

**CATEGORY II CONTRACT**

**UNITED STATES DEPARTMENT OF THE INTERIOR**

**NATIONAL PARK SERVICE**

**BANDELIER NATIONAL MONUMENT**

**MERCHANDISE, FOOD AND BEVERAGE SERVICES**

**CONCESSION CONTRACT NO. CC-BAND001-06**

~~**BANDELIER TRADING, INC.**~~  
~~**101 W. San Francisco Street**~~  
~~**Santa Fe, New Mexico 87501**~~  
~~**Phone: 505-988-1866**~~  
~~**e-mail: simplysf@cybermesa.com**~~

Covering the Period

**April 1, 2006 through March 31, 2016**

as of Jan. 15, 2013  
Pajarito Plateau Trading Co. LLC.  
dba Bandelier Trading Company  
3323 Avenida Del Oro  
Santa Fe, NM 87507  
505 672-9791  
Extension through December 31,  
2016, signed January 26, 2016



United States Department of the Interior



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

IN REPLY REFER TO:  
IMR-ACM  
CC-BAND001-16

JAN 13 2016

Emily Mayo  
Pajarito Plateau Trading Co, LLC  
379 Catherine Avenue  
Los Alamos, NM 87544

Dear Ms. Mayo:

The National Park Service (NPS), after consideration of alternatives, has determined that an extension of NPS Concession Contract CC-BAND001-06, (as it may be amended, "Contract") is necessary in order to avoid interruption of visitor services.

Accordingly, the Contract is hereby extended until December 31, 2016. It is the intention of the NPS to award a new contract with an effective date of January 1, 2017. The terms and conditions of the extension are the same as those of the Contract.

This extension does not negate the need to submit a proposal for the award of a new concession contract. The incumbent concessioner must submit a proposal by the specified deadline to be evaluated and considered for award of the new long-term contract once a competitive solicitation is issued.

Please indicate your agreement by signing and dating in the space provided below and returning the fully-executed letter to this office no later than February 16, 2016. For your convenience, we have enclosed a copy of this letter for your files and a pre-addressed envelope (postage required).

If you have any questions or if we can provide further assistance, contact Paula Bauer, Concessions Management Specialist, Intermountain Region at (303) 969-2666 or e-mail at paula\_bauer@nps.gov.

Sincerely,

Sue E. Masica  
Regional Director

Agreed:

Emily Mayo  
Pajarito Plateau Trading Co, LLC

01/26/2016

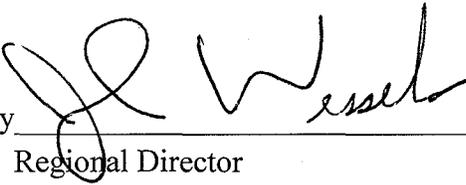
Date

APPROVAL

The foregoing Assignment and Acceptance are hereby approved and Concession Contract No. CC-BAND001-06 is hereby considered as duly assigned by Armand P. Ortega, Bandelier Trading, Inc. to Emily Mayo, Pajarito Plateau Trading Co., LLC effective as of the day and year written below, subject to agreement to and satisfactory performance by the Assignee of the conditions set forth above.

Dated at Lakewood, Colorado, this 15<sup>th</sup> day of January, 2013.

By



Regional Director  
Intermountain Region  
National Park Service

ASSIGNMENT, ACCEPTANCE AND APPROVAL DOCUMENT

ASSIGNMENT

For value received, Armand P. Ortega, Bandelier Trading, Inc., (hereinafter referred to as the "Assignor"), hereby transfers, subject to the approval of the Secretary of the Interior acting through the National Park Service, to Emily Mayo, Pajarito Plateau Trading Co., LLC, (hereinafter referred to as the "Assignee"), all its rights, title and interest in and under Concession Contract No. CC-BAND001-06 (hereinafter after referred to as the "Contract") entered into between the Secretary of the Interior and the Assignor as of April 1, 2006, granting the right to operate a concession providing general merchandise sales and limited food service within Bandelier National Monument.

Executed at Santa Fe, NM this 8<sup>th</sup> day of  
January, 2013.

Armand P. Ortega, Assignor:

Witness:

AP Ortega

Emily Mayo

Title Owner-Manager

Title N/A

## ACCEPTANCE

The undersigned, the Assignee named in the above Assignment, hereby accepts the same and agrees, subject to the approval of the Secretary of the Interior acting through the National Park Service, to carry out fully and to perform all of the obligations imposed upon said Assignor, by the terms and provisions of the Contract from and after the date of approval by the Secretary. The undersigned Assignee further understands and agrees to the following conditions of the Secretary's approval of this Assignment:

1. Within 60 days of the date of approval of the Assignment, an audited balance sheet, as of the effective date of the Assignment on which an unqualified opinion has been expressed by an independent licensed or Certified Public Accountant, will be submitted for the approval of the Secretary.
2. Assets acquired by the Assignee from the Assignor must be recorded at an amount that will not exceed fair value as defined in the Contract, or if the Contract does not define fair value for a particular class of assets, an amount that will not exceed the fair market value of the asset. The Assignee must provide in detail the basis for valuation, including, if required by the National Park Service, appraisals.
3. To assume all obligations of the Contract incurred by the Assignor prior to the effective date of the Assignment if the Assignor fails to perform them, including, but not limited to, payment of franchise fees, payment of utilities provided by the National Park Service, and deposits to capital and government improvement accounts, if any.
4. Within 60 days after approval of the Assignment, a copy of an itemized Bill of Sale covering all transferred assets will be provided to the National Park Service.
5. The purchase price or any debt to be incurred in connection with the Assignment will not be used at any time by the Assignee or any related party as justification for:
  - a. An increase in rates to be charged to the public;
  - b. A waiver or reduction of franchise fees or other Contract requirements with the exception of an allowance to serve pre-packaged foods instead of made-to-order; or
  - c. Any claim that the terms of the Contract do not provide a reasonable opportunity for profit.

6. The National Park Service, when developing the requirements of any subsequent concession contract for this operation, will not take into account the purchase price or any outstanding debt resulting from this Assignment. Franchise fees and other contract obligations for the subsequent concession contract will be established based on the probable value to a concessioner of the authorization as determined by the National Park Service. The Assignee assumes all risk in this connection.
7. In the event that the Assignee is not awarded a subsequent concession contract, neither the National Park Service nor the successor concessioner will bear any liability for any debt incurred by the Assignee in connection with this Assignment.
8. The Assignee represents that it has not been advised by the National Park Service or any official of the United States government that the National Park Service or other government official considers the terms of this transaction to be reasonable or that the Assignee may expect to earn a profit under the terms of the Contract and this transaction.
9. Approval of this Assignment by the Secretary in no manner implies the existence of or grants any preferential right to the award of any subsequent concession contract, and Assignee waives any right to assert any preferential right or other benefit based on approval of this Assignment by the Secretary.
10. Assignee will not utilize this approval in any form or manner, including, but not limited to, any litigation, proceeding or hearing, involving the National Park Service or the United States of America, as evidence of any fact or matter other than that the National Park Service approved the Assignment in accordance with Section 408 of the National Park Service Concessions Management Improvement Act of 1998 (P.L. 105-391).
11. Notwithstanding any representations made by the Assignee to the National Park Service or the Assignor or other persons as to the value of the Contract or possessory interest, if any, or as to any other matters related to this transaction, the National Park Service, by approving this Assignment, expressly is not agreeing to, approving or concurring in any such representations. The National Park Service reserves the right to challenge any representations made by the Assignee in any future matters concerning the Contract and the National Park Service, including, but not limited to, the value of any possessory interest granted by the Contract, if any.
12. That, to the extent that the Assignor may have been allocated user days or other access privileges to the park area for the purposes of the Contract, such allocations are subject to change or elimination by the National Park Service and that the Contract does not grant such allocations as a matter of right to the Assignee or any subsequent concessioner.
13. The approval of this Assignment by the Secretary shall not be construed, in any manner, as amending, altering or waiving any terms and conditions of the Contract.

14. The approval of this Assignment by the Secretary does not in and of itself constitute approval of any financial transaction or encumbrance associated with this Assignment. If such financial transaction or encumbrance must by law be approved by the Secretary, the Secretary's approval of any such associated financial transaction or encumbrance, if granted, will be provided in a separate document.

Armand P. Ortega, Assignor:

AP Ortega

Title Owner-Manager

Witness:

Emily J Ortega

Title \_\_\_\_\_

Emily Mayo, Assignee:

Emily C. Mayo

Title Owner

Witness:

Alex Ortega

Title N/A



**CATEGORY II CONTRACT**

**UNITED STATES DEPARTMENT OF THE INTERIOR**

**NATIONAL PARK SERVICE**

**BANDELIER NATIONAL MONUMENT**

**MERCHANDISE, FOOD AND BEVERAGE SERVICES**

**CONCESSION CONTRACT NO. CC-BAND001-06**

~~**BANDELIER TRADING, INC.**~~  
~~**101 W. San Francisco Street**~~  
~~**Santa Fe, New Mexico 87501**~~  
~~**Phone: 505-988-1866**~~  
~~**e-mail: simplysf@cybermesa.com**~~

Covering the Period

**April 1, 2006 through March 31, 2016**

Jan. 15, 2013 Sale and Transfer to Emily  
Mayo, Pajarito Plateau Trading Co. LLC. -- dba  
Bandelier Trading Company

Extension through December 31, 2016



**CONCESSION CONTRACT****TABLE OF CONTENTS****IDENTIFICATION OF THE PARTIES**

- SEC. 1 TERM OF CONTRACT**
- SEC. 2 DEFINITIONS**
- SEC. 3 SERVICES AND OPERATIONS**
- A. Required and Authorized Visitor Services
  - B. Operation and Quality of Operation
  - C. Operating Plan
  - D. Merchandise and Services
  - E. Rates
  - F. Impartiality as to Rates and Services
- SEC. 4 CONCESSIONER PERSONNEL**
- SEC. 5 LEGAL, REGULATORY, AND POLICY COMPLIANCE**
- A. Legal, Regulatory, and Policy Compliance
  - B. Notice
  - C. How and Where to Send Notice
- SEC. 6 ENVIRONMENTAL AND CULTURAL PROTECTION**
- A. Environmental Management Objectives
  - B. Environmental Management Program
  - C. Environmental Management Measurement
  - D. Environmental Data, Reports, Notifications, and Approvals
  - E. Corrective Action
  - F. Indemnification and Cost Recovery for Concessioner Environmental Activities
  - G. Weed and Pest Management
  - H. Protection of Cultural and Archeological Resources
- SEC. 7 INTERPRETATION OF AREA RESOURCES**
- A. Concessioner Obligations
  - B. Director Review of Content
- SEC. 8 CONCESSION FACILITIES USED IN OPERATION BY CONCESSIONER**
- A. Assignment of Concession Facilities
  - C. Effect of Withdrawal
  - D. Right of Entry

	E.	Personal Property
	F.	Condition of Concession Facilities
	G.	Utilities
SEC. 9.		<b>MAINTENANCE</b>
	A.	Maintenance Obligation
	B.	Maintenance Plan
SEC. 10.		<b>FEEES</b>
	A.	Franchise Fee
	B.	Payments Due
	C.	Interest
	D.	Adjustment of Franchise Fee
SEC. 11.		<b>INDEMNIFICATION AND INSURANCE</b>
	A.	Indemnification
	B.	Insurance in General
	C.	Commercial Public Liability
	D.	Property Insurance
SEC. 12.		<b>BONDS AND LIENS</b>
	A.	Bonds
	B.	Lien
SEC. 13.		<b>ACCOUNTING RECORDS AND REPORTS</b>
	A.	Accounting System
	B.	Annual Financial Report
	C.	Other Financial Reports
SEC. 14.		<b>OTHER REPORTING REQUIREMENTS</b>
	A.	Insurance Certification
	B.	Environmental Reporting
	C.	Miscellaneous Reports and Data.
SEC. 15.		<b>SUSPENSION, TERMINATION, OR EXPIRATION</b>
	A.	Suspension
	B.	Termination
	C.	Notice of Bankruptcy or Insolvency
	D.	Requirements in the Event of Termination or Expiration
SEC. 16.		<b>ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS</b>
SEC. 17.		<b>GENERAL PROVISIONS</b>

**EXHIBITS**

- EXHIBIT A. Nondiscrimination
- EXHIBIT B. Operating Plan
- EXHIBIT C. Assigned Land, Real Property Improvements
- EXHIBIT D. Assigned Government Personal Property
- EXHIBIT E. Maintenance Plan
- EXHIBIT F. Insurance Requirements
- EXHIBIT G. Transition to a New Concessioner



THIS Contract is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Intermountain Region, (hereinafter referred to as the "Director"), and Bandelier Trading, Inc., a corporation organized and existing under the laws of the State of New Mexico (hereinafter referred to as the "Concessioner"):

**WITNESSETH:**

**THAT WHEREAS**, Bandelier National Monument 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 (Pub.L. 105-391), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

**SEC. 1. TERM OF CONTRACT**

This Concession Contract No.BAND001-06 ("Contract") shall be effective as of April 1, 2006, and shall be for the term of ten (10) years until its expiration on March 31, 2016.

**SEC. 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 Bandelier National Monument.
- (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 the Concessioner under this Contract. The United States retains title and ownership to all Concession Facilities.
- (f) "Days" shall mean calendar days.
- (g) "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.
- (h) "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.
- (i) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this Contract, 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.

(j) "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.

(k) "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.

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

(m) "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.

### **SEC. 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:

**Merchandise and Souvenirs, including certified Native American handicrafts**  
**Made to order fast food service**

**Non-alcoholic beverages**  
**Bundled firewood**  
**Visitor convenience items**

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

**Shuttle Service for hikers to specific trailheads within the Monument.**

**(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 B. The Director in his 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 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 A.

(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.

**SEC. 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.

## **SEC. 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  
Bandelier National Monument  
HCR 1, Box 1, Suite 15  
Los Alamos, NM 87544  
Attn: Admin. Officer

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

Bandelier Trading, Inc.  
101 West San Francisco Street  
Santa Fe, New Mexico 87501  
Attention: Armand P. Ortega

**SEC. 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.

**SEC. 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.

## **SEC. 8. CONCESSION FACILITIES USED IN OPERATION BY THE CONCESSIONER**

### **(a) Assignment of Concession Facilities**

(1) The Director hereby assigns Concession Facilities as described in Exhibit C to the Concessioner for the purposes of this Contract. 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.

**SEC. 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 Plan**

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.

## **SEC. 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 twenty-five percent (25%) of the Concessioner's 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.

### **(c) 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.

### **(d) 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 in accordance with this section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.

(6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director 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, 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.

## **SEC. 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) At the request of the Director, 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 C in amounts no less than the Director may require during the term of the Contract. The minimum values currently in effect are set forth in Exhibit C.

(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 limitation 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.

## **SEC. 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.

## **SEC. 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 \$250,000, 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 \$250,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

**(c) Other Financial Reports**

(1) 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.

**SEC. 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, at the request of the Director, 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.

**(b) 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.

**(c) 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.

**SEC. 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.

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

#### **SEC. 16. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS**

(a) 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.

(b) 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.

#### **SEC. 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.

**CONCESSIONER**

**UNITED STATES OF AMERICA**

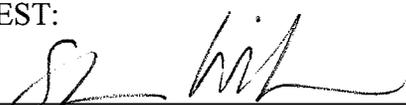
BY   
Armand P. Ortega, President  
Bandelier Trading, Inc.

BY   
Director  
National Park Service

Date: 2/24/06

Date: 3/2/06

**ATTEST:**

BY:   
(Title) Secretary/Treasurer  
Bandelier Trading, Inc



**EXHIBIT A****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:

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

- (2) The Concessioner is prohibited from:
- (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition;
  - (ii) 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.

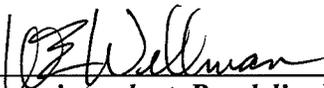
**B. Existing Facilities**

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 B  
OPERATING PLAN**

**MERCHANDISE, FOOD AND  
BEVERAGE SERVICES**

**BANDELIER NATIONAL MONUMENT**

**SIGNED:**  **DATE:** 3/2/06  
*for* Superintendent, Bandelier National Monument

**SIGNED:**  Pres **DATE:** 2/24/06  
Bandelier Trading, Inc.



**OPERATING PLAN**

**INTRODUCTION ..... 1**

1) **RESPONSIBILITIES ..... 1**

    A) Concessioner..... 1

    B) Bandelier National Monument ..... 1

2) **GENERAL OPERATING STANDARDS AND REQUIREMENTS ..... 2**

    A) Schedule of Operation ..... 2

    B) Rate Determination and Approval Process ..... 2

    C) Purchasing ..... 3

    D) Operational Evaluations ..... 3

    E) Environmental Audit ..... 3

    F) Concessioner Operational Reports ..... 4

    G) Insurance ..... 4

3) **GENERAL POLICIES ..... 4**

    A) Facility Use ..... 4

    B) Lost and Found ..... 4

    C) Credit Cards ..... 4

    D) Vending ..... 4

    E) Vehicles ..... 5

    F) Parking Area ..... 5

    G) Storage ..... 5

    H) Deliveries ..... 6

    I) Interactions with Wildlife..... 6

    J) Signs and Labels ..... 6

    K) Merchandising ..... 6

    L) Visitor Convenience Items ..... 8

    M) Food and Beverage Service ..... 8

    N) Bundled Firewood ..... 8

    O) Shuttle Service ..... 9

    P) Special Events ..... 9

4) **HUMAN RESOURCES MANAGEMENT ..... 9**

    A) Employee Identification and Appearance ..... 9

    B) Employee Hiring ..... 9

    C) Employee Training ..... 10

    D) Volunteers in the Park ..... 10

    E) Risk Management..... 10

5) **UTILITIES AND WASTE DISPOSAL..... 11**

    A) Concessioner ..... 11

    B) Service ..... 11

6) **PROTECTION AND SECURITY ..... 11**

    A) Concessioner ..... 11

    B) Service ..... 12

    C) Fire Protection ..... 12

7) **PUBLIC RELATIONS ..... 12**

    A) Complaints and Required Notices ..... 12

    B) Promotional Material..... 12

**Addendum: Special Events**



## INTRODUCTION

This Operating Plan between (Bandelier Trading, Inc.), (hereinafter referred to as the "Concessioner") and the National Park Service (hereinafter referred to as the "Service") will serve as a supplement to Concession Contract No. CC-BAND001-06 (hereinafter referred to as the "Contract"). It describes specific operating responsibilities of the Concessioner and the Service with regard to those lands and facilities within Bandelier National Monument (Monument) that are assigned to the Concessioner for the purposes authorized by the 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 of Bandelier National Monument. Any revisions will be consistent with the main body of this 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.

### 1) Responsibilities

#### A) Concessioner

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

- (1) Has the authority and the managerial experience for operating the authorized Concession facility and services within the Monument,
- (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 Monument, and,
- (4) Has the responsibility for implementing the policies and directives of the Service.

#### B) Bandelier National Monument

The Superintendent of Bandelier National Monument is the Monument manager with responsibility for all Monument operations, including Concessions. 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 Bandelier National Monument. This includes:

- (1) Evaluation of Concessioner services and facility and
- (2) Review and approval of rates charged for all commercial services.

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

The Concessioner will provide all services in a consistent, quality manner. Service standards provided by the National Park Service guidelines are considered service minimums. The Concessioner will make every effort to exceed these standards. The Concessioner will monitor and evaluate their operations to assure the meeting of quality standards.

### **A) Schedule of Operation**

- (1) The Concessioner will provide the merchandise retail and food and beverage operations during the hours of operation of the Monument Visitor Center. Summer hours (Memorial Day through Labor Day): 8 a.m. – 6 p.m.; Winter: 8 a.m. – 4:30 p.m.; Spring/Fall: 9:00 a.m. to 5:30 p.m. Closed Christmas and New Year's days. The Superintendent and the Concession Manager will review hours of operation semi-annually (generally before and after the heavy use season) to set a schedule for the upcoming period. The Service will provide public notification of changes in operating hours or periods of closure.
- (2) Special Events. The Superintendent may schedule up to six special events per year that would require the Concessioner to remain open beyond normal business hours. The Superintendent will notify the Concessioner as soon as the event is scheduled, but no less than 14 days in advance. The Concessioner and the Superintendent will cooperatively determine appropriate hours of operation that are commensurate with the special event. When the Superintendent desires the Concessioner to participate in special events by more than extending operating hours, the Superintendent will provide reasonable notice as set out in P)(1) below.

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

- (1) Rate Determination. The Service intends 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.

Merchandise Rates. The Concessioner will base the rates for merchandise pricing on a Competitive Market Declaration, subject to the annual approval of the Superintendent.

Food and Beverage Rates. The Concessioner will base the rates for food and beverage items on a Competitive Market Declaration and are subject to approval of the Superintendent as a part of the menu approval process.

Shuttle Service. The Concessioner will base the rates for the shuttle service on the financial analysis of the services offered, subject to the written approval of the Superintendent.

- (2) Rate Approval

- (a) Approval Timing. The Concessioner must submit rate requests by March 1 of each year. The Superintendent will approve, disapprove or adjust rates and will inform the Concessioner within 30 days of the rate request submittal. Approved Rate Posting. The Concessioner will prominently post all rates for goods and services provided to the visiting public.

- (b) Rate Compliance. The Superintendent or his/her designated representative will periodically conduct on-site comparability studies with follow-up telephone calls to update rate information for a rate review. The Service will check rate compliance during periodic operational evaluations and throughout the year. Approved rates will remain in effect until superseded by written changes approved by the Superintendent.

### **C) Purchasing**

- (1) Competitive Purchasing. The Concessioner may purchase goods from a facility operated or owned by the Concessioner or a parent company, provided the product is comparable in quality and price.
- (2) Discounts. The Concessioner will take advantage of all available trade, cash and quantity discounts and rebates and pass them through to the consumer or the operation.
- (3) Environmental. The Concessioner will purchase environmentally friendly products whenever available and feasible.

### **D) Operational Evaluations**

- (1) The Service will inspect all services and facilities to:
  - (a) Ensure public health and safety
  - (b) Ensure that satisfactory services are provided
  - (c) Ensure that employee working conditions are satisfactory
  - (d) Ensure that buildings and equipment are well maintained
- (2) The Service and the Concessioner will inspect and monitor Concession Facilities and services.
- (3) The Concessioner will adhere to all applicable standards, authorized rates, safety and public health.
- (4) The Concessioner will minimize all effects of its operations on historical, cultural, and natural resources.
- (5) The Service will forward the results of the evaluations to the Concessioner in a timely manner.
- (6) The Concessioner will cooperate with the Service in scheduling inspections and in accompanying Service staff upon requested.

The Concessioner must comply with correction dates or establish abatement plans (subject to the approval of the Service) to correct deficiencies.

### **E) Environmental Audit**

The Service has 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 an environmental 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 National Park Service Environmental Audit Program Operating Guide and the Concession Environmental Audit System ("CEAS") Guide. The Service will conduct environment audits at least every five years.

#### **F) Concessioner Operational Reports**

The Concessioner must maintain adequate records to verify the adjustments made to gross receipts related to the sale of United States and Native American handcraft items in accordance with Service policy. These records must provide verification of actual sales through use of a separate cash register key or a similar system. On an annual basis, the Concessioner will maintain and provide for review, upon the request of the Superintendent, certification of authenticity of all handcraft items for which the Concessioner claims an exception to the franchise fee. The Concessioner will develop procedures to meet these requirements and provide them, upon request, to the Superintendent.

#### **G) Insurance**

At the minimum, 30 days prior to commencing operations the Concessioner will provide appropriate Certificate(s) of Insurance for all insurance coverages related to its operations under this Contract to the Superintendent. During the term of the Contract, current Certificate(s) of Insurance will be provided to the Superintendent prior to expiration of insurance policy.

### **3) General Policies**

Within 30 days of the award of the Contract the Concessioner will provide information to the Superintendent listing the decision-making authority of on-site manager(s) and identifying the person with whom the Service will deal regarding day-to-day operations and issues.

#### **A) Facility Use**

- (1) The Concessioner may not allow the use of Concession Facilities for activities that do not directly and exclusively support the visitor services allowed by the Concession Contract.
- (2) Smoking Policy. All Concession facilities are designated as non-smoking.

#### **B) Lost and Found**

The Concessioner must turn over any lost items turned in to the Concessioner or found by Concession employees to the front desk at the Visitor Center within 24 hours. The Concessioner will direct visitors who have lost or found items to the Visitor Center for reporting. Service employees, volunteers, and Concessioner employees may not keep lost and found items.

#### **C) Credit Cards**

The Concessioner will accept credit cards and, at the minimum, honor MasterCard and Visa.

#### **D) Vending**

The vending machine and its location will be easily identified, appropriately illuminated, and of a design and color which complements the aesthetics of the building and surroundings. Before placing the machine, the Superintendent must approve the location. Brand

information should only be visible when at the machine. The Concessioner will keep all machines clean, properly stocked, and in good working condition. In addition to soft drinks, the vending machine will offer water and at least one other non-carbonated drink selection.

#### **E) Vehicles**

- (1) Licensing, Maintenance, and Registration. The Concessioner will keep all vehicles it uses properly registered, licensed, and maintained in accordance with federal and state law and regulations.
- (2) Operators of all Concessioner owned, hired and non-owned autos will have a valid state operator's license for the size and class of vehicle driven.
- (3) Concessioner Parking. The Concessioner will ensure that Superintendent-approved designated areas are used to park and store Concessioner-owned vehicles and equipment in a safe, organized manner.
- (4) Identification. The Concessioner will ensure that its vehicles discreetly display the Concessioner name and logo.

#### **F) Parking Area**

- (1) The Concessioner will ensure its employees and supplies conform to posted parking requirements. The Concessioner also will ensure its employees conform to current park policies including seasonal car pool requirements when implemented.

#### **G) Storage**

- (1) The Concessioner will implement a plan to re-stock prior to or after heavy visitor use periods. The Concessioner will keep the use of hand trucks to transport supplies across the patio during heavy visitor use periods to a minimum.
- (2) The Concessioner may use the 7'X7' storage area adjacent to the west patio until the Service completes construction of the maintenance storage building located in the boneyard on the mesa.
- (3) Within 30 days following notification of completion of the assigned storage area on the mesa, the Concessioner will vacate the 7' X.7' storage area adjacent to the west patio.
- (4) The Concessioner will equip the storage area on the mesa with shelving and appliances for storage of inventory, supplies, food, and beverage.
- (5) The Concessioner will install appliances and adequate shelving in the assigned storage area on the mesa within 30 days following notification of its completion by the Superintendent. The appliances and shelving will be considered personal property and not permanently fixed to the property.
- (6) The Service will remove the 7' X 7' storage area adjacent to the west patio.

**H) Deliveries**

Upon completing the installation of appliances and shelving in the storage area on the mesa:

- (1) The Concessioner will direct the delivery of inventory, food, beverages, and supplies to that storage area. Deliveries to the retail facility in Frijoles Canyon as in the case of stocking distributors will be subject to the approval of the Superintendent.
- (2) The Concessioner will coordinate with its vendors for deliveries and access to the storage area on the mesa.
- (3) The Concessioner will transport inventory, food, beverages, and supplies from the storage area on the mesa for re-stocking of the Concession Facilities in Frijoles Canyon.

**I) Interactions with Wildlife**

- (1) The Service prohibits the feeding of wildlife within all units of the National Park System. The Concessioner will not encourage the feeding of wildlife at any facility within its land assignment by displaying food, such as popcorn and bread, in such a manner that may imply approval of the feeding of wildlife. The Concessioner will take care in the packaging and serving of food to lessen the opportunity for spillage.
- (2) Should rodents, for example squirrels, become a nuisance the Concessioner will work with park officials to mitigate the situation.

**J) Signs and Labels**

- (1) All signs will be professionally made and not hand-printed. The Superintendent must approve all signs before they are displayed.
- (2) All merchandise will be clearly labeled with the selling price. Identical items may be marked by display area, rather than on each item.
- (3) Pricing labels may not conceal country of origin if foreign made.

**K) Merchandising**

The gift shop at the Monument serves two purposes: 1) provide opportunities for visitors to purchase mementos of the Monument, and 2) serve as an extension of the Monument's interpretive responsibilities to the public. Merchandise generally will contribute to the understanding of the Monument and related environmental and cultural values. The following objectives for the gift shop apply:

- (1) The image of the Monument and its gift shop will be intertwined.  
Gift shop employees will attend the Monument's seasonal Interpretive Training and other Monument training and orientation as available.
- (2) The Concessioner will offer gifts and souvenirs that have an identifiable relationship to the Monument and the surrounding area. In compliance with Section 3(d)(3) of the Contract, the Concessioner will develop a gift shop plan based on the Monument's interpretive themes.

- (a) The plan will emphasize providing local and regional handcrafted art and craft merchandise and souvenirs and merchandise specific to the Monument that include the name Bandelier National Monument.
  - (b) The Concessioner will submit the plan for the Superintendent's approval within 30 days following the award of the Contract.
- (3) The Concessioner will keep the gift shop uncluttered and display merchandise neatly. The Concessioner will integrate Monument interpretive themes into the interior decor at retail and food service facilities.
- (a) The Concessioner will submit a plan and work with the NPS to remove the slat wall shelving attachments on the north and east walls of the gift shop and replace them with freestanding handcrafted wood shelving units.
  - (b) The Concessioner will submit a plan and work with the NPS to remove three narrow strips of wood on the west wall.
  - (c) The Concessioner will replace three showcases with cases that replicate archived CCC wood furniture. Two ladder display units will be replaced with CCC replicas. The Concessioner will provide a concept plan of the replicas to be approved by the Superintendent prior to implementation.
- (4) The Concessioner will follow National Park Service Merchandising Standards, including but not limited to:
- (a) Foreign-made merchandise is allowed but should not dominate the gift shop.
  - (b) The Concessioner may not offer merchandise that offends normal standards of taste or which violates conservation principles.
  - (c) The Concessioner may not offer original prehistoric or historic archeological specimens, but may offer replicas if they are clearly labeled as replicas.
  - (d) The Concessioner may offer merchandise representative of items found in the Monument, but not originating from the Monument, if labeled and identified to indicate the origin.
  - (e) The Concessioner may not offer plant material or other natural materials originating in the Monument. The Concessioner may offer animal skin fabricated into such items as leather gloves, belts, jackets, purses, etc., if the Concessioner obtains a statement from the manufacturer stating the skins were obtained from legally authorized sources and not from threatened or endangered species.
  - (f) The Concessioner may not offer merchandise conflicting with Service policies and regulations.
  - (g) The Concessioner may offer petrified wood, minerals and stones with at least one face or surface of the item polished to distinguish it from the natural state.

**L) Visitor Convenience Items**

The Concessioner will provide limited visitor convenience items such as film, photographic supplies, sunscreen, and insect repellent as approved by the Superintendent as part of the gift shop plan.

**M) Food and Beverage Service**

- (1) The Concessioner will offer a range of food service including made to order foods, box lunch service, and pre-packaged snack foods. Food service will include healthy fresh foods representative of the Northern New Mexico area and include options for children and the elderly. The Concessioner will submit menus to the Superintendent for approval by March 1 of each operating year.
- (2) The Concessioner will not offer food that has exceeded the producer's specific "Do not sell after" date.
- (3) The Concessioner will offer a variety of pre-packaged drinks including water and one non-carbonated selection both over the counter and from the vending machine. The Concessioner may provide fountain-dispensed beverages.
- (4) The Concessioner will offer prepackaged beverages and packaged food items in recyclable containers.
- (5) The Concessioner will provide seating and tables for visitors within the Concessioner's assigned area. The Concessioner will acquire and maintain an adequate number of seating and tables. The number and type of seating and tables and their location will be based on approval by the Superintendent.
- (6) The Concessioner will inspect patio grounds and tables at least twice daily and promptly remove food items and litter from the assigned area.
- (7) The Concessioner will clean, including table and seat cleaning, sweeping, litter-pickup, removal of leftover food items, emptying and cleaning of trash receptacles at least once daily.
- (8) The Concessioner may not offer alcoholic beverages and tobacco products.

**N) Bundled Firewood**

- (1) The Concessioner will offer bundled seasoned, firewood in the Concession Facilities in Frijoles Canyon as well as Juniper Campground on a year-round basis.
- (2) Material used to bundle the firewood requires the approval of the Superintendent.
- (3) The Superintendent will designate an area in Juniper Campground for the storage and sale of firewood.
- (4) The Concessioner will provide an enclosed storage shed for firewood and a secure method for collecting sales. The Concessioner will secure the storage shed and not offer firewood during bans on open fires. The Superintendent will notify the Concessioner promptly of all bans on open fires.

**O) Shuttle Service**

The Concessioner may provide a shuttle service for park visitors who wish to be shuttled between locations within the Monument. Prior to providing the shuttle service, the Concessioner will present a detailed proposal to the Superintendent for review. At the minimum the proposal must include proposed marketing strategy, proposed method and schedule of operation, proposed routes, payment/refund policy, and rates. Before implementing the shuttle service, the Superintendent must approve the plan.

**P) Special Events**

- (1) The Concessioner will participate in up to six special events per year.

The Superintendent will notify the Concessioner as soon as the event is scheduled but no shorter than 30 days prior to the event. The Superintendent will schedule a meeting with the Concessioner to cooperatively determine appropriate actions/activities for the Concessioner to undertake for the scheduled event. Depending on the time necessary to prepare for the event, the Concessioner's participation in the Special Events will include actions/activities described by the Concessioner in the attached Addendum to the Operating Plan.

- (2) The Concessioner's participation in Special Events in 2006 will include commemorating the 90<sup>th</sup> Anniversary of Bandelier National Monument. At a minimum, the Concessioner will feature commemorative 90<sup>th</sup> Anniversary themed merchandise. The Concessioner will partner with the NPS to participate in additional commemorative activities and events as determined in consultation with the Superintendent.
- (3) In 2008, Special Events will include the Concessioner's participation in commemorating the 75<sup>th</sup> Anniversary of Civilian Conservation Corps (CCC). At a minimum, the Concessioner will feature commemorative 75<sup>th</sup> CCC themed merchandise. The Concessioner will partner with the NPS to participate in additional commemorative activities and events as determined in consultation with the Superintendent.

**4) Human Resources Management****A) Employee Identification and Appearance**

- (1) Employees will be neat and clean in appearance and will have a hospitable, positive, friendly and helpful attitude.
- (2) Employees will wear a uniform to include a name tag to identify them as employees of the Concessioner.
- (3) The Superintendent must approve uniforms at the beginning of this Contract and changes will require approval from the Superintendent before implementation.

**B) Employee Hiring**

- (1) 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.

- (2) **Drug-free Environment.** Should the Concessioner learn of illegal drug use by its employees within the Monument, the Concessioner must report the use and subsequent action taken by the Concessioner to the Chief Ranger's Office.
- (3) **Service Employees.** If the Superintendent determines that no conflict of interest exists and provides written approval, the Concessioner may employ spouses and dependent children of Service employees except for the Superintendent and the [insert title of park employee who will have the most operational contact with the concession operations].

### **C) Employee Training**

- (1) The Concessioner will provide mandatory employee orientation for all new employees and inform employees of Monument regulations and requirements that affect their employment and activities while working in the Monument.
- (2) On an annual basis, the Concessioner will provide a one day general employee orientation and training for all concession employees. This training will include information on the regulations and requirements affecting their employment and activities while working in the Monument. The Concessioner will provide appropriate job training to each employee prior to duty assignments and working with the public.
- (3) The Service will allow employees of the Concessioner to attend all appropriate Service training sessions, including first aid, cardiopulmonary resuscitation, and emergency procedures for both permanent and seasonal employees. The Service will provide the Concessioner adequate notice of such training.
- (4) The Concessioner will provide training to employees to allow them to provide information about the general history of the area, significant archeological features as well as some of the more common animals inhabiting the area. Employees will direct visitors to the Visitor Center for additional information.
- (5) The Concessioner will provide appropriate training in environmental, safe food handling, and risk management to employees.

### **D) Volunteers in the Park (VIP) Program**

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

### **E) Risk Management**

The Concessioner will develop a Risk Management Program to ensure a safe and risk-free employee and visitor environment. Under 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. The Concessioner will

develop the initial plan and submit it to the Superintendent within 120 days after the Service awards the Contract. The Service will review the plan annually, in accordance with Occupational Safety and Health Administration ("OSHA"), NFPA and National Park Service guidelines. The program will include, at a minimum, the following components:

- a) Management's Policy Statement, Duties, Employee's Responsibilities, and Administration.
- b) Inspection and Abatement.
- c) Accident Investigation and Reporting.
- d) Safety/Health Committee.
- e) Training.
- f) Emergency Procedures.

## **5) Utilities and Waste Disposal**

### **A) Concessioner**

- (1) The Concessioner will contract with independent suppliers to provide utility services not provided by the Service.
- (2) The Concessioner will promptly pay for electricity, fuel, refuse collection, telephone, sewage disposal, and water or any other utility or service, whether made by governmental authority or independent suppliers.

### **B) Service**

- (1) The Service will provide electric, gas, water and sewage services, as available, to the Concessioner's assigned facilities. The Service will charge the Concessioner on a monthly basis for these services in accordance with current regulations and policies.
- (2) The Service will provide solid waste disposal and recycling service and bill the Concessioner accordingly.
- (3) The Service will review operating costs for utility systems and services annually and will notify the Concessioner in writing by April 1 of the rates for the upcoming operating season. However, rates based upon actual costs to the Service may change without prior notice if a rate change is passed on to the Service by the utility company. The Service conducts a rate comparability study annually and bases rates both on the study and results of the preceding fiscal year's actual costs.
- (4) Nothing in this agreement will prevent the Service from terminating a particular utility service if such service is commercially available and the Service deems it is in the public interest to switch to a commercial utility.

## **6) Protection and Security**

### **A) Concessioner Responsibility**

- (1) The Concessioner must provide appropriate security or security devices within Concession Facilities.

**B) Service Responsibility**

- (1) The Service provides law enforcement protection.

**C) Fire Protection**

- (1) The Service will install fire detection and appropriate suppression equipment in accordance with applicable National Fire Protection Association standards.
- (2) The Concessioner will maintain fire detection and suppression equipment and ensure access in compliance with applicable National Fire Protection Association standards.
- (3) Los Alamos County Fire Department provides 911 emergency response.

**7) Public Relations****A) Complaints and Required Notices**

The Concessioner must respond to all complaints received. The Concessioner will answer all written complaints within 10 days and provide copies of the correspondence to the Service. The Concessioner will cooperate with the Service in investigating all complaints. In order to facilitate the solicitation of visitor comments, the Concessioner will post the following notices prominently at all Concessioner cash registers and payment areas:

- (1) 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  
Bandelier National Monument  
15 Entrance Road  
Los Alamos NM 87544

- (2) 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.

- (3) Public Statements – The Concessioner will forward all media inquiries concerning operations within the Monument to the Superintendent.

**B) Promotional Material**

- (1) Approval. The Superintendent must approve all promotional material prior to publication, distribution, broadcast, etc. The Concessioner will contact the Superintendent well in advance to establish specific time frames for each project review. The Superintendent may require unapproved promotional material removed from circulation.
- (2) Changes. The Concessioner will submit brochure changes and layout 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 will contact the Superintendent well in advance to establish specific time frames for each project.

- (3) Statements. Concessioner advertisements will include a statement that the Concessioner is authorized by the National Park Service and the Department of the Interior to serve the public in Bandelier National Monument.



## **Addendum to Exhibit B: Operating Plan**

### **Concessioner's Actions/Activities in conjunction with Bandelier National Monument's Special Events**

Concessioner will work with the NPS to determine extended store hours, for special events and programs, to complement the hours, events and programs planned by the NPS.

The Concessioner and the Superintendent will cooperatively determine appropriate actions/activities to be provided by the Concessioner such as these described below:

#### **Nightwalks**

- Extending hours of operation during the Nightwalks.
- Selling hot chocolate and coffee in self-serve carafes outside on one of the patios for the Nightwalks
- Providing a computer printout of that day's night sky for each participant.

#### **Cultural Demonstrations**

- Soliciting participation of artists represented in gift shop in cultural demonstrations. These artists would give presentations at the shop during the demonstrations.
- Selling the work of some of the current demonstrators.

#### **National Park Week**

- Concessioner will give a 15% discount to anyone who has an annual National Park Pass.
- The Concessioner will explore working with some of their food vendors to provide specialty foods or drink to complement whatever the NPS offers to visitors.
- The Concessioner will explore sponsoring demonstrations and/or presentations by some of the artists represented in the gift shop merchandise selection.

#### **Public Lands Day**

- A minimum of one Concession staff member will participate in the environmental clean up project during PLD.
- Concessioner will offer free bottled water to all participants as they work.
- Concessioner will create a voucher that staff members or NPS representative can distribute to the clean up participants that entitles them to a free meal with drink.
- Concessioner will provide a bottle of water and trail mix snack at no charge for each participant on the hike, on the tour to Tsankawi, and on the Nightwalk. (specific to 2006)

**Public Open House**

- Concessioner will offer a 15% discount on all merchandise and food to all visitors and NPS staff on the day of the event.
- Concessioner will offer an Open House at the gift shop where Concessioner will have several artists on hand to meet visitors.
- Concessioner will offer a taste testing at the snack bar featuring items that visitors would judge for addition to the following year's menu.
- Concessioner will serve local jam and toast made from pueblo breads and sell loaves of the bread to visitors.
- Concessioner will explore serving specialty food made from the same ingredients as being demonstrated by the NPS. (e.g. pinon cookies and red and green chile based foods.)

**75<sup>th</sup> Anniversary of CCC**

- Concessioner will prominently display all CCC themed merchandise and design a commemorative 75<sup>th</sup> Anniversary CCC T-shirt, tote bag and mug to sell throughout 2008.
- Concessioner proposes to bring in a guest speaker who is a mason worker who worked with the CCC on the Bandelier buildings.

**90<sup>th</sup> Anniversary of Bandelier National Monument**

- Concessioner will sell commemorative 90<sup>th</sup> Anniversary of Bandelier T-shirts, mugs, tote bags, magnets throughout the year.
- Concessioner will partner with the NPS in sponsoring guest speakers from museums and/or universities during the summer.
- Concessioner will commission work by some of the offeror's artists to particularly reflect the Bandelier experience.
- Concessioner will partner with NPS in other commemorative activities and events as determined in consultation with the NPS.

**One Time Special Events**

- Concessioner will partner with the NPS in activities and events as determined in consultation with the NPS at the appropriate time.

**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]:

- Exhibit C-1 Gift Shop/Snack Bar, West Patio approximately 14' X 33', w/portals and East Patio approximately 35'6" X 38', w/portals, and Adjacent Storage Spaces
- Exhibit C-2 \*Southeast corner of Maintenance Storage Building
- Exhibit C-3 Juniper Campground, Loop B, approx. 8' X 16' area for placement of Concessioner-owned Firewood shed

REAL PROPERTY IMPROVEMENTS ASSIGNED:

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

Building Number	Description
17	Gift Shop (Approximately 1,770 Sq. Ft.)
18	Storage enclosure adjacent to east patio located in a portion of Building 18 (Approximately 22' X 12½')
15	Storage enclosure adjacent to east patio located in a portion of Building 15 (Approximately 8' X 11')
n/a	<i>Storage area located adjacent to west patio (Approximately 7' X 7') assigned until completion of 20' X 20' storage area located in NPS Facility Maintenance Building</i>
_____	<i>Storage area located in the east end of the NPS Facility Maintenance Building (Approximately 20' X 20') *assigned upon completion of building construction</i>

Approved, effective 3/2, 2006

By:   
Director, Intermountain Region

Bandelier National Monument  
Building Replacement Cost

Area/Building Number	Description	Area (sq. ft.)	Insurance Full Replacement Cost as of 3/2/04
Frijoles Canyon Building 17	Gift Shop and Snack Bar	1,770	\$271,252
Maintenance Building on the Mesa	20' X 20' Storage Area	400	Prorated share based on final construction costs
<b>Total Cost:</b>			\$ _____

# EXHIBIT C-1

BANDELIER NATIONAL MONUMENT

concessioner area

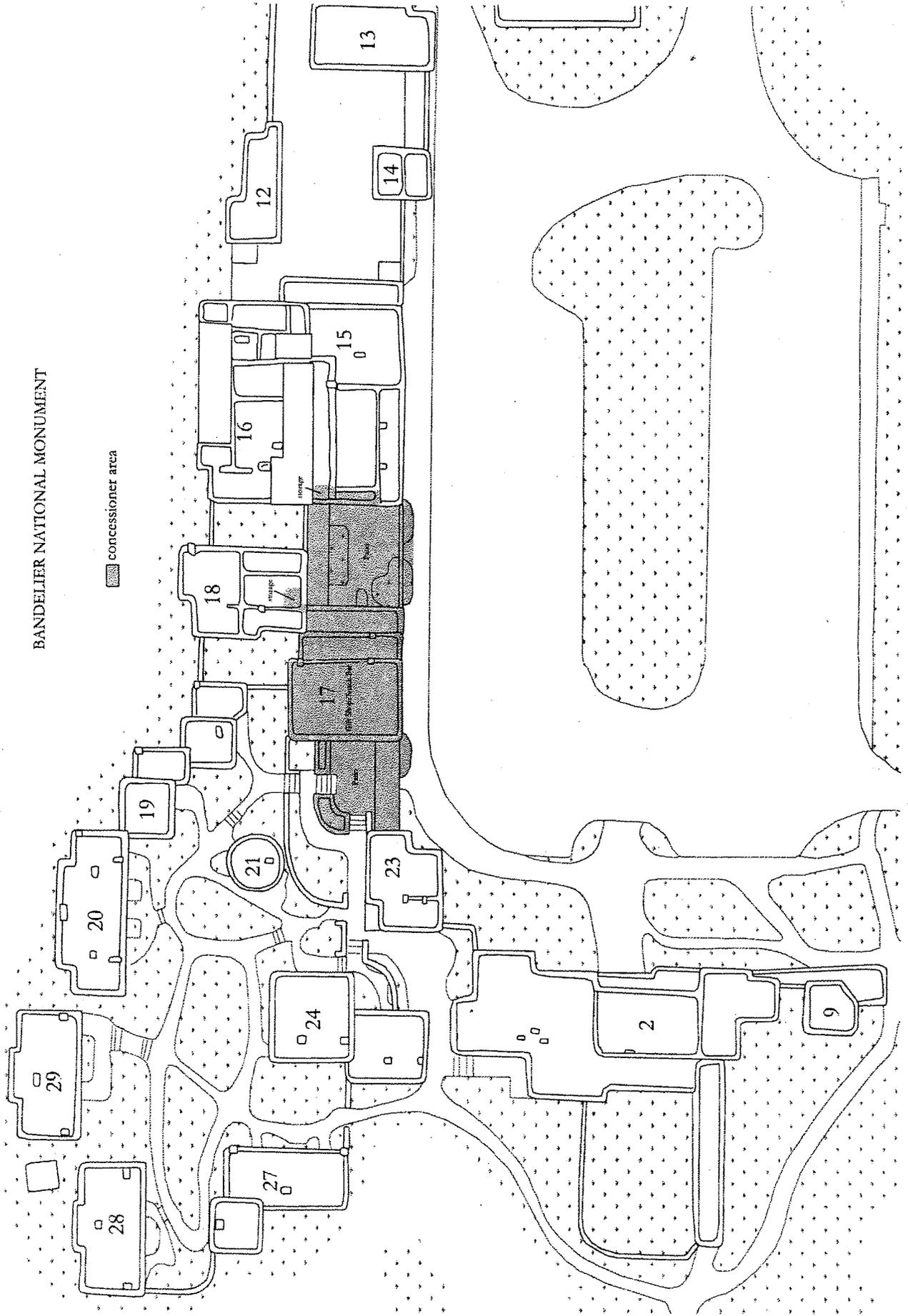
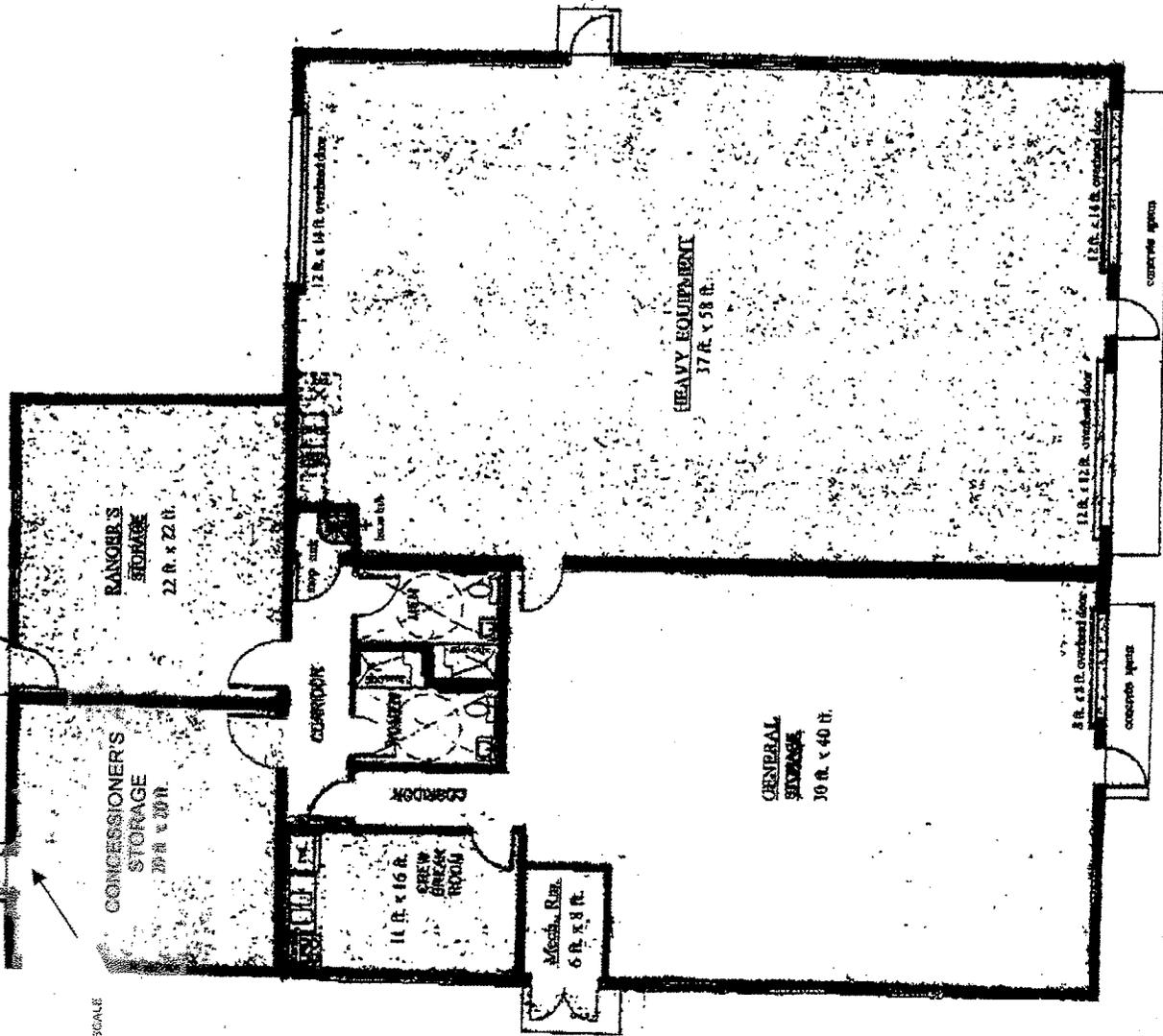


EXHIBIT C-2

DOUBLE DOORS  
NOT DRAWN TO SCALE



71  
51

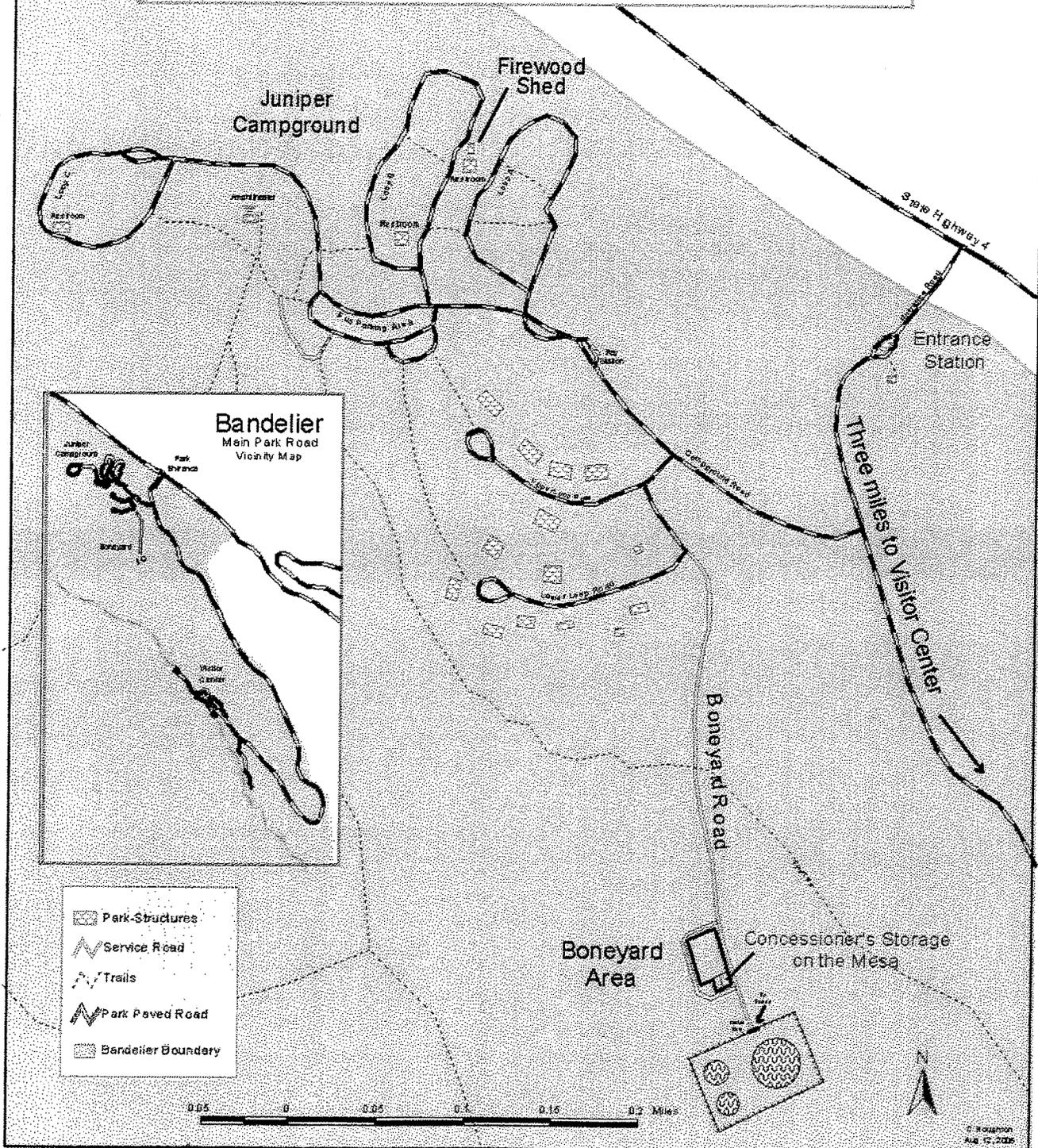
BANDELER NATIONAL MONUMENT - March 2005  
MAINTENANCE STORAGE BUILDING

Approximately 3000 sq. feet

FLOOR PLAN  
SCALE 1/8"=1'-0"



# Bandelier National Monument Overview of Mesa Area



**EXHIBIT D****ASSIGNED GOVERNMENT PERSONAL PROPERTY**

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

<b>Assigned Government Personal Property</b>			
<b>System</b>	<b>Unit</b>	<b>Description</b>	<b>Model Number</b>
Freezer/Refrig	True (In-Out)	All Stainless Steel	TS-23F
Freezer/Refrig		All Stainless Steel	TS-23
Freezer/Refrig		Deli Case	TSID-48-2L
Freezer/Refrig		Sandwich/Salad	TSSU-12
Freezer/Refrig		Worktop (Freezer)	TWT-48F
Freezer/Refrig		Worktop (Refrigerator)	TWT-48F
Steam Table	Duke	Aerohot - Electric	E303
Range	Wolf	Challenger	KCHR-0-29-FT45
Work Table	Advance Tabco	Standard (1 each)	TFMS-243
Fryer	Vulcan	gas fryer	TGR-35
Hot Plate	APW Wyott	Champion	GHP-2H
Hot Dog Cooker	APW Wyott	Mr. Frank	DS-1A
Ice Maker & Bin	Enodis	Ice-O-Matic	ICE500A/B55PS

Effective, this 2 day of March, 2006.

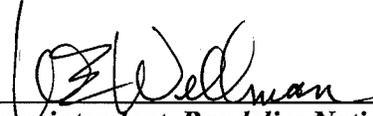
By:   
 Director, Intermountain Region



**EXHIBIT E  
MAINTENANCE PLAN**

**MERCHANDISE, FOOD AND  
BEVERAGE SERVICES**

**Bandelier National Monument**

SIGNED:  DATE: 3/2/06  
*for* Superintendent, Bandelier National Monument

SIGNED:   DATE: 2/24/06  
Bandelier Trading, Inc.



100

100

100

**MAINTENANCE PLAN**

**INTRODUCTION..... 1**

A) General ..... 1

B) Plans Reports and Inspections .....3

C) Facility Maintenance ..... 4

D) Utilities .....5

E) Signs ..... 6

F) Solid Waste ..... 6

G) Recycling, Pollution Prevention and Conservation .....6

H) Hazardous Materials and Hazardous Waste Program.....7

I) Grounds, Landscaping, and Pest Management .....8

J) Roads, Trails, Parking Areas and Walkways.....8



## **Introduction**

This Maintenance Plan between Bandelier Trading, Inc., (hereinafter referred to as the "Concessioner") and the National Park Service, (hereinafter referred to as the "Service") will serve as a supplement to Concession Contract CC –BAND001-06 (hereinafter referred to as the "Contract"). It sets forth the maintenance responsibilities of the Concessioner and the Service with regard to those lands and facilities within Bandelier National Monument (hereinafter referred to as the "Monument"), which are assigned to the Concessioner for the purposes 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 Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of Bandelier National Monument. Revisions may not be inconsistent with the main body of this Contract. Revisions must be reasonable and in furtherance of the purposes of the Contract.

### **B) General**

These general maintenance standards and requirements apply to all concession service types and any work performed by Concessioner contractors, as applicable.

- (1) *Land Assignment.* The Concessioner is responsible for the maintenance and repair of the Concession Facilities, including personal property within those facilities, as shown in Exhibits C and D.
  - (a) Lands within the Monument, as defined by Land Assignment Map in Exhibits C-1 and C-2 to the Contract are the responsibility of the Concessioner. These lands contain facilities, improvements, court yards, flower beds, and walkways used by the Concessioner. The Concessioner has specific responsibilities, defined below, regarding the condition of these lands together with the facility, improvements, and landscapes on them.
  - (b) Any National Park Service approved change resulting from construction of buildings, modification of buildings, or changes to land use within the Concessioner's land assignment will result in a corresponding change in the Land Assignment Map.
- (2) *Responsibilities.* The Concessioner will perform preventative maintenance and repairs to the Concession facilities. 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.

The current *Concession Management Guidelines* provide the general direction, expectations and standards on all aspects of Concession operations. The operational performance standards provide the general standards for interior and exterior maintenance.

- (a) All maintenance will be conducted in compliance with all Applicable Laws, the following referred sections of the 2000 version of the International Property Maintenance Code ("IPMC"), and the manufacturer's recommendations and specifications. The current IPMC can be found at [www.iccsafe.org](http://www.iccsafe.org). In the event of any conflict between Applicable Laws and the IPMC, the Applicable Laws will control.

- (b) The Concessioner will integrate energy efficiency, environmental protection, and sustainable practices into its maintenance activities.

(3) *Definitions*

- (4) *In addition to all the defined terms contained in the Contract, and Exhibit F, the following definitions apply to this Maintenance Plan.*

- (a) **Energy Star** refers to a joint US Environmental Protection Agency and Department of Energy program that helps businesses and individuals protect the environment through superior energy efficiency.
- (b) **Environmental Preferable Purchasing** refers to the affirmative acquisition of environmentally preferable products.
- (c) **Operations** refer to all aspects of Concessioner activity authorized under the Contract. Operations include all services provided to the public and also include all non-public measures necessary to support those authorized services.
- (d) **Exterior** refers to structures, the foundations, exterior walls and surfaces, roofs, porches, stairways, and other structural attachments. This includes all the equipment, sidewalks, walkways, parking lots, landscaping, and utilities within the Concessioner's land assignment.
- (e) **Interior** refers to the area of structures inside the external walls and under the roof, including doors and window frames. This also includes all equipment, appurtenances, and utility systems that penetrate the walls, roof, or foundation.
- (f) **Maintenance** is the preservation and repair of capital improvements, to the greatest practical extent, to the originally constructed condition or its subsequently improved condition. Maintenance includes operational cyclic repair and rehabilitation to address health, life and safety and provide a positive environment for Monument visitors and employees.
- **Cyclic Maintenance** is work activities that reoccur on a periodic cycle of greater than one year but less than seven years.
  - **Preventative Maintenance** is planned, scheduled servicing, inspection, adjustment, and replacement that results in continued service, fewer breakdowns and prevents premature replacement of equipment and materials.
  - **Repair** is correcting an unsatisfactory or substandard physical condition. 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.
  - **Replacement** is an aspect of repair and may be a necessary and/or an economically sound approach to repairs.
- (g) **Pests** are organisms that interfere with the management objectives of a site.  
See Section 2 of the Contract for additional definitions.

- (4) *Environmental Management and Cultural Protection in Maintenance.* The Concessioner shall incorporate Best Management Practices (BMP's) related to natural (environmental) and cultural resource protection in its maintenance activities.

Key goals in conducting these activities are pollution prevention, energy and water conservation, sustainable design and environmental purchasing.

- (a) Energy and Water Conservation. The Concessioner will incorporate water and energy efficiency in all maintenance practices and integrate water and energy conserving measures whenever feasible. Energy efficient products, such as those certified by the United States Environmental Protection Agency Energy Star Program, must be installed to replace less efficient products and to minimize energy consumption when replacement is needed.
- (b) Environmental Preferable Purchasing. 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.

### C) Plans, Reports and Inspections

- (1) *Annual Maintenance Plan and Report*. The Concessioner is to provide the Monument with an updated "Annual Maintenance Report" that covers the facility, building, assigned government personal property and assigned area. It will include a reporting of the previous year's maintenance and maintenance plan for the following year. The Report will be delivered to the Superintendent on or before October 1 of each year. The Superintendent will provide written response thereto within 30 days from receipt thereof. The Report will include:
  - (a) Preventative Maintenance (PM) Schedules. PM schedules will be developed by the Concessioner and included in the plan to ensure that all property assigned to the Concessioner is properly maintained. At a minimum, PM schedules will include detailed PM schedules for each building system (including but not limited to roofs, building envelopes and mechanical equipment). At a minimum, the PM schedules will adhere to the manufacturer's recommendations. The PM schedule will list what PM tasks will be completed and their frequency. Also included in the plan will be the Concessioner's quality control process to ensure that the PM's are being completed as scheduled.
  - (b) Cyclic Maintenance Schedules. Programmed cyclic maintenance items will be included in the plan. Typical item in this category is paint.
  - (c) Scheduled and Unscheduled Maintenance Items. A plan will be developed to schedule other (unscheduled maintenance items, deferred maintenance, etc.) maintenance requirements during the year. The plan will include a service call procedure and method to prioritize service calls.
  - (d) Furniture and Removable Equipment. The planned systematic replacement of furniture and removable equipment for the following year.
  - (e) Annual Maintenance Plan and Report and proposed costing to accomplish the items in the Annual Maintenance Plan and Report.
- (2) *Inspection*. *The Monument reserves the right to conduct an inspection and review of the assigned concession facility to determine what maintenance is needed. An annual review will occur on a schedule to be submitted by the Concessioner and approved*

by the Superintendent. Based upon the identified needs, the Superintendent and the Concessioner will develop a timeline to cure the deficiencies.

#### **D) Facility Maintenance**

- (1) **Qualified Personnel.** *All maintenance and repair work will be done by qualified personnel as defined by applicable codes.*
- (2) **Specifications and Written Approval.** *Repairs or replacements will be done in accordance with National Park Service regulations.*
  - (a) For work conducted on the Frijoles Canyon facility, the Concessioner will use only qualified personnel and ensure that work is completed in accordance with the Secretary of the Interior's Standards for Historic Preservation.
  - (b) Any proposed action that requires review under the National Environmental Policy Act, Section 106 of the National Historic Preservation Act and NPS Director's Order 12 will be submitted to the Superintendent. The Service will determine what level of environmental compliance is required. The Concessioner may be required to contract for preparation of an environmental assessment or environmental impact statement. The Superintendent will advise the Concessioner on proper process and procedure. The Superintendent must approve the proposed action in writing before any work commences.
- (3) **Painting.** *Unless required more frequently per the manufacturer's recommendation, or the IPMC, interior paintable surfaces will be painted by the Concessioner on a regular cycle of not less than seven years. Exterior paintable surfaces will be maintained by the Service. Paint products will be of a "best quality" from a major manufacturer and a type and color that is readily available on the open market. Any changes to paint colors from the color range provided by the Superintendent must be approved by the Superintendent. Whenever possible, the Concessioner will utilize reprocessed, low volatile organic content (VOC), latex coatings when technically feasible and appropriate.*
- (4) **Buildings:** *No changes may be made to the architecture, building interior or exterior, including color and material unless approved in advance by the Superintendent.*
- (5) **Lighting.** *The historic light fixtures currently in place inside the gift shop and snack bar and outside on the patios will be maintained by the NPS. All lights must be shielded to cast light downward only to protect night skies and without sending the directed light outside the area of need. Generally exterior lighting and interior night lights will be kept to a minimum.*
- (6) **Independent Inspections.** *All independent inspection fees will be borne by the Concessioner.*
- (7) **Damage to Capital Improvements.** *The Concessioner will repair any damage caused to any structure due to actions on the part of a Concessioner employee or supplier.*
- (8) **Fire Escapes and Exits.** *Installations of fire escapes and emergency exit hardware and signs will receive prior written approval from the Superintendent.*

(9) Furniture and Removable Equipment

- (a) The Superintendent may 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) The Concessioner will maintain all furniture, fixtures, and equipment (FF&E) according to industry standards for public use and be free of defects.
  - (c) The Concessioner will maintain all equipment used in food service operations, including but not limited to dishwashers, refrigerators, freezers, and serving tables, in compliance with all applicable laws and code including the most current Food and Drug Administration's Food Code.
  - (d) The Concessioner will maintain, service, and repair all government owned appliances and equipment, including parts, supplies, and related materials, according to the manufacturer's recommendations. To the greatest extent possible, the Service will provide manuals specific to the government owned appliances and equipment. The Concessioner, however, may need to obtain some manufacturer's recommendations from the manufacturer or through other sources such as the Internet. (See Contract – Exhibit D and Maintenance Plan Exhibit E-1 for list of Government owned appliances and equipment maintained by the Concessioner)
  - (e) The Concessioner must replace the government-owned appliances and equipment listed in Contract Exhibit D with new appliances and equipment that have similar capacity and usefulness. When the Concessioner replaces any government-owned appliances and equipment, the Concessioner will return the item being replaced to the Service. The replacement appliances and equipment will be the Personal Property of the Concessioner.
  - (f) The Service will replace non-removable (i.e., affixed) equipment assigned to the Concessioner when necessary. (See Contract - Maintenance Plan Exhibit E-1, for list of Government owned affixed equipment)
- (10) Floors. *The NPS will wax and seal the historic floors in the gift shop and snack bar. The Concessioner will sweep and wet mop the floors to keep them clean of dust, dirt, and grease build-up. No one may use solvents without written approval of the Superintendent.*
- (11) Cleaning. *The Concessioner will clean the Concession Facilities.*

**E) Utilities**

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.

(1) *Water*

- (a) The Concessioner will maintain and repair all interior plumbing within the Concession Facilities.
- (b) The Service will install, as necessary, and maintain water meters and backflow prevention devices in the Concession Facilities.

(c) The Service and the United States Public Health Service will conduct annual water/sewer surveys in the assigned Concession Facility.

(2) *Sewer*

(d) The Concessioner will maintain and repair all interior plumbing and fixtures within the Concession Facilities.

(e) The Service will perform the day-to-day maintenance of lift stations.

(f) The Concessioner will maintain and repair grease traps associated with their operations.

(g) The Concessioner will report sewer spills and plugged sewer lines to Service Facility Manager immediately for NPS repair and or maintenance.

(3) *Electrical*

(h) The Concessioner will maintain and repair all interior wiring and electrical supply lines from exterior transformers into the Concession Facilities.

(4) *Gas*

(i) The Concessioner will maintain and repair all interior gas supply lines from exterior meter(s) into the Concession Facilities.

(5) *Telephones*

(j) The Concessioner is responsible for all on-premise telephone equipment and wiring.

(6) *HVAC System*

(k) The Concessioner is responsible for winterizing and spring start up of evaporative cooler system and regular maintenance of heating and air conditioning system according to manufactures recommendations.

**F) Signs**

(1) *The Concessioner will install, maintain, and replace all interior and exterior signs relating to its operations and services within its land assignment. Examples include the Concessioner's operating services and hours, rules or policies, and identifying location of the facility.*

(2) *The Service provides roadside directional, traffic, and regulatory signs.*

**G) Solid Waste**

(1) *The Service will provide and maintain garbage cans and dumpsters, collect solid waste, and bill the Concessioner based on established rates.*

**H) G) Recycling, Pollution Prevention and Conservation**

(1) *Recycling Programs*

The Concessioner will participate in the Monument's recycling program and, at a minimum, recycle plastic, paper, cardboard and aluminum. The Service will bill the Concessioner based upon established rates.

(l) The Service will provide and maintain recycling collection containers for the public and Concessioner to use in the Concession Facilities.

(m) The Concessioner will breakdown cardboard boxes and haul them to a designated collection point. The Concessioner will not allow cardboard to accumulate within the Concession Facilities.

(2) *Use of Recycled Products*

(n) The Concessioner will implement a source reduction program designed to minimize its use of disposable products in its operations. Reusable and recyclable products are preferred over "throwaways." Where the Concessioner needs to use disposable products, it will strive to use products that have the least impact on the environment. The Concessioner must use post-consumer recycled products whenever possible.

(3) *Environmentally Safe Products*

(o) The Concessioner will implement a hazardous waste source reduction program to minimize the use of hazardous chemicals in its operation. Where practical, the Concessioner will use environmentally safe "green" products and practices that enhance sustainable operations and development, promote use of recycled oils, tires (re-treads), construction materials, etc.

(4) *Water and Energy Conservation*

(p) The Concessioner will implement water and energy conservation measures for its operation. As new technologies are developed, the Concessioner will explore the possibility of integrating them into existing operations where the potential for increased efficiency, reduced water or energy consumption, or reduced impacts on the environment exists.

**I) Hazardous Materials and Hazardous Waste Program**

(1) *The Concessioner will maintain health and safety standards and take necessary mitigative and corrective measures to assure a healthy work environment.*

(q) The Concessioner will be familiar with its obligations under Section 6 of the Contract.

(r) The Concessioner's Environmental Management Program (EMP) will include its approach to avoiding, containing and cleaning up hazardous substance spills and releases, whether incidental or non-incidental.

(s) The Concessioner will maintain health and safety standards, as outlined by the Occupational Safety & Health Administration, when conducting maintenance and/or rehabilitation of buildings and/or areas that may contain asbestos, Polychlorinated Biphenyls (PCBs) and lead-based paint materials.

i) As of October 2005, five windows in the gift shop and employee restroom contain lead based paint on the interior and exterior surfaces. Rehabilitation of these historic windows is the responsibility of the NPS. There are no known areas with asbestos or PCB's within the assigned concession facilities.

(t) Individual fleet and public service vehicles with a load rating greater than two tons should carry, at minimum, enough absorbent materials to effectively immobilize the total volume of fluids contained within the vehicle. Vehicles

and operators transporting hazardous materials must be Department of Transportation certified and/or registered if applicable, and operators must be knowledgeable of local emergency response and personal safety protocol.

**J) Grounds, Landscaping, and Pest Management**

- (1) *The Concessioner will conduct its business and daily activities in such a manner as to minimize impacts on the natural scene, including the protection of native vegetation and controlling erosion.*
- (2) *Within the Concession Facilities, the Concessioner will maintain the flower beds and planters, including seasonal plantings and adequate watering. Before making any landscaping changes, the Concessioner will obtain the approval of the Service. The Concessioner will obtain the approval of the Service before using any chemicals, including but not limited to, fertilizers, pesticides, and herbicides.*
- (3) *The Concessioner will work with the Service to identify resource-related problems in the Concession Facilities. The Service will recommend and approve correction methods. The Concessioner will complete necessary work*
- (4) *The Concessioner will control litter within the Concession facilities.*
- (5) *The Concessioner will notify the Superintendent of serious pest problems including rodents, birds, bats, and other wildlife or insects that may invade buildings. The Superintendent will coordinate with other Service staff to provide an approved Integrated Pest Management (IPM) strategy for implementation by the Concessioner. The Concessioner will provide the Service the IPM results.*

**K) Roads, Trails, Parking Areas and Walkways**

- (1) *The Service will resurface, surface repair, patching, striping, debris, hazard removal, and sweep roads and parking areas.*
- (2) *The Concessioner will maintain walkways within the Concession Facilities - including but not limited to sweeping, snow removal, surface repair, erosion control, and lighting.*
- (3) *Should the Service disrupt areas or lands within the Concessioner's assigned lands, the Service will provide mitigative signing and barriers.*

**NON-REMOVABLE (i.e. AFFIXED) EQUIPMENT**

System	Unit	Model	Model Number
HVAC	Carrier Gas Furnace	Weathermaker 8000	right: 58DLA13510122
HVAC			left: 58DLA13510122
HVAC	Air Conditioner-Split Unit	Furnace N-Coil	right: CK5AXA060024ABAA
HVAC			left: CK5AXA048021ABAA
HVAC	Carrier Condenser		small: 38CKC048361
HVAC			large: 38CKC060371
HVAC	Swamp Cooler	Ares	SE-1 AA2E
Freezer/Refrig		vent system w/thermostat	
Shelving	Advance Tabco	wall shelves (9 each)	WS-KD-48
Sink	Advance Tabco	Regaline	94-83-60-24LR
Handwashing Sink		small porcelain	
Exhaust System	Greeheck	exhaust fan on roof	CUBE131-5
Exhaust System	Greeheck	range hood	GHPE 8.00-S
Grease Trap	Grease trap	in parking lot	
Fire Suppression	Ansul	over range	R-102 Wet Chemical
Hot Water Heater	Hydroject	gas, 50 gal.	
Bathroom Fixtures	toilet		
Bathroom Fixtures	bathroom sink		
Bathroom Fixtures	medicine cabinet		
Bathroom Fixtures	light fixture		
Historic Light Fixtures	2 in snack bar		
Historic Light Fixtures	6 in gift shop		
Historic Light Fixtures	4 in east courtyard		
Historic Light Fixtures	2 in west courtyard		
Fluorescent Lights	6 in snack bar		

Source: The National Park Service

<sup>(5)</sup> <sup>1</sup>Non-removable (i.e. affixed) equipment to be maintained and repaired by the Concessioner and replaced by the Service as necessary.



## 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.

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, solely for its benefit, an ***unconditional 30 day advance*** notice of cancellation, non-renewal, or material change in coverage or policy terms for all coverage issues.

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 at its park. Nevertheless, if the Concessioner purchases insurance in addition to the limits illustrated herein, the Service will receive the benefit 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 are to be written on an occurrence basis only. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or Excess "Umbrella" Liability.

##### A. Commercial General Liability

1. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability (and must include Contractual Liability and Products/Completed Operations Liability).

Bodily Injury and Property Damage Limit	\$1,500,000
Products/Completed Operations Limit	\$1,500,000
Personal Injury & Advertising Injury Limit	\$1,500,000
General Aggregate	\$1,500,000
Fire Damage Legal Liability "per fire"	\$50,000

2. The liability coverages may not contain the following exclusions/limitations:

- a. Athletic or Sports Participants
- b. Products/Completed Operations
- c. Personal Injury or Advertising Injury exclusion or limitation
- d. Contractual Liability limitation

- e. Explosion, Collapse and Underground Property Damage exclusion
- f. Total Pollution exclusion
- g. Watercraft limitations affecting the use of watercraft in the course of the Concessioner's operations (unless separate Watercraft coverage is maintained)

3. For all lodging facilities and other indoor facilities where there may be a large concentration of people, the pollution exclusion may be amended so that it does not apply to the smoke, fumes, vapor or soot from equipment used to heat the building.

4. If the policy insures more than one location, the General Aggregate limit must be amended to apply separately to each location, or, at least, separately to the appropriate NPS location(s).

#### **B. Automobile Liability**

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.)

Each Accident Limit - \$1,000,000 or as required by the state of New Mexico whichever is greater.

#### **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, 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.

#### **D. Care, Custody and Control--Legal Liability (Describe Specific Coverage)**

Coverage will be provided for damage to property in the care, custody or control of the Concessioner.

Any One Loss

#### **E. Environmental Impairment Liability**

Coverage will be provided for bodily injury, personal injury or property damage arising out of pollutants or contaminants (on site and/or offsite).

Each Occurrence or Each Claim Limit  
Aggregate Limit

**F. 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.

**G. 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 \$5,000.

**H. Workers Compensation & Employers' Liability**

Coverage will comply with the statutory requirements of the state(s) in which the Concessioner operates.

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

1. Insurance shall cover buildings, structures, improvements & betterments and/or contents for all Concession Facilities, as more specifically described in Exhibit C and D of this Contract.
2. Coverage shall apply on an "All Risks" or "Special Coverage" basis.
3. The policy shall provide for loss recovery on a Replacement Cost basis.
4. The amount of insurance should represent no less than 100% of the Replacement Cost value of the insured property.
5. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
6. Coverage is to be provided on a blanket basis.
7. The Vacancy restriction, if any, must be eliminated for property that will be vacant beyond any vacancy time period specified in the policy.
8. Flood Coverage shall be maintained, if available, with a limit of not less than the building replacement cost as stated in Exhibit C.
9. Earthquake Coverage shall be maintained with a limit of not less than the building replacement costs listed in Exhibit C.

**B. Boiler & Machinery Coverage**

1. Insurance shall apply to all pressure objects within Concession Facilities.
2. The policy shall provide for loss recovery on a Replacement Cost basis.
3. The amount of insurance should represent no less than 75% of the Replacement Cost value of the insured property.
4. The coinsurance provision, if any, shall 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.

**D. Business Interruption and/or Expense**

1. Business Interruption insurance, if maintained by the Concessioner, should cover the loss of income and continuation of fixed expenses in the event of damage to or loss of Concession Facilities. 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.

**E. Deductibles**

Property Insurance coverages described above may be subject to deductibles as follows:

1. Direct Damage deductibles shall not exceed the lesser of 10% of the amount of insurance or \$25,000 (except Flood & Earthquake coverage may be subject to deductibles not exceeding \$50,000).
2. Extra Expense deductibles (when coverage is not combined with Business Interruption) shall not exceed \$25,000.

**F. Required Clauses**

1. 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. CC-BAND001-06 dated April 1, 2006, between the United States of America and Bandelier Trading, Inc., 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."

## V. INSURANCE COMPANY MINIMUM STANDARDS

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

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

## VI. 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.

**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 F.**

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.

## VII. STATUTORY LIMITS

In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit shall be considered the minimum to be maintained.



## EXHIBIT G

### TRANSITION TO A NEW CONCESSIONER

#### **Section 1. In General**

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

#### **Section 2. Cooperation Prior to the Termination Date**

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

**(a) Continue Operations.** Continue to provide visitor services and otherwise comply with the terms of the Contract in the ordinary course of business and endeavor to meet the same standards of service and quality that were being provided previously, and with a view to maintaining customer satisfaction.

**(b) Designating a Point of Contact and Other Actions.** Cooperate with the Director and the New Concessioner to ensure the smooth transition of operations by: (1) designating one of the Concessioner's executives as the point of contact for communications between the Concessioner and the New Concessioner; (2) providing the Director and the New Concessioner with access to any assigned Real Property Improvements, including "back-of-house areas" and including copies of the keys to assigned Real Property Improvements; (3) providing the Director and the New Concessioner with full access to the books and records, licenses and all other materials pertaining to any assigned Real Property Improvements and the Concessioner's operations in general; (4) providing the Director and the New Concessioner with copies of all maintenance agreements, equipment leases (including short-wave radio) service contracts and supply contracts, including contracts for on-order merchandise (collectively, "Contracts"), and copies of all liquor licenses and other licenses and permits (collectively, "Licenses"); (5) allowing the New Concessioner to solicit and interview for employment all of the Concessioner's salaried and hourly employees, including seasonal employees through a coordinated process implemented by the Concessioner; and (6) not entering into any contracts or agreements that would be binding on any assigned Real Property Improvements or operations in general after the Termination Date without the prior written agreement of the New Concessioner.

**(c) Financial Reports.** Within 30 days after receipt of the notification of the selection of the New Concessioner, provide the New Concessioner with a financial report with respect to the operation of any assigned Real Property Improvements and the Concessioner's operations in general as of the last day of the month prior to receipt of such notification. Thereafter, the Concessioner shall update such financial report on a periodic basis (but no less frequently than thirty (30) days) until the Termination Date. Such financial report shall include, at a minimum, (1) a balance sheet for the Concessioner's assigned Real Property Improvements, if any; (2) a schedule of pending accounts payable; and (3) a schedule of pending accounts receivable.

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

**(e) Sale of Inventory and Other Personal Property.** In addition to inventory that may be sold to the New Concessioner in accordance with Section 16(d)(3), the Concessioner, shall sell to the New Concessioner at book value such other items on the Personal Property List described above as the New Concessioner may request.

**(f) Other Information and Reports.** Provide the New Concessioner with all other information and reports as would be helpful in facilitating the transition, including, without limitation, a list of maintenance records for the Concessioner's operations for the period of one year prior to notification of the selection of the New Concessioner, and complete information with respect to: (1) utilities, including gas and electric; (2) telephone service; (3) water service; and, (4) specific opening and closing procedures. Such information shall be provided within thirty (30) days after receipt of notification of the selection of the New Concessioner, and shall be updated periodically (but no less frequently than thirty (30) days) until the Termination Date.

**(g) Other Cooperation.** Provide the Director and the New Concessioner with such other cooperation as may be reasonably requested.

### **Section 3. Cooperation Upon the Termination Date.**

Upon the Termination Date, the Concessioner shall:

**(a). Transfer of Contracts and Licenses.** Cooperate with the transfer or assignment of all Contracts and Licenses entered into by the Concessioner that the New Concessioner elects to assume.

**(b). Fees and Payments.** Within ten (10) days after the Termination Date, the Concessioner shall provide the Director with an itemized statement of all fees and payments due to the Director under the terms of the Contract as of the Termination Date, including, without limitation, all

deferred, accrued and unpaid fees and charges. The Concessioner shall, within ten (10) days of its delivery to the Director of this itemized statement, pay such fees and payments to the Director. The Concessioner and the Director acknowledge that adjustments may be required because of information that was not available at the time of the statement.

**(c). Access to Records.** Notwithstanding any other provision of this Contract to the contrary, upon the Termination Date, the Concessioner shall make available to the Director for the Director's collection, retention and use, copies of all books, records, licenses, permits and other information in the Concessioner's possession or control that in the opinion of the Director, are related to or necessary for orderly and continued operations of the related facilities and services.

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

**(e). Other Cooperation.** Provide the Director and the New Concessioner with such other cooperation as may be reasonably requested.

