

**AGREEMENT  
(Replacing Agreement #1443CA8300-98-001)**

**Between**

**FRIENDS OF HAWAI'I VOLCANOES NATIONAL PARK**

**And**

**HAWAI'I VOLCANOES NATIONAL PARK  
NATIONAL PARK SERVICE**

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This Agreement is entered into by and between the Friends of Hawai'i Volcanoes National Park (Friends) and Hawai'i Volcanoes National Park (Park), National Park Service (NPS), U.S. Department of the Interior, United States of America, to cover activities by the Friends in support of the Park and its mission.

**ARTICLE I – BACKGROUND AND OBJECTIVES**

Hawai'i National Park was created by Congress in 1916 and renamed Hawai'i Volcanoes National Park in 1961 to protect and interpret two of the world's most active volcanoes, years of volcanism, migration, and evolution, a multitude of endangered species for visitors and researchers and to perpetuate Native Hawaiian culture. The Park was designated as an International Biosphere Reserve in 1980 and a World Heritage Site in 1987. Most recently the Park was expanded by the 116,000-acre Kahuku addition to total park acreage of 333,000 acres. The Park receives 2.6 million visits annually.

Originally established as Na Ho' Aloha Ainahou to serve as a custodian of Ainahou Ranch, the Friends of Hawai'i Volcanoes National Park has adopted a much broader role in helping address Park needs.

The Friends is incorporated as a 501(c)(3) nonprofit, tax-exempt organization, established under the laws of the State of Hawaii for the purpose of providing support and assistance to the interpretive, resource management, visitor services and research activities of the Park and to provide interpretive and educational services to the visiting public.

The Park and Friends wish to continue to grow their long-standing relationship and collaboration to support and encourage resource protection, volunteer support and stewardship, enhancing visitor educational and interpretive experiences, and more effectively communicate the purpose and values of the park through fundraising and other support activities.

## **ARTICLE II - AUTHORITY**

16 U.S.C. § 6 authorizes the Secretary, in administration of the National Park Service, to accept monies donated for the purposes of the national park and monument system, and 16 U.S.C. §18g provides fundraising authority;

16 U.S.C. § 4601-1(f) authorizes the NPS to enter into cooperative agreements to sponsor, engage in, and assist in research related to outdoor recreation, undertake studies and assemble information concerning outdoor recreation and to cooperate with educational institutions and others in order to assist in establishing education programs and activities and to encourage public use and benefits from outdoor recreation;

## **ARTICLE III - DEFINITIONS**

As used herein the following definitions shall apply:

“Applicable Laws” means all federal, state and local laws, regulations, ordinances, orders or other legal requirements applicable to the activities undertaken under this Agreement, whether now in force or hereafter enacted or promulgated.

“NPS Director’s Order #21” means NPS Director’s Order #21: Donations and Fundraising as it may be amended, supplemented or superceded throughout the term of this Agreement. NPS Director’s Order #21 is published on the internet, at [www.nps.gov/policy](http://www.nps.gov/policy). A copy of NPS Director’s Order #21 in effect as of the effective date of this Agreement is attached hereto and incorporated by reference herein. It is understood that DO#21 and a companion Reference Guide will be updated within the next six months.

“Major Fundraising Campaign” is any fundraising activity identified in NPS Director’s Order #21 as one for which the Director of NPS has reserved (and not delegated) the authority to authorize.

**ARTICLE IV – OBLIGATIONS AND UNDERSTANDINGS**

A. The Park agrees to:

1. Provide specialists and technical expertise in interpretation, resource management, historic preservation and facilities maintenance, subject to the availability of staff, for the purpose of collaborating with the Friends in planning, developing and implementing specific projects and initiatives under the terms of this Agreement, some of which will be described in Project Statements.
2. Provide in accordance with established policy, regulations and protocols, the use of NPS buildings and other NPS resources for classrooms or venues for educational or interpretive programs.
3. Present the Friends annually, and as needed throughout the year, a current list of park needs and opportunities for support, which the Friends may use for soliciting funds and contributions.
4. Designate the Park superintendent or his/her designee as the park non voting representative to the Board of the Friends and general membership,
5. Provide timely reviews and feedback to the Friends on materials and requests submitted for review, approval or clearances.
6. Review project plans and other documentation provided by the Friends for compliance with the terms of this Agreement and subsequent Project Statements, and to inform the Friends of the results of the review.
7. Inspect and review ongoing program activities conducted under the terms of this Agreement and subsequent Project Statements and provide assistance, guidance and oversight as agreed to by both the Park and the Friends. The Park will annually review interpretive activities conducted by the Friends and provide related training.
8. Undertake and complete project documentation, consultation and coordination required for compliance with environmental and historic preservation and resource management laws and regulations applicable to projects conducted under the terms of this Agreement and subsequent Project Statements.
9. Designate a liaison who will act as the primary NPS liaison with the Friends and who will maintain regular communications with the Friends for the purposes of this Agreement and subsequent Project Statements.

10. Train key Friends' members and/or staff, as identified and agreed to by both parties, in how to follow and comply with pertinent NPS and Park regulations and policies, especially as they relate to visitor safety and protection of Park natural and cultural resources (e.g. specifically human-wildlife encounters, historic structures, off-trail travel, hazards of volcanic areas, wild land fires, sensitive archeological and traditional culture or religious sites, etc.).

11. Support Board development through partnership training and consultations, joint attendance at national Friend/Partners meetings and NPS guidelines applicable to donations and fundraising.

12. Diversify its funding base through development of a business plan that identifies near and longer term public and private funding sources and strategies for increasing non-appropriated funding.

B. The Friends agree to:

1. Provide philanthropic support to NPS efforts through direct and indirect fundraising campaigns, planned giving, grants, endowments, earned income, etc., as well as completing applicable agreements, feasibility studies, fundraising plan/strategies, and donor recognition and communications strategy; comply with all aspects of Directors Order (DO)# 21 -Donations and Fundraising and the DO#20 Reference Guide as they may be amended, supplemented or superceded throughout the term of this Agreement.

2. Coordinate closely with the Park Superintendent to ensure that fundraising materials accurately and appropriately reflect Park needs and are consistent with established park priorities and approved park plans.

3. Work with the Park to ensure that intended solicitations to national and regional corporations and businesses are properly vetted to ensure there are not conflicts in solicitations with other NPS support organizations that corporations are not listed on Department of Interior prohibited sources lists and there are no real or implied product endorsements or conflicts of interest.

4. Obtain prior Park review and approval of print material and graphics that the Friends plan to use to raise funds and represent Park needs as appropriate. The Friends shall obtain prior approval from the NPS before:

- Holding special events within the Park;
- Initiating any new fundraising campaign activities;
- Entering into third-party agreements of a material nature regarding activities to be conducted by the Friends under this Agreement;
- Assigning this Agreement or any part thereof;

- Releasing any public information that refers to the Department of the Interior, the NPS, and the Park, any NPS employee (by name or title), this Agreement or associated agreements.

5. Accept donations only for the purposes described in the Friends' Articles of Incorporation and account to their donors for the use of funds accepted to assist Park needs.

6. Submit to the Park Superintendent an annual financial report of their activities under this Agreement, in a form acceptable to the NPS. The report will be prepared by an independent, licensed or certified public accountant and will be in such detail that all gross receipts realized and expenses incurred by, or accruing to, the Friends in connection with activities under the Agreement will be included. This will be accompanied by a written summary of activities for the year as required by DO#21.

7. Not engage in any activity that would reasonably lead the public to conclude that they are Park employees. Require Friends employees and volunteers who engage in public contact to wear a readily identifiable indication of Friends affiliation.

8. The Friends will maintain its tax-exempt status and adhere to the requirements imposed on any organization exempt from taxation under Section 501 (c) (3) or its successor of the Internal Revenue Code and State of Hawaii requirements for tax-exempt organizations.

9. Plan, develop and implement educational and interpretive programs at Ainahou Ranch, other areas within the park and in other neighboring environments that support natural and cultural resources similar or related to those at the Park.

10. Designate a Program Chair to develop and administer the Friend's educational and interpretive programs, to maintain regular communications with the Park representative, and to compile, prepare and distribute information on its programs to the general public.

11. Provide appropriate project documentation to Park for review at least 30 days prior to the proposed start of any major proposed project or project phase undertaken for this Agreement or subsequent Project Statement.

12. Transfer to the Park any real property and any buildings or structures upon their completion or termination of this Agreement, whichever is first. All reports, studies and research documents completed or contracted by Friends shall become the property of the Park.

C. Both parties jointly agree to:

1. Negotiate and develop Project Statements for projects to be conducted under this Agreement. Project Statements shall specify: the project activity; the project title; the scope of work; the period of performance; deliverable draft and final products; the delivery schedule; key staff; the project budget with the contributions in funds and/or other resources contributed by both parties; and the chargeable Park account.

2. That Na HoAloha 'Ainahou (now the Friends) was the historical custodian of Ainahou Ranch and has a vested interest in its protection and preservation. The Friends will be considered an official partner in the restoration, preservation and protection of both the Ranch and Nene, a threatened and endangered species. The Friends or their designated representative will participate with the Park in development of projects and protection strategies for identified park resources, including cultural landscapes.

3. To negotiate and develop written standards for visitor safety and the protection of Park natural and cultural resources for any Friends activities conducted under this Agreement or subsequent Project Statement.

4. That Park or other NPS employees may not serve on Friends boards, even in an ex officio capacity, may only offer advice on Friends decisions concerning the relationship of the Friends to the NPS, and may not represent the Friends in business transactions or operations. However, as authorized by Public Law 79-633, NPS employees may assist Friends operations.

5. That Friends personnel are not Government employees and are not authorized to undertake any Government function or activity on behalf of the Park beyond those activities authorized by this Agreement and any subsequent Project Statement.

6. That the Friends shall not support any Park or other NPS employee by donated funds unless it obtains the written approval of the Superintendent of HAVO. Any such employment must be in compliance with all federal rules and regulations for employee ethics and conduct and Park staff supported by donated funds.

7. That Friends' fundraising and support activities may be directed towards, but not limited to: corporations, foundations, individuals, other charitable organizations, and involve special fund-raising events and programs, grants, gifts and bequests.

8. That monies solicited and accepted for the Park by the Friends may be specified for a particular item or project, or may be placed in general donation funds of the Friends to be contributed to Park at the discretion of the Board of Directors as requested and approved by Park.

9. Bear all costs of any fund raising campaign(s) under this Agreement (including without limitation management and other overhead costs) to the extent permitted by NPS Director's Order #21. Currently, these costs may not exceed 20 percent of the funds raised.

10. That any capital campaign will comply with the provisions of DO#21 and be pre-approved through a separate Fundraising agreement and the NPS Partnership Construction Project Process as applicable.

#### **ARTICLE V – TERM OF AGREEMENT**

This Agreement shall be effective when signed by both parties and shall remain in effect for five years from that date unless otherwise modified or terminated.

#### **ARTICLE VI – KEY OFFICIALS**

A. The persons listed below are identified as Key Officials considered essential to the work being performed under the Agreement:

1. For the NPS:

(a) Park Liaison to Friends

Jim Gale  
Chief of Interpretation  
Hawai'i Volcanoes National Park  
P.O. Box 52  
Hawaii National Park, HI 96718  
Telephone: (808) 985-6010  
Fax (808) 985-6004  
E-mail: [jim\\_gale@nps.gov](mailto:jim_gale@nps.gov)

(b) Park Superintendent

Cindy Orlando  
Superintendent  
Hawai'i Volcanoes National Park  
P.O. Box 52  
Hawaii National Park, HI 96718  
Telephone: (808) 985-6025  
Fax (808) 967-8186  
E-mail: cindy\_orlando@nps.gov

2. For the Friends:

Friends of Hawai'i Volcanoes National Park  
Casey Jarman, President  
P.O. Box 653  
Volcano, HI 96785  
Telephone: (808) 985-7373  
Fax: None  
E-mail: Jarmanc001@hawaii.rr.com

- A. **Communications** – Communication regarding this Agreement should be between the key officials.
- B. **Changes in Key Officials** – Either the Park or the Friends should provide written notification to the other party on any permanent change in a key official reasonably in advance of the proposed change.

**ARTICLE VII– TERMINATION**

Either party may terminate this Agreement for any reason by providing sixty (60) days written notice of termination to the other party. No party will incur costs as a result of this termination.

NPS may terminate this Agreement for the convenience of the government, at any time, when it is determined to be in the best interest of the public to do so. The affected parties shall be notified in writing within five (5) working days following the termination. Termination pursuant to this provision shall be without cost to the United States.

## **ARTICLE VII– LIABILITY AND INSURANCE**

In furtherance of and as an expense of this Agreement, in connection with the fundraising activities that are the subject of this Agreement, the Friends shall:

A. Prior to undertaking any authorized activities within a park unit the Friends shall procure comprehensive general liability insurance from a responsible company or companies in coverage amounts and upon terms acceptable to NPS. The policy or policies shall name the United States as an additional insured, shall specify that the insured shall have no right of subrogation against the United States for payments of any premiums or deductibles due there under, and shall specify that the insurance shall be assumed by, be for the account of, and be at the insured's sole risk. After consultation with insurance professionals, the Friends will consult with NPS regarding the adequacy of proposed insurance coverage and terms.

If the insurance proposal is accepted in writing by NPS, the Friends will provide NPS with written confirmation that agreed to coverage was procured prior to undertaking any activities within the park unit at issue. Insurance shall be reviewed every two years beginning on the date of purchase of insurance coverage, and shall be updated and modified if necessary to ensure consistency with generally accepted insurance practices and NPS policies. NPS reserves the right to at any time require the Friends to acquire additional or supplemental insurance, or other form of security such as a bond, if NPS determines that the Friend's insurance is not adequate to cover liability associated with in-park activities.

B. The Friends will pay the United States the full value of all damages to the lands or other property of the United States caused by the Friends, its employees, agents, representatives, or contractors.

C. In connection with the fundraising activities that are the subject of this Agreement, the Friends assumes liability for and does hereby agree to, save, hold harmless, 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 of any nature whatsoever, and by whomsoever made, in any way arising out of the fundraising activities of the Friends, its employees, agents or contractors under this Agreement up to the limits of agreed upon insurance coverage. This indemnification shall survive the termination or expiration of this Agreement

D. The Friends will pay the United States the full value of all damages to the lands or other property of the United States caused by the Friends, its employees, agents, representatives, or contractors.

E. The Friends will cooperate with NPS in the investigation and defense of any claims that may be filed with NPS arising out of the activities of the Friends, its employees, agents, representatives, or contractors.

## **ARTICLE XI – PROPERTY UTILIZATION AND DISPOSITION**

All tools, equipment, and facilities furnished by the park will be on a loan basis. Tools, equipment, and facilities will be returned in the same condition received except for normal wear and tear in project use. Property management standards set forth in 43 CFR §12.2933 through 12.935 apply to this Agreement.

## **ARTICLE IX. GENERAL PROVISIONS**

A. Non-Discrimination: All activities pursuant to this Agreement shall be in compliance with the requirements of Executive Order 11246; Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 et seq.); and with all other Federal laws and regulations prohibiting discrimination on the grounds of race, color, sexual orientation, national origin, disabilities, religion, age or.

B. NPS Appropriations: Nothing contained in this Agreement shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress, and available for the purposes of this Agreement for that fiscal year, or as involving the United States in any contract or other obligation for the future expenditure of money in excess of such appropriations or allocations.

C. Member of Congress: Pursuant to 41 U.S.C. § 22, no Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States, or to any benefit to arise thereupon.

D. Lobbying with Appropriated Money: No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law ratification, policy or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request,

or to Congress or such official through the proper channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct foreign policy, counter-intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.

E. Drug Free Workplace Act: The Parties certify that comprehensive actions will be taken to ensure the work place is drug free.

F. Third Parties Not to Benefit: This Agreement does not grant rights or benefits of any nature to any third party.

G. Assignment: No part of this Agreement shall be assigned to any other party.

H. Effective Date: This Agreement becomes effective on the date the last signature is affixed.

I. Non-exclusive: This Agreement in no way restricts the Partners from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.

J. Compliance with Applicable Laws: This Agreement and performance there under is subject to all laws, regulations and management policies governing NPS property and resources, whether now in force or hereafter amended, supplemented, superseded, enacted or promulgated. Nothing in this Agreement shall be construed as in any way impairing the general powers of the NPS for supervision, regulation, and control of its property under such applicable laws, regulations, and management policies. Nothing in this Agreement shall be inconsistent with or contrary to the purpose of or intent of any Act of Congress.

K. Disclaimers of Government Endorsement: The Friends will not publicize or circulate materials (such as advertisements, solicitations, brochures, press releases, speeches, pictures, movies, articles, manuscripts, or other publications), suggesting expressly or implicitly, that the Government, the Department of the Interior, the NPS, or Government employees endorse the Friends' work, services, or positions, or that the Friends' work or services are superior to work or services performed by others. Nothing herein is intended to prevent NPS or the Department of the Interior from recognizing contributions made by the Friends to NPS, and from authorizing, on a case-by-case basis, inclusion of such recognition in materials generated by the Friends.

L. Merger: This Agreement, including any attachments to hereto, and or documents incorporated by reference herein, contains the sole and entire agreement of the parties.

only when agreed to in writing by both the NPS and the Friends.

N. Waiver: Failure to enforce any provision of this Agreement by either party shall not constitute a waiver of that provision. Waivers must be express and evidenced in writing.

O. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by facsimile transmission) as against the party signing such counterpart, but which together shall constitute one and the same instrument.

P. No Lobbying for Federal Funds: The Friends will not seek appropriations from Congress to support any ongoing or proposed activity or project relating to the subject matter of this Agreement or sub agreements hereto, including without limitation federal appropriations for construction, renovation, property acquisition, leasing, administration or operations. Nothing in this paragraph is intended to preclude the Friends from applying for and obtaining a competitive or non-competitive grant of federal financial assistance from a federal agency or from undertaking otherwise lawful activities with respect to any project or proposal included in the President's budget request to Congress; nor should this paragraph be construed as requesting, authorizing or supporting advocacy by nonfederal entities before Congress.

Q. Agency: The Friends is not an agent or representative of the United States, the Department of the Interior, or the NPS, nor will the Friends represent themselves as such to third parties.

R. No Third-Party Beneficiaries: Unless expressly stated herein, nothing in this agreement is intended to grant any rights or provide any benefits to any third party.

S. Survival: Any and all provisions which, by themselves or their nature, are reasonably expected to be performed after the expiration or earlier termination of this Agreement, shall survive and be enforceable after the expiration or earlier termination of this Agreement. Any and all liabilities, actual or contingent, which have arisen during the term of this Agreement and in connection with this Agreement, shall survive expiration or termination of this Agreement.

T. Partial Invalidity: If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

