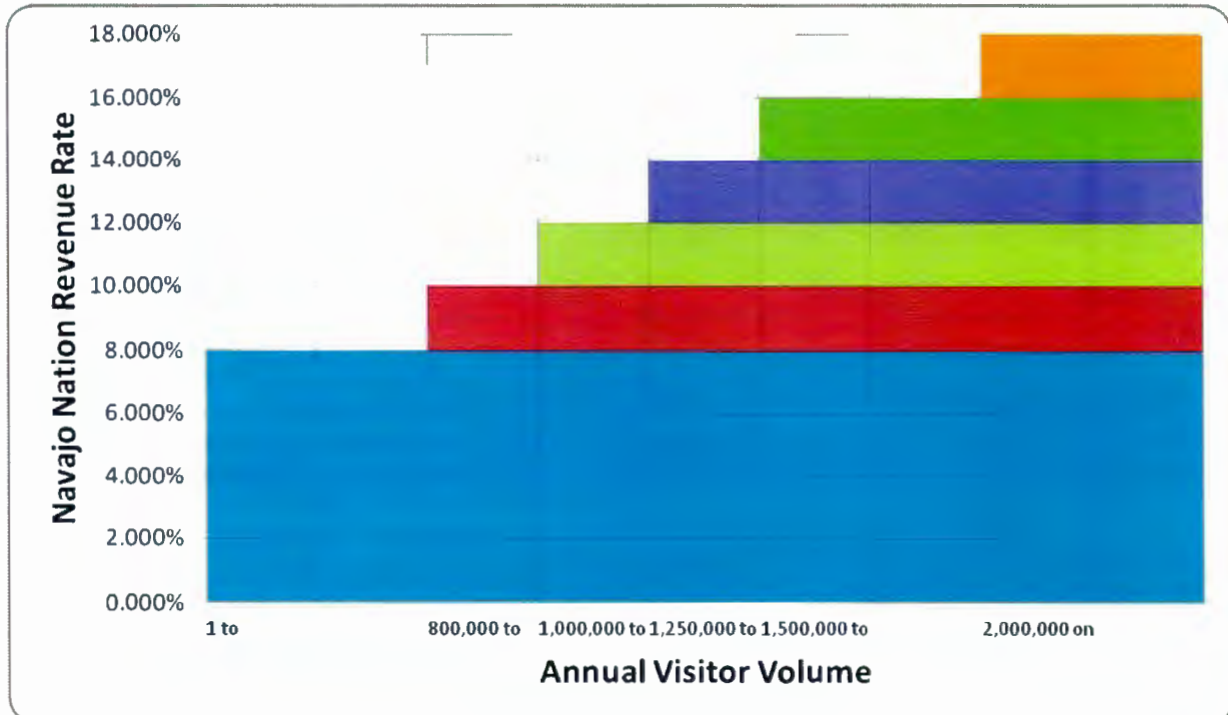
PROJECT DEVELOPMENT OVERVIEW FLOW CHART



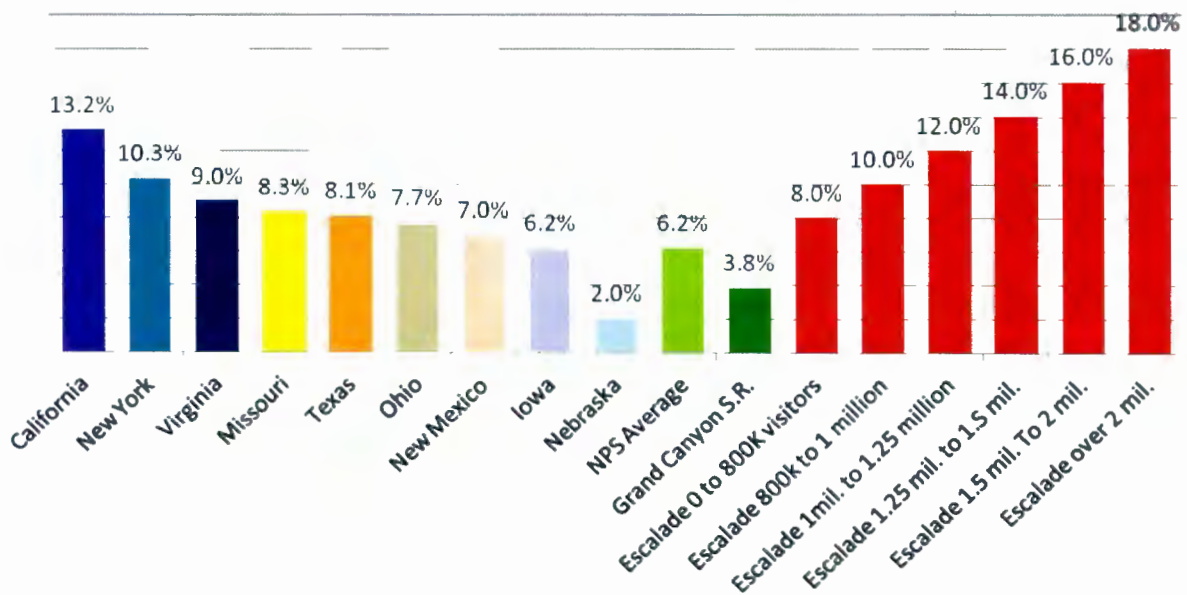
All information contained herein constituting projections or forecasts are good faith estimates and subject to change without notice.

FINANCIAL TERMS AND PROJECTIONS

The Navajo Nation will receive a franchise fee of 8% to 18% of gross revenues based upon various visitor attendance levels as shown on the tables below. The Navajo Nation will also receive 50% of the leasing rental revenues emanating from the development pads outside the "Operator Area" (see page 18).



Percentage of gross revenue charged by other governments compared to Grand Canyon Escalade



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NAVAJO NATION REVENUE MATRIX

The two major variables in projecting the annual revenues to the Navajo Nation are the Visitor spend rate and the number of visitors. Below are four visitor spend rates by seven annual visitor volumes. Visitor spend rates are estimated from Grand Canyon National Park and Grand Canyon West spend rates (see Tab 7).

	ANNUAL VISITOR VOLUME						
	0 to 800,000	to 1,000,000	to 1,250,000	to 1,500,000	to 1,750,000	to 2,000,000	to 2,250,000
	NAVAJO NATION GROSS REVENUE RATE						
VISITOR SPEND RATE	8.00%	10.00%	12.00%	14.00%	16.00%	16.00%	18.00%
PROJECTED NAVAJO NATION REVENUES							
\$139.00	8.00%	10.00%	12.00%	14.00%	16.00%	16.00%	18.00%
GCW based Top-end Estimate	\$8,896,000	\$11,676,000	\$15,846,000	\$20,711,000	\$26,271,000	\$31,831,000	\$38,086,000
Sales tax revenue	\$5,560,000	\$6,950,000	\$8,687,500	\$10,425,000	\$12,162,500	\$13,900,000	\$15,637,500
Hotel tax revenue	\$9,195,000	\$9,195,000	\$9,195,000	\$9,195,000	\$9,195,000	\$9,195,000	\$9,195,000
Total Possible Revenue	\$23,651,000	\$27,821,000	\$33,728,500	\$40,331,000	\$47,628,500	\$54,926,000	\$62,918,500
\$135.00	8.00%	10.00%	12.00%	14.00%	16.00%	16.00%	18.00%
Best Case 2003 NPS study based projection	\$8,640,000	\$11,340,000	\$15,390,000	\$20,115,000	\$25,515,000	\$30,915,000	\$36,990,000
Sales tax revenue	\$5,400,000	\$6,750,000	\$8,437,500	\$10,125,000	\$11,812,500	\$13,500,000	\$15,187,500
Hotel tax revenue	\$9,195,000	\$9,195,000	\$9,195,000	\$9,195,000	\$9,195,000	\$9,195,000	\$9,195,000
Total Possible Revenue	\$23,235,000	\$27,285,000	\$33,022,500	\$39,435,000	\$46,522,500	\$53,610,000	\$61,372,500
\$125.00	8.00%	10.00%	12.00%	14.00%	16.00%	16.00%	18.00%
GCW based Low-end Estimate	\$8,000,000	\$10,500,000	\$14,250,000	\$18,625,000	\$23,625,000	\$28,625,000	\$34,250,000
Sales tax revenue	\$5,000,000	\$6,250,000	\$7,812,500	\$9,375,000	\$10,937,500	\$12,500,000	\$14,062,500
Hotel tax revenue	\$9,195,000	\$9,195,000	\$9,195,000	\$9,195,000	\$9,195,000	\$9,195,000	\$9,195,000
Total Possible Revenue	\$22,195,000	\$25,945,000	\$31,257,500	\$37,195,000	\$43,757,500	\$50,320,000	\$57,507,500
\$92.50	8.00%	10.00%	12.00%	14.00%	16.00%	16.00%	18.00%
Worst case Grand Canyon F&B based projection	\$5,920,000	\$7,770,000	\$10,345,000	\$13,782,500	\$17,482,500	\$21,182,500	\$25,345,000
Sales tax revenue	\$3,700,000	\$4,625,000	\$5,781,250	\$6,937,500	\$8,093,750	\$9,250,000	\$10,406,250
Hotel tax revenue	\$9,195,000	\$9,195,000	\$9,195,000	\$9,195,000	\$9,195,000	\$9,195,000	\$9,195,000
Total Possible Revenue	\$18,815,000	\$21,590,000	\$25,521,250	\$29,915,000	\$34,771,250	\$39,627,500	\$44,946,250

Hotel tax revenue based on 950 rooms using current Navajo tax rates to the average occupancy and room rates from the Grand Canyon National Park South Rim operations.

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JOB CREATION AND OPERATING CONSIDERATIONS

Grand Canyon Escalade is scheduled to begin operations in the Spring of 2020. The Company estimates, that at 1.8 million annual visitors, operations including the Navajoland Discovery Center will require 850 employees with an estimated \$39 million of payroll. This estimate does not include employment from the Lease Pads for the hotels, rv-park or convenience store. It is anticipated that the Lease Pads will generate another 1,200 to 1,300 jobs onsite. The total estimated job creation for onsite and offsite is estimated at 3,500 jobs.

A definitive number of employees and payroll can only be determined after the planning and design phase is under way, which will begin after the execution of the Master Agreement, but we estimate at the 1.8 million annual visitor level we need a minimum of 850 employees. Following is a listing of the categories of jobs and compensation that will be needed to facilitate 1.8 million

PROJECTED ESCALADE JOB DESCRIPTIONS & COMPENSATION*

ADMINISTRATION & ACCOUNTING

Job Description	Num	Salary	Benefits
General Manager	1	\$180,000	\$54,000
Asst General Mngr	2	\$145,000	\$43,500
CFO/Controller	1	\$145,000	\$43,500
Internal auditor	1	\$90,000	\$27,000
Senior accountant	6	\$70,000	\$21,000
Accountant	8	\$55,000	\$16,500
Payroll clerk	4	\$47,500	\$14,250
Cash room clerk	6	\$42,500	\$12,750
H-R Manager	1	\$95,000	\$28,500
Asst H-R Manager	2	\$62,500	\$18,750
Benefits administrator	2	\$62,500	\$18,750
Admin asst.	8	\$30,000	\$9,000

NAVAJOLAND DISCOVERY CENTER

Job Description	Num	Salary	Benefits
Guest Manager	1	\$160,000	\$48,000
Asst. Manager	2	\$120,000	\$36,000
Program Producers	5	\$75,000	\$22,500
Story-tellers	24	\$45,000	\$13,500
Asst. Story-tellers f/t	100	\$36,000	\$10,800
Asst. Story-tellers p/t	120	\$18,000	\$5,400
Admin asst.	3	\$30,000	\$9,000

MARKETING

Job Description	Num	Salary	Benefits
Manager	1	\$90,000	\$27,000
Asst. Manager	2	\$60,000	\$18,000
Event manager	3	\$65,000	\$19,500
Admin asst.	2	\$30,000	\$9,000

GUEST SERVICES

Job Description	Num	Salary	Benefits
Manager	1	\$90,000	\$27,000
Asst Manager	2	\$62,500	\$18,750
Supervisors	10	\$57,500	\$17,250
Engineers	8	\$52,500	\$15,750
Attendants f/t	50	\$30,000	\$9,000
Attendants p/t	60	\$15,000	\$4,500
Admin asst.	2	\$30,000	\$9,000

RETAIL

Job Description	Num	Salary	Benefits
Floor Manager	1	\$80,000	\$24,000
Asst. Floor Manager	4	\$55,000	\$16,500
Purchasing Manager	2	\$62,500	\$18,750
Stocking/Warehouse	7	\$30,000	\$9,000
Attendants f/t	30	\$27,500	\$8,250
Attendants p/t	26	\$14,000	\$4,200

FOOD & BEVERAGE

Job Description	Num	Salary	Benefits	Total
Manager	1	\$90,000	\$27,000	\$117,000
Asst. Manager	2	\$70,000	\$21,000	\$91,000
Chef	3	\$70,000	\$21,000	\$91,000
Asst. Chef	5	\$60,000	\$18,000	\$78,000
Cook	20	\$40,000	\$12,000	\$52,000
Kitchen attendant	25	\$30,000	\$9,000	\$39,000
Attendants f/t	60	\$30,000	\$9,000	\$39,000
Attendants p/t	80	\$15,000	\$4,500	\$19,500

INFORMATION TECHNOLOGY

Job Description	Num	Salary	Benefits	Total
Manager	1	\$90,000	\$27,000	\$117,000
Asst. Manager	3	\$70,000	\$21,000	\$91,000
IT specialist	10	\$55,000	\$16,500	\$71,500
Admin asst.	4	\$30,000	\$9,000	\$39,000

SUPPORT OPERATIONS

Job Description	Num	Salary	Benefits	Total
Manager	1	\$80,000	\$24,000	\$104,000
Asst. Mngr - EMR	6	\$60,000	\$18,000	\$78,000
EMT/Fire	20	\$52,500	\$15,750	\$68,250
Asst. Mngr - Security	6	\$45,000	\$13,500	\$58,500
Security	50	\$40,000	\$12,000	\$52,000
Wastewater operator	5	\$55,000	\$16,500	\$71,500
Mechanic	6	\$45,000	\$13,500	\$58,500
Groundkeeper/Janitor	30	\$32,500	\$9,750	\$42,250
Admin asst.	4	\$30,000	\$9,000	\$39,000

TOTAL EMPLOYEES 850

(Does not include onsite employees for the Hotels, RV-Park, etc.)

TOTAL PAYROLL \$32,921,200

AVERAGE COMPENSATION \$39,006.16

*Projections assume 1.8 million annual visitors

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PROJECT MANAGEMENT TEAM MEMBERS

R. Lamar Whitmer is the principal of Fulcrum Group. Mr. Whitmer's activities have included representing, or engaging in joint ventures or contingency endeavors with publicly traded companies, privately held companies, governments, and sophisticated investors regarding a spectrum of projects and services such as troubleshooting, project analysis, financings, regulatory permitting, and other real estate and development related issues.

Mr. Whitmer was responsible for obtaining the "Hualapai Exception" during the last round of the FAA/NPS Grand Canyon Over-flights rule making. Revenue from the Exception significantly assisted the Hualapai Indian Tribe in expanding their tourism enterprise at Grand Canyon West.

In 1990, he served as the Metro-Phoenix Chief Negotiator for Major League Baseball expansion. Mr. Whitmer served as a financial advisor to the State of Arizona on developing a design build lease-purchase program for the construction of new State office buildings. As an Associate Vice President for Prudential-Bache Securities and AG Edwards, Mr. Whitmer worked as an investment banker and participated in raising capital for retail, office, multifamily, and hotels projects throughout the Western United States. For more than 10 years, Mr. Whitmer was a partner in a general contracting construction company based out of Phoenix.

Albert A. Hale is an enrolled Navajo tribal member, aka "Ahbihay", who currently serves in the Arizona House of Representatives after four terms in the Arizona State Senate. Representative Hale served as the President of the Navajo Nation from 1995 to 1998. He also served as an Assistant Attorney General for the Navajo Nation and special counsel to the Navajo Nation Council.

Representative Hale has a private law practice with an office located in St. Michaels, Arizona. He represents Navajo and non-Navajo clients in federal, state and various Indian Nations courts including the courts of the Navajo Nation. His clientele include the Navajo Engineering and Construction Authority (a Navajo Nation enterprise) and companies doing business on the Navajo Nation and other Indian Nations.

Eunice L. Tso is a Navajo consultant specializing in projects that benefit Navajo Country. For the past 18 years she has worked on a variety of large and small scale development projects. Between 2005 and 2009 she served as the project manager for the Monument Valley Navajo Tribal Park Improvement Project and the View Hotel development project. These projects were completed on time and on budget. She's completed land use plans for over 10 chapters, which has given her an strong understanding of the needs and attitudes of the Navajo people. She's completed numerous environmental impact analysis for Navajo projects including Twin Arrows and Northern Edge casino developments. Her professional strengths draw from her natural leadership skills and her ability to work well with others, complemented by a strong understanding of regulations that affect the fields of environment and development.

Eunice is an enrolled Navajo Nation tribal member and holds a B.S. Degree in Geology and a M.S. Degree in Environmental Geology from Northern Arizona University (NAU). She hails from Lechee Chapter.

Darrell Metzger is an established veteran in the leisure, resort and theme park industry, primarily focused in the Asia Pacific region. Mr. Metzger is currently retained by Khazanah Nasional to advise on the development and operations of major investments for Themed Attractions and Resorts Sdn Bhd. Themed Attractions and Resorts is the operational and management company for Khazanah Nasional Berhad's Leisure and Tourism Division. He also serves as a director on several companies mandated to develop premier destination resorts and attractions in their effort to promote the growth of this sector in Malaysia.

Spending a decade with the Disney organization culminated in the opening of the Tokyo Disney Resort in the early 1980's, Mr. Metzger moved to Ocean Park in Hong Kong in the early 1990s. There he successfully implemented a US\$100 million strategic plan that doubled profits and attendance. He then went on to become CEO of the Sentosa Leisure Group in Singapore where he played an instrumental role in building the Sentosa brand and raised private investment of US\$6 billion to improve facilities. Mr. Metzger spent a year in Dubai as CEO of Ruwaad Holdings, where he oversaw the company's entry into South Africa with the announcement of the Amazulu World destination resort in Durban.

An MBA graduate of California State University, Mr. Metzger, his wife Beverly and their two children, have lived and travelled around the world, but have always maintained a home base in Southern California.

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Jennifer Taliman is an enrolled Navajo Nation tribal member, and is a government relations and public affairs consultant based out of Window Rock, Arizona. Most recently Ms. Taliman has been engaged as a public relation manager for TallSalt Advisors, a financial advisory firm, located in Scottsdale, Arizona.

In addition her work as a consultant, Ms. Taliman has significant experience with the tourism, retail and financial services sectors. Ms. Taliman attended Northern Arizona University.

Keith A. Lamparter is the President and founder of KLI Companies. Mr. Lamparter formed KLI Companies in March of 2006 to provide owner's representative and development management services on a contract basis to both private and institutional owners and investors. KLI Clients have included entities owned and/or managed by the Blackstone Group, LP, LXR Luxury Resorts, Credit Suisse Alternative Investments and DLJ Real Estate Capital Partners. KLI also provided evaluation and advisory services of the Grand Canyon South Rim facilities, Grand Canyon Railroad and Yellowstone hotels as part of an advisory team for the acquisition of Xanterra Resorts in 2008

Significant projects for Mr. Lamparter have included management of master planning and design for a planned new Four Seasons Resort and Private Residences in Puerto Rico, renovations at the Boulders Resort in Carefree, Arizona, Casa Marina and Reach Resorts in Key West, Florida, and the El Conquistador, El San Juan and Condado Plaza hotels in Puerto Rico, the Four Seasons Resort and Private Residences, Jackson Hole, Wyoming, Kierland Resort and Kierland Commons, Scottsdale, Arizona, Terreneau Resort, Rancho Palos Verdes, California and the Westin La Cantera Golf Resort, San Antonio, Texas.

Bernie Propst was the Chief Financial Officer for the Hualapai Indians' Grand Canyon Resort Corporation, which operates Grand Canyon West, from 2006 through 2009. As a key member of the GCRC management team, he oversaw all aspects of financial reporting, financial feasibilities, financings, receivables and payables during the dramatic increase of visitor volume.

Mr. Propst brings over 25 years of extensive business experience in finance, accounting, taxation, auditing and general management. He earned his CPA license in California in 1980 and his work includes several years of external and internal auditing of public and private businesses. Corporate positions that he has held over the years include that of Controller, Treasurer and Chief Financial Officer, and he has served on the Board of Directors of several private companies. Mr. Propst holds a Bachelor of Science in accounting and management information systems from California State University, Sacramento and a Masters in Taxation from Golden Gate University.

Peter M. K. Kaanapu, Jr. currently consults with leading consulting, design and engineering, development and public sector clients and governments globally. Mr. Kaanapu has completed projects in eighteen states in the U.S. as well as in twenty-five foreign countries including; Abu Dhabi, Antigua BWI, Argentina, Australia, the Bahamas, Belgium, Peoples Republic of China, Dubai, Egypt, Eritrea, France, Germany, Guam, Hong Kong, Japan, Oman, Samoa, South Africa, South Korea, Malaysia, Mexico, Micronesia, Nigeria, Philippines, Puerto Rico, Taiwan (ROC), and Turkey.

Formerly, he was a Senior Vice President with AECOM Enterprises, the project development arm of AECOM (NYSE:ACM), and continues to consult with them. He joined AECOM from KPMG LLP where he led the Honolulu office's Real Estate and Hospitality consulting practice as Managing Director. Previously, as Senior Vice President for marketing and planning at the Polynesian Cultural Center in Hawaii, Mr. Kaanapu was responsible for all aspects of revenue generation and product development at Hawaii's No. 1 paid cultural attraction.

In the past, he was an equity partner and principal with the internationally renowned consulting firm Economics Research Associates and was co-office manager for the firm's office located in Fort Lauderdale, Florida. Mr. Kaanapu earned his Bachelor of Science degree, Magna Cum Laude in Business Administration from Brigham Young University-Hawaii in 1978. He later completed an MBA from the Marriott School of Management at BYU- Provo, Utah in 1980.

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Michael V. Lee - Magic Learning Destinations Productions, in 1989, launched Michael Lee Design and Magic Learning Destinations Productions for consulting, managing, and building projects for a wide variety of themed entertainment clients worldwide including Swire Properties, Warner Bros., Children's Television Workshop (now Sesame Workshop), and many others. Mr. Lee's career in art and design has spanned over 33 years. He has built a reputation as a creative artist, planner, designer and architect on high-pressure, world-class projects. He has extensive experience in all phases of development of theme parks, museums, cultural entertainment centers, water parks, resorts, theaters, and other types of recreation and education projects.

In the early 1970's he was an assistant professor of Art & Design at California State University, Fullerton, and was the co-founder of the Environmental Studies Department, one of the first successful interdisciplinary environment-oriented programs of its kind in the U.S.

As a licensed architect he has been a principal in several architectural and engineering firms, including Walker-Lee which produced award-winning projects for golf, resort and leisure projects of over \$500 million. He has won awards from the Hong Kong Downtown Merchants Association for his innovative planning and design of seasonal events including the yearly Christmas Celebration ('94-'99) with arrival of Santa Claus at Pacific Place, one of the largest and most prestigious shopping venues in south-east Asia. He has also been honored for "Innovation in the Use of New Materials" by General Electric Company and was the recipient of the Governor's Award for Excellence in Teaching.

As Director of Design for LucasArts Attractions, a division of Industrial Light and Magic (a George Lucas Company), he lead a team of world-class producers, planners and designers who produced attractions for Disney, Universal and other major entertainment companies.

He specializes in creative environments for attractions with his own unique mixture of experience in both science and art. Indeed, the planning and design of unique and compelling experiences is the specialty of MLD. Michael Lee has been a featured speaker at meetings of the American Museum association, International Association of Amusement Parks and Attractions, American Institute of Architects, several radio and TV programs and other industry conferences. He has taught design at two universities. Michael holds a B.S. from BYU and a Master of Fine Arts in Design from the University of California at Los Angeles. www.mldworldwide.com

Jack Gilmore - Gilmore Planning and Landscape Architecture Jack is the President of Gilmore Planning and Landscape Architecture, Jack's professional experience has primarily dealt with developer-oriented land planning and landscape architectural design services. Projects range from large master planned communities and golf courses to mixed use commercial, office, and industrial parks. As a registered Landscape Architect he has dealt with the design and preparation of construction documents for projects ranging from desert restoration to large campus landscapes and community parks.

Jack's alma mater is Kansas State University, Bachelor of Landscape Architecture, and is a Registered Landscape Architect in Arizona, Nevada, California, Wisconsin, and Kansas. www.getgilmore.com

- **Sundt Construction, Inc.** Sundt, founded in 1890, is an employee-owned full-service building contractor with unsurpassed expertise and capabilities. www.sundt.com
- **Swaback Partners pllc.** Swaback Partners provides world renowned special case architectural design, community planning and development services, interior design, environmental and graphic design. www.swabackpartners.com
- **Tmad Taylor and Gaines.** TT&G is an engineering, facility programming and construction services company. Established in 1955, TT&G has a team of over 450 professionals throughout 13 locations in five states. Their services cover the full spectrum of engineering—mechanical, electrical, plumbing, structural and civil. www.ttgc.com

- **Doppelmayr/Garaventa Group.** Doppelmayr is the world leader in tramway/ropeway engineering, and has production facilities and sales and service locations in over 33 countries of the world and to date has built more than 14,400 installations in over 88 countries. www.doppelmayr.com

PLEASE NOTE: All contractors, architects and engineers to be use on the design and construction of Grand Canyon Escalade are subject to the Navajo Nation Business Opportunity Act and the Navajo Business and Procurement Act.

PROJECT DEVELOPMENT CONSIDERATIONS

BOUNDARY

The Tram and the Riverwalk facilities, including the lower tram station, the walkways, the amphitheater, the food pavilion and a waste water plant, are located adjacent to the Colorado River, on the west end of the Navajo Nation.

The Navajo Nation and Grand Canyon National Park share a common border. The Navajo Nation's western border was set by the Navajo Boundary Act of 1934 as "the south bank of that stream (Colorado River) to its confluence with the Little Colorado River thence following the north bank of the Little Colorado River to a point opposite the east boundary of the Grand Canyon National Park."

The Navajo Boundary Act excluded from the Navajo Reservation all lands previously designated by the Secretary of the Interior as being valuable for power purposes and all lands withdrawn or classified as power-site lands.

The Secretary of the Interior, in 1917, designated all the land along the eastern edge of the Colorado River within a quarter mile of the River as valuable for water power purposes.

However, the Navajo Boundary Act retained for the Navajo Nation "the exclusive right to occupy and use such designated and classified lands until they shall be required for power purposes or other uses under the authority of the United States."

In 1984, the Secretary of the Interior revoked the water power designations.

As a result of that revocation, the Navajo Nation has the exclusive right to use and occupy the eastern bank of the Colorado River without limitation.

The National Park Service has expressed concerns about the effects of the Escalade Project on Grand Canyon National Park. Those concerns will be addressed jointly by the Navajo Nation and Confluence Partners, LLC through discussions with Department of the Interior officials and our congressional delegation.

PROJECT SCHEDULE

The Company anticipates that if the Master Agreement is approved by the end of April 2016, then, in a best case scenario, design and construction of Phase One could be completed thirty six months from finalization of the Master Agreement, with operations beginning in May 2019.

Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16
Master Agreement Approval									Environ. & Reg. Permitting		
									Design & Engineering		
Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17
Environmental & Regulatory Permitting											
Design & Engineering											
Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18
Design & Engineering											
							Construction Begins				
Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19
Construction											
Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20
Construction				Opening Day - Begin Operations							
Operational Ramp-up											

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CULTURAL AND ENVIRONMENTAL COMPLIANCE

The Navajo Nation has substantial authority for environmental protection on tribal lands through their retained tribal sovereignty. Further, the federal government, through the Navajo Nation Trust Land Leasing Act of 2000 (25 U.S.C § 415) has authorized the Navajo Nation to conduct business site leasing without subsequent federal approval, as the Navajo Nation has adopted regulations, including an environmental review, that are consistent with federal regulations.

The Grand Canyon Escalade Project will undergo a tribal environmental review in accordance with Subchapter 800 of the Navajo Nation Business Leasing Regulations of 2005. This process is similar to that in which the Navajo casinos were developed.

The environmental review will ensure compliance with the following Navajo laws:

- Navajo Nation Cultural Resource Protection Act (NNC § 1001)
- Navajo Nation Policy to Protect Traditional Cultural Properties (NNHPD Policy)
- Navajo Endangered Species List (RCS-41-08)
- Navajo Nation Biological Resource Land Use Clearance Policies and Procedures (RCMA-44-038) (which incorporates the federal Endangered Species Act)
- Navajo Nation Environmental Protection Act (4 NNC, Chapter 9)
- Navajo Nation Clean Water Act (C.J.Y.-81-99)

DESIGN AND PERMITTING

The design and permitting processes are as follows and will occur in the order set forth below.

1. Program, Budget and Schedule. The Project+ Development Agreement requires the Company and the Nation, through the Hospitality Enterprise Representative, to agree on a Program of uses and square footages, a Budget detailing all costs and a Schedule for all major activities anticipated. These three items must be approved by the Company and the Enterprise Representative prior to proceeding with selection of the consultant team and design of the Project.
2. Consultant Team Selection. Upon approval of the Program, the Budget and the Schedule, the Company will select a professional design and consultant team, consisting of the primary architect, civil engineers, environmental, archeological and cultural consultants and a variety of specialized designers, engineers and consultants.
3. Preliminary Reports and Investigations. Project design will begin with the preparation of the following key reports and investigations.
 - a. Boundary Survey. This survey will be used to prepare the legal instrument for defining the Project limits.
 - b. Topographic Report. This report will detail the topography of the Project site and proposed routes for roadways, water and electric utilities that will be required for the precise engineering and design work that will follow
 - c. Geotechnical Report. The geotechnical report is the tool used to communicate the surface and sub-surface soil, rock, and water conditions to the design team together with specific design recommendations for roadways, building foundations and other structures such as bridges.
 - d. Drainage Study. The drainage study addresses the hydrology and hydraulics of the Project area and roadway.

All information contained herein constituting projections or forecasts are good faith estimates and subject to change without notice.

- e. Well Field Location and Engineering. The Geohydrological Engineer will locate and design a well field capable of producing a sustained 1000 GPM of potable water.
- f. Preliminary Environmental, Cultural and Archeological Surveys. Environmental, cultural and archeological surveying will be conducted to identify areas of concern as soon as possible. This process is set out in greater detail above. The Company will coordinate with the Enterprise Representative any remedial actions or additional measures that need to be taken as a result to the environmental, cultural and archeological reviews.

These baseline assessments will be used to develop a series of recommendations and procedures for implementation before, during and after construction, which typically include dust and erosion control requirements (fencing, catchments, baling, revegetation), methodology to avoid displacement of materials into the river or river bed, areas of construction avoidance, work rules and regulations to protect wildlife mating, nesting or other behaviors, habitat enhancement or mitigation requirements, and other items of particular importance such as means and methods for construction and the design of foundations and building elements. The assessments will also set forth the methodology for post-construction review to ensure that the habitat and its biology remain free of adverse impact. Until these key reports are completed no final structural design, site plan or roadway and utility corridor determinations can be finalized.

Project Design, Design Standards and Guidelines. Once the baseline assessments are completed, the resulting data and recommendations will be incorporated into specific design and engineering plans and specifications which will be issued to the Project contractors for use and administration of Project construction.

1. Design Standards and Guidelines. Design Standards and Guidelines will be developed which will govern all design and construction for the Project. These Design Guidelines and Standards will address design and planning standards, exterior materials and colors, code requirements, parking requirements, roadway and traffic standards, building setbacks, landscaping design requirements and landscape planning materials, sustainable building practices and other requirements for all building and land development within the Project and the Project Entrance on Highway 89. The Design Standards and Guidelines will be approved jointly by the Company and Navajo Nation representatives.
2. Conceptual Design. Conceptual designs for the Project will be developed concurrently with development of the Design Guidelines and Standards. These various concepts will study different options for each Project component and building as well as their arrangement and relationship on the Project site. The final Conceptual Design will be approved jointly by the Company and the Enterprise Representative.
3. Schematic Design. Following approval of the Conceptual Design, the professional team will prepare more refined and detailed schematic designs. The final Schematic Design will be presented to the Construction Manager who will use them to prepare detailed cost estimates so Project costs can be controlled and managed early in the process.
4. Design Development. The Design Development documents will consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems which illustrate the Schematic Design documents. The Design Development documents will also contain a Final Site Plan which will be the guide for the initial Project construction and for future development.
5. Construction Documents. The Construction Documents will consist of drawings and specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Project. At the completion of the Construction Documents phase, the Company will provide the Project Budget which will include an updated comprehensive construction cost estimate in order to move forward with the permitting process and final negotiations with the highest qualified firm on the final list of contractors.

CONSTRUCTION

Selection of the Construction Manager. The Construction Contract will set a Guaranteed Maximum Price for the Project. **The Company will select the Construction Manager subject to the Navajo Nation Business Opportunity Act and the Navajo Business and Procurement Act**, and contract directly with them upon acceptance of the Guaranteed Maximum Price. **The Company will also monitor the Construction Manager's selection of all the subcontractor trades, ensuring compliance with the Navajo Nation Business Opportunity Act and the Navajo Business and Procurement Act.**

Construction Management. The Company will oversee, manage and administer the Construction Contract. A person to serve as construction/project manager will be assigned by the Company to the Project on a full-time basis during the construction and closeout phases of the Project.

Construction Methods. Construction and development of Colorado River level facilities must be undertaken with a great deal of care in order to minimize disturbance of the existing landscape and to prevent any impact to the Colorado River and the land area between the Project boundary and the Colorado River.

1. Construction will commence with the implementation of erosion control, fencing, dust control and pollution controls. At the canyon rim level, this will focus on protection of washes and waterways leading to the canyon and the rivers, fencing areas to be protected, and establishing a variety of pollution control measures. At the river level, particular focus will be on establishing perimeter protection such as fencing to prevent any disturbed materials such as loose rocks or construction materials from entering into the protected zone below the high-water mark of the river and to prevent human incursion into protected areas.
2. Construction at the rim level will be conventional and should not present any unusual challenges, other than the remote location. Construction below the rim and at the river level, on the other hand, will present a broad array of challenges with the most daunting being access which, until the tramway is established, will be by helicopter only. Therefore, establishment of primary and secondary helicopter landing pads and adjacent staging areas will be the first step in construction. It is currently anticipated that, due to the limited ability to operate heavy equipment and the need to minimize disturbance to the land, the majority of structures at the river level will be elevated above the ground and sitting on piers.
3. Once the helicopter landing pads and staging areas are erected, the focus will be on building the escalate tramway base and the bases for the tramway towers. These bases will require excavation and disturbance of the site, although in limited areas, and pouring a significant amount of concrete. Work on the tramway tower bases will be particularly challenging as access is precarious, men must work tethered to the canyon side, and there are little or no staging areas. However, once the river level base and the tramway bases are established the towers themselves and tramway machinery can be erected very quickly and the tram itself used to shuttle men, machinery and supplies.
4. With the establishment of the tramway, and completion of the piers for the elevated walkway and other structures, virtually all activity will take place above the ground without further ground disturbance. Equipment, manpower and materials will be transported utilizing the elevated walkway structures and transported to the river level either by helicopter or the tramway. Utilities such as water, wastewater, power and communications will be hung below the elevated walkway deck eliminating the need for trenching and excavation. Wastewater treatment will be by means of a containerized, packaged bio-reactor system that treats wastewater producing reclaimed water that can be used for landscape watering, eliminating problems with groundwater contamination associated with traditional septic systems or the excavation and disturbance of building a conventional wastewater treatment plant.

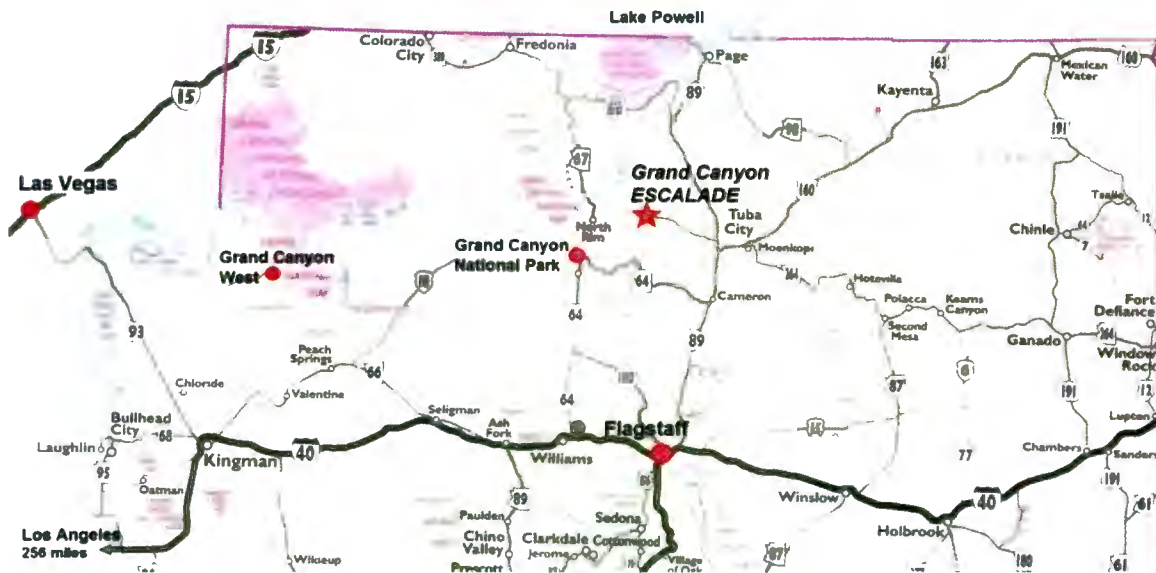
Project Close-out. The Company will manage the close-out process for the Project. The Company will oversee and manage any necessary corrections and work completions. The Enterprise Representative may participate in any final inspections. The Company will provide to the Enterprise Representative and to the Director of the Division of Economic Development the originals or copies of all close-out documents, including electronic copies.

The Company will assist the Architect, the Engineer and the Enterprise in the transfer of the electric lines and water lines and their accompanying dedicated easements elements of the Project to NTUA.

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GRAND CANYON ESCALADE LOCATION

Grand Canyon Escalade is located on the western edge of the Navajo Nation reservation at the Confluence of the Colorado River and the Little Colorado River located about 100 miles (161 kilometers) by road from Interstate-40 and Flagstaff, Arizona. More than 73 million residents, almost 24% of the U.S. population, lives within a 1,000 mile range of Flagstaff and Grand Canyon Escalade.



The table below demonstrates the approximate driving distance of the major metro-cities within a 1,000 mile range of Flagstaff and Grand Canyon Escalade.

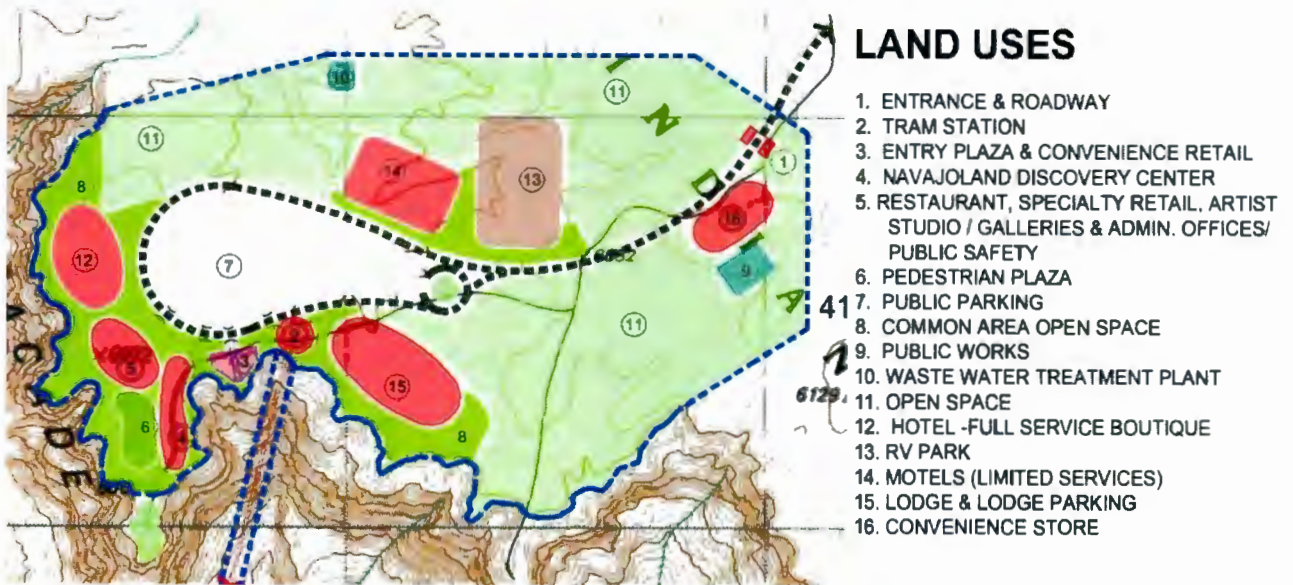
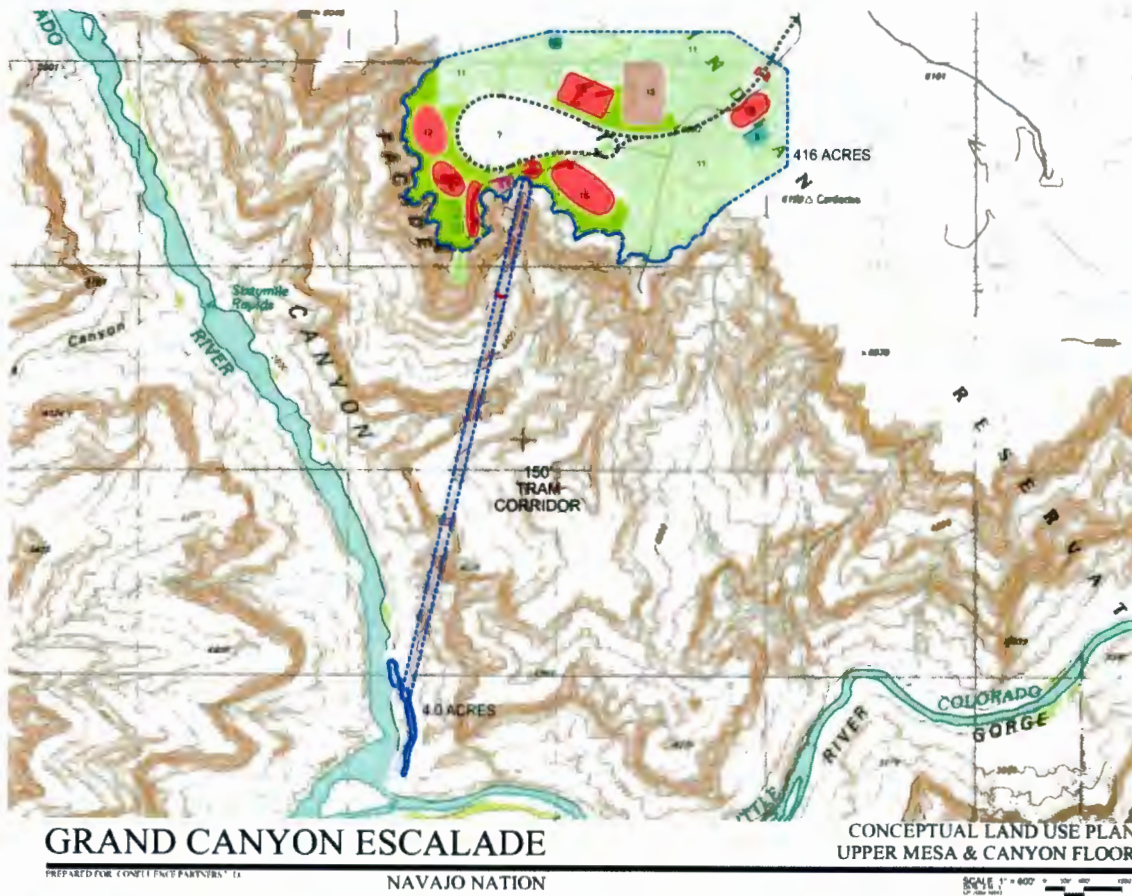
To GCE from	Las Vegas	Phoenix	Los Angeles	San Francisco	Salt Lake	Denver	Dallas
Road miles	358	246	564	852	469	580	971
(Kilometers)	560	396	907	1371	755	933	1562

Access Road



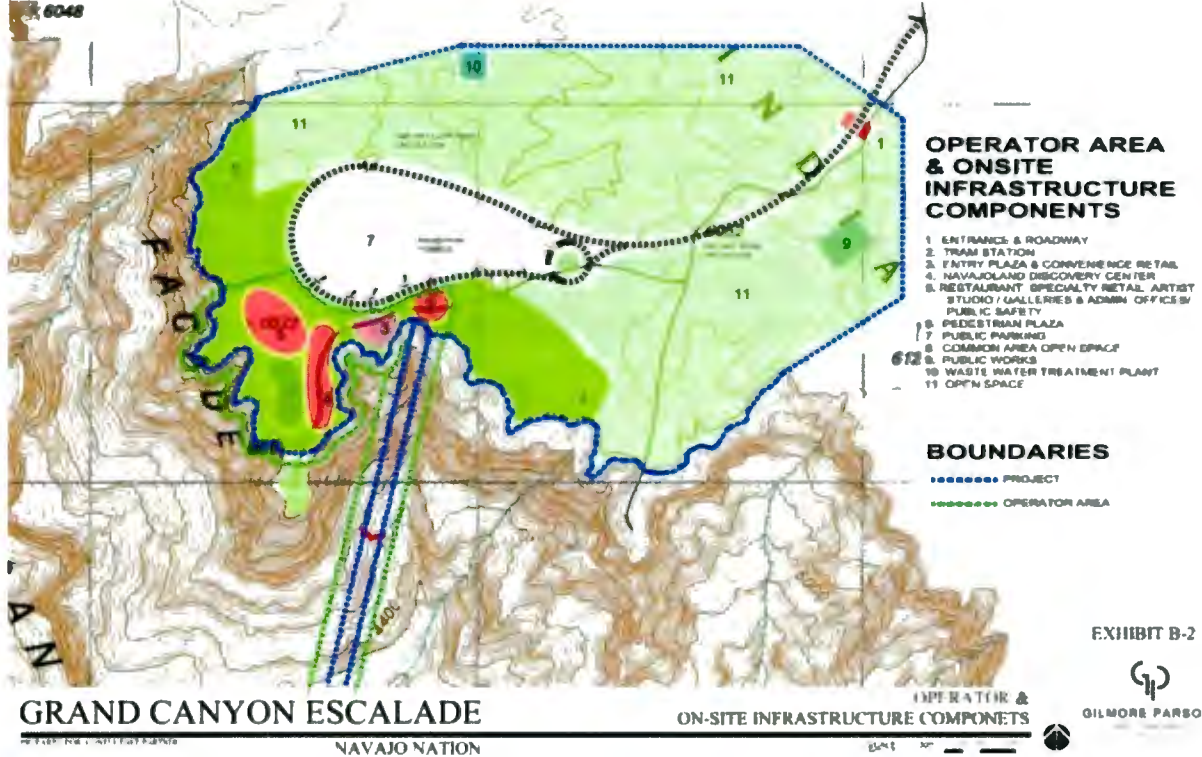
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DEVELOPMENT LAND USE PLAN

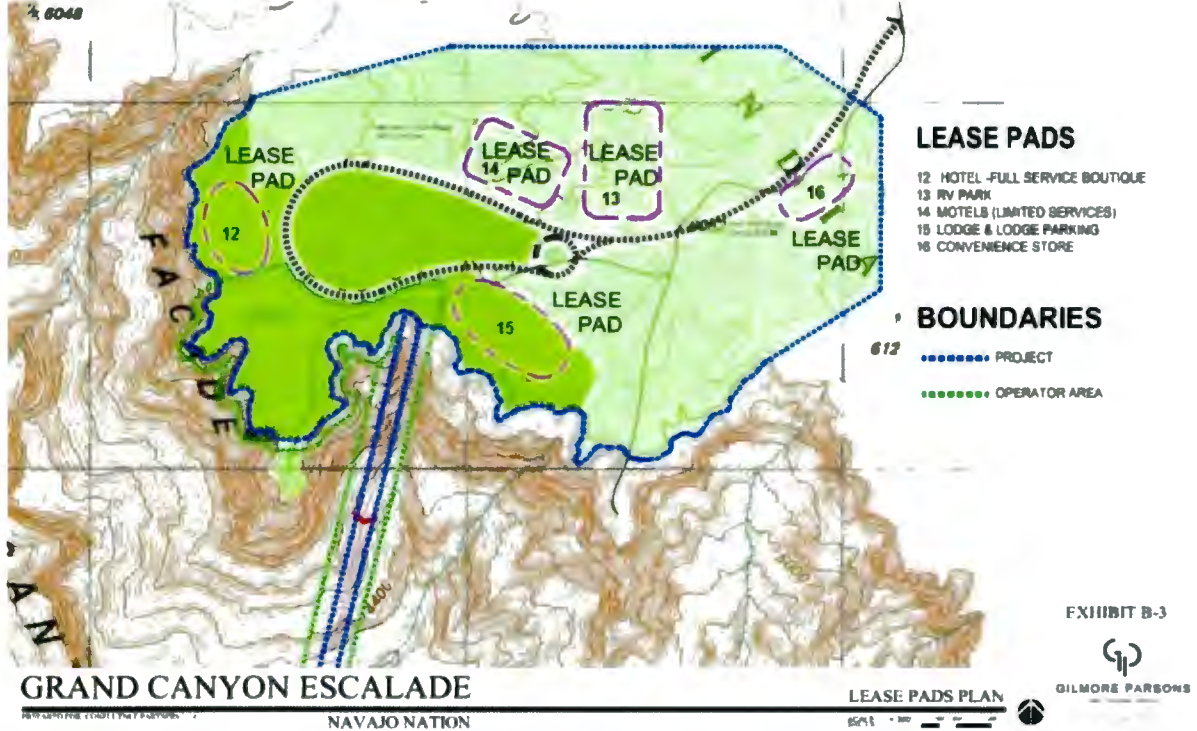


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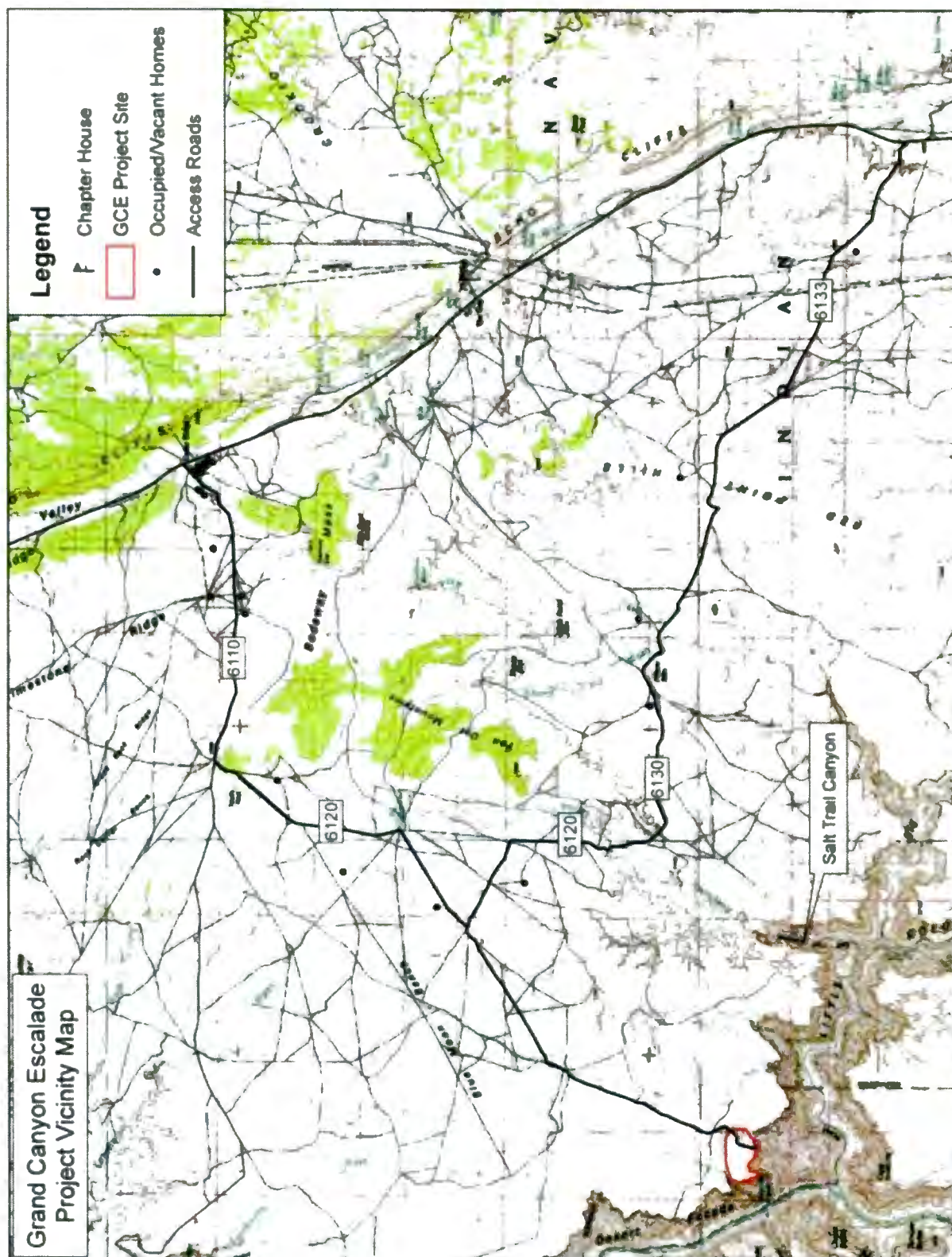
OPERATOR AREA



LEASE PADS



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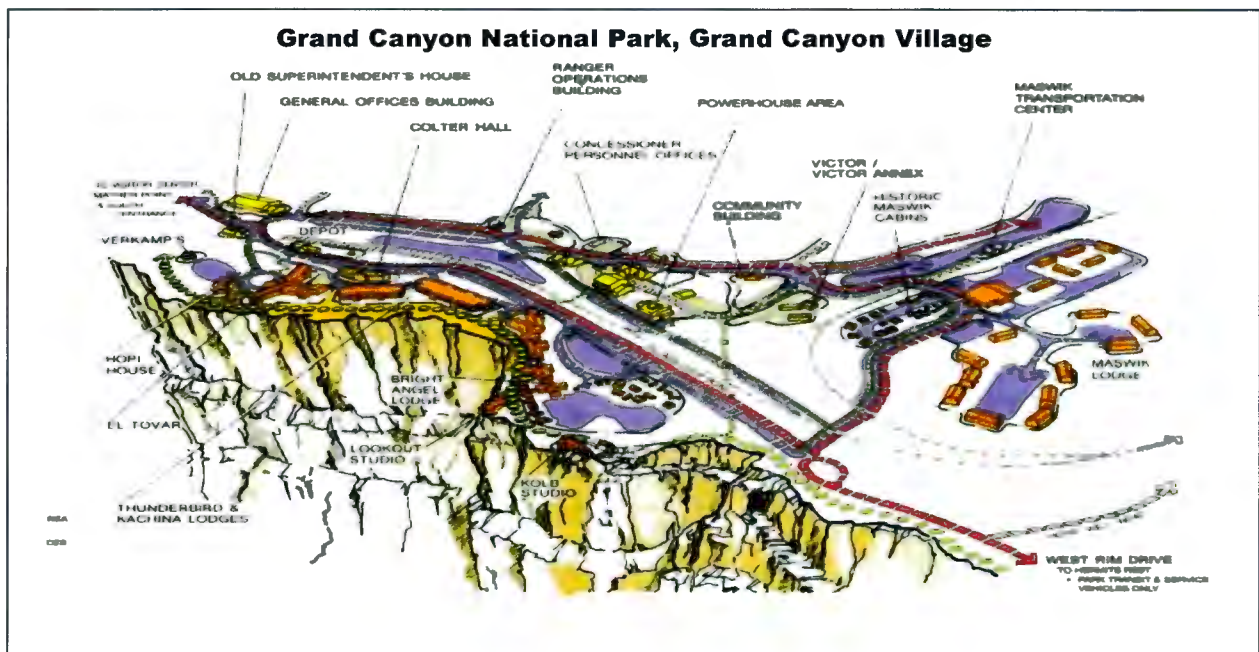


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GRAND CANYON NATIONAL PARK vs GRAND CANYON ESCALADE

Grand Canyon Village began as a camp in the 1880's. The Village's cacophony of architectural styles was initially cobbled together by the Santa Fe Railroad, which began service to the Canyon in 1901. The development layout was done by the Railroad to accommodate train passengers, with cars and buses being an afterthought.

Since its establishment as a National Park in 1907, the Village has grown into the most highly visited location in the National Park System, with over 4 million visitors per year. With this popularity has come sprawl, congestion, and outdated facilities. The Village now consists of 1,086 rentable rooms, over 1,250 restaurant seats, and 15,000 square feet of retail space built between 1905 and 1972. In addition there are over 1,000 employee housing units, administrative office complexes, campgrounds, a commercial laundry and railroad facilities. The capacity of the parking lots, lodging, restaurants and gift shops is too small to accommodate visitor volume, and the pedestrian paths are long, narrow and difficult to access from limited parking areas.



Grand Canyon Escalade is being designed to enable public access to the majestic Grand Canyon while minimizing adverse environmental impacts and preserving historical, cultural and religious areas on or in the Canyon. The Escalade gondola tramway to the Canyon floor will provide a unique and unmatched ability for the casual tourist to actually visit the Canyon floor and the Colorado River, providing an opportunity to combine awe inspiring views from the Canyon's rim, as well as from the Canyon floor. Pedestrian friendly arcades will allow visitors to access Artisan Studios and Galleries along the Canyon rim, which will offer not only shopping but the ability to interact with Native American artists and artisans, dine at restaurants with unparalleled views, learn about the Navajo and Native Americans by touring the Navajoland Discovery Center, and spend the night at a Canyon-side lodge.

Green buildings utilizing native materials, living systems and site-sensitive design will make Grand Canyon Escalade a model for eco-friendly development. Centralized parking with natural landscape buffers to protect the Canyon experience will provide convenient access for autos, tour busses and mass-transportation while eliminating unsightly sprawl and congestion.

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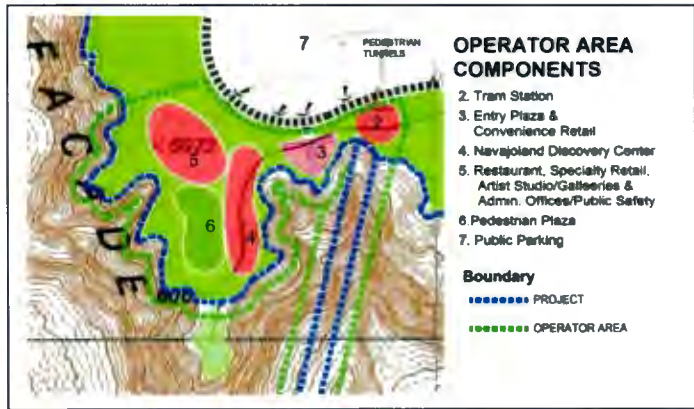
PHASE ONE DEVELOPMENT & OPERATOR AREA COMPONENTS

The Company estimates the cost of constructing Phase One of the development, inclusive of the Operator Area, to be around \$160 million.

The Operator Area includes an initial mixed use of retail, restaurants and the Navajoland Discovery Center. However, the Company can develop more retail/commercial space within the Area.

The Escalade Gondola Tramway

The development's main attraction will be the Escalade eight-person gondola tramway a ride which will take about 10 minutes from the rim of the Canyon to the Canyon floor. The length of the tram will be approximately 1.6 miles (2.57 kilometers) with about a 3,200 foot (975 meters) descent. We have selected Doppelmayr-Garaventa Group www.doppelmayr.com to be our tramway manufacturer and installer. Doppelmayr has conducted a site visit and analysis for the Company and estimates the cost of the tramway to be \$26 million.



Eight-person gondola carriage



Mammoth Mountain Tramway with 8-person Gondolas

Navajoland Discovery Center

The Company and the Escalade Navajoland Discovery Center Advisory Board will work hand in hand with the Navajo People to create the Navajoland Discovery Center — a tourism facility that honors and celebrates Navajo culture, history and traditions. From contemporary Navajo art to myriad activities, entertainment, exhibits and more, Escalade will immerse visitors in the legends of the Navajo so they can experience the true enchantment of the Dine'. The Navajoland Discovery Center will tell the Navajos' and other area tribes' stories and relationship with the Canyon. Exhibits will be in both buildings and in open space areas. The programming will continually change with the seasons and the availability of story-tellers, musicians and performers. The Company has \$19 million budgeted for constructing the Navajoland Discovery Center, and anticipates spending 20% of admission revenues on operating the Discovery Center.

Grand Canyon Escalade Multimedia Complex

As an adjunct to the Navajoland Discovery Center, we intend to develop a multimedia complex where visitors can watch a variety of media experiences. As the means funding the complex, we intend to offer a joint venture opportunity to those that can bring expertise and capital (i.e. IMAX).

Rim Level Infrastructure

The Company has budgeted \$30 million to construct the necessary onsite infrastructure including the entry gate, various roads, a wastewater treatment plant, and 1,200 visitor parking spaces. Within the visitor parking area, the Company will construct local vendor stations.

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Rim Level Commercial/Retail

In Phase One, the Company is planning to construct 47,000 square feet of mixed use retail and restaurants. While final mix is to be determined, the Company intends to have an art studio/galleries and specialty retail area on the west side of the development.

The concept for the Artisan Studios/Galleries and Specialty Retail space is:

To facilitate an "Artist in Residency" program to integrate Native American Artists through Escalade's art studio/galleries and specialty retail.

It is contemplated that those participating in the "Artist in Residency" program would receive 3 to 6 month fellowships which includes room and board.

As part of the fellowship, the artist would be required to interact with visitors through lectures, exhibits or performances.



The concept for the Escalade Restaurant is to provide world class cuisine with a world class view of the Canyon.

Riverwalk Facilities

In Phase One, the Company is planning to construct a lower tramway station that will include a retail component, two 1,100 foot elevated connecting walkways and a food pavilion. An amphitheater and terraced seated area will be available for performances or to just view the river and the Canyon. A self contained wastewater package plant within the lower tram station will also be part of Phase One.



View upstream of the Colorado River, the proposed elevated Riverwalk, and Tramway station and route.

Administrative, Public Safety and Maintenance Facilities

In Phase One, the Company is planning to construct 20,000 square feet of apportioned Administrative, Public Safety and Maintenance Facilities. The administrative space will be the operations center for the development. Public Safety will include not only the security center, but also a medical response center and adjacent helipad. The Maintenance Facilities will include a maintenance yard located northwest of the entrance to the development.

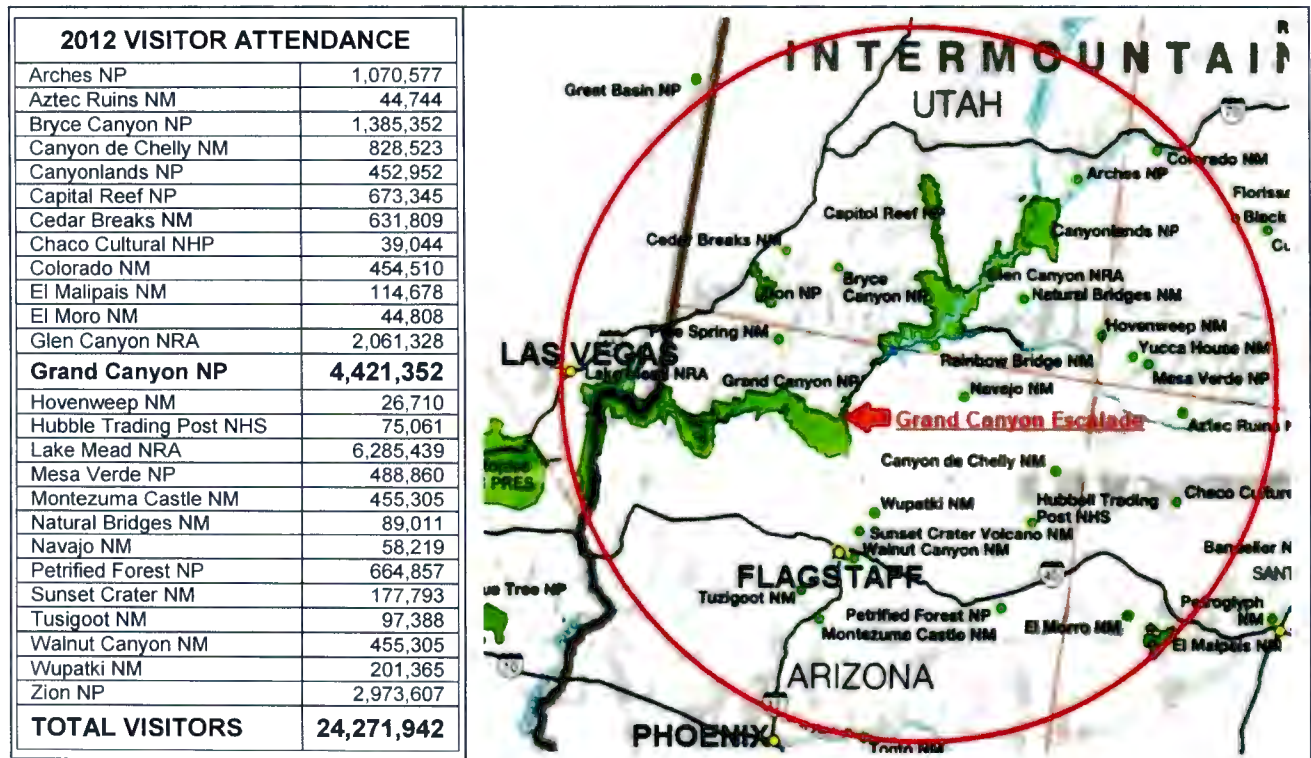
FUTURE DEVELOPMENT COMPONENTS

Beyond Phase One, future planned development will include a Lodge Hotel, a Boutique Hotel, multiple midlevel Motels, a RV Park, and a General Store.

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GRAND CANYON MARKET DYNAMICS

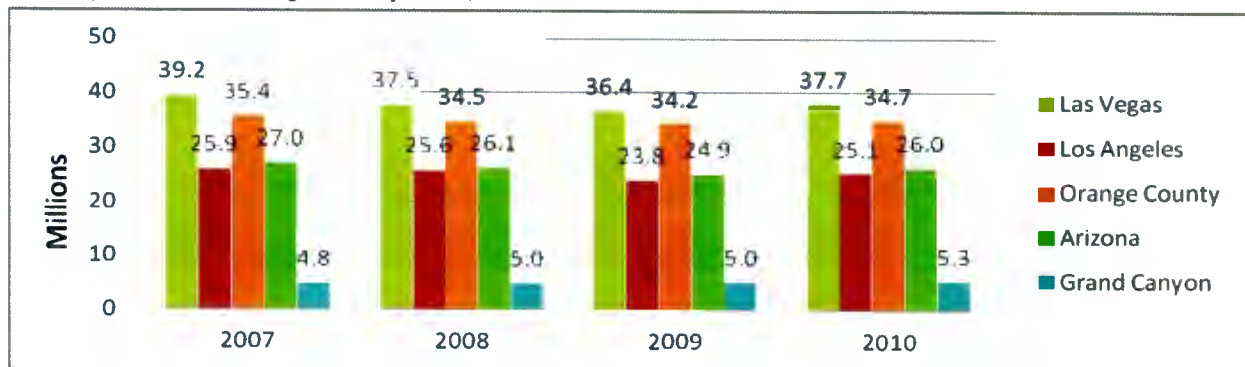
The tourism market for the southwestern United States is very vibrant and dynamic. More than 24 million visitors annually frequent the Grand Circle's National Parks, National Monuments, National Recreation Areas and other attractions in northern Arizona, southern Utah, and southeastern Nevada.



For more than 20-years the Grand Canyon National Park has averaged 4.37 million annual visitors. With the 2007 opening of the Skywalk at Grand Canyon West, the Grand Canyon tourism market has averaged more than 5.1 million annual visitors.

Despite the 2008 – 2009 national/worldwide recession, Grand Canyon visitation has not only remained stable but, since the opening of Skywalk, Grand Canyon visitation grew by more than 20%.

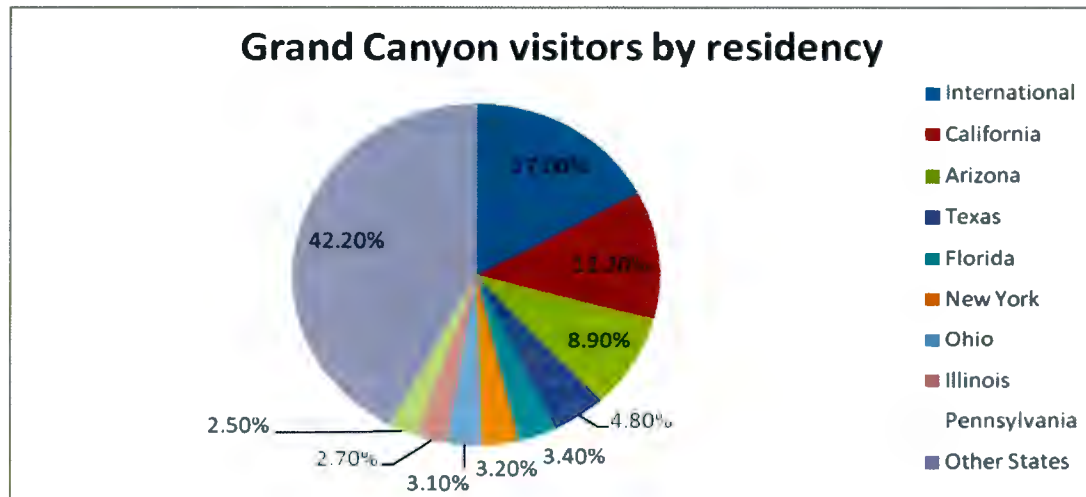
The Chart below demonstrates that as a result of the recession, visitation declined in Las Vegas by 7.3%, Los Angeles 8.1%, Orange County 3.6%, and Arizona 7.8%.



Source: LVCVA, LAC, AOCCVB, State of Arizona Office of Tourism, National Park Service and GCRC

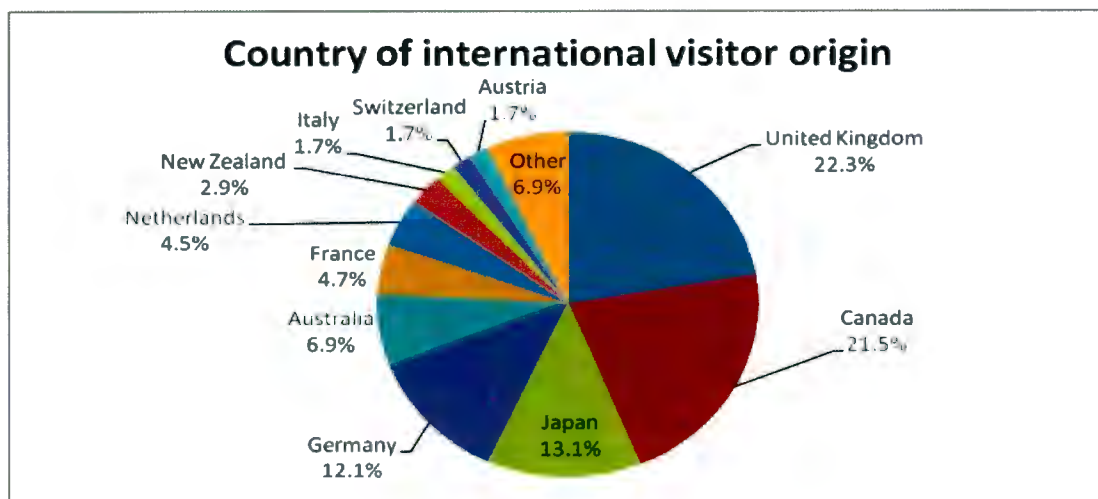
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In 2005, the Grand Canyon National Park (GCNP) and the National Park Service (NPS) commissioned a study of Grand Canyon visitors. They found 40% of annual Grand Canyon visitors are return visitors. 66% of all Grand Canyon visitors included the Grand Canyon National Park as one stop on a longer trip with other destinations. The chart above shows that international visitors accounted for 17.0% of GCNP visitors.



Source: 2005 Grand Canyon National Park Tourism Study

The chart below shows the distribution of the top countries of origin and clearly demonstrates the global attraction and why the Grand Canyon is considered the most popular of the Seven Natural Wonders of the World.



Source: 2005 Grand Canyon National Park Tourism Study

The average age of Grand Canyon visitors is 48.5 years old; with the highest level of discretionary income, they are the most desirous market demographic.

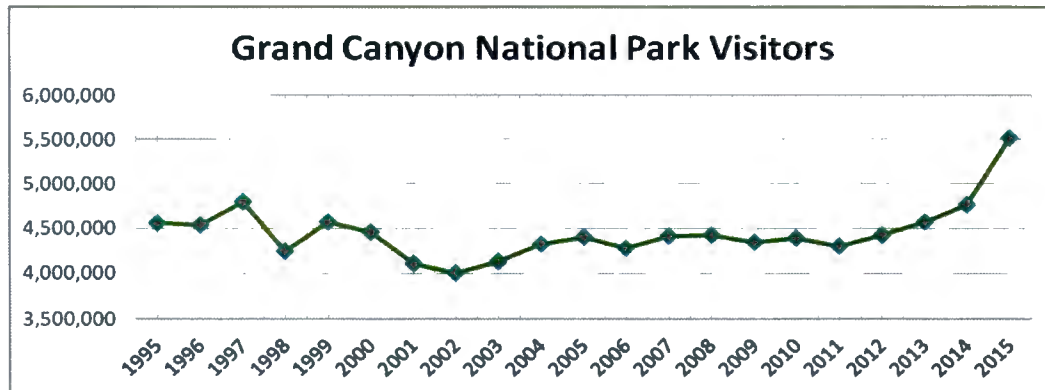
The NPS study found 97.1% of GCNP visitors used a private or rental car as their means of visiting GCNP. Visitors from the Southwest, the Midwest, and eastern United States use Interstate-40 as their primary road access for GCNP and Grand Canyon West.

Those traveling to and from Las Vegas and southern California would also use Interstate-40. "Free and Independent Travelers" (FIT) primarily use automobiles and represent the highest profit margin visitors.

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GRAND CANYON MARKET COMPETITION

Grand Canyon National Park for more than 20 years has averaged 4.3 million annual visitors. The Park's General Management Plan projected that attendance could reach 7 million annually if improvements were made to facilitate the additional growth. Because the Park is incapable of making improvements to draw and/or accommodate increased visitor volumes, their projected growth potential remains unrealized.



Grand Canyon National Park revenue/expense model is difficult to analyze due to incomplete disclosure and unexpressed methodology. The 2005 NPS tourism study found that the average visitor stay for day visitors was around 6 hours and 2.5 days for overnight visitors, with an average daily expenditure of \$158 for visitors staying within the Park and \$175 for those staying outside the Park.

According to GCNP's Park Profile, their total annual revenue averages around \$66 million (\$15 gross revenue per visitor), which goes for Park operations, maintenance and capital improvements. GCNP's base operating appropriation for 2011 was \$22,331,000. The total recreation fee revenue was \$13.8 million and has averaged \$14,679,860 over the past 10 years. Additional funds received from concessions \$6.9 million, along with donations and other sources came to \$22.4 million.

It has been reported that the Xanterra's South Rim operations generates just over \$66 million in gross revenue. Their retail space produces around \$16.9 million annually, which equals \$1,054 per square foot. Their food and beverage grosses around \$21.4 million annually, which equals \$14,855 per seat.

Grand Canyon West (GCW) offers a mixture of recreational activities, including the widely acclaimed Skywalk. GCW is owned by the Hualapai Indian Tribe and managed by the Grand Canyon Resort Corporation. GCW is located along the southwestern rim of the Grand Canyon, and 242 miles (389 kilometers) west by road from the Grand Canyon National Park south entrance.

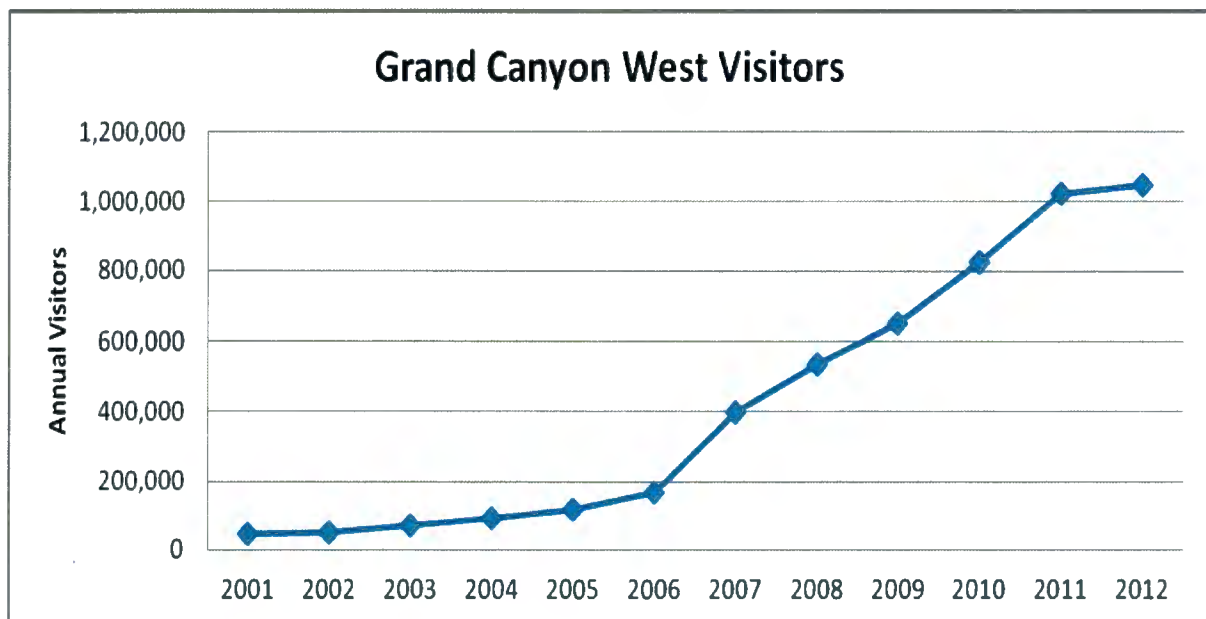
According to a ranking NPS official, after the Grand Canyon West Skywalk opened in March 2007, the most frequently asked question at Grand Canyon National Park after "Where are the restrooms?" is "Where's the Skywalk?"

GCW visitation continues to grow in spite of GCW's infrastructure challenges. Currently GCW trucks in potable water, hauls out sewage, generates electricity from diesel generators, and lacks an all-weather access road.

According to GCRC officials, approximately 60% of visitors paid to use the Skywalk and 40% paid to ride the pontoon boat excursion. At full retail price, the Skywalk and pontoon excursion would generate \$19.8 million and \$69.9 million for potential gross revenue of \$89.7 million or \$81.55 per visitor. When combined with admission revenue and excluding all other revenues (e.g. gift shop retail), their total projected gross revenue is between \$137.1 million to \$152.4 million. Based on the estimated admissions to GCW, the Skywalk ticket and the pontoon ticket revenues, the average visitor spends \$124.64 to \$138.55.

The chart below demonstrates that since the March 2007 opening of the Skywalk, GCW visitation has increased by 625% to an estimated 1.1 million annual visitors

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Source: GCRC

COMPARISON OF GRAND CANYON PRODUCTS

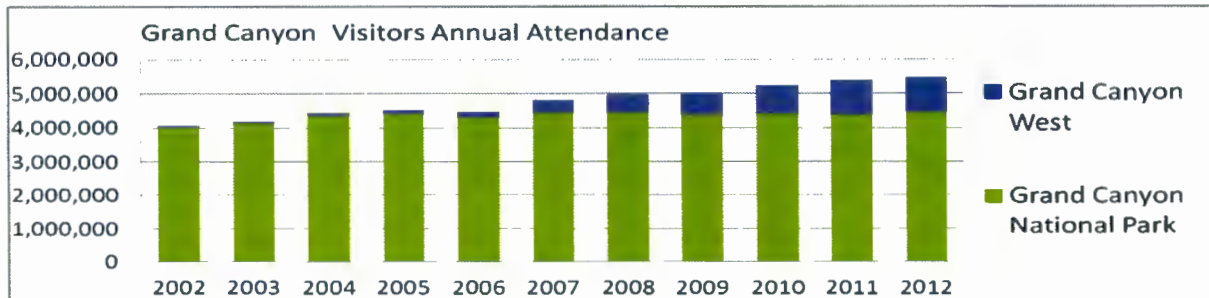
LOCATION	Attraction	Annual Attendance	Pricing per person	Description
GRAND CANYON NATIONAL PARK		+/- 4.3 million	\$25/car \$12/individual	Admission to the Park
	Mule ride		\$122.81 3 hours \$506.82 Overnight	Ticket
	Train		\$75 (Coach) \$107.50 (first class) \$122.50 (observation car)	Ticket (does not include Park admission)
GRAND CANYON WEST		+/- 1.1 million	\$43.05 – \$56.98	Admission
	Skywalk	+/- 600,000	\$29.95	Ticket
	River Pontoon	+/- 400,000	\$159.00	Ticket (includes helicopter ride)
GRAND CANYON ESCALADE			\$32.50 per person	Admission
	Tramway		\$46.00 per person	Ticket

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ESCALADE'S MARKET POTENTIAL

More than 73 million residents, almost 24% of the U.S. population, live within a 1,000 mile range of Grand Canyon Escalade. With the opening of the Skywalk at Grand Canyon West, the Grand Canyon tourism market has averaged more than **5.1 million visitors** annually for the last five years. Grand Canyon National Park has averaged 4.3 million annual visitors. An estimated 24 million visitors annually frequent the National Parks, National Monuments and other attractions in northern Arizona, southern Utah, and southeastern Nevada.

The chart below shows the significant growth that Grand Canyon West and the Skywalk have added in the last five years, and confirms the National Park's predictions of potential market growth and projections of up to 7 million annual visitors. In others words... *"if you build it, they will come"*.



ESCALADE'S MARKETING STRATEGY

Escalade intends to capitalize on the Grand Canyon being an iconic international destination. The development and opening of Escalade will garner worldwide media attention which will provide an earned media platform to brand Escalade as the premium Grand Canyon destination.

The Company will create continual market "buzz" by refreshing Escalade's Arts & Culture programmatic themes to reflect seasonal changes. After every September, when Grand Canyon National Park has reduced staffing and programs from its summer operations (May – September), Escalade will aggressively market to winter visitors throughout the Southern California, Las Vegas and Arizona peak season (November – April). The primary marketing focus will be to increase Park visitors capture rate in the non-peak seasons and thus earned market "buzz" will also increase peak season visitation.

The NPS study found 97.1% of GCNP visitors used a private or rental car as opposed to the 1.6% of park visitors affiliated with a tour package. Approximately 40% of Grand Canyon West's visitors are from tour package operators. Accordingly, Escalade will primarily focus on the FIT (Free Independent Traveler) market, but will pursue the tour operators as a segment of new market growth potential.

In addition to capitalizing on the earned media opportunities, Escalade will develop internet-based marketing and reservations, along with making full use of social media platforms; other traditional forms of marketing and promotion, such as trade shows, will also be pursued.

Marketing Objectives

- Develop an awareness of **Escalade** as the Grand Canyon's premier destination.
- By the fourth year of operations Escalade intends to capture 27.5% of Grand Canyon annual visitation (1.2 million) and add 219,000 new annual visitors to the marketplace.
- Target the Phoenix and Las Vegas winter visitors from November through April.

Public Relations Objectives

1. Create a local, regional, national, and international awareness of **Escalade**.
2. Aggressively use earned media to promote **Escalade**.
3. Integrate an Arts and Native American Cultural theme into Escalade's marketing and sales efforts.

All information contained herein constituting projections or forecasts are good faith estimates and subject to change without notice.

Targeted Consumer Markets

GEOGRAPHIC:

Primary:

- Travel decision-makers in the drive markets of Arizona, Southern California and Texas

Secondary:

- Visitors/convention attendees to Phoenix and Las Vegas
- Visitors to Arizona and Las Vegas (pre/post events)
- Florida, New York, Ohio and Illinois
- International markets of UK, Canada, Germany and Japan

PRIMARY DEMOGRAPHIC:

- Household Incomes \$100,000+
- Couples; Families; Groups of friends and singles

The primary target audience is the affluent 35+ year old; residents of Arizona, California, and Texas, who are inclined to take 3+ overnight leisure trips per year.

SECONDARY DEMOGRAPHIC:

- Age 55+
- Household Incomes \$100,000 +

The secondary target consists of a slightly older, 55+ year old couple/individual, without children living at home who are affluent and is likely to take 3+ overnight leisure trips per year.

Advertising/Marketing

Primary Targets: Residents of Arizona and southern California. County/City priorities: Phoenix, Orange County, San Diego County, and Dallas/Fort Worth

Public Relations Action Steps

1. Distribute press releases and a monthly e-newsletter.
2. Distribute story ideas and conduct ongoing media familiarization tours.
3. Participate in Arizona Office of Tourism Media Marketplace and Media Missions.
4. Utilize media clipping service to measure media coverage - online, print, television and radio.

Primary Targets: Regional, national, and international media, specifically cable TV Productions and Publications. Areas include Travel & Lifestyle, Arts & Entertainment, and Outdoor Recreation, as well as travel guidebooks, daily newspapers.

Travel Industry Action Steps

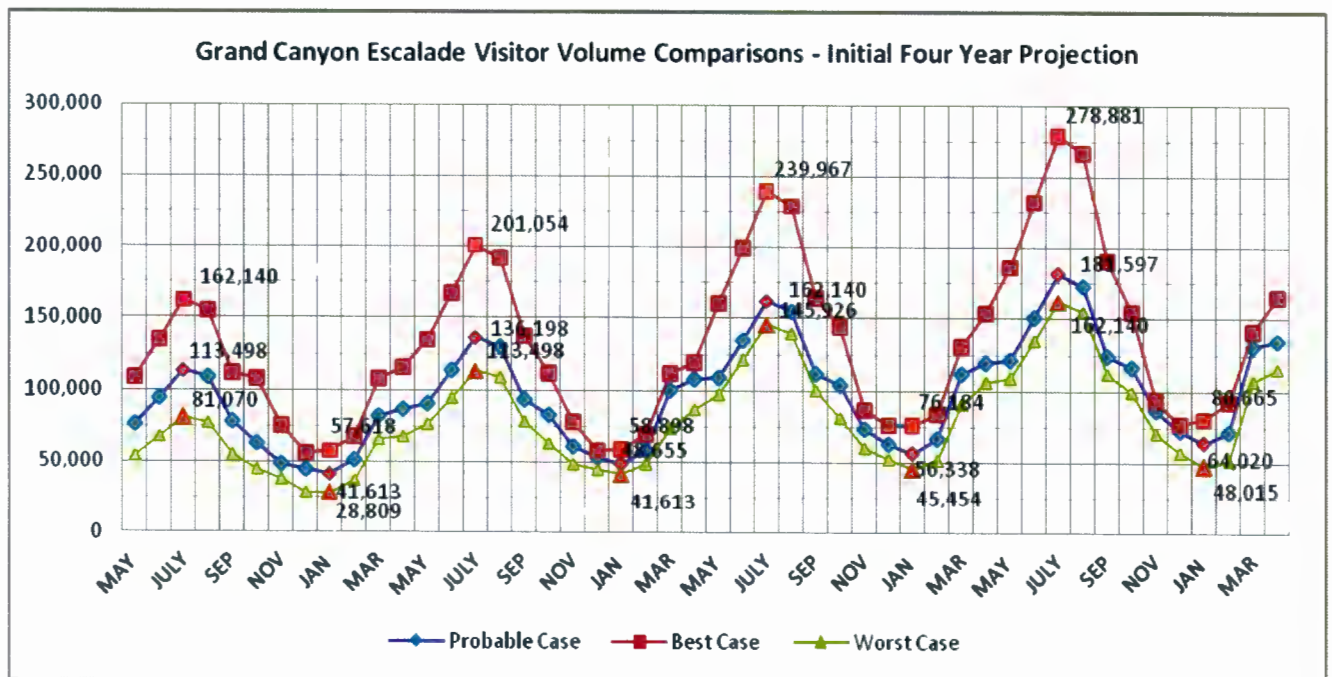
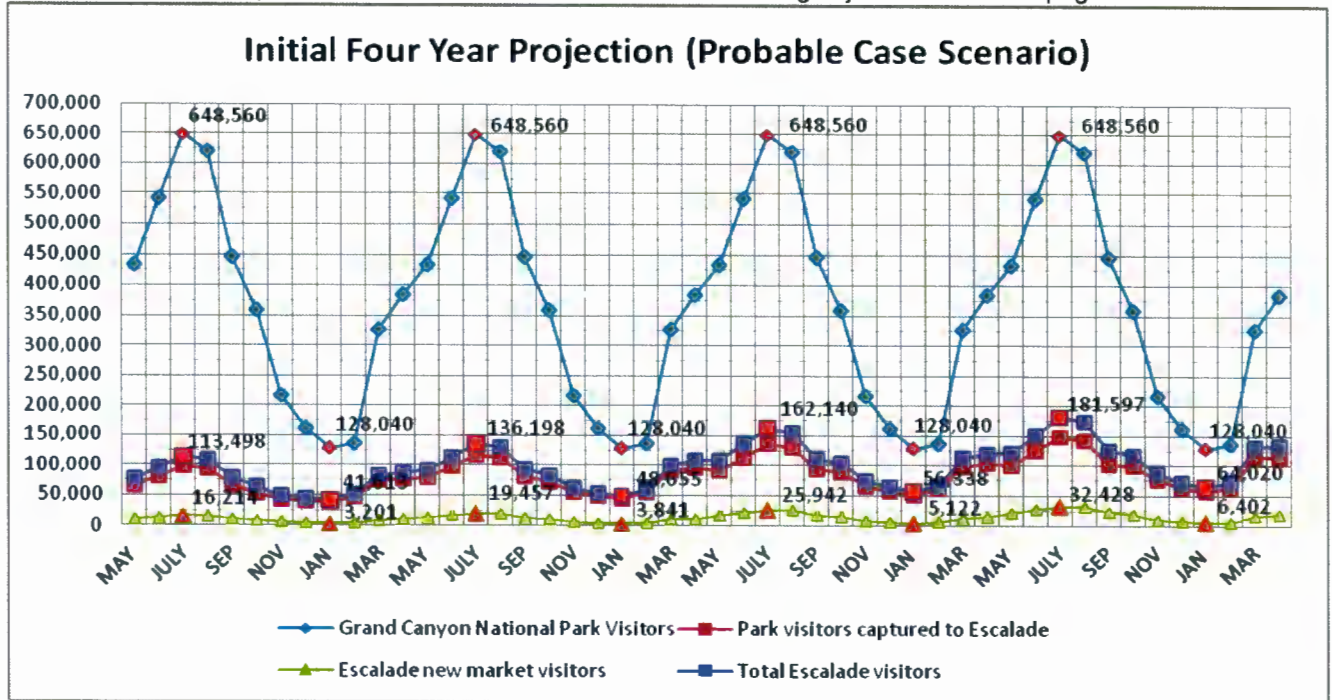
1. Promote coverage in regional and international travel trade publications of Escalade as the Grand Canyon travel destination.
2. Strengthen, support and complement the overall strategic marketing plan by obtaining public relations coverage with key travel trade media too expensive to buy as part of the advertising budget.
3. Educate the travel trade about breadth, scope and diversity of Escalade.
4. Generate awareness of the Escalade brand.
5. Convince travel trade media to position Escalade as an ideal small meetings and Free Independent Traveler (FIT) destination.
6. Focus on Pre/Post FAM (familiarization) trips to Escalade by targeting meeting planners holding conventions/meetings in the Phoenix area, Flagstaff, and Las Vegas.

Primary targets are receptive tour operators, wholesale tour operators and travel agents in the domestic and international markets. The focus internationally will be the UK, Canada, Germany and Japan. Additional targets are planners for small meetings and the incentives market.

Escalade Visitor Volume Projections

The following projections are the product of internal discussions and analysis using input from in-depth interviews with numerous tourism industry participants and officials.

The chart below expresses the "Probable Case Scenario" marketing objectives found on page 25.



All information contained herein constituting projections or forecasts are good faith estimates and subject to change without notice.

Escalade Projected Visitor Capture Rates and Volumes

Refreshing thematic programming by season will increase Park visitors capture rate in the non-peak seasons and thus increase peak season visitation. After every September, when Grand Canyon National Park has reduced staffing and programs from its summer operations (May – September), Escalade will aggressively market to winter visitors throughout the Las Vegas and Arizona peak season (November – April). The table below expresses our projected market capture rate, new market growth and visitor volumes as shown on the charts on previous page and used in the pro-forma on the next page.

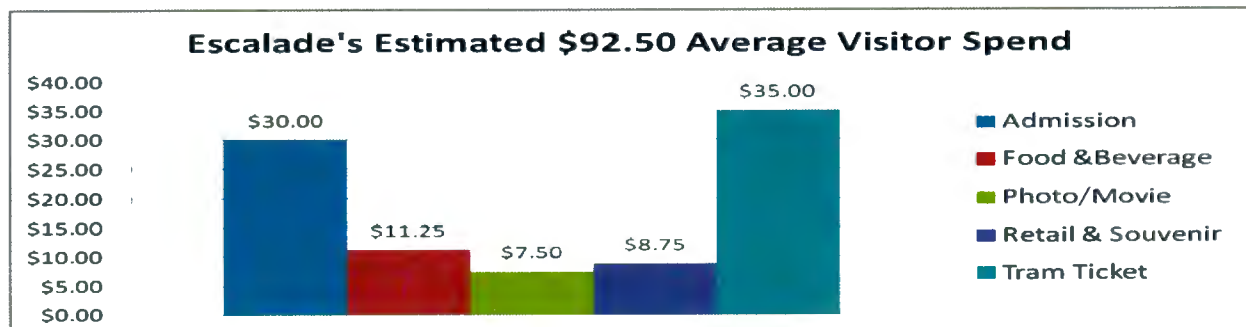
National Park Visitors captured by Percentage & Visitors	YR 1		YR 2		YR 3		YR 4	
	Peak Season 15.0% 402,930	Non peak 23.9% 374,165	Peak Season 18.0% 483,516	Non peak 28.9% 459,833	Peak Season 21.0% 564,102	Non peak 33.1% 525,782	Peak Season 23.0% 617,826	Non peak 37.1% 591,382
Escalade Visitors	2.5%		3.0%		4.0%		5.0%	
New Market Increase	109,989		131,987		175,982		219,978	
Total Escalade Visitors	887,084		1,075,336		1,265,867		1,429,186	

Escalade Projected Visitor Expenditures

The Grand Canyon National Park rebid their South Rim Concessions in August 2013. The tables below contains the actual visitor spend of South Rim Visitors and demonstrates the South Rim's severe lack of capacity, due to the NPS' inability to develop adequate points of sale and lodging.

Grand Canyon Natl. Park	Transaction Averages	Visitor Capture Rates	Average Visitor Spends
Food & Beverage	\$11.25 to \$13.17	40.36% to 41.91%	\$4.54 to \$5.52
Retail	\$23.91 to \$24.93	16.61% to 17.41%	\$3.97 to \$4.34

In using the GCW and GCNP visitor spend information, we estimate that the average spend rate will be between \$92.50 and \$135.00 per visitor. The graph below shows the components of the \$92.50 estimate.



The range of economic potential of visitors to Grand Canyon Escalade is denoted in the table below.

		Annual Visitor Volume				
Visitor spend rates		0.8 million	1.0 million	1.25 million	1.5 million	2.0 million
GCW top end	\$139.00	\$111,200,000	\$139,000,000	\$173,750,000	\$208,500,000	\$278,000,000
GCNP NPS 2005 visitor study	\$135.00	\$108,000,000	\$135,000,000	\$168,750,000	\$202,500,000	\$270,000,000
GCW low end	\$125.00	\$100,000,000	\$125,000,000	\$156,250,000	\$187,500,000	\$250,000,000
GCNP 2013 Concession based	\$92.50	\$74,000,000	\$92,500,000	\$115,625,000	\$138,750,000	\$185,000,000

All information contained herein constituting projections or forecasts are good faith estimates and subject to change without notice.

ASSORTED SITE PHOTOGRAPHS



Rim Level Conceptual Land Uses



Looking southwest from the Restaurant and Retail area



Looking west from the Boutique Hotel site



Looking southwest from the Lodge Hotel site.

All information contained herein constituting projections or forecasts are good faith estimates and subject to change without notice.



All information contained herein constituting projections or forecasts are good faith estimates and subject to change without notice.

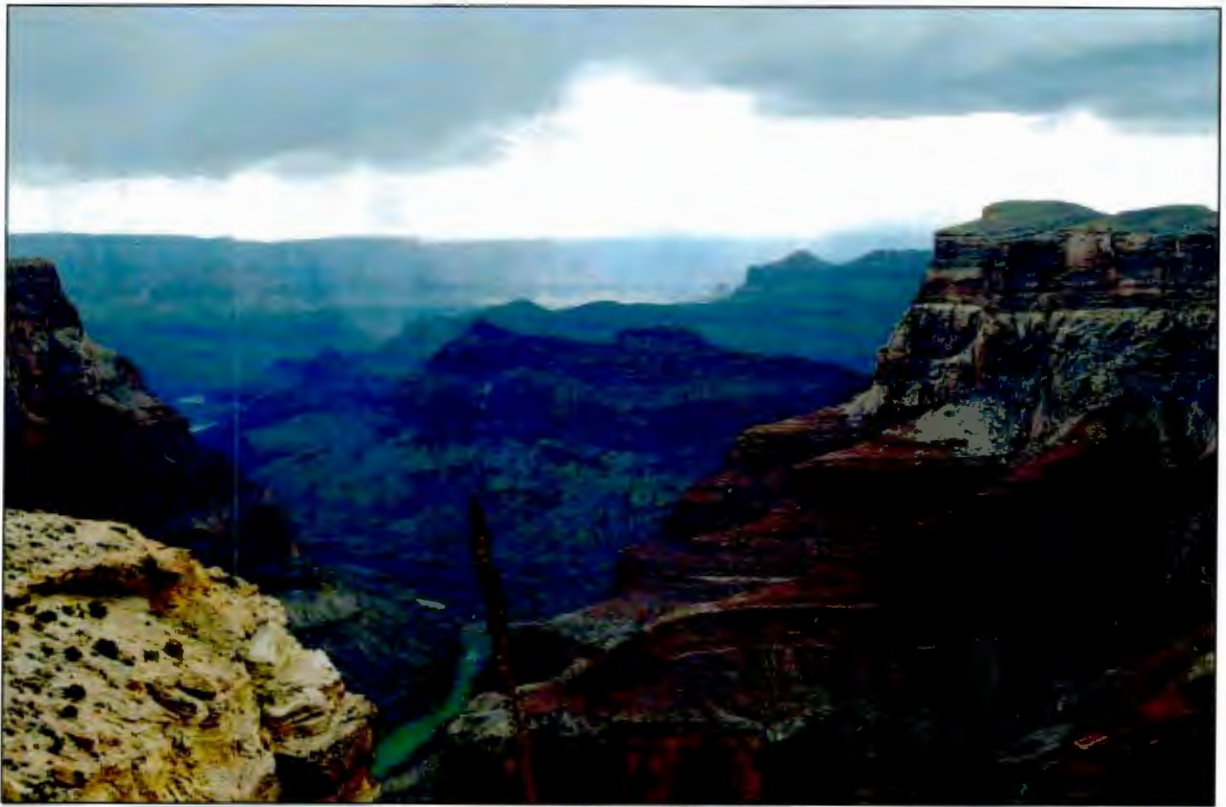


Looking downward at the confluence from the visitor plaza



Looking south from the Restaurant & Retail area

All information contained herein constituting projections or forecasts are good faith estimates and subject to change without notice.



Looking south by southwest at Chuar Butte from the restaurant site

All information contained herein constituting projections or forecasts are good faith estimates and subject to change without notice.

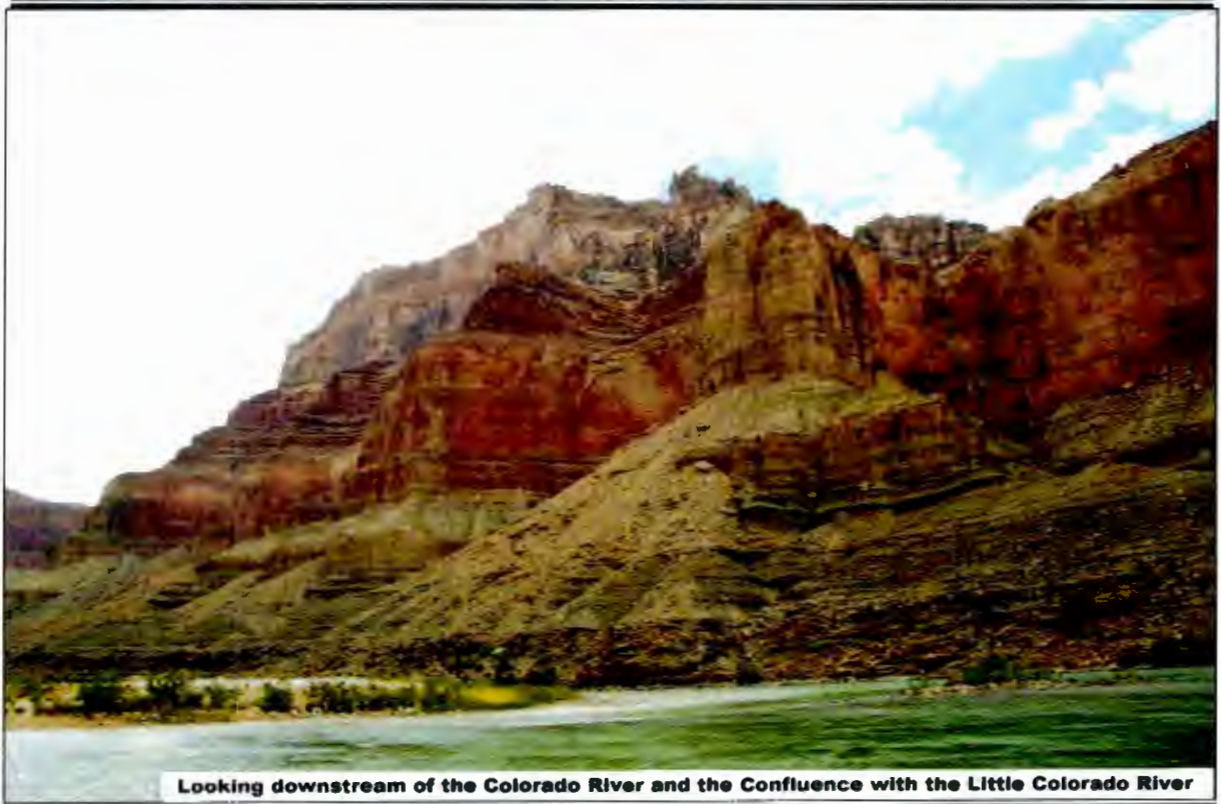


Looking upstream of the Colorado River from above the Confluence

All information contained herein constituting projections or forecasts are good faith estimates and subject to change without notice.

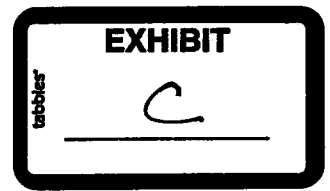


Looking upstream of the Colorado River from the elevation of the Riverwalk about 300 feet from the Confluence



Looking downstream of the Colorado River and the Confluence with the Little Colorado River

All information contained herein constituting projections or forecasts are good faith estimates and subject to change without notice.



March 21, 2014

MASTER AGREEMENT

GRAND CANYON ESCALADE PROJECT

**MASTER AGREEMENT
GRAND CANYON ESCALADE PROJECT
TABLE OF CONTENTS**

	Page
ARTICLE 1. DEFINITIONS, TERMS AND REFERENCES	2
ARTICLE 2. ENTERPRISE-ROLES AND RESPONSIBILITIES	9
ARTICLE 3. ENGAGEMENT OF CP	11
ARTICLE 4. LAND WITHDRAWAL, CONDITIONAL USE PERMITS AND BUSINESS SITE LEASES TO THE ENTERPRISE	12
ARTICLE 5. TERM OF AGREEMENT	13
ARTICLE 6. REVENUE TO THE NATION, THE ENTERPRISE AND CP	14
ARTICLE 7. DEVELOPMENT RESPONSIBILITIES OF THE PARTIES	15
ARTICLE 8. OPERATION OF THE PROJECT	19
ARTICLE 9. FUNDING	23
ARTICLE 10. DAMAGE OR DESTRUCTION; NO CONDEMNATION; NO SPECIAL TAXES OR PERMITTING REQUIREMENTS	25
ARTICLE 11. DEFAULT, CURE, REMEDIES, TERMINATION	28
ARTICLE 12. DISPUTE RESOLUTION	31

ARTICLE 13. ASSIGNMENTS; OWNERSHIP CHANGES	34
ARTICLE 14. ANCILLARY AGREEMENTS	35
ARTICLE 15. COVENANT NOT TO COMPETE	36
ARTICLE 16. REPRESENTATIONS AND WARRANTIES	36
ARTICLE 17. GENERAL PROVISIONS	39
SIGNATURES	46
EXHIBIT A LEGAL DESCRIPTION OF THE PROJECT AREA AND THE OFFSITE INFRASTRUCTURE STUDY CORRIDORS	
EXHIBIT B-1 CONCEPTUAL LAND USE PLAN	
EXHIBIT B-2 OPERATOR AREA AND ONSITE INFRASTRUCTURE COMPONENTS	
EXHIBIT B-3 LEASE PADS PLAN	
EXHIBIT C OFFSITE INFRASTRUCTURE STUDY CORRIDORS MAP	
EXHIBIT D-1 BUSINESS SITE LEASE-PROJECT AREA	
EXHIBIT D-2 BUSINESS SITE LEASE-OFFSITE INFRASTRUCTURE-ROAD	
EXHIBIT D-3 BUSINESS SITE LEASE-OFFSITE INFRASTRUCTURE-UTILITIES	
EXHIBIT E DEVELOPMENT AGREEMENT	
EXHIBIT F OPERATING AGREEMENT	

EXHIBIT G LICENSE AGREEMENT

EXHIBIT H-1 CONDITIONAL USE PERMIT-PROJECT AREA

**EXHIBIT H-2 CONDITIONAL USE PERMIT-INFRASTRUCTURE STUDY
CORRIDORS**

This **MASTER AGREEMENT** is created and executed as of the date of the last signature below (the **"Effective Date"**), by and among **THE NAVAJO NATION**, a sovereign government and federally-recognized Indian tribe, **NAVAJO NATION HOSPITALITY ENTERPRISE**, a wholly owned enterprise of the Navajo Nation, and **CONFLUENCE PARTNERS, L.L.C.**, an Arizona limited liability company.

RECITALS:

- A. The Navajo Nation (the **"Nation"**) is the beneficial owner of the real property including the **"Project Area"** and the **"Offsite Infrastructure Study Corridors"** within which the **"Offsite Infrastructure"** will be located, as described in **Exhibit A** and as depicted in **Exhibits B-1 and C** (the **"Site"**), which are attached hereto, and all in-gross and appurtenant rights attendant thereto.
- B. The Nation desires to set aside the Site for purposes of development of a destination tourism project to be called the Grand Canyon Escalade Project (the **"Project"**) and to enter into conditional use permits and business site leases with Navajo Nation Hospitality Enterprise (the **"Enterprise"**) to enable the development and operation of the Site.
- C. The Nation and the Enterprise desire to engage individuals with specialized experience in the tourism business to assist in the development and operation of the Site.
- D. Confluence Partners, L.L.C. (**"CP"**) possesses specialized experienced in the tourism industry and tourism business performance as is evidenced in the track record of its individual members with projects comparable in complexity and scope to the tourism facility which the Nation desires to develop and operate.
- E. The Nation, the Enterprise and CP desire to enter into this Agreement to outline

the obligations of CP, the Enterprise and the Nation to develop and operate the Project and the Offsite Infrastructure, in accordance with, and subject to the terms, conditions, and limitations stated herein.

NOW, THEREFORE, the Nation, the Enterprise and CP (individually referred to as a "**Party**" and collectively referred to as the "**Parties**") agree as follows:

ARTICLE 1.

DEFINITIONS, TERMS AND REFERENCES

1.1. Definitions. In this Agreement, exhibits attached hereto, and subsequent modifications, changes, or addenda properly executed by the Parties, the terms within this Agreement shall have the following meanings:

"**Agreement**" means this Master Agreement, as it may subsequently be amended, modified, changed, supplemented, or renewed by the Parties or their successors.

"**Bankruptcy**" means any of the following: (a) a Party's voluntary filing of a bankruptcy petition pursuant to Title 11 of the United States Code, or a court of competent jurisdiction's issuing an order for relief against such a Party pursuant to Title 11 of the United States Code; (b) a Party's filing a petition or answer seeking participation, or acquiescing to participation, in any reorganization, rearrangement, composition, readjustment, liquidation, dissolution, or similar relief for such Party pursuant to any federal bankruptcy law or regulation concerning bankruptcy, insolvency, or other relief provided to debtors; (c) a Party's actively seeking, consenting to, or acquiescing to the appointment of any custodian, trustee, receiver, conservator, or liquidator of such Party as an organization, all of its tangible and intangible assets, or substantially all of its tangible and intangible assets; (d) a Party's making any general assignment of its tangible or intangible assets for the benefit of creditors pursuant to a federal bankruptcy law or regulation; (e) a Party's failure to adequately service its debts

as such debts become due; or (f) a court of competent jurisdiction's entry of an order, judgment, or decree approving a bankruptcy petition filed against such a Party seeking any involuntary reorganization, rearrangement, composition, readjustment, liquidation, dissolution, or similar relief pursuant to any federal bankruptcy law or regulation relating to bankruptcy, insolvency, or other relief for creditors, which order, judgment, or decree remains of legal force without a court of competent jurisdiction's issuing an order to vacate and stay such order, judgment, or decree for an aggregate time-period of 60 days (consecutive or nonconsecutive) from the order, judgment, or decree's date of entry.

"Business Day" means any calendar day other than Saturday, Sunday, or a legal holiday of the Navajo Nation, the United States, or the State of Arizona; unless the term "Business Day" is expressly and conspicuously used contrary to this defined usage.

"Claims" means any and all causes of action, counts, claims, obligations, debts, costs, and validly asserted liabilities of any kind, nature, or character to be brought by a proper plaintiff, whether direct or indirect, known or unknown, absolute or contingent, determined or speculative, at law or in equity, or otherwise, which make a Party liable to such proper plaintiff, including reasonable attorneys' fees and costs.

"Construction Work" means all activities required to construct the Project and the Offsite Infrastructure.

"Construction Costs" means: (i) cost of architectural and engineering services; (ii) costs and fees to obtain the Permits and the governmental approvals; (iii) construction management fees or costs of supervision; (iv) attorneys' fees and costs; (v) cost of insurance premiums; (vi) costs for any tap in, connection, annexation, hook up, or similar activity; (vii) costs for required land balancing, filling, compacting, or stripping; (viii) cost for any pumps required to increase water pressure to deliver potable water to the Site in compliance with all applicable regulatory requirements; (ix) costs of excavation and construction of footings, foundations, and backfilling; (x) costs of soil borings and

related testing services; (xi) costs of remediation of hazardous materials as may be required pursuant to applicable environmental laws, rules, and regulations; (xii) construction costs, including labor, materials and administrative charges; and (xiii) any other overhead, office, administrative, or otherwise necessary costs and expenses .

"CP" means Confluence Partners, L.L.C., an Arizona limited liability company, Grand Canyon Escalade, L.L.C. and any permitted assignee or successor in interest of CP.

"days" means calendar days.

"Development Agreement" means the Agreement attached hereto as Exhibit E.

"Discovery Center" means a facility located in the Operator Area containing a visitor welcome area, orientation exhibits and programs concerning the Grand Canyon and the various tribes within and adjacent to the Grand Canyon.

"Effective Date" means the date of this Agreement's execution, which is the date of the last signature of the Parties provided below.

"Enterprise" means the Navajo Nation Hospitality Enterprise, a wholly owned enterprise of the Navajo Nation.

"Escalade Tram" means a tram from the rim of the Grand Canyon to a location above the high water mark of the Colorado River upstream from the confluence of the Colorado River and the Little Colorado River within the Grand Canyon.

"Grand Canyon Escalade, L.L.C." means the company organized by and including Confluence Partners, L.L.C. to finance, develop and operate the Project, and any permitted assignee or successor in interest.

"Gross Revenues of the Project" means all income received by CP from whatever source for business activities within the Project Area or resulting from the operations of the Project, excluding Lease Pad Rental Revenues and any taxes paid to CP.

"Lease Pad Rental Revenues" means rental payments received from sublessees within the Project Area but outside the Operator Area.

"Lease Pads" are those locations within the Project and outside the Operator Area, as depicted on Exhibit B-3, which the Nation, the Enterprise and CP identify for development and for which CP is responsible for ensuring that infrastructure is provided as part of the obligations of CP.

"Marks" means the name of the Project and the Discovery Center, and all other trade names, trademarks for goods and services, certification marks, or other appurtenant intellectual property associated with the Project and the Discovery Center and their operations.

"Nation" means the Navajo Nation, a sovereign government and a federally-acknowledged Indian tribe.

"NTUA" means the Navajo Tribal Utility Authority, a wholly-owned enterprise of the Navajo Nation.

"Offsite Infrastructure" means all infrastructure improvements to the Project Area boundary including (i) an all-weather access road from US 89, including Project monuments and signage, (ii) electrical transmission lines, (iii) telecommunication lines, and (iv) potable water lines and water storage tanks.

"Offsite Infrastructure Study Corridors" means the corridors described in Exhibit A and depicted on Exhibit C within which the **Offsite Infrastructure** will be located.

"Onsite Infrastructure" means all infrastructure improvements within the Project Area, including the water lines, water storage tanks, waste water lines, electrical transmission lines, telecommunications lines, the waste water treatment plant, the public works building, roads, public parking, drive aisles, pedestrian pathways and landscaping necessary for the Project Improvements and the Lease Pads.

"Opening Day" means the first date on which a paying visitor enters the Operator Area.

"Operating Agreement" means the Agreement attached hereto as Exhibit F which details the operational responsibilities of the Parties.

"Operator Area" means all lands within the Project Area assigned to CP for CP's exclusive development, as depicted in Exhibit B-2 attached hereto.

"Paid Customer Admissions" means customers that have purchased and paid for entry to the Operator Area and for which such purchased tickets have been used.

"Permits" means any and all permits, licenses, and necessary authorizations from any governmental agency or authority, including any environmental permits, as are necessary to allow the development and operation of the Project and the Offsite Infrastructure to proceed.

"Person" means any natural person, juristic person, corporation, firm, joint-venture, partnership, limited liability company, association, enterprise, trust, or other

entity or organization, or any government, or political subdivision of a government, or agency, department, or instrumentality thereof.

"Pre-Construction Work" means those activities necessary to commence construction of the Offsite Infrastructure and the Project, including design, engineering, surveying, and permitting, and such professional consultation as is necessary to complete the Pre-Construction Work including but not limited to, consultation with, architects, engineers, surveyors, hydrologists, soil experts, and archaeologists.

"Project" means the Grand Canyon Escalade Project, including the Project Area, the Project Improvements, the Onsite Infrastructure, any additional improvements developed within the Project Area and all personal property acquired for or used in connection with the development, management, and operation of the Project.

"Project Area" means the approximately 420 acres withdrawn for the Project, as described in Exhibit A and as depicted in Exhibit B-1.

"Project Improvements" means the real property improvements to be constructed by CP within the Project Area, other than the Onsite Infrastructure, as set forth in Section 7 of this Agreement, including the Escalade Tram, restaurants, food and beverage outlets, including both convenience and seated dining, buildings including space for retail, office, administration, public safety (Emergency Medical Technicians and Police), maintenance, the Entrance and the Discovery Center, as conceptually depicted in Exhibit B-1, attached hereto, and as depicted in the Final Site Plan approved through the Development Agreement.

"Related Persons" means the officers, directors, shareholders, members, partners, employees, agents, consultants, accountants, attorneys, successors, and assigns of a Person. For all purposes of this Agreement, the elected and appointed officials,

employees, agents, consultants, accountants, attorneys, successors, and assigns of the Nation are deemed to be Related Persons of the Nation.

"Site" means the real property associated with the Project and the Offsite Infrastructure Study Corridors as described in Exhibit A and depicted in Exhibits B-1 and C and all in-gross and appurtenant rights attendant thereto.

"Standards of Operation" means the standards of quality for the management and operation of a first-class tourist facilities in the southwestern United States as commonly recognized in the hospitality industry regarding guest facilities, services and overall atmosphere.

1.2. Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all genders. The singular shall include the plural, and the plural shall include the singular; the part includes the whole; the terms "include" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The titles of articles, sections, and subsections in this Agreement are for convenience, and neither limit nor amplify the provisions of this Agreement. All references in this Agreement to "Articles," "Sections," and "Exhibits" shall refer to the corresponding Article or Section of or Exhibit to this Agreement, unless otherwise specifically provided.

1.3. No Presumption Against Any Party. This Agreement shall not be interpreted or construed to intrinsically presume the resolution of any uncertainty or ambiguity herein for or against any Party. This Agreement shall be construed and interpreted according to the ordinary meaning of the words used herein so as to fairly accomplish the purposes and intentions of the Parties hereto.

- 1.4. Exhibits. All Exhibits attached to this Agreement are incorporated by reference, and made a part of this Agreement.

ARTICLE 2.

ENTERPRISE-ROLES AND RESPONSIBILITIES

- 2.1. Engagement. The Nation hereby appoints and engages the Enterprise as its agent for purposes of enabling the development and operation of the Project in accordance with the terms of and having the duties, obligation and authorities set forth in this Agreement. The Enterprise hereby accepts the appointment and engagement on the terms in this Agreement.
- 2.2. Roles and Responsibilities. As provided in this Agreement and the terms of the Development Agreement and the Operating Agreement, the Enterprise shall be engaged in the following activities:
- 2.2.1. Enter into the License Agreement for the Enterprise's Marks;
 - 2.2.2. Enter into Business Site Leases for the Project Area and the Offsite Infrastructure and act as the Nation's representative regarding the development and operations of the Project within the Business Site Lease for the Project Area;
 - 2.2.3. Coordinate with the Nation and CP regarding the establishment and funding of the construction escrow account;
 - 2.2.4. Identify a representative authorized to act on the Enterprise's behalf with respect to the development of the Project and the Offsite Infrastructure, as required by the Development Agreement.
 - 2.2.5. Participate in the Design Guidelines and Architectural Standards Design Committee;
 - 2.2.6. Participate in the construction meetings including Project and Offsite Infrastructure close-outs and review contractor's log and invoices for the Offsite Infrastructure Construction;

- 2.2.7. Transfer the water and power Offsite Infrastructure to NTUA and the other utilities to other service providers;
- 2.2.8. Maintain the all weather access road from U.S. 89 to the Project Boundary;
- 2.2.9. Draft subleases for the lease pads within the Project Area;
- 2.2.10. Negotiate and enter into subleases with sublessees for various activities including hotels, RV park, and convenience store and fuel station;
- 2.2.11. Ensure that CP has the required bonding and insurance at all times and that the United States, the Nation and the Enterprise have been named as additional insureds;
- 2.2.12. Provide inspections of the Project as provided for in the Development Agreement and the Operating Agreement;
- 2.2.13. Audit the books and records of CP as provided for in the Operating Agreement;
- 2.2.14. Notify CP of any breaches of the Master Agreement, Development Agreement, Operating Agreement or other agreements negotiated between the Enterprise and CP related to the Project in accordance with the provisions of the relevant agreement.

2.3. Compensation Before Opening Day. Commencing on the Effective Date and continuing for ninety (90) days after the Opening Day, the Nation shall compensate the Enterprise as follows:

- 2.3.1. The Nation shall pay the Enterprise \$5,000 per month, payable on the first day of the month; and
- 2.3.2. The Nation shall reimburse the Enterprise for expenses incurred by Enterprise to satisfy its obligations under the terms of the Development Agreement.

2.4. Compensation After Opening Day. After the Opening Day, Enterprise shall be compensated as provided in Section 9 of the Operating Agreement.

2.5. Reporting. Enterprise shall provide quarterly reports to the Director, Division of Economic Development regarding the status of the Project.

ARTICLE 3.

ENGAGEMENT OF CP

3.1. Engagement. The Nation hereby appoints and engages CP as the developer and operator of the Project in accordance with the terms of, and having the duties, obligations, and authorities set forth in this Agreement. CP hereby accepts the appointment and engagement on the terms in this Agreement. CP agrees to develop, supervise and operate the Project in accordance with the terms and conditions as set forth in this Agreement, and in compliance with all applicable federal, Nation, state, and local laws, ordinances, rules, and regulations.

3.2. License to Develop and Operate. During the term of this Agreement, the Nation hereby grants to CP a non-revocable license and right to enter upon and occupy the Project Area in order to develop and operate the Project in accordance with this Agreement. Upon the termination or expiration of this Agreement, CP's license to enter the Project Area and to develop and operate the Project shall be automatically revoked.

3.3. License to Market the Enterprise's Marks. During the term of this Agreement, the Enterprise grants to CP a non-revocable license to market and use the Enterprise's Marks. The License Agreement is attached as Exhibit G. Upon the termination or expiration of this Agreement, CP's license to market and use the Enterprise's Marks shall be automatically revoked.

- 3.4. Non-Interference. The Nation and the Enterprise acknowledge and agree that during the term of this Agreement, neither the Nation nor the Enterprise shall give orders or instructions to employees of CP, including without limitation, the general manager or any other manager or involve themselves in any way with the day-to-day operations of CP, and warrant to CP uninterrupted, exclusive control of the development and operations of the Project, subject to the rights of the Nation and the Enterprise as provided by this Agreement.
- 3.5. Performance of CP. CP agrees to make commercially reasonable efforts, and to exercise its professional skill and competence, in performing CP's services under this Agreement.

ARTICLE 4.

LAND WITHDRAWAL, CONDITIONAL USE PERMITS AND BUSINESS SITE LEASES TO THE ENTERPRISE

- 4.1. Land Withdrawal. The Project Area, described in the attached Exhibit A and depicted in Exhibit B-1, is withdrawn for the Project's development and operation.
- 4.2. Conditional Use Permits. Conditional Use Permits between the Nation and CP for the Project Area and for the Offsite Infrastructure Study Corridors, attached as Exhibits H-1 and H-2, are approved for a period of not to exceed three years for the purposes of conducting preliminary and final design and engineering work, and environmental, archeological and cultural clearances for location of the Project Improvements and the Business Site Leases for the Project Area and the Offsite Infrastructure-Road and the Offsite Infrastructure-Utilities. The Conditional Use Permits shall expire upon the sooner of three years from the Effective Date, or the issuance of the Business Site Leases to the Enterprise, or

the determination that no business site leases will be issued due to the inability to meet the archeological, cultural or environmental clearance requirements. The term can be extended upon the agreement of the Nation, through the Director of the Division of Economic Development, and the Enterprise for good cause shown.

- 4.3. Business Site Leases. The Enterprise shall seek and the Nation shall take such actions as are necessary to enter into Business Site Leases for the Project Area and the Offsite Infrastructure-Road and Offsite Infrastructure-Utilities, by and between the Nation as lessor and the Enterprise as lessee, for initial terms of twenty-five (25) years, with automatic renewals for two (2) subsequent twenty-five (25) year terms in substantially the forms attached as Exhibits D-1, D-2 and D-3. CP agrees to assume all of the Enterprise's obligations under the terms and conditions of the Business Site Lease issued to the Enterprise for the Project Area during the term of the Operating Agreement.
- 4.4. In the event that the Conditional Use Permits described above expire, the land withdrawal shall terminate and the Parties shall have no further obligation pursuant to this Agreement.

ARTICLE 5.

TERM OF AGREEMENT

- 5.1. Term Commencement. This Agreement commences on the Effective Date.
- 5.2. Term. This Agreement shall continue so long as the Business Site Leases are executed prior to termination of the Conditional Use Permits and shall remain in effect so long as there is an Operating Agreement between the Enterprise and CP. The term of the Operating Agreement between the Enterprise and CP shall begin on the date of execution of that Agreement and shall terminate fifty years from the

Opening Day of the Project, if not terminated sooner or extended pursuant to this Agreement.

ARTICLE 6.

REVENUE TO THE NATION, THE ENTERPRISE AND CP

6.1. Nation's Revenue As consideration for the Nation's participation and performance of obligations pursuant to this Agreement, the Nation shall receive;

6.1.1. A fee of;

6.1.1.1. 8% of the total Gross Revenues of the Project for a calendar year in which the Paid Customer Admissions are eight hundred thousand customers or less; and

6.1.1.2. in a calendar year in which the Paid Customer Admissions are more than eight hundred thousand customers, 10% of the Gross Revenues of the Project proportionately attributable to the number of Paid Customer Admissions in excess of eight hundred thousand and up to one million customers; and

6.1.1.3. in a calendar year in which the Paid Customer Admissions are more than one million customers, 12% of the Gross Revenues of the Project proportionately attributable to the number of Paid Customer Admissions in excess of one million and up to one million two hundred fifty thousand customers; and

6.1.1.4. in a calendar year in which the Paid Customer Admissions are more than one million two hundred fifty thousand customers, 14% of the Gross Revenues of the Project proportionately attributable to the number of Paid Customer Admissions in excess of one million two hundred fifty thousand and up to one million five hundred thousand customers; and

6.1.1.5. in a calendar year in which the Paid Customer Admissions are more than one million five hundred thousand customers, 16% of the Gross

Revenues of the Project proportionately attributable to the number of Paid Customer Admissions in excess of one million five hundred thousand and up to two million customers; and

6.1.1.6. in a calendar year in which the Paid Customer Admissions are more than two million customers, 18% of the Gross Revenues of the Project proportionately attributable to the number of Paid Customer Admissions in excess of two million customers; and

6.1.2. 50% of the Lease Pad Rental Revenues.

6.2. Enterprise's Revenue As consideration for the Enterprise's participation and performance of obligations pursuant to this Agreement, the Enterprise shall receive a fee of 2% of the Nation's Revenue, as set forth in Section 6.1 above; and

6.3. CP's Revenue. As consideration for CP's performance of obligations pursuant to this Agreement, CP shall receive:

6.3.1. The remainder of the Gross Revenues of the Project after payment of the Nation's Revenue and the Enterprise's Revenue as set forth above; and

6.3.2. 50% of the Lease Pad Rental Revenues.

ARTICLE 7.

DEVELOPMENT RESPONSIBILITIES OF THE PARTIES

7.1. Development Agreement. The detailed development responsibilities of the Parties are fully set forth in the Development Agreement attached hereto as Exhibit E. In the event that terms of the Development Agreement and this Agreement conflict, the terms of the Development Agreement shall govern.

7.2. Permits.

7.2.1. CP shall be responsible for obtaining the Permits. CP shall at all times use its diligent and commercially reasonable efforts to obtain the Permits. All fees

and costs associated with obtaining the Permits shall be the responsibility of CP, except for those reimburseable fees and costs attributable to the Offsite Infrastructure which are the responsibility of the Nation, as further described in Article 9.

7.2.2. The Nation and Enterprise will cooperate with CP, and its engineers, architects, and other professionals, in CP's efforts to obtain the Permits; such cooperation may include, but not be limited to, completing, signing, or otherwise executing applications or other documents required by governmental agencies to obtain the Permits. Nothing herein is intended to limit the discretion of the Nation as a regulatory authority to grant, deny or place limitations on the Permits.

7.3. Development Responsibilities of the Nation.

The Nation will fund or obtain funding for the construction of the Offsite Infrastructure at the estimated cost of \$65 million in 2014 dollars.

7.4. Development Responsibilities of the Enterprise.

7.4.1. The Enterprise shall have the responsibility to construct the Offsite Infrastructure in accordance with the requirements of this Agreement, through agreement with CP, as more fully described in the Development Agreement attached hereto as Exhibit E. The Offsite Infrastructure shall be designed and constructed in compliance with all applicable laws of general applicability that relate to infrastructure construction on the Navajo Nation. All costs associated with the construction of the Offsite Infrastructure shall be the responsibility of the Nation.

7.4.2. The Enterprise shall cooperate with CP in the review of designs, contract approval, and development of the Project and the Offsite Infrastructure.

7.5. Development Responsibilities of CP.

7.5.1. General Obligations. CP shall construct the Project Improvements and the Onsite Infrastructure in accordance with the requirements of this Agreement, as

more fully described in the Development Agreement attached hereto as Exhibit E and any additional improvements in accordance with the Operating Agreement, attached hereto as Exhibit F. The Project Improvements and the Onsite Infrastructure shall be designed and constructed in compliance with: (i) all applicable laws that relate to construction projects on the Navajo Nation, (ii) the Americans with Disabilities Act; and (iii) the International Building Code. All costs associated with the construction of the Project Improvements and the Onsite Infrastructure shall be the responsibility of CP.

7.5.1.1. Minimum Investment. CP shall spend a minimum of One Hundred Twenty Million Dollars (\$120,000,000.00) on Construction Costs for the Project Improvements and the Onsite Infrastructure.

7.5.2. Operator Area.

7.5.2.1. Minimum Build Out of Project Improvements in the Operator Area.

CP will build the following facilities to no less than the square footage indicated, unless modified as provided in the Development Agreement;

7.5.2.1.1. Rim Level Commercial Areas

7.5.2.1.1.1. Retail, Food and Beverage facilities-32,254 square feet.

7.5.2.1.1.2. Public Restroom facilities-5,000 square feet.

7.5.2.1.2. Rim Level Administration/Public Safety/Central Kitchen and Warehouse, Engineering and Maintenance facilities-23,000 square feet.

7.5.2.1.3. Discovery Center-\$10 Million in Construction Costs.

7.5.2.1.4. Escalade Tram

7.5.2.1.5. River Level Facilities

7.5.2.1.5.1. Administration/Office, Storage, Retail Space, Food and Beverage -12,576 square feet.

7.5.2.1.5.2. Public Restrooms-4,000 square feet.

7.5.2.2. Modification of Build Out Requirements for Project Improvements in the Operator Area.

If, as a result of the conclusions reached in the design development process within the Development Agreement, the functions or the minimum square footages provided for above require modification, those modifications shall be made pursuant to the process set forth in the Development Agreement.

7.5.2.3. Rights to Additional Development in Operator Area. To the extent that CP desires to develop and construct additional improvements within the Operator Area after construction of the Project Improvements, CP is permitted to do so, provided that the additional improvements are identified in the Final Site Plan. Additional improvements not identified in the Final Site Plan shall require approval by the Enterprise before CP commences construction and shall be in compliance with the provisions of the Design Guidelines and Architectural Standards.

7.5.3 Mechanics' Liens. CP shall not permit the lien of any contractor, subcontractor, mechanic, materialman, laborer, architect, engineer, consultant, or any other person or entity arising out of work, material, services performed, goods supplied, or services or goods contracted for by CP; nor those services or goods claimed to have been performed, supplied, or contracted to be performed or supplied by, through, or otherwise pursuant to CP's conduct or actions (whether such services or goods performed or supplied, or contracted to be performed or supplied arise pursuant to this Article or pursuant to any other provision of this Agreement), to persist or remain as a lien upon the Business Site Leases, the Offsite Infrastructure, the Project Area, the Onsite Infrastructure or the Project Improvements. However, CP shall have the right to contest the lien in good faith by appropriate judicial proceedings so long as: (i) the proceeding operates to stay any execution or foreclosure on the lien, and (ii) CP diligently pursues the contest to its conclusion. In any event, CP shall indemnify, defend, and hold harmless the Enterprise and the Nation and its elected and appointed officials for, from, and

against any and all Claims with respect to any such lien. This indemnity shall survive the expiration or termination of this Agreement.

7.5.4 CP shall obtain bonds covering the payment for and performance of the Construction Work and payment of any liens by mechanics, materialmen, suppliers, vendors, or others that provide construction services or goods to the Project and the Offsite Infrastructure.

7.6. Commencement and Completion of the Project Improvements, the Onsite Infrastructure and the Offsite Infrastructure. Upon obtaining all necessary Permits, CP shall promptly commence, and with due diligence, proceed to construct the Project Improvements, the Onsite Infrastructure and the Offsite Infrastructure in accordance with the Development Agreement.

7.7. Ownership of the Project. The Nation owns and shall retain ownership of the Project Improvements, the Onsite Infrastructure and the Offsite Infrastructure.

ARTICLE 8.

OPERATION OF THE PROJECT

8.1. The Operating Agreement. The detailed operational responsibilities of the Parties are fully set forth in the Operating Agreement attached hereto as Exhibit F. In the event that terms of the Operating Agreement and this Agreement conflict, the terms of the Operating Agreement shall govern.

8.2. Operation of Project. CP shall operate the Project in accordance with the requirements and obligations of the Operating Agreement and the Business Site Lease for the Project Area, with full responsibility and authority to supervise,

direct, and control the operation of the Project; subject to the limitations and restrictions otherwise set forth herein and in the Operating Agreement.

8.2.1. CP shall perform its responsibilities and duties pursuant to this Agreement, the Operating Agreement and the Business Site Lease for the Project Area and shall operate the Project in a manner consistent with the Standards of Operation.

8.2.2. CP shall pay all costs and expenses for and related to operating the Project; including all fuel, gas, light, power, water, sewage, garbage disposal, telephone, and other utility bills as such costs are incurred and become due for payment; however, the costs and expenses related to operation of the Lease Pads shall not be an obligation of CP, but shall be subject to the sublease agreements by and between the Enterprise as sublessor and the third party sublessees, a form of which will be provided by the Enterprise to CP no later than 180 days after the effective date of this Agreement.

8.2.3. CP shall determine appropriate pricing values for services within the Operator Area including admission fees, the Escalade Tram, retail goods, entertainment, food and beverages, and other amenities for retail customers and for tour operators (or other organized commercial tour groups) as described in the Operating Agreement.

8.2.4. CP shall arrange for utility, telephone, pest control, security service, EMT and police services, trash removal, and other maintenance services consistent with the Standards of Operation and appropriate for the operation of the Project.

8.2.5. CP shall determine, establish, and maintain advertising, public relations, and promotional policies appropriate for marketing and retailing the Project and its attendant attractions.

8.2.6. CP shall maintain the Project Improvements in good repair and in serviceable and attractive condition.

8.2.7. CP shall make or cause to be made such replacements and capital improvements within the Project as are deemed reasonable or necessary for the successful operation and management of the Project as provided for in the

Development Agreement and the Operating Agreement. CP shall establish reserve accounts sufficient to fund such replacements and capital improvements.

8.2.8. CP shall institute and defend such proceedings at law or in equity that CP deems reasonably necessary and appropriate for the collection of accounts receivable, or otherwise proper in connection with matters directly arising from the Project's operation and management.

8.2.9. CP shall collect all applicable Nation, federal, state, local, and municipal excise, sale, transaction privilege, and use taxes for services and goods purchased by the Project's customers from such customers. CP shall remit the relevant taxes to the appropriate taxing authority or authorities. Furthermore, CP shall provide a quarterly accounting of all such tax amounts collected from customers and remitted to the applicable taxing authorities to the Nation and the Enterprise and such other designated division, department, office, official, or agent as the Parties may agree. The Nation and the Enterprise shall promptly deliver to CP all notices of such assessments, valuations, and similar materials or documents that are to be addressed and filed by CP, or which the Nation or the Enterprise receives from taxing authorities.

8.2.10. CP shall collect the rental payments from the sublessees having leasehold interests in the Lease Pads.

8.2.11. CP shall comply with all applicable laws, statutes, codes, regulations, and ordinances that govern the Project's management, use, and operation.

8.2.12. CP shall bond over, or make other adequate provision for, the payment of any liens by mechanics, materialmen, suppliers, vendors, or others that provide services or goods to the Project.

8.2.13. CP shall operate and maintain the Project as provided in the Operating Agreement.

8.3. Operating Licenses. CP shall obtain and maintain all licenses and permits required by applicable laws, statutes, codes, regulations, and ordinances to operate the Project. The Nation agrees to promptly execute and deliver any and all

applications, certificates, and other documents, materials, or information as may be reasonably requested by CP to obtain and maintain such licenses and permits. The Nation further agrees to provide such additional assistance and cooperation as may reasonably be requested by CP in connection with obtaining and maintaining such licenses and permits.

8.4. Project Personnel.

8.4.1. Employment Policies. CP shall comply with all labor laws, statutes, regulations, and policies applicable to the Project, including laws, statutes regulations and policies governing hiring, retention, promotion and discipline, wages and salary rates and terms, benefits, pensions, retirements, bonus and employee benefits plans.

8.4.2. General Authority of CP. CP shall supervise and direct the personnel employed in the operation, maintenance, and security of the Project, which supervision and direction CP shall exercise in its professional judgment and discretion. CP's actions shall also comply with the requirements set forth within the Navajo Preference in Employment Act, 15 N.N.C. §§ 601 *et seq.* and all other Applicable Laws relating to employment and employment conditions.

8.4.3. Personnel are CP's Employees. All personnel employed, whether on a permanent or temporary basis, to render services in connection with the Project (including the general manager and supervisors) shall be employees of CP, and shall not be employees of the Enterprise or of the Nation. Neither the Enterprise nor the Nation shall supervise or direct (or attempt to supervise or direct) the general manager or any of the Project's employees. However, the Nation and the Enterprise shall have the right to communicate with CP regarding the operation of the Project.

8.4.4. Indemnity. CP shall pay, indemnify, defend, and hold harmless the Enterprise, the Nation and its elected and appointed officials for, from, and against any and all Claims arising in connection with any matter asserted by an employee, former employee, or potential employee of CP who renders services in

connection with the Project regarding hire, discharge, supervision, pay, and any other employment matters, including without limitation any workers' compensation, discrimination, and personal injury claims; CP shall also pay, indemnify, defend, and hold harmless the Enterprise, the Nation and its elected and appointed officials for, from, and against any and all Claims arising by reason of any claims of unfair labor practices or otherwise relating to attempts to cause any employees of CP to join a union or other organized labor organization. This indemnity shall survive the expiration or termination of this Agreement.

8.5. Security and Law Enforcement

8.5.1 CP will provide unarmed security personnel in the Operator Area and the public parking areas whenever facilities are in use.

8.5.2 The Nation will provide law enforcement to and from, as well as within, the Project for issues that extend beyond the appropriate duties of the Operator's security personnel.

8.6. Negation of Property Interest. The covenants of the Enterprise and the Nation and other provisions of this Agreement are not intended (and shall not be construed) to create or grant a leasehold or any other real property or incorporeal interest in favor of CP, with respect to all or any part of the Project, other than a license to develop and operate the Project in accordance with the provisions, terms, and provisions set forth in this Agreement for the effective term.

ARTICLE 9.

FUNDING

9.1. CP shall be responsible for arranging, securing and acquiring funding for all of the Project's Pre-Construction Work and Construction Work and all of the Offsite Infrastructure's Pre-Construction Work, subject to the Nation's commitment to arrange, secure, and acquire funding for Offsite Infrastructure as set forth herein.

9.1.1. After receipt of all Permits necessary to construct and operate the Project Improvements and the Offsite Infrastructure, and after approval of the Design Guidelines and Architectural Standards and the Final Site Plan developed in accordance with the procedures established in the Development Agreement, CP will provide to the Enterprise proof of adequate funding necessary to complete the Construction Work.

9.1.2. CP may, with the Enterprise's prior written consent, commence the Construction Work prior to providing proof to the Enterprise of adequate funding pursuant to this Article.

9.1.3. If, after receipt of all Permits necessary to construct and operate the Project Improvements and the Offsite Infrastructure and after approval of the Design Guidelines and Architectural Standards and the Final Site Plan, CP has not provided proof of adequate funding for the Project's Construction Work, the Nation may, at its option, elect to provide CP with an additional time-period within which to provide proof of adequate funding for the Project's Construction Work, terminate the Agreement or declare an Event of Default pursuant to Article 11.1 herein, and pursue its remedies pursuant to Article 11.3 herein.

9.2. The Nation shall be responsible for arranging, securing, and acquiring funding for Pre-Construction and Construction Work on the Offsite Infrastructure currently estimated to be \$65 million in 2014 dollars.

9.2.1. Based upon the Offsite Infrastructure Budget developed in accordance with the procedures established in the Development Agreement and after receipt of all Permits necessary to construct and operate the Project Improvements and the Offsite Infrastructure, the Nation will provide proof to CP of adequate funding necessary to reimburse CP for all Pre-Construction Work associated with the Offsite Infrastructure and to complete the Construction Work on the Offsite Infrastructure.

9.2.2. In the event the Nation has not provided proof of adequate funding for all or a portion of the Offsite Infrastructure Pre-Construction and Construction Work

by the date all the Permits necessary to construct and operate the Project Improvements and the Offsite Infrastructure have been received, CP may, at its option, elect to provide the Nation with an additional time-period within which to provide proof of adequate funding for the Offsite Infrastructure Pre-Construction and Construction Work, terminate the Agreement, declare an Event of Default and remedy the default by arranging, securing and acquiring additional funding to construct the Offsite Infrastructure, or pursue its other remedies pursuant to Article 11 herein. However, any such funding will be secured by a first position priority pledge the Nation's Revenue described in Section 6.1, and will carry the actual interest rate obtained by CP from the financing sources plus a fee to be paid to CP of 10% per year on any outstanding balance owed by the Nation.

9.2.3. In the event the Nation is unable to arrange, secure, and acquire the necessary funding for all or a portion of the Offsite Infrastructure Pre-Construction and Construction Work, and CP elects to secure additional financing as described in Article 9.2.2 above, any deadlines imposed on CP to arrange, secure, and acquire funding pursuant to Article 9.1 above, as well as any deadlines imposed on CP to begin and complete the Project's construction, will automatically be extended three years without further action being necessary.

- 9.3 In the event CP is unable to obtain the required Permits for construction and operation of the Project and the Offsite Infrastructure, the Nation is not obligated to reimburse CP for any Pre-Construction Work on the Offsite Infrastructure.

ARTICLE 10.

DAMAGE OR DESTRUCTION; NO CONDEMNATION; NO SPECIAL TAXES OR PERMITTING REQUIREMENTS

10.1. Damage or Destruction.

10.1.1. Reconstruction by CP. If the Project Improvements, the Onsite Infrastructure or any portion thereof (excluding any portion transferred to

NTUA), shall be damaged, destroyed, or rendered unusable at any time, or times, by fire, flood, ground subsidence, structural problems, or any other cause (whether insured or uninsured), CP will, with due diligence, repair, rebuild, or replace the same portion of the Project Improvements or Onsite Infrastructure ("**Reconstruction**"), and shall use any and all insurance proceeds payable on account of such casualty in a manner that results in the Project Improvements, the Onsite Infrastructure or portion thereof, being substantially the same after Reconstruction as prior to such damage or destruction; which use of the insurance proceeds and associated activities shall be in compliance with all applicable governmental laws or regulations. Any insurance proceeds received by the Nation and/or the Enterprise on account of such casualty shall be transferred over to CP for Reconstruction. To the extent that any insurance proceeds payable, with respect to the casualty loss, are insufficient to complete the Reconstruction, CP shall arrange, secure, and acquire the additional funds necessary to complete the Reconstruction.

10.1.2. Reconstruction by the Enterprise and by the Nation. If the Offsite Infrastructure or any portion thereof (excluding any portion transferred to NTUA), shall be damaged, destroyed, or rendered unusable at any time, or times, by fire, flood, ground subsidence, structural problems, or any other cause (whether insured or uninsured), the Enterprise will, with due diligence, repair, rebuild, or replace the same portion of the Offsite Infrastructure ("**Reconstruction**"), and shall use any and all insurance proceeds payable on account of such casualty in a manner that results in the Offsite Infrastructure, or portion thereof, being substantially the same after Reconstruction as prior to such damage or destruction; which use of the insurance proceeds and associated activities shall be in compliance with all applicable governmental laws or regulations. Any insurance proceeds received by CP or the Nation on account of such casualty shall be transferred over to the Enterprise for Reconstruction. To the extent that any insurance proceeds payable, with respect to the casualty loss,

are insufficient to complete the Reconstruction, the Nation shall arrange, secure, and acquire the additional funds necessary to complete the Reconstruction.

10.1.3. Timing. CP and/or the Nation shall commence any Reconstruction required pursuant to this Article within a commercially reasonable time-period after occurrence of damage or destruction to the Project Improvements, the Onsite Infrastructure, the Offsite Infrastructure or any portion thereof (excluding any portion transferred to NTUA), which shall not exceed Ninety (90) days; and thereafter, CP and/or the Nation shall complete such Reconstruction diligently.

10.2. No Condemnation by the Nation. The Nation, on behalf of the Nation and its political subdivisions, and any agency, department or instrumentality of the Nation or its political subdivisions, agrees not to condemn any portion of the Project, the Project Improvements or the Onsite Infrastructure, through any eminent domain or other compulsory acquisition measures that may exist in the law for the purposes of taking the same. However, the Nation does not waive or foreclose any other remedies that may be available pursuant to Article 11 herein or otherwise.

10.3. No Special Taxes or Permitting Requirements. The Nation, on behalf of the Nation and its political subdivisions, and any agency, department or instrumentality of the Nation or its political subdivisions, agrees not to impose any special taxes or special permitting requirements on the Project. It is the intent of this section that the Project be liable for taxes of general applicability only, including Chapter taxes of general applicability, and permitting requirements of general applicability only.

ARTICLE 11.
DEFAULT, CURE, REMEDIES, TERMINATION

11.1. Events of Default. Each of the following shall constitute an "**Event of Default**":

11.1.1. Failure by a Party to pay any amount due and payable pursuant to this Agreement within 15 days following receipt of written notice of such failure given to such defaulting Party by a non-defaulting Party.

11.1.2. Failure by a Party to perform, keep, or fulfill any of its nonmonetary covenants, undertakings, or obligations set forth in this Agreement or the material breach of any of a Party's representations or warranties in this Agreement, if such failure or breach is not cured within 30 days following receipt of written notice specifying such failure or breach by such defaulting Party from a non-defaulting Party; provided, however, that if such failure or breach is curable but is not reasonably capable of being cured within 30 days, the defaulting Party may provide a plan, to the satisfaction of the non-defaulting Party, to cure the breach over a specified period of time and thereafter prosecute such cure to completion with all due diligence.

11.1.3. The filing of a petition by CP for relief under the Bankruptcy Code, or under any other present or future tribal, state or federal law regarding bankruptcy, reorganization or other debtor relief law; or the filing of any pleading or answer by CP in any involuntary proceeding under the Bankruptcy Code or other debtor relief law which admits the jurisdiction of the court or the petition's material allegations regarding CP's insolvency; or a general assignment by CP for the benefit of creditors; or application by CP for the appointment of a receiver, trustee, custodian or liquidator of CP or any of its property.

11.1.4. Failure of CP to effect a full dismissal of an involuntary petition under the Bankruptcy Code or under any other debtor relief law that is filed against CP that in any way restrains or limits CP, the Enterprise or the Nation regarding this Agreement, prior to the earlier of the entry of any court order granting relief

sought in such involuntary petition or ninety (90) days after the date of filing of such involuntary petition.

11.1.5. Occurrence of any management or organizational change in CP or in the members or investors of CP which has a material adverse effect on the ability of CP or its members or investors to perform their obligations under this Agreement.

11.2. Remedies. Upon the occurrence of an Event of Default and failure to Cure after Notice, a non-failing or non-breaching Party may pursue any or all of the following:

11.2.1. Terminate this Agreement as provided in Section 11.3 below; or

11.2.2. Elect to take any and all action deemed necessary by such non-defaulting Party, in such non-defaulting Party's sole and absolute discretion, to cure the default, including making payments to third parties. The non-defaulting Party shall first provide written notice to the defaulting Party of its intention to cure the default. All sums expended by the non-defaulting Party in connection with the exercise of this option shall be paid by the defaulting Party to the non-defaulting Party within fifteen (15) days of receipt by the defaulting Party of an invoice and demand for repayment of the costs, fees, and expenses to cure the Event of Default; or

11.2.3. Pursue any other right or remedy which a non-defaulting party may have at law or in equity.

11.3. Termination. This Agreement may be terminated as follows:

11.3.1. Upon the occurrence of any Event of Default and the failure to cure after written notice, a non-defaulting Party may exercise the right to terminate by providing a written notice of termination to the defaulting Party given at least 20 days prior to the proposed termination date. If the defaulting Party cures prior to the proposed termination date, the Event of Default shall be considered remedied and this Agreement shall not be terminated. This Twenty (20)-day termination

notice is in addition to any other notice or cure period provided with respect to such Event of Default.

11.3.2. At the option of CP, exercised by written notice to the Enterprise and the Nation in the event of a suspension of the Project's development or operations for a period in excess of Ninety (90) days, but only if such suspension was due to circumstances beyond CP's reasonable control.

11.3.3. Expiration of the Conditional Use Permits under Article 4.4

CP shall seek extensions of the Conditional Use Permits no less than 90 days prior to the proposed expiration date(s). If the Conditional Use Permits are extended prior to the proposed expiration date(s), this Agreement shall not be terminated.

11.4 Transition Procedures. Upon the termination or expiration of this Agreement, CP shall, at CP's expense;

11.4.1. Promptly vacate the Project.

11.4.2. Remove all of CP's personal property unrelated to the Project. The removal of such personal property must occur within fifteen (15) days after the termination or expiration of this Agreement.

11.4.3. Repair any injury occasioned by installation or removal of such personal property.

11.4.4. Ensure that Project Improvements and the Onsite Infrastructure are in at least as good condition as they were at the completion of construction, reasonable wear and tear excepted.

11.4.5. Transfer to the Enterprise all governmental permits, licenses, and authorizations attendant to the operations of the Project.

11.4.6. Transfer to the Enterprise all interests in real and personal property constructed, procured or acquired by the CP for the Project.

11.4.7. Deliver to the Enterprise all leasehold interests and concession agreements in effect at such time and the Enterprise shall accept and assume all such interests and concession agreements.

11.4.8. Deliver to the Enterprise all keys, safe combinations, materials, and information necessary for the Project's operations, and any property of the Enterprise or the Nation in the possession of CP.

ARTICLE 12.

DISPUTE RESOLUTION

12.1. Arbitration. Any controversy, claim or dispute arising out of or related to this Agreement shall be resolved through binding arbitration (the "**Arbitration**"). For matters in which the amount in controversy is less than \$500,000 the Arbitration shall be conducted by a sole arbitrator; provided, however, if the Parties cannot agree upon an arbitrator, the Nation and the Enterprise will select an arbitrator and CP will select an arbitrator and the two arbitrators will select the sole arbitrator to resolve the dispute. For all other matters, the Arbitration shall be conducted by three arbitrators, unless the Parties agree otherwise or this Agreement, the Development Agreement or the Operating Agreement expressly provide otherwise. The Nation or the Enterprise (or, when appropriate, the Nation and the Enterprise jointly) shall choose one arbitrator; CP shall choose one arbitrator; and the Parties' chosen arbitrators shall agree upon the third arbitrator to conduct the Arbitration and decide the dispute between the Parties. Prompt disposal of any dispute is important to the Parties. The Parties agree that the resolution of any dispute shall be conducted expeditiously, to the end that the final disposition thereof shall be accomplished within 120 days or less. The Arbitration shall proceed as follows:

12.1.1. Initiation. The Nation, CP or the Enterprise may request and thus initiate arbitration of the dispute by written notice to the other party or by an instrument mutually executed collectively by the Parties (the "**Arbitration Notice**"). The Arbitration Notice shall state specifically the dispute that the initiating party or parties wish to submit to arbitration. If the matter to be

arbitrated is the proposed termination of this Agreement, the Arbitration Notice must be filed prior to the proposed termination date.

12.1.2. The Arbitrators. The Arbitrators shall have ten years of experience in dealing with complex commercial disputes and shall consent in writing to apply Navajo law to resolve the dispute.

12.1.3. The Procedures. The Arbitration shall be conducted in accordance with the Navajo Nation Arbitration Act, 7 N.N.C. §§ 1101, et seq. and the Commercial Arbitration Rules of the American Arbitration Association then in effect.

12.1.4. Scope of Arbitral Award

12.1.4.1. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract.

12.1.4.2. The award of the arbitrator(s) may include:

12.1.4.2.1. Interest at such rate and from such date as the arbitrator(s) may deem appropriate; and

12.1.4.2.2. An award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.

12.1.4.2.3. Compensation, if any, due to CP upon termination of this Agreement.

12.1.5. Judgment. The arbitral award may be reduced to a judgment in the Navajo Nation courts as provided in the Navajo Nation Arbitration Act. In the event that the Navajo Nation Courts take no action within Forty-five days after the issuance of the arbitral award, either party may seek a judgment from the Maricopa County Superior Court for the State of Arizona. The arbitral award reduced to a judgment as described herein may be enforced through appropriate judicial proceedings in any court of competent jurisdiction.

12.2. Governing Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the Navajo Nation.

- 12.3. No Waiver of Sovereign Immunity. Nothing in this Agreement shall be interpreted as constituting a waiver, express or implied, of the Nation's sovereign immunity from suit.
- 12.4. No Assertion of Sovereign Immunity to Impair or Impede the Arbitration. In so far as this Agreement relates to a commercial matter, and disputed commercial issues between the Parties, each of the Nation and the Enterprise agrees that it will not assert any claim of sovereign immunity as a bar to CP's initiation of Arbitration, compelling of Arbitration, the Arbitration itself, the enforcement of an arbitral award in CP's favor, or CP's pursuit of its rights provided pursuant to this Agreement.
- 12.5. Enforcement of Arbitral Awards. Enforcement of any arbitral award shall be consistent with Navajo law, including the limitations associated with money damages awarded against the Nation provided by current Navajo Law under 1 N.N.C. § 554(H)(3)¹, and the relevant rules promulgated by the American Arbitration Association.
- 12.6. Judicial Equitable Relief Not Prohibited. Although the Parties agree that they shall not be permitted to seek, and that they shall not seek monetary damages in a court of law, other than through the enforcement of an arbitral award; the Parties shall not be precluded from the pursuit and award of equitable relief, such as

¹ "(3) Damages against the Navajo Nation under the consent to suit granted by the Navajo Nation to Navajo contractors and/or their sureties shall be limited to damages claimed under applicable principles of contract damage law, including damages necessary to compensate for fulfilling the obligations under the bond, which shall include properly authorized change orders and properly authorized performance under owner directives to proceed done under protest, but shall not include:

- a. Punitive damages;
- b. Damages from claims arising in tort;
- c. Damages caused by delays in performance due to governmental review and approval procedures of the Navajo Nation or other governmental entity having the right to review and/or approve the contract or project; or
- d. Damages caused by delay, contract modification, or contract termination, due to delay in or failure to receive matching funds for the contract or project."

declaratory and injunctive relief, from the Nation's courts, which judicial equitable relief may be sought in addition to, or without, arbitral resolution of any dispute between the Parties arising pursuant to, out of, or in connection with this Agreement.

ARTICLE 13.

ASSIGNMENTS; OWNERSHIP CHANGES

13.1 CP's Assignments.

Except as otherwise provided in Article 13.4, CP may not assign its interests in this Agreement to any other person, firm, or organization, without the prior written consent of the Enterprise, which shall not be unreasonably withheld. Any attempted transfer or assignment without the Enterprise's required prior written consent shall be void, understood to confer no rights whatsoever upon any third-party, and shall constitute an Event of Default pursuant to this Agreement.

13.2 Nation's Assignments.

The Nation may assign or otherwise transfer the Enterprise's interests in or provided by, this Agreement to another entity that is separately managed, but wholly owned by the Nation, or its successor in interest, without the prior consent of CP. In the event the Nation elects to make such an assignment or other transfer pursuant to this Article 13.1, then, notwithstanding any other provision of this Agreement to the contrary, the assignee or transferee shall assume the Enterprise's rights and obligations provided by this Agreement.

13.3 Release Requirements Associated With Assignments. Each permitted assignment or transfer occurring pursuant to this Article 13 shall be properly evidenced by a written instrument that has been executed by the assignor/transferor and the assignee/transferee. Each such assignee shall also expressly agree in writing to

assume, to be bound by, and to perform the terms, covenants, and conditions of this Agreement that otherwise would be the obligations of the assignor stated herein. The assignor or its assignee shall promptly deliver at least one executed copy of the executed proper written instrument, or instruments, to the other Parties, or the successors in interest of the non-assigning Parties. Such an assignment shall not release the assignor from such Party's obligations existing pursuant to this Agreement, unless the non-assigning Parties agree in writing to such a release. However, the Nation, as an assigning Party, shall not be subject to this release requirement in the case of an assignment pursuant to Article 13.2 herein. A non-assigning Party's consent to an assignment on one occasion shall not be deemed consent to any subsequent assignment(s).

- 13.4 Lender's Rights. It is the understanding of the Parties that CP will be obtaining a loan for the construction of the Project Improvements, and that said loan may be secured by the Operating Agreement and CP's revenues to be generated through that Operating Agreement. The Parties expressly agree that, in the event of default by CP on the terms of that loan the lender or lenders will have the right to assume the rights and responsibilities of the Operating Agreement without the prior written consent of the Nation or the Enterprise.

ARTICLE 14.

ANCILLARY AGREEMENTS

- 14.1. The design, permitting and construction of the Project and the Offsite Infrastructure are the subject of the Development Agreement, attached hereto as Exhibit E.
- 14.2. The operation of the Project is the subject of the Operating Agreement, attached hereto as Exhibit F.

ARTICLE 15.
COVENANT NOT TO COMPETE

15.1. No Authorizations for Competing Business Issued by the Nation. During the term of this Agreement, neither the Nation, nor any of its political subdivisions, agencies, departments or instrumentalities, shall authorize or engage in a Nation Competing Business within the "Restricted Area" defined below. CP may waive the prohibitions provided in this Article on a case-by-case basis. Such a waiver shall be considered discreet and particular to that unique circumstance, and shall not be implied, interpreted, or construed to authorize any other waivers of this Article's prohibition whatsoever.

15.2. Certain Definitions. As particularly used in this Article 15:

15.2.1. **"Nation Competing Business"** means any business activities included within the Project.

15.2.2. **"Restricted Area"** means and includes the Navajo Reservation within fifteen (15) miles of the Project, and within two and one-half (2.5) miles on either side of the access road to the Project and the entrance to the Project's access at US-89. Provided, however, that businesses may be developed at the entrance to the Project's access on either side of US-89 in conformity with the Design Guidelines and Architectural Standards for the Project.

ARTICLE 16.
REPRESENTATIONS AND WARRANTIES

16.1. The Nation's Representations and Warranties. As of this Agreement's Effective Date, the Nation warrants and represents to CP and the Enterprise as follows:

16.1.1. Organizational Status. The Nation has actual and apparent authority to negotiate, execute, and perform its obligations incurred pursuant to this Agreement. The person(s) executing this Agreement on behalf of the Nation have

full power, actual authority, and apparent authority to do so, and to execute and deliver all materials, documents, and instruments necessary and appropriate to consummate the transactions contemplated by this Agreement;.

16.1.2. Entity Action. All of the Nation's necessary precursor actions, in its various capacities, which are required for the execution, delivery, and performance of the Nation's obligations incurred by the terms, conditions, and provisions of this Agreement have been duly and effectively taken

16.2. Representations and Warranties of CP. As of the Effective Date of this Agreement, CP warrants and represents to the Nation and the Enterprise as follows:

16.2.1. Organizational Status. CP is a limited liability company, which is duly organized, validly existing, properly authorized, and in good standing to transact the business necessary to fulfill its obligations incurred by the terms, conditions, and provisions of this Agreement pursuant to the laws of the State of Arizona and the Nation. CP has all necessary actual and apparent authority to negotiate, execute, and perform its obligations incurred pursuant to this Agreement. The person(s) executing this Agreement on behalf of CP have full power, actual authority, and apparent authority to do so, and to execute and deliver all materials, documents, and instruments necessary and appropriate to consummate the transactions contemplated by this Agreement.

16.2.2. Entity Action. All of CP's necessary precursor company actions that are required for CP's execution, delivery, and performance of this Agreement have been duly and effectively performed.

16.3. Representations and Warranties of the Enterprise. As of the Effective Date of this Agreement, the Enterprise warrants and represents to the Nation and CP as follows:

16.3.1. Organizational Status. The Enterprise is a tribal enterprise of the Navajo Nation, which is duly organized, validly existing, properly authorized, and in

good standing to transact the business necessary to fulfill its obligations incurred by the terms, conditions, and provisions of this Agreement pursuant to the laws of the Nation. The Enterprise has all necessary actual and apparent authority to negotiate, execute, and perform its obligations incurred pursuant to this Agreement. The person(s) executing this Agreement on behalf of the Enterprise have full power, actual authority, and apparent authority to do so, and to execute and deliver all materials, documents, and instruments necessary and appropriate to consummate the transactions contemplated by this Agreement.

16.3.2. Entity Action. All of the Enterprises' necessary precursor actions that are required for the Enterprises' execution, delivery, and performance of this Agreement have been duly and effectively performed.

- 16.4. No Third-Party Rights Violated By This Agreement. Each Party represents and warrants to the other Parties that the execution and performance of this Agreement will not breach any existing obligations to any third-parties or otherwise; nor will the execution and performance of this Agreement by the Parties infringe or otherwise violate any third-parties' preexisting rights. Although each Party believes to the best of its abilities and knowledge that each Party's respective representations and warranties are correct and accurate with respect to third-parties' rights, the Parties acknowledge that no Party guarantees or warrants absolutely that no third-party whatsoever will assert a putative violation of a Party's obligation(s) or the third-party's preexisting rights allegedly caused by, or arising from, the execution and performance of this Agreement. Such third-party assertions of a Party's violation of preexisting obligations or rights shall not constitute an Event of Default for purposes of Article 11 herein unless and until a properly convened and conducted arbitral body or a court of competent jurisdiction concludes that a Party's execution and performance of this Agreement violates a Party's obligations to a third-party, or otherwise violates a third-party's preexisting rights.

ARTICLE 17.
GENERAL PROVISIONS

- 17.1. Indemnity. CP, as a Party to this Agreement, indemnifies the Nation and the Enterprise, as Parties to this Agreement, for, from, and against all Claims attributable, directly or indirectly, to CP's breach of any obligation herein, the inaccuracy of any representation or warranty made by CP, and any of CP's instruments delivered pursuant to this Agreement, or in connection with the transactions contemplated by this Agreement. CP's indemnity of the Nation and the Enterprise shall survive the expiration or termination of this Agreement.
- 17.2. Further Assurances. The Nation, the Enterprise and CP shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other actions necessary to make this Agreement fully and legally effective, binding, and enforceable, as between the Nation, the Enterprise and CP, and as against third-parties.
- 17.3. Successors and Assigns. Subject to the provisions of Article 13, this Agreement shall be binding upon, and inure to the benefit of the Nation, the Enterprise and CP, their assigns, and their successors in interest.
- 17.4. Amendments. This Agreement may not be modified, amended, surrendered, or changed, except by a written instrument properly executed by the Nation, the Enterprise and CP.
- 17.5. Inspection Rights.
- 17.5.1. The Nation, the Enterprise and their authorized representatives shall have, and at any and all times retain, the right to inspect the Project to ensure and determine CP's compliance with its obligations existing pursuant to this Agreement, and otherwise existing in connection with the Nation's and the

Enterprise's performance of their obligations pursuant to this Agreement. Any inspections shall be conducted as set forth in the Operating Agreement.

17.5.2. Enterprise shall have the right to have an independent audit conducted of the admissions to, the Gross Revenues of and the Lease Pad Rental Revenues of the Project, as well as the CP Repair and Maintenance Reserve Fund and the Tram Repair and Replacement Reserve Fund. The audit process is set forth in the Operating Agreement.

17.6. Relationship. This Agreement does not create any fiduciary, agency, or partnership relationship between the Parties. In the performance of this Agreement, CP is, and shall at all times be considered to act solely as an independent contractor. This Agreement, and any and all agreements, instruments, documents, or transactions contemplated by this Agreement, shall not be interpreted, deemed, or construed to make CP a partner or party in a joint-venture with the Nation or the Enterprise in any respect whatsoever; and all Parties agrees that they will not make any contrary representation, assertion, contention, claim, cross-claim, or counter-claim, in any action, suit, or other proceeding of a legal or administrative nature that involves this Agreement, CP, the Enterprise or the Nation.

17.7. Entire Agreement. This Agreement, including Exhibits A through H-2, supersedes all previous agreements, understandings, undertakings, and arrangements between the Parties, whether oral or written; and constitutes the entire Agreement between the Parties relating to the subject matter hereof.

17.8. Time of the Essence: Force Majeure. Time is of the essence for this Agreement; provided, however, that the time limitations set forth herein shall control; except with respect to monetary obligations, which shall be extended for the period of any delay due to causes beyond the delayed Party's control, or circumstances that cannot reasonably be foreseen or accounted for in advance to effectively counter,

including, without limitation, strikes, governmental regulations or orders, or other events of force majeure.

17.9. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same Agreement.

17.10. Notices. Notices and other communications that are required or contemplated by this Agreement shall be in writing, and shall be provided by: (a) personal, in-hand delivery, (b) private courier service, with overnight delivery service, (c) United States Postal Service, certified mail, postage pre-paid, return receipt requested (which receipt shall be preserved as evidence of delivery), (d) facsimile transmission, or (e) electronic mail, addressed and transmitted to the Parties at the addresses and telecopier numbers immediately following this provision, or to such other address or telecopier number as a Party may designate to the other Party in a writing delivered in accordance with the provisions of this Article:

To CP:

Confluence Partners, LLC
R. Lamar Whitmer, Manager
7343 E. Camelback Rd.
Scottsdale, AZ 85251
Fax No.: 480-945-4879
Telephone No.: 480-945-4879
Email address: rlw@fulcrumgroup.com

With a copy to:

Michael C. Nelson, Esq.
1131 E. Coronado Rd.
Phoenix, AZ 85006
Fax No.: 602-241-3326

Telephone No.: 602-803-3593

Email address: Michael.Nelson@azbar.org

To the Nation:

President

Post Office Box 7440

Window Rock, Navajo Nation (AZ) 86515

Fax No.: 928-871-4025

Telephone No.: 928-871-7000

Email address:

Director, Division of Economic Development

Executive Director

PO Box 663

Window Rock, AZ 86515

Fax No.: 928) 871-7381

Telephone No.: (928) 871-6544

Email address:

With a copy to:

Attorney General

Navajo Nation Office of the Attorney General

Navajo Nation Department of Justice

Post Office Box 2010

Window Rock, Navajo Nation (AZ) 86515

Fax No.: 928-871-6200

Telephone No.: 928-871-6933

Email address:

To Enterprise:

Navajo Nation Hospitality Enterprise

PO Box 2340

48 West Highway 264

Window Rock, AZ 86515

Fax No.: 928-871-5466

Telephone No.: 928-871-4108

Email address: gm.az236@choicehotels.com

- 17.11. All notices and other materials shall be deemed to have been delivered, and shall be considered effective upon the date on which the notice is actually received. If provided by facsimile transmission or e-mail, and the receiving Party confirms receipt within 24 hours of send-off, then notice shall be deemed delivered at the time this facsimile or e-mail is sent; but if no confirmation e-mail is sent by the Party receiving the notice or communication, then such notice or communication shall be deemed received 72 hours after the facsimile or e-mail was sent.
- 17.12. Interest on Unpaid Amounts. A Party's amounts due and owing to another Party pursuant to this Agreement shall bear interest from the date due until paid at the Prime Lending Rate, as published by the National Reserve System Board of Governors, plus two percentage points, except for any amounts provided by CP for the Nation pursuant to Sec.9.2.2; such amounts shall carry the interest rate set forth in that section.
- 17.13. Time Periods. Except as otherwise expressly provided for in this Agreement, the time for performance of any obligation or the deadline for taking any action required pursuant to this Agreement shall be deemed to expire at 5:00 p.m. Mountain Standard Time on the final day of the applicable time-period provided for in this Agreement. If the time-period or deadline for the performance of any obligation or taking any action pursuant to this Agreement expires on a day other than a Business Day, the time for performance or taking such action shall be extended to the next Business Day, as defined herein, or otherwise defined by the Parties pursuant to this Agreement.

17.14. Waivers. No express written waiver of any of the provisions of this Agreement, and no waiver by a Party of a breach or other violation of any term, condition, or provision of this Agreement shall operate as, or be construed to be, a waiver of any subsequent breach of the same or other term, condition, or provision of this Agreement. Nor will any waiver be a continuing waiver of any term, condition, or provision of this Agreement. Further, no waiver provided by a Party to another Party shall be binding, unless such express and discrete waiver is executed in writing by the Party providing the waiver. A Party may waive any term, condition, or provision of this Agreement intended for its benefit; provided, however, that such waiver shall in no way be understood to excuse the other Parties from the performance of any of its other obligations pursuant to this Agreement.

17.15. Severability and Survival. To the extent that this Agreement provides that certain rights of the Parties are to survive the expiration or termination of this Agreement, the provisions of this Article 17, along with those otherwise stated herein to survive expiration or termination, shall survive expiration or termination of this Agreement with respect to such rights and obligations. Additionally, all of the terms, conditions, and provisions of this Agreement are intended to be distinct and severable. If any term, condition, provision, or clause of this Agreement is declared to be invalid and unenforceable by a properly convened and conducted arbitral body, such term, condition, provision, or clause shall be ineffective only to the extent of such invalidity or unenforceability. Such invalidity or unenforceability shall not affect either the balance of such a term, condition, or provision, to the extent it is not invalid or unenforceable, or the remaining terms, conditions, provisions, and clauses within this Agreement. In the event any term, condition, provision, or clause of this Agreement is determined by a properly convened and conducted arbitral body to be invalid or unenforceable, then the Parties shall use good faith efforts to replace the invalidated or unenforceable provision with an alternative, valid term, condition, provision, or clause that is

consistent with the spirit of the original invalidated term, condition, provision, or clause.

IN WITNESS WHEREOF, CP, the Enterprise and the Nation, acting by and through their proper and duly authorized officers or representatives, have each duly executed this Agreement on the date(s) provided below.

The Navajo Nation:

By Russell Begaye _____

President

Date: _____

The Navajo Nation Hospitality Enterprise:

By _____

Its _____

Date: _____

Confluence Partners, L.L.C. an Arizona limited liability company

By R. Lamar Whitmer _____

Managing Partner

Date: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROJECT AREA AND THE OFFSITE INFRASTRUCTURE STUDY CORRIDORS

October 29, 2013

Exhibit A

Legal Description of the Project Area

Parcel One-On the Rim Project Area

Beginning at a point within T33N, R6E, Sec. 30, SW 1/4 located on the rim of the Grand Canyon, identified as Point 36.22513581 -111.79648582; thence 1,769' on bearing N 74.3317 E to Point 36.22642434 -111.79070170; thence 2,961' on bearing S 89.5638 E to Point 36.22640538 -111.78066147; thence 1,028' on bearing S 56.3720 E to Point 36.22484823 -111.77775349; thence 1,593' on bearing S 00.1624 W to Point 36.22047198 -111.77778699; thence 1,158' on bearing S 56.4159 W to Point 36.21872908 -111.78107141, located on the rim of the Little Colorado River Gorge; thence west and north along the rim of the Little Colorado River Gorge and the Grand Canyon to the point of beginning.

Parcel Two-Tram Route

A corridor seventy-five (75) feet on either side of a line beginning at a point within T33N, R6E, Sec.31, NE 1/4 located on the rim of the Little Colorado River Gorge identified as Point 36.2199 -111.71914; thence 8,484' at bearing S 12.5007 W through Point 36.20723131 -111.79497192 to Point 36.19716515 -111.79786800.

Parcel Three-Canyon Floor River Walk

A corridor seventy-five (75) feet on either side of a line beginning at a point within T32.5N, R6E, Sec. 31, SW 1/4 identified as Point 36.19840672 -111.79825149; thence 466' at bearing S 14.0747 E to Point 36.19716515 -111.79786800; thence 594' at bearing S 14.5421 E to Point 36.19558746 -111.79735218; thence 393' at bearing S 18.1302 W to Point 36.19456262 -111.79777026; thence 350' at bearing S 09.5159 W to Point-36.19361613 -111.79797470.

Legal Description of the Study Corridors

Road Study Corridor

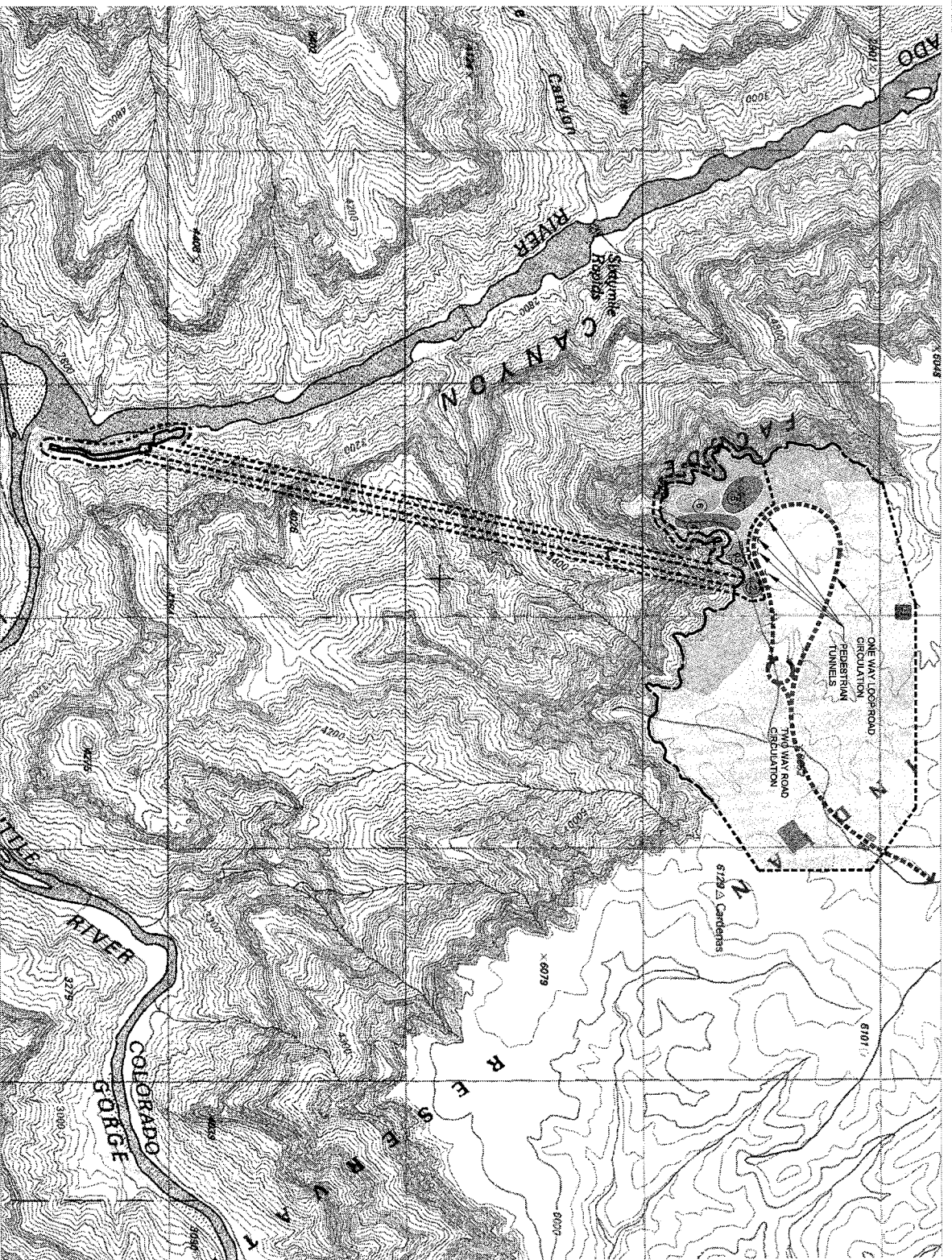
Beginning at a point within T33N, R6E, Sec. 30, located on the rim of the Grand Canyon, identified as Point 36.22452194 -111.80234194; thence 25,654' at bearing N 20.1714 E to Point 36.29059250 -111.77206333; thence 23,306' at bearing N 63.4330 E to Point 36.31878500 -111.70104917; thence 102,410' at bearing S 63.1418 E to Point 36.19118889 -111.39153694; thence 14,987' at bearing S 04.3420 W to Point 36.15016778 -111.39585694; thence 55,811' at bearing N 70.0710 W to Point 36.20278472 -111.57333889; thence 25,468' at bearing N 57.4150 W to Point 36.24052361 -111.64623611; thence 23,900' at bearing N 46.0713 W to Point 36.28615083 -111.70453056; thence 12,380' at bearing S 58.2913 W to Point 36.26843306 -111.74038000; thence 22,443' at bearing S 24.3940 W to Point 36.21244389 -111.77224972; thence 9,906' at bearing N 63.4338 W to the Point of Beginning.

Utility Study Corridor

Beginning at a point within T33N, R6E, Sec. 30, located on the rim of the Grand Canyon, identified as Point 36.22452194 -111.80234194; thence 25,654' at bearing N 20.1714 E to Point 36.29059250 -111.77206333; thence 23,306' at bearing N 63.4330 E to Point 36.31878500 -111.70104917; thence 68,735' at bearing N 89.0628 E to Point 36.32112000 -111.46776917; thence 29,864' at bearing S 34.3060 E to Point 36.25329333 -111.41076306; thence 51,350' at bearing S 68.5023 W to Point 36.20278472 -111.57333889; thence 25,468' at bearing N 57.4150 W to Point 36.24052361 -111.64623611; thence 23,900' at bearing N 46.0713 W to Point 36.28615083 -111.70453056; thence 12,380' at bearing S 58.2913 W to Point 36.26843306 -111.74038000; thence 22,443' at bearing S 24.3940 W to Point 36.21244389 -111.77224972; thence 9,906' at bearing N 63.4338 W to the Point of Beginning.

EXHIBIT A TO OPERATING AGREEMENT

OPERATOR AREA



GRAND CANYON ESCALADE

PREPARED FOR: CONFERENCE PARTNERS, LLC

NAVAJO NATION

OPERATOR AREA

SCALE: 1" = 600'
 0' 300' 600' 1200'



- OPERATOR AREA**
2. TRAM STATION
 3. ENTRY PLAZA & CONVENIENCE RETAIL
 4. DISCOVERY CENTER
 5. RESTAURANT, SPECIALTY RETAIL, ARTIST STUDIO / GALLERIES & ADMIN OFFICES/ PUBLIC SAFETY
 6. PEDESTRIAN PLAZA

BOUNDARIES

- PROJECT
- OPERATOR AREA

EXHIBIT 'A'
TO OPERATING
AGREEMENT

EXHIBIT G

LICENSE AGREEMENT

LICENSE AGREEMENT

This License Agreement (the "Agreement") is made and entered into this ____ day of _____, 2014, by and between the Navajo Nation Hospitality Enterprise, a wholly-owned enterprise of the Navajo Nation (the "Enterprise"), and Confluence Partners, L.L.C., an Arizona limited liability company ("CP").

RECITALS

A. On _____, 2014, the Nation, Enterprise and CP entered into a Master Agreement (the "Master Agreement"), concerning the operation of an aerial tram, an elevated riverwalk, an amphitheater, a cultural center, entertainment facilities, restaurants, hotels, food and beverage outlets, retail and office space, and other related business activities in connection with a tourist attraction located on and below the eastern rim of the Grand Canyon in the Navajo Nation (the "Project," as defined and described in the Master Agreement).

B. The Enterprise is the owner of the following trademarks, service marks, trade names, and/or business names used to promote and indicate the source of the goods and services offered to the public in connection with the Project, together with all common law, statutory and intellectual property rights relating thereto, as well as all similar variations, logos, and designs used (or to be used) therewith (hereinafter collectively referred to as the "Marks").

ESCALADE

GRAND CANYON ESCALADE

C. CP desires, and the Enterprise is willing to grant, a license for the use of the ESCALADE and GRAND CANYON ESCALADE Marks and a mark to be determined by CP for the Discovery Center and such other marks as may be developed thereafter, upon the terms and

specimens of all uses of the Marks upon request.

5. Use of the Marks by CP: CP agrees that it will display the Marks only in such form or manner as shall be specifically approved by the Enterprise. CP also shall cause to appear on all materials on or in connection with which the Marks are used, such legends, markings and notices as the Enterprise may request in order to give appropriate notice of any trademark rights therein. CP further acknowledges that all uses of the Marks by CP and all goodwill developed therefrom shall inure to the benefit of the Enterprise. CP agrees that nothing in this Agreement shall give CP any right, title or interest in the Marks other than the licensed right to use the Marks in accordance with this Agreement. CP further agrees that all title to, and ownership of, the Marks shall remain with the Enterprise, and that CP will not attack the title of the Enterprise to the Marks or attack the validity of this Agreement.

6. Registration of the Marks: Upon CP's written request, and at CP's sole expense, the Enterprise shall have the obligation to register the Marks (and any additional trademarks relating to the Project) in accordance with applicable state and/or federal laws, as well as to maintain, renew, cancel or abandon any such registrations. Any such additional trademarks shall be owned by the Enterprise and will be subject to the terms of this Agreement. CP shall assist and cooperate with the Enterprise, as the Enterprise may reasonably request, in applying for, maintaining and renewing any such registrations, which assistance and cooperation shall include CP's execution of any reasonably required documents.

7. Infringement: CP shall have the first option to bring any action, at CP's sole expense, on account of any actual or threatened infringements, dilutions, imitations, or

unauthorized use of the Marks by third parties ("CP Actions"). Notwithstanding the foregoing, the Enterprise shall have the right to provide written notice to CP of any such actions that the Enterprise wishes to prosecute, and if within 30 days thereof CP fails to provide written notice to the Enterprise of CP's willingness to promptly pursue such action, the Enterprise shall have the right to do so, at its expense ("Enterprise Actions"). Each party shall reasonably cooperate and assist the other party in connection with any such actions. Any and all damage recoveries, settlements, and/or compensation paid in connection with any CP action, net of all legal expenses and costs, shall be deemed "Gross Revenues of the Project" within the meaning of the Master Agreement and distributed as provided in the Master Agreement. The Enterprise shall retain any and all damage recoveries, settlements, and/or compensation paid in connection with any Enterprise Actions

8. Assignments and Sublicensing: The Enterprise may freely assign all or any portion of its rights under the license granted to CP herein. CP may not assign or sublicense any of its rights under the license granted herein without the prior written consent of the Enterprise, which consent shall not be unreasonably withheld.

9. Termination of License: The Enterprise shall have the right to terminate the license granted to CP hereunder, effective immediately upon CP's receipt of written notice from the Enterprise, in the event of any affirmative act of insolvency by CP, or upon the appointment of any receiver or trustee to take possession of the properties of CP, or upon the winding up, sale, consolidation, merger, or any sequestration by governmental authority of CP, or upon any breach of any of the duties and obligations of CP under this Agreement. Upon the expiration or termination

of the license granted to CP herein, CP agrees (a) to immediately discontinue all uses of the Marks and any terms, symbols or logos confusingly similar thereto, (b) to deliver all printed and electronic materials which bear the Marks to the Enterprise, and (c) that all rights in the Marks and the goodwill connected therewith shall be and remain the property of the Enterprise.

10. Disclaimer of Warranties: No warranties, express or implied, are made by the Enterprise in connection with the Marks or any rights thereto granted hereunder.

11. Limitation of Liability: The Enterprise shall not be liable to CP for any indirect, special, consequential, incidental or punitive damages, or for any lost profits or loss of use or interruption of business, regardless of the form of action or theory of liability, resulting from any defect in or use of the Marks. The Enterprise's liability under this Agreement for any damages to CP (including but not limited to liability for intellectual property infringement), regardless of the form of action or theory of liability, shall not exceed the total amount of license fees paid by CP hereunder.

12. Additional Acts and Documents: The parties agree to execute any further documents and to perform any additional acts necessary to effectuate and implement the purposes of this Agreement.

13. Modifications and Waiver: This Agreement constitutes the entire agreement between the parties as to the subject matter herein, and no covenants, promises, representations or warranties have been made or are being relied upon by either party except as expressly set forth herein. This Agreement supersedes any prior understandings and agreements, written or oral, respecting the subject matter hereof. No provision of this Agreement may be waived, modified or

altered except in a writing executed by the parties hereto.

14. Choice of Law and Venue: All aspects of this Agreement, including without limitation, its enforcement, interpretation and validity, shall be governed by the laws of the Navajo Nation. In the event of any dispute that in any way relates to or arises out of the subject matter of this Agreement (including, without limitation, all claims based upon contract, tort, statutory and equitable grounds), the parties hereby consent to be governed by the dispute resolution provision of the Master Agreement.

15. Authority: Each party warrants that it has the authority to enter into this Agreement, and that the person signing on its behalf is duly authorized to do so.

16. Successors and Assigns: This Agreement is and shall be binding upon the successors and assigns of each of the parties.

17. Execution: This Agreement may be executed in multiple counterparts, and when a counterpart has been executed by each of the parties hereto, such counterparts, taken together, shall constitute a single agreement. Duplicate and/or faxed originals may also be utilized, each of which shall be deemed an original document.

IN WITNESS WHEREOF, CP and the Enterprise have executed this Agreement on the day and year first above written.

NAVAJO NATION HOSPITALITY
ENTERPRISE, a wholly-owned enterprise of
the Navajo Nation

CONFLUENCE PARTNERS, L.L.C.,
an Arizona limited liability company

By: _____

By: _____

Its: _____

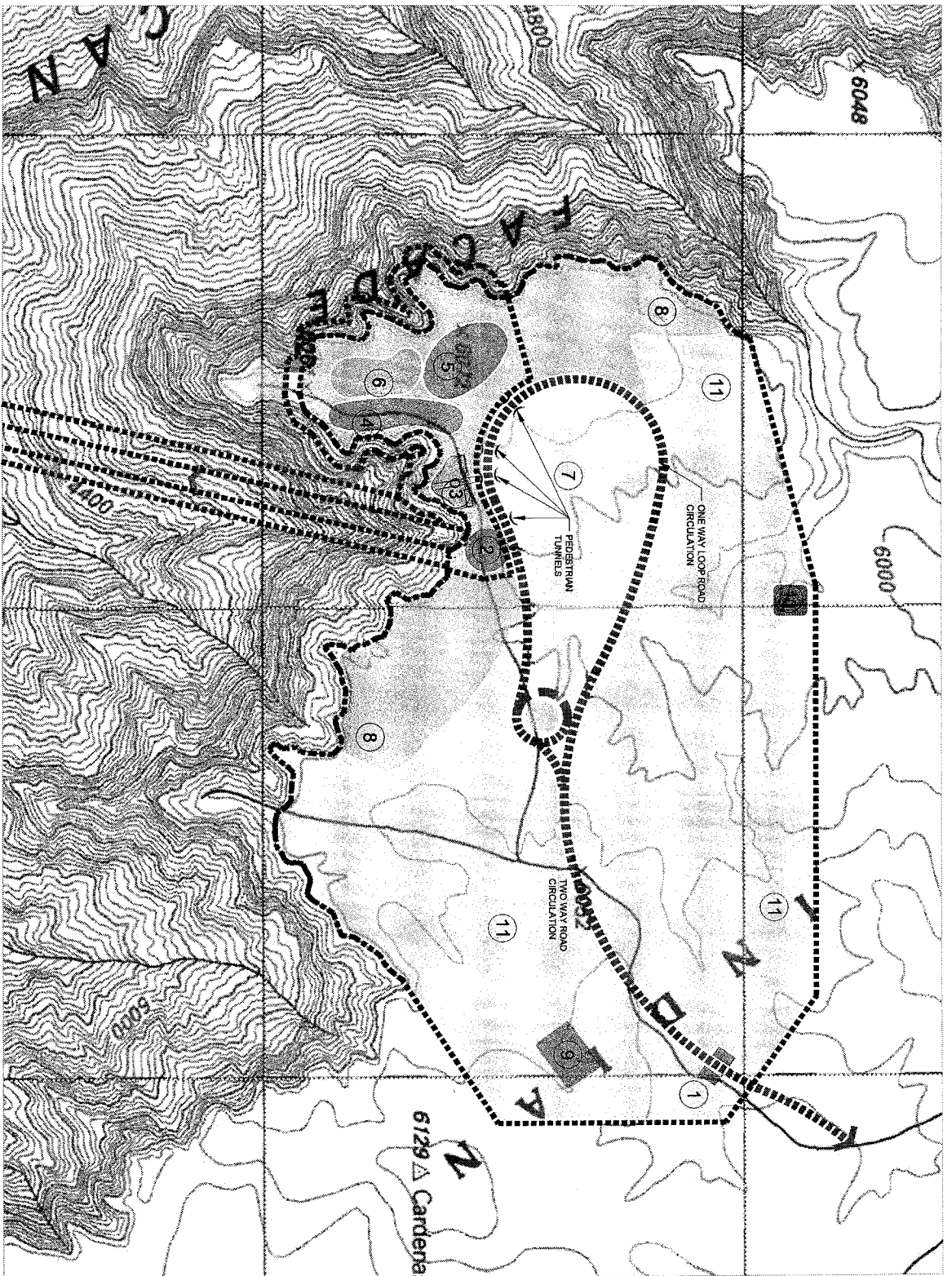
Its: _____

EXHIBIT B-1

CONCEPTUAL LAND USE PLAN

EXHIBIT B-2

OPERATOR AREA AND ONSITE INFRASTRUCTURE COMPONENTS



OPERATOR AREA & ONSITE INFRASTRUCTURE COMPONENTS

1. ENTRANCE & ROADWAY
2. TRAM STATION
3. ENTRY PLAZA & CONVENIENCE RETAIL
4. DISCOVERY CENTER
5. RESTAURANT, SPECIALTY RETAIL, ARTIST STUDIO / GALLERIES & ADMIN. OFFICES/ PUBLIC SAFETY
6. PEDESTRIAN PLAZA
7. PUBLIC PARKING
8. COMMON AREA OPEN SPACE
9. PUBLIC WORKS
10. WASTE WATER TREATMENT PLANT
11. OPEN SPACE

BOUNDARIES

- PROJECT
- OPERATOR AREA

GRAND CANYON ESCALADE

PREPARED FOR: CONFERENCE PARTNERS LLC

NAVAJO NATION

OPERATOR AREA & ON-SITE INFRASTRUCTURE COMPONENTS

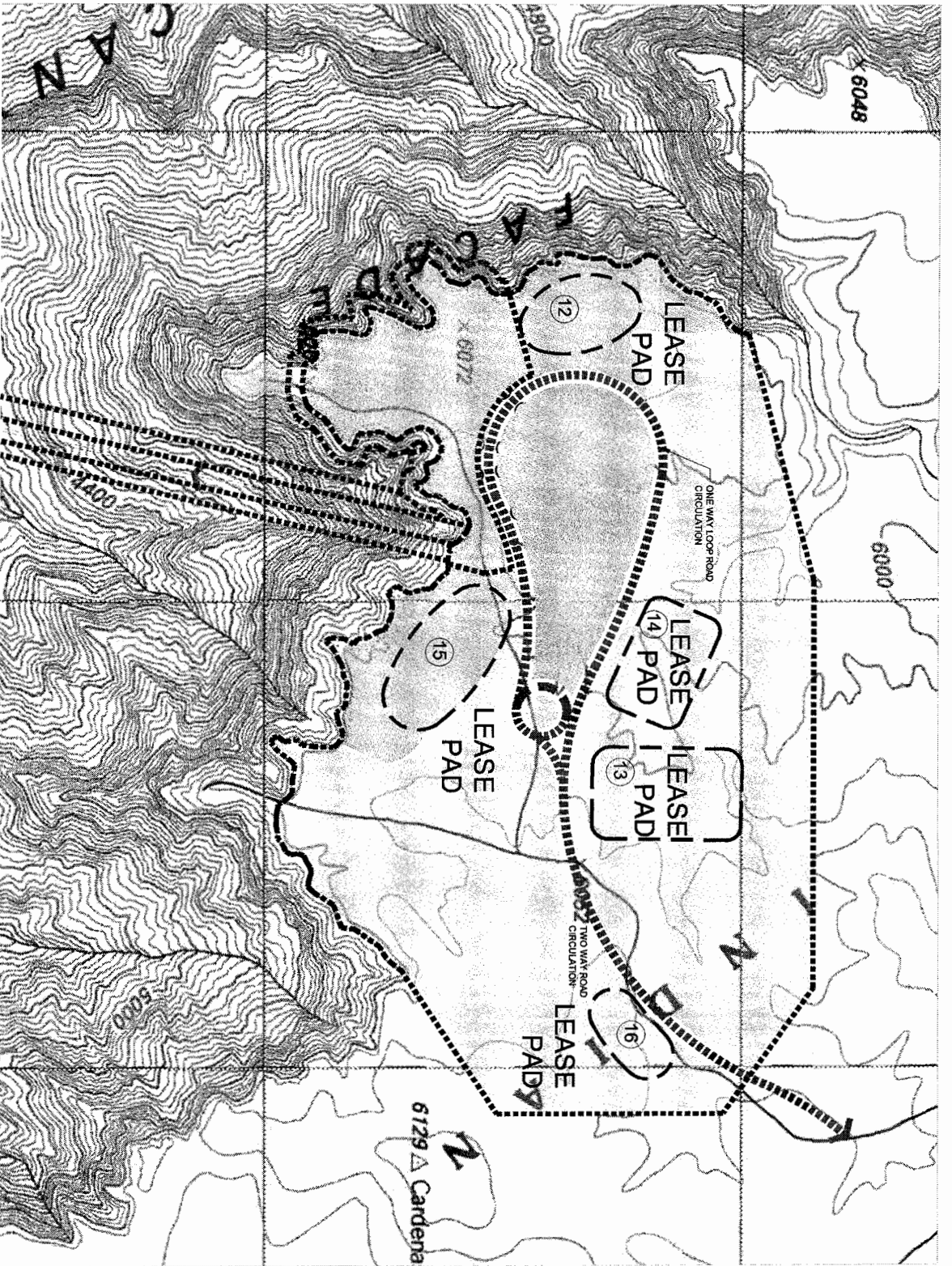
SCALE: 1" = 300' 0" 300' 300'



EXHIBIT B-2

EXHIBIT B-3

LEASE PADS PLAN



GRAND CANYON ESCALADE

PREPARED FOR: CONFLUENCE PARTNERS, LLC

NAVAJO NATION

LEASE PADS PLAN

SCALE: 1" = 300' 0" 150' 300' 600'



LEASE PADS

- 12. HOTEL - FULL SERVICE BOUTIQUE
- 13. RV PARK
- 14. MOTELS (LIMITED SERVICES)
- 15. LODGE & LODGE PARKING
- 16. CONVENIENCE STORE

BOUNDARIES

- PROJECT
- OPERATOR AREA

EXHIBIT B-3

EXHIBIT C

OFFSITE INFRASTRUCTURE STUDY CORRIDORS MAP

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T.M.A.D.
TAMOR & GAINES
• SURVEYING
• ENGINEERING
• DESIGN
4020 N. ALICE, SUITE 102
SCOTTSDALE, AZ 85253
PH: 602.371.1873

GRAND CANYON ESCALADE

36.1602
-111.3959

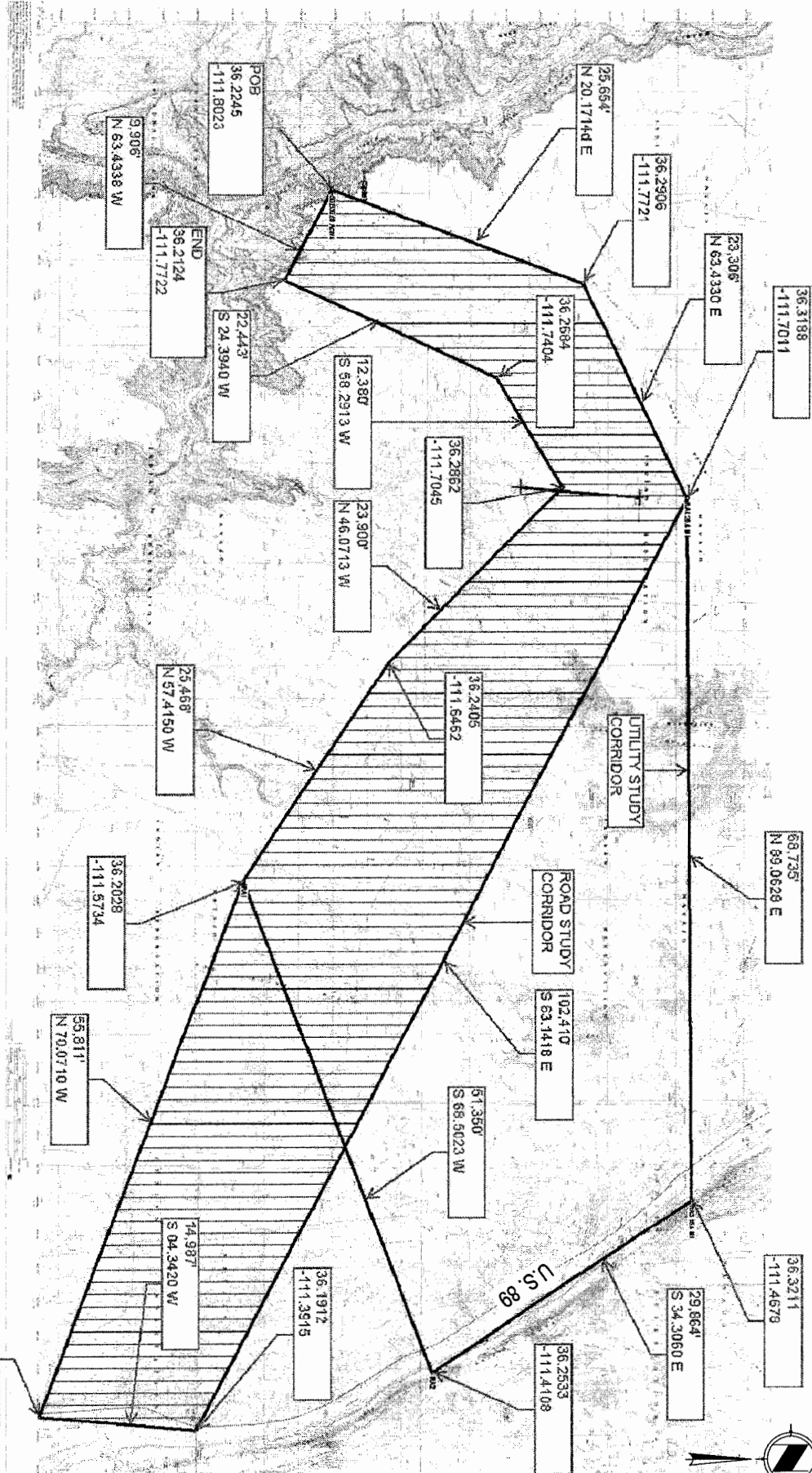


EXHIBIT D-1

BUSINESS SITE LEASE-PROJECT AREA

Lease No. _____
Lease Fee _____

PART I
NAVAJO NATION ECONOMIC DEVELOPMENT LEASE
(Navajo Nation Trust Land)
Grand Canyon Escalade Project Area

- ☒ **Standard Business Site Lease**
☐ **Shopping Center Lease**

THIS LEASE, in sextuplicate, is made and entered into this _____ day of _____ 20____, by and between THE NAVAJO NATION, hereinafter called Lessor, whose address is Post Office Box 663, Window Rock, Navajo Nation (Arizona) 86515, and, NAVAJO NATION HOSPITALITY ENTERPRISE, hereinafter called the Lessee, whose address is Post Office Box 2340, 48 West Highway 264, Window Rock, AZ 86515, in accordance with the provisions of 25 U.S.C. §§ 415(e) as amended, and as implemented by the regulations contained in the Navajo Nation Business Site Leasing Regulations of 2005, hereinafter called the Tribal Regulations; and any amendments thereto relative to business leases on restricted lands which by this reference are made a part hereto.

RECITALS

1. The Navajo Nation ("Lessor" or "Nation") is the beneficial owner of the approximately 420 acres of land within the Bodaway Gap Chapter that is proposed for a destination tourism project referred to as the Grand Canyon Escalade Project (the "Project").
2. The Grand Canyon Escalade Project will be developed and operated by Confluence Partners, L.L.C., a privately owned entity, ("Operator"), which through its members possesses specialized experience in the tourism industry.
3. The Nation believes that it is in the best interest of the Navajo Nation to lease the land upon which the Project will be developed and operated to a Navajo Nation owned entity to oversee the development and operation of the Project by Confluence Partners.
4. Navajo Nation Hospitality Enterprise ("Lessee") is a wholly owned enterprise of the Navajo Nation organized for the purpose, in pertinent part, of providing professional motel and restaurant, retail, wholesale and recreational services and quality facilities to the public.
5. It is in the best interests of the Navajo Nation for the Nation to lease the land upon which the Project will be developed and operated (the "Leased Premises") to Navajo Nation Hospitality Enterprise, in accordance with the terms, conditions, and limitations stated herein.
6. Pursuant to Section 3(c) of the Operating Agreement, Operator agrees to assume all of the Lessee's obligations under this Lease.

A. LAND DESCRIPTION.

1. For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Lessor hereby leases to the Lessee the following described Leased Premises:

To be inserted prior to executing this Lease

Said Property is shown on the attached survey plat marked as Exhibit "A", which by reference is made part hereof.

2. All of the above land is located in the Bodaway Gap Chapter of the Navajo Nation, County of Coconino, State of Arizona. This Lease is subject to any prior, valid, existing rights-of-way and easements. In addition, there is hereby reserved and excepted from this Leased Premises, rights-of-way for utilities subsequently constructed by or on authority of the Lessor, provided that such rights-of-way do not unreasonably interfere with Lessee's use of this Leased Premises.

B. PURPOSE, UNLAWFUL USES.

1. Lessee shall contract with the Operator to develop and operate the Leased Premises for the following purposes only:

A destination tourism project to be called the Grand Canyon Escalade Project which may include, but is not limited to, a tram, restaurants, retail stores, hotels, an RV park, entertainment venues, a convenience store and gas station, and the utilities and infrastructure, including the water lines, waste water lines, electrical transmission lines, telecommunications lines, the waste water treatment plant, the public works building, roads, public parking, drive aisles, pedestrian pathways and landscaping necessary for the Project.

2. The Leased Premises shall not be used by Lessee, Sublessee(s), Assignee(s), or Operator for any purpose or purposes other than those set out above, except with the prior written consent of Lessor. Consent may be withheld, granted, or granted upon conditions, in the sole discretion of Lessor.
3. Lessee agrees that it will not use or cause to be used any part of the Leased Premises for any unlawful conduct or purpose.

C. TERM.

The term of this Lease shall be Twenty-five (25) years, beginning on the date this Lease is executed by the Navajo Nation President or an authorized designee.

Lessee may exercise options to renew for two additional terms of Twenty-five (25) years. Both options shall be granted provided this Lease is not in default. Lessee shall give written notice of its intent to renew this Lease to the Division Director of the Division of Economic Development or successor, at least one year, prior to the expiration date of this Lease. The Division Director for the Division of Economic Development or successor shall grant the renewal of this Lease so long as this Lease is not in default.

D. RENTAL.

1. In consideration of the foregoing, the Lessee covenants and agrees to pay One Hundred Dollars (\$100) per year, due and payable on the effective date of this Lease and on each annual anniversary thereafter.
2. All rental shall be deposited with the Controller of the Navajo Nation. When the annual accounting required by Section 1.3, Part II, of this Lease is completed, the Lessee shall pay any balance due on any rental or percentage rental, if applicable, or if there is an overpayment, the overpayment shall be credited toward future rents.
3. Rental shall be paid on the effective date of this Lease, if rental is unpaid ten (10) days after the due date, the Lessee shall be subject to a late charge. Should the Lessee not pay rent within thirty (30) days after the due date, the Lessee shall be subject to a late charge of 10% of the amount due, however such amount shall be prorated for each day the rent is not paid until the thirtieth day after the due date, the amount above shall be paid in full. If the Lessee does not pay the full amount within sixty (60) days the Lessee shall be subject to an additional late charge of 10% of the amount due. If the Lessee does not pay the full amount within ninety (90) days, the Lessee shall be subject to an additional late charge of 10% of the amount due, and this Lease shall be subject to termination.
4. The rent shall not be adjusted during the term of this Lease, including the renewal terms, so long as the Nation receives revenues from the Project directly from the Operator of the Project or a subsequent operator. In the event that there is no operator of the Project and Lessee operates the Project directly Lessor reserves the right to modify the rent and other terms of this Lease.
5. In the event of an assignment, amendment or transfer of this Lease, the rent and other terms of this Lease shall be subject to renegotiation. In addition, if the Lessee exercises any options to renew and operates the Project itself, the Lessor reserves the right to modify the rent and other terms of this Lease.
6. Lessor reserves the right to inspect the books and records of Lessee and any Sublessee or Assignee to verify the accuracy of the rentals paid.

E. IMPROVEMENTS.

1. The Lessee, in consideration for the granting of this Lease, covenants and agrees that Lessee will contract with Operator to construct, or have constructed, a destination resort including the Escalade Tram, restaurants, food and beverage outlets, buildings including space for retail, office, administration, public safety (Emergency Medical Technicians and Police), maintenance, and the Discovery Center. In addition, Lessee shall contract with third parties to sublease certain parcels of the Project for the development of one or more hotels, an RV park, and a convenience store and fuel station.

2. Except as otherwise provided in this Lease, all buildings and improvements, including removable personal property and trade fixtures, on the Leased Premises shall remain on said property after termination of this Lease and shall thereupon become the property of Lessor. However, any removal of personal property unrelated to the operations of the Project by Lessee must be completed within fifteen (15) days after termination of this Lease, such presence on the property shall not be deemed a holdover or trespass, provided Lessee is acting in a diligent manner to remove such property. Upon the expiration of the fifteen (15) day period, the Lessor has the right to grant a fifteen (15) day extension in order to permit Lessee to re-enter the premises to complete the removal of personal property, during such time the Lessee shall have no right or interest to the premises or any remaining improvements.

F. COMPLETION OF DEVELOPMENT.

1. The improvements and development of the Leased Premises shall be completed in accordance with the terms of the Development Agreement.
2. Prior to the commencement of construction of any improvements on the Leased Premises, or prior to the beginning of any substantial repair or alteration thereto, or work or labor thereon, Lessee shall post non-responsibility notices at the site on Lessor's behalf.
3. Upon completion of construction of any of the improvements, the Lessee is required to submit any as-builts to the Navajo Nation Division of Economic Development, which submission may be satisfied by the submission by Operator or by a Sublessee with a copy of the as-builts provided to Lessee.
4. Whenever under this Lease a time is stated within which or by which original construction, repairs, or reconstruction of improvements shall be made and during such period a general or sympathetic strike or lock out occurs, war or rebellion ensues, or some event unquestionably beyond Lessee's power to control, the period of delay so caused shall be added to the period limited herein for the completion of such work.

G. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION.

1. All improvements placed on the Leased Premises shall comply with the Design Standards and Architectural Guidelines developed in accordance with the Development Agreement and shall be constructed in a good and workmanlike manner and in compliance with applicable laws and building codes. Lessee shall ensure that the Operator and any Sublessees shall maintain the Leased Premises and all improvements thereon and any alterations, additions, or appurtenances thereto, in good order and repair and in a safe, sanitary, neat and attractive condition, and shall otherwise comply with all laws, ordinances and regulations applicable to said premises.
2. As provided in the Operating Agreement or a Sublease, Lessee shall permit the Operator or a Sublessee to make alterations, additions or repairs to improvements on the premises. At the expiration or termination of the Operating Agreement or Sublease, Lessee shall have the right to make alternations, additions or repairs to improvements on the premises.
3. Lessee shall indemnify and hold harmless the Lessor and the United States against liability for all claims arising from Operator's failure to maintain said premises and the improvements thereon as herein above provided, or from

Lessee's non-observance of any law, ordinance or regulation applicable thereto. During the term of the Operating Agreement, Operator shall be responsible for the Lessee's obligations under this provision and shall indemnify and hold harmless Lessee in addition to the Lessor and the United States.

H. RENTAL AND PERFORMANCE BOND.

Lessor agrees that no rental or performance bond is required during the term of this Lease.

I. CONSTRUCTION BOND.

Prior to the commencement of construction of any improvement on the Leased Premises, the Lessee will directly or through Operator cause the construction contractor to post a payment and performance construction bond in favor of Lessor and Lessee. The purpose of the construction bond is to guarantee the completion of the improvements and payment in full of valid claims of all persons for work performed in or materials furnished for construction of the improvements.

J. INSURANCE

Lessee shall obtain or require Operator to obtain and maintain Commercial General Liability Insurance, including coverage for fire and casualty, with an aggregate limit of \$2,000,000 and limits of \$1,000,000 per occurrence. The insurance shall include the Lessor and the United States as additional insured parties. A copy of the certificates shall be provided to the Director, Division of Economic Development on or before the fifteenth day after execution of this Lease.

K. SUBLEASES

Subleases do not require approval from the Lessor and are hereby explicitly authorized, pursuant to the Navajo Nation Business Site Lease Management Plan, so long as the Lessee/Sublessor and the Sublessee agree to the following terms:

1. The Lessee/Sublessor shall provide a copy of the sublease to the Division of Economic Development.
2. The Sublessee shall agree to be bound by all the terms and conditions of this Lease.
3. The Sublessee shall comply with the purposes of this Lease set forth in Section B and the Sublease shall so specify.
4. The term of the Sublease shall not extend beyond the term and any renewals of this Lease set forth in Section C.

K. NOTICES AND DEMANDS.

1. All notices, demands, requests or other communications to or upon either party provided for in this Lease, or given or made in connection with this Lease, shall be in writing and shall be addressed as follows:

To or upon Lessor: President
The Navajo Nation
Post Office Box 9000
Window Rock, Navajo Nation (Arizona) 86515
Telefax: 1-928-871-7381

To or upon Lessee: Navajo Nation Hospitality Enterprise
Post Office box 2340
48 West Highway 264
Window Rock, AZ 86515
Telefax: 1-928-871-4108

Copies to: Division Director
Division of Economic Development
P.O. Box 663
Window Rock, Navajo Nation (Arizona) 86515
Telefax: 1-928-871-7381

2. All notices shall be given by personal delivery, by registered or certified mail, postage prepaid or by facsimile transmission, followed by surface mail. Notices shall be effective and shall be deemed delivered when dispatched and may be delivered by personal delivery, registered or certified mail, or by facsimile transmission, followed by surface mail.
3. Lessor and Lessee may at any time change its address for purposes of this Section by written notice.

K. APPLICABLE TERMS AND CONDITIONS

The Standard Terms and Conditions for Economic Development Leases on Navajo Nation Trust Land in Part II of this Lease apply to this Lease and are incorporated herein in their entirety (NOTE: The Terms and Conditions for a Standard Business Site Lease apply to all Leases. The Terms and Conditions for Business Site Leases with Underground Storage Tanks apply where they are appropriate. If Underground Storage Tanks are on the premises when the Lessee signs this Lease, or are installed after the Lessee signed this Lease, these Terms and Conditions will apply to this Lease as a matter of law.).

The specific Version of Standard Terms and Conditions for Navajo Nation Economic Development Leases (Trust Land) is under Resolution No. EDCO-48-07.

EXCEPTIONS TO STANDARD TERMS AND CONDITIONS (Insert and justify any deviations from the Standard Terms and Conditions in Part II of this Lease).

IN WITNESS THEREOF:

NAVAJO NATION HOSPITALITY ENTERPRISE

By _____
Its _____

DATE: _____

NAVAJO NATION:

By Russell Begaye, President

DATE:

EXHIBIT D-2

BUSINESS SITE LEASE-OFFSITE INFRASTRUCTURE-ROAD

Lease No. _____
Lease Fee _____

PART I
NAVAJO NATION ECONOMIC DEVELOPMENT LEASE
(Navajo Nation Trust Land)
Grand Canyon Escalade
Offsite Infrastructure - Road

- ☒ **Standard Business Site Lease**
☐ **Shopping Center Lease**

THIS LEASE, in sextuplicate, is made and entered into this _____ day of _____, 20____, by and between THE NAVAJO NATION, hereinafter called Lessor, whose address is Post Office Box 663, Window Rock, Navajo Nation (Arizona) 86515, and, NAVAJO NATION HOSPITALITY ENTERPRISE, hereinafter called the Lessee, whose address is Post Office Box 2340, 48 West Highway 264, Window Rock, AZ 86515, in accordance with the provisions of 25 U.S.C. §§ 415(e) as amended, and as implemented by the regulations contained in the Navajo Nation Business Site Leasing Regulations of 2005, hereinafter called the Tribal Regulations; and any amendments thereto relative to business leases on restricted lands which by this reference are made a part hereto.

RECITALS

1. The Navajo Nation ("Lessor" or "Nation") is the beneficial owner of the land within the Bodaway Gap Chapter that is proposed for a roadway from Route 89 to the approximately 420 acre Project Area to be developed as a destination tourism project and referred to as the Grand Canyon Escalade Project (the "Project").
2. Pursuant to the terms of the Master Agreement, the Navajo Nation entered into a Conditional Use Permit with Confluence Partners, LLC, the developer and operator of the Project, to conduct the necessary studies to complete the environmental, archeological and cultural clearances which permits the Nation to enter into this Lease.
3. Pursuant to the terms of the Master Agreement, the Nation is obligated to finance the development and construction of a roadway (the "Road") to the Project.
4. The Nation believes that it is in the best interest of the Navajo Nation to lease the Project land and the land for the offsite infrastructure development to a single entity and for that entity to be a Navajo Nation owned entity.
5. Navajo Nation Hospitality Enterprise ("Lessee") is a wholly owned enterprise of the Navajo Nation organized for the purpose, in pertinent part, of providing professional tourism services and facilities to the public.
6. It is in the best interests of the Navajo Nation for the Nation to lease the land upon which the Road will be developed and maintained (the "Leased Premises") to Navajo Nation Hospitality Enterprise, in accordance with the terms, conditions, and limitations stated herein.

A. LAND DESCRIPTION.

1. For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Lessor hereby leases to the Lessee the following described Leased Premises:

To be inserted prior to executing this Lease

Said Property is shown on the attached survey plat marked as Exhibit "A", which by reference is made part hereof.

2. All of the above land is located in the Bodaway Gap Chapter of the Navajo Nation, County of Coconino, State of Arizona. This Lease is subject to any prior, valid, existing rights-of-way and easements. In addition, there is hereby reserved and excepted from this Leased Premises, rights-of-way for utilities subsequently constructed by or on authority of the Lessor, provided that such rights-of-way do not unreasonably interfere with Lessee's use of this Leased Premises.

B. PURPOSE, UNLAWFUL USES.

1. Lessee shall contract with the Operator to develop the Leased Premises for the following purposes only:

The Road from Highway 89 to the Project boundary.

2. The Leased Premises shall not be used by Lessee for any purpose or purposes other than those set out above, except with the prior written consent of Lessor. Consent may be withheld, granted, or granted upon conditions, in the sole discretion of Lessor.
3. Lessee agrees that it will not use or cause to be used any part of the Leased Premises for any unlawful conduct or purpose.

C. TERM.

The term of this Lease shall be Twenty-five (25) years, beginning on the date this Lease is executed by the Navajo Nation President or an authorized designee.

Lessee may exercise options to renew for two additional terms of Twenty-five (25) years. Both options shall be granted provided this Lease is not in default. Lessee shall give written notice of its intent to renew this Lease to the Division Director of the Division of Economic Development or successor, at least one year, prior to the expiration date of this

Lease. The Division Director for the Division of Economic Development or successor shall grant the renewal of this Lease so long as this Lease is not in default.

D. RENTAL.

The Road serves a public purpose and, therefore, there is no rent for this Lease.

E. IMPROVEMENTS.

1. The Lessee, in consideration for the granting of this Lease, covenants and agrees that Lessee will contract with Operator to construct, or have constructed, the Road from Highway 89 to the Project.
2. Except as otherwise provided in this Lease, all improvements on the Leased Premises shall remain on said property after termination of this Lease and shall thereupon become the property of Lessor.

F. COMPLETION OF DEVELOPMENT.

1. The improvements and development of the Leased Premises shall be completed in accordance with the Development Agreement.
2. Prior to the commencement of construction of any improvements on the Leased Premises, or prior to the beginning of any substantial repair or alteration thereto, or work or labor thereon, Lessee shall post non-responsibility notices at the site on Lessor's behalf.
3. Upon completion of construction of any of the improvements, the Lessee is required to submit any as-builts to the Navajo Nation Division of Economic Development.
4. Whenever under this Lease a time is stated within which or by which original construction, repairs, or reconstruction of improvements shall be made and during such period a general or sympathetic strike or lock out occurs, war or rebellion ensues, or some event unquestionably beyond Lessee's power to control, the period of delay so caused shall be added to the period limited herein for the completion of such work.

G. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION.

1. All improvements placed on the Leased Premises shall be developed in accordance with the Development Agreement and shall be constructed in a good and workmanlike manner and in compliance with applicable laws and building codes. Lessee shall maintain the Leased Premises and all improvements thereon and any alterations, additions, or appurtenances thereto, in good order and repair and in a safe, sanitary, neat and attractive condition, and shall otherwise comply with all laws, ordinances and regulations applicable to said premises.
2. Lessee is permitted to make alterations, additions or repairs to improvements on the Leased Premises.
3. Lessee shall indemnify and hold harmless the Lessor and the United States against liability for all claims arising from failure to maintain the Leased Premises

and the improvements thereon as herein above provided, or from Lessee's non-observance of any law, ordinance or regulation applicable thereto.

H. RENTAL AND PERFORMANCE BOND.

Lessor agrees that no rental or performance bond is required during the term of this Lease.

I. CONSTRUCTION BOND.

Prior to the commencement of construction of any improvement on the Leased Premises, the Lessee will directly or through Operator cause the construction contractor to post a payment and performance construction bond in favor of Lessor and Lessee. The purpose of the construction bond is to guarantee the completion of the improvements and payment in full of valid claims of all persons for work performed in or materials furnished for construction of the improvements.

J. INSURANCE

Lessee shall obtain and maintain Commercial General Liability Insurance, including coverage for fire and casualty, with an aggregate limit of \$2,000,000 and limits of \$1,000,000 per occurrence. The insurance shall include the Lessor and the United States as additional insured parties. A copy of the certificates shall be provided to the Director, Division of Economic Development on or before the fifteenth day after execution of this Lease.

K. NOTICES AND DEMANDS.

1. All notices, demands, requests or other communications to or upon either party provided for in this Lease, or given or made in connection with this Lease, shall be in writing and shall be addressed as follows:

To or upon Lessor: President
The Navajo Nation
Post Office Box 9000
Window Rock, Navajo Nation (Arizona) 86515
Telefax: 1-928-871-7381

To or upon Lessee: Navajo Nation Hospitality Enterprise
Post Office box 2340
48 West Highway 264
Window Rock, AZ 86515
Telefax: 1-928-871-4108

Copies to: Division Director
Division of Economic Development
P.O. Box 663
Window Rock, Navajo Nation (Arizona) 86515
Telefax: 1-928-871-7381

2. All notices shall be given by personal delivery, by registered or certified mail, postage prepaid or by facsimile transmission, followed by surface mail. Notices shall be effective and shall be deemed delivered when dispatched and may be

delivered by personal delivery, registered or certified mail, or by facsimile transmission, followed by surface mail.

3. Lessor and Lessee may at any time change its address for purposes of this Section by written notice.

K. APPLICABLE TERMS AND CONDITIONS

The Standard Terms and Conditions for Economic Development Leases on Navajo Nation Trust Land in Part II of this Lease apply to this Lease and are incorporated herein in their entirety (NOTE: The Terms and Conditions for a Standard Business Site Lease apply to all Leases. The Terms and Conditions for Business Site Leases with Underground Storage Tanks apply where they are appropriate. If Underground Storage Tanks are on the premises when the Lessee signs this Lease, or are installed after the Lessee signed this Lease, these Terms and Conditions will apply to this Lease as a matter of law.).

The specific Version of Standard Terms and Conditions for Navajo Nation Economic Development Leases (Trust Land) is under Resolution No. EDCO-48-07.

EXCEPTIONS TO STANDARD TERMS AND CONDITIONS (Insert and justify any deviations from the Standard Terms and Conditions in Part II of this Lease).

IN WITNESS THEREOF:

NAVAJO NATION HOSPITALITY ENTERPRISE

By _____
Its _____

DATE: _____

NAVAJO NATION:

By Russell Begaye, President

DATE: _____

EXHIBIT D-3

BUSINESS SITE LEASE-OFFSITE INFRASTRUCTURE-UTILITIES

Lease No. _____
Lease Fee _____

PART I
NAVAJO NATION ECONOMIC DEVELOPMENT LEASE
(Navajo Nation Trust Land)
Grand Canyon Escalade
Offsite Infrastructure - Utilities

- ☒ **Standard Business Site Lease**
☐ **Shopping Center Lease**

THIS LEASE, in sextuplicate, is made and entered into this _____ day of _____, 20____, by and between THE NAVAJO NATION, hereinafter called Lessor, whose address is Post Office Box 663, Window Rock, Navajo Nation (Arizona) 86515, and, NAVAJO NATION HOSPITALITY ENTERPRISE, hereinafter called the Lessee, whose address is Post Office Box 2340, 48 West Highway 264, Window Rock, AZ 86515, in accordance with the provisions of 25 U.S.C. §§ 415(e) as amended, and as implemented by the regulations contained in the Navajo Nation Business Site Leasing Regulations of 2005, hereinafter called the Tribal Regulations; and any amendments thereto relative to business leases on restricted lands which by this reference are made a part hereto.

RECITALS

1. The Navajo Nation ("Lessor" or "Nation") is the beneficial owner of the land within the Bodaway Gap Chapter that is proposed for the development of water and power utilities from _____ to the approximately 420 acre Project Area to be developed as a destination tourism project and referred to as the Grand Canyon Escalade Project (the "Project").
2. Pursuant to the terms of the Master Agreement, the Navajo Nation entered into a Conditional Use Permit with Confluence Partners, LLC, the developer and operator of the Project, to conduct the necessary studies to complete the environmental, archeological and cultural clearances which permits the Nation to enter into this Lease.
3. Pursuant to the terms of the Master Agreement, the Nation is obligated to finance the development and construction of the utilities to the Project necessary to develop and operate the Project. The utilities include (i) electrical transmission lines, (ii) telecommunication lines, and (iii) potable water lines and water storage tanks to be located within the leased premises ("Leased Premises") that are subject to this Lease.
4. The Nation believes that it is in the best interest of the Navajo Nation to lease the Project land and the land for the offsite infrastructure development to a single entity and for that entity to be a Navajo Nation owned entity.
5. Navajo Nation Hospitality Enterprise ("Lessee") is a wholly owned enterprise of the Navajo Nation organized for the purpose, in pertinent part, of providing professional tourism services and facilities to the public.

6. It is in the best interests of the Navajo Nation for the Nation to lease the land upon which the utilities will be developed and maintained to Navajo Nation Hospitality Enterprise, in accordance with the terms, conditions, and limitations stated herein.
7. It is the intent of the Navajo Nation and the Lessee to dedicate the utilities constructed within this Leased Premises to Navajo Tribal Utility Authority ("NTUA").

A. LAND DESCRIPTION.

1. For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Lessor hereby leases to the Lessee the following described Leased Premises:

To be inserted prior to executing this Lease

Said Property is shown on the attached survey plat marked as Exhibit "A", which by reference is made part hereof.

2. All of the above land is located in the Bodaway Gap Chapter of the Navajo Nation, County of Coconino, State of Arizona. This Lease is subject to any prior, valid, existing rights-of-way and easements. In addition, there is hereby reserved and excepted from this Leased Premises, rights-of-way for utilities subsequently constructed by or on authority of the Lessor, provided that such rights-of-way do not unreasonably interfere with Lessee's use of this Leased Premises.

B. PURPOSE, UNLAWFUL USES.

1. Lessee shall contract with the Operator to develop the Leased Premises for the following purposes only:

Water service to the Project including water lines, lift stations, water storage tanks; and electricity service to the Project including electric power lines; and telecommunication service to the Project including telecommunication lines.

2. The Leased Premises shall not be used by Lessee for any purpose or purposes other than those set out above, except with the prior written consent of Lessor. Consent may be withheld, granted, or granted upon conditions, in the sole discretion of Lessor.
3. Lessee agrees that it will not use or cause to be used any part of the Leased Premises for any unlawful conduct or purpose.

C. TERM.

The term of this Lease shall be Twenty-five (25) years, beginning on the date this Lease is executed by the Navajo Nation President or an authorized designee.

Lessee may exercise options to renew for two additional terms of Twenty-five (25) years. Both options shall be granted provided this Lease is not in default. Lessee shall give written notice of its intent to renew this Lease to the Division Director of the Division of Economic Development or successor, at least one year, prior to the expiration date of this Lease. The Division Director for the Division of Economic Development or successor shall grant the renewal of this Lease so long as this Lease is not in default.

D. RENTAL.

Provision of utilities serve a public purpose and, therefore, there is no rent for this Lease.

E. IMPROVEMENTS.

1. The Lessee, in consideration for the granting of this Lease, covenants and agrees that Lessee will contract with Operator to construct, or have constructed, the utilities to the Project.
2. Except as otherwise provided in this Lease, all improvements on the Leased Premises shall remain on said property after termination of this Lease and shall thereupon become the property of Lessor.

F. COMPLETION OF DEVELOPMENT.

1. The improvements and development of the Leased Premises shall be completed in accordance with the Development Agreement.
2. Prior to the commencement of construction of any improvements on the Leased Premises, or prior to the beginning of any substantial repair or alteration thereto, or work or labor thereon, Lessee shall post non-responsibility notices at the site on Lessor's behalf.
3. Upon completion of construction of any of the improvements, the Lessee is required to submit any as-builts to the Navajo Nation Division of Economic Development.
4. Whenever under this Lease a time is stated within which or by which original construction, repairs, or reconstruction of improvements shall be made and during such period a general or sympathetic strike or lock out occurs, war or rebellion ensues, or some event unquestionably beyond Lessee's power to control, the period of delay so caused shall be added to the period limited herein for the completion of such work.

G. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION.

1. All improvements placed on the Leased Premises shall be developed in accordance with the Development Agreement and shall be constructed in a good and workmanlike manner and in compliance with applicable laws and building codes. Lessee shall maintain the Leased Premises and all improvements thereon and any alterations, additions, or appurtenances thereto, in good order

and repair and in a safe, sanitary, neat and attractive condition, and shall otherwise comply with all laws, ordinances and regulations applicable to said premises.

2. Lessee is permitted to make alterations, additions or repairs to improvements on the Leased Premises.
3. Lessee shall indemnify and hold harmless the Lessor and the United States against liability for all claims arising from failure to maintain the Leased Premises and the improvements thereon as herein above provided, or from Lessee's non-observance of any law, ordinance or regulation applicable thereto.

H. RENTAL AND PERFORMANCE BOND.

Lessor agrees that no rental or performance bond is required during the term of this Lease.

I. CONSTRUCTION BOND.

Prior to the commencement of construction of any improvement on the Leased Premises, the Lessee will directly or through Operator cause the construction contractor to post a payment and performance construction bond in favor of Lessor and Lessee. The purpose of the construction bond is to guarantee the completion of the improvements and payment in full of valid claims of all persons for work performed in or materials furnished for construction of the improvements.

J. INSURANCE

Lessee shall obtain and maintain Commercial General Liability Insurance, including coverage for fire and casualty, with an aggregate limit of \$2,000,000 and limits of \$1,000,000 per occurrence. The insurance shall include the Lessor and the United States as additional insured parties. A copy of the certificates shall be provided to the Director, Division of Economic Development on or before the fifteenth day after execution of this Lease.

K. NOTICES AND DEMANDS.

1. All notices, demands, requests or other communications to or upon either party provided for in this Lease, or given or made in connection with this Lease, shall be in writing and shall be addressed as follows:

To or upon Lessor: President
 The Navajo Nation
 Post Office Box 9000
 Window Rock, Navajo Nation (Arizona) 86515
 Telefax: 1-928-871-7381

To or upon Lessee: Navajo Nation Hospitality Enterprise
 Post Office box 2340
 48 West Highway 264
 Window Rock, AZ 86515
 Telefax: 1-928-871-4108

Copies to: Division Director
Division of Economic Development
P.O. Box 663
Window Rock, Navajo Nation (Arizona) 86515
Telefax: 1-928-871-7381

2. All notices shall be given by personal delivery, by registered or certified mail, postage prepaid or by facsimile transmission, followed by surface mail. Notices shall be effective and shall be deemed delivered when dispatched and may be delivered by personal delivery, registered or certified mail, or by facsimile transmission, followed by surface mail.
3. Lessor and Lessee may at any time change its address for purposes of this Section by written notice.

K. APPLICABLE TERMS AND CONDITIONS

The Standard Terms and Conditions for Economic Development Leases on Navajo Nation Trust Land in Part II of this Lease apply to this Lease and are incorporated herein in their entirety (NOTE: The Terms and Conditions for a Standard Business Site Lease apply to all Leases. The Terms and Conditions for Business Site Leases with Underground Storage Tanks apply where they are appropriate. If Underground Storage Tanks are on the premises when the Lessee signs this Lease, or are installed after the Lessee signed this Lease, these Terms and Conditions will apply to this Lease as a matter of law.).

The specific Version of Standard Terms and Conditions for Navajo Nation Economic Development Leases (Trust Land) is under Resolution No. EDCO-48-07.

EXCEPTIONS TO STANDARD TERMS AND CONDITIONS (Insert and justify any deviations from the Standard Terms and Conditions in Part II of this Lease).

IN WITNESS THEREOF:

NAVAJO NATION HOSPITALITY ENTERPRISE

By _____
Its _____

DATE: _____

NAVAJO NATION:

By Russell Begaye, President

DATE: _____

EXHIBIT E

DEVELOPMENT AGREEMENT

PROJECT+ DEVELOPMENT AGREEMENT

Between

NAVAJO NATION HOSPITALITY ENTERPRISE

And

CONFLUENCE PARTNERS, LLC

For

GRAND CANYON ESCALADE

PROJECT+ CONSTRUCTION

PROJECT+ DEVELOPMENT AGREEMENT

Table of Contents

SECTION 1. GENERAL AGREEMENTS.....	2
1.1. Term of Agreement	
1.2. Designation of Representatives	
1.2.1. Enterprise Representative	
1.2.2. CP Representative	
1.3. Definitions	
1.4. Authority and Responsibility	
SECTION 2. SCOPE OF SERVICES.....	6
2.1. Overview of Basic Services	
2.1.1. Best Efforts	
2.1.2. Oversight	
2.1.3. Project+ Integration	
2.2. Basic Services	
2.2.1. Project+ Program	
2.2.2. Project+ Budget	
2.2.2.1. Project+ Budget Preparation	
2.2.2.2. Project Budget	
2.2.2.3. Offsite Infrastructure Budget	
2.2.3. Project+ Schedule	
2.2.4. Selection of Prime Consultants and Others	

- 2.2.5. CM@R and CM Selection and Contracting
- 2.2.6. Environmental, Cultural and Archeological Surveys
- 2.2.7. Land Identification and Surveys
- 2.2.8. Project Design, Review and Approval
 - 2.2.8.1. Design Guidelines and Architectural Standards
 - 2.2.8.2. Design Committee
 - 2.2.8.3. DGAS Approval
 - 2.2.8.4. Construction in Conformance with the DGAS
 - 2.2.8.5. Project Conceptual Alternatives and Conceptual Design
 - 2.2.8.6. Project Schematic Design
 - 2.2.8.7. Project Design Development
 - 2.2.8.8. Project Final Site Plan
- 2.2.9. Offsite Infrastructure Design, Review and Approval
 - 2.2.9.1 Offsite Infrastructure Schematic Design
 - 2.2.9.2 Offsite Infrastructure Design Development
- 2.2.10 Construction Documents
- 2.2.11 Construction Contract Negotiations
- 2.2.12 Construction Management
- 2.2.13 Project+ Close-out
 - 2.2.13.1. Substantial Completion
 - 2.2.13.2. Partial Occupancy or Use of the Offsite Infrastructure
 - 2.2.13.3. Final Completion

SECTION 3. REPORTING.....24

3.1. Reporting

3.2. The Enterprise Communications

SECTION 4. PAYMENTS.....25

4.1. Schedule of Values

4.1.1. Pre-Construction Work

4.1.2. Construction Work

4.2. Payment for Pre-Construction Work

4.3. Construction Work Progress Payments

4.3.1. Escrow Account

4.3.2. Applications

4.3.3. Stores Materials and Equipment

4.3.4. Lien Waivers and Liens

4.3.4.1. Partial Lien Waivers and Affidavits

4.3.4.2. Responsibility for Liens

4.3.5. Retainage

4.4. Adjustment of CM'S Payment Application

4.5. Acceptance of Construction Work

4.6. Payment Delay

4.7. Payment at Substantial Completion and Retainage Amounts

4.8. Final Payment

4.9. Late Payment

SECTION 5. INSURANCE.....	33
5.1. Insurance	
5.2. Types of Insurance	
SECTION 6. BONDING.....	35
SECTION 7. INDEMNIFICATION.....	36
SECTION 8. DEFAULT, CURE, REMEDIES.....	36
8.1. Event of Default	
8.2. Remedies	
8.3. Termination	
SECTION 9. MISCELLANEOUS.....	40
9.1. Notice	
9.2. Time is of the Essence	
9.3. Time Periods	
9.4. No Partnership	
9.5. Severability	
9.6. Waivers	
9.7. Governing Law	
9.8. Dispute Resolution	
9.9. Amendments	
SIGNATURES.....	43

PROJECT+ DEVELOPMENT AGREEMENT

This **Project+ Development Agreement** (the "**Agreement**") shall be effective as of _____, 2014, and is entered into by and between the **Navajo Nation Hospitality Enterprise**, a wholly-owned enterprise of the Navajo Nation (the "**Enterprise**") and **Confluence Partners, LLC ("CP")** (the "**Parties**").

RECITALS

A. **The Navajo Nation** (the "**Nation**") and CP entered into a **Memorandum of Understanding ("MOU")** dated February 21, 2012, which provided for, among other things, CP to perform certain services in connection with the development of the **Grand Canyon Escalade Project**, a resort development and tramway to be located north of the confluence of the Colorado and Little Colorado Rivers on the western edge of the Navajo Nation (the "**Project**"). The Project and the Offsite Infrastructure are hereafter referred to as "**Project+**".

B. The Nation and CP have, concurrently with this Agreement, entered into a Master Agreement, of which this Agreement is a part, which Agreement establishes the responsibilities of CP for the development and construction of the Project and the Offsite Infrastructure, including, among other things, (i) the selection of third party consultants; (ii) providing supervision and management of all third parties involved in the completion of Project+, including but not limited to the architects, engineers, surveyors, planners and contractors, (iii) providing sufficient organization, personnel and management to carry out the requirements of this Agreement in an expeditious and economical manner, and (iv) performing services related to programming, site selection, schedule, budget, design, reporting and construction management.

C. Navajo Nation Hospitality Enterprise ("**the Enterprise**") an enterprise of the Navajo Nation, has been authorized by the Nation, through the Master Agreement, to act as the Nation's representative for the development and construction of the Project.

C. The Parties hereto desire to detail in this Agreement CP's rights, duties and relationship with the Enterprise which shall apply during all stages of development of Project+.

AGREEMENTS

SECTION 1. GENERAL AGREEMENTS

1.1. Term of Agreement This Development Agreement shall commence on the date of signing and terminate at "**Project+ Close-Out**"

1.2. Designation of Representatives

1.2.1. Enterprise Representative The Enterprise shall designate in writing to CP an individual as the Enterprise Representative, to act on the Enterprise's behalf with regard to any matters of this Agreement. The initial designee and default designee in the absence of any designation shall be the signatory for the Enterprise to this Agreement or the then acting chief executive for the Enterprise.

1.2.2. CP Representative CP shall appoint a person to serve as CP's Representative. Keith Lamparter shall serve as CP's initial Representative. In the event Keith Lamparter can no longer serve as the CP Representative, any replacement be appointed by CP shall be a person who has substantial experience in managing large construction projects. The CP Representative shall be paid by CP.

1.3. Definitions

"**Architect**" means the primary design and production architectural firm responsible for preparing the architectural plans upon which building permit(s), if any, will be issued and which

will be issued to the contractor for construction.

"Business Day" means any calendar day other than Saturday, Sunday, or a legal holiday of the Navajo Nation, the United States, or the State of Arizona; unless the term "Business Day" is expressly and conspicuously used contrary to this defined usage.

"Construction Documents" means the documents described in Section 2.2.14,

"Construction Manager" ("CM") means the general contractor doing the work under the Construction Contract.

"Construction Manager at Risk" ("CM@R") means the general contractor providing budget and schedule expertise during the Pre-Construction Work.

"days" means calendar days.

"Engineer" means the primary design and production engineering firm responsible for preparing the civil engineering plans from which the Work will be constructed.

"Material Supplier" means a person or entity retained by the Construction Manager to provide material and equipment for the Work.

"Offsite Infrastructure" means the Offsite Infrastructure as defined in the Master Agreement.

"Prime Consultants" means the CM, the CM@R, the Architect and the Engineer.

"Project" means the Project as defined in the Master Agreement.

"Project+" means the Project plus the Offsite Infrastructure.

"Project+ Close-Out" means the completion of Project+ development, as described in Section 2.2.13.

"Subconsultants" means professional design, engineering and other providers of professional services contracted to the Prime Consultants or CP and providing services to Project+.

"Subcontractors" means specialty construction contractors contracted to either the CM or CP and providing construction services to Project+.

"Work" means the construction and services necessary or incidental to fulfill the CP's obligations for Project+ in conformance with this Agreement. The Work is divided into two components; the **Pre-Construction Work**, which is primarily the design and permitting stages, and includes all Work done on or before the date the final Permits (as defined in the Master Agreement) necessary to construct the Project Improvements and the Offsite Infrastructure are received, and the **Construction Work**, which is primarily the construction services, and includes all Work done after the date the final Permits necessary to construct the Project Improvements and the Offsite Infrastructure are received. Construction Work of the Off-Site Infrastructure may begin prior to receipt of all Permits necessary to begin the Work on the Project Improvements upon agreement of the Parties.

1.4. Authority and Responsibility

1.4.1. CP will manage on a daily basis and be the primary point of contact for the development of Project+. All development services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work of this Agreement and in accordance with all Legal Requirements.

1.4.2. CP shall be the obligated party on all contracts related to the planning, design and construction of Project+, including but not limited to the Prime Consultants, any subcontractors, subconsultants or other third parties working on Project+.

1.4.3. CP has the authority to execute contracts and subsequent change orders to Prime Consultants, vendors, professional service providers and other entities for the work on Project+ to the extent that they are consistent with the overall Project+ Schedule and the Project+ Budget as agreed to by the CP Representative and the Enterprise Representative.

1.4.4. CP shall create or cause to be created an overall Project+ Schedule. CP shall adjust the Project+ Schedule, if necessary, as Project+ proceeds.

1.4.5. CP shall ensure that tests, inspections and reports required by law and good building practices or as necessary for the work of the Prime Consultants, such as structural, mechanical, soils, materials and chemical tests, tests for air and water pollution, and tests for hazardous materials, are undertaken and produced.

1.4.6. CP shall furnish or cause to be furnished all legal, insurance and accounting services, including auditing services that may be reasonably necessary at any time for Project+ Pre-Construction and Construction Work management.

1.4.7. CP shall provide prompt written notice to the Enterprise Representative if CP becomes aware of any material fault or defect in Project+ that could reasonably cause an increase in the Budget, a delay in the Schedule, a reduction in quality of the Work or the scope of Project+ or create an ongoing liability for CP and/or the Enterprise. For the purposes of this article 1.3.8 "prompt" shall mean a reasonable period of time from the moment of gaining actual knowledge of the material fault or defect but in no event more than 14 days after gaining actual knowledge.

1.4.8. The Enterprise Representative shall be notified at least three days in advance of and may attend, at its discretion, all scheduled meetings involving the design and construction of Project+ and shall receive written summaries of any and all meetings. The Enterprise Representative shall be given no less than 5 Business Days notice of any final inspections and may participate in any final inspections.

SECTION 2. SCOPE OF SERVICES

2.1. Overview of Basic Services CP will manage development of Project+ on a daily basis from inception to completion for all phases of the development process. Where review, comment and/or approval by the Enterprise Representative are provided for below, that review, comment and/or approval shall be exercised within seven days of receipt of the relevant documents or be deemed waived. CP's basic services to be provided pursuant to this Agreement are set forth below.

2.1.1. Best Efforts

CP will use its best efforts to negotiate terms and conditions that are the most favorable to both CP and the Enterprise in all contracts and agreements, subject to any applicable legal requirements. CP will oversee, administrate and manage the contracts and agreements for all Prime Consultants, subcontractors and service providers.

2.1.2. Oversight

Using its best judgment and based on Project+ programming, design and other information provided by the Prime Consultants, CP shall oversee the CM@R's preparation of the estimates of costs for Project+ and its required elements. CP shall ensure that the CM and the CM@R provide throughout the design and construction of Project+, cost evaluations of alternative materials and systems. The Project+ Budget shall be available at all times for review by the Enterprise Representative. CP shall

monitor the approved Project+ Budget and shall update and reissue the Project+ Budget monthly to show actual costs or revised estimates. CP shall develop cash flow reports and forecasts for Project+ and advise the Enterprise Representative of variances between actual and budgeted or estimated costs. CP shall oversee the Construction Work to ensure compliance with the Project+ Schedule.

2.1.3. Project+ Integration

CP acknowledges that the elements of Project+, including the Project Improvements, the Onsite Infrastructure and the Offsite Infrastructure, require integration. CP shall develop the scope of the Offsite Infrastructure to ensure it will be adequate to serve the Project. CP shall coordinate design and construction activities for the Project with the design and construction activities for the Offsite Infrastructure to endeavor to cause Project+ to be designed and constructed in accordance with the latest Project+ Schedule, Project+ Budget and the Project+ contracts. CP shall schedule and conduct meetings to discuss coordination procedures, progress and scheduling.

2.2. Basic Services CP will provide the following services as a part of the development management process:

2.2.1. Project+ Program

CP shall prepare requirements for and limitations on Project+, including a written program which shall set forth the uses and square footage. CP will direct and oversee all programming meetings between the Engineer, CM@R, the Enterprise Representative and any relevant electrical, water, communications and transportation utility providers to Project+ to endeavor to have the Engineer incorporate each party's programming needs into the design of the Offsite Infrastructure, provided such can be accomplished without adversely affecting constructability, the Project+ Schedule or the Offsite Infrastructure Budget.

2.2.2. Project+ Budget

2.2.2.1. Project+ Budget Preparation. CP shall prepare and update monthly or as otherwise agreed to in writing by the Parties the budget for Project+ ("**Project+ Budget**"), including, but not limited to (1) the costs necessary to undertake all steps necessary for leasing of the Project+ properties by the Enterprise including archeological and biological studies, environmental assessments, surveys, and legal fees ("**Leasing Costs**"), (2) design and pre-construction services by the Prime Consultants for Project+ ("**Pre-Construction Costs**"), (3) the costs of construction of Project+ including all ancillary construction costs such as materials testing, inspections, permits, and construction phase services by the Prime Consultants ("**Construction Costs**"), and (4) all other costs related to Project+ including bonds, insurance, overhead and supervision, sales and marketing costs, financing costs (if any), and development fees, ("**Soft Costs**") and 5) reasonable contingencies related to all of these costs. CP may elect to establish and update said budget through the services of a cost consultant. The Project+ Budget shall be divided into two separate but interrelated budgets, the Project Budget and the Offsite Infrastructure Budget. CP will maintain separate, adequate and accurate books and records for the Project and for the Offsite Infrastructure.

2.2.2.2. Project Budget CP will provide the Project Budget to the Enterprise Representative for review and comment prior to commencement of construction. CP will, through the Project Budget, demonstrate compliance with the minimum expenditure and minimum square footage requirements of Article 7.5 of the Master Agreement. Any cumulative increases of 10% or more in the final Project Budget shall require CP to provide evidence of ability to finance or pay for the increase and that the scope of work is consistent with the approved site plan or amendment thereto.

2.2.2.3. Offsite Infrastructure Budget Not less than thirty (30) days prior to the start of construction of the Offsite Infrastructure, CP shall present the final Offsite Infrastructure Budget to the Enterprise Representative for review and approval. The objections shall not be arbitrary or capricious. Any increase or decrease in the Offsite Infrastructure Budget shall require agreement between the Parties as to scope or quality of the Work and the method of financing or payment. The Enterprise must approve any change order which results in an increase to the Offsite Infrastructure Budget. Said agreement or approval shall not be arbitrarily or capriciously withheld.

2.2.3. Project+ Schedule

CP shall prepare and periodically update a Project+ schedule ("**Project+ Schedule**"). The Project+ Schedule and any update shall be presented to the Enterprise Representative for review and comment. CP shall coordinate and integrate the Project+ Schedule, the Prime Consultants services, the Construction Contract services, the services of other vendors and service providers and the Enterprise's responsibilities, highlighting critical and long-lead time items. The Construction Contract portion of the Project+ Schedule, which shall be prepared by the CM@R, shall provide for phasing of construction (both of the Project and the Offsite Infrastructure), times of commencement and completion required of each major trade or construction element, and ordering and delivery of equipment and products requiring long-lead time. CP shall oversee the CM's expediting of the ordering and delivery of materials, products and equipment requiring long-lead time. CP shall update and reissue the Project+ Schedule monthly or as otherwise agreed to in writing between the Parties to show current conditions.

2.2.4. Selection of Prime Consultants and Others

2.2.4.1. CP will solicit proposals for services for the Prime Consultants,

subconsultants, subcontractors and professional services providers for Project+ subject to the Navajo Business and Procurement Act, 12 N.N.C. §§ 1501, *et seq* and the Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 *et seq*.

2.2.4.2. The Project+ Program, the Project+ Schedule and the Project+ Budget will be reviewed and approved by CP and the Enterprise prior to solicitation of consultants. The Project+ Program, the Project+ Schedule and the Project+ Budget will be the basis for solicitation of proposals.

2.2.4.3. CP will require that, as part of their agreements, the Architect and Engineer consent to the transfer of their drawings, plans and specifications to the extent that their use is limited to Project+.

2.2.5. CM@R and CM Selection and Contracting

2.2.5.1. CM@R. CP will select the CM@R for Project+. The CM@R contract shall provide for Pre-Construction Work pertaining to the design and constructability of Project+ by the CM@R for a fee agreed to by CP. CP will oversee and manage the CM@R Contract and the responsibilities there under.

2.2.5.2. CM. CP will select the CM for Project+. The Construction Contract shall provide for the Construction Work by the CM for Project+ at a guaranteed maximum price ("GMP") to be negotiated. CP will negotiate the terms and conditions of the Construction Contract. The Construction Contract and GMP shall each be reviewed by the Enterprise Representative and approved by CP. CP will oversee and manage the Construction Contract and the responsibilities there under.

2.2.5.3. CP will provide the Enterprise Representative with copies of any

agreements for review and comment prior to entering into said agreements. Approval by the Enterprise Representative with regard to the Offsite Infrastructure Work will be for conformance to contracting requirements and material matters that may adversely affect the Enterprise only.

2.2.6. Environmental, Cultural and Archeological Clearances

CP will coordinate the environmental, cultural and archeological surveying processes and any permitting processes with the Prime Consultants, subconsultants and subcontractors to identify areas of concern as soon as possible, toward the end of ensuring a timely receipt of the necessary clearances and permit(s) prior to construction. CP shall file on behalf of CP, the Enterprise and the Architect, for the Project, and the Engineer, for the Offsite Infrastructure, any documents required for approvals by governmental authorities having any authority over Project+; copies of any such documents will be provided to the Enterprise Representative prior to filing. CP shall coordinate with the Enterprise Representative concerning any remedial actions or additional measures that need to be taken as a result to the environmental, cultural and archeological reviews. CP shall comply with the Environmental Review Process presently contained in Subchapter 800 of the Navajo Nation Business Leasing Regulations of 2005 and any subsequent amendments to those regulations.

2.2.7. Land Identification and Surveys

CP, during Design Development, shall work with the Enterprise Representative, the Prime Consultants, subconsultants, the Navajo Tribal Utility Authority and any other relevant electrical, water, communications and transportation utility providers, local Chapter officials and local land users to determine the land to be used for Project+ and to create the legal descriptions of all parcels of real property to be leased by the Nation to the Enterprise for Project+ in order for the Enterprise to lease and for CP to operate and maintain Project+.

2.2.8 Project Design, Review and Approval

CP, working with the Prime Consultants and subconsultants shall have prepared for CP's and the Enterprise Representative's review and approval and for incorporation into the Design Guidelines and Architectural Standards and the Final Site Plan, documents describing the design elements, character, materials and other elements.

2.2.8.1. Design Committee

The Design Committee shall be designated, comprised of two representatives from CP, one of whom will be the CP Representative, and two representatives from the Enterprise. Within 30 days of execution of this Agreement CP shall designate in writing to the Enterprise the 2nd CP representative to the Design Committee. Within 30 days of execution of this Agreement the Enterprise shall also designate in writing to CP two persons as representatives to the Design Committee. The Enterprise Representative may act as one of the two persons representing the Enterprise on the Design Committee and will be an initial and default designee.

2.2.8.2. Design Guidelines and Architectural Standards.

CP shall engage the services of the Architect or a designated subconsultant to work with the Design Committee to develop the Design Guidelines and Architectural Standards ("DGAS"). The DGAS shall set forth approved design and planning standards, exterior materials and colors, code requirements, parking requirements, roadway and traffic standards, building setbacks, landscaping design requirements and landscape planning materials, sustainable building practices and other requirements for all building and land development within the Project and the Project Entrance on Highway 89.

2.2.8.3. DGAS Approval

The final DGAS and any amendment thereto, shall be approved by the Design

Committee. If joint approval cannot be reached, the proposed DGAS or the proposed Amendment may be submitted to arbitration before a single arbitrator under the dispute resolution provisions of the Master Agreement

2.2.8.4. Construction in Conformance with the DGAS

2.2.8.4.1. All proposed construction within the Project will be submitted to the Enterprise for comment and review of compliance with the DGAS and for CP's approval of the plans.

2.2.8.4.2. With regard to any improvements within the Operator Area, Enterprise Representative comments shall be limited to material compliance with the DGAS. The Enterprise Representative may obtain, upon request, an extension of up to 30 days to consider proposed improvements within the Operator Area. Any comments by the Enterprise Representative shall specifically identify any non-compliant items together with the applicable DGAS standard.

2.2.8.4.3. All proposed construction at the entrance to the Project's access on either side of US-89 as set forth in the Master Agreement shall be submitted to the Director of the Navajo Division of Economic Development for review of compliance with the DGAS and approval of the plans.

2.2.8.5 Project Conceptual Alternatives and Final Conceptual Design

Contemporaneously with the DGAS, CP will engage the Prime Consultants to develop conceptual design alternatives a preferred alternative and a Final Conceptual Design with related cost estimates.

2.2.8.5.1 In no less than three working sessions, a preferred alternative will be selected by CP and the Enterprise. Following these working sessions, the Prime Consultants shall develop the preferred alternative in more detail for subsequent presentation and working sessions with CP and the Enterprise, in order to arrive at consensus on a Final Conceptual Design.

2.2.8.5.1.1 The preferred alternative will include site plans, cost estimates, preliminary single-line floor plans, preliminary sections, "Image Boards" illustrating proposed images for the Project, and several 3-dimensional "vernacular" sketches describing several alternatives for the exterior architectural massing and character sketches of the Project.

2.2.8.5.2 The proposed Final Conceptual Design will be submitted to the Enterprise Representative for comment. The Final Conceptual Design will be approved by CP.

2.2.8.6 Project Schematic Design

Based upon the approved Final Conceptual Design and consistent with the Project+ Schedule, the Project Budget and the Project+ Program, CP shall have prepared by the Prime Consultants Schematic Design Documents to include, without limitation, the following:

2.2.8.6.1 Overall Project site plan to be prepared by the Engineer. The Architect and the subconsultants, including the landscape architect, shall provide site plan, building and landscape planning information to the Engineer for this portion of work;

- 2.2.8.6.2 Building and public area floor plans;
- 2.2.8.6.3 An area matrix identifying the mix and square footage of each building type and the square footage of uses within each building type;
- 2.2.8.6.4 Roof plans including mechanical unit locations;
- 2.2.8.6.5 Structured parking level plans (if any);
- 2.2.8.6.6 Material schedules;
- 2.2.8.6.7 Major building sections, as needed;
- 2.2.8.6.8 Building elevations and material legend;
- 2.2.8.6.9 Preliminary outline specifications;
- 2.2.8.6.10 Mechanical electrical and plumbing ("MEP") single line diagrams;
- 2.2.8.6.11 MEP systems description narratives describing the systems;
- 2.2.8.6.12 Define areas of special lighting, particularly outside lighting, lighting controls, and audio/visual systems including equipment rooms;
- 2.2.8.6.13 Civil engineering plans, grading and drainage, cut and fill analysis, paving and hardscape.

CP will work with the Architect, the CM@R and the CM to ensure that the design and selection

of construction materials does not adversely affect the Project Budget and will direct the Architect, the CM@R and the CM to provide value engineering options in the event that the construction estimate for Schematic Design exceeds the Project Budget. CP shall consult with the Enterprise Representative, the Architect, the Engineer, the CM@R and the CM and make recommendations whenever design details adversely affect constructability, the Project+ Budget or the Project+ Schedule. After completion of the Schematic Designs, CP will provide an updated Project Budget that will include the construction cost estimate provided by the CM@R and the Schematic Design Documents to the Enterprise Representative for review and comment. After consideration of the Enterprise Representative's comments, the Final Schematic Design Documents will be approved by CP.

2.2.8.7 Project Design Development.

2.2.8.7.1. Based on the Final Schematic Design Documents, CP shall have prepared Design Development Documents, which shall be reviewed by the Enterprise Representative and approved by CP. The Design Development Documents shall consist of plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to describe the size and character of the Project including major materials and systems and their quality levels.

2.2.8.7.2. Prior to the conclusion of preparation of the Design Development Documents, CP shall provide to the Enterprise Representative for review and comment the CM@R's final Project Budget that will include a comprehensive construction cost estimate.

2.2.8.8 Project Final Site Plan.

2.2.8.8.1. CP shall work with the Prime Consultants to prepare the Final

Site Plan, which shall be approved by the CP Representative and by the Enterprise Representative. The Final Site Plan, together with the Design Development Documents, shall be available for review by the Enterprise Representative prior to approval of the Final Site Plan. The Final Site Plan shall govern the initial Project construction and serve as the guide for future development. The Final Site Plan shall designate the locations of the Lease Pads (as defined in the Master Agreement) and the build out within the Operator Area.

2.2.8.8.2. If, as a result of the decisions made during the Project Design process, the facilities or the minimum square footages provided for in the Operator Area in Article 7.5 of the Master Agreement require modification, CP and the Enterprise will meet and jointly agree to such modifications as are necessary.

2.2.8.8.3. If agreement cannot be reached on the Final Site Plan, the Final Site Plan may be submitted to arbitration by a single arbitrator under the dispute resolution provisions of the Master Agreement.

2.2.9 Offsite Infrastructure Design, Review and Approval

2.2.9.1. Offsite Infrastructure Schematic Design.

During the schematic design phase, CP will ensure that the Engineer is creating an Offsite Infrastructure consistent with the requirements of Project+ and of NTUA. CP will work with the Engineer, the Enterprise Representative, CM@R and any prospective utility providers to ensure that the design and selection of construction materials does not adversely affect the Offsite Infrastructure Budget and will direct the Engineer and the CM@R to provide value engineering options in the event that the construction estimate for schematic design exceeds the

Offsite Infrastructure Budget. CP will consult with the Enterprise Representative, the Engineer and CM@R and make recommendations whenever design details adversely affect constructability, the Offsite Infrastructure Budget or the Project+ Schedule. At the completion of the schematic design phase, CP will provide final Schematic Design Documents and an updated Offsite Infrastructure Budget, including the construction cost estimates to the Enterprise Representative for comment prior to approval by CP.

2.2.9.2. Offsite Infrastructure Design Development

Based on the Final Schematic Design Documents, CP shall have prepared Design Development Documents, which shall be reviewed by the Enterprise Representative and approved by CP. The Design Development Documents shall consist of plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to describe the Offsite Infrastructure including major materials and systems and their quality levels. CP will provide an Offsite Infrastructure Budget that will include a comprehensive construction cost estimate. CP and the Enterprise Representative shall approve the Design Development Documents, including the Offsite Infrastructure Budget.

2.2.10. Construction Documents.

Based on the Design Development Documents for both the Project and the Offsite Infrastructure, CP shall have prepared by the Prime Consultants Construction Documents for Project+. The Construction Documents shall consist of construction-ready Drawings and Specifications. The Prime Consultants shall incorporate into the Construction Documents the design requirements of any utility to which the infrastructure element shall be dedicated and of governmental authorities having jurisdiction over Project+ including requirements imposed by all laws, codes, ordinances, rules, regulations, official interpretations, and orders of applicable governmental authorities having jurisdiction over Project+, including all ADA laws (collectively the "**Legal Requirements**") in connection

with aspects of Project+ design. At the completion of the Construction Documents phase, CP will provide a Project+ Budget that will include an updated comprehensive construction cost estimate provided by the CM@R. The Construction Documents shall be jointly reviewed and approved by the CP Representative and the Enterprise Representative and any utility provider to which an infrastructure element will be dedicated. Disapproval shall be limited to non-compliance with the Design Development Documents.

2.2.11. Construction Contract Negotiations

CP will enter into negotiations with the CM@R for the Construction Work for Project+ and the terms of the Construction Contract. CP may, if CP is unable to reach a satisfactory negotiation with the CM@R and if CP believes that it is in the best interests of the Project+, bid the Construction Work to additional CM firms. The Construction Contract shall be approved by CP. The Construction Contract shall set forth a GMP for the Project. CP will contract directly with the CM upon acceptance of the GMP. CP will also monitor the CM's selection of all the subcontractor trades, ensuring compliance with the Navajo Nation Business Opportunity Act, 5 N.N.C. §§201, et seq. and the Navajo Business and Procurement Act, 12 N.N.C. §§ 1501, et seq. The CM will contract directly with the subcontractors for Construction Work, resulting in a single GMP general contract covering the entire Project+.

2.2.12. Construction Management

2.2.12.1. CP will oversee, manage and administer the Construction Contract. CP shall coordinate schedules, activities and responsibilities of the Prime Consultants and any other subcontractors performing work for Project+. A person to serve as construction/Project manager will be assigned by CP to Project+ on a full-time basis during the construction and closeout phases of Project+.

2.2.12.2. CP shall schedule and conduct meetings to discuss such matters as procedures, progress and scheduling. CP shall cause minutes of such meetings to be promptly prepared and distributed to the Enterprise Representative, the Prime Consultants and other necessary persons or firms along with any updated Project+ Schedule or Project+ Budget. CP, in consultation with the Prime Consultants, will update the Project+ Schedule and Project+ Budget as required to show current conditions. CP shall record the progress of Project+ and submit written progress reports every month to the Enterprise Representative, or more frequently in the case of the occurrence of a material event. CP shall review and make available to the Enterprise Representative the daily log kept by the CM containing a record of jobsite conditions, such as weather, each contractor's work on the site, problems encountered and other relevant data as the Enterprise Representative may reasonably request.

2.2.12.3. CP shall receive certificates of insurance and bonds, as required, from the CM@R, the CM, the Prime Consultants and the subcontractors and forward copies to the Enterprise Representative. CP, the Enterprise, the Nation and the United States shall be named as additional insureds on the certificates and bonds. CP shall review the safety programs developed by each Prime Consultant, the CM and subcontractors for purposes of coordinating safety programs with those of other Prime Consultants and Subcontractors. CP shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs of any Prime Consultant or Subcontractor or the CM. CP shall have authority to require additional inspection or testing of the work and may reject work that does not conform to the requirements of the applicable contract documents.

2.2.12.4. CP shall maintain accounting records on the Work performed for

Project+ with the level of detail and documentation needed to establish the amount of "Construction Costs" as defined in the Master Agreement. CP shall develop and implement procedures for the timely review and processing of applications by the CM and other consultants for progress and final payments, such procedures shall ensure that the Work has been performed and materials delivered or stored in an amount at least equal to the requested payment amount. The payment application shall be certified by the Architect, for Project Work, and the Engineer, for Offsite Infrastructure Work. Approval of a request for payment by CP shall constitute a representation, to the best of CP's knowledge, information and belief, that the recipient is entitled to payment for work represented by the payment request. Final payment to the CM shall not be made until such time as CP has reviewed the final punch-list prepared by the Architect, for Project Work, or the Engineer, for Offsite Infrastructure Work, and has determined that each punch-list item has been satisfactorily completed.

2.2.12.5. CP shall review and evaluate change order requests submitted and approved by the Architect, the Engineer or CM, assist in negotiating such change order requests, consult, as applicable, with the Architect, the Engineer or CM and prepare necessary documentation to incorporate the changes into the applicable documents. CP may not execute any change order not in compliance with the Project+ Budget provisions contained in Article 2.2.2.

2.2.13. Project+ Close-out

2.2.13.1. Substantial Completion

The CP Representative shall notify the Enterprise Representative and the Architect or the Engineer when it considers Substantial Completion of the Construction Work or a designated portion to have been achieved. The CP Representative shall notify NTUA if the portion is to be transferred to NTUA and

involve NTUA, as determined to be necessary or required, in any inspection, certification of acceptance processes described below. The CP Representative, with the assistance of the Architect or the Engineer, shall promptly conduct an inspection to determine whether the Construction Work or designated portion can be occupied or utilized for its intended use without excessive interference in completing any remaining unfinished Construction Work by CM. If the CP Representative determines that the Construction Work or designated portion has not reached Substantial Completion, the CP Representative, with the assistance of the Architect or the Engineer shall promptly compile a list of items to be completed or corrected so the Construction Work or designated portion may be occupied or utilized for its intended use. CP shall ensure that all items on the list are promptly completed.

When Substantial Completion of the Construction Work or a designated portion is achieved, the Architect or the Engineer shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of CP, the Enterprise and CM for interim items such as security, maintenance, utilities, insurance and damage to the Construction Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by the Architect or the Engineer to the CP Representative and the Enterprise Representative for CP's and the Enterprise's written acceptance of responsibilities assigned in the Certificate.

Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Construction Work or a designated portion. The CP Representative shall maintain and provide to the Enterprise Representative a calendar of the warranty periods for each designated portion.

2.2.13.2. Partial Occupancy or Use of the Offsite Infrastructure

The Enterprise may occupy or use completed or partially completed portions of the Offsite Infrastructure Construction Work when (a) the portion of the Offsite Infrastructure Construction Work is designated in a Certificate of Substantial Completion, and (b) appropriate insurer(s) consent to the occupancy or use. CP shall not unreasonably withhold consent to partial occupancy or use. Enterprise shall not unreasonably refuse to accept partial occupancy. CP and the Enterprise will confer and agree about the use and possible transfer of some or all of the completed Offsite Infrastructure components for public use as they become available.

2.2.13.3. Final Completion

Upon notification from CM that the Construction Work is complete and ready for final inspection and acceptance, the CP Representative shall notify the Enterprise Representative and the Architect or the Engineer. The Architect or the Engineer, with the CP Representative and the Enterprise Representative, shall promptly conduct an inspection to determine if the Construction Work has been completed and is acceptable under the Contract Documents. CP will assist the Architect, the Engineer and the Enterprise in the transfer of the utilities and their accompanying dedicated easements to NTUA and any other utility providers.

CP will review the close-out documents (as-built drawings, warranties and Operations & Maintenance manuals) provided by the Prime Consultants for compliance with the requirements of their contracts. With the Architect, the Engineer and CP's maintenance personnel, CP shall ensure that the CM has the proper commissioning checklist and that they follow these procedures for the CM's final testing and start-up of utilities, operational systems and equipment. CP shall assist in obtaining all warranties and other items (manuals, as-built plans,

etc.). CP will provide to the Enterprise Representative and to the Director of the Division of Economic Development electronic copies of all close-out documents.

SECTION 3. REPORTING

3.1. Reporting The CP Representative will keep the Enterprise Representative informed and timely respond to reasonable requests for information by the Enterprise as to the progress of Project+ in order to allow the Enterprise to: (i) properly exercise oversight responsibilities; (ii) interface with CP; (iii) expedite matters requiring the Enterprise review; and (iv) timely assume remedial or curative activities.

In addition to the communications required by this Agreement in other sections, the reporting systems used for Project+ will be as follows:

3.1.1. Monthly payment schedules showing payments to date, current application amount and balance to complete;

3.1.2. Monthly construction cost reports showing budgeted amounts, costs-to-date and balances to complete;

3.1.3. Monthly status reports listing all changes or proposed changes and responsibility therefore; contract status; drawing status (during the design phase); construction status (during the construction phase); change order log; and overall Project+ Schedule status.

3.2. The Enterprise Communications

The Enterprise shall direct its comments, questions, instructions and concerns pertaining to the design and construction of Project+ or any person providing goods or services to Project+ through the Enterprise Representative to the CP Representative and not to any person providing such goods and services. The CP Representative shall schedule meetings with the Enterprise Representative to resolve issues as necessary.

SECTION 4. PAYMENTS.

4.1. Schedule of Values

4.1.1. Pre-Construction Work

Within one hundred eighty (180) days from the date of execution of this Agreement, CP shall compile and the CP Representative shall submit to the Enterprise Representative a schedule of values apportioned to the various divisions or phases of the Pre-Construction Work for the Offsite Infrastructure. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the agreed-upon fee for the Pre-Construction Work for the Offsite Infrastructure.

4.1.2. Construction Work

Within sixty (60) days from the date of receipt of the last Permit required to begin the Construction Work, unless extended pursuant to Article 9.2.4 of the Master Agreement, CP shall compile and the CP Representative shall submit to the Enterprise Representative a schedule of values apportioned to the various divisions or phases of the Construction Work for the Offsite Infrastructure. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the agreed-upon fee for the GMP for the Construction Contract for the Offsite Infrastructure.

4.2. Payment for Pre-Construction Work

4.2.1. The CP Representative shall present to the Enterprise Representative, on a monthly basis, a Statement of Accrued Costs for work done during the previous month on the Pre-Construction Work for the Offsite Infrastructure. That Statement shall contain a notarized affidavit from the CP Representative stating that the Work was done in conformity with the Offsite Infrastructure Schedule and the Offsite Infrastructure Budget,

and shall include updated monthly projections for the cost of Work. Any change orders and unforeseen occurrences shall be identified and specified.

4.2.2. No later than 90 days prior to the anticipated date when CP shall have received all Permits necessary to construct and operate the Project Improvements and the Offsite Infrastructure, the CP Representative shall notify the Enterprise Representative and the Nation of that anticipated event, the presently accrued costs and the reasonably anticipated costs to be incurred prior to the date of receipt of the final Permit, and the extent of the Nation's obligation to provide funding for the Offsite Infrastructure Work, pursuant to Article 9.2 of the Master Agreement.

4.2.3. On the day the final Permit necessary to construct and operate the Project Improvements and the Offsite Infrastructure has been received, but no sooner than 90 days after the notice given in Section 5.2.2, the Nation as provided in the Master Agreement, shall provide to the CP Representative and the Enterprise Representative proof that adequate funding necessary to reimburse CP for all Pre-Construction Work associated with the Offsite Infrastructure and to complete the Construction Work on the Offsite Infrastructure has been obtained.

4.2.4. Upon presentation of such proof, the CP Representative shall present to the Enterprise Representative an application for payment for Pre-Construction Work which is supported by the previously submitted Statements of Accrued Costs and substantiating data. The Payment Application shall include any properly authorized Change Orders.

4.2.5. The Enterprise shall pay the amount otherwise due on the Payment Application, no later than thirty (30) days after submittal of the Payment Application.

4.2.6. This Section 4.2 is subject to Article 9.2.4 of the Master Agreement and Sections

4.3.4.1. Partial Lien Waivers and Affidavits, 4.3.5. Retainage and 4.4. Adjustment of CP's Payment Application below.

4.3. Construction Work Progress Payments

4.3.1. Escrow Account

An escrow account shall be established. The Enterprise Representative, the CP Representative and the CM shall meet prior to beginning the Offsite Infrastructure Construction Work and establish the initial deposit for the escrow account, based on the anticipated first three months of Offsite Infrastructure Construction Work. The balance in the escrow account shall be replenished monthly in order to maintain an amount equal to the three highest monthly applications for payments previously submitted by CP.

Payments will be made from the escrow account by the Enterprise to CP pursuant to the application process detailed in Section 5.3.2 below.

4.3.2. Applications

CP shall transmit to the Enterprise Representative and the Engineer a monthly application for payment no later than the 15th day of the calendar month for the preceding calendar month; CM's applications for payment shall be itemized and supported by CM's schedule of values and any other substantiating data as required by this Agreement. Payment applications shall include payment requests on account of properly authorized change orders. The Enterprise shall pay the amount due on a payment application after CP has deducted the retainage, no later than fourteen (14) days after the CP Representative has submitted a complete and accurate payment application.

4.3.3. Stored Materials and Equipment

Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Construction Work but

delivered to and suitably stored on-site or off-site including applicable insurance, storage and costs incurred transporting the materials to an off-site storage facility. Approval of payment applications for stored materials and equipment stored off-site shall be conditioned on submission by CM to the Enterprise Representative of bills of sale and proof of required insurance, or such other procedures satisfactory to the Enterprise Representative.

4.3.4. Lien Waivers and Liens

4.3.4.1. Partial Lien Waivers and Affidavits

As a prerequisite for payment CM shall provide partial lien and claim waivers in the amount of the application for payment and affidavits from its Subcontractors and Material Suppliers for the completed Construction Work. Such waivers shall be conditional upon payment. In no event shall CM be required to sign an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

4.3.4.2. Responsibility for Liens

If the Enterprise has made payments in the time required by this Article 5, CM shall, within thirty (30) days after filing, cause the removal of any liens filed against the Project by any party or parties performing labor or services or supplying materials in connection with the Construction Work. If CM fails to take such action on a lien, the Enterprise may cause the lien to be removed at CM's or CP's expense, including bond costs and reasonable attorneys' fees. This Clause shall not apply if there is a dispute pursuant to Section 10.7 relating to the subject matter of the lien.

4.3.5. Retainage

The monthly application for payment submitted to the Enterprise Representative from the CP Representative as described in Section 5.3.2 shall indicate the amount of the retainage. From each monthly application for payment made prior to Substantial Completion, the retainage shall be calculated as follows:

4.3.5.1. Retention in the amount of Ten Percent (10%) shall be withheld from each Progress Payment until the Offsite Infrastructure Construction Work is Fifty Percent (50%) complete. Once the Offsite Infrastructure Construction Work is Fifty Percent (50%) complete, should the Offsite Infrastructure Construction Work be on schedule and in compliance with the Contract Documents, the retainage percentage shall be reduced to Five Percent (5%). The retainage shall be released in accordance with Paragraph 4.7.4 of this Agreement.

4.4. Adjustment of CM's Payment Application

4.4.1. The Enterprise may adjust or reject a payment application, in whole or in part, as may reasonably be necessary to protect the Enterprise from loss or damage based upon the following,:

4.4.1.1. CM's repeated failure to perform the Offsite Infrastructure Construction Work as required by the Contract Documents.

4.4.1.2. Loss or damage arising out of or relating to this Agreement and caused by CM to the Enterprise or Others to whom the Enterprise may be liable.

4.4.1.3. CM's failure to properly pay Subcontractors and Material Suppliers following receipt of such payment from the Enterprise.

4.4.1.4. Defective Offsite Infrastructure Construction Work not corrected in a timely fashion.

4.4.1.5. Reasonable evidence of delay in performance of the Offsite Infrastructure Construction Work such that the Offsite Infrastructure Construction Work will not be completed by the Dates of Substantial or Final Completion.

4.4.1.6. Reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Offsite Infrastructure Construction Work.

4.4.1.7. Third-party claims involving CM or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until CM furnishes the Enterprise Representative with adequate security in the form of a surety bond, letter of credit or other collateral or commitment sufficient to discharge such claims if established.

4.4.1.8. No later than seven (7) days after receipt of an application for payment, the Enterprise Representative shall give written notice to the CP Representative, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by CM in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

4.5. Acceptance of Construction Work

Neither the Enterprise's payment of progress payments nor its partial or full use or occupancy of the Offsite Infrastructure constitutes acceptance of Construction Work.

4.6. Payment Delay

If for any reason not the fault of CM, or unless a payment application is disputed pursuant to Section 5.4.1 above, CP does not receive a progress payment from the Enterprise within seven (7) days after the time such payment is due as defined in Subparagraph 5.3.2, then CP, upon giving seven (7) days written notice to the Enterprise Representative, and without prejudice to and in addition to any other legal remedies, may stop Offsite Infrastructure Construction Work until payment of the full amount owing to CP has been received, including interest from the date payment was due. The GMP and Dates of Substantial or Final Completion shall be equitably adjusted by a change order for reasonable cost and delay resulting from shutdown, delay and start-up.

4.7. Payment at Substantial Completion and Retainage Amounts

Upon acceptance by the CP Representative of the Certificate of Substantial Completion, the Enterprise shall pay to CP the remaining retainage held by the Enterprise for the Construction Work described in the Certificate of Substantial Completion less a sum equal to two hundred percent (200%) of the estimated cost of completing or correcting remaining items on that part of the Construction Work, as agreed to by the CP Representative and CM as necessary to achieve Final Completion. Uncompleted items shall be completed by CM in a mutually agreed time frame. The Enterprise shall pay CP monthly the amount retained for unfinished items as each item is completed.

4.8. Final Payment

4.8.1. When the Offsite Infrastructure Construction Work is complete, CM shall prepare for the CP Representative's acceptance a final application for payment stating that to the best of CM's knowledge, and based on the CP Representative's inspections, the Offsite Infrastructure Construction Work has reached final completion in accordance with the Contract Documents.

4.8.2. Final payment of the balance for the Offsite Infrastructure shall be made to CM within twenty (20) days after CM has submitted an application for final payment, including submissions required under Subparagraph 5.9.4, and a Certificate of Final Completion has been executed by the Engineer.

4.8.3. Final payment shall be due on CM's submission of the following to the CP Representative:

4.8.3.1. An affidavit declaring any indebtedness connected with the Offsite Infrastructure Construction Work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied or to be paid with the proceeds of final payment, so as not to encumber the Enterprise's property.

4.8.3.2. As-built drawings, manuals, copies of warranties and all other close-out documents required by the Contract Documents.

4.8.3.3. Release of any liens, conditioned on final payment being received.

4.8.3.4. Consent of any surety.

4.8.3.5. Any outstanding known and unreported accidents or injuries experienced by CP or its Subcontractors at the Worksite.

4.9. Late Payment

Payments due on payment applications but unpaid shall bear interest from the date payment is due at the rate agreed to in the Construction Contract.

SECTION 5. INSURANCE

5.1. Insurance

CP, at its own expense shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance. Each insurer shall have a current A.M. Best Company, Inc. rating of not less than A- and a category rating of not less than "8." All insurers must be a Nationally Accredited Insurance Company with a financial strength rating of "A" or the equivalent, and authorized to do business in the State where the leased premises are located. Use of alternative insurers requires notice to the Enterprise Representative. Insurance provided by CP shall be primary. The insurance provided by CP shall have the following general provisions:

5.1.1. The insurance coverage, except Workers' Compensation and Professional Liability, shall name the Nation, the United States, the Enterprise, their agents, representatives, directors, officials, employees, and officers, as additional insured.

5.1.2. All insurance shall be maintained in full force and effect until services required to be performed under the terms of this Agreement are satisfactorily completed and formally accepted.

5.1.3. CP's insurance, except Worker's Compensation and Professional Liability, shall be primary insurance with respect to the Enterprise and any insurance or self insurance maintained by the Enterprise shall be excess of CP's insurance and shall not contribute to it. Any failure to comply with the claims reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the Enterprise.

5.1.4. The policies, except Workers' Compensation and Professional Liability, shall contain a waiver of transfer rights of recovery (subrogation) against the Enterprise, its

agents, representatives, directors, officers, and employees for any claims arising out of the work of CP.

5.1.5. The policies may provide coverage which contains deductibles or self insureds retention amounts. CP shall be solely responsible for deductible and/or self-insured retentions. CP shall be required to post a performance bond equal to the deductible or self-insured retention level.

5.1.6. Prior to commencing services under this Agreement, CP shall furnish the Enterprise Representative and the Director of the Division of Economic Development with certificates of insurance or formal endorsements, issued by CP's insurer(s), as evidence that policies providing the required coverages, conditions, and limits are in full force and effect. Such certificates shall provide for not less than thirty (30) days advance notice of cancellation, termination, or material alteration. Such certificates shall be sent directly to the Enterprise Representative and the Division of Economic Development.

5.2. Types of Insurance.

CP shall carry the following types of insurance:

5.2.1. Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CP employees;

5.2.2. Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000 each occurrence regarding any owned, hired and non-owned vehicles assigned to or used in performance of services under this Agreement;

5.2.3. Commercial General Liability insurance with unimpaired limit of not less than \$1,000,000, for each occurrence and \$2,000,000 in the aggregate, and coverage shall

include coverage for bodily injury, property damage, personal injury, and contractual covering, but not limited to, the liability assumed under the indemnification provisions of Section 7.1 of this Agreement. A general liability insurance policy may not be written on a "claims made" basis; and

5.2.4. Professional Liability insurance covering negligent errors or omissions arising out of the services performed by CP or any person employed by CP shall not be required. In lieu thereof CP shall require such professional liability insurance from the Architect and the Engineer with limits of not less than \$1,000,000 each claim and \$5,000,000 in the aggregate.

In the event any services are subcontracted by the Architect or CM, CP shall require each consultant to secure and maintain Professional Liability Insurance sufficient for the protection of the portion of the work by each consultant on the same basis as above.

5.2.5. Umbrella/Excess Liability insurance with a limit of not less than \$5,000,000 per occurrence combined limit Bodily Injury and Property Damage, that "follows form" and applies in excess of the Commercial General Liability and Automobile Liability, as required above. Primary per occurrence (or per claim for Professional Liability) coverage may be used to fulfill this requirement.

SECTION 6. BONDING

Prior to the commencement of construction of any improvement on Project+, CP will cause the CM to post a payment and performance construction bond in favor of CP, the Enterprise and the Nation. The purpose of the construction bond is to guarantee the completion of the improvements and payment in full of valid claims of all persons for work performed in or materials furnished for construction of the improvements.

SECTION 7. INDEMNIFICATION

CP hereby agrees to indemnify the Enterprise (including its officers, agents and employees), the Nation and the United States for, from and against any and all claims, demands, suits, and liabilities, of any nature whatsoever (collectively "Indemnity Claims"), arising out of or in any way connected with the negligent action or inaction of CP or any affiliate of CP. CP's duty to pay any Indemnity Claim shall, in each instance, be reduced by the amount the Enterprise, the Nation or the United States recovers from any third-party regarding such Indemnity Claim.

SECTION 8. DEFAULT, CURE, REMEDIES

8.1. Event of Default.

8.1.1. Failure by a Party to pay any amount due and payable pursuant to this Agreement within 15 days following receipt of written notice of such failure given to such defaulting Party and the Director of the Division of Economic Development by a non-defaulting Party.

8.1.2. Failure by a Party to perform, keep, or fulfill any of its nonmonetary covenants, undertakings, or obligations set forth in this Agreement or the material breach of any of a Party's representations or warranties in this Agreement, if such failure or breach is not cured within 30 days after written notice specifying such failure or breach is received by such defaulting Party from a non-defaulting Party; provided, however, that if such failure or breach is curable but is not reasonably capable of being cured within such period, and such Party commences to cure such default during such period and thereafter prosecutes such cure to completion with all due diligence, then no Event of Default by such party shall exist.

8.2. Remedies.

Upon the occurrence of an Event of Default and failure to cure after Notice, a non-failing or non-breaching Party may pursue any or all of the following:

8.2.1. Terminate this Agreement as provided in Section 9.3 below;

8.2.2. Elect to take any and all action deemed necessary by such non-defaulting party, in such non-defaulting party's sole and absolute discretion, to cure the default, including making payments to third parties. In the event the Enterprise fails to make a payment properly presented, CP may arrange, secure and acquire additional funding pursuant to Article 9.2.2 of the Master Agreement. The non-defaulting Party shall first provide written notice to the defaulting Party of its intention to cure the default. All sums expended by the non-defaulting Party in connection with the exercise of this option shall be paid by the defaulting Party to the non-defaulting Party within fifteen (15) days of receipt by the defaulting Party of an invoice and demand for repayment of the costs, fees, and expenses to cure the Event of Default; or

8.2.3. Pursue any other right or remedy which a non-defaulting party may have at law or in equity.

8.3. Termination.

This Agreement may expire or be terminated as follows:

8.3.1. Upon the occurrence of any Event of Default and the failure to cure after written notice, a non-defaulting party may exercise the right to terminate by providing a written notice of termination to the defaulting party given at least 20 days prior to the proposed termination date. If the defaulting Party cures prior to the proposed termination date, the Event of Default shall be considered remedied and this Agreement shall not be terminated. This Twenty (20)-day termination notice is in addition to any other notice or

cure period provided with respect to such Event of Default.

8.3.2. At the option of CP, exercised by written notice to the Enterprise in the event of a suspension of the Project's operations for a period in excess of Ninety (90) days, but only if such suspension was due to circumstances beyond CP's reasonable control.

8.3.3. Transition at Termination.

Upon the termination of this Agreement, CP shall:

8.3.3.1. Promptly vacate the Project.

8.3.3.2. Remove all of CP's personal property unrelated to the Project. The removal of such personal property must occur within fifteen (15) days after the termination or expiration of this Agreement.

8.3.3.3. Repair any injury occasioned by installation or removal of such personal property.

8.3.3.4. Transfer all governmental permits, licenses, and authorizations attendant to the operations of Project+.

8.3.3.5. Transfer all interests in real and personal property constructed, procured or acquired by the CP for Project+.

8.3.3.6. Deliver all leasehold interests and concession agreements in effect at such time; and Enterprise shall accept and assume all such interests and concession agreements.

8.3.3.7. Deliver all keys, safe combinations, materials, and information necessary for the Project's operations, and any property of the Enterprise or the Nation in the possession of CP or its Related Persons.

8.3.3.8. Discontinue advancing the services under this Agreement and proceed to close said operations under this Agreement.

8.3.3.9. Deliver to the Enterprise Representative all drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by or in the possession of CP related to the Project+ under this Agreement, entirely or partially completed, together with all unused materials supplied by the Enterprise upon payment in full for all services satisfactorily performed.

8.3.3.10. In no event shall CP, be responsible for any use of partially completed documents or work product by the Enterprise or any other third party.

8.3.3.11. In the event of such termination of this Agreement, CP shall be paid any outstanding costs and the pro rata portion of the last monthly installment in which services were performed, and neither the Enterprise nor CP shall thereafter have any further responsibility to each other.

8.3.3.12. In the event of termination, the Enterprise shall have the option of completing the work, or entering into an agreement with another party for the performance of the services and completion of the work.

SECTION 9. MISCELLANEOUS

9.1. Notice.

Notices and other communications that are required or contemplated by this Agreement shall be in writing, and shall be provided by: (a) personal, in-hand delivery, (b) private courier service, with overnight delivery service, (c) United States Postal Service, certified mail, postage pre-paid, return receipt requested (which receipt shall be preserved as evidence of delivery), (d) facsimile transmission, or (e) electronic mail, addressed and transmitted to the Parties at the addresses and telecopier numbers immediately following this provision, or to such other address or telecopier number as a Party may designate to the other Party in a writing delivered in accordance with the provisions of this Section:

To CP: Confluence Partners, LLC

R. Lamar Whitmer, Manager
Keith Lamparter
7343 E. Camelback Rd.
Scottsdale, AZ 85251
Fax No.: 480-945-4879
Telephone No.: 480-945-4879
Email address: rlw@fulcrumgroup.com

With a copy to:

Michael C. Nelson, Esq.
1131 E. Coronado Rd.
Phoenix, AZ 85006
Fax No.: 602-241-3326
Telephone No.: 602-803-3593
Email address: Michael.Nelson@azbar.org

To the Division of Economic Development;

Division of Economic Development
Albert Damon, Jr., Executive Director
PO Box 663
Window Rock, AZ 86515
Fax No.: (928) 871-7381
Telephone No.: (928) 871-6544
Email address: adamon@navajo-nsn.gov

To Enterprise:

Navajo Nation Hospitality Enterprise
PO Box 2340
48 West Highway 264
Window Rock, AZ 86515
Fax No.: 928-871-5466
Telephone No.: 928-871-4108
Email address: gm.az236@choicehotels.com

All notices and other materials shall be deemed to have been delivered, and shall be considered effective upon the date on which the notice is actually received. If provided by facsimile transmission or e-mail, and the receiving Party confirms receipt within 24 hours of send-off, then notice shall be deemed delivered at the time this facsimile or e-mail is sent; but if no confirmation e-mail is sent by the Party receiving the notice or communication, then such notice or communication shall be deemed received 72 hours after the facsimile or e-mail was sent.

9.2. Time is of the Essence. Time is of the essence with respect to the performance of each of the covenants and obligations contained in this Agreement.

9.3. Time Periods. Except as otherwise expressly provided for in this Agreement, the time for performance of any obligation or the deadline for taking any action required pursuant to this Agreement shall be deemed to expire at 5:00 p.m. Mountain Standard Time on the final day of the applicable time-period provided for in this Agreement. If the time-period or deadline for the performance of any obligation or taking any action pursuant to this Agreement expires on a day other than a Business Day, the time for performance or taking such action shall be extended to the next Business Day, as defined herein, or otherwise defined by the Parties pursuant to this Agreement.

9.4. No Partnership. No partnership, joint venture, agency, landlord/tenant or employee/employer relationship is established by the terms of this Agreement between the Enterprise and CP or the Enterprise and any other person.

9.5. Severability. No provision or term of this Agreement is severable without the written consent of the Enterprise and CP.

9.6. Waivers. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Parties hereto. This Agreement may not be changed, modified or rescinded except in writing by the Parties hereto, and any attempt at oral modifications of this Agreement shall be void and of no effect.

9.7. Governing Law. The laws of the Navajo Nation shall govern the interpretation and enforcement of this Agreement.

9.8. Dispute Resolution. Any disputes under this Agreement not specifically addressed in this Agreement shall be resolved through the process set forth in Article 12 of the Master Agreement.

9.9. Amendments. This Agreement may be amended only when agreed to in writing by CP and through resolution of the Enterprise Board of Directors. Notice of such intended action by the Enterprise Board shall be sent to the Director, Division of Economic Development, no less than five Business Days prior to the date of such intended action

This Agreement is effective as of _____, 2014.

[SIGNATURE PAGE FOLLOWS]

The Navajo Nation Hospitality Enterprise:

By _____

Its Chairman of the Board of Directors

Date: _____

Confluence Partners, L.L.C. an Arizona limited liability company:

By _____

R. Lamar Whitmer

Managing Partner

Date: _____

EXHIBIT F

OPERATING AGREEMENT

March 21, 2014

GRAND CANYON ESCALADE OPERATING AGREEMENT

**BY AND BETWEEN THE NAVAJO NATION HOSPITALITY ENTERPRISE, A
WHOLLY-OWNED ENTERPRISE OF THE NAVAJO NATION AND CONFLUENCE
PARTNERS, L.L.C. A LIMITED LIABILITY COMPANY ORGANIZED UNDER THE
LAWS OF THE STATE OF ARIZONA**

GRAND CANYON ESCALADE OPERATING AGREEMENT
TABLE OF CONTENTS

SEC. 1. TERM OF AGREEMENT	1
SEC. 2. DEFINITIONS.....	2
SEC. 3. OPERATION OF THE PROJECT	5
(a) General Authority.....	
(b) Operation and Quality of Operation.....	
(c) Business Site Lease Assumption.....	
(d) Operating Plan.....	
(e) Personal Property.....	
(f) Merchandise.....	
(g) Promotional Materials.....	
(h) Trademarks and Licensing.....	
(i) Security, Emergency Medical Services, and Fire Protection	
SEC. 4. RIGHT OF ENTRY AND INSPECTION	7
SEC. 5. CONSTRUCTION OF ADDITIONAL IMPROVEMENTS.....	8
SEC. 6. DISCOVERY CENTER.....	9
SEC. 7. LEASE PADS.....	10
(a) Marketing.....	
(b) Management.	
(c) Sublease Terms.....	
SEC. 8. MAINTENANCE, REPAIR AND REPLACEMENT.....	11
(a) General Obligations	

(b) Maintenance Plan	
(c) CP Repair and Maintenance Reserve Fund	
(d) Tram Repair and Replacement Reserve Fund.....	
(e) Enterprise Repair and Maintenance Reserve Fund.....	
SEC. 9. REVENUE TO THE NATION, THE ENTERPRISE AND CP.....	14
(a) The Nation's Revenue.....	
(b) The Enterprise's Revenue.....	
(c) Distribution and Payment of the Nation's Revenue and the Enterprise's Revenue.....	
(d) CP's Revenue.....	
(e) Interest	
SEC. 10. PROJECT PERSONNEL	16
(a) Employees	
SEC. 11. PROTECTION OF CULTURAL AND ARCHEOLOGICAL RESOURCES.....	16
SEC. 12 INDEMNIFICATION AND INSURANCE	17
(a) Indemnification	
(b) Insurance in General	
(c) Commercial General Liability	
(d) Property Insurance	
(e) Reconstruction.....	
SEC. 13. BONDS	20
SEC. 14. REPORTING REQUIREMENTS.....	21
(a) Insurance Certification	
(b) Revenue and Paid Customer Admissions Reports.....	
(c) Year End Reports.....	
(d) Miscellaneous Reports and Data	

SEC. 15. TERMINATION OR EXPIRATION	22
(a) Expiration.....	
(b) Events of Default.....	
(c) Remedies.....	
(d) Termination	
(e) Notice of Bankruptcy or Insolvency	
(f) Requirements in the Event of Termination or Expiration	
SEC. 16. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS	24
(a) CP's Assignments.....	
(b) The Nation's Assignments.....	
(c) Release Requirements Associated With Assignments.....	
(d) Lender's Rights.....	
SEC. 17. DISPUTE RESOLUTION.....	26
SEC. 18. GENERAL PROVISIONS	29
SIGNATURES.....	33
EXHIBIT A: Operator Area.....	

THIS AGREEMENT is made and entered into by and between the **Navajo Nation Hospitality Enterprise**, a wholly-owned enterprise of the Navajo Nation (the “**Enterprise**”) and **Confluence Partners, L.L.C.** a Limited Liability Company organized under the laws of the State of Arizona, (“**CP**”):

RECITALS:

The **Grand Canyon Escalade Project** (the “**Project**”) is to provide economic and employment benefits from the Grand Canyon tourism market to the **Navajo Nation** (the “**Nation**”) and its members.

The Nation has leased the **Leased Premises** to the Enterprise for development and operation of the Project.

Pursuant to the Development Agreement between the Parties, the **Project Improvements and the Retained Onsite Infrastructure** have been or will be constructed by CP within the Leased Premises.

CP possesses specialized experienced in the tourism industry and tourism business performance as is evidenced in the track record of its individual members with projects comparable in complexity and scope to the tourism facility which the Nation desires to develop and operate.

The Enterprise desires CP to operate the Project for the benefit of the Nation and its members, and for the customer use and enjoyment of the Project.

NOW, THEREFORE, the Enterprise and CP agree as follows:

SEC.1. TERM OF AGREEMENT

This **Operating Agreement** (“**Agreement**”) shall be effective as of the date of signing of this Agreement and shall be for the term of fifty years (50) years from Opening Day, unless mutually

extended by the parties or sooner terminated by the terms of this Agreement.

SEC.2. DEFINITIONS

The following terms used in this Agreement 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 the Nation, the State of Arizona and the United States governing the Project, 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.

(b) **"Best Management Practices"** or **"BMPs"** are policies and practices available to CP to maintain a superior level of performance reasonable in light of the circumstances of the operations conducted under this Agreement. BMPs are expected to change from time to time with a goal of sustainability of CP's operations. The Project will strive for the standards of quality for the management and operation of a first-class tourist facilities in the southwestern United States as commonly recognized in the hospitality industry regarding guest facilities, services and overall atmosphere.

(c) **"Business Day"** means any calendar day other than Saturday, Sunday, or a legal holiday of the Navajo Nation, the United States, or the State of Arizona; unless the term "Business Day" is expressly and conspicuously used contrary to this defined usage.

(d) **"Business Site Lease for the Project Area"** means the business site lease issued to the Enterprise for the Project.

(e) **"CP Repair and Replacement Reserve Fund"** means a reserve fund created to carry out repair and replacement of the Project Improvements and the Retained Onsite Infrastructure.

(f) **"Customer Services"** means the services that CP is required and authorized to provide by

Section 3 of this Agreement.

(g) **"days"** means calendar days.

(h) **"Enterprise Repair and Replacement Reserve Fund"** means a reserve fund created to carry out repair and replacement of the Project Access Road.

(i) **"Exhibit" or "Exhibits"** means the various exhibits, which are attached to this Agreement, each of which is hereby made a part of this Agreement.

(j) **"Gross Revenues of the Project"** means all income received by CP from whatever source for business activities within the Leased Premises or resulting from the operations of the Project, excluding Lease Pad Rental Revenues and all taxes paid to CP.

(k) **"Lease Pads"** means those locations within the Leased Premises and outside the Operator Area which the Enterprise and CP have identified for development.

(l) **"Leased Premises"** means that property described in the Business Site Lease for the Project Area issued to the Enterprise within the approximately 420 acres initially withdrawn for the Project.

(m) **"Marks"** means the name of the Project and the Discovery Center, and all other trade names, trademarks for goods and services, certification marks, or other appurtenant intellectual property associated with the Project and the Discovery Center and their operations.

(n) **"Nation"** means the Navajo Nation, a sovereign government and a federally-acknowledged Indian tribe.

(o) **"NTUA"** means the Navajo Tribal Utility Authority, a wholly-owned enterprise of the Navajo Nation.

(p) **“Opening Day”** means the first date on which a paying visitor enters the Operator Area.

(q) **“Operator Area”** means all lands within the Leased Premises assigned to CP for CP’s exclusive development, as depicted in Exhibit A attached hereto.

(r) **“Paid Customer Admissions”** means customers that have purchased and paid for entry to the Operator Area and for which such purchased tickets have been used.

(s) **“Project Improvements”** means the real property improvements constructed by CP within the Leased Premises, other than the Retained Onsite Infrastructure, including the Escalade Tram, restaurants, food and beverage outlets, buildings including space for retail, office, administration, public safety (Emergency Medical Technicians and Police), maintenance, the Entrance and the Discovery Center, as depicted in the Final Site Plan approved pursuant to the Development Agreement.

(t) **“Project Access Road”** means an all-weather access road from US 89 to the Leased Premises, along with Project monuments and signage.

(u) **“Retained Onsite Infrastructure”** means all infrastructure improvements within the Leased Premises not transferred to NTUA or another service provider, including the water lines, water storage tanks, waste water lines, electrical transmission lines, telecommunications lines, the waste water treatment plant, the public works building, roads, public parking, drive aisles, pedestrian pathways and landscaping necessary for the Project Improvements and the Lease Pads.

(v) **“Tram Repair and Replacement Reserve Fund”** means a reserve fund created to carry out the repair and replacement required of the Escalade Tram.

SEC.3. OPERATION OF THE PROJECT

(a) General Authority

The Enterprise hereby grants CP a non-revocable license and right to enter upon and occupy the Leased Premises, including the Project Improvements and the Retained Onsite Infrastructure, in order to operate the Project in accordance with this Agreement.

(b) Operation and Quality of Operation

CP shall provide, operate and maintain the required and authorized customer services and any related support facilities and services in accordance with this Agreement and BMP. CP shall provide the plant, personnel, equipment, goods, and commodities necessary for providing, operating and maintaining the required and authorized customer services and merchandise in accordance with this Agreement.

(c) Business Site Lease Assumption

CP agrees to assume all of the Enterprise's obligations under the terms and conditions of the Business Site Lease for the Project Area.

(d) Operating Plan

(1) CP shall establish and revise, as necessary, specific requirements for the operations of the Project under this Agreement in the form of an Operating Plan. No later than 180 days prior to the Opening Day, CP shall deliver a comprehensive Operating Plan to the Enterprise for review and comment. The Enterprise will comment within fifteen days. CP will respond, in writing, to the comments within fifteen days thereafter. The Parties will meet and confer to resolve any concerns.

(2) The Operating Plan will address how Paid Customer Admissions are determined, including how and where Paid Customer Admissions are counted; the Enterprise reserves the right to approve or disapprove that methodology for the determination of Paid Customer Admissions. If CP and the Enterprise are unable to agree on that methodology for determining Paid Customer Admissions, that dispute may be arbitrated before a single arbitrator under Sec. 19 of this Agreement.

CP will review the Operating Plan with the Enterprise at least every two years and revise as necessary.

(e) Personal Property

CP shall provide all personal property, including without limitation removable equipment, furniture and goods, necessary for its operations under this Agreement.

(f) Merchandise

(1) CP reserves the right to determine and control the nature, type and minimum quality of the merchandise to be sold or provided by CP within the Project and by the lessees of the Lease Pads.

(2) CP will develop and implement standards, which will be reviewed and approved by the Enterprise, that will assure that merchandise reflects the purpose and significance of the Project, including, but not limited to, merchandise that reflects the Grand Canyon area's geology, wildlife, plant life, archeology, local Native American cultures, local ethnic cultures, and historic significance.

(g) Promotional Materials

All promotional material, regardless of media format (i.e. printed, electronic, broadcast media), provided by CP related to the Project shall be provided to the Enterprise 30 days prior to use. The Enterprise may object within seven days thereafter. The Parties will meet and confer to resolve any concerns. All such material will identify the Project as located on the Navajo Nation.

(h) Trademarks and Licensing

The Enterprise has granted to CP a non-revocable license to market and use the Enterprise's Marks during the term of this Agreement. The License Agreement for the Marks is appended to the Master Agreement as Exhibit G.

(i) Security, Emergency Medical Services, and Fire Protection.

(1) Security

(i) CP will provide unarmed security personnel in the Operator Area and the public parking areas whenever facilities are in use.

(ii) CP Employee Authority. Unless cross deputized by the Navajo Nation Police and/or the Coconino Sheriff's Office, CP employed security personnel have only the authority of private citizens in their interaction with customers and employees. They will not take law enforcement actions or to carry firearms, but will work closely with law enforcement personnel.

(iii) CP will provide a public safety facility within the Project.

(2) Fire Protection

CP will provide fire protection, including facilities, equipment and personnel.

(3) Emergency Medical Services

CP will provide emergency response medical services, including facilities, equipment and personnel.

SEC.4. RIGHT OF ENTRY AND INSPECTION

(a) The Enterprise and its authorized representatives shall have the right, at any reasonable time during the term of this Agreement, to enter upon the Leased Premises, or any part thereof, to inspect the same and all Project Improvements for purposes, including, but not limited to, conditions affecting the health, safety and welfare of those entering the Leased Premises, the protection of the Leased Premises, the Project Improvements or any adjoining property or uses, or compliance with applicable environmental health or safety laws and regulations. No showing of probable cause shall be required for such entry and inspection. If testing for environmental contamination reveals environmental contamination in violation of applicable law, CP shall pay the costs of such testing. Nothing in this paragraph shall limit CP's obligation under applicable law to perform testing or remediation or otherwise limit CP's liability.

(b) The Enterprise and its authorized representatives shall have the right, during normal business hours, during the term of this Agreement and if this Agreement is terminated or expired, at any time, enter upon the Leased Premises, or any part thereof, to inspect the same and all Project Improvements. The Enterprise and its authorized representatives shall notify CP not less than

three (3) days before conducting the inspection. Such inspection shall not unreasonably interfere with CP's business operations, unless this Agreement has expired or is terminated.

(c) The Enterprise shall have the right to audit the Gross Revenues of the Project, the Lease Pad Rental Revenues, the Paid Customer Admissions, the CP Repair and Maintenance Reserve Fund and the Tram Repair and Replacement Reserve Fund on an annual basis at the close of the books of the Project for the year, or whenever requested by the Enterprise. Such audits are optional, and shall be timely made if the right of audit is exercised. Prior years shall not be subject to audit.

The Enterprise shall contract for and pay the full cost of the audit. CP shall pay the full cost of the audit in the event of a monetary default, and in the event that the audit discloses a material error in the reporting to the Nation and the Enterprise of the Gross Revenues of the Project, the Lease Pad Rental Revenues or total Paid Customers Admissions for the period audited. Material error is an amount of 5% or greater of the total correct amount due for the period audited.

Within ten Business Days of the close of the books of the Project for the year CP shall notify the Enterprise of its opportunity to schedule this audit. The Enterprise shall notify CP, within 30 days of its notification from CP, that an audit has been scheduled and of the approximate date of such audit. The Enterprise shall make its best efforts to schedule the audit such that it can be completed within 120 days of the close of the Project's books for the year.

Such audits shall be conducted by a public accounting firm with offices in multiple states.

The audit period shall be for the calendar year, or for a shorter period as requested by the Enterprise.

The scope of the audit is limited to an audit of the Gross Revenues of the Project, the Lease Pad Rental Revenues, the Paid Customer Admissions, the CP Repair and Maintenance Reserve Fund and the Tram Repair and Replacement Reserve Fund.

SEC.5. CONSTRUCTION OF ADDITIONAL IMPROVEMENTS

(a) To the extent that CP elects to develop and construct additional improvements within the Operator Area after construction of the Project Improvements, CP is permitted to do so, provided

that the additional improvements are identified in the Final Site Plan. Additional improvements not identified in the Final Site Plan shall require approval by the Enterprise before CP commences construction and shall be in compliance with the Design Guidelines and Architectural Standards.

(b) All additional improvements constructed or installed by CP within the Operator Area will immediately become the property of the Nation and be considered Project Improvements.

(c) All proposed construction within the Leased Premises will be submitted to CP for review of compliance with the Design Guidelines and Architectural Standards and approval of the plans. Following CP approval, the submittal shall be forwarded to the Enterprise for review and comment. With regard to any improvements within the Operator Area, the Enterprise's comments should be limited to material compliance with the Design Guidelines and Architectural Standards. The Enterprise Representative may obtain, upon request, an extension of up to 30 days to consider proposed improvements within the Operator Area. Any comments by the Enterprise Representative should specifically identify any non-compliant items together with the applicable Design Guidelines and Architectural Standards standard.

(d) All proposed construction within the Project Entrance on Highway 89 will be submitted to the Director of the Division of Economic Development for review of compliance with the Design Guidelines and Architectural Standards and approval of the plans.

SEC.6. DISCOVERY CENTER

(a) Enrolled members of the Navajo Nation will not be charged an additional fee for admission to the Discovery Center.

(b) Discovery Center Advisory Council

(1) CP shall appoint an Advisory Council consisting of knowledgeable individuals selected by CP. The Council shall meet as CP deems necessary.

(2) CP shall submit the proposed content of any interpretive programs, exhibits, displays or materials, regardless of media format (i.e. printed, electronic, or broadcast media), to the

Enterprise and the Advisory Council for review and comment prior to offering such programs, exhibits, displays or materials to Project customers.

(c) CP shall provide all customer services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Discovery Center as set forth by CP in planning documents, mission statements and/or development outlines and the comments of the Discovery Center Advisory Council.

SEC.7. LEASE PADS

(a) Lease Pads Marketing

CP shall be the exclusive marketer of the Lease Pads. CP shall negotiate sublease terms on behalf of the Enterprise, subject to Enterprise approval. Nothing herein shall preclude the Enterprise from retaining a Lease Pad for its own development, subject to the requirements of all sublessees set out below. The Enterprise on behalf of the Nation shall be the sole authority to approve all subleases. CP shall have the authority to engage real estate brokers and consultants to assist CP, at CP's expense.

(b) Lease Pads Management

CP shall be responsible for ensuring that the sublessees adhere to the operating standards contained within this Agreement, the Business Site Lease for the Project Area and the subleases, and to the Project's Design Guideline and Architectural Development Standards.

(c) Sublease Terms

A sample sublease form will be provided by the Enterprise to CP within 180 days of Effective Date of the Master Agreement. The sample sublease form shall be for use in the management and marketing of the Lease Pads. The sublease shall require the sublessee to pay for common expenses for fire, trash, landscaping, road maintenance and EMT services for the Lease Pads.

SEC. 8 MAINTENANCE, REPAIR AND REPLACEMENT

(a) General Obligations

CP shall be solely responsible for maintenance, repair and replacement for the Project, including all Project Improvements and the Retained Onsite Infrastructure, and excluding the Lease Pads.

(b) Maintenance Plan

For these purposes, CP shall undertake appropriate inspections, and shall establish a Maintenance Plan consisting of specific maintenance requirements, which Maintenance Plan shall be delivered to the Enterprise for review and comment no later than 180 days prior to Opening Day. The Enterprise will comment within fifteen days. CP will respond, in writing, to the comments within fifteen days thereafter. The Parties will meet and confer to resolve any concerns. CP and the Enterprise will jointly review the Maintenance Plan at least every two years and revise as necessary.

(c) CP Repair and Replacement Reserve Fund

(1) CP shall establish and manage the CP Repair and Maintenance Reserve Fund. The funds in this Reserve shall be used to carry out repair and replacement of Project Improvements and the Retained Onsite Infrastructure that are non-recurring within a seven-year time frame. Such projects may include repair or replacement of foundations, building frames, window frames, sheathing, subfloors, drainage, rehabilitation of building systems such as electrical, plumbing, built-in heating and air conditioning, roof replacement and similar projects.

(2) Projects paid for with funds from the CP Repair and Replacement Reserve Fund will not include routine, operational maintenance of facilities or housekeeping and grounds keeping activities. Nothing in this section shall lessen the responsibility of CP to carry out the maintenance and repair of Project Improvements, the Retained Onsite Infrastructure or housekeeping and grounds keeping responsibilities as required by this Agreement from CP funds exclusive of the funds contained in the CP Repair and Replacement Reserve Fund. Any expenditure which extends the useful life or improves a capital asset may be paid for from the Fund. CP and the Enterprise shall meet and confer on a yearly basis concerning the coming year's expenditures. Any lender-required Reserve Fund can count towards this Fund.

(3) CP shall pay into the CP Repair and Replacement Reserve Fund, within forty five (45) days after the last day of each year that CP operates, beginning five years from Opening Day, an amount equal to one and one-half percent (1.5%) of CP's gross receipts from the previous year, until the Fund balance reaches three million dollars (\$3 Million). Thereafter, payments of no more than one and one-half percent (1.5%) of CP's gross receipts from the previous year will be made into the Fund in order to replenish the Fund balance to a maximum of three million dollars (\$3 Million). CP and the Enterprise will meet and confer every five years concerning the adequacy of the maximum and establish a new maximum if appropriate.

(4) The balance in the CP Repair and Replacement Reserve Fund shall be available for projects in accordance with the CP Reserve Fund's purpose. For all expenditures made for each project from the CP Repair and Replacement Reserve Fund, CP shall maintain auditable records including invoices, billings, canceled checks, and other documentation.

(5) The CP Repair and Replacement Reserve Fund shall not be used to construct Project Improvements, the Retained Onsite Infrastructure or additional improvements. CP shall obtain no ownership or other compensable interest as a consequence of the expenditure of CP Repair and Replacement Reserve Fund.

(6) If any CP Repair and Replacement Reserve funds have been obligated by CP but not expended as of the termination or expiration of this Agreement, the Enterprise and CP may enter into an agreement under which CP will expend that portion of such funds for their obligated purposes in lieu of a remittance of that portion of the unexpended funds to the Enterprise.

(d) Tram Repair and Replacement Reserve Fund

(1) CP shall establish and manage the Tram Repair and Maintenance Reserve Fund. The funds in this Reserve shall be used to carry out repair and replacement requirements of the Escalade Tram.

(2) Projects paid for with funds from the Tram Repair and Replacement Reserve Fund will not include routine, operational maintenance of the Escalade Tram. Nothing in this section shall lessen the responsibility of CP to carry out the maintenance and repair of the Escalade Tram as required by this Agreement from CP funds exclusive of the funds contained in the Tram Repair and Replacement Reserve Fund. Any expenditure which extends the useful life of the Escalade Tram may be paid for from the Fund. CP and the Enterprise shall meet and confer on a

yearly basis concerning the coming year's expenditures. Any lender or insurance-required Reserve Fund can count towards this Fund.

(3) No more than forty five (45) days after five years from Opening Day, CP, the Enterprise and the Tram Operator shall meet and establish an amount necessary to meet the anticipated repair and replacement needs for the Escalade Tram for the subsequent five years, and a contribution schedule and a maximum contribution cap sufficient to fund those anticipated needs. CP and the Enterprise shall meet and confer on a yearly basis to review and revise the anticipated repair and replacement needs for the Escalade Tram for the subsequent five years, and a contribution schedule and a maximum contribution cap sufficient to fund those anticipated needs.

(4) The balance in the Tram Repair and Replacement Reserve Fund shall be available for Escalade Tram repair and replacement needs in accordance with the Tram Reserve Fund's purpose. For all expenditures made from the Tram Repair and Replacement Reserve Fund, CP shall maintain auditable records including invoices, billings, canceled checks, and other documentation.

(5) The Tram Repair and Replacement Reserve Fund shall not be used to construct Project Improvements, the Retained Onsite Infrastructure or additional improvements. CP shall obtain no ownership or other compensable interest as a consequence of the expenditure of the Tram Repair and Replacement Reserve Fund.

(6) If any Tram Repair and Replacement Reserve funds have been obligated by CP but not expended as of the termination or expiration of this Agreement, the Enterprise and CP may enter into an agreement under which CP will expend that portion of such funds for their obligated purposes in lieu of a remittance of that portion of the unexpended funds to the Enterprise.

(e) Enterprise Repair and Replacement Reserve Fund

(1) The Enterprise shall establish and manage the Enterprise Repair and Maintenance Reserve Fund. The funds in this Reserve shall be used to carry out repair and replacement of the Project Access Road.

(2) Projects paid for with funds from the Enterprise Repair and Replacement Reserve Fund will include routine operational maintenance of the road.

(3) No more than ninety (90) days after Opening Day, CP and the Enterprise shall meet and establish the amounts necessary to fund operations, maintenance, repair and replacement for the Project Access Road for the coming five years and a contribution schedule and a maximum contribution cap sufficient to fund those anticipated needs. CP and the Enterprise shall meet and confer on a yearly basis to review and revise the anticipated operations, maintenance, repair and replacement needs for the Project Access Road for the subsequent five years, and a contribution schedule and a maximum contribution cap sufficient to fund those anticipated needs. CP will transfer the determined amounts from the Nation's Revenues of the Project to the Enterprise Repair and Maintenance Reserve Fund, pursuant to Sec. 9(b) of this Agreement.

(4) The balance in the Enterprise Repair and Replacement Reserve Fund shall be available for projects in accordance with the Reserve Fund's purpose. For all expenditures made for each project from the Enterprise Repair and Replacement Reserve Fund, the Enterprise shall maintain auditable records including invoices, billings, canceled checks, and other documentation.

SEC.9.REVENUE TO THE NATION, THE ENTERPRISE AND CP

(a)The Nation's Revenue

For the term of this Agreement, the Nation shall receive;

(1) A fee of;

- i. 8% of the total Gross Revenues of the Project for a calendar year in which the Paid Customer Admissions are eight hundred thousand customers or less; and
- ii. in a calendar year in which the Paid Customer Admissions are more than eight hundred thousand customers, 10% of the Gross Revenues of the Project proportionately attributable to the number of Paid Customer Admissions in excess of eight hundred thousand and up to one million customers; and
- iii. in a calendar year in which the Paid Customer Admissions are more than one million customers, 12% of the Gross Revenues of the Project proportionately attributable to the number of Paid Customer Admissions in excess of one million and up to one million two hundred fifty thousand customers; and
- iv. in a calendar year in which the Paid Customer Admissions are more than one

million two hundred fifty thousand customers, 14% of the Gross Revenues of the Project proportionately attributable to the number of Paid Customer Admissions in excess of one million two hundred fifty thousand and up to one million five hundred thousand customers; and

v. in a calendar year in which the Paid Customer Admissions are more than one million five hundred thousand customers, 16% of the Gross Revenues of the Project proportionately attributable to the number of Paid Customer Admissions in excess of one million five hundred thousand and up to two million customers; and

vi. in a calendar year in which the Paid Customer Admissions are more than two million customers, 18% of the Gross Revenues of the Project proportionately attributable to the number of Paid Customer Admissions in excess of two million customers; and

vii. in a calendar year in which the Paid Customer Admissions are more than two million customers, 12.5% of the Gross Revenues of the Project proportionately attributable to two million customers and 18% of the Gross Revenues of the Project proportionately attributable to the number of Paid Customer Admissions in excess of two million customers.

(viii) For purposes of counting Paid Customer Admissions and determining the application of the aforementioned fee rates, each customer entering the Operator Area shall be counted upon their initial entrance to the Operator Area for each day that they enter the Operator Area.

(2) Lease Pads Rental Revenues. 50% of the Lease Pad Rental Revenues.

(b) The Enterprise's Revenue

For the term of this Agreement, the Enterprise shall receive 2% of the Nation's Revenue, as set forth in Section 9(a) above.

(c) Distribution and Payment of the Nation's and the Enterprise's Revenues

Prior to any payments being made to the Nation and the Enterprise, payments will be made first, to satisfy any obligations under Article 9.2.2 of the Master Agreement and, second, to the Enterprise Repair and Replacement Reserve Fund as required by Section 8(e)(3) above. The remaining amounts will be distributed as follows; 98% will be transmitted to the Nation directly; 2% will be transmitted to the Enterprise directly. All payments will be made monthly by electronic transfer on or before the tenth day of the subsequent month. Monthly payments will

be based on 8% of Gross Revenues of the Project, plus 50% of the received Lease Pad Rental Revenues. At the end of the calendar year there will be a true up based on the number of Paid Customer Admissions for the year. The true up will be paid no more than 10 days following the end of the calendar year. If the funds for the true up are held in an interest bearing account, the amount due at true up will include the actual interest earned. Paid Customer Admission reports will also be transmitted on or before the tenth day of the subsequent month. Any payment or report not made within fifteen days of the due date constitutes an event of default.

(d) CP's Revenue

CP will retain;

- (1) The remainder of the Gross Revenues of the Project after payment of the Nation's and the Enterprise's Compensation as set forth above; and
- (2) 50% of the received Lease Pad Rental Revenues.

(e) Interest

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for above. The percent of interest charged will be based on the Prime Lending Rate, as published by the National Reserve System Board of Governors, effective on the date past due, plus 2 percentage points.

SEC.10. PROJECT PERSONNEL

(a) Employees

(1) CP shall comply with all labor laws, statutes, regulations, and policies applicable to the Project, including laws, statutes regulations and policies governing hiring, retention, promotion and discipline, wages and salary rates and terms, benefits, pensions, retirements, bonus and employee benefits plans.

(2) CP shall supervise and direct the personnel employed in the operation, maintenance, and security of the Project, which supervision and direction CP shall exercise in its professional judgment and discretion.

(3) CP shall provide all personnel necessary to operate the Project.

(4) CP shall comply with the Nation's Navajo Preference in Employment Act, 15 N.N.C. §§ 601, et seq. and all other Applicable Laws relating to employment and employment conditions.

(5) CP shall develop an Employee Handbook which addresses customer relations, pre-employment screening, hiring, training, employment, termination, conduct and drug and alcohol use.

SEC. 11. PROTECTION OF CULTURAL AND ARCHEOLOGICAL RESOURCES

(a) CP shall ensure that any identified protected sites and archeological resources within the Leased Premises are protected by CP, CP's employees, agents and suboperators, in accordance with Applicable Laws. CP will abide by any conditions or limitations imposed on the use of Leased Premises as a result of the Archeological Clearance process.

(b) Discoveries of any archeological or cultural resources by CP shall be promptly reported to the Enterprise and the Navajo Nation Historic Preservation Department. CP shall cease activities which may impact any archeological or cultural resource until the Navajo Nation Historic Preservation Department investigates the discovery and provides a plan to proceed, upon such terms and conditions as the Navajo Nation Historic Preservation Department deems necessary.

SEC.12. INDEMNIFICATION AND INSURANCE

(a) Indemnification

CP agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the Nation and the Enterprise, their 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 CP, its employees, agents or suboperators under this Agreement. This indemnification shall survive the termination or expiration of this Agreement.

(b) Insurance in General

(1) CP shall obtain and maintain during the entire term of this Agreement at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of the Business Site Lease for the Project Area and such additional types and coverage amounts of insurance as a prudent businessperson would purchase in similar circumstances. The insurance requirements for the operations of the Project shall be determined by CP and the Enterprise no less than one hundred eighty (180) days prior to Opening Day.

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

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

(c) Commercial General Liability

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

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this Agreement.

(3) All liability policies shall specify that the insurance company shall have no right of subrogation against the Nation or the Enterprise and shall provide that United States, the Nation and the Enterprise are named as additional insureds.

(4) From time to time, as conditions in the insurance industry warrant, the Enterprise and CP may modify the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of

insurance a prudent businessperson would purchase in similar circumstances.

(d) Property Insurance

(1) CP shall provide fire and extended insurance coverage on Project Improvements and the Retained Onsite Infrastructure for all or part of their replacement cost

(2) Commercial property insurance shall provide for CP and the Enterprise to be named insured as their interests may appear.

(3) Insurance policies that cover Project Improvements or the Retained Onsite Infrastructure shall contain a loss payable clause approved by the Enterprise which requires insurance proceeds to be paid directly to CP without requiring endorsement by the Enterprise, unless the damage exceeds \$1,000,000. The use of insurance proceeds for repair or replacement of Project Improvements or the Retained Onsite Infrastructure will not alter their character as properties of Nation and, notwithstanding any provision of this Agreement to the contrary, CP shall gain no ownership, or other compensable interest as a result of the use of these insurance proceeds.

(e) Reconstruction

(1) Reconstruction by CP. If the Project Improvements, the Retained Onsite Infrastructure, or any portion thereof, shall be damaged, destroyed, or rendered unusable at any time, or times, by fire, flood, ground subsidence, structural problems, or any other cause (whether insured or uninsured), CP will, with due diligence, repair, rebuild, or replace ("**Reconstruction**") the same portion of the Project Improvements or the Retained Onsite Infrastructure, and shall use any and all insurance proceeds payable on account of such casualty in a manner that results in the Project Improvements, the Retained Onsite Infrastructure, or portion thereof, being substantially the same after Reconstruction as prior to such damage or destruction; which use of the insurance proceeds and associated activities shall be in compliance with all applicable governmental laws or regulations. Any insurance proceeds received by the Nation and/or the Enterprise on account of such casualty shall be transferred over to CP for Reconstruction. To the extent that any insurance proceeds payable, with respect to the casualty loss, are insufficient to complete the Reconstruction, CP shall arrange, secure,

and acquire the additional funds necessary to complete the Reconstruction.

(2) Reconstruction by the Enterprise. If the Project Access Road or any portion thereof, shall be damaged, destroyed, or rendered unusable at any time, or times, by fire, flood, ground subsidence, structural problems, or any other cause (whether insured or uninsured), the Enterprise will, with due diligence, repair, rebuild, or replace (**"Reconstruction"**) the same portion of the Project Access Road, and shall use any and all insurance proceeds payable on account of such casualty in a manner that results in the Project Access Road, or portion thereof, being substantially the same after Reconstruction as prior to such damage or destruction; which use of the insurance proceeds and associated activities shall be in compliance with all applicable governmental laws or regulations. Any insurance proceeds received by CP or the Nation on account of such casualty shall be transferred over to the Enterprise for Reconstruction. To the extent that any insurance proceeds payable, with respect to the casualty loss, are insufficient to complete the Reconstruction, the Enterprise shall, pursuant to Article 10.1.2 of the Master Agreement, acquire the additional funds necessary to complete the Reconstruction.

(3) Timing. CP and/or the Enterprise shall commence any Reconstruction required pursuant to this Section within a commercially reasonable time-period after occurrence of damage or destruction to the Project Improvements, the Retained Onsite Infrastructure, the Project Access Road or any portion thereof, which shall not exceed Ninety (90) days; and thereafter, CP and/or the Enterprise shall complete such Reconstruction diligently.

SEC.13. BONDS

The Enterprise may require CP to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Enterprise, in order to ensure the proper construction of additional improvements under this Agreement and to insure compliance with the Business Site Lease for the Project Area.

SEC.14. REPORTING REQUIREMENTS

The following describes notifications required under this Agreement:

(a) Insurance Certification

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

(b) Revenue and Paid Customer Admissions Reports

CP shall submit to the Enterprise monthly on or before the tenth day of each subsequent month reports detailing the Paid Customer Admissions, and the revenue distributions as described in Section 9(c) above.

(c) Year End Reports

(1) True Up Report- CP shall submit to the Enterprise annually, within ten Business Days of the close of the books of the Project for the year, a statement detailing;

- (i) Gross Revenues of the Project
- (ii) Lease Pad Rental Revenues
- (iii) Paid Customer Admissions
- (iv) Amounts paid to satisfy any obligations under Article 9.2.2 of the Master Agreement
- (v) Amounts paid to the Enterprise Repair and Replacement Reserve Fund
- (vi) Amounts paid to the Nation
- (vii) Amounts paid to the Enterprise

(2) Statements of Reserve Fund Activity

(i) CP Repair and Replacement Reserve Fund and Tram Repair and Replacement Fund. CP shall submit to the Enterprise annually, within ten Business Days of the close of the books of the Project for the year, statements reflecting total activity in the CP Repair and Replacement Reserve Fund and the Tram Repair and Replacement Fund for the preceding

calendar year. The statements must reflect monthly inflows and outflows on a project by project basis.

(ii) Enterprise Repair and Replacement Reserve Fund. The Enterprise shall submit to CP annually, not later than one hundred twenty (120) days after the end of the calendar year, a statement reflecting total activity in the Enterprise Repair and Replacement Reserve Fund for the preceding calendar year. The statement must reflect monthly inflows and outflows on a project by project basis.

(d) Miscellaneous Reports and Data

The Enterprise from time to time may request CP to provide other reports and data regarding its performance under the Agreement when reasonable to do so.

SEC.15. EXPIRATION, EVENTS OF DEFAULT, REMEDIES, TERMINATION

(a) Expiration

The term of the Operating Agreement between the Enterprise and CP shall be for fifty years from Opening Day unless mutually extended by the parties or sooner terminated by the terms of this Agreement. No compensation will be due to CP upon expiration of the Operating Agreement.

(b) Events of Default

Each of the following shall constitute an "Event of Default":

(1) Failure by a Party to pay any amount due and payable pursuant to this Agreement within 15 days following receipt of written notice of such failure given to such defaulting Party by a non-defaulting Party.

(2) Failure by a Party to perform, keep, or fulfill any of its nonmonetary covenants, undertakings, or obligations set forth in this Agreement or the material breach of any of a Party's representations or warranties in this Agreement, if such failure or breach is not cured within 30 days following receipt of written notice specifying such failure or breach by such defaulting Party from a non-defaulting Party; provided, however, that if such failure or breach is curable but is not reasonably capable of being cured within 30 days, the defaulting Party may provide a plan, to the satisfaction of the non-defaulting Party, to cure the breach over a specified period of time

and thereafter prosecute such cure to completion with all due diligence.

(3) The filing of a petition by CP for relief under the Bankruptcy Code, or under any other present or future tribal, state or federal law regarding bankruptcy, reorganization or other debtor relief law; or the filing of any pleading or answer by CP in any involuntary proceeding under the Bankruptcy Code or other debtor relief law which admits the jurisdiction of the court or the petition's material allegations regarding CP's insolvency; or a general assignment by CP for the benefit of creditors; or application by CP for the appointment of a receiver, trustee, custodian or liquidator of CP or any of its property.

(4) Failure of CP to effect a full dismissal of an involuntary petition under the Bankruptcy Code or under any other debtor relief law that is filed against CP that in any way restrains or limits CP, the Enterprise or the Nation regarding this Agreement, prior to the earlier of the entry of any court order granting relief sought in such involuntary petition or ninety (90) days after the date of filing of such involuntary petition.

(5) Occurrence of any management or organizational change in CP or in the members or investors of CP which has a material adverse effect on the ability of CP or its members or investors to perform their obligations under this Agreement.

(c) Remedies

Upon the occurrence of an Event of Default and failure to Cure after Notice, a non-failing or non-breaching Party may pursue any or all of the following:

(1) Terminate this Agreement as provided in Section 15(d) below; or

(2) Elect to take any and all action deemed necessary by such non-defaulting Party, in such non-defaulting Party's sole and absolute discretion, to cure the default, including making payments to third parties. The non-defaulting Party shall first provide written notice to the defaulting Party of its intention to cure the default. All sums expended by the non-defaulting Party in connection with the exercise of this option shall be paid by the defaulting Party to the non-defaulting Party within fifteen (15) days of receipt by the defaulting Party of an invoice and demand for repayment of the costs, fees, and expenses to cure the Event of Default; or

(3) Pursue any other right or remedy which a non-defaulting party may have at law or in equity.

(d) Termination

This Agreement may be terminated as follows:

(1) Upon the occurrence of any Event of Default and the failure to cure after written notice, a non-defaulting Party may exercise the right to terminate by providing a written notice of termination to the defaulting Party given at least 20 days prior to the proposed termination date. If the defaulting Party cures prior to the proposed termination date, the Event of Default shall be considered remedied and this Agreement shall not be terminated. This Twenty (20)-day termination notice is in addition to any other notice or cure period provided with respect to such Event of Default.

(2) At the option of CP, exercised by written notice to the Enterprise and the Nation in the event of a suspension of the Project's development or operations for a period in excess of Ninety (90) days, but only if such suspension was due to circumstances beyond CP's reasonable control.

(e) Notice of Bankruptcy or Insolvency

CP must give the Enterprise 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. CP must also give the Enterprise immediate notice of any petition or other proceeding against CP for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this Agreement or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, the Enterprise and CP consider that this Agreement is not a lease but an executory Agreement exempt from inclusion in assets of Operator pursuant to 11 U.S.C. 365.

(f) Requirements in the Event of Termination or Expiration

Upon termination of this Agreement for any reason, or upon its expiration, and except as otherwise provided in this section, CP shall, at CP's expense;

(1) Promptly vacate the Project.

(2) Remove all of CP's personal property unrelated to the Project. The removal of such personal property must occur within fifteen (15) days after the termination of this Agreement for

any reason or its expiration.

(3) Repair any injury occasioned by installation or removal of such personal property.

(4) Ensure that Project Improvements and the Retained Onsite Infrastructure are in at least as good condition as they were at the beginning of the term of this Agreement, reasonable wear and tear excepted.

(5) Transfer to the Enterprise all governmental permits, licenses, and authorizations attendant to the operations of the Project.

(6) Transfer to the Enterprise all interests in real and personal property constructed, procured or acquired by the CP for the Project.

(7) Deliver to the Enterprise all leasehold interests and concession agreements in effect at such time and Enterprise shall accept and assume all such interests and concession agreements.

(8) Deliver to the Enterprise all keys, safe combinations, materials, and information necessary for the Project's operations, and any property of the Enterprise or the Nation in the possession of CP.

(9) Provide a list of names, addresses and telephone numbers of any persons, firms, or organizations that were performing services for the Project, or providing goods to the Project.

SEC.16. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS

(a) CP's Assignments. Except as otherwise provided in this Section, CP may not assign its interests in this Agreement to any other person, firm, or organization, without the prior written consent of the Enterprise, which shall not be unreasonably withheld. Any attempted transfer or assignment without the Enterprise's required prior written consent shall be void, understood to confer no rights whatsoever upon any third-party, and shall constitute an Event of Default pursuant to this Agreement.

(b) The Nation's Assignments. The Enterprise may assign or otherwise transfer its interests in or provided by, this Agreement to an entity that is separately managed, but wholly owned by the Nation, or its successor in interest, without the prior consent of CP. In the event the Nation and/or the Enterprise elects to make such an assignment or other transfer pursuant to this Section, then, notwithstanding any other provision of this Agreement to the contrary, the assignee or

transferee shall assume the Nation's and the Enterprise's rights and obligations provided by this Agreement.

(c) Release Requirements Associated With Assignments. Each permitted assignment or transfer occurring pursuant to this Section shall be properly evidenced by a written instrument that has been executed by the assignor/transferor and the assignee/transferee. Each such assignee shall also expressly agree in writing to assume, to be bound by, and to perform the terms, covenants, and conditions of this Agreement that otherwise would be the obligations of the assignor stated herein. The assignor or its assignee shall promptly deliver at least one executed copy of the executed proper written instrument, or instruments, to the other Parties, or the successors in interest of the non-assigning Parties. Such an assignment shall not release the assignor from such Party's obligations existing pursuant to this Agreement, unless the non-assigning Parties agree in writing to such a release. However, the Nation, as an assigning Party, shall not be subject to this release requirement in the case of an assignment pursuant to this Section. A non-assigning Party's consent to an assignment on one occasion shall not be deemed consent to any subsequent assignment(s).

(d) Lender's Rights. It is the understanding of the Parties that CP will be obtaining a loan for the construction of the Project Improvements and the Retained Onsite Infrastructure, and that said loan may be secured by this Agreement and CP's revenues to be generated through this Agreement. The Parties expressly agree that, in the event of default by CP on the terms of that loan the lender or lenders will have the right to assume the rights and responsibilities of this Agreement without the prior written consent of the Nation or the Enterprise.

Sec.17. DISPUTE RESOLUTION

(a) Arbitration. Any controversy, claim or dispute arising out of or related to this Agreement shall be resolved through binding arbitration (the "**Arbitration**"). For matters in which the amount in controversy is less than \$500,000 the Arbitration shall be conducted by a sole arbitrator; provided, however, if the Parties cannot agree upon an arbitrator, the Enterprise will select an arbitrator and CP will select an arbitrator and the two arbitrators will select the sole

arbitrator to resolve the dispute. For all other matters, the Arbitration shall be conducted by three arbitrators, unless the Parties agree otherwise or this Agreement, the Master Agreement or the Development Agreement expressly provide otherwise. The Enterprise shall choose one arbitrator; CP shall choose one arbitrator; and the Parties' chosen arbitrators shall agree upon the third arbitrator to conduct the Arbitration and decide the dispute between the Parties. Prompt disposal of any dispute is important to the Parties. The Parties agree that the resolution of any dispute shall be conducted expeditiously, to the end that the final disposition thereof shall be accomplished within 120 days or less. The Arbitration shall proceed as follows:

(1) Initiation. CP or the Enterprise may request and thus initiate arbitration of the dispute by written notice ("**Arbitration Notice**") to the other party or by an instrument mutually executed by collectively by the Parties (the "Arbitration Notice"). The Arbitration Notice shall state specifically the dispute that the initiating party wishes to submit to arbitration. If the matter to be arbitrated is the proposed termination of this Agreement, the Arbitration Notice must be filed prior to the proposed termination date.

(2) The Arbitrators. The Arbitrators shall have ten years of experience in dealing with complex commercial disputes and shall consent in writing to apply Navajo law to resolve the dispute.

(3) The Procedures. The Arbitration shall be conducted in accordance with the Navajo Nation Arbitration Act, 7 N.N.C. §§ 1101, et seq. and the Commercial Arbitration Rules of the American Arbitration Association then in effect.

(4) Scope of Arbitral Award

(i) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract.

(ii) The award of the arbitrator(s) may include:

(a) Interest at such rate and from such date as the arbitrator(s) may deem appropriate; and

(b) An award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.

(iii) Compensation, if any, due to CP upon termination of this Agreement.

(5) Judgment. The arbitral award may be reduced to a judgment in the Navajo Nation

courts as provided in the Navajo Nation Arbitration Act. In the event that the Navajo Nation Courts take no action for Forty-five days after the issuance of the arbitral award, either party may seek to obtain a judgment from the Maricopa County Superior Court for the State of Arizona. The arbitral award reduced to a judgment as described herein may be enforced through appropriate judicial proceedings in any court having jurisdiction.

(6) No Assertion of Sovereign Immunity to Impair or Impede the Arbitration. In so far as this Agreement relates to a commercial matter, and disputed commercial issues between the Parties, the Enterprise agrees that it will not assert any claim of sovereign immunity as a bar to CP's initiation of Arbitration, compelling of Arbitration, the Arbitration itself, the enforcement of an arbitral award in CP's favor, or CP's pursuit of its rights provided pursuant to this Agreement.

(7) Enforcement of Arbitral Awards. Enforcement of any arbitral award shall be consistent with Navajo law, including the limitations associated with money damages awarded against the Nation provided by current Navajo Law under 1 N.N.C. § 554(H) (3)¹, and the relevant rules promulgated by the American Arbitration Association.

(b) Governing Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the Navajo Nation.

(c) No Waiver of Sovereign Immunity. Nothing in this Agreement shall be interpreted as constituting a waiver, express or implied, of the Nation's sovereign immunity from suit.

¹ "(3) Damages against the Navajo Nation under the consent to suit granted by the Navajo Nation to Navajo contractors and/or their sureties shall be limited to damages claimed under applicable principles of contract damage law, including damages necessary to compensate for fulfilling the obligations under the bond, which shall include properly authorized change orders and properly authorized performance under owner directives to proceed done under protest, but shall not include:

- a. Punitive damages;
- b. Damages from claims arising in tort;
- c. Damages caused by delays in performance due to governmental review and approval procedures of the Navajo Nation or other governmental entity having the right to review and/or approve the contract or project; or
- d. Damages caused by delay, contract modification, or contract termination, due to delay in or failure to receive matching funds for the contract or project."

(d) Judicial Equitable Relief Not Prohibited. Although the Parties agree that they shall not be permitted to seek, and that they shall not seek monetary damages in a court of law, other than through the enforcement of an arbitral award; the Parties shall not be precluded from the pursuit and award of equitable relief, such as declaratory and injunctive relief, from the Nation's courts, which judicial equitable relief may be sought in addition to, or without, arbitral resolution of any dispute between the Parties arising pursuant to, out of, or in connection with this Agreement.

SEC.18. GENERAL PROVISIONS

(a) All information required to be submitted to the Enterprise by CP pursuant to this Agreement is confidential to the extent provided by Applicable Laws.

(b) Suboperator or other third party agreements, including management agreements, for the provision of customer services required and/or authorized under this Agreement are permitted.

(c) Any and all taxes or assessments of any nature that may be lawfully imposed by any governmental entity upon the property or business of CP shall be paid promptly by CP.

(d) No member of, or delegate to, the Navajo Nation Council shall be admitted to any share or part of this Agreement or to any benefit that may arise from this Agreement but this restriction shall not be construed to extend to this Agreement if made with a corporation or company for its general benefit.

(e) No oral representations of any nature form the basis of or may amend this Agreement. This Agreement may be extended, renewed or amended only when agreed to in writing by CP and through resolution of the Enterprise Board of Directors. Notice of such intended action by the Enterprise Board shall be sent to the Director, Division of Economic Development, no less than five days prior to the date of such intended action

(f) This Agreement does not grant rights or benefits of any nature to any third party.

(g) The invalidity of a specific provision of this Agreement shall not affect the validity of the remaining provisions of this Agreement.

(h) Waiver by the Enterprise or CP of any breach of any of the terms of this Agreement by the other party shall not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the Agreement. The subsequent acceptance of any payment of money or other performance required by this Agreement shall not be deemed to be a waiver of any preceding breach of any term of the Agreement.

(i) CP shall give the Enterprise immediate written notice of any violation of Applicable Laws by CP, including its agents or suboperators.

(j) Notices and other communications that are required or contemplated by this Agreement shall be in writing, and shall be provided by: (a) personal, in-hand delivery, (b) private courier service, with overnight delivery service, (c) United States Postal Service, certified mail, postage pre-paid, return receipt requested (which receipt shall be preserved as evidence of delivery), (d) facsimile transmission, or (e) electronic mail, addressed and transmitted to the Parties at the addresses and telecopier numbers immediately following this provision, or to such other address or telecopier number as a Party may designate to the other Party in a writing delivered in accordance with the provisions of this Section.

All notices and other materials shall be deemed to have been delivered, and shall be considered effective upon the date on which the notice is actually received. If provided by facsimile transmission or e-mail, and the receiving Party confirms receipt within 24 hours of send-off, then notice shall be deemed delivered at the time this facsimile or e-mail is sent; but if no confirmation e-mail is sent by the Party receiving the notice or communication, then such notice or communication shall be deemed received 72 hours after the facsimile or e-mail was sent.

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

Navajo Nation Hospitality Enterprise
PO Box 2340
48 West Highway 264
Window Rock, AZ 86515
Fax No.: 928-871-5466
Telephone No.: 928-871-4108
Email address: gm.az236@choicehotels.com

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

Confluence Partners, LLC
Attn: R. Lamar Whitmer, Managing Partner
7343 E. Camelback Rd., Suite D
Scottsdale, AZ 85251
Fax No.: 480-945-4879
Telephone No.: 480-945-4879
Email address: rlw@fulcrumgroup.com

With a copy to:

Michael C. Nelson, Esq.
1131 E. Coronado Rd.
Phoenix, AZ 85006
Fax No.: 602-241-3326
Telephone No.: 602-803-3593
Email address: Michael.Nelson@azbar.org

(k) Time Periods. Except as otherwise expressly provided for in this Agreement, the time for performance of any obligation or the deadline for taking any action required pursuant to this Agreement shall be deemed to expire at 5:00 p.m. Mountain Standard Time on the final day of the applicable time-period provided for in this Agreement. If the time-period or deadline for the performance of any obligation or taking any action pursuant to this Agreement expires on a day

other than a Business Day, the time for performance or taking such action shall be extended to the next Business Day, as defined herein, or otherwise defined by the Parties pursuant to this Agreement.

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

NAVAJO NATION HOSPITALITY ENTERPRISE

By _____

Chairman, Board of Directors

DATE: _____, 20__

CONFLUENCE PARTNERS, L.L.C.

By _____

R. Lamar Whitmer, Managing Partner

DATE: _____, 20__

EXHIBIT H-1

CONDITIONAL USE PERMIT-PROJECT AREA

**CONDITIONAL USE PERMIT FOR PROJECT AREA
BY AND BETWEEN THE NAVAJO NATION AND CONFLUENCE PARTNERS**

This Conditional Use Permit ("Permit") is entered into by and between Confluence Partners, LLC ("CP"), an Arizona limited liability company, and the Navajo Nation ("Nation").

WHEREAS, by Resolution No. BA-09-092-12, the Bodaway/Gap Chapter approved the withdrawal of up to 420 acres of land within the Bodaway/Gap Chapter for the purposes of development of the "Grand Canyon Escalade Project" by CP which development includes a tram from the rim to the bottom of the Grand Canyon, as well as tourism development activities at the rim and related rights of way necessary to provide access and utilities; and

WHEREAS, by Resolution No. _____, the Navajo Nation has approved proceeding with the Project, has executed the Master Agreement and has withdrawn approximately 420 acres of land described in Exhibit A and depicted in Exhibit B-1 to the Master Agreement (the "Project Area") for the Grand Canyon Escalade Project; and

WHEREAS, as provided in the Master Agreement, it is the intention of the Navajo Nation to enter into a Business Site Lease with Navajo Nation Hospitality Enterprise (the "Enterprise") to act as lessee with respect to the Project Area; and for Enterprise to enter into a Development Agreement and an Operating Agreement with CP to develop and operate the Grand Canyon Escalade Project; and

WHEREAS, pursuant to the terms of the Master Agreement, it is CP who is charged with the responsibility to conduct the necessary studies to complete the environmental, cultural and archeological clearances which would permit Enterprise to enter into a business site lease with the Nation for the Project Area.

NOW, THEREFORE, the parties to this Permit agree to the following:

1. CP agrees:
 - a. To enter, occupy and conduct activities within the Project Area for the purposes of (i) obtaining clearances related to archeological and cultural resources and environmental laws in order to comply with the requirements for executing a business site lease and (ii) developing a final site plan for the Project;
 - b. To maintain liability insurance up to an aggregate \$2,000,000 with limits of \$1,000,000 per occurrence within the Project Area. The insurance shall include the Nation and the United States as additional insured parties. A copy of the certificates shall be provided to the Director, Division of Economic Development, prior to entering the Project Area;
 - c. To provide security and be responsible for any and all costs associated with occupation of the Project Area; and

- d. To leave the Project Area in substantially its current condition at the termination of this Permit.
2. The Navajo Nation agrees to charge no rental fee for the use of the Project Area.
3. The effective date ("Effective Date") of the Permit shall be the date this Permit is last signed by the Parties hereto.
4. This Permit shall terminate on the earliest of three (3) years from the Effective Date, the execution of a business site lease, or the determination that no business site lease will be issued due to the inability to meet the archeological, cultural or environmental clearance requirements, unless sooner terminated for cause.
5. Any controversy, claim or dispute arising out of or related to this Permit shall be resolved as follows:
 - a. The resolution mechanism shall be arbitration. For matters in which the amount in controversy is less than \$500,000 the arbitration shall be conducted by a sole arbitrator; provided, however, if the Parties cannot agree upon an arbitrator, the Nation will select an arbitrator and CP will select an arbitrator and the two arbitrators will select the sole arbitrator to resolve the dispute. For matters in which the amount in controversy is \$500,000 or more, the arbitration shall be conducted by three arbitrators. The Nation shall choose one arbitrator; CP shall choose one arbitrator; and the Parties' chosen arbitrators shall agree upon the third arbitrator that panel shall conduct the arbitration and decide the dispute between the Parties. Prompt resolution of any dispute is important to the Parties. The Parties agree that the arbitration shall be conducted expeditiously, to the end that the final disposition thereof shall be accomplished within 120 days or less. The arbitration shall proceed as follows:
 - i. Initiation. The Nation or CP may request and thus initiate arbitration of the dispute by written notice ("Arbitration Notice") to the other party or by an instrument mutually executed by the Parties (the "Arbitration"). The Arbitration Notice shall state specifically the dispute that the initiating party wishes to submit to arbitration.
 - ii. The Arbitrators. All Arbitrators shall have shall have 10 years of experience in dealing with complex commercial disputes and shall consent in writing to apply Navajo law to resolve the dispute.
 - iii. Procedure. The Arbitration shall be conducted in accordance with the Navajo Nation Arbitration Act, 7 N.N.C. §§ 1101, *et seq.* and the Commercial Arbitration Rules of the American Arbitration Association then in effect, as limited by Subsection "e" below.

- iv. Judgment. The arbitral award may be reduced to a judgment in the Navajo Nation courts as provided in the Navajo Nation Arbitration Act. In the event that the Navajo Nation Courts take no action for Forty-five (45) days after the issuance of the arbitral award, either party may seek a judgment from the Maricopa County Superior Court for the State of Arizona. The arbitral award reduced to judgment as described herein may be enforced through appropriate judicial proceedings in any court of competent jurisdiction.
- b. Governing Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the Navajo Nation.
- c. No Waiver of Sovereign Immunity. Nothing in this Agreement shall be interpreted as constituting a waiver, express or implied, of the Nation's sovereign immunity from suit.
- d. No Assertion of Sovereign Immunity to Impair or Impede the Arbitration. Insofar as this Agreement relates to a commercial matter, and disputed commercial issues between the Parties, the Nation agrees that it will not assert any claim of sovereign immunity as a bar to CP's initiation of arbitration, compelling of arbitration, the Arbitration itself, the enforcement of an arbitral award in CP's favor, or CP's pursuit of its rights provided pursuant to this Agreement.
- e. Enforcement of Arbitral Awards. Enforcement of any arbitral award shall be consistent with Navajo law, including the limitations associated with money damages awarded against the Nation provided by 1 N.N.C. § 554(H)(3), and the relevant rules promulgated by the American Arbitration Association.
- f. Judicial Equitable Relief Not Prohibited. Although the Parties agree that they shall not be permitted to seek, and that they shall not seek monetary damages in a court of law, other than through the enforcement of an arbitral award; the Parties shall not be precluded from the pursuit and award of equitable relief, such as declaratory and injunctive relief, from the Nation's courts, which judicial equitable relief may be sought in addition to, or without, arbitral resolution of any dispute between the Parties arising pursuant to, out of, or in connection with this Agreement.

IN WITNESS WHEREOF, the Parties, acting by and through their duly authorized officers or representatives, have each duly executed this Agreement on the date(s) provided below.

The NAVAJO NATION:

By _____

Russell Begaye, President

Date: _____

CONFLUENCE PARTNERS, LLC

By _____

Its _____

Date: _____

EXHIBIT H-2

CONDITIONAL USE PERMIT-INFRASTRUCTURE STUDY
CORRIDORS

**CONDITIONAL USE PERMIT FOR STUDY CORRIDORS
BY AND BETWEEN THE NAVAJO NATION AND CONFLUENCE PARTNERS**

This Conditional Use Permit ("Permit") is entered into by and between Confluence Partners, LLC ("CP"), an Arizona limited liability company, and the Navajo Nation ("Nation").

WHEREAS, by Resolution No. BA-09-092-12, the Bodaway/Gap Chapter approved the withdrawal of rights of way necessary to provide access and utilities to 420 acres of land within the Bodaway/Gap Chapter for the purposes of a tourism development at the rim of the Grand Canyon and to the river below referred to as the "Grand Canyon Escalade Project"; and

WHEREAS, by Resolution No. _____, the Navajo Nation has approved proceeding with the Project, has executed the Master Agreement and has identified land within which "Offsite Infrastructure" to the Project can be developed. Offsite Infrastructure means all infrastructure improvements to the Project Area boundary including (i) an all-weather access road from US 89, including Project monuments and signage, (ii) electrical transmission lines, (iii) telecommunication lines, and (iv) potable water lines and water storage tanks as described in Exhibit A and depicted in Exhibit C to the Master Agreement (the "Offsite Infrastructure Study Corridors" or "Study Corridors"); and

WHEREAS, as provided in the Master Agreement, it is the intention of the Navajo Nation to enter into business site leases with Navajo Nation Hospitality Enterprise (the 'Enterprise') to act as lessee with respect to the land on which the Offsite Infrastructure will be developed; and

WHEREAS, pursuant to the terms of the Master Agreement, it is CP who is charged with the responsibility to conduct the necessary studies to complete the and archeological, cultural and environmental clearances which would permit Enterprise to enter into business site leases with the Nation for the Offsite Infrastructure.

NOW, THEREFORE, the parties to this Permit agree to the following:

1. CP agrees:
 - a. To enter, occupy and conduct activities within the Study Corridors for the purposes of (i) identifying the land on which the Offsite Infrastructure will be developed and (ii) obtaining clearances related to archeological and cultural resources and environmental laws in order to comply with the requirements for executing a business site lease;
 - b. To maintain liability insurance up to an aggregate \$2,000,000 with limits of \$1,000,000 per occurrence within the Study Corridors. The insurance shall include the Nation and the United States as additional insured parties. A copy of the certificates shall be provided to the Director, Division of Economic Development, prior to entering the Study Corridors;

- c. To provide security and be responsible for any and all costs associated with occupation of the Study Corridors; and
 - d. To leave the Study Corridors in substantially its current condition at the termination of this Permit.
- 2. The Navajo Nation agrees to charge no rental fee for the use of the Study Corridors.
- 3. The effective date ("Effective Date") of the Permit shall be the date this Permit is last signed by the Parties hereto.
- 4. This Permit shall terminate on the earliest of three (3) years from the Effective Date, the execution of the last business site lease necessary to develop the Offsite Infrastructure, or the determination that no business site lease will be issued due to the inability to meet the archeological, cultural or environmental clearance requirements, unless sooner terminated for cause.
- 5. Any controversy, claim or dispute arising out of or related to this Permit shall be resolved as follows:
 - a. The resolution mechanism shall be arbitration. For matters in which the amount in controversy is less than \$500,000 the arbitration shall be conducted by a sole arbitrator; provided, however, if the Parties cannot agree upon an arbitrator, the Nation will select an arbitrator and CP will select an arbitrator and the two arbitrators will select the sole arbitrator to resolve the dispute. For matters in which the amount in controversy is \$500,000 or more, the arbitration shall be conducted by three arbitrators. The Nation shall choose one arbitrator; CP shall choose one arbitrator; and the Parties' chosen arbitrators shall agree upon the third arbitrator that panel shall conduct the arbitration and decide the dispute between the Parties. Prompt resolution of any dispute is important to the Parties. The Parties agree that the arbitration shall be conducted expeditiously, to the end that the final disposition thereof shall be accomplished within 120 days or less. The arbitration shall proceed as follows:
 - i. Initiation. The Nation or CP may request and thus initiate arbitration of the dispute by written notice ("Arbitration Notice") to the other party or by an instrument mutually executed by the Parties (the "Arbitration"). The Arbitration Notice shall state specifically the dispute that the initiating party wishes to submit to arbitration.
 - ii. The Arbitrators. All Arbitrators shall have shall have 10 years of experience in dealing with complex commercial disputes and shall consent in writing to apply Navajo law to resolve the dispute.

- iii. Procedure. The Arbitration shall be conducted in accordance with the Navajo Nation Arbitration Act, 7 N.N.C. §§ 1101, *et seq.* and the Commercial Arbitration Rules of the American Arbitration Association then in effect, as limited by Subsection "e" below.
- iv. Judgment. The arbitral award may be reduced to a judgment in the Navajo Nation courts as provided in the Navajo Nation Arbitration Act. In the event that the Navajo Nation Courts take no action for Forty-five (45) days after the issuance of the arbitral award, either party may seek a judgment from the Maricopa County Superior Court for the State of Arizona. The arbitral award reduced to judgment as described herein may be enforced through appropriate judicial proceedings in any court of competent jurisdiction.
- b. Governing Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the Navajo Nation.
- c. No Waiver of Sovereign Immunity. Nothing in this Agreement shall be interpreted as constituting a waiver, express or implied, of the Nation's sovereign immunity from suit.
- d. No Assertion of Sovereign Immunity to Impair or Impede the Arbitration. Insofar as this Agreement relates to a commercial matter, and disputed commercial issues between the Parties, the Nation agrees that it will not assert any claim of sovereign immunity as a bar to CP's initiation of arbitration, compelling of arbitration, the Arbitration itself, the enforcement of an arbitral award in CP's favor, or CP's pursuit of its rights provided pursuant to this Agreement.
- e. Enforcement of Arbitral Awards. Enforcement of any arbitral award shall be consistent with Navajo law, including the limitations associated with money damages awarded against the Nation provided by 1 N.N.C. § 554(H)(3), and the relevant rules promulgated by the American Arbitration Association.
- f. Judicial Equitable Relief Not Prohibited. Although the Parties agree that they shall not be permitted to seek, and that they shall not seek monetary damages in a court of law, other than through the enforcement of an arbitral award; the Parties shall not be precluded from the pursuit and award of equitable relief, such as declaratory and injunctive relief, from the Nation's courts, which judicial equitable relief may be sought in addition to, or without, arbitral resolution of any dispute between the Parties arising pursuant to, out of, or in connection with this Agreement.

IN WITNESS WHEREOF, the Parties, acting by and through their duly authorized officers or representatives, have each duly executed this Agreement on the date(s) provided below.

The NAVAJO NATION:

By _____

Russell Begaye, President

Date: _____

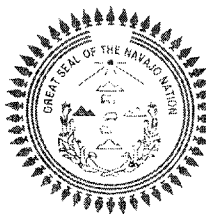
CONFLUENCE PARTNERS, LLC

By _____

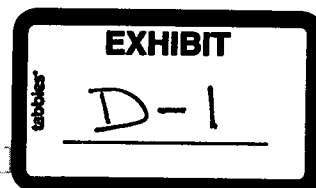
Its _____

Date: _____

THE NAVAJO NATION



BEN SHELLY PRESIDENT
REX LEE JIM VICE PRESIDENT



MEMORANDUM:

TO : 2 NNC § 164 Reviewers
Delegates & 2 NNC '164 Reviewers
Navajo Nation Government

FROM : Robert Willie
Robert Willie, General Accounting Supervisor
Office of the Controller

DATE : October 17, 2014

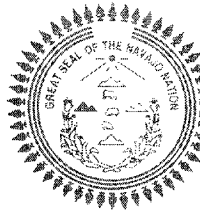
SUBJECT : 164 Review-2368-Master Agreement between NN and Grand Canyon Escalade Project

The Office of the Controller has reviewed the above referenced document.

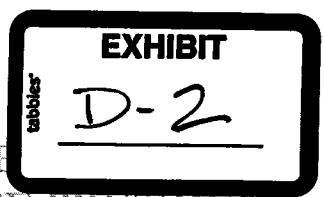
1. The project will cost up to \$65 million dollars. It is unknown who will fund this amount. How are the funds going to be utilized? The memo from Sacred Wind speaks to a loan, who is securing this loan and where is the funding source to pay back this loan.
2. The project team wishes to withdraw 420 acres of land within the Bodaway/Gap Chapter for the project
3. The team wishes to have conditional use permits to conduct preliminary and final design and engineering work, and environmental, archaeological and cultural clearances for the location of the Project Improvements and the Business Site leases for the project area.
4. As part of the agreement the enterprise wishes to be tax exempt.
5. The project appears to be a high risk project.

If you should have any questions you can contact me at tribal extension X6125.

THE NAVAJO NATION



BEN SHELLY PRESIDENT
REX LEE JIM VICE PRESIDENT



MEMORANDUM:

TO : 2 NNC § 164 Reviewers
Delegates & 2 NNC '164 Reviewers
Navajo Nation Government

FROM : Robert Willie
Robert Willie, General Accounting Supervisor
Office of the Controller

DATE : November 17, 2014

SUBJECT : 164 Review-2368-Master Agreement between NN and Grand Canyon Escalade Project

The Office of the Controller has reviewed the above referenced document.

1. The project will cost up to \$65 million dollars. The project funding will be provided by Sacred Mountain, LLC. See letter attached dated October 6, 2014 from Joe Bergen, Owner/President of Sacred Mountain, LLC. There is no loan agreement in place at present with a stated interest rate or number of years. The method of repayment of this loan is not identified within the documents provided. The language in the draft resolution has been amended in the resolved clause number 12 which changed the language speaking to Navajo Nation Funds in the amount of 65,000,000 is hereby authorized, to a third party which will be securing the funding. The proceeds from the project will be the payback method as understood from a meeting with Mr. Albert Damon and Deswood Tome.
2. The other questions have been addressed by an undated memo from Mr. Damon which is included within the 164.

If you should have any questions you can contact me at tribal extension X6125.

THE NAVAJO NATION



BEN SHELLY PRESIDENT
REX LEE JIM VICE PRESIDENT

EXHIBIT

tabbker

D-3

Mr. Robert Willie
General Accounting Supervisor
Office of the Controller, Navajo Nation
P.O. Box 3150
Window Rock, Navajo Nation (AZ) 86515

RE: Grand Canyon Escalade

Dear Mr. Willie,

The DED has received your Memorandum dated 10/17/2014 regarding the 164 review of the Master Agreement between the NN and the Grand Canyon Escalade Project. We have answered your concerns and they are noted below for your review and records.

The responses follow your line of questioning and are provided below in red:

1. The project will cost up to \$65 million. It is unknown who will fund this amount. How are the funds going to be utilized? The [letter] from Sacred [Mountain] speaks to a loan, who is securing this loan and where is the funding source to pay back this loan.

The Navajo Nation is responsible for funding \$65 Million for the construction of the offsite improvements.

The funds will be for offsite infrastructure, consisting of a paved road, a water line, an electrical line and communications. All improvements can and will be used by other local beneficiaries to support housing and livestock production. These improvements are within the area formerly known as the Bennett Freeze.

The Navajo Nation will be pledging its' franchise fee revenue from the project to repay the loan.

2. The project team wishes to withdraw 420 acres of land within the Bodaway/Gap Chapter for the project.

While this issue has nothing to do with the scope of review by the Comptroller's office, it is correct that the project team wishes to, upon completion of and subject to environmental, archaeological and cultural clearances, withdraw the 420 acre site and other lands necessary for the offsite infrastructure. Currently there is a Chapter resolution that supports the withdrawal.

3. The team wishes to have conditional use permits to conduct preliminary and final design and engineering work, and environmental, archaeological and cultural clearances for the location of the Project improvements and the Business Site leases for the project area.

See the response above to Issue Two.



4. As part of the agreement the enterprise wishes to be tax exempt.

It is our understanding that the Navajo Nation Hospitality Enterprise is a wholly owned by the Navajo Nation and as such enjoys a form of tax exempt status. All project revenue would be subject to Navajo Nation sales taxes.

5. The project appears to be a high risk project.

The Navajo Nation's risks are minimal. The Nation is not required to expend any funds until the permitting is completed.

The Grand Canyon tourism market is a known quantity and actually exhibited growth during 2008 recession. Attached is a matrix of revenues to the Nation based four levels of Visitor spending and seven visitor attendance levels.

Thank you for your prompt review of the documents and do not hesitate to contact us directly if you require further communications regarding this 164 review of the Master Agreement.

A handwritten signature in black ink, appearing to read "Albert A. Damon Jr.", is written over a horizontal line.

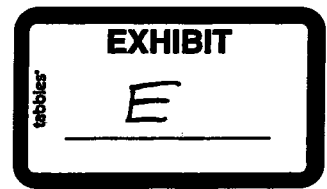
Sincerely,
Albert A. Damon Jr.
Division Director Economic Development
Navajo Nation

CC: File, Escalade



THE NAVAJO NATION

POST OFFICE BOX 9000 • WINDOW ROCK, AZ 86515 • (928) 871-6000



BEN SHELLY
PRESIDENT

REX LEE JIM
VICE-PRESIDENT

MEMORANDUM

TO : Albert Damon Jr., Division Director
Division of Economic Development

FROM : Lisa Jymm
Lisa Jymm, Principal Budget Analyst
Office of Management & Budget

DATE : August 19, 2014

SUBJECT : OMB's Review of 164 Document #002368

The Office of Management & Budget (OMB) has reviewed the above document and has the following comments:

1. The program does not indicate where the funds to cover the \$65 million Grand Canyon Escalade project will be coming from.

The 164 documents will be returned to the program for corrections. If there are any further questions, contact the Office of Management and Budget at extension 6046.

Concurred by:

Dominic Beyal, Executive Director
Office of Management and Budget

Note: 10/6/14 letter from Sacred Mountain, LLC, indicates they would be the source of the \$65 million for infrastructure costs.

*DBeyal, ED, OMB
10-14-14*

xc: OMB File



Sacred Mountain LLC



October 6, 2014

Albert Damon, Jr., Director
Division of Economic Development
Navajo Nation
P.O. Box 663
Window Rock, Arizona 86515

Via: email to adamon@navajo-nsn.gov

Subject: Financing \$65 million of Off-site Infrastructure for the Grand Canyon Escalade Project

Dear Mr. Damon:

After reviewing the Grand Canyon Escalade Council Briefing Book, and meeting with you, my attorneys, Ben Shelly, Navajo Nation President and Confluence Partners, we have concluded the Escalade project is very feasible and will be a significant economic driver for the Navajo people.

Given that the \$65 million loan proceeds will be used for off-site infrastructure, the interest on the financing should be eligible for tax exempt status. This will be a significant benefit in reducing the Nation's interest payments. Currently the "A" rated 20 year tax exempt bond yield is 3.65% (source: http://www.fmsbonds.com/Market_Yields/index.asp).

Accordingly, we are highly confident, subject to standard and customary industry underwriting criteria, that we can cause the funding of the \$65 million needed for off-site infrastructure.

We look forward to working on this project, and stand ready, willing and able to start as soon as the Council gives its approvals.

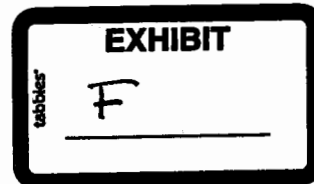
Sincerely,

Joe Bergen, Owner/President

365 Sparks Blvd. #500 – Sparks, Nevada 89434
Phone: (928) 214-1803 • Fax: (928) 496-1180



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL



ETHEL B. BRANCH
ATTORNEY GENERAL

RODGERICK T. BEGAY
ACTING DEPUTY ATTORNEY GENERAL

MEMORANDUM

TO: Levon Henry, Chief Legislative Counsel
Office of Legislative Counsel

FROM:


Rodgerick T. Begay, Acting Deputy Attorney General
Navajo Nation Department of Justice

DATE: August 24, 2016

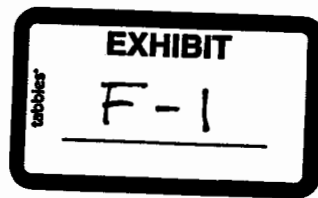
SUBJECT: **Exhibits for Proposed Legislation to the Grand Canyon Escalade Project**

Generally, exhibits to legislations are posted online for public view. Pursuant to 2 N.N.C. §164(A)(6), "[a]ny matters or exhibits determined by the Navajo Nation Department of Justice to be confidential shall be properly marked 'confidential' and shall not be placed on the website or otherwise released." One of the exhibits to the above-mentioned legislation is a DOJ memorandum dated December 18, 2014 and it has been marked as exhibit F-1. The DOJ attorney who drafted that memorandum indicated that it was attorney-client privileged and confidential. The memorandum indicates numerous legal issues with the proposed Master Agreement.

The December 2014 memorandum was issued with the expectation that the legal issues would be addressed. It appears that the issues have not been addressed. Pursuant to 2 N.N.C. §1964(G), the Attorney General may waive attorney-client privileged communications when it advances the overall legal interests of the Navajo Nation Government. However, the Attorney General may have a potential conflict. In such situations and in the spirit of the authorities provided to the Deputy Attorney General under 2 N.N.C. §1962(C), I hereby waive the attorney-client privilege to allow for the publication of the DOJ memorandum dated December 18, 2014 marked as exhibit F-1 because, I find that the legal concerns still remain in the draft Master Agreement. The committees and the Navajo Nation Council ought to be fully aware of the concerns raised by DOJ in that memorandum when considering this proposed legislation.



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL



HARRISON TSOSIE
Attorney General


DANA L. BOBROFF
Deputy Attorney General

ATTORNEY CLIENT PRIVILEGED
and
2 N.N.C. §110 (F) CONFIDENTIAL MATERIAL

MEMORANDUM

TO: 2 N.N.C. § 164 Reviewers

FROM:


Henry S. Howe, Counsel
Office of the Attorney General

DATE: December 18, 2014

SUBJECT: Document Review (aka "164 Review") Packet #2368: Master Agreement - Grand Canyon Escalade Project and related agreements

The Grand Canyon Escalade Project is a tourism destination featuring a gondola tramway to the floor of the Grand Canyon and involving the development of several hotels, restaurants and retail stores. The Nation would lease 420 acres plus corridors for a roadway and utility infrastructure to the Navajo Nation Hospitality Enterprise which would enter into a Development Agreement and an Operating Agreement with Confluence Partners ("CP" or "the developer").

The Department of Justice has reviewed the above referenced document and related attachments and finds the documents insufficient as follows:

1. Financing of the Project: Offsite infrastructure costs are the obligation of the Nation and are estimated to be \$65 million in 2014 dollars. There is no identification of the source of the \$65 million. In addition, there has been no "budget impact analysis" as required by 12 N.N.C. §§ 810 and 820. The package includes a single one-page letter from Sacred Mountain LLC executed by Joe Bergen, Owner/President that provides that Sacred Mountain "can cause the funding of the \$65 million needed for off-site infrastructure." It is not a commitment to fund nor does it provide any of the terms and conditions of a "loan." Moreover, in the event that the Nation fails to provide proof of adequate funding currently estimated to be \$65 million, § 9.2.2 of the Master Agreement provides that Confluence Partners may declare an event of default and remedy the default "by arranging, securing and acquiring additional funding" in which case the loan would be secured by the revenues to be received by the Nation, the Nation would be obligated to repay the loan on the terms negotiated by the Nation but would also be required to

Attorney Client Privileged and 2 N.N.C. §110(F) Confidential Material

Memorandum To: 2 N.N.C. § 164 Reviewers

RE: Document Review (aka "164 Review") Packet #2368: Master Agreement – Grand Canyon Escalade Project and related agreements

December 18, 2014

Page 2 of 4

pay a fee to Confluence Partners of "10% per year on any outstanding balance owed by the Nation." In the first years of repayment the outstanding balance would be close to the \$65 million borrowed. In reviewing the Navajo Nation Revenue Matrix provided in the package, it is quite possible that there would not be sufficient revenues for the Nation to repay the lender and the CP fee. If there are 800,000 visitors in a year and the average visitor spend is \$125, then the Nation's share of Project revenues would be \$8,000,000 and the 10% of the outstanding balance of \$65,000,000 would be \$6,500,000. If the interest rate is 3.25% as suggested by Sacred Mountain, the annual payment on a 20 year term would be \$4,425,000. In total this would be a total annual commitment of \$11,085,000, substantially more than the annual revenues generated. Note, on the revenue side, this analysis does not include sales tax revenues and hotel tax revenues and on the expense side, it does not include the 2% or \$160,000 owed to Hospitality Enterprise the contributions to the Enterprise Repair and Replacement Reserve Fund required by § 8(e)(3) of the Operating Agreement.

2. Financing of the Project: Payment of Hospitality Enterprise a fee of \$5,000 per month plus expenses commencing on the effective date and continuing through the first 90 days of operation and thereafter 2% of the Nation's revenues. Neither the Master Agreement nor the Council Resolution identifies the source of the funds to pay Hospitality Enterprise. This is an operating expense, not a Capital expense and is a payment to a tribal enterprise which could continue for a number of years before the Project was ready to open. No budget impact analysis has been completed by the Office of Management and Budget of these financial requirements.

3. Financing of the Project: The Navajo Nation is obligated to provide certain safety services (e.g. police) once the Project is opened. Neither the Master Agreement nor the Council Resolution identifies the source of funds to pay for the safety services. No budget impact analysis has been completed by the Office of Management and Budget of these additional financial requirements.

4. The Project Area Includes Lands for which Jurisdiction is in Dispute. The Project is designed to bring visitors to the floor of the Grand Canyon by means of a gondola tramway. The National Park Service has challenged the boundary of the Navajo Nation in the area that the tram would occupy. Neither the Master Agreement, nor the Council Resolution nor any of the ancillary documents provides a mechanism for resolving this dispute in a timely fashion.

5. Ability to Terminate for Lack of Progress by the Developer. Execution of the Master Agreement would permit the developer Confluence Partners to have a nonrevocable license and right to enter upon and occupy the Project area in order to develop and operate the Project. Master Agreement §3.2. The developer would have control of the site as the operator for the development period and for an additional 50 years from the date that the Project opens for business. If this were a standard business site lease rather than a Master Agreement/Development Agreement/Operating Agreement, the developer/lessee would be required to complete the development within a stated period of years. If the proposed development did not take place within that time period, then the lessee would lose its rights

Attorney Client Privileged and 2 N.N.C. §110(F) Confidential Material

Memorandum To: 2 N.N.C. § 164 Reviewers

RE: Document Review (aka "164 Review") Packet #2368: Master Agreement – Grand Canyon Escalade Project and related agreements

December 18, 2014

Page 3 of 4

under the terms of the lease and the rights to the land would revert to the Nation. In this case, there is no such protection, the developer could tie up the property for a significant period of time during which there might be no revenue generation and there would be no ability for the Nation to terminate the related agreements and reclaim the rights to the property. Moreover, while the Nation has no right to terminate the agreement for inactivity, the developer does have the right to terminate the agreement if the Project's development or operations is suspended for a period in excess of 90 days if such suspension is due to circumstances beyond CP's reasonable control. Master Agreement § 11.3.2.

6. No formal determination of the estimate of damages by the Land Department has been made as required by 16 N.N.C. § 1403. The 420 acres are located within the area known as the former Bennett Freeze. As a result, there has been little or no commercial or customary use activity within the 420 acres. The Master Agreement and Council Resolution provide for the immediate withdrawal of the 420 acres and the granting of Conditional Use Permits which would allow for conducting environmental, archeological and cultural clearances. While little or no activity has been conducted within this area, there is some physical evidence of customary uses on the site. Under 16 N.N.C. § 1403, the Navajo Nation Land Department shall estimate the possible payments to be made to users of the land and the CP would be required to deposit with the Controller "an amount equal to at least double the estimate of damage." While the developer has made significant efforts to identify customary users, the Land Department has not estimated the damages and there is no provision for setting aside funds before the withdrawal would occur.

7. No ability on behalf of the Nation or Hospitality Enterprise to lease out the lease pads in the event that the developer fails to actively pursue the leases. The developer is listed as the exclusive marketer of the lease pads and retains 50% of the lease pad revenues. Operating Agreement § 7(a). In the event that the developer failed to lease out the pads within a time certain, there is no provision that would allow the Nation or Hospitality Enterprise to directly lease the pads and retain the portion of the lease revenues allocated to the developer.

8. Compliance with Navajo Law including the Business Opportunity Act. Throughout the negotiations between the Navajo Nation negotiating team and the developer, the Navajo Nation negotiating team made it clear to the developer that compliance with the Business Opportunity Act including the opportunity for a Priority 1 or Priority 2 contractor to be the successful bidder in the design and construction of the Project was a requirement of Navajo law. The Business Opportunity Act provides as follows: "[i]t is the intent of this Act to grant first opportunity and contracting preference to qualified Navajo-owned or Indian-owned businesses for all contracts, subcontracts, grants and sub-grants issued by public and private entities within the Navajo Nation." 5 N.N.C. § 2. During the negotiations, the only designer or engineer that the developer indicated would be sole sourced was the tram designer Doppelmayer. At no time during the negotiations did the developer indicate that the contractor would be Sundt construction, although one of the principals did note that he had been discussing the project with Sundt. Nevertheless in a Council Briefing book distributed in February 2014, the developer included the following language: "[i]n addition to the Company's Operating Members, the

Attorney Client Privileged and 2 N.N.C. §110(F) Confidential Material

Memorandum To: 2 N.N.C. § 164 Reviewers

RE: Document Review (aka "164 Review") Packet #2368: Master Agreement – Grand Canyon Escalade Project and related agreements

December 18, 2014

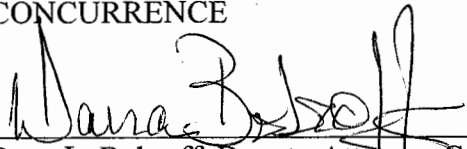
Page 4 of 4

project team members are:" Sundt Construction (general contractor), Mike Lee Designs (architect), Swaback Partners (architect and community planning), Gilmore Planning and Landscape Architecture (landscape architect), Tmad Taylor and Gaines (engineering) and Doppelmayr/Garaventa Group (tram engineering). This selection of a team that includes not a single Priority 1 or 2 contractor or designer is anathema to the intent of 5 N.N.C. § 2 and inconsistent with the language of § 2.2.4 of the Development Agreement.

9. Failure to codify language that subjects third parties to potential violation of Navajo Law. Paragraph 9 of the Council Resolution provides that "any construction or operation of any businesses in violation of the [covenant not to compete of Section 15.1 of the Master Agreement] is a violation of Navajo law. However the caption of the Council resolution does not put individuals on notice of this provision, nor is there specific language within the Council resolution that explains who and what activities may be in violation of Navajo law. The Master Agreement § 15.2.1 provides quite broadly that "any business activities included within the Project are "Nation Competing Business" which would be in violation of Navajo law. 2 N.N.C. § 165 provides that "[a]ll resolutions proposing new laws or amendments of laws are legislation and shall clearly indicate new language by underscoring the new language and deletion by overstrike and shall refer to appropriate Navajo Nation Code Titles and Sections." The resolution is insufficient in failing to identify the titles and sections of the Navajo Nation Code that would be modified by this Council resolution.

For the reasons set forth above, Document Review Packet #2368 is deemed legally insufficient.

CONCURRENCE



Dana L. Bobroff, Deputy Attorney General
Office of the Attorney General

xc: Levon Henry, Chief Legislative Counsel
: Mariana Kahn, Attorney
Office of Legislative Counsel

THE NAVAJO NATION



BEN SHELLY PRESIDENT
REX LEE JIM VICE PRESIDENT

EXHIBIT

F-2

MEMORANDUM:

TO: The Honorable Ben Shelly
President, The Navajo Nation

FROM:

A handwritten signature in black ink, appearing to read "Albert Damon".

Albert Damon, Executive Director
Division of Economic Development

A handwritten signature in black ink, appearing to read "Deswood Tome".

Deswood Tome, Special Advisor to the President
Office of the President and Vice President

Date: January 14, 2015

RE: Grand Canyon Escalade Project

The Navajo Nation is in an economic sustainability crisis. The Nation needs dedicated creative action to overcome our dilemma of a growing population with an over reliance on nonrenewable coal revenues and the Nation's dependence on declining federal revenues. When you appointed me to head Economic Development, you charged me with finding and securing projects that will create jobs and provide sustainable economic opportunities for the Navajo people.

Grand Canyon Escalade is such a project. Mr. Tome's and my objective in negotiating the agreements on Escalade is to deliver the best deal possible. We believe the resolution and agreements do just that.

As you know, Grand Canyon Escalade is a tourism project that has many challenges, but has the potential to create 3,500 jobs in the area formerly known as the Bennett Freeze, increase worldwide attention to the Navajo Nation to boost tourism to other areas of the Nation, produce substantial tax and other revenues for the Navajo people, and provide opportunities for local artists and vendors. The Project will also make available infrastructure for community development now that the Freeze has been lifted.

After reading the DOJ December 18 Escalade memo it is apparent that the DOJ lawyers do not understand or appreciate the difficulties and roadblocks that we face in bringing outside capital and business opportunities to create jobs on the Nation.

Because the Nation is unable to invest millions of dollars in the permitting clearances and preliminary design of the offsite improvements for Escalade (improvement that can be used for community/work force housing), your negotiating team (NT) was able to get Confluence Partners (CP) to assume that risk.

In other words, the Navajo Nation does not have any funds at risk until the project is permitted and ready to begin final design and construction. Project revenues will more than fund the debt for the offsite infrastructure.

In a normal Business Site Lease (typically less than an acre), the lease is not approved until the permitting and clearances are complete. Raising investment capital for a project the size of Escalade is impossible without a preapproved lease arrangement subject to permitting and clearances. Your negotiating team hammered out agreements that will allow the Council and you to approve moving the project forward and minimizing the risks to the Nation while maximizing job creation and revenues.

What needs to be emphasized is to make the Project actually happen, the outside investors need to have acceptable risks and risk-adjusted returns, and know that the Nation will proceed in good faith fulfilling its obligations.

With respect to the numbered issues outlined in the December 18, 2014 DOJ Memorandum on Grand Canyon Escalade, it appears that most of the items in Mr. Howe's so called legal review are his point of view of negotiated business issues which are beyond his scope of expertise.

Below are our responses to the DOJ issues in their December 18, 2014 memo:

It should also be noted that Mr. Howe was the DOJ lawyer assigned to support the negotiating team and had a legal advisory role in the creating the resolution and agreements that he now deems insufficient.

1. **Financing of the Project: Offsite infrastructure costs.** The DOJ memo fails to recognize that the offsite infrastructure (waterline, power-line, communications and the road) can be financed on a tax-exempt basis only if the Nation is the borrower. Since a significant portion of infrastructure will be used in the former Bennett Freeze area for housing, the Project is providing about \$26 million of infrastructure for the local area development.

As per Mr. Howe's financial analysis using the Nation's project revenue to fund the offsite infrastructure debt with the Sacred Mountain's estimated payment, there is a two times (2X) coverage of the debt service. As Mr. Bergen stated in his letter, funding the Nation's infrastructure costs should not pose a difficulty with such debt service coverage.

Without the Nation's commitment to cause the funding the offsite infrastructure, CP will unable raise the initial at-risk/high risk money for both their onsite and the Nation's offsite the permitting clearances and preliminary design costs.

To enable CP's raising of the high risk preconstruction moneys; we agreed that CP would be able to pledge the Nation's project revenue to fund the offsite infrastructure as the means of funding the offsite costs if the Nation fails to act. To give the high risk investors comfort that their moneys would not be at risk beyond the permitting and clearances there needed be an incentive (penalty) for the Nation to cause the funding of the offsite costs. We had previously agreed upon an extension of the Operating Agreement in order not to have a cut in revenues to the Nation. It was the lawyers that came up the 10% penalty and insisted that both sides accept it. Our best way to avoid the penalty is to perform.

2. **Payment of Hospitality Enterprise fee of \$5,000 per month and expenses.** The Hospitality's \$5,000 per month is intended offset their incidental costs during the permitting, design and construction phases. Those costs have been programmed into the budget for offsite permitting, design and construction which will be funded initially by CP and then from the Sacred Mountain funding. Contrary to Mr. Howe contention, capitalizing those types of costs are appropriate, and are a standard and customary practice in the development industry.
3. **Public Safety services.** The Project will have its own security, EMTs and firefighters on site funded by operations. The Project is required to provide space for the Navajo Nation Public Safety Department. Additional police staffing for the area should be paid for by increased tax revenues caused by the project. Fire fighting capabilities will be built into the project and we will have a substation on site for future fire personnel to fight fires and provide immediate assistance in emergency situations.

The issue of funding the police staffing is not relevant to the legality of the resolution or the agreements, and as such is outside the scope of a proper legal review of the documents in the 164 process.

4. **Boundary Dispute:** While resolving the boundary issue may delay the Project, we agreed with CP to resolve it through direct engagement of the DOI and our congressional delegation. If it requires legal action, as Mr. Howe knows CP and DOJ agreed upon a conceptual form of a litigation agreement with CP funding the costs and that the agreement would be drafted and executed after Council action. It is the Nation's perspective that the Western Boundary of the Navajo Nation is the middle of the Colorado River.

The boundary issue is not relevant to the legality of the resolution or the agreements, and is outside the scope of a proper legal review of the documents in the 164 process.

5. **Ability to Terminate for Lack of Progress by CP:** During the negotiation it became apparent that with so many unknown variables (such as the boundary issue in item 4) that are beyond both the Nation's and CP's immediate control, it would be impossible to document specific performance hurdles for either party.

Under Section 3.5 of the Master Agreement, CP agrees to make commercially reasonable efforts, and to exercise its professional skill and competence, in performing CP's services

under this Agreement. If CP fails to perform accordingly, upon notice they can cure the default or we can terminate the agreements.

6. **16 N.N.C. 16 § 1403 and Unknown Users:** Under the MOU the Nation was required to identify area users. After multiple requests to and consultations with NN Land Department it was determined that there are not any grazing permit holders using the 420 acre site.

If 16 N.N.C. § 1403 actually affected the project, Mr. Howe surely would have incorporated it into the agreements, or made it a condition of the process during the negotiations.

7. **Lease pad Marketing:** After much discussion and analysis it became apparent that the Project components are interdependent on each other, and having one entity, the operator manage, operate and market the entire development is crucial to the success of the Project. The Enterprise has the ultimate approval over the lease-pad leases and is not precluded from assisting in the marketing of the lease pads.

This portion is a business term and not relevant to the legality of the resolution or the agreements, and as such it is outside the scope of a proper legal review of the documents in the 164 process.

8. **Compliance with the Business Opportunity Act:** During the negotiating sessions the NT and CP needed to have an actual basis for discussion on the development process, and the cost of design and constructability. At no cost to the NT, CP engaged the various consultants including Sundt to assist in scoping of the Project. As CP stated in the negotiating sessions, all of those engaged in the pre-agreement phase know that when the Project is approved, they will be obligated to compete in a selection process as outlined in the Navajo Nation Business Opportunity Act and incorporated into the Development Agreement.

If CP had not engaged these consultants, Mr. Howe would be howling about the lack of diligence and creditability of the estimated infrastructure and project costs.

9. **Failure to codify language that subjects third parties to potential violation of Navajo Law.** The non-compete portion of the Agreement only prohibits the Nation from approving competing businesses in the area as described in the Master Agreement, not third parties. For the Nation to approve area competition would be a breach of contract and is contrary to Navajo law.

Mr. Howe gave advice on drafting the non-compete clause, to which we relied on in developing the Master Agreement.

Unfortunately, the DOJ lawyers seem to have a mental block about the challenges that threaten the economic sustainability of our People, and all too often they are incapable in finding solutions to those obstacles preventing us from creating a better future for our people.

If we are to create jobs and economic opportunities for the Navajo people we need to bring in outside entrepreneurs and private investment capital. Grand Canyon Escalade is the opportunity to create 3,500 jobs in the area of the former Bennett Freeze, offset the costs of infrastructure for community development and produce substantial revenues for the Nation, all without much risk to or upfront funding from the Nation.

We recommend that you approve the packet and move the Project forward.

SECTION 164 REVIEW FORM

Title of Document: Master Agreement between NN and Grand Canyon Escalade Project
 Program/Division: Administration/Division of Economic Development

Contact Name: Albert Damon, Jr. Executive Director

Email/Phone Number: adamon@navajo-nsn.gov (928) 871-6547

Division Director Approval for 164A: _____

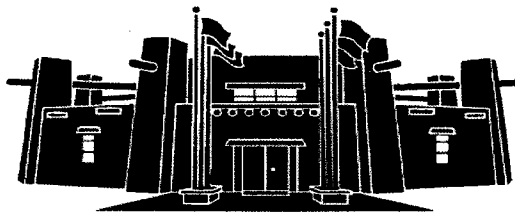
Check document category; only submit to category reviewers. Each reviewer has a maximum 7 working days, except Business Regulatory Department which has 2 days, to review and determine whether the document(s) are sufficient or insufficient. If deemed insufficient, a memorandum explaining the insufficiency of the document(s) is required.

Section 164(A) Final approval rests with Legislative Standing Committee(s) or Council

- | | | | Sufficient | Insufficient |
|--------------------------|--|-------------|--------------------------|--------------------------|
| <input type="checkbox"/> | Statement of Policy or Positive Law: | | | |
| | 1. OAG: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | IGA, Budget Resolutions, Budget Reallocations or amendments: (OMB and Controller sign ONLY if document expends or receives funds) | | | |
| | 1. OMB: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| | 2. OOC: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| | 3. OAG: _____ | Date: _____ | <input type="checkbox"/> | <input type="checkbox"/> |


Section 164(B) Final approval rests with the President of the Navajo Nation

- | | | | | | |
|-------------------------------------|--|-----------------------------|--------------------------------|-------------------------------------|--------------------|
| <input checked="" type="checkbox"/> | Grant/Funding Agreement or amendment: | <i>Albert Damon, Jr.</i> | Date: <u>7/30/14</u> | <input checked="" type="checkbox"/> | <i>Disputal</i> |
| | 1. Division: | <u>Albert Damon, Jr.</u> | Date: <u>7/30/14</u> | <input checked="" type="checkbox"/> | <i>10/14</i> |
| | 2. OMB: | <u>DBayle - See Memo</u> | Date: <u>8-19-14 10/14/14</u> | <input checked="" type="checkbox"/> | <i>concur w/</i> |
| | 3. OOC: | <u>Markie Yvonne Sumner</u> | Date: <u>10-20-14 11/17/14</u> | <input checked="" type="checkbox"/> | <i>Rob Willace</i> |
| | 4. OAG: | <u>Dana Tessa</u> | Date: <u>10-17-14</u> | <input type="checkbox"/> | <i>in memo</i> |
| <input type="checkbox"/> | Subcontract/Contract expending or receiving funds or amendment: | | | | <i>See memo</i> |
| | 1. Division: | <u>Albert Damon, Jr.</u> | Date: <u>06/26/2014</u> | <input type="checkbox"/> | |
| | 2. BRD: | _____ | Date: _____ | <input type="checkbox"/> | |
| | 3. OMB: | _____ | Date: _____ | <input type="checkbox"/> | |
| | 4. OOC: | _____ | Date: _____ | <input type="checkbox"/> | |
| | 5. OAG: | _____ | Date: _____ | <input type="checkbox"/> | |
| <input type="checkbox"/> | Letter of Assurance/M.O.A./M.O.U./Other agreement not expending funds or amendment: | | | | |
| | 1. Division: | _____ | Date: _____ | <input type="checkbox"/> | |
| | 2. OAG: | _____ | Date: _____ | <input type="checkbox"/> | |
| <input type="checkbox"/> | M.O.A. or Letter of Assurance expending or receiving funds or amendment: | | | | |
| | 1. Division: | _____ | Date: _____ | <input type="checkbox"/> | |
| | 2. OMB: | _____ | Date: _____ | <input type="checkbox"/> | |
| | 3. OOC: | _____ | Date: _____ | <input type="checkbox"/> | |
| | 4. OAG: | _____ | Date: _____ | <input type="checkbox"/> | |



MEMORANDUM

TO: Hon. Benjamin Bennett
23rd Navajo Nation Council

FROM: 
Levon B. Henry, Chief Legislative Counsel
Office of Legislative Counsel

DATE: June 8, 2016

SUBJECT: AN ACTION RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; APPROVING THE MASTER AGREEMENT FOR THE DEVELOPMENT OF THE GRAND CANYON ESCALADE PROJECT; APPROVING THE FUNDING APPLICATION OF SIXTY FIVE MILLION DOLLARS (\$65,000,000) FOR THE DEVELOPMENT OF THE OFFSITE INFRASTRUCTURE TO THE GRAND CANYON ESCALADE PROJECT; AUTHORIZING THE NAVAJO NATION HOSPITALITY ENTERPRISE TO ENTER INTO A DEVELOPMENT AND OPERATING AGREEMENT; ACCEPTING THE APPROVAL OF THE WITHDRAWAL OF LAND IN THE BODAWAY/GAP CHAPTER; APPROVING A COVENANT NOT TO COMPETE; WAIVING CERTAIN PROVISIONS OF 7 N.N.C. §§ 1101 - 1118

Pursuant to your request, attached is the above-referenced proposed resolution and associated legislative summary sheet. Based on existing law and review of the documents submitted, the resolution as drafted is legally sufficient. Please note the vote requirement of 2/3rds for waiver of Title 7. As with all legislation this legislation is subject to review by the courts in the event of a challenge.

The Office of Legislative Council confirms the appropriate standing committee(s) reviews based on the standing committees powers outlined in 2 N.N.C. §§ 301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. § 164(A)(5). Please note that the waiver of the Navajo Nation Arbitration law, should it remain as part of the legislation, will require a two-third (2/3rd) vote for passage of the legislation at the Navajo Nation Council.

Please review the proposed resolution to ensure it is drafted to your satisfaction. If this proposed resolution is acceptable to you, please sign it where it indicates "Prime

Sponsor", and submit it to the Office of Legislative Services for the assignment of a tracking number and referral to the Speaker.

If the proposed resolution is unacceptable to you, or if you have further questions, please contact me at the Office of Legislative Counsel and advise me of changes you would like made to the proposed resolution. You may contact me at (928) 871-7166. Thank you.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0293-16_____

SPONSOR: Benjamin Bennett

TITLE: An Action Relating to Law And Order, Resources And Development, Budget And Finance, And Naabik'iyati Committees And Navajo Nation Council; Approving The Master Agreement For The Development Of The Grand Canyon Escalade Project; Approving The Funding Application Of Sixty Five Million Dollars (\$65,000,000) For The Development Of The Offsite Infrastructure To The Grand Canyon Escalade Project; Authorizing The Navajo Nation Hospitality Enterprise To Enter Into A Development And Operating Agreement; Accepting The Approval Of The Withdrawal Of Land In The Bodaway/Gap Chapter; Approving A Covenant Not To Compete; Waiving Certain Provisions Of 7 N.N.C. §§ 1101-1118

Date posted: August 29, 2016 at 5:31pm

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

**Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7590**

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Nav, ajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*