

Cooperative Management Agreement for Petroglyph National Monument 2008

This Cooperative Management Agreement (hereinafter "**Agreement**") is entered into by and between the City of Albuquerque (hereinafter "**City**"), a New Mexico municipal corporation, acting through its Chief Administrative Officer, and the National Park Service (hereinafter "**NPS**"), an agency of the United States Department of the Interior, acting through the Superintendent of Petroglyph National Monument (hereinafter "**Monument**"). Throughout this Agreement the City and the NPS may be referred to jointly as "**the parties.**"

Article I. Background and Objectives

The United States Congress established the Monument in the Petroglyph National Monument Establishment Act of 1990 (hereinafter "**Establishment Act**"), Pub. L. No. 101-313, 104 Stat. 272, as amended by the Petroglyph National Monument Boundary Adjustment Act (hereinafter "**Boundary Adjustment Act**"), § 3305 of the 1998 Supplemental Appropriations and Rescissions Act, Pub. L. No. 105-174, 112 Stat. 58, 82. The Monument contains 7,236 acres and is located primarily within the city limits of Albuquerque, New Mexico, and consists of the Atrisco, Boca Negra, and Piedras Marcadas Units.

In 1991 the City, the NPS, the New Mexico Energy, Minerals and Natural Resources Department, and the New Mexico General Services Department executed Joint Powers Agreement No. 78-521.81-277, which the parties agree constitutes the binding agreement referenced in subsection 104(a) of the Establishment Act.

In October 1991 the City and the NPS completed a Land Protection Plan for the Monument which identifies the Atrisco Unit as the "National Park Service NPS management area;" the Boca Negra Unit as the "State area, City acquisition and management;" and the Piedras Marcadas Unit as the "City of Albuquerque management area."

The United States currently owns lands in the Atrisco Unit and a small tract of land in the Piedras Marcadas Unit that the NPS manages in accordance with the Establishment Act and the Boundary Adjustment Act; the Act of August 25, 1916, ch. 408, 39 Stat. 535, codified as amended at 16 U.S.C. §§ 1 and 2 through 4 (2006); and other federal laws applicable generally to units of the national park system.

The City currently owns lands in the Atrisco, Boca Negra, and Piedras Marcadas Units, and manages those lands in accordance with Bernalillo County and City of Albuquerque Open Space Ordinances. The State of New Mexico (hereinafter "**State**") currently owns lands in the Boca Negra Unit that the City manages under the Joint Powers Agreement #78-521.81-277. By virtue of that assignment of authority, the present agreement is hereby limited to the City of Albuquerque and the National Park Service.

As of the date of execution of this Agreement, the State of New Mexico has not ceded to the United States any legislative jurisdiction over lands within the Monument, which means that federally owned lands within the Monument are under "proprietary federal jurisdiction."

The Establishment Act envisions that the City and the NPS will manage their lands in the Monument in a cooperative and consistent manner. Subsections 102(a) and 102(b) of the Establishment Act direct the Secretary of the Interior (1) to administer the Atrisco Unit and (2) to administer the Boca Negra and Piedras Marcadas Units in cooperation with the State or the City, in accordance with § 105 of the Establishment Act. Subsection 105(c) of the Establishment Act authorizes the Secretary of the Interior to enter into cooperative agreements with the State or the City under which the NPS may manage and interpret any lands owned by the State or the City within the boundaries of the Monument.

In the interest of better protecting the Monument's natural and cultural resources and better meeting the needs of the public, and to ensure the consistent management of lands within the Monument, the City and the NPS now desire to enter into an agreement setting forth the parties' obligations for the administration and management of the Monument.

It is the intent of this agreement to define the working relationship between the parties and to promote the protection of the cultural and natural resources, visitor services and law enforcement within the monument boundaries. To this end the undersigned agree to the following Guiding Principles:

1. To the maximum extent practicable, Petroglyph National Monument will be managed as a joint responsibility of the parties. The City shall administer and manage the Boca Negra and Piedras Marcadas Units of the Monument. The NPS shall administer and manage the Atrisco Unit of the Monument. The term "administer and manage" means the exercise of daily functions including but not restricted to administration, maintenance, delivery of programs, visitor services, and public safety.
2. Information sharing shall be a keystone of this agreement. Data and other information on natural and cultural resources, visitor experiences, stakeholder satisfaction and law enforcement incidents should be shared in a timely manner. Regularly scheduled management meetings will be conducted and cross training will be encouraged.
3. The protection of the cultural and natural resources of Petroglyph National Monument will be the parties' foremost concern. To accomplish this goal the parties will work to administer and manage the land base to provide visitor services, educational opportunities, and public safety for the communities using the Monument.
4. To the maximum extent practical, the parties will facilitate joint work parties, joint training sessions and cross-deputization of law enforcement personnel. The goal is to provide a seamless appearance to the public with regard to information, visitor services and public safety. Where beneficial to the Monument, joint funding initiatives are also encouraged.

Article II. Administration and Management of the Monument

A. The City agrees as follows:

1. The City shall administer and manage the Boca Negra and Piedras Marcadas Units of the Monument in accordance with § 105 of the Establishment Act. The City's responsibilities for the Boca Negra and Piedras Marcadas Units include but are not limited to the following:

a. Administration – interagency coordination, consultation with affiliated communities, staffing, offices, budget, purchasing, contracting, public information, establishing Monument policy and implementing policies.

b. Planning – strategic planning, information analysis, design, facility siting, compliance and developing land use policies.

c. Resource Management – resource inventory and monitoring, maintaining databases, maps and records, compliance, responding to information requests and providing management with resource information to make educated management decisions, and managing research permits.

d. Visitor Services – outreach and educational programs, developing exhibits, literature and information for the visiting public, developing kiosks and wayside exhibits, conducting visitor surveys and managing volunteer projects.

e. Operations and Maintenance – facility planning, construction, maintenance, repair, fencing, signage, trail maintenance and land restoration.

f. Public Safety – resource, facility and visitor protection, routine patrols, investigations, interagency coordination, special projects/directed assignments, sharing of reports and intelligence, sharing of radio systems, dispatches and frequencies, managing special use permits and developing superintendent's compendiums for managing public use. To this end both parties agree to the following:

2. The City shall serve as the primary law enforcement agency for the Boca Negra and Piedras Marcadas units in terms of routine patrols and responding to incidents or accidents. At the request of the city, NPS law enforcement rangers will respond to, and assist with accidents and incidents in these city owned and managed units. This provision is not intended to, and does not, preclude either party from patrolling or responding to incidents within any portion of the Monument or from enforcing, to the extent of its lawful jurisdiction, applicable statutes, regulations, or ordinances within any portion of the Monument.

3. Because no portion of the Monument is under exclusive federal jurisdiction, all City, county, and state law enforcement officers may patrol or respond to incidents on all lands (including federally owned or administered lands) within the Monument and may enforce, to the extent of their lawful jurisdiction, applicable statutes, regulations, or ordinances on all lands (including federally owned or administered lands) within the Monument.

4. Unless commissioned by the City, NPS law enforcement rangers have no authority to enforce City criminal ordinances within the Monument. The City may through its authority provide the necessary law enforcement commissions to qualified NPS law enforcement personnel to authorize those personnel to enforce City ordinances on all lands within the Monument.

5. To provide for public safety, officer safety and interagency cooperation for the protection of all lands within the Monument. In the spirit of this agreement a separate law enforcement agreement has been developed, to which all parties agree to abide once executed.

B. the NPS agrees as follows:

1. The NPS shall administer and manage the Atrisco Unit of the Monument including all lands now owned or hereafter acquired by the City (hereinafter "City-owned lands") within the unit, in accordance with § 105 of the Establishment Act. The City hereby consents to the NPS' administration and management of City-owned lands within the Atrisco Unit, and the parties hereby affirm that this Agreement is a "written instrument" as that phrase is used in 36 C.F.R. subsection 1.2(a)(2). The NPS' responsibilities for the Atrisco Unit include but are not limited to the following:

a. Administration – interagency coordination, consultation with affiliated communities, staffing, offices, budget, purchasing, contracting, public information, establishing Monument policy and implementing policies.

b. Planning – strategic planning, information analysis, design, facility siting, compliance and developing land use policies.

c. Resource Management – resource inventory and monitoring, maintaining databases, maps and records, compliance, responding to information requests and providing management with resource information to make educated management decisions, and managing research permits.

d. Visitor Services – outreach and educational programs, developing exhibits, literature and information for the visiting public, developing kiosks and wayside exhibits, conducting visitor surveys and managing volunteer projects.

e. Operations and Maintenance – facility planning, construction, maintenance, repair, fencing, signage, trail maintenance and land restoration.

f. Public Safety – resource, facility and visitor protection, routine patrols, investigations, interagency coordination, special projects/directed assignments, sharing of reports and intelligence, sharing of radio systems, dispatches and frequencies, managing special use permits and developing superintendent’s compendiums for managing public use. To this end both parties agree to the following:

2. By virtue of the Establishment Act and their federal law enforcement commissions, NPS law enforcement rangers may enforce federal criminal statutes on all lands within the Monument. NPS law enforcement rangers also may enforce the regulations found in 36 C.F.R. Chapter I on all lands (including City-owned lands) within the Atrisco Unit and on federally owned lands within other units of the Monument.

3. The NPS shall serve as the primary law enforcement agency for the Atrisco Unit in terms of routine patrols and responding to incidents or accidents. At the request of the NPS, the City will respond to, or handle any accident or incident in the Atrisco Unit if no NPS units are available.

4. Unless commissioned by the City, NPS law enforcement rangers have no authority to enforce City criminal ordinances within the Monument. The City may through its authority provide the necessary law enforcement commissions to qualified NPS law enforcement personnel to authorize those personnel to enforce City ordinances on all lands within the Monument.

5. If the City so requests, the NPS, acting in accordance with 16 U.S.C. subsection 1a-6(c)(1) (2006), may designate qualified City law enforcement officers to act as special policemen within the Monument.

6. To provide for public safety, officer safety and interagency cooperation for the protection of all lands within the Monument, a separate law enforcement Memorandum of Understanding has been developed, to which all parties agree to abide once executed.

C. The Parties further agree as follows:

1. The NPS will issue and administer all research and special use permits for the Atrisco Unit of the Monument, and other areas of federally owned land. The City will issue and administer all research and special use permits for all City and State owned lands within the Boca Negra and Piedras Marcadas Units of the Monument. If either party receives a written application for a research or special use permit for lands on which it does not have management authority, it will promptly forward the application to the responsible Superintendent.

Before a research or special use permit is issued, the responsible Superintendent must approve it in writing.

2. The NPS and the City shall establish a joint sign committee. Signs, brochures, and other material used to identify the Monument or provide information shall use the design standards of the NPS; however, all such materials shall incorporate references to both agencies.
3. Whenever feasible, the NPS and the City shall jointly plan and conduct training opportunities for Monument and Open Space employees.
4. To the maximum extent practicable and as permitted by applicable law, each Party agrees to notify the other Party of anticipated consultations with communities affiliated or associated with the Monument for the purpose of joint consultation. Both Parties agree to share relevant information with each other concerning such consultation.
5. Both parties will provide each other with copies of all public information releases and when appropriate draft and send out such releases jointly.
6. In the event of any shortfalls in staffing or scheduling, both parties agree to temporarily provide the necessary personnel or services to respond to incidents or situations requiring attention on each others lands to provide for public safety, the protection of all resources and visitors within the Monument.

D. Other Provisions Relating to Administration and Management of the Monument

1. The parties recognize the importance of administering and managing the Monument's three units in a consistent manner and in accordance with the Establishment Act's mandates and prescriptions. Accordingly, to the maximum extent practicable, the City and the NPS shall communicate and coordinate with each other regarding day-to-day activities and events within the Monument; shall consult with each other before taking actions affecting the Monument; shall attempt to substantiate the cooperative spirit envisioned by the Establishment Act; and shall endeavor to administer and manage the Monument's three units in such a manner that the public does not differentiate between the units.
2. The Secretary of the Interior has sole responsibility and authority to make minor boundary adjustments to the Monument in accordance with applicable federal law. Both parties will work to resolve any boundary adjustments and at the completion of all land acquisitions will work together to develop a comprehensive boundary adjustment proposal to submit to Congress and the Secretary of the Interior for approval.
3. Absent compliance with the City's property management and disposal regulations and a written agreement between the parties transferring specific property, the City will be deemed to own any improvements permanently

attached or affixed to City-owned lands within the Monument. Absent compliance with federal property management and disposal regulations and a written agreement between the parties transferring specific property, the United States will be deemed to own any improvements permanently attached or affixed to federally-owned lands within the Monument.

4. Each party shall supervise its own employees and shall control the method and manner of its employees' work. Employees shall report only to their usual supervisors within their respective organizations. Nothing in this Agreement is intended to alter the parties' usual chain of command or to create an employer-employee or principal-agent relationship between one party and the other party's employees.

5. As between the parties, each party shall be solely liable for property damage, personal injury, or death arising out of the acts or omissions of its employees, officers, or agents. The parties' liability is subject to the immunities and limitations contained in applicable law, including the New Mexico Tort Claims Act, codified at N.M. Stat. Ann. §§ 41-4-1 through 41-4-29, Michie 2007, and the Federal Tort Claims Act, codified as amended primarily at 28 U.S.C. §§ 2671-80 (2006).

6. The parties' performance of their obligations under this Agreement is subject to the availability of funds appropriated for the purposes of this Agreement by the Albuquerque City Council and the United States Congress. Nothing in this Agreement should be construed as obligating the City or the NPS to expend in any one fiscal year any sum of money in excess of appropriations made by the Albuquerque City Council or the United States Congress for the purposes of this Agreement or as involving either party in any contract or other obligation for the expenditure of money in excess of such appropriations.

7. This Agreement does not authorize the transfer of funds from one party to the other. Any transfer of funds must be authorized by a separate written instrument executed by the parties.

8. The City's chief Administrative Officer and the NPS superintendent and appropriate members of their staffs shall meet at least once a year to evaluate the Monument's administration and management and to review this Agreement.

E. General Contract Provisions

1. If any part of the Agreement is held to be illegal, invalid or unenforceable, such holding will not affect the legality, validity, or enforceability of any other part of the Agreement as long as the remainder of the Agreement is reasonably capable of performance.

2. This Agreement will be governed by, and will be construed and enforced in accordance with, the laws of the United States, the laws of the State of New Mexico, and the ordinances of the City.

Article III. Term of Agreement

This Agreement will be effective for a period of five (5) years from the date of final signature, unless one of the parties terminates the Agreement earlier under article VIII below.

Article IV. Key Officials and Notices

The parties' key officials are listed below. All notices required by this Agreement must be in writing and must be delivered in person or sent via registered or certified mail, postage prepaid, to the other party's key official(s) at the address(es) listed below. The effective date of service of any notice will be the date when the notice is delivered in person or, if mailed, the postmark date.

For the City:

Chief Administrative Officer
City of Albuquerque
P.O. Box 1293
Albuquerque, NM 87103
(505) 768-3000

With a copy to:

Director
Parks and Recreation Department
P.O. Box 1293
City of Albuquerque, NM 87103
(505) 768-8018

For the NPS:

Superintendent
Petroglyph National Monument
6001 Unser Boulevard NW
Albuquerque, New Mexico 87120
(505) 899-0205

Article V. Prior Approval

See Article II (Statement of Work) above.

Article VI. Reports and/or Deliverables

Not applicable.

Article VII. Property Utilization

Unless otherwise agreed to in writing by the parties, any personal property furnished by one party to the other will remain the property of the furnishing party. Any personal property furnished by the NPS to the City during the performance of this Agreement will be used and disposed of as set forth in NPS Property Management Regulations.

Article VIII. Modification and Termination

This Agreement may be modified only by a written instrument executed by the parties.

Either party may terminate this Agreement by providing the other party ninety (90) days advance written notice of its intention to do so. If one party notifies the other party of its intention to terminate, then the parties shall meet promptly to discuss the reasons for the proposed termination and to try and resolve their differences amicably. Recognizing the importance of this Agreement, the parties commit to using every reasonable means available, including, if necessary, the use of a neutral mediator, to try to avoid terminating this Agreement.

Article IX. Standard Clauses

A. Civil Rights

During the performance of this agreement, the participants agree to abide by the terms of USDI-Civil Rights Assurance Certification, non-discrimination, and will not discriminate against any person because of race, color, religion, sex, or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, or national origin.

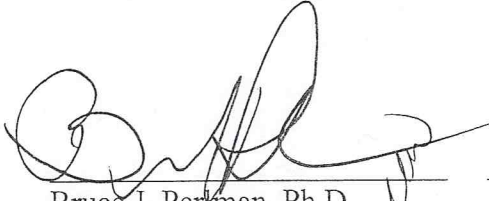
B. Official Not to Benefit

No member of or delegate to Congress or resident Commissioner shall be admitted to any share of part of this agreement or to any benefit that may arise there from, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

Article X. Authorizing Signatures

In witness hereof, the parties' authorized representatives have signed this Agreement on the dates indicated, thereby executing it.

For the City of Albuquerque:

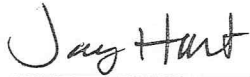


Bruce J. Perlman, Ph.D.
Chief Administrative Officer
City of Albuquerque

5/16/08
Date

Recommended by:

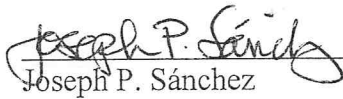
MRS



Mr. Jay Hart
Director
Parks and Recreation Department
City of Albuquerque

5/8/08
Date

For the National Park Service:



Joseph P. Sanchez
Superintendent
Petroglyph National Monument

5/1/08
Date