

EMERGENCY OPERATING AGREEMENT

EMERGENCY OPERATING AGREEMENT made this _____ day of _____, 20____, by and between DIVISION OF ECONOMIC DEVELOPMENT, hereinafter referred to as "DED", and, _____, hereinafter referred to as "Operator".

Recitals

WHEREAS _____ Business Site is not currently being used and existing structures are subject to vandalism;

WHEREAS _____ Business Site is within the jurisdiction of the Navajo Nation;

WHEREAS _____ Business Site includes approximately _____ acres;

WHEREAS the property is available as a business site lease it needs to be occupied for security and maintenance of the business so that the Navajo Nation continues to benefit from the business opportunities.

WHEREAS Navajo Nation desires to engage the services of the Operator to manage and operate this site, on a temporary and emergency basis, until a Business Site Lease can be issued, which may be incumbent upon the operator being able to exercise the development efforts and or related interest of the Navajo Nation. Operator desires to provide such services on the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **EMPLOYMENT OF OPERATOR:** Operator shall act as the exclusive operator to manage, operate, and maintain Business Site until a formal lease from the Navajo Nation for the premises is executed and approved.
2. **TERM AND RENTAL:** The use of this Agreement will be limited to a term of _____ [*days, months or year*] following the date this Agreement is signed; however, may be renewed. Operator must give the DED Division Director notice at least five (5) days before expiration of the Agreement [so long as the Operator is diligently working on obtaining a business site lease].

Rent shall be waived, but shall not be construed to be the annual rental for a Business Site Lease or Permit.

3. **MAINTENANCE, REPAIRS, AND OPERATIONS:** Operator shall not be responsible for, and shall have no liability for any past due or unpaid Lease payments accrued by the former operator prior to the execution of this Agreement. Operator shall be responsible for all maintenance, repair and operations on the building and premises and shall maintain in a pleasant appearance as determined by the Nation.
4. **EMPLOYEES:** Operator shall employ, discharge, and supervise all on-site employees or contractors required for the efficient operation and maintenance of _____

Business Site. All on-site personnel, except independent contractors and employees of independent contractors, shall be the employees of the Operator. Operator shall comply with all applicable Navajo Nation preference in employment laws in hiring, supervising, and discharging the on-site personnel at Business Site.

5. **INSURANCE:** Operator may obtain the following insurance, and such insurance shall be maintained in force during the full term of this Agreement:
 - a. Comprehensive general liability insurance for bodily injury, death and property damage which must include the Navajo Nation and the United States as additional named insureds.
 - b. Workers compensation and employer liability insurance to cover the Operator, the employees of the Operator.
6. **TERMINATION:** This Agreement may be terminated by either party by giving not less than thirty (30) day notice in writing to the other party.
7. **CONDEMNATION:** This Agreement shall terminate in the event of a total condemnation of Business Site. If a partial condemnation of the property reduces the compensation of Operator by more than ten per cent (10%), Operator may terminate this Agreement.
8. **NO PROPERTY INTEREST CREATED:** Nothing contained in this Agreement shall be deemed to create or shall be construed as creating in Operator any property interest in the land.
9. **LICENSING OF OPERATOR:** Operator shall at all times during the term of this Agreement maintain such licenses and permits as are required for any of the various services to be performed by Operator.
10. **OPERATOR AS INDEPENDENT CONTRACTOR:** Operator is an independent contractor and not an employee of the Navajo Nation for any purpose.
11. **COVENANTS AND CONDITIONS:** All of the terms and conditions of this Agreement are expressly intended to be construed as covenants as well as conditions.
12. **NOTICE:** All notices, requests, demands, or other communications hereunder shall be in writing, and shall be deemed to have been duly given if delivered in person, or within five (5) days after deposited in the United States mail, postage prepaid, certified, with return receipt requested, or otherwise actually delivered to

Navajo Nation, Division of Economic Development at P. O. Box 663, Window Rock, Arizona 86515 or to Operator at _____.
Either party hereto may change the address at which it receives written notices by so notifying the other party hereto in writing.

13. **PARTIES BOUND; ASSIGNMENT:** This Agreement shall be binding on and inure to the benefit of the successors and assigns to the parties hereto, and their respective successors

and assigns; provided, however, that this Agreement may not be assigned by Operator without prior written consent of the Navajo Nation.

Anything in the foregoing to the contrary notwithstanding, Operator may, without the consent of the Navajo Nation, delegate the performance of (but not responsibility for) any duties and obligations of Operator to any independent contractor or entity.

14. **CONSENT TO JURISDICTION:** Operator hereby consents to the legislative, executive and judicial jurisdiction of the Navajo Nation in connection with all activities conducted by the Operator within the Navajo Nation. Operator shall also agree to be governed by the Navajo Nation Business Leasing Regulations of 2005 and the Navajo Nation Business Site Lease Management Plan, as amended.
15. **SOVEREIGN IMMUNITY:** Nothing herein shall be construed to waive the sovereign immunity of the Navajo Nation, explicitly or implicitly.
16. **EFFECT OF PARTIAL INVALIDITY:** Should any section or any part of any section of this Agreement be rendered void, invalid or unenforceable for any reason by the appropriate Navajo Nation Court, such a determination shall not render void, invalid or unenforceable any other section or any part of any section in this Agreement.
17. **INTEGRATION:** The drafting, execution and delivery of this Agreement by the parties have been induced by no representations, statements, warranties or agreements other than those expressed in this Agreement. This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof unless expressly referred to in this Agreement.
18. **MODIFICATION:** This Agreement may not be modified unless such modification is in writing and signed by both parties in this Agreement.

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

OPERATOR:

[*name*], [*title*]
[*name of business*]

DATE: _____

DIVISION OF ECONOMIC DEVELOPMENT:

[*name*], Department Manager

DATE: _____

[*name*], Division Director

DATE: _____