



# United States Department of the Interior



NATIONAL PARK SERVICE  
Pacific West Region  
333 Bush Street, Suite 500  
San Francisco, California 94104

IN REPLY REFER TO:  
C3823 (PWR-CM)

30 DEC 2017

Mr. James Michael Williams  
dba The Beanery



Dear Mr. Williams:

Enclosed please find a new Exhibit C (Assigned Land and Real Property Improvements) to Concession Contract No. CC-MOJA001-08. This new exhibit updates the required insurance replacement values for the Concession Facilities assigned to you under this Contract.

If you have any questions please contact Kimberley Gagliolo, Commercial Services Specialist, Pacific West Region, at (415) 623-2227.

Sincerely,

*Christine S. Lehnertz*  
Christine S. Lehnertz  
Regional Director, Pacific West Region

Enclosure

cc: Superintendent, Mojave National Park  
Debra Hecox, Planning and Development Branch Chief, WASO

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IN AMERICA 

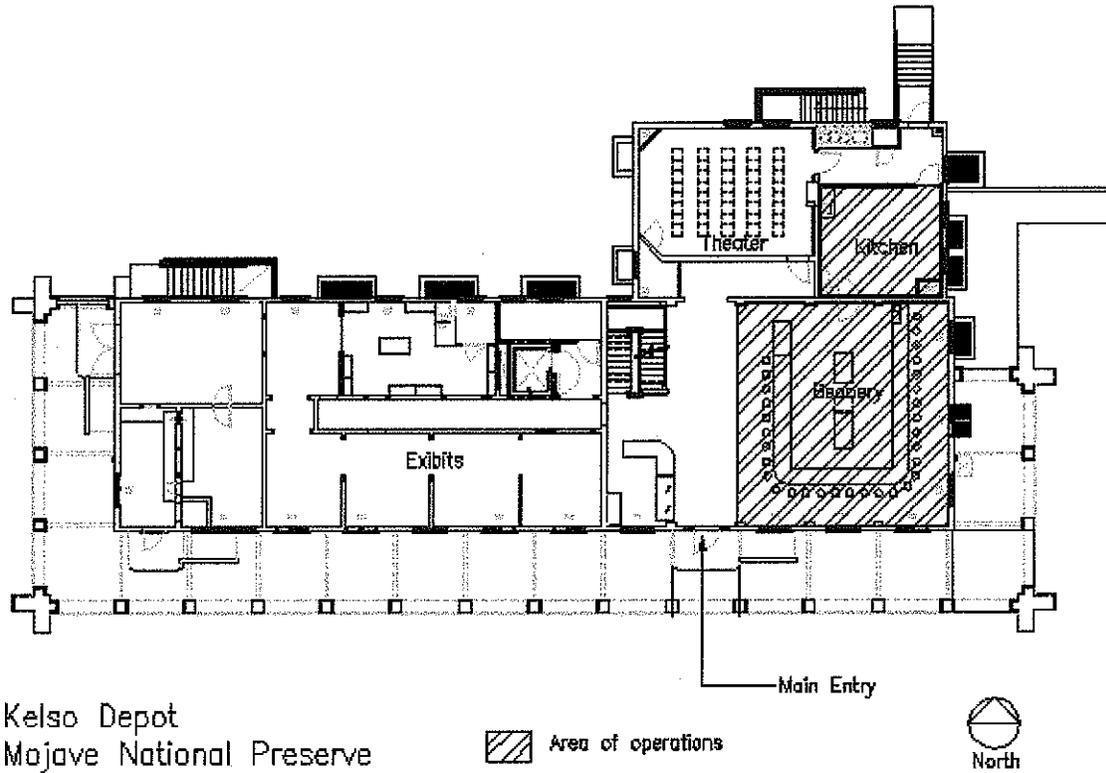
**EXHIBIT C**

**ASSIGNED LAND AND REAL PROPERTY IMPROVEMENTS  
(CONCESSION FACILITIES)**

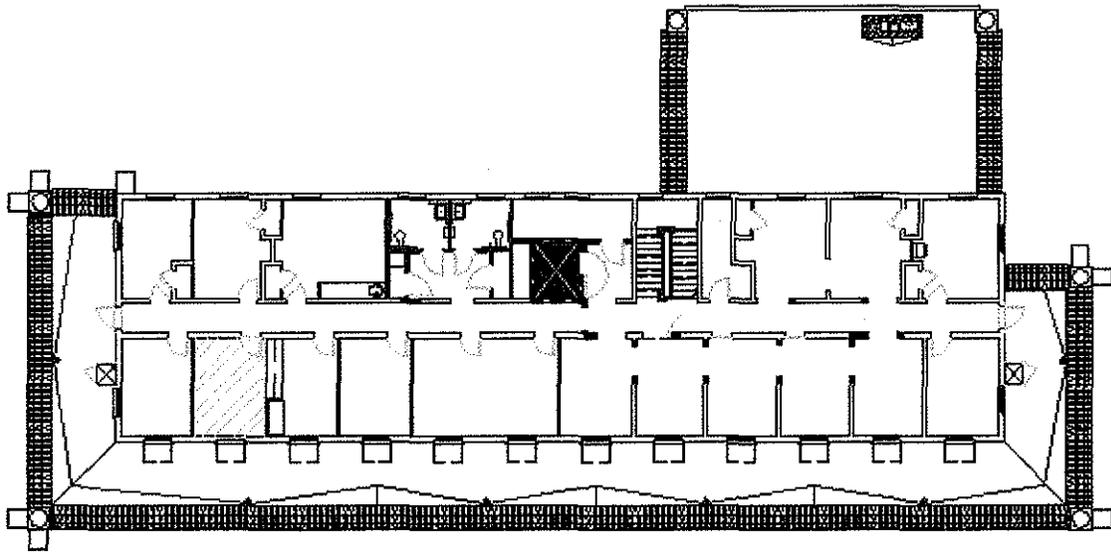
**Land Assigned**

Land is assigned in accordance with the boundaries shown on the following map[s]:

**The Beanery – Main Floor**



**The Beanery – Second Floor**



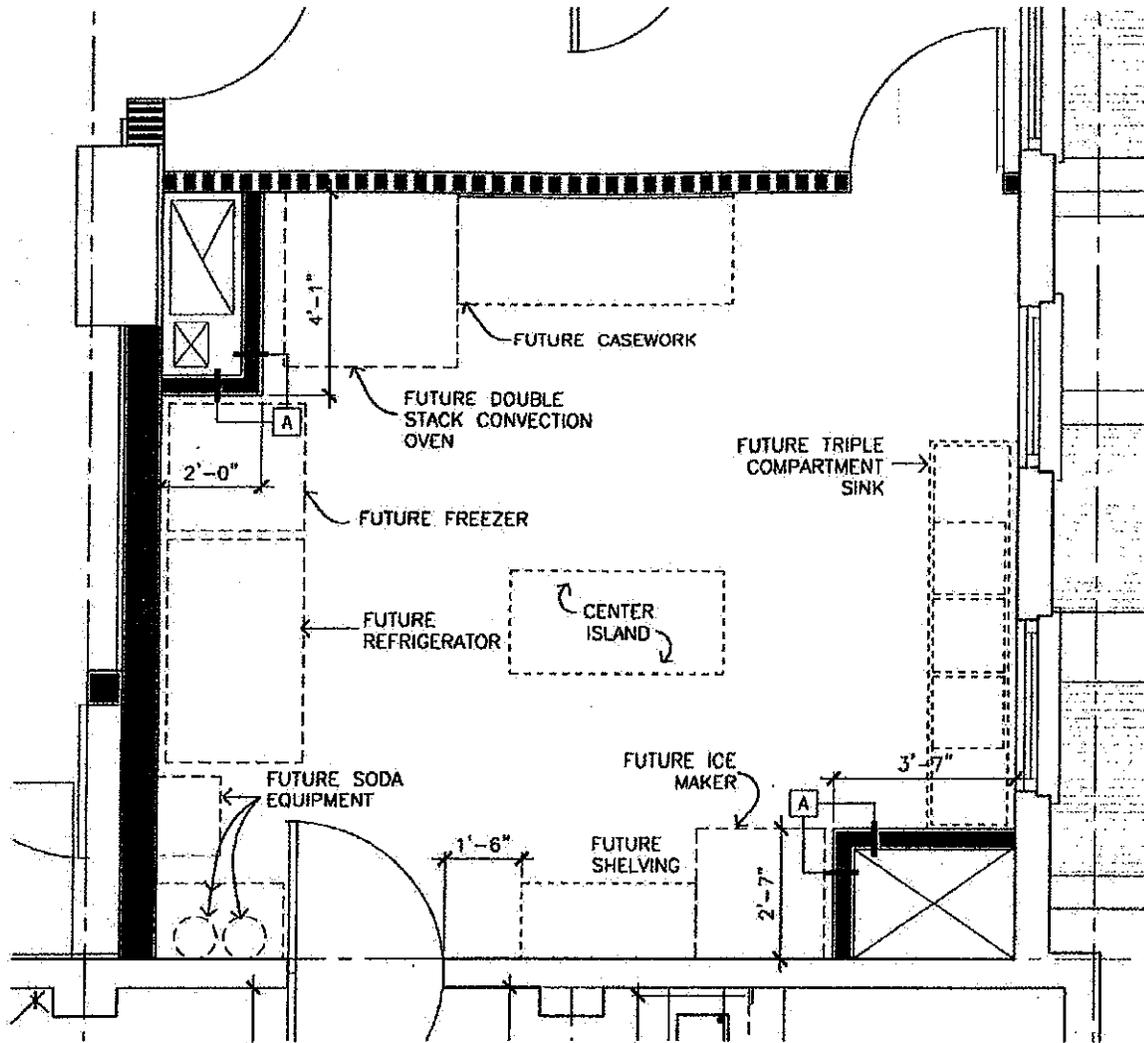
Kelso Depot  
Mojave National Preserve

 Area of operations





The Beanery Kitchen – Detailed Plan



② KITCHEN PLAN  
SCALE © : 1/2" = 1'-0"

**Real Property Improvements Assigned**

The following real property improvements are assigned to the concessioner for use in conducting its operations under this Contract:

FMSS Asset Code	FMSS Asset Description	FMSS Asset Type	Unit of Measure	Date Built or Installed	Historic (Y or N)	Insurance Replacement Value
65897	Kelso Train Depot (The Beanery)	4100	1,570 SF		N	\$161,293
76813	Kelso Train Depot Storage Shed 210	4100	84 SF		N	\$3,350

*\*Please note: The lack of value for an asset in the column for Insurance Replacement Value does not relieve the Concessioner of its obligation to insure the asset according to the terms of this Contract.*

Approved, effective January 1, 2012

By 

 Christine S. Lehnertz  
Regional Director, Pacific West Region



# United States Department of the Interior



NATIONAL PARK SERVICE  
Pacific West Region  
333 Bush Street, Suite 500  
San Francisco, California 94102

IN REPLY REFER TO:  
C3821 (PWR-CM)

74 NOV 2011

Mr. James Michael Williams  
dba The Beanery



RE: Concession Contract CC-MOJA001-08

Dear Mr. Williams:

Enclosed please find an updated Exhibit D -- Assigned Government Property for your records. This exhibit updates the government personal property assigned for the Kelso Depot Beanery.

We appreciate your food service to Mojave National Preserve's visitors. Should you have any questions, please call Darby Watson, Commercial Services Project Manager, at (415) 623-2226.

Sincerely,

Christine S. Lehnertz  
Pacific West Regional Director

Enclosure

✓ cc: Superintendent, Mojave National Park

## EXHIBIT D

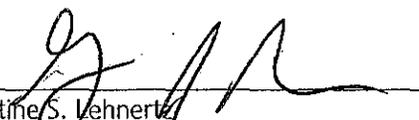
## ASSIGNED GOVERNMENT PERSONAL PROPERTY

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

Property Number	Description of Item	Model Number	Serial Number
2011 NE-1024	Commercial Microwave, Panasonic	NE-1024	6HN0150282
2011 1021805	Warming Kettle, Tomilinson 10 and ½ qt.		1004403
2011 1014403	Warming Kettle, Tomilinson 8 qt, No		136419
	Refrigerator/sandwich/salad, Everest,	Model EPBR2	
	Table, Work R&J FAB,	TUG-306	
	Range, restaurant, gas, Imperial Range,	IR-6	
	Refrigerator/Freezer Combo, Everest,	ESRF3	
	Sink, kitchen, R&J FAB,	RJ-3-1818-18D	
	Faucet, backsplash mount, Fisher	13277	
	Sink, kitchen, R&J FAB,	RJ-1-1818-18L	
	Faucet, backsplash mount, Fisher	13242	
	Bin, ice, Ice-o-Matic	B42PS	
	Icemaker without bin, Ice O-Matic,	ICE0520HA	
	Dry Storage Shelves, Seaview,	SPB-1848	
	Sink, Hand, wall mount Alltrong	51B11310-DC	
	Hot Dog Steamer, APW Wyatt	DS-1A	
	2 Soup Kettles, Thunder Group	SEJ30000TW	
	Oven, Microwave, Amana Appliances,	ALD10D	
	4 Refrigerator Undercounter Compact, Everest,	ETBR2	
	Ice Cream Merchandiser with sliding lid, Kelvinator	KCG070GW	
	Malt Mixer, Waring,	DMC201DC	
	Dispenser, hot powdered drink, Bun-o-matic,	SET00.0200	
	2 Drink machines, Vit-mixl	748	
	Coffee Maker, Automatic, Bun-o-matic,	12950.0232	
	Exhaust Hood, Captive Aire Model	ND2448	
	2 Locker, G.S.W.	EL-6DR	
	Double Overshelf R&J FAB, custom,		
	Cash Register, Sharp	ER-A420	
	31 Bar stools		
	Air curtain, Mars,	36NCH	
	Mop Sink R&J FAB,	RJ-1-1818-MOP	
	Chemical Shelf and mop rack, Seaview,	SBP-1436	
	Hot water heater		
	Rollergrill bun cabinet combo Gold Metal	8324	LDBST-00214
	Toaster, Popup, Waring,	Model WCT820	
	Vegi Prep Sink 1 compartment,		
	Mop Bucket, ringer combo, Update International, Model MBK-9		
	Wet Floor Sign Update International	WFS-25	

Property Number	Description of Item	Model Number	Serial Number
	Dispenser Paper Towel, Update International	TD-1114L	
	Soap Dispenser, Update International	SD-20	
	3 Coffee Decanter, Plastic, Update International	CD-8890	
	2 Coffee Decanter, Plastic, Update International	CD-8890-OR	
	2 Knife Bread, Dexter Russell,	P94807	
	1 Chef's knife, Dexter Russell,	P94801	
	1 Tomato Slicer, Lincoln Food Service	0644N	
	Scoop, Update International	AS-12	
	Ice Bin Mobile, Carlisle	IC2254-03	
	3 Trash Containers with lids, Carlisle	341044-23	
	Floor Mat rubber, Admiral Craft	MAT35TC	
	8 Floor Mat, rubber, Update International	FM-35B	
	Beverage Dispenser, non-insulated, Carlisle	1082061	
	2 Serving Bowl, plastic, Carlisle	6914-07	
	Condiment caddy, sugar Thunder Group	PLSP032CL	
	2 Pie cutters, Alegacy Food Service	856	
	4 Thermometer refrig/freezer, Update International,	THRE-30	
	1 dozen basket fast food, Thunder Group	PLBK1034R	
	4 spread butter, Update International,	WS-6PH	
	2 Cake Servers, Update International	WPS-6	
	Ice Cream Spade, Update International	DP-SP	
	2 Tongs Utility, Update International,	ST-12HDCS	
	2 each Disher Ice Cream Dipper, Johnson-Rose	7512	
	2 each ladle, Thunder Group	SL0L005	
	Scoop, Thunder Group	AITWSC058	
	1 Oven Mitt, Update International	SIL-13	
	Picket Thermometer, Crestware	TRM220C	
	3 each mottled cup Johnson-Rose	7676	
	2 each spoon, serving, slotted, Thunder Group	SLSBA212	
	Knife Sharpener, manual, Forschner,	49002	
	Stock pot , Winco	SST-16	

Approved, effective 11/14, 2011

By:   
 Christine S. Lehner  
 Regional Director, Pacific West Region



# United States Department of the Interior

NATIONAL PARK SERVICE  
Pacific West Region  
1111 Jackson Street, Suite 700  
Oakland, California 94607-4807



IN REPLY REFER TO:

C3823 (PWR-CM)

NOV 1 8 2008

Gagliolo  
Altman  
Turnbull  
Jarvis

Mr. James Michael Williams  
dba The Beanery

Dear Mr. Williams:

Please find enclosed a fully executed copy of your new Concession Contract, CC-MOJA001-08, for the operation of the Beanery, a food service facility at the Historic Kelso Train Depot within Mojave National Preserve. The effective date of this Contract is November 1, 2008.

This copy is for your records. Signed copies are also kept at the Park, the Regional Office in Oakland, and the Washington, D.C. Office. If you have any questions, please contact Kim Gagliolo, Concession Management Analyst, at (510) 817-1368.

Sincerely,

**JONATHAN B. JARVIS**

Jonathan B. Jarvis  
Regional Director, Pacific West Region

Enclosure

cc: Superintendent, Mojave National Preserve  
~~Branch Chief, Planning & Development, WASO~~

TAKE PRIDE<sup>®</sup>  
IN AMERICA 

**CATEGORY II CONTRACT**  
**UNITED STATES DEPARTMENT OF THE INTERIOR**  
*NATIONAL PARK SERVICE*

MOJAVE NATIONAL PRESERVE

**THE BEANERY**  
**A FOOD SERVICE FACILITY**

James Michael Williams  


Doing Business As

The Beanery

**CONCESSION CONTRACT NO. MOJA001-08**

Covering the Period

November 1, 2008 through October 31, 2013

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**IDENTIFICATION OF THE PARTIES**

This Contract made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Pacific West Region, hereinafter referred to as the "Director," and, James Michael Williams, an individual, doing business as - The Beanery, hereinafter referred to as the "Concessioner":

**WITNESSETH**

**THAT WHEREAS**, Mojave National Preserve is administered by the Director as a unit of the National Park System to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

**WHEREAS**, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

**WHEREAS**, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director; and

**WHEREAS**, the Director desires the Concessioner to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship, and leadership;

**NOW, THEREFORE**, pursuant to the authority contained in the Acts of August 25, 1916 (16 U.S.C. 1, 2-4), and November 13, 1998 (P.L. 105-391), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

**SECTION 1. TERM OF CONTRACT**

This Concession Contract No. CC-MOJA001-08 ("Contract") shall be effective as of November 1, 2008, and shall be for the term of five (5) years until its expiration on October 31, 2013.

**SECTION 2. DEFINITIONS**

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

- (a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (e.g., 36 CFR Part 51), whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.
- (b) "Area" means the property within the boundaries of Mojave National Preserve.
- (c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this Contract. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner's operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.
- (d) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this Contract and all real property improvements assigned to or constructed by the Concessioner under this Contract. The United States retains title and ownership to all Concession Facilities.
- (e) "Days" shall mean calendar days.
- (f) "Director" means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and his duly authorized representatives.
- (g) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this Contract, each of which is hereby made a part of this Contract.
- (h) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services made pursuant to the rights granted by this Contract, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:
  - (1) intracompany earnings on account of charges to other departments of the operation (such as laundry);
  - (2) charges for employees' meals, lodgings, and transportation;
  - (3) cash discounts on purchases;
  - (4) cash discounts on sales;
  - (5) returned sales and allowances;
  - (6) interest on money loaned or in bank accounts;
  - (7) income from investments;

- (8) income from subsidiary companies outside of the Area;
- (9) sale of property other than that purchased in the regular course of business for the purpose of resale;
- (10) sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;
- (11) receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

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

- (i) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by a subconcession contract. A subconcessioner will report all of its gross receipts to the Concessioner without allowances, exclusions, or deductions of any kind or nature.
- (j) "Subconcessioner" means a third party that, with the approval of the Director, has been granted by a Concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.
- (k) "Superintendent" means the manager of the Area.
- (l) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by section 3(a) of this Contract.

### **SECTION 3. SERVICES AND OPERATIONS**

#### **(a) Required and Authorized Visitor Services**

During the term of this Contract, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

- (1) Required Visitor Services. The Concessioner is required to provide the following visitor services during the term of this Contract:
  - (i) Food and beverage. Seated services including hot foods, delicatessen sandwiches, hot and cold non-alcoholic beverages, salads, ice cream and other desserts.
- (2) Authorized Visitor Services.
  - (i) Retail Services. The Concessioner is authorized to provide the sale of retail items limited to merchandise such as bottled water, mugs, coffee tumblers, t-shirts, film, cameras and other items that embody the historic Kelso Train Depot and Beanery.
  - (ii) To-go Service. Including package lunches, snacks, and beverages.
  - (iii) Outdoor Grilling. The Concessioner is authorized to expand their menu options by grilling outdoors.

**(b) Operation and Quality of Operation.**

The Concessioner shall provide, operate and maintain the required and authorized visitor services and any related support facilities and services in accordance with this Contract to such an extent and in a manner considered satisfactory by the Director. Except for any such items that may be provided to the Concessioner by the Director, the Concessioner shall provide the plant, personnel, equipment, goods, and commodities necessary for providing, operating and maintaining the required and authorized visitor services in accordance with this Contract. The Concessioner's authority to provide visitor services under the terms of this Contract is non-exclusive.

**(c) Operating Plan**

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this Contract in the form of an Operating Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating Plan is attached to this Contract as Exhibit A. The Director in his/her discretion, after consultation with the Concessioner, may make reasonable modifications to the initial Operating Plan that are in furtherance of the purposes of this Contract and are not inconsistent with the terms and conditions of the main body of this Contract.

**(d) Merchandise and Services**

- (1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this Contract, including, but not limited to, the nature, type, and quality of food and beverage, grocery or merchandise, if any, to be sold or provided by the Concessioner within the Area.
- (2) All promotional material, regardless of media format (i.e. printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this Contract must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.
- (3) The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

**(e) Rates**

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this Contract. The Concessioner's rates and charges to the public must be approved by the Director in accordance with Applicable Laws and guidelines promulgated by the Director from time to time.

**(f) Impartiality as to Rates and Services**

- (1) Subject to Section (f)(2) and (f)(3), in providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit B.
- (2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this Contract. However, the Director reserves the right to review and modify the Concessioner's complimentary or reduced rate policies and practices as part of its rate approval process.
- (3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

#### **SECTION 4. CONCESSIONER PERSONNEL**

- (a) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this Contract.
- (b) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit B.
- (c) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.
- (d) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessioner.
- (e) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.
- (f) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to correct the situation.
- (g) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any Concessioner employee housing, within the Area.
- (h) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness

program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.

- (i) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that is found to be in violation of the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

## **SECTION 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE**

### **(a) Legal, Regulatory and Policy Compliance**

This Contract, operations thereunder by the Concessioner and the administration of it by the Director, shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this Contract at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this Contract. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this Contract.

### **(b) Notice**

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or contractors, and, at its sole cost and expense, must promptly rectify any such violation.

### **(c) How and Where to send Notice**

All notices required by this Contract shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

Superintendent  
Mojave National Preserve  
2701 Barstow Road  
Bartow, California 93211

Notices sent to the Concessioner shall be sent to the following address:

James Michael Williams  
dba The Beanery



**SECTION 6. ENVIRONMENTAL AND CULTURAL PROTECTION****(a) Environmental Management Objectives**

The Concessioner shall meet the following environmental management objectives (hereinafter "Environmental Management Objectives") in the conduct of its operations under this Contract:

- (1) The Concessioner, including its employees, agents and contractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.
- (2) The Concessioner shall incorporate Best Management Practices (BMPs) in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this Contract.

**(b) Environmental Management Program**

- (1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this Contract. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.
- (2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and complexity of the EMP may vary based on the type, size and number of Concessioner activities under this Contract.
- (3) The EMP shall include, without limitation, the following elements:
  - (i) Policy. The EMP shall provide a clear statement of the Concessioner's commitment to the Environmental Management Objectives.
  - (ii) Goals and Targets. The EMP shall identify environmental goals established by the Concessioner consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (i.e. measurable results and schedules) to achieve these goals.
  - (iii) Responsibilities and Accountability. The EMP shall identify environmental responsibilities for Concessioner employees and contractors. The EMP shall include the designation of an environmental program manager. The EMP shall include procedures for the Concessioner to implement the evaluation of employee and contractor performance against these environmental responsibilities.
  - (iv) Documentation. The EMP shall identify plans, procedures, manuals, and other documentation maintained by the Concessioner to meet the Environmental Management Objectives.
  - (v) Documentation Control and Information Management System. The EMP shall describe (and implement) document control and information management systems to maintain knowledge of Applicable Laws and BMPs. In addition, the EMP shall identify how the

Concessioner will manage environmental information, including without limitation, plans, permits, certifications, reports, and correspondence.

- (vi) Reporting. The EMP shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Director under this Contract.
- (vii) Communication. The EMP shall describe how the environmental policy, goals, targets, responsibilities and procedures will be communicated throughout the Concessioner's organization.
- (viii) Training. The EMP shall describe the environmental training program for the Concessioner, including identification of staff to be trained, training subjects, frequency of training and how training will be documented.
- (ix) Monitoring, Measurement, and Corrective Action. The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will self-assess its performance under the EMP, at least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The self-assessment should ensure the Concessioner's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the Concessioner to correct any deficiencies identified by the self-assessment.

**(c) Environmental Performance Measurement**

The Concessioner shall be evaluated by the Director on its environmental performance under this Contract, including, without limitation, compliance with the approved EMP, on at least an annual basis.

**(d) Environmental Data, Reports, Notifications, and Approvals**

- (1) Inventory of Hazardous Substances and Inventory of Waste Streams. The Concessioner shall submit to the Director, at least annually, an inventory of federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the Concessioner in operations under this Contract. The Concessioner shall obtain the Director's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this Contract. The Concessioner shall also submit to the Director, at least annually, an inventory of all waste streams generated by the Concessioner under this Contract. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.
- (2) Reports. The Concessioner shall submit to the Director copies of all documents, reports, monitoring data, manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessioner shall also submit to the Director any environmental plans for which coordination with Area operations are necessary and appropriate, as determined by the Director in accordance with Applicable Laws.
- (3) Notification of Releases. The Concessioner shall give the Director immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable

Laws) within or at the vicinity of the Area, (whether solid, semi solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by product.

- (4) Notice of Violation. The Concessioner shall give the Director in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.
- (5) Communication with Regulatory Agencies. The Concessioner shall provide timely written advance notice to the Director of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessioner related to compliance with Applicable Laws concerning operations under this Contract. The Concessioner shall also provide to the Director any written materials prepared or received by the Concessioner in advance of or subsequent to any such communications. The Concessioner shall allow the Director to participate in any such communications. The Concessioner shall also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

**(e) Corrective Action**

- (1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the Concessioner's operations under this Contract, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.
- (2) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by product used, handled, stored, disposed, or transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

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

- (1) The Concessioner shall indemnify the United States in accordance with section 11 of this Contract from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys' fees and experts' fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this Contract.
- (2) If the Concessioner does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director

associated with such action upon demand. Nothing in this section shall preclude the Concessioner from seeking to recover costs from a responsible third party.

**(g) Weed and Pest Management**

The Concessioner shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice and other pests on Concession Facilities assigned to the Concessioner under this Contract. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Director.

**(h) Protection of Cultural and Archeological Resources**

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees, agents and contractors, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by the Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

**SECTION 7. INTERPRETATION OF AREA RESOURCES**

**(a) Concessioner Obligations**

- (1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area as reflected in Area planning documents, mission statements and/or interpretive prospectuses.
- (2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this Contract.
- (3) The Concessioner is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessioner.

**(b) Director Review of Content**

The Concessioner must 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 Director for review and approval prior to offering such programs, exhibits, displays or materials to Area visitors.

**SECTION 8. CONCESSION FACILITIES USED IN OPERATION BY THE CONCESSIONER**

**(a) Assignment of Concession Facilities**

- (1) The Director hereby assigns the Concession Facilities to the Concessioner for the purposes of this Contract as listed in Exhibit C. The Concessioner shall not be authorized to construct any Capital Improvements (as defined in Applicable Laws including without limitation 36 CFR Part 51) upon Area lands. The Concessioner shall not obtain a Leasehold Surrender Interest

or other compensable interest in Capital Improvements constructed or installed in violation of this Contract.

- (2) The Director shall from time to time amend Exhibit C to reflect changes in Concession Facilities assigned to the Concessioner.

**(b) Concession Facilities Withdrawals**

The Director may withdraw all or portions of these Concession Facilities assignments at any time during the term of this Contract if:

- (1) the withdrawal is necessary for the purpose of conserving, preserving or protecting Area resources or visitor enjoyment or safety;
- (2) the operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or
- (3) land or real property improvements assigned to the Concessioner are no longer necessary for the concession operation.

**(c) Effect of Withdrawal**

Any permanent withdrawal of assigned Concession Facilities which the Director or the Concessioner considers to be essential for the Concessioner to provide the visitor services required by this Contract will be treated as a termination of this Contract pursuant to Section 15. No compensation is due the Concessioner in these circumstances.

**(d) Right of Entry**

The Director shall have the right at any time to enter upon or into the Concession Facilities assigned to the Concessioner under this Contract for any purpose he may deem necessary for the administration of the Area.

**(e) Personal Property**

- (1) Personal Property Provided by the Concessioner. The Concessioner shall provide all personal property, including without limitation removable equipment, furniture and goods, necessary for its operations under this Contract, unless such personal property is provided by the Director as set forth in subsection (e)(2).
- (2) Personal Property Provided by the Government. The Director may provide certain items of government personal property, including without limitation removable equipment, furniture and goods, for the Concessioner's use in the performance of this Contract. The Director hereby assigns government personal property listed in Exhibit D to the Concessioner as of the effective date of this Contract. This Exhibit D will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property assigned to it and shall be responsible for maintaining the property as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

**(f) Condition of Concession Facilities**

The Concessioner has inspected the Concession Facilities and any assigned government personal property, is thoroughly acquainted with their condition, and accepts the Concession Facilities, and any assigned government personal property, "as is."

**(g) Utilities**

- (1) The Director may provide utilities to the Concessioner for use in connection with the operations required or authorized hereunder when available and at rates to be determined in accordance with Applicable Laws.
- (2) If the Director does not provide utilities to the Concessioner, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area.

**SECTION 9. MAINTENANCE**

**(a) Maintenance Obligation**

Subject to the limitations set forth in Section 8(a)(1) of this Contract, the Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and groundskeeping for all Concession Facilities to the satisfaction of the Director.

**(b) Maintenance**

For these purposes, the Director, acting through the Superintendent, shall undertake appropriate inspections, and shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. The initial Maintenance Plan is set forth in Exhibit E. The Director in his discretion may make reasonable modifications to the Maintenance Plan from time to time after consultation with the Concessioner. Such modifications shall be in furtherance of the purposes of this Contract and shall not be inconsistent with the terms and conditions of the main body of this Contract.

**SECTION 10. FEES**

**(a) Franchise Fee**

- (1) For the term of this Contract, the Concessioner shall pay to the Director for the privileges granted under this Contract a franchise fee equal to **one and one half percent (1.5%)** of the Concessioner's annual gross receipts for the preceding year or portion of a year.
- (2) Neither the Concessioner nor the Director shall have a right to an adjustment of the fees except as provided below. The Concessioner has no right to waiver of the fee under any circumstances.

**(b) Payments Due**

- (1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly

payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

- (2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees. In the event of termination or expiration of this Contract, overpayments will first be offset against any amounts due and owing the Government and the remainder will be paid to the Concessioner.
- (3) All franchise fee payments consisting of \$10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

**(b) 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 current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

**(c) Adjustment of Franchise Fee**

- (1) The Concessioner or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this Contract, a reconsideration and possible subsequent adjustment of the franchise fee established in this section. For the purposes of this section, the phrase "extraordinary, unanticipated changes" shall mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this Contract which have or will significantly affect the probable value of the privileges granted to the Concessioner by this Contract. For the purposes of this section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this Contract.
- (2) The Concessioner or the Director must make a request for a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this Contract.
- (3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fee.
- (4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, prospectively as of the date of agreement.
- (5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee is accordance with this section. Such a

request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.

- (6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties by the parties, the arbitration panel shall establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.
- (7) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee (up, down or unchanged) that is consistent with the probable value of the privileges granted by this Contract within sixty (60) days of the presentations.
- (8) Any adjustment to the franchise fee resulting from this Section shall be prospective only.
- (9) Any adjustment to the franchise fee will be embodied in an amendment to this Contract.
- (10) During the pendency of the process described in this Section, the Concessioner shall continue to make the established franchise fee payments required by this Contract.

## **SECTION 11. INDEMNIFICATION AND INSURANCE**

### **(a) Indemnification**

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

### **(b) Insurance in General**

- (1) The Concessioner shall obtain and maintain during the entire term of this Contract at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this Contract as determined by the Director. The initial insurance requirements are set forth below and in Exhibit F. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in similar circumstances. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.
- (2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.
- (3) The Concessioner shall at the time insurance is first purchased and annually thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of

the policy as evidence of compliance with this section. The Concessioner shall provide the Director immediate written notice of any material change in the Concessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverages.

**(c) Commercial Public Liability**

- (1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees, agents or contractors, in carrying out the activities and operations required and/or authorized under this Contract.
- (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 Contract, as more specifically set forth in Exhibit F. Furthermore, the commercial general liability package shall provide no less than the coverages and limits described in Exhibit F.
- (3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.
- (4) From time to time, as conditions in the insurance industry warrant, the Director may modify Exhibit F to revise 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) In the event of damage or destruction, the Concessioner will repair or replace those Concession Facilities and personal property utilized by the Concessioner in the performance of the Concessioner's obligations under this Contract.
- (2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on Concession Facilities for all or part of their replacement cost as specified in Exhibit F in amounts no less than the Director may require during the term of the Contract.
- (3) Commercial property insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear.
- (4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities and/or personal property utilized in the Concessioner's operations under this Contract, as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 12 shall apply to such insurance proceeds. The Concessioner shall not be relieved of its obligations under subsection (d)(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.
- (5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of Concession Facilities will not alter their character as

properties of the United States and, notwithstanding any provision of this Contract to the contrary, the Concessioner shall gain no ownership, Leasehold Surrender Interest (as defined in Applicable Laws including without limitations 36 CFR Part 51) or other compensable interest as a result of the use of these insurance proceeds.

- (6) The commercial property package shall include the coverages and amounts described in Exhibit F.

## **SECTION 12. BONDS AND LIENS**

### **(a) Bonds**

The Director may require the Concessioner to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Director, in order to ensure faithful performance of the Concessioner's obligations under this Contract.

### **(b) Lien**

As additional security for the faithful performance by the Concessioner of its obligations under this Contract, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the Contract hereunder within the Area.

## **SECTION 13. ACCOUNTING RECORDS AND REPORTS**

### **(a) Accounting System**

- (1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this Contract, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.
- (2) If the Concessioner's annual gross receipts are \$250,000 or more, the Concessioner must use the accrual accounting method.
- (3) In computing net profits for any purposes of this Contract, the Concessioner shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this Contract by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

### **(b) Annual Financial Report**

- (1) The Concessioner shall submit annually as soon as possible but not later than one hundred twenty (120) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

- (2) If the annual gross receipts of the Concessioner are in excess of \$1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.
- (3) If annual gross receipts are between \$500,000, and \$1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.
- (4) If annual gross receipts are less than \$500,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

**(c) Other Financial Reports**

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

**SECTION 14. OTHER REPORTING REQUIREMENTS**

The following describes certain other reports required under this Contract:

**(a) Insurance Certification**

As specified in Section 11, the Concessioner shall provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this Contract. The Concessioner shall give the Director immediate written notice of any material change in its insurance program, including without limitation, any cancellation of required insurance coverages.

**(a) Environmental Reporting**

The Concessioner shall submit environmental reports as specified in Section 6 of this Contract, and as otherwise required by the Director under the terms of this Contract.

**(b) Miscellaneous Reports and Data**

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

**SECTION 15. SUSPENSION, TERMINATION, OR EXPIRATION**

**(a) Suspension**

The Director may temporarily suspend operations under this Contract in whole or in part in order to protect Area visitors or to protect, conserve and preserve Area resources. No compensation of any nature shall be due the Concessioner by the Director in the event of a suspension of

operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

**(b) Termination**

- (1) The Director may terminate this Contract at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit visitor services in the Area to those that continue to be necessary and appropriate.
- (2) The Director may terminate this Contract if the Director determines that the Concessioner has materially breached any requirement of this Contract, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only those visitor services required or authorized by the Director pursuant to this Contract, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program and the requirement to comply with Applicable Laws.
- (3) In the event of a breach of the Contract, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the Contract for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the Contract for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 15(a).
- (4) The Director may terminate this Contract upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this Contract or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this Contract if the Director determines that the Concessioner is unable to perform the terms of Contract due to bankruptcy or insolvency.
- (5) Termination of this Contract for any reason shall be by written notice to the Concessioner.

**(c) Notice of Bankruptcy or Insolvency**

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

execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, NPS considers that this Contract is not a lease but an executory contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 365.

**(d) Requirements in the Event of Termination or Expiration**

- (1) In the event of termination of this Contract for any reason or expiration of this Contract, no compensation of any nature shall be due the Concessioner in the event of a termination or expiration of this Contract, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.
- (2) Upon termination of this Contract for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner shall, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, repair any injury occasioned by installation or removal of such property, and ensure that Concession Facilities are in at least as good condition as they were at the beginning of the term of this Contract, reasonable wear and tear excepted. The removal of such personal property must occur within thirty (30) days after the termination of this Contract for any reason or its expiration (unless the Director in particular circumstances requires immediate removal). No compensation is due the Concessioner from the Director or a successor Concessioner for the Concessioner's personal property used in operations under this Contract. However, the Director or a successor Concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner in accordance with the terms of this Contract shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.

**SECTION 16. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS**

- (1) This Contract is subject to the requirements of Applicable Laws, including, without limitation, 36 CFR Part 51, with respect to proposed assignments and encumbrances, as those terms are defined by Applicable Laws. Failure by the Concessioner to comply with Applicable Laws is a material breach of this Contract for which the Director may terminate this Contract for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this Contract of any nature or operating rights under this Contract, if obtained in violation of Applicable Laws.
- (2) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to Applicable Laws, including without limitation, 36 CFR Part 51, of the requirements of Applicable Law and this Contract.

**SECTION 17. GENERAL PROVISIONS**

- (a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by the terms of Applicable Laws.
- (b) All information required to be submitted to the Director by the Concessioner pursuant to this Contract is subject to public release by the Director to the extent provided by Applicable Laws.

- (c) Subconcession or other third party agreements, including management agreements, for the provision of visitor services required and/or authorized under this Contract are not permitted.
- (d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this Contract.
- (e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.
- (f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit that may arise from this Contract but this restriction shall not be construed to extend to this Contract if made with a corporation or company for its general benefit.
- (g) This Contract is subject to the provisions of 43 CFR, Subtitle A, Subpart D, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.
- (h) This Contract contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this Contract. This Contract may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.
- (i) This Contract does not grant rights or benefits of any nature to any third party.
- (j) The invalidity of a specific provision of this Contract shall not affect the validity of the remaining provisions of this Contract.
- (k) Waiver by the Director or the Concessioner of any breach of any of the terms of this Contract 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 Contract. The subsequent acceptance of any payment of money or other performance required by this Contract shall not be deemed to be a waiver of any preceding breach of any term of the Contract.
- (l) Claims against the Director (to the extent subject to 28 U.S.C. 2514) arising from this Contract shall be forfeited to the Director by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Contract as of the 5<sup>th</sup>, day of Oct, 2008.

CONCESSIONER

UNITED STATES OF AMERICA

BY James Michael Williams/Beanny  
(Title)  
(Company Name)

BY Jonathan B. Jarvis  
Jonathan B. Jarvis, Regional Director  
Pacific West Region  
National Park Service

[SOLE PROPRIETORSHIP]

WITNESSES:

NAME  
ADDRESS  
TITLE

James Schocker  
[Redacted]

NAME  
ADDRESS  
TITLE

Maile Williams  
[Redacted]

**EXHIBIT A  
OPERATING PLAN**

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## D) INTRODUCTION

This Operating Plan between James Michael Williams, dba The Beanery, (hereinafter referred to as the "Concessioner") and the National Park Service (hereinafter referred to as the "Service") at Mojave National Preserve (hereinafter referred to as the "Preserve") will serve as a supplement to draft Concession Contract CC-MOJA001-08 (hereinafter referred to as the "Contract"). It describes specific operating responsibilities of the Concessioner and the Preserve with regard to those lands and facilities within the Preserve which are assigned to the Concessioner for the purposes authorized by the Concession Contract.

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

This plan will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent.

Any revisions will be consistent with the main body of the Contract. Any revisions must be reasonable and in furtherance of the purposes of the Contract. This plan will remain in effect until superseded or amended.

## II) DEFINITIONS

In addition to all defined terms contained in the Contract, its Exhibits, and 36 CFR 51, the following definitions apply to this Operating Plan.

- (1) **Affirmative Acquisition.** Donating, buying, or purchasing preference of a product over a similar product because of certain characteristics or properties.
- (2) **Environmental Purchasing.** The affirmative acquisition of environmentally preferable products.
- (3) **Environmentally Preferable.** Products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operations, maintenance, or disposal of the product or service.
- (4) **Hazardous Chemical.** Any chemical which is a physical or health hazard, as regulated by the US Occupational Safety and Health Administration in 29 CFR 1910.120.
- (5) **Hazardous Material.** A substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has been designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 USC 5103), as regulated by the US Department of Transportation in 49 CFR 171.
- (6) **Hazardous Substance.** Any hazardous waste, hazardous chemical or hazardous material.
- (7) **Hazardous Waste.** The definition of hazardous waste as regulated by the US Environmental Protection Agency in 40 CFR 261.
- (8) **Incidental.** A spill or release of a hazardous substance that does not pose a significant safety or health hazard to employees in the immediate vicinity or to the employee cleaning it up, nor does it have the potential to become an emergency within a short time frame. Incidental releases are limited in quantity, exposure potential, or toxicity and present minor safety or health hazards to employees in the immediate work area or those assigned to clean them up. An incidental spill may be safely cleaned up by employees who are familiar with the hazards of the chemicals with which they are working.
- (9) **Non-incident.** A spill or release that is not an incidental spill or release.

- (10) **Pollution Prevention.** "Source reduction," as defined in the Pollution Prevention Act of 1990, and other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources; or protection of natural resources by conservation.
- (11) **Post-consumer Material.** Material or finished product that has served its intended use and has been diverted or received from waste destined for disposal.
- (12) **Recycling.** The act of producing new products or materials from previously used and collected materials.
- (13) **Universal Waste.** The definition of universal waste as regulated by the US Environmental Protection Agency in 40 CFR 261.
- (14) **Waste Prevention.** Any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.
- (15) **Waste Reduction.** Preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

### III) RESPONSIBILITIES

#### A) Concessioner

To achieve an effective and efficient working relationship between the Concessioner and the Preserve, the Concessioner will designate an on-site general manager who:

- (1) Has the authority and the managerial experience for operating the authorized Concession facilities and services within the Preserve;
- (2) Will employ a staff with the expertise and training to operate all services authorized under this Contract;
- (3) Has full authority to act as a liaison in all Concession administrative and operational matters within the Preserve; and,
- (4) Has the responsibility for implementing the policies and directives of the Service.

#### B) National Park Service

The Superintendent of Mojave National Preserve has the responsibility for all Preserve operations, including concession operations. The Superintendent carries out the policies and directives of the Service, including Concession program management. Directly, or through designated representatives, the Superintendent reviews, directs, and coordinates Concessioner activities relating to the Preserve. This includes:

- (1) Evaluation of Concessioner services and facilities;
- (2) Review and approval of rates charged for all commercial services; and
- (3) Review and approval of construction and all improvements to facilities.

### IV) GENERAL OPERATING STANDARDS AND REQUIREMENTS

#### A) Schedule of Operation

- (1) *Obligation.* The Concessioner will provide year-round services as defined in the Contract for the Preserve's visitors. The following hours are considered the minimum operating hours and can not be changed without prior written authorization from the Superintendent. The Concessioner will submit, for approval, the operating schedule for the Beanery within **30 days of Contract award**, and by **November 1<sup>st</sup>** for each subsequent year thereafter. The Preserve will give reasonable notice of any schedule changes that it may initiate. In no event

will the Concessioner fail to open on a designated business day or close earlier than the minimum operating hours, except for natural disasters and/or other bona fide emergencies or authorized by the Superintendent. The hours of operation will be prominently displayed at the Beanery and will be included in all Preserve information brochures, newspapers, etc.

- (2) *Minimum hours of operation.* The Beanery will be open, at a minimum, from 9:00 a.m. to 5:00 p.m.; five days a week, which will include all weekends. The Beanery will not be open Christmas day in connection with the Kelso Train Depot Visitor Center.

**A) Rate Determination and Approval Process**

- (1) *Rate Determination.* It is the objective of Service to ensure that the Concessioner's rates and charges to the public are commensurate with the level of services and facilities provided, and are reasonable, justified, and comparable with similar facilities and services provided by the private sector. Reasonableness of rates will be in accordance with current Concessions Management Guidelines (NPS-48). The Concessioner will develop its rates for food and beverage service in accordance with the current Service Core Menu Guidelines. After the Superintendent approves the rates for the initial core menu, the Superintendent will review those core menu items regularly on the menu based on comparability analysis.
- (2) *Rate Approval.* It is the responsibility of the Concessioner to submit rate requests by **November 1<sup>st</sup>** for the next calendar year, all requests must be made in writing to the Superintendent. The Superintendent will approve, disapprove or adjust rates and will inform the Concessioner within **30 days** of the rate request submittal. New rates will not be implemented until the Superintendent provides written approval.
- (3) *Information Required.* The Concessioner will provide detailed information necessary to enable the Preserve to assess rates, i.e., pertinent information should include, at a minimum, established criteria and comparable data, more information about what should be included in the request is outlined in the current Concession Management Guidelines (NPS-48).
- (4) *Rate Compliance.* The Services' Concession Management staff will periodically conduct on-site comparability studies with follow-up telephone calls to update rate information for a rate review. Rate compliance will be checked during periodic operational evaluations and throughout the year. Approved rates will remain in effect until superseded by written changes approved by the Superintendent.
- (5) *Reduced Rates for Government Employees.* Goods and services may not be provided to government employees or their families without charge or at reduced rates that are not available to the general public.
- (6) *Discounted Items.* If the Concessioner offers an item or service at less than optimum condition (because of unavailable amenities or condiments, or because of poor service or other conditions), item or service will be discounted. This should not be construed to condone shortages or "running out" of items on a regular basis and should be used only in unavoidable situations.

### C) Evaluations

The Concessioner will manage operations and services to ensure protection of resources, compliance with public health, environmental and safety requirements, and provide satisfactory services for Preserve visitors within the assigned areas of responsibility. The operation of facilities and services required by this Contract will conform to the evaluation standards set forth in the current Concession Management Guidelines (NPS-48).

The Service and/or its representatives and the Concessioner will separately evaluate and monitor Concession facilities and services with respect to Service policy, applicable standards, authorized rates, safety, public health, environmental management including Best Management Practices, impacts on cultural and natural resources, identified maintenance and operating deficiencies, and visitor satisfaction, concerns, and reactions.

The Concessioner will meet with Service officials to prioritize and schedule the correction of deficiencies and the implementation of improvement programs resulting from these inspections. The Concessioner will be responsible for correction of deficiencies and abatement plans within dates assigned by the Service.

- (1) *Frequency of Operational Evaluations.* The Preserve will conduct a minimum of one, unannounced periodic evaluation of the Concession facilities and services to ensure conformance to operational standards.
- (2) *Pre-season Inspections.* Each year, prior to the peak season of operation, an inspection may be conducted by the representatives of the Preserve and the Concessioner. At the time of this inspection, the Preserve's representative will explain to the Concessioner the specific items to be evaluated during the periodic inspections, such as determining Concessioner maintenance work needed and to approve and accept completed maintenance work.
- (3) *Periodic Operations Evaluations and Inspections.* The Service will conduct periodic inspections of Concession facilities and services to evaluate conformance to operational standards. The on site manager will be contacted at the time of evaluations so that a Concessioner representative may accompany the Preserve's evaluator. The Service reserves the right to enter the Concessioner's facilities at any reasonable time for any evaluation or when otherwise deemed necessary.
- (4) *Public Health.* The Concessioner will maintain and follow a formal, written food service sanitation self-inspection program. The Preserve will help develop and/or update the program as necessary.
- (5) *Other Evaluation Criteria.* The Concessioner may also be evaluated in terms of compliance with Contract requirements, such as timely payment of franchise fee, timely submission of annual financial report, timely and accurate submission of medical logs, and proof of general liability, automobile (if applicable), and workers compensation insurance.
- (6) *Health and Safety Inspections*
  - (a) Service Risk Management Evaluation. The Service will annually conduct a comprehensive evaluation of the Concessioner's Risk Management Program. Safety will also be a component of regular periodic evaluations.
  - (b) Public Health Inspections. A US Public Health Service Sanitarian will conduct unannounced periodic inspections of the Concessioner's food and beverage and other food sales.
  - (c) Food and Beverage Operations. The Concessioner will develop and follow a Hazard Analysis Critical Control Point ("HACCP") Plan, consistent with the current Food Code published by the US Public Health Service, which will be available from the Area upon request. The Service may help develop and update the program as necessary.

- (d) Concessioner Safety Inspection. The Concessioner's Safety Manager will perform periodic documented interior and exterior safety inspections of all Concession facilities in accordance with its documented Risk Management Program. The Concessioner's Safety Manager will assure employee compliance with health, fire, and safety code regulations as well as the Preserve's policies and guidelines.
- (7) *Fire Inspections*
- (a) The Service. The Service is the Authority Having Jurisdiction (AHJ) for all structural fire and life safety issues on federal lands administered by the National Park Service. The Preserve's Fire Management Officer will complete structural fire inspections, at no cost to the Concessioner.
- (b) The Concessioner. The Concessioner will work with the Preserve's Fire Management Officer to schedule bi-annual structural fire inspections to ensure compliance with the National Fire Protection Code. The Preserve's Fire Management Officer can be reached at (760) 252-6132.
- (c) Fire Drills. The Concessioner will conduct routine fire drills, in cooperation and under the guidance of the Service AHJ, of all concession facilities as required by the Risk Management Plan and NPS Reference Manual #58 (Structural Fire Management).
- (8) *Environmental Audit*. The Service has established a Concession Environmental Audit System to facilitate Concessioner compliance with all applicable environmental requirements, implementation of best management practices, promotion of sound environmental practices, and awareness and accountability for environmental management. The scope of the audit includes applicable federal, state and local laws and regulations, applicable Department of the Interior and Service policies and regulations, and other criteria as contained within the current NPS Environmental Audit Program Operating Guide and the Concession Environmental Audit System ("CEAS") Guide. Audits will be conducted at least every five years.
- (9) *Visitor Comments*. In order to elicit responsive visitor comments, the Concessioner will utilize Service-approved comment cards available to visitors in order to measure service and quality standards, pricing, and overall park experience.
- (a) The Concessioner will respond within ten business days, in writing, to all visitor complaints regarding Concessioner facilities or services. A copy of the response with any supporting material will be provided to the Service.
- (b) The Concessioner will forward to the Superintendent all comments on a monthly basis and all complaints on a weekly basis.
- (c) The Preserve will forward to the Concessioner any comments and/or complaints received regarding Concessioner facilities or services. The Concessioner will investigate and respond to any complaints within ten business days. The Concessioner will provide a copy of any such responses to the Superintendent, and a copy of any Preserve responses will be forwarded to the Concessioner.

#### **D) General Policies**

- (1) *Facilities Use*. Concession facilities may not be used for activities or services that do not directly and exclusively support contractual services authorized by the Concession Contract without written permission from the Preserve.
- (a) Smoking Policy. All Concession facilities are designated as non-smoking.

- (2) *Lost and Found.* The Concessioner will establish and provide an effective program for handling lost and found or unattended property in facilities and upon lands assigned to the Concessioner. Procedures for the handling of lost and found property will conform to DO 44, Personal Property Management and Personal Property Management Handbook No. 44, which can be found at <http://www.nps.gov/refdesk/DOrders/DOrder44.html>
- (a) *Concessioner Responsibility.* Items will be turned over to Concessioner personnel responsible for administering the lost and found program and tagged to identify the item, date, location, and name of finder. Items of value will be reported to the Service as soon as possible. If an item is not claimed within seven (7) days, it shall be turned over to the Visitor Center front desk in accordance with the Preserve's lost and found policy. Whenever possible, the Concessioner shall attempt to identify the ownership of the found item and provide this information to the Preserve. Guests who have lost or found items should be directed to the Visitor Center front desk for reporting.
- (b) *Returning of Property.* Owners claiming property may sign to receive property on location after proper identification of the item and owner has been established. No property will be released without the claimant's name, address, and signature acknowledging receipt of property.
- (c) Concessioner and Preserve employees and volunteers are not entitled to claim lost and found items.
- (3) *Credit Cards.* Credit cards will be honored and at a minimum, MasterCard and Visa will be accepted.
- (4) *Vehicles*
- (a) Concessioner Parking. The Concessioner will ensure that Preserve-approved designated areas are used to park and store vehicles and equipment in a safe, organized manner.
- (b) Identification. Concessioner owned vehicles will be discreetly identified with the Company name and logo.
- (5) *Interactions with Wildlife*
- (a) The feeding of wildlife within a National Park Service area is not permitted. The Concessioner will not encourage the feeding of wildlife at any facility.

## **E) Human Resources Management**

### *(1) Employee Hiring Procedures*

- (a) Staffing Requirements. The Concessioner will hire a sufficient number of employees to ensure satisfactory visitor services throughout the year. The Concessioner will attempt to offer its employees a full workweek whenever possible. Prior to employment, the Concessioner will inform employees of salary, schedules, holiday pay, overtime requirements, and the possibility that less-than-full-time employment may occur during slow periods.
- (b) Drug-free Environment. The Concessioner will maintain, to the greatest extent possible, a drug free workplace environment. Should any illegal drug use occur within the Preserve, it must be promptly reported by the Concessioner to the Superintendent.
- (c) Background Checks. The Concessioner will establish hiring policies that will include appropriate background reviews of applicants for employment. The Concessioner will not hire, or retain, any person known to have an outstanding warrant for arrest.
- (d) Driver Requirements. Drivers of trucks will have a valid State operator's license for the size and class of vehicle being driven.

- (e) Equal Opportunity. The Concessioner and its employees shall not discriminate against any individual because of race, creed, color, sex, national origin, or physical or mental handicap and shall comply with equal opportunity and accessibility standards and requirements.
  - (f) Preserve Employees. The Concessioner will not employ in any status a Preserve employee, his/her spouse, or minor children of the Preserve employees without the Superintendent's written approval.
- (2) *Employee/Staffing Practices*. Employees will project that hospitable, friendly, helpful, positive attitude, be capable of and willing to answer visitor's questions, and provide visitor assistance.
- (3) *Interpretation*. Interpretive messages will be included on menus, placemats, paper cups, 10 cards, etc. The Concessioner will explore a wide array of avenues for conveying intricate messages to visitors on Park-related themes and topics such as resource protection, appreciation of the Preserve's values, and National Park Service goals.
- (4) *Employee Identification and Appearance*. The Concessioner will ensure that all employees wear uniforms or standardized clothing with a personal nametag. Employees will be neat and clean in appearance and will project a hospitable, positive, friendly and helpful attitude as well as be capable of and willing to answer visitors' questions (about both job and general Preserve information). Employees shall conduct themselves in a professional manner at all times.
- (5) *Training*
- (a) Training Program. An active, ongoing training program for development of necessary skills and techniques must be provided for all Concession employees. These sessions shall stress work performance, including a thorough knowledge of food safety, Preserve regulations, the Concessioner's Environmental Management Program, and responsibilities for performing their duties. It also shall include product and service presentation, cleanliness, employee attitudes, and Preserve philosophy and policy. The orientation will be given to Concessioner employees at the start of their employment, and refresher training given annually thereafter.
  - (b) Interpretive Training. The Concessioner will provide interpretive skills training for all employees who provide interpretive, informational and safety orientation information and/or services. The Concessioner will work closely with the Preserve to improve the methods of preparing and presenting effective interpretive information. Training will be coordinated with the Preserve.
  - (c) Orientation. All concession employees should attend Orientation Training provided by the Preserve. One employee is required to attend annually. The Preserve will coordinate the dates/times for this training with the Concessioner. Concession employees may be able to participate in park interpretative training at Mojave National Preserve. The Concessioner will also provide mandatory employee orientation and training and will inform employees of park regulations and requirements that affect their employment and activities while residing and working in Mojave National Preserve.
  - (d) Environmental and Risk Management. The Concessioner will provide applicable training in environmental and risk management to employees annually.
  - (e) The Preserve Training. Employees shall be encouraged to attend any Service-sponsored training relating to Concession operations in the Preserve. Employees, especially managers, may attend other Service training as space permits and determined appropriate by the Service.

- (6) *Delays.* Sufficient staff shall be allotted to prevent undue delays. Determination of undue delay will consider the kinds of service being rendered and situations or conditions beyond the control of the Concessioner, such as unanticipated influxes of visitors or sudden weather changes.

## V) RISK MANAGEMENT

### A) Documented Risk Management Program

Per the Occupational Safety and Health Act of 1970 and the National Park Service Risk Management Program, the Concessioner will provide a safe and healthful environment for all of its employees and visitors. A Risk Management Program will be developed and maintained by the Concessioner to implement an appropriate safety program. The initial plan will be developed and submitted to the Preserve within **120 days** after Contract execution. The Concessioner shall ensure that the Preserve has a current copy of the Concessioner Risk Management Program and any updates to this Program. This plan will be reviewed and approved by the Preserve annually, in accordance with Occupational Safety and Health Administration (“OSHA”), NFPA and Service guidelines. The program will include, at a minimum, the following components:

- Management’s Policy Statement, Duties, Employee’s Responsibilities, and Administration.
- Inspection and Abatement.
- Accident Investigation and Reporting.
- Safety/Health Committee.
- Training.
- Emergency Procedures.

### B) Emergency Response

- (1) *General.* The Concessioner will provide plans and procedures, equipment and training to employees to effectively respond to releases of hazardous substances for the purpose of stopping the release in accordance with Applicable Laws.
- (2) *National Park Service Plans.* The Concessioner will be familiar with the Preserve’s Emergency Response Plan, Continuity of Operations Plan. Copies will be provided upon request.
- (3) *Reporting.*
- (a) The Concessioner will notify the Preserve immediately when a release of a hazardous substance occurs. Proper safety actions must be implemented immediately in accordance with the Concessioner’s emergency response plans and procedures.
  - (b) The Concessioner will submit all Emergency Planning and Community Right-to-Know (EPCRA) reports required under Applicable Laws to the Preserve in accordance with Section 6d of the Contract.
  - (c) The Concessioner will also submit to the Preserve, upon request, applicable hazardous materials storage and toxic release information necessary for Preserve EPCRA reporting.

## VI) ENVIRONMENTAL MANAGEMENT PROGRAM

The Concessioner will prepare, with guidance from the Service, and Environmental Management Program (“EMP”) in accordance with Section 6 of the Contract and the plan will be updated annually. Further specifications and requirements are found in other sections of this Operating Plan and the Maintenance Plan, Exhibit E, to the Contract.

## VII) EMERGENCY SERVICES

### A) Law Enforcement

- (1) *NPS Law Enforcement.* The Preserve will provide visitor protection, and will handle all violations of Federal, State, County or Service regulations or policies. State or County officials may be called to assist in some matters but this will be accomplished through the office of the Chief Ranger or his/her authorized representative.
- (2) *Concessioner Personnel.* Concessioner-employed personnel have only the authority of private citizens in their interaction with Preserve visitors. They have no authority to take law enforcement action or to carry firearms.

### B) Fire Protection

- (1) The Service and the Concessioner will jointly provide fire protection to the facility, with primary responsibility lying with the Preserve.
- (2) Fire prevention and protection will be primary considerations at all facilities.
- (3) All facilities will conform to the applicable National Fire Protection Association (NFPA) Codes unless specific variance is granted by the Preserve. A fire extinguisher suitable for use on all classes of fires in compliance with NFPA standards must be located in each building. The Concessioner shall train and equip personnel for evacuation of employees and stock. The Concessioner shall ensure that fire detection and fire suppression equipment (including all fire extinguishers) is maintained in good operating condition at all times in the food service area. It is also the Concessioner's responsibility to detect and report all structural fires immediately.
- (4) Structural fire suppression is the primary responsibility of the Preserve. The primary focus shall be on the effective prevention of fires and the evacuation of persons from the premises.

### C) Emergency Medical Care

- (1) *Preserve Response.* The Preserve and Baker Ambulance Service are responsible for emergency medical care.
- (2) *Emergency Reporting Procedures.* All Concessioner employees will be trained in proper emergency reporting procedures and will be instructed to provide essential information, e.g. a call back number at their location. Federal Interagency Communications Center Dispatch will dispatch law enforcement and emergency personnel as needed. Any injury sustained by a visitor or employee in a concession facility and all medical emergencies shall be immediately reported to the Preserve. The Preserve will investigate all visitor and employee accidents which require medical attention.

## VIII) PUBLIC RELATIONS

### A) Required Notices

- (1) The following notices will be prominently posted at all Concessioner registration and payment areas:

“This service is operated by (Concessioner's name), a Concessioner under contract with the U.S. Government and administered by the National Park Service. The Concessioner is responsible for conducting these operations in a satisfactory manner. Prices are approved by the National Park Service.”

Please address comments to: Superintendent  
Mojave National Preserve  
2701 Barstow Road

Barstow, CA 92311

"This is a facility operated in an area under the jurisdiction of the U.S. Department of the Interior. No discrimination by segregation or other means in the furnishing of accommodations, facilities, services, or privileges on the basis of race, creed, color, ancestry, sex, age, disabling condition or national origin is permitted in the use of this facility. Violations of this prohibition are punishable by fine, imprisonment, or both. Complaints of violations of this prohibition should be addressed to the Director, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127."

#### **B) Public Statements**

All questions concerning operations in the Preserve or with the Preserve or concerning any incidents occurring within the Preserve will be referred to the Superintendent.

#### **C) Advertisements and Promotional Material**

##### *(1) Promotional Material*

- (a) Approval. The Preserve must approve all promotional material prior to publication, distribution, broadcast, etc. The Concessioner will contact the Preserve well in advance to establish specific time frames for each project review. The Preserve may require unapproved promotional material removed from circulation.
  - (b) Changes. Brochure changes and layout should be submitted to the Superintendent for review at least **30 days** prior to projected need/printing dates. The Superintendent will make every effort to respond to minor changes to brochure and other texts within 15 days. Longer periods may be required for major projects or where Service assistance is required to help develop the product. The Concessioner should contact the Preserve well in advance to establish specific time frames for each project.
  - (c) Material Specifications. All advertisements and promotional material are recommended to be published on minimum 30% post-consumer material paper and/or tree-free products and double-sided. The use of soy-based inks is also recommended.
- (2) *Statements*. Advertisements must include a statement that the Concessioner is authorized by the Service and the Department of the Interior, to serve the public in Mojave National Preserve.

### **IX) SPECIFIC OPERATING STANDARDS AND REQUIREMENTS**

#### **A) Food and Beverage Operations**

- (1) *Facility Use*. The Concessioner will not use the facilities assigned within the Contract to provide catering services outside the Preserve without the consent of the Superintendent.
- (2) *Management*. The Concessioner will ensure that a manager and/or other key personnel will be visible in the food service facility during the peak service hours of operation.
- (3) *Menus*. All menus will maintain a price range that accommodates the general range of Preserve visitors. The Concessioner will offer an all-American, 1930s-40s menu that will interpret the Beanery's historic fare. The Concessioner is encouraged to provide a range of food that provides for a wide variety of visitors, including vegetarian entrées, heart healthy entrées, light eaters and entrées, and children's menus.
- (4) *Food Handlers*. All food handlers who provide food service will be fully trained. At least one manager on staff must have Serve Safe® certification. Food handlers in a training status will be accompanied by a certified food handler.
- (5) *Alcohol Sales*. No alcoholic beverages will be sold by the Concessioner.

- (6) *US Public Health Code.* All food preparation and dishwashing will conform to US public health code requirements.
- (7) *Garbage collection.* The Preserve will provide dumpsters outside of the building for the Concessioner's trash. The Concessioner is responsible for hauling its own garbage to dumpsters; garbage should be taken to dumpsters daily. Garbage receptacles will be closed at all times.
- (8) *To-Go Service.* Sales of the menu items for carry-out or to-go are authorized.

#### **B) Merchandise**

- (1) *Limited Merchandise Items.* The Concessioner is authorized to sell a limited amount of merchandise, such as water bottles, mugs, coffee tumblers, t-shirts, film, and cameras directly associated with the historic Kelso Depot train station and the Beanery if such sale does not impede or interfere with the required services.

#### **X) Reporting Requirements**

##### **A) Preserve Reports**

*Annual Performance Evaluation.* The Preserve will prepare the Concessioner's annual performance evaluation during **February** for the preceding calendar year. The Concessioner will meet with the Superintendent and/or his/her representative(s) to discuss the annual evaluation, which includes contractual, operational, public health, and safety components.

##### **B) Concessioner Operational Reports**

- (1) *Visitor Use Data.* In order to monitor visitor use, detect visitor trends, and provide data to satisfy reporting requirements, visitor use data is required monthly of the Concessioner. The Concessioner will complete the visitor utilization sheet, listing the number of monthly meals served, total monthly food and beverage revenues, average check size, and monthly retail sales. This information is due by the **10<sup>th</sup> day of the following month**. A sample of this operational report form is included as Attachment A of this Operating Plan. From time to time the Preserve may redesign this form in order to best obtain data from the Concessioner. Even if no meals are served or retail items are sold during a month, the Concessioner will complete a form for each month the Concessioner operates.
- (2) *Human Illness Reporting.* Information on all employee human illnesses, whether employees for guests, is to be promptly reported to Preserve's safety office. This information, along with other information received, will be evaluated by the Preserve, who may consult with the Public Health Service to help identify outbreaks of illness associated with contaminated water or food sources, or caused by other adverse environmental conditions. Initial reports will be made by telephone.
- (3) *Incident Reports.* The Concessioner will immediately report to Federal Interagency Communications Center Dispatch at (909) 383-5652:
  - (a) Any fatalities or visitor-related incidents that could result in a tort claim to the United States or the Concessioner.
  - (b) Any incident involving property damage to a visitor's property or government owned property.
  - (c) Employee or visitor injuries requiring more than minor first aid treatment.
  - (d) Any fires.
  - (e) Any motor vehicle accidents.

- (f) Any incident that affects Preserve resources, including removal of animals from the Preserve.
- (g) Any known or suspected violations of the law.
- (4) *Hazardous substance spills.* The Concessioner will immediately report spills to the Federal Interagency Communications Center Dispatch.

#### **XI) Utility Responsibility**

##### **A) Concessioner**

- (1) The Concessioner is responsible for contracting independent suppliers to provide year-round utility services not provided by the Preserve. The Concessioner is responsible for the direct payment to these suppliers.
- (2) The Concessioner is liable for prompt payment of electricity, fuel, refuse collection, telephone, sewage disposal, water or any other utility or service, whether made by governmental authority, public or community Service Company.

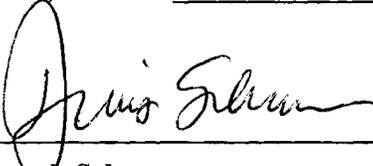
##### **B) The Service**

- (1) The Service will provide electricity, gas, water, and garbage services to the Concessioner's assigned facilities. The Service will bill on a monthly basis for these services in accordance with current regulations and policies.
- (2) The Service will review operating costs for utility systems and services annually and will notify the Concessioner in writing at least **sixty (60) days in advance** of new rate implementation.

**XII) Volunteers in the Preserve (VIP) Program**

The Concessioner will encourage and permit its employees to participate in the Preserve's Volunteers in Parks (VIP) program.

Approved, effective 10-27-08, 2008

By:   
Dennis Schramm  
Superintendent, Mojave National Preserve

**ATTACHMENT A  
MONTHLY UTILIZATION REPORT**

Report due by the 10<sup>th</sup> of each month. Reports may be faxed to Lisa Wilson, Administrative Officer at (760) 252-6174.

Month	Number of Covers (Meals Served)	Total Revenues	Average Food Check	Total Retail Sales
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				
<b>TOTAL</b>				

**EXHIBIT B**  
**NONDISCRIMINATION**

**Section I: Requirements Relating to Employment and Service to the Public**

**A) Employment**

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

- (1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provision of this nondiscrimination clause.
- (2) The Concessioner will, in all solicitations or advertisements for employees placed by on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disabling condition.
- (3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed \$50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.
- (5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled,

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

- (8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

#### **B) Construction, Repair, and Similar Contracts**

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

#### **C) Facilities**

(1) Definitions: As used herein:

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

(2) The Concessioner is prohibited from:

- (a) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition;
- (b) (i) discriminating by segregation or other means against any person.

## Section II: Accessibility

Title V, Section 504, of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the service or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law, and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

### A) Discrimination Prohibited

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

- (1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
- (2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
- (4) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
- (5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;
- (6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
- (7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

### B) Existing Facilities

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

### EXHIBIT C ASSIGNED LAND

#### Main Floor

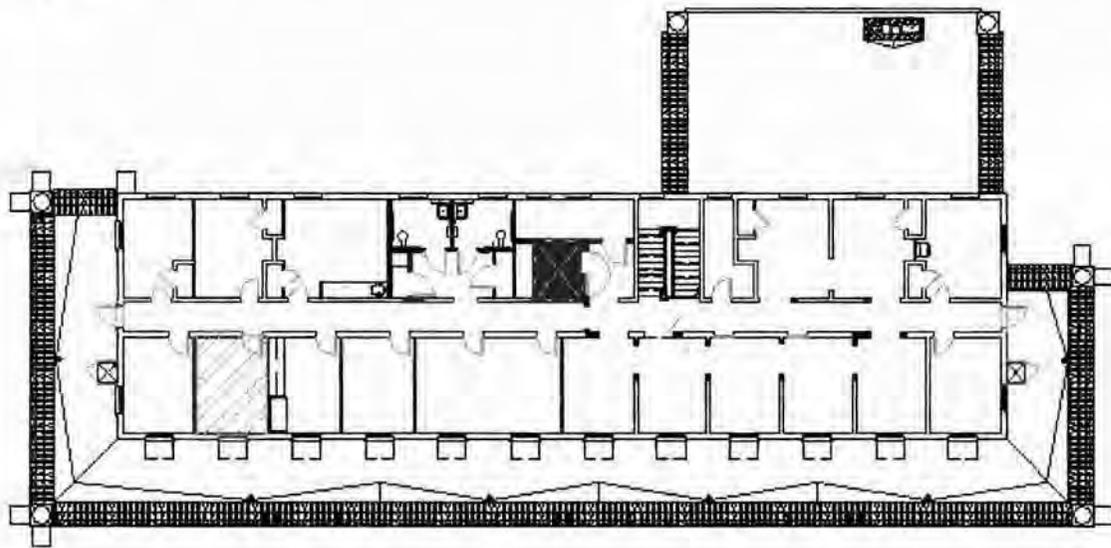


Kelso Depot  
Mojave National Preserve

 Area of operations



**Second Floor**



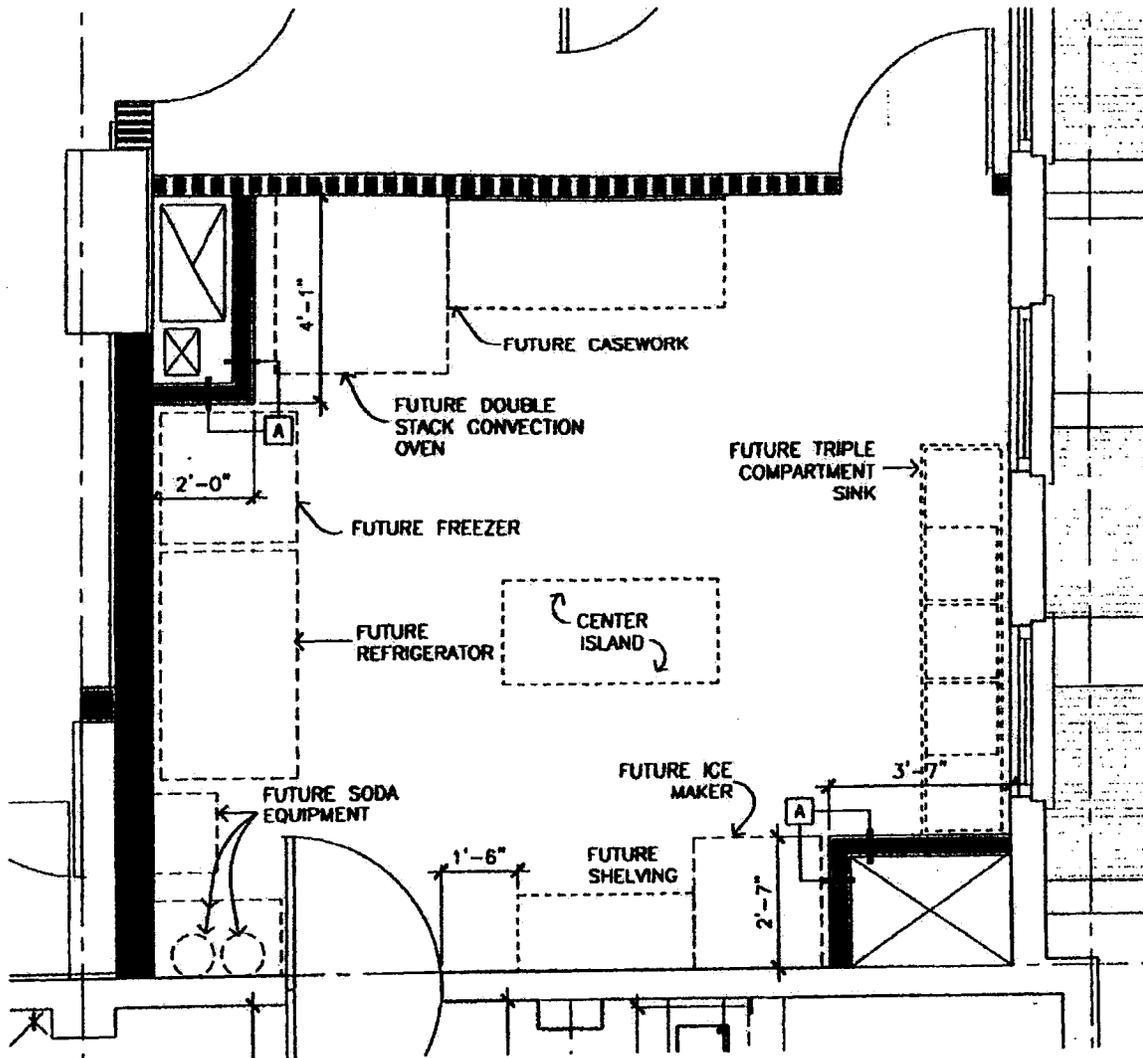
Kelso Depot  
Mojave National Preserve

 Area of operations





**Kitchen Plan (detailed)**



② KITCHEN PLAN  
SCALE © : 1/2" = 1'-0"

**REAL PROPERTY IMPROVEMENTS ASSIGNED**

The following real property improvements are assigned to the Concessioner for use in conducting its operations under this Contract:

**Kelso Depot**

<b>Building Name</b>	<b>FMSS Asset Code</b>	<b>Asset Type</b>	<b>Total Units (Qty)</b>	<b>Unit</b>	<b>Insurance Replacement Cost</b>
Kelso Train Depot (the Beanery)	65897	4100	13,132	sq. ft.	
Kelso Train Depot Storage Shed	76813	4100	84	sq. ft.	

Approved effective \_\_\_\_\_, 2008

By: \_\_\_\_\_  
**Dennis Schramm**  
 Superintendent, Mojave National Preserve

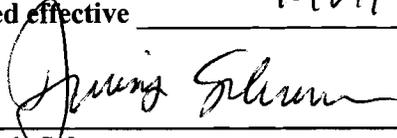
**EXHIBIT D  
ASSIGNED GOVERNMENT PERSONAL PROPERTY**

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

Property Number \_\_\_\_\_ Description of Item \_\_\_\_\_

**TO BE UPDATED ONCE PERSONAL PROPERTY IS PURCHASED**

Approved effective 10/27/08, 2008

By:   
**Dennis Schramm**  
Superintendent, Mojave National Preserve

**EXHIBIT E  
MAINTENANCE PLAN**

**D) INTRODUCTION..... 1**

**II) GENERAL STANDARDS FOR CONCESSIONER FACILITIES ..... 1**

**III) DEFINITIONS ..... 1**

**IV) CONCESSIONER RESPONSIBILITIES ..... 2**

    A) General..... 2

    B) Inspections and Reports..... 3

    C) Facility Maintenance..... 3

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    A) Facility Maintenance..... 8

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    C) Signs ..... 8

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## D) INTRODUCTION

This Maintenance Plan between James Michael Williams, dba The Beanery, (hereinafter referred to as the "Concessioner") and the National Park Service (hereinafter referred to as the "Service") at Mojave National Preserve (hereinafter referred to as the "Preserve") will serve as a supplement to the Concession Contract No. CC-MOJA001-08 (hereinafter referred to as the "Contract"). It describes maintenance responsibilities of the Concessioner and the Service with regard to those lands and facilities within the Preserve, which are assigned to the Concessioner for the purposes required and authorized by the Contract.

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

This plan shall remain in effect until superseded or amended. It will be reviewed annually by the Service in consultation with the Concessioner and revised as determined necessary by the Service. Revisions will be consistent with the main body of the contract. Any revisions must be reasonable and in furtherance of the purposes of the Contract.

## II) GENERAL STANDARDS FOR CONCESSIONER FACILITIES

The Concessioner is required by the terms of the Contract to maintain the facilities used in a manner that is acceptable to the Service. It is the purpose of this Maintenance Plan to help define the necessary standards and to define the maintenance relationship between the Concessioner and the Service. Both the Concessioner and the Service have specific responsibilities as outlined in the Contract and this document.

## III) DEFINITIONS

In addition to all the defined terms contained in the Contract and its other exhibits, the following definitions apply to this Maintenance Plan.

- (1) **Assigned Areas.** Lands within the Mojave National Preserve, as defined by Land Assignment/Concessioner Facilities Maps in Exhibit C to the Contract. These lands contain improvements and support facilities used by the Concessioner. The Concessioner has specific responsibilities, defined below, regarding the maintenance and upkeep of these facilities. Any approved change in land use resulting from building modification or other activity is regarded as causing an immediate corresponding change in the land assignment.
- (2) **Environmental Purchasing.** Affirmative acquisition of environmentally preferable products.
- (3) **Environmentally Preferable.** Products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operations, maintenance, or disposal of the product or service.
- (4) **Hazardous Chemical.** Any chemical which is a physical or health hazard, as defined by the US Occupational Safety and Health Administration in 29 CFR 1910.120.
- (5) **Hazardous Material.** A substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has been designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 USC 5103), as defined by the US Department of Transportation in 49 CFR 171.
- (6) **Hazardous Substance.** Any hazardous waste, hazardous chemical, or hazardous material.
- (7) **Hazardous Waste.** The definition of hazardous waste as defined by the US Environmental Protection Agency in 40 CFR 261.
- (8) **Interior.** The area of structures inside the external walls and under the roof, including doors and window frames. This also includes all equipment, furnishings, appurtenances, improvements and utility systems which penetrate the walls, roof, or foundation.

- (9) **Maintenance.** The preservation and upkeep of real or personal property in as nearly as is practicable to the originally constructed condition or its subsequently improved condition. Maintenance includes operational cyclic repair by state licensed individuals (when needed), rehabilitation of designated areas, facilities, infrastructure, equipment and their component parts -- up to and including replacement if necessary --to provide a safe, sanitary and aesthetically pleasing environment for Preserve visitors and employees.
- (10) **Cyclic Maintenance.** Work activities that reoccur on a periodic cycle of greater than one year but less than seven years.
- (11) **Preventative Maintenance.** Planned, scheduled servicing, inspection, adjustment, and replacement that results in continued service, fewer breakdowns and prevents premature replacement of equipment and materials.
- (12) **Repair.** The act of correcting an unsatisfactory physical condition. Replacement is an aspect of repair and may be a necessary and/or an economically sound approach to repairs. Repair is an aspect of maintenance and the objective of repair is the same as the objective of the general act of maintenance as defined above.
- (13) **Personal Property.** All property which is not permanently attached to the real property structure. There are two types of personal property Government and Concessioner owned personal property. Government owned personal property will be identified in Exhibit D of the Contract.
- (14) **Pollution Prevention.** "Source reduction," as defined in the Pollution Prevention Act of 1990, and other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources; or protection of natural resources by conservation.
- (15) **Post-consumer Material.** Material or finished product that has served its intended use and has been diverted or received from waste destined for disposal.
- (16) **Universal Waste.** Refer to the definition of universal waste as defined by the US Environmental Protection Agency in 40 CFR 261.
- (17) **Solid Waste.** Discarded household and business items such as product packaging, grass clippings, furniture, clothing, bottles, food scraps, newspapers, appliances, paint, and batteries. It is more commonly referred to as trash, garbage, litter, or rubbish. In a horse stable operation, this would also include manure. The term "solid waste," as used in this Maintenance Plan, does not include sewage, septic sludge, and hazardous waste. Solid waste will be managed in accordance with Applicable Laws including 40 CFR 243 and 36 CFR 6.
- (18) **Waste Reduction.** Preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

#### IV) CONCESSIONER RESPONSIBILITIES

##### A) General

- (1) **Land Assignment.** The Concessioner is responsible for all cyclic, preventative, and routine maintenance and repair of all personal property as shown in Exhibit C and D, except as noted in Section V under "Service Responsibilities." The Concessioner will correct any deficiencies and complete this work on a timely basis to achieve the basic goals described in the most current Concession Management Guidelines and all for the condition of all personal property. The Concessioner will be responsible for daily cleaning of the picnic table area and the office upstairs.
  - (a) Lands within the Preserve, as defined by the Land Assignment Maps in Exhibit C to the Contract, are the responsibility of the Concessioner. These lands contain improvements and support facilities, used by the Concessioner. The Concessioner has specific responsibilities, defined below, regarding the condition of these facilities.

- (b) Any Service approved change resulting from changes to land use within the Concessioner's land assignment will result in a corresponding change in the Land Assignment Maps.
- (2) *Responsibilities.* The Concessioner will be responsible for cyclic and preventative maintenance and repairs to all personal property as defined by Section 8(c) of the Contract used by the Concessioner within the areas assigned to the Concessioner for the purposes of the Contract. The Concessioner will correct any deficiencies and complete this work within **30 days** notification for non-life/health safety issues and immediately for life/health safety issues, to achieve the basic goals described in the most current Concession Management Guidelines.
- (3) *Environmental Management.* The Concessioner will conduct routine maintenance activities and seek ways to develop quality facilities and services. The Concessioner will encourage companies and businesses with which it does business to provide cleaner technologies and safer alternatives to toxic and hazardous materials, and to develop innovative technology.
- (a) Energy and Water Conservation. The Concessioner will incorporate energy and water efficiency in all maintenance practices and integrate energy and water conserving measures whenever feasible. As new technologies are developed, the Concessioner will explore the possibility of integrating them into existing operations where there is potential for increased efficiency, reduced water or energy consumption, or reduced impacts on the environment.
- (b) Energy Star. New equipment shall be ENERGY STAR<sup>®</sup> labeled or designated to be in the upper 25% of energy efficiency in its class in accordance with Federal Energy Management Standards (FEMP).
- (c) Pollution Prevention and Waste Reduction. The Concessioner will incorporate utilizing maintenance practices that prevent pollution and employ waste reduction strategies.
- (d) Equipment and Materials. The Concessioner will use products or materials that are less toxic, contain post-consumer recycled content, are naturally or minimally processed, and use other materials that have additional environmentally preferable attributes. The Concessioner will minimize use of hazardous chemicals in its operations.
- (4) *Environmental Purchasing.*
- (a) Where feasible and available, the Concessioner will utilize products or materials that are less toxic, contain post-consumer recycled content, are naturally or minimally processed products, and/or use other materials that have additional environmentally preferable attributes.
- (b) Reusable and recyclable products are preferred over "throwaways."

## **B) Inspections and Reports**

- (1) *Inspections.* The Service reserves the right to conduct an inspection and review of the assigned Concession facilities to determine what maintenance is needed, and if the facilities comply with applicable federal and state laws, regulations, guidelines, rules, codes and policies. Based upon the identified needs resulting from the inspection, the Service and the Concessioner will develop a timeline to cure the deficiencies. The Superintendent or his/her designated representatives will have access to all concession facilities to conduct evaluations and other required inspections.
- (2) *Personal Property Replacement Plan.* The Concessioner will provide the Service with its planned personal property replacement schedule for the next calendar year by **November 1** of each year of the Contract. The plan will include the estimate date of the replacement, estimated replacement cost, expected life of replacement property, and expected salvage value of replaced personal property at the time of replacement.

## **C) Facility Maintenance**

- (1) *Access to Concession Facilities.* The Superintendent and/or his designated representative will have access to all Concession Facilities within the Preserve at any time and without prior notice to conduct evaluations and other required inspections.
- (2) *Qualified Personnel.* All maintenance and repair work will be done by qualified personnel as defined by Applicable Laws/Codes.
- (3) *Specifications.* Repairs or replacements will be done in accordance with Service specifications, industry standards, and applicable manufacturer's guidelines and are subject to Service approval.
- (4) *Reports.* Within **thirty (30) days** after any repair and maintenance work has been done, the Concessioner shall submit a written report to the Service. This report shall include a description of the work accomplished and the work methods used.
- (5) *Building Codes.* The Concessioner will comply with all applicable federal, state, and local codes, including, but not limited to, the National Fire Protection Association's (NFPA) and applicable OSHA standards.
- (6) *Repairs and Modification.* All repairs and modifications necessary and approved by the Superintendent shall meet the National Standards Plumbing Code, the Uniform Building Code and the National Electrical Code at a minimum.
- (7) *Interior Surfaces.* Routine maintenance shall be performed on a regular and recurring basis that will assure that all varnished, painted and metal surfaces are maintained in a clean and non-deteriorating condition.
- (8) *Cleaning Products.* The Service must approve all cleaning products used by the Concessioner.
- (9) *Appurtenances.* The Concessioner shall maintain all appurtenances in such condition as to assure that they will last and function as they were designed for the normal life as is expected for such equipment. Replacement of any broken or worn out kitchen equipment (microwaves, blenders, etc.) or the cash register shall be at the expense of the Concessioner.
- (10) *Cleaning.* Daily housekeeping (flooring, window frames, windows, rafters, wallpaper, paint, etc.) will be the responsibility of the Concessioner. All assigned areas will be well maintained and cleaned. The area will be kept free of clutter and debris at all times.
- (11) *Safety and Health.* The Concessioner will provide and maintain safety devices, in accordance with applicable codes, including but not limited to, fall protection, fire detection, suppression equipment, etc. and all equipment necessary for the protection of the employees and the public, as well as Concessioner-owned and government-assigned improvements by complying with all applicable codes. It shall be the responsibility of the Concessioner to maintain housekeeping standards at such level to provide safe living conditions, to see that various electrical circuits are not overloaded, that all circuits are properly fused and that wire sized of extension cords, etc. are of the proper size for the load.
- (12) *Safety and Fire.* Structural fire inspections will be completed at no cost to the Concessioner by the Preserve's Fire Management Officer. These inspections must be completed bi-annually to ensure compliance with the National Fire Protection Code. The Preserve's Fire Management Officer can be reached at (760) 252-6132.
- (13) *Damage to Concession Facilities or Utilities.* The Concessioner will be responsible for repairing, or paying for the repairs, of any damage caused to any assigned structure or utility due to negligence on the part of a Concession employee or supplier. Any such damage shall be reported to the Chief of Facility Management at (760) 252-6152 prior to any work being done.
- (14) *Independent Inspections.* All independent inspection fees will be borne by the Concessioner.
- (15) *Furniture and Removable Equipment.*

- (a) The Superintendent reserves the right to require the Concessioner to replace furniture and removable equipment at the end of its useful life or when the item presents a quality, safety or environmental issue.
- (b) All furniture, fixtures, and equipment including but not limited to dishwashers, refrigerators, ice machines, freezers, and serving tables, will be maintained according to food industry standards for public use and be free of defects.
- (c) All furniture and equipment not being used shall be clean, well maintained, and stored in an uncluttered manner.

#### **D) Utilities**

The Concessioner is responsible for contracting with independent suppliers to provide propane. The Concessioner is responsible for direct payment to this supplier.

The Concessioner will repair, replace, or pay for any utility system damage within its assigned areas and/or damage occurring beyond the Concessioner's assigned areas which results from negligence by the Concessioner's agents, and/or its employees while working or operating equipment.

##### *(1) Electrical*

- (a) The Concessioner will contract with the Preserve for electrical services. The Preserve will bill the Concessioner at established utility rates.
- (b) The Concessioner shall maintain all fixtures (lamps, cords and equipment) affixed to the secondary electrical lines.
- (c) The Preserve will bill the Concessioner to recoup costs for repairing or replacing any electrical system damage, which results from negligence of the Concessioner and/or its employees while working or operating Concessioner's equipment.

##### *(2) Water*

- (a) The Concessioner will contract with the Preserve for water and sewer service. The Preserve will bill the Concessioner at established utility rates.
- (b) The Preserve will bill the Concessioner to recoup costs for repairing or replacing any damage to the water system which results from negligence of the Concessioner and/or its employees while working or operating Concession equipment.
- (c) The Concessioner shall also maintain all fixtures attached to the water system within all concession facilities and comply with cross connection/backflow requirements. Alterations, additions, or extensions to the water system owned by the Service are not permitted without prior written approval from the Superintendent or his/her representative.
- (d) If a water main is tapped, broken or needs to be accessed, the Concessioner shall immediately contact the Federal Interagency Communications Center Dispatch Office at (909) 383-5652 and the Chief of Facility Management at (760) 252-6152.

##### *(3) Sewer*

- (a) The Concessioner is responsible for immediately reporting sewage spills and plugged sewer lines to the Federal Interagency Communications Center Dispatch Office at (909) 383-5652 and the Chief of Facility Management at (760) 252-6152.
- (b) The Concessioner shall exercise due diligence in the handling and disposal of grease as necessary to assure that grease does not flow into wastewater systems. The Preserve will bill the Concessioner to recoup costs for clearing or replacing clogged sewer lines and cleaning lift station wet wells due to heavy grease accumulation when directly related to the Concessioner's operations.

##### *(4) Telephone*

- (a) The Concessioner is authorized to install a temporary satellite dish for phone and internet service, at its own expense. The Concessioner shall submit a proposal for

approval, to the Superintendent, on the exact location of the satellite dish prior to installation. The location of the satellite dish will be limited to areas where there is minimal visual impact.

- (b) The Concessioner will be responsible for maintaining the satellite dish in an appropriate manner and will be required to remove the satellite dish when the local phone company or the Service is able to provide phone service to the Kelso Train Depot.

#### **E) Signs**

- (1) There is currently a historic neon "Lunch Room" sign located on the exterior of the building.
- (2) No additional exterior signs shall be permitted.
- (3) The Concessioner will install, maintain, and replace all interior signs relating to its operations and services within its assigned facilities which relate specifically to concession operations. Examples include the Concessioner's operating services and hours, rules or policies, and identifying location of facilities.
- (4) The Concessioner shall ensure its signs are compatible with Service sign standards, see Director's Order 52C, Park Signage, found at <http://www.nps.gov/policy/DOrders/52Cfinal.pdf>. Sign size, style, color and location shall be submitted for approval by the Preserve prior to installation. The Preserve will provide direction and assistance to the Concessioner during the design and installation of approved signage.
- (5) No handwritten signs shall be permitted within the Concessioner's area of responsibility except on a short-term, interim basis.
- (6) The Preserve may install, maintain and replace regulatory signs within areas assigned to the Concessioner.
- (7) The Preserve will maintain all road or directional signs relating to the Concession operation.
- (8) *Hazardous Substance Management*
  - (a) The Concessioner will implement hazardous chemical reduction strategies to minimize use of hazardous chemicals in their operation. Hazardous chemicals will be stored and handled in accordance with Applicable Laws including, without limitation, Occupational Safety and Health Administration (OSHA) requirements (e.g., 29 CFR 1910 and 1926) and NFPA codes (e.g., NFPA 30, NFPA 30A, and NFPA 302). Storage areas will be maintained in an orderly manner. Containers will be in good condition and will be closed when not in use. Incompatible materials will be stored separately.
  - (b) Where technically feasible and appropriate, flammable or combustible material will only be stored inside a building in a flammable storage cabinet, inside storage room or building as defined in NFPA 30.
  - (c) Secondary containment will be provided for the storage of hazardous substances where there is the reasonable potential for discharge due to a spill or leak to the environment. Locations with reasonable potential for discharge include, but are not limited, to outside storage areas and interior storage areas in the proximity of doorways or floor drains.
- (9) *Hazardous, Universal, and Miscellaneous Maintenance Waste Management*
  - (a) The Concessioner will implement pollution prevention practices to minimize the production of hazardous, universal and miscellaneous maintenance wastes from Concessioner operations.
  - (b) Spent fluorescent lamps, nickel-cadmium batteries, sealed lead-acid batteries, mercury containing thermostats and waste pesticides will be managed in accordance with the United States Environmental Protection Agency (US EPA) Universal Waste Rule 40 CFR 273 and associated state and local requirements.

- (c) Lead-acid batteries and used oil will be managed in accordance with 40 CFR 266 and 279, respectively.
  - (d) The Concessioner will maintain health and safety standards, as outlined by OSHA, when conducting maintenance and/or rehabilitation of buildings and/or areas that may contain asbestos, polychlorinated biphenyls (PCBs) and lead-based paint materials.
  - (e) In addition to the requirements stated above, hazardous wastes, universal wastes and miscellaneous maintenance wastes including, but not limited to alkaline batteries and used antifreeze, will be recycled if economically and technically feasible and appropriate.
- (10) *Solid Waste Management*
- (a) The Concessioner shall provide an effective system for the collection and disposal of all litter and garbage within its assigned areas.
  - (b) The Concessioner will keep all assigned areas, including the picnic area, free of litter, debris, garbage, and abandoned equipment, vehicles, furniture or fixtures.
  - (c) The Concessioner will contract with the Preserve for garbage pickup. The Preserve provided dumpsters must be used for all exterior garbage collection.
  - (d) Once implemented, the Concessioner will be required to participate in the Preserve's recycling program. Products to be recycled will include, but are not limited to: plastics, aluminum, glass, used oil, antifreeze, and batteries.
  - (e) Broken or unused electronic equipment such as computers, computer monitors, and televisions will be managed and disposed in accordance with Applicable Laws. This equipment will be reused or recycled where economically and technically feasible and appropriate.

#### **F) Pest Management**

##### *(1) Integrated Pest Management*

- (a) The control of pests by chemicals and other means is subject to Preserve approval. The Service and the Concessioner will agree to an Integrated Pest Management Program that will define the nature and frequency of treatment, approved chemical lists, etc. The application of any herbicide, pesticide, or the engagement of any pest control or non-native species activity in buildings, residences, or in grounds/landscape materials will be in accordance with Preserve policies, whether applied by the Concessioner or any contractor.
- (b) The Concessioner's use of chemicals, pesticides, herbicides and toxic materials and substances shall be in accordance with the Preserve's Integrated Pest Management program and must be pre-approved by the Preserve.
- (c) The Service will provide guidance on best management practices to prevent infestation by exotic species, and on control of infestations of exotic species. The Concessioner will review specific issues with the Service's integrated pest management coordinator.
- (d) All pesticides will be stored and handle in accordance with pesticide label instructions, OSHA regulations, and US EPA requirements and guidelines contained in 40 CFR 165. Pesticides will be stored in cabinets or other areas separate from other hazardous substances in accordance Service guidelines.

#### **G) Vehicles**

- (1) All vehicle equipment used by the Concessioner in the operations of the Beanery will be duly licensed and safety-inspected as required by the State of California.
- (2) All vehicle equipment used by the Concessioner in the operations of the Beanery shall be kept clean and in good repair.

#### **V) SERVICE RESPONSIBILITIES**

During the execution of any of the Service's responsibilities indicated below, should the Service disrupt lands within the Concessioner's assigned lands, the Service shall provide mitigative signing, barriers, and revegetative efforts as needed. The Service will assist the Concessioner in its maintenance program by executing the following responsibilities.

**A) Facility Maintenance**

- (1) All major repairs and replacement of Capital Improvements will be undertaken by the Service.
- (2) All cyclic and preventive maintenance having to do with the Concession Facilities will be undertaken by the Service.
- (3) The Service will replace or conduct emergency repairs on all government owned personal property at no charge to the Concessioner unless the repairs are a result of the Concessioner's negligence.
- (4) The Service will charge the Concessioner for all repairs to the facility resulting from Concessioner negligence.

**B) Utilities**

- (1) *General.* The Service will repair or replace any damage occurring to utility systems assigned to the Concessioner within its land assignment that is due to the negligence of the Service and/or its employees.
- (2) *Electrical.* The Service shall provide electrical service to concession facilities at Kelso Train Depot. The Concessioner will be billed at established utility rates.
- (3) *Water*
  - (a) The Service shall supply potable water to all concession facilities to the extent possible using existing water systems. The Concessioner will be billed at established utility rates.
  - (b) The Service will maintain all fixtures attached to the water system within all concession facilities.
  - (c) Once installed, the Service will be responsible for maintaining the water supply system to the Preserve's water meter on the line providing service to the Concessioner.
  - (d) The Service will furnish water service, connections, meters and shut-off valves on the distribution side of the water meter. The Service will assist with the location and identification of water and sewer lines and make repairs if the damaged section is within an area of the Service's responsibility.
- (4) *Sewer*
  - (a) The Service will repair and maintain all sewage lines, connections, disposal systems, and appurtenances at Kelso Train Depot.
  - (b) The Service will maintain, repair and replace fixtures attached to the sewage disposal system.

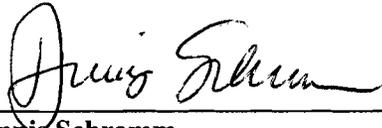
**C) Signs**

- (1) Unless otherwise specified herein, the Service is responsible for constructing, obtaining, installing, and maintaining all regulatory, traffic control, safety, operational, directional, or informational signs that serve the interest of the Government or that affect the safety and well-being of the visitor or the area. Examples include information signs along roadways, directional signs along Preserve trails, and interpretive signing. All roadway and parking signs are the responsibility of the Service.
- (2) The Service will provide direction and assistance to the Concessioner as the latter designs and installs interior signage that is the Concessioner's responsibility.
- (3) Informational exhibits will be reviewed by the Chief of Interpretation and approved by the Superintendent prior to their installations.

**D) Roads, Parking Lots and Public Areas**

- (1) The Service will maintain all roads and parking areas that are Government-owned, as shown on the land assignment maps (see Exhibit C to the Contract).
- (2) The Service will provide, maintain, repair and replace picnic tables in the Kelso Depot parking lot.

Approved, effective 10/27/08, 2008

By   
**Dennis Schramm**  
**Superintendent, Mojave National Preserve**

## EXHIBIT F INSURANCE REQUIREMENTS

### I) INSURANCE REQUIREMENTS

The Concessioner shall obtain and maintain during the entire term of this Contract, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of the Contract.

With the exception of statutory Workers' Compensation insurance protection, the National Park Service (Service) shall be named as an additional insured under all insurance policies issued or arranged in support of this agreement. All insurance coverage provided for the benefit of, or evidenced to the Service is not to be impaired by any act of the Concessioner, its agents, servants or employees. The Concessioner will ensure that its insurance carriers provide that the Service shall, solely for its benefit, be provided *an unconditional 30 day advance* notice of cancellation, non-renewal or material change in coverage or policy terms for all coverage issues. The term National Park Service shall by definition and where appropriate and legally permissible, also include the term United States Government/United States of America.

The amounts of insurance, limits of liability and coverage terms indicated are not intended as a limitation of the Concessioner's responsibility or liability under the Contract, but rather an indication as to the minimum type(s), amount(s), and scope of insurance that the Service considers necessary to allow the operation of the concession facilities at its park. Nevertheless, if the concessioner purchases insurance in addition to the limits illustrated herein, the Service will receive the benefits of the additional amounts of insurance without additional cost to the Service.

### II) LIABILITY INSURANCE

The following Liability Coverages are to be maintained at a minimum, all of which, unless noted herein, are to be written on an occurrence form of coverage. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or "Umbrella" Liability. (See item #3 excess or umbrella liability insurance policy).

#### A) Commercial General Liability Insurance

- (1) Coverage will be provided for bodily injury, property damage, contractual liability, personal or advertising injury liability (including contractual liability arising out of personal injury and advertising injury liability) and products/completed operations liability insurance protection. The following minimum limits of liability \* are to be provided:

##### **Bodily Injury and Property Damage Limit**

(a) General Aggregate	\$1,000,000
(b) Products & Completed Operations Aggregate	\$500,000
(c) Per Occurrence	\$500,000
(d) Personal Injury & Advertising Injury Liability	\$500,000
(e) Medical Payments	\$50,000
(f) Fire Damage Legal Liability "per fire"	\$50,000

*\*or those minimum limits required by the Umbrella/excess liability insurer*

- (2) The liability coverages may not contain the following exclusions/limitations:
- (a) Athletic or Sports Participation

- (b) Products/Completed Operations
- (c) Personal Injury or Advertising Injury
- (d) Contractual Liability (unless expressly and specifically excluding this NPS contract # from the exclusion/limitation)
- (e) Explosion, Collapse and Underground Property Damage
- (f) Total Pollution

**B) Automobile Liability Insurance**

Coverage will be provided for bodily injury or property damage arising out of the ownership, maintenance or use of "any auto," Symbol 1. (Where there are no owned autos, coverage applicable to "hired" and "non-owned" autos, "Symbols 8 & 9," shall be maintained.)

Bodily Injury and Property Damage (combined) \$1,000,000 per occurrence\*

*\*or those minimum limits required by the Umbrella/excess liability insurer*

**C) Excess Liability or Excess "Umbrella" Liability**

This coverage is not required, but may be used to supplement any of the above Liability coverage policies in order to arrive at the required minimum limit of liability. If maintained, coverage will be provided for bodily injury, property damage, and personal or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage shall be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance shall be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Excess "Umbrella" Liability policy. If the coverage afforded by the excess or umbrella policy results in limits greater than the limits required hereunder, then the greater limit shall be available to the Service in the event of a loss.

Note: An excess or "umbrella" liability policy may be used to achieve the liability limits outlined above. However, if a lower limit of liability is used for a subordinate policy, then the limit of liability under the umbrella policy must be that limit necessary to achieve the full limit of liability required for the subject policy. For instance, the General Liability policy requires a \$10M limit of liability. If the limit of liability provided under the General liability policy is \$1M, then the umbrella policy must provide a limit of at least \$9M to provide the total requirement of \$10M. Since the Umbrella/Excess policy applies over both the automobile and the commercial general liability policy, a single limit under the excess policy is all that will be required.

The umbrella liability policy coverage shall be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance shall be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Excess "Umbrella" Liability policy. If the coverage afforded by the excess or umbrella policy results in limits greater than the limits required hereunder, then the greater limit shall be available to the NPS in the event of a loss.

**D) Special Provisions for Use of Aggregate Policies**

At such time as the aggregate limit of any required policy is (or if it appears that it will be) reduced or exhausted, the Concessioner may be required to reinstate such limit or purchase additional coverage limits.

**E) Self-Insured Retentions**

Self-insured retentions on any of the above described Liability insurance policies (other than Excess "Umbrella" Liability, if maintained) may not exceed \$10,000 without prior approval of the Director.

**F) Workers Compensation & Employers' Liability**

Coverage will comply with the statutory requirements of the state(s) in which the Concessioner operates. The State(s) of concession operation must be specifically included for coverage under the policy. The Employers Liability limit will not be less than \$1,000,000.

**III) PROPERTY INSURANCE****A) Building(s) and/or Contents Coverage**

- (1) Amount of Insurance (Building): 100 percent of replacement value as listed in Exhibit D (without deduction for physical depreciation).
- (2) Amount of Insurance (Contents): 100 percent of replacement value (without deduction for physical depreciation).
- (3) Amount of Insurance (Inventory): 100 percent of replacement value (without deduction for physical depreciation).
- (4) Insurance shall cover buildings, structures, improvements & betterments and/or contents for all Concession Facilities, as more specifically described in Exhibit D of this Contract.
- (5) Coverage shall apply on an "All Risks" or "Special Coverage" basis.
- (6) The policy shall provide for loss recovery on a Replacement value basis (without deduction for physical depreciation).
- (7) The amount of insurance, except for the inventory, should represent no less than 100 percent of the Replacement Cost value of the sum total of all insured property. Inventory shall be insured at 100 percent of the replacement cost of the products held for sale.
- (8) The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
- (9) Coverage is to be provided on a blanket basis
- (10) The Vacancy and unoccupancy restriction, if any, must be eliminated for property that will be vacant or unoccupied beyond any time period specified in the policy.
- (11) Ordinance or Law, demolition and increased cost of construction Coverage shall be maintained with a limit of not less than the building replacement value (without deduction for physical depreciation) listed in Exhibit D.

**B) Boiler & Machinery Coverage**

- (1) Insurance will apply on the "comprehensive" basis of coverage including all objects within the Concession Facilities. Production equipment is to be included if applicable.
- (2) The policy will provide for loss recovery on a replacement value (without deduction for physical depreciation) basis.
- (3) The amount of insurance must represent no less than 100% of the replacement value (without deduction for physical depreciation) of the sum total of all insured property.

- (4) The coinsurance provision, if any, must be waived or suspended by an Agreed Amount or Agreed Value clause.
- (5) Coverage is to be provided on a blanket basis.
- (6) If insurance is written with a different insurer than the Building(s) and Contents insurance, both the Property and Boiler insurance policies must be endorsed with a joint loss agreement.
- (7) Ordinance or Law, demolition and increased cost of construction Coverage must be maintained with a limit of not less than the building replacement value (without deduction for physical depreciation) listed in Exhibit D.

**C) Business Interruption and/or Expense**

Business Interruption insurance and extra expense insurance must cover the loss of income and continuation of fixed expenses in the event of damage to or loss of Concession Facilities, including, without limitation and with respect to the interests of the Service, the loss (or reduction) of franchise fee payments to the Service by the Concessioner. Extra Expense insurance shall cover the extra expenses above normal operating expenses to continue operations in the event of damage or loss to covered property. The coverage to be provided shall be at least that calculated as follows:

Anticipated annual Gross revenue from operations		\$ _____
Less non-continuing expenses		(\$ _____)
	Total:	\$ _____
Prorated by ratio of days of operation over 365 =		<u>    x percentage    </u>
Business Interruption limit		\$ _____

**D) Deductibles**

- (1) Property Insurance coverages described above may be subject to deductibles as follows:
- (2) Direct Damage deductibles must not exceed the lesser of 10 percent of the amount of insurance or \$25,000
- (3) Extra Expense deductibles (when coverage is not combined with Business Interruption) shall not exceed \$25,000.

**E) Required Clauses**

**Loss Payable Clause:** A loss payable clause similar to the following must be added to Buildings and/or Contents, Boiler and Machinery, and Builders Risk policies

“In accordance with Concession Contract No. \_\_\_\_\_ dated \_\_\_\_\_, between the United States of America and [the Concessioner] payment of insurance proceeds resulting from damage or loss of structures insured under this policy is to be disbursed directly to the Concessioner without requiring endorsement by the United States of America.”

#### IV) INSURANCE COMPANY MINIMUM STANDARDS

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

- (1) All insurers for all coverages must be rated no lower than A- by the most recent edition of A.M. Best's Key Rating Guide (Property-Casualty edition).
- (2) All insurers for all coverages must have a Best's Financial Size Category of at least VII according to the most recent edition of A.M. Best's Key Rating Guide (Property-Casualty edition).
- (3) All insurers must be admitted (licensed) or approved in the State of California.

#### V) CERTIFICATES OF INSURANCE

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

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

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

The Certificate of Insurance shall contain a notation that the insurance coverage represented therein complies with the provisions of this agreement as outlined in Exhibit I and Section 12 of the main body of this Contract.

The notice of cancellation provision of the certificate shall have any and all qualifying language such as: "*We will endeavor to provide*" or "*failure to provide said notice will not place any liability upon the company or its representative*" deleted from its terms.

#### VI) STATUTORY LIMITS

In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit is to be considered the minimum to be maintained. In the event that the statutorily required limit is less than the limits required herein, the limits required herein shall control.