

**Reference Guide  
To  
Director's Order #21  
Donations and Fundraising**

**Note to the Reader:** The Reference Guide to Director's Order #21 on Donations and Fundraising is the back-up documentation for the Director's Order and is intended to be read in tandem with that document. It is comprised of distinct segments of information that tie directly back to the corresponding section in the Director's Order. The document will grow as additional templates, examples, and background information becomes available.

The table of contents is directly from the Director's Order. Where reference guide materials are available it is indicated by underlined bold text. These titles are formatted in such a way that on-line readers of the document may hyperlink to the relevant material.

# Reference Guide to Director's Order #21: Donations and Fundraising

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## **Chapter 1**

### 1.0 Background and Purpose

#### 1.1 Background

#### 1.2 Purpose

#### 1.3 [Related Sources of Guidance](#)

#### 1.4 Activities not Subject to this Director's Order

### 1.3 Related Sources of Guidance

- NPS Management Policies sets out the basic policies for the management of the national park system.
- Director's Order #1 on the NPS Directives System provides an overview of the NPS directives system and describes the relationship among NPS Management Policies, Director's Orders and Reference Guides.
- Any requests for waivers related to the policies and directions provided in DO #21 must comply with DO #1 subsection on "Things to Know About NPS Policy."
- Director's Order #20 on Agreements provides additional guidance on other kinds of agreements that may be used to implement aspects of partnerships.
- Director's Order #24 on Museum Collections Management and the NPS Museum Handbook provide additional policy and guidance specific to museum collections.
- Director's Order #25 on Land Acquisition provides information on NPS policies regarding land acquisition and boundary adjustments whether through donations or other means.
- Director's Order #32 on Cooperating Associations provides additional policy and guidance specific to cooperating associations.
- Director's Order #44 on Personal Property Management provides additional policy and guidance on management of, and accountability for, donated personal property.
- Director's Order #48A and #48B on Concessions and Commercial Use Authorizations as well as the website of the Concessions Management Program contain the laws, regulations, and policy guidance on in-park commercial operations including sales.
- Director's Order #53 on Special Park Uses contains additional guidance on special events.
- Director's Order #70 on Internet and Intranet Publishing establishes NPS policy on the development of NPS websites
- *Standards of Ethical Conduct for Employees of the Executive Branch* (5 CFR 2635.808).
- *Partnership Legal Primer* provides a basic introduction to federal law and ethical considerations affecting partnerships. It can be found on the Department of the Interior's Partnership web page: [http://www.doi.gov/partnerships/partnership\\_legal\\_framework.html](http://www.doi.gov/partnerships/partnership_legal_framework.html)
- Department of the Interior Departmental Manual: *Donation Guidelines* (374 DM 6) [http://elips.doi.gov/app\\_dm/act\\_getfiles.cfm?relnum=3692](http://elips.doi.gov/app_dm/act_getfiles.cfm?relnum=3692)



## **Chapter 3**

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#### 3.2 Matching Funds/Challenges

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### **3.4 Annual Reporting Requirements**

Annual reports on the NPS' use of its donation acceptance authority will be developed by the National Partnership Office (NPO) using the information collected through the annual update of the Friends' Group list and the NPS Budget Office until the standard procedures and requirements have been developed by the Department. The NPS will not report on individual donations to non-profit park partners but will report the annual contributions of such groups as one donation.

An associated effort will be the collection of annual reports or IRS Form 990 in order to meet the two recommendations made by the Government Accountability Office regarding Friends Group in their July 2003 report "Park Service: Agency Needs to Better Manage the Increasing Role of Nonprofit Partners." The GAO recommended that the NPS should develop and maintain an accurate list of nonprofit groups serving the parks and should require nonprofits to report key financial information (described as annual revenue, donations, and net assets). The NPO will satisfy this requirement by continuing to maintain its existing Friends Group database and by collecting information on annual revenue, donations and net assets from publicly available documents such as a Friends Group's annual report or IRS Form 990.

It should be noted that the NPS Volunteers-in-Parks Program and the NPS Cooperating Association Office collect and report on donations. The NPO will not collect information on either program. The NPO may include summary information on the contributions to those programs in order to report out on the larger role of philanthropy in the stewardship of the NPS.

## **Chapter 5**

### 5.0 Roles and Responsibilities

5.1 [National Park Service](#)

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## 5.1 National Park Service

NPS employees may support or encourage efforts of third parties to create park support groups such as “friends” groups whose purposes include raising funds for the benefit of the NPS, specifically where none now exist. There are a variety of resources available for guidance on the federal and state requirements for non-profit organizations. Useful contacts and additional information:

- NPS Regional Partnership Coordinators,
- NPS Partnership Website ([www.nps.gov/partnerships](http://www.nps.gov/partnerships))-- this guidance speaks particularly to the private citizen interested in creating the organization,
- National Park Foundation,
- Association of Partners for Public Lands,
- Local Community Foundations
- IRS website ([www.irs.gov/charities/index.html](http://www.irs.gov/charities/index.html)).

Coordination and communication are essential when a park has the benefit of having multiple partners.

## 5.2 Fundraising Partners

Friends groups are non-profit organizations that are generally formed under state law and must comply with state and federal requirements for charitable fundraising as well as standards of professional conduct, including:

- Specific standards and philosophies of operation;
- Best practices;
- Codes of professional conduct;
- Fiduciary guidelines;
- Financial accountability requirements;
- Independent audit procedures;
- Public disclosure requirements;
- Performance reviews;
- Relevant federal, state, and local statutes;
- Board of directors governance resolutions; and
- Self-imposed canons of executive behavior.

Nonprofit standards are equal in force and importance to, and are in no way inferior to, the standards of probity expected of any public agency and its employees.

Many nonprofit professionals entered the charitable field in part because of the distinctive ethical dimensions of their respective missions. Most people in the governance structures of nonprofits volunteer their time and seek no financial reward, because they want to give to causes of profound moral worth.

The Donor Bill of Rights and the Association of Fundraising Professionals Code of Ethical Principles and Standards of Professional Practice, and The Accountable Nonprofit Organization

(see below) are three examples of documents regarding the professional conduct of professional fundraisers.

### **The Donor Bill of Rights**

*The Donor Bill of Rights was created by the American Association of Fund Raising Counsel (AAFRC), Association for Healthcare Philanthropy (AHP), the Association of Fundraising Professionals (AFP), and the Council for Advancement and Support of Education (CASE). It has been endorsed by numerous organizations.*

#### The Donor Bill of Rights

Philanthropy is based on voluntary action for the common good. It is a tradition of giving and sharing that is primary to the quality of life. To ensure that philanthropy merits the respect and trust of the general public, and that donors and prospective donors can have full confidence in the nonprofit organizations and causes they are asked to support, we declare that all donors have these rights:

- I. To be informed of the organization's mission, of the way the organization intends to use donated resources, and of its capacity to use donations effectively for their intended purposes.
- II. To be informed of the identity of those serving on the organization's governing board, and to expect the board to exercise prudent judgment in its stewardship responsibilities.
- III. To have access to the organization's most recent financial statements.
- IV. To be assured their gifts will be used for the purposes for which they were given.
- V. To receive appropriate acknowledgement and recognition.
- VI. To be assured that information about their donation is handled with respect and with confidentiality to the extent provided by law.
- VII. To expect that all relationships with individuals representing organizations of interest to the donor will be professional in nature.
- VIII. To be informed whether those seeking donations are volunteers, employees of the organization or hired solicitors.
- IX. To have the opportunity for their names to be deleted from mailing lists that an organization may intend to share.
- X. To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.

# AFP Code of Ethical Principles and Standards of Professional Practice

## STATEMENT OF ETHICAL PRINCIPLES Adopted 1964, Amended October 2004



The Association of Fundraising Professionals (AFP) exists to foster the development and growth of fundraising professionals and the profession, to promote high ethical standards in the fundraising profession and to preserve and enhance philanthropy and volunteerism. Members of AFP are motivated by an inner drive to improve the quality of life through the causes they serve. They serve the ideal of philanthropy; are committed to the preservation and enhancement of volunteerism; and hold stewardship of these concepts as the overriding principle of their professional life. They recognize their responsibility to ensure that needed resources are vigorously and ethically sought and that the intent of the donor is honestly fulfilled. To these ends, AFP members embrace certain values that they strive to uphold in performing their responsibilities for generating philanthropic support.

### AFP members aspire to:

- ◆ practice their profession with integrity, honesty, truthfulness and adherence to the absolute obligation to safeguard the public trust;
- ◆ act according to the highest standards and visions of their organization, profession and conscience;
- ◆ put philanthropic mission above personal gain;
- ◆ inspire others through their own sense of dedication and high purpose;
- ◆ improve their professional knowledge and skills so that their performance will better serve others;
- ◆ demonstrate concern for the interests and well being of individuals affected by their actions;
- ◆ value the privacy, freedom of choice and interests of all those affected by their actions;
- ◆ foster cultural diversity and pluralistic values, and treat all people with dignity and respect;
- ◆ affirm, through personal giving, a commitment to philanthropy and its role in society;
- ◆ adhere to the spirit as well as the letter of all applicable laws and regulations;
- ◆ advocate within their organizations, adherence to all applicable laws and regulations;
- ◆ avoid even the appearance of any criminal offense or professional misconduct;
- ◆ bring credit to the fundraising profession by their public demeanor;
- ◆ encourage colleagues to embrace and practice these ethical principles and standards of professional practice; and
- ◆ be aware of the codes of ethics promulgated by other professional organizations that serve philanthropy.

### STANDARDS OF PROFESSIONAL PRACTICE

Furthermore, while striving to act according to the above values, AFP members agree to abide by the *AFP Standards of Professional Practice*, which are adopted and incorporated into the *AFP Code of Ethical Principles*. Violation of the *Standard* may subject the member to disciplinary sanctions, including expulsion, as provided in the *AFP Ethics Enforcement Procedures*.

### Professional Obligations

1. Members shall not engage in activities that harm the member's organization, clients, or profession.
2. Members shall not engage in activities that conflict with their fiduciary, ethical and legal obligations to their organizations and their clients.
3. Members shall effectively disclose all potential and actual conflicts of interest; such disclosure does not preclude or imply ethical impropriety.
4. Members shall not exploit any relationship with a donor, prospect, volunteer or employee for the benefit of the member or the member's organization.

5. Members shall comply with all applicable local, state, provincial, federal, civil and criminal laws.
6. Members recognize their individual boundaries of competence and are forthcoming and truthful about their professional experience and qualifications.

### Solicitation and Use of Philanthropic Funds

7. Members shall take care to ensure that all solicitation materials are accurate and correctly reflect the organization's mission and use of solicited funds.
8. Members shall take care to ensure that donors receive informed, accurate and ethical advice about the value and tax implications of contributions.
9. Members shall take care to ensure that contributions are used in accordance with donors' intentions.
10. Members shall take care to ensure proper stewardship of philanthropic contributions, including timely reports on the use and management of such funds.
11. Members shall obtain explicit consent by the donor before altering the conditions of contributions.

### Presentation of Information

12. Members shall not disclose privileged or confidential information to unauthorized parties.
13. Members shall adhere to the principle that all donor and prospect information created by, or on behalf of, an organization is the property of that organization and shall not be transferred or utilized except on behalf of that organization.
14. Members shall give donors the opportunity to have their names removed from lists that are sold to, rented to, or exchanged with other organizations.
15. Members shall, when stating fundraising results, use accurate and consistent accounting methods that conform to the appropriate guidelines adopted by the American Institute of Certified Public Accountants (AICPA)\* for the type of organization involved. (\* In countries outside of the United States, comparable authority should be utilized.)

### Compensation

16. Members shall not accept compensation that is based on a percentage of contributions; nor shall they accept finder's fees.
17. Members may accept performance-based compensation, such as bonuses, provided such bonuses are in accord with prevailing practices within the members' own organizations, and are not based on a percentage of contributions.
18. Members shall not pay finder's fees, or commissions or percentage compensation based on contributions, and shall take care to discourage their organizations from making such payments.

## **The Accountable Nonprofit Organization**

(Association of Fundraising Professionals, see:

[http://www.afpnet.org/ka/ka-3.cfm?folder\\_id=897&content\\_item\\_id=1072](http://www.afpnet.org/ka/ka-3.cfm?folder_id=897&content_item_id=1072))

The Accountable Nonprofit Organization is a statement of principles to guide charities.

It outlines the operations and procedures a nonprofit undertakes to show it is accountable to donors, the people it serves, and the general public.

This statement was endorsed by AFP (Association of Fundraising Professionals) Board in 1995.

### **The Accountable Nonprofit Organization**

Each nonprofit organization holds a public trust to improve the quality of life.

The accountable organization clearly states its mission and purpose, articulates the needs of those being served, explains how its programs work, how much they cost and what benefits they produce.

The accountable organization freely and accurately shares information about its governance, finances and operations. It is open and inclusive in its procedures, processes and programs consistent with its mission and purpose.

The nonprofit organization is accountable to all those it exists to serve, to all those who support it, and to society.

The accountable nonprofit organization is responsible for mission fulfillment, leadership on behalf of the public interest, stewardship and quality.

The accountable nonprofit is responsible for:

#### **Mission fulfillment**

- Doing what it says it will do.
- Maintaining relevance by meeting needs in a changing environment.

#### **Leadership on behalf of the public interest**

- Enhancing the well-being of communities and society.
- Promoting inclusiveness, pluralism and diversity within society.
- Educating the public, business, nonprofit organizations and government, including appropriate advocacy and lobbying.

#### **Stewardship**

- Maintaining effective governance and management.
- Generating adequate resources, managing resources effectively, supporting and recognizing volunteers, and appropriately compensating staff.
- Avoiding conflict of interest and abuse of power.

#### **Quality**

- Striving for and achieving excellence in all aspects of the organization.
- Evaluating the total organization and its outcomes on an ongoing basis.

## Chapter 6

### 6.0 Donations

#### 6.1 Considering Donations

6.1.1 Maintaining the Integrity and Impartiality of, and Public Confidence, in NPS and Department of the Interior

6.1.2 Reviewing Direct Donations

6.1.3 Director's Approval

6.1.4 Acceptance of Donations from Donors Involved in Litigation

#### 6.2 Use of Donations

#### 6.3 In-Park Fund-raising

6.3.1 [Donation Boxes](#)

6.3.2 Displays and Fundraising Activity Information

6.3.3 In-Park Events

6.3.4 [Guest Donation Program](#)

### 6.3.1 Donation Boxes

Partner managed donation boxes may be placed on NPS property under the terms of the agreement establishing the partnership or in a separate written agreement. The separate written agreement may only be used if the agreement establishing the partnership is in place. It may be a formal agreement or a letter and must include the following:

- 1) The number, location, appearance and length of time the donation boxes will be located in the park;
- 2) Times and methods for collecting funds;
- 3) Accounting procedures;
- 4) Projects which will be funded by the proceeds of the donation box
- 5) Disposition of funds in the event the partnership ends.

The following example is for use where the partner assumes all responsibility for production/construction, installation, maintenance, and upkeep. It can be modified where the park will assume some of those responsibilities.

#### Example:

Dear \_\_\_\_

This responds to the *<insert authorized nonprofit fundraising partner's name here>* request to install donation boxes within *<insert park name here>* for the purpose of raising money to support the *<insert the project/program name or names here>*. The National Park Service (NPS) supports the *<insert partner name>* proposal and authorizes placement of donation boxes within *<insert park name here>* under the following conditions:

1. One hundred percent of all funds raised through the donation boxes, including any interests thereon, must be used for the *<insert the project/program name or names here>*. The *<insert partner name>* cannot deduct costs or other administrative fees from donations received. This standard NPS requirement is intended to prevent parties who are not motivated by altruism towards parks from seeking to place donation boxes in parks.
2. All accounting, document retention, and document access provisions of the Agreement of *<insert date of agreement establishing the partnership>* between the *<insert partner name>* and NPS, as amended or superseded, will apply to funds raised through the donation boxes. The *<insert partner name>* will ensure that its accounting and reporting system clearly identifies and tracks from receipt to expenditure all funds and associated interest attributable to the donation boxes.
3. NPS must review and approve the proposed design and location of collection boxes within *<insert park name here>*. All collection boxes must clearly inform the public that all funds donated will be used solely for the *<insert the project/program name or names*

*here*> and, should the *<insert the project/program name or names here>* be terminated, for other *<insert park name here>* programs and purposes.

4. The *<insert partner name>* will take reasonable and appropriate measures to ensure the security of donation box funds. Such measures will include secure donation box design, frequent emptying of donation boxes, and measures to safeguard against theft after the boxes have been emptied.
5. In the event that the *<insert the project/program name or names here>* is/are terminated, any funds donated to the *<insert partner name>* for use for this project or program must be remitted to NPS for use within *<insert park name here>* or used by the Foundation, with NPS approval, for other programs or projects benefiting *<insert park name here>*.
6. Placement and operation of donation boxes will be governed by applicable laws, regulations or NPS policies as exist at this time or as amended.
7. The authorization provided by this letter will become effective upon NPS receipt of a reply letter from the *<insert partner name>* accepting the above terms and conditions.

Thank you for your assistance with the *<insert the project/program name or names here>*. If you have any questions or concerns please contact me at xxx-xxx-xxxx.

Sincerely

Superintendent

CONCURRENCE

I concur with the terms of this letter.

---

EXECUTIVE DIRECTOR

---

DATE

### **6.3.4 Guest Donation Program**

The Guest Donation Program was made permanent by the Secretary of the Interior in 2003. The creation of the permanent program included a provision allowing the program to be expanded to non-lodging activities (also on a strictly voluntary basis) with the approval of the Director. This section contains: the [memo](#) from the Director to the National Leadership Council announcing the program and describing the role of the *AD-partnerships*; the [Standard Operating Procedures, Statement of Participation](#) in the program; the [Guest Donation Restricted Fund Authorization Form](#), the [Guest Donation Restricted Fund Authorization Form and Direct Grant to Local Friends Group](#); [Sample Language for Required Guest Notices](#); and the [request for approval of the expansion of the program](#).

# United States Department of the Interior

NATIONAL PARK SERVICE  
1849 C Street, N.W.  
Washington, D.C 20240

IN REPLY REFER TO:

October 6, 2003

Memorandum

To: National Leadership Council  
From: Director, National Park Service /s/Fran Mainella  
Subject: National Park Guest Donation Program

The Secretary of the Interior, at my recommendation, has approved the extension of the Guest Donation Program formerly known as the Lodge Check-off Program. The extension is permanent, without a sunset date. This is very good news and a reflection of a wonderful partnership between an increasing number of concessionaires, the National Park Foundation, and several local park fundraising groups.

The Secretary has specifically asked the National Park Service to do several things to ensure the on-going success of the program, and to ensure that there is no possibility of even an appearance of conflict of interest. These items are detailed in the Secretary's memorandum, which is attached. I am assigning the responsibility for follow up on these items to the Associate Director for Partnerships, Interpretation and Education, Volunteers, and Outdoor Recreation.

I am extremely pleased that the Secretary has permanently extended this program I expect each of the Regional Directors to implement the program in parks in which concessionaires volunteer to participate, and to do so in exact accordance with the Standard Operating Procedures, which are attached. The Associate Director, Partnerships, Interpretation and Education, Volunteers, and Outdoor Recreation will be responsible for monitoring each of these partnerships to ensure they are being operated as directed.



THE SECRETARY OF THE INTERIOR  
WASHINGTON

October 1, 2003

Memorandum

To: Director, National Park Service

From: Secretary /s/Gale A. Norton

Subject: Permanent Authorization of National Park Guest Donation Program

I am pleased to advise you that I hereby approve a permanent extension of the National Park Guest Donation Program. This program was initially established by the Secretary of the Interior in July 2000, with a provision to sunset on October 1, 2003, unless extended prior to that date. This provided the Service, our non-profit partners and lodge concessionaires an opportunity to evaluate the effectiveness of the program and to determine whether changes are necessary.

This program has operated successfully and is growing. There has been broad acceptance of the program by the public, partners and concessionaires. Our partners and park managers support the permanent authorization of this program and encourage its expansion.

The Guest Donation Program must be operated in each participating park unit in strict adherence to the attached guidelines. These guidelines have been developed to ensure that participation is truly voluntary on the part of our visitors and to ensure the complete avoidance of any conflict or even an appearance of a conflict of interest in the operation of the program. The requirement that all such contributions be deposited with the National Park Foundation before transfer to our local partners was originally designed to avoid any questions of criticism and is retained for that reason in these guidelines. Requests have been made by the Service's non-profit partners to expand the program to include non-lodging activities on a strictly voluntary basis. You are authorized to approve additional activities you determine appropriate. Each such activity must be

subject to similar safeguards for assuring that the highest ethical standards are maintained.

Finally, please pass onto all who participate in this program my personal thanks for their efforts in helping to preserve and enhance our national parks.

## **STANDARD OPERATING PROCEDURES**

### **General Policy Approval**

The Secretary of the Interior has permanently approved the National Park Guest Donation Program. The program may be implemented by a National Park concessioner as set forth below without any additional prior approval. Any program implemented using this authority must adhere to the following procedures and is subject to termination by the Director, National Park Service, for non-compliance.

### **Scope of Program**

This program authorizes willing National Park concessioners to give guests the opportunity to make a \$1 per day or more, per room, donation to the National Park Foundation to support the national park they are visiting. This is not a room rate addition, and is in no way related to contract room rate approval or gross revenue franchise fees. It is a voluntary public service action by the concessioner. One hundred percent of the funds donated must be initially deposited to a restricted account at the National Park Foundation for the benefit of the national park where the funds are collected. Upon the Superintendent's request, funds received under this program will be contributed to a local non-profit park support group to enhance its efforts on behalf of the park. The local non-profit support group must have a current signed agreement with the park in order to receive any funds from this program. Use of funds from this account will be approved by the Grants and Programs Committee of the National Park Foundation Board or the board of the local park support group where appropriate after consultation with the Park's Superintendent. The Superintendent will have final say on use of the funds.

### **Standard Operating Procedures**

1. **Role of the Concessioner.** This is an entirely voluntary program in which any willing concessioner may choose to participate and may withdraw from at any time.

A decision by a concessioner to participate or not participate in the program will not influence the Service's evaluation of that concessioner under its contract with the National Park Service. Misuse of the contributed funds by a concessioner may result in its termination from this program by the Director and such other actions as may be appropriate.

A concessioner that chooses to participate in this program must:

- o Sign the attached form (Statement of Participation Guest Donation Program-[Attachment 1](#)) and submit it to the Director, with copies to the appropriate Superintendent(s);

- Using the attached appropriate form, either (a) establish a restricted fund at the National Park Foundation, disbursements from which will be approved by the Grants and Programs Committee of the National Park Foundation Board after consulting with the Superintendent ([Attachment 2A](#)), or (b) establish a restricted fund with authorization to the National Park Foundation to grant funds to a local non-profit friends group ( [Attachment 2B](#))
- Agree to deposit in this account at least quarterly 100% of the donations received;
- Agree to distribute the required notices to lodge guests, as provided by the National Park Foundation; and
- Agree to provide to the Superintendent an annual audit of funds received and deposited to the National Park Foundation account.

Every guest (or representative of the guests staying in each room) will be advised of the program, its benefits, and how to opt out at each of the following contact points:

- At check-in
- Through written materials in the guest room
- At check-out

*(Examples of each form of notice are attached in [Attachment 3](#))*

2. **Role of Visitors.** This is an entirely voluntary program for national park visitors.
3. **Role of Park Superintendent.** The Superintendent:
  - Will provide the Regional Director a copy of all forms received from concessioners stating the concessioners' intent to participate in the program;
  - Will review and approve all guest contact information required by this policy;
  - Will respond to all guest complaints or concerns raised about the program;
  - Will make recommendations and consult with the Grants and Programs Committee of the National Park Foundation Board over disbursements from restricted funds;
  - May recommend to the National Park Foundation that a local non-profit park support group that has a current agreement with the park receive funds to enhance its efforts on behalf of that park;
  - Will ensure that a concessioner who chooses to participate in the program does so in accordance with this policy as well as all other pertinent laws, regulations, and policies;
  - Will advise the Regional Director if a concessioner who chooses to participate in the program fails to operate the program in compliance with this policy as well as all other pertinent laws, regulations, or policies;
  - Will submit an annual report to the Regional Director by October of each year that includes the accounting provided by the National Park Foundation on donations deposited and withdrawn from the restricted fund, an explanation of how funds received under this program were used, and any recommendations for changes to the program; and
  - Will not delegate any management of this program to the park's concession office.

4. **Role of Regional Directors.** A Regional Director with one or more Lodge Guest Donation Programs operating in his or her region:
- Is responsible for program consistency within their region;
  - Will take steps to bring into compliance a concessioner operating a program that is inconsistent with this policy, and failing that, recommend to the Director that the concessioner be terminated from participation in the program and such other actions as may be appropriate;
  - Submit to the Director in December of each year an evaluation of the program in that Region and recommendations for any modifications;
  - Will ensure that all conflict of interest provisions and procedures are strictly adhered to.

5. **Role of Associate Director - Partnerships, Interpretation and Education, Volunteers and Outdoor Recreation (PIEVOR).**

The Director has delegated oversight of this national program to the Associate Director - Partnerships, Interpretation and Education, Volunteers, and Outdoor Recreation. All reports or communications that are to be submitted to the Director in compliance with this policy should be forwarded in care of the Associate Director - PIEVOR or their designee.

6. **Role of the National Park Foundation.**

- The point of contact and program official responsible for this program on the Foundation staff is the Vice President for Field Development;
- For monies collected in parks at which Superintendents have requested that funds be transferred to a local friends group, NPF will develop procedures for these monies to be transferred. The NPF will not charge any fees on monies collected and disbursed in these cases;
- For monies collected in parks for which NPF will act as the fund manager, NPF will establish a park-specific restricted fund and will develop a system to efficiently process recommendations made by the superintendent on expenditures from that fund. The NPF will charge an annual management fee in these cases. This fee will cover the necessary accounting, reporting, audit, investment management and administrative costs associated with the fund. The fee will be assessed monthly, based on the fund's current market value. In addition, money to pay for the fee charged by the mutual fund manager in which the funds reside until used will be charged against the monies available. This fee averages approximately .83% annually by prospectus. Management fees, based on market value, will be charged as follows:
  - \$0 to \$499,999 - 1.50% per annum
  - \$500,000 to \$999,999 - 1.25% per annum
  - \$1 million to \$1,999,999 - 1.00% per annum
  - Over \$2,000,000 - Negotiated with NPF based on the level of activity in the account.

In addition to the annual management fee, NPF will charge the fund for other

direct costs related to fund transactions (e.g. bank charge, second check charge, etc.)

- NPF will prepare an annual accounting of the total funds received and disbursed in each park's account, including monies collected and passed through to a local friends group. NPF will not account for the use of monies after they are transferred to a local friends group. Reports will be submitted to each park superintendent;
- NPF will prepare an annual accounting of the entire program for submission to the Director, National Park Service and to the Board of Directors of the Foundation.

**ATTACHMENT 1**

**STATEMENT OF PARTICIPATION  
GUEST DONATION PROGRAM**

Name of Concessioner:

\_\_\_\_\_  
Park(s) Served (list all parks and the facilities in those parks that will participate in the program):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

As the duly authorized representative of (\_\_\_\_\_), a concessioner in the park(s) named above, I have personally reviewed the requirements that govern the Guest Donation Program. (\_\_\_\_\_) wishes to implement a guest donation program at the facilities listed above in compliance with these requirements. Our company, represented by myself, realizes that its decision to participate in the Guest Donation Program will not influence the superintendent's evaluation of its performance under this or any subsequent concession agreements or contracts. (\_\_\_\_\_) recognizes that its failure to administer the program in accordance with these requirements will result in the termination of the program by the Director, National Park Service and such other actions as may be appropriate. Misuse of the funds collected by the concessioner is subject to all applicable federal and state laws including 28 USC 2514.

(\_\_\_\_\_) is establishing a restricted account to receive these donations at the National Park Foundation. (\_\_\_\_\_) recognizes that it must deposit 100% of all donations received in this account that is controlled by the National Park Foundation. It is also understood that the concessioner must provide the required notices to guests about this program. (\_\_\_\_\_) will provide at least five (5) working days written notice to the Director, National Park Service and the Park Superintendent if it chooses to withdraw from this program. In the event of withdrawal, all donations received must be deposited in the restricted account within 30 days.

\_\_\_\_\_  
(Responsible Official for the Concessioner)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Please send the original of this form to:

Director, National Park Service

Attn: Associate Director - Partnerships, Interpretation and Education, Volunteers and Outdoor Recreation

1849 C Street, NW

Washington, DC 20240

## ATTACHMENT 2A

### GUEST DONATION RESTRICTED FUND AUTHORIZATION FORM

*Note: This form is to be used in when a concessioner desires to establish a Guest Donation Program and to set up a Guest Donation Restricted Fund with the National Park Foundation to receive such funds from a concessioner participating in the Guest Donation Program, and the Park Superintendent wishes to have the monies managed by the National Park Foundation.*

*Completion of this form by the participating concessioner and the park superintendent is required to establish and manage a restricted fund with the National Park Foundation.*

1. Name of Fund:

---

2. Name and Address of Fund Creator (Concessioner):

---

---

3. Type of Fund: Restricted

(The NPF reports the Fund's activities on its audited financial statements, manages the investment and manages disbursements in consultation with the park superintendent.)

4. Purpose of the Fund: General Fund

(All monies received and earned including principal and interest will be spent for park purposes, excluding only those funds required for management fees by the National Park Foundation and fees charged by the mutual fund provider.)

5. Contributions to the Fund by the Concessioner: Contributions to the fund are made payable to the Fund named in paragraph 1, or to the National Park Foundation with the Fund specified on the check or in an accompanying letter.

6. Disbursements

The National Park Foundation in consultation with the Park Superintendent (or officially delegated staff) shall determine disbursements. Once recommendations are developed, they will be proposed in writing by the Foundation to the Superintendent for her/his approval. On receipt of written approval the Foundation will make the disbursements. Such disbursements shall not be made more than twice per year, unless exceptions are agreed to in writing between the Park Superintendent and the Chief Operating Officer of the Foundation.

7. Investment Portfolio

The Restricted Fund will be invested in the Vanguard Prime Money Market Fund, which is invested in cash funds and money market instruments. The National Park Foundation Board of Directors may, from time to time, make changes as it deems necessary or prudent to asset allocation guidelines. Such changes, if they apply to this portfolio, will also be made to this fund.

8. Management Fees

The National Park Foundation will charge fees for management of this fund as enumerated in Section 6 of the Standard Operating Procedures for the Guest Donation Program.

9. Authorization

All signatories to this form affirm by their signatures that they have read the form and the Standard Operating Procedures for the Guest Donation Program. All signatories affirm their understanding of the requirements of the program. The requirements are necessary to ensure scrupulous avoidance of conflict of interest or the appearance of conflict of interest in the management of both this program and concession contracts.

\_\_\_\_\_  
Signature of the Creator of the Fund (Concessioner)      Date \_\_\_\_\_

I am aware of, and agree with, the establishment of a Guest Donation Program in the park of which I am Superintendent by

\_\_\_\_\_  
(insert name of Concessioner)  
and verify that the requirements of the SOP will be met.

\_\_\_\_\_  
Signature of the Park Superintendent      Date \_\_\_\_\_

## ATTACHMENT 2B

### GUEST DONATION RESTRICTED FUND AUTHORIZATION FORM AND DIRECT GRANT TO LOCAL FRIENDS GROUP

*Note: This form is to be used when a concessioner desires to establish a Guest Donation Program and to set up a Guest Donation Restricted Fund with the National Park Foundation to receive such funds, and the Park Superintendent wishes to have the monies received granted from the National Park Foundation to a local friends group associated with the park.*

*Completion of this form by the participating concessioner and the park superintendent is required to establish the restricted fund with the National Park Foundation, and to direct transfer of monies deposited in such restricted fund to a local non profit friends group.*

1. Name of Fund:

---

2. Name and Address of Fund Creator (Concessioner):

---

---

3. Type of Fund: Restricted

(The NPF reports the funds activities on its audited financial statements.)

4. Purpose of the Fund: Direct Grant to Local Friends Group

(All monies received will be immediately granted to the designated local park related nonprofit friends group designated on this form. All monies will be used for park purposes. No monies will be retained or used by the National Park Foundation.)

5. Contributions to the Fund by the Concessioner: Contributions to the fund are made payable to the Fund named in paragraph 1, or to the National Park Foundation with the Fund specified on the check or in an accompanying letter.

6. Disbursements

Disbursements by the National Park Foundation from the restricted fund to the local nonprofit friends group shall be made at least once per month whenever there is money in the account.

7. Management Fees

The National Park Foundation will charge no management fees on monies received and disbursed from this Fund.

8. Authorization

All signatories to this form affirm by their signatures that they have read the form and the Standard Operating Procedures for the Guest Donation Program. All signatories affirm their understanding of the requirements of the program, and that these requirements apply to monies transferred to a local nonprofit friends group. All signatories further understand

and agree that no guest donation program may be operated by the concessioner unless the concessioner uses the National Park Foundation as the initial recipient of the donated funds prior to their disbursement to a local friends group. This requirement is necessary to ensure scrupulous avoidance of conflict of interest or the appearance of conflict of interest in the management of this program, the business of the local friends' group and concession contracts.

\_\_\_\_\_  
Signature of the Creator of the Fund (Concessioner)

\_\_\_\_\_  
Date

I am aware of, and agree with, the establishment of a Guest Donation Program in the park of which I am Superintendent by

\_\_\_\_\_  
(insert name of concessioner)

and verify that the requirements of the SOP will be met. I request that the National Park Foundation, upon establishment of a restricted fund as directed above, arrange for the disbursement of all monies deposited into the fund to (enter full name and address of local nonprofit friends group) \_\_\_\_\_

\_\_\_\_\_  
Transfer of deposited monies will be made as indicated in paragraph 6 above. I also request verification of the establishment of the requested transfer process in writing to me from the National Park Foundation.

\_\_\_\_\_  
Signature of the Park Superintendent

\_\_\_\_\_  
Date

## ATTACHMENT 3

### SAMPLE LANGUAGE FOR REQUIRED GUEST NOTICES

*Note: For parks with local friends groups that receive the funds through the National Park Foundation add phrases in [brackets] below.*

#### **At Check-in:**

##### **Oral:**

"We are proud to participate in an easy way for guests to support \_\_\_\_\_. Please read this information and make a decision about the opportunity to donate \$1 per day of your stay here at \_\_\_\_\_(Name of park(s))."

**Written** - provided with key and other check-in materials:

"Dear Guest:

\_\_\_\_\_ is proud to offer our guests an opportunity to support \_\_\_\_\_(Name of park) through the National Park Foundation and \_\_\_\_\_(Name of local friends group).

Lodge Guests will have a \$1 per day, per room, voluntary donation added to their room bills. We deposit 100% of the donations received from our guests to the \_\_\_\_\_(Name of fund), a fund that can only be used to support \_\_\_\_\_(Name of park(s)). Through your generosity, projects like \_\_\_\_\_(Examples of projects funded/to be funded with donations) can be accomplished.

Your support of this program is appreciated, but if you prefer not to participate, simply notify us at any time during your stay and we will remove this donation from your room account. *[Provide phone extension, a check-off card that can be left in the room or at the front desk or some specific means of indicating that they do not want to participate].*

Thank you and enjoy **your** National Parks!

#### **In Room:**

Lodge Guest Welcome Letter:

Welcome to \_\_\_\_\_. We want to make your stay with us as enjoyable as possible and stand ready to assist you at anytime during your stay. We will be pleased to help you explore the vast array of opportunities available here to learn, recreate, and experience this special place--one of **your** National Parks.

As the lodging concessioner for \_\_\_\_\_(Name of park(s)), we would like to acquaint you with a program in which we participate that enables our guests to directly support this park.

Working in collaboration with the National Park Foundation (the official national non-profit partner of the National Park Service) and \_\_\_\_\_(Name of local friends group), we offer our guests an easy way to contribute to the park through a **voluntary** \$1 per day, per room, add-on to your room bill. If you would prefer not to participate, please *[insert phone number or other specific action that they can take]*. We will gladly remove the donation from your bill. You can let us know when you check-in, at any time during your stay, or when you check-out.

All donations from this lodge are placed in a restricted account that can only be used to support activities and projects that benefit \_\_\_\_\_(Name of park(s)).

Your donation added to those of others will result in a significant impact on the park. *[Include examples of project funded/to be funded through this program]*.

If you agree this is an easy way to make small gifts add up to something truly significant, then no action is required on your part. We will automatically add your individual donation, and it will be listed as a donation on your hotel bill. This donation is tax deductible.

If you would like to donate an additional sum, please let us know.

Thank you for supporting **your** National Parks!

**At Check-out:**

Front desk personnel will be instructed to present the bill to the guest for review, and if the guest has participated in the \$1 per day, per room, voluntary donation program, should say:

**"We appreciate your donation to \_\_\_\_\_ (Name of park(s))."**

## **Expansion of the Guest Donation Program**

With the authorization of the Director, the Guest Donation Program may be expanded to non-lodging activities in the park on a strictly voluntary basis. These activities will be subject to the same guidelines in order to ensure the highest ethical standards are maintained. A request to the Director to expand the program should follow this template:

Memorandum

To: Director, National Park Service

Through: Associate Director, Partnerships, Interpretation, Education, Volunteers and Outdoor Recreation

From: Park Superintendent

Subject: Expansion of Guest Donation Program at (Park Name)

We would like to request approval to expand the donation program which is currently in effect at *<insert park name>* (through the National Park Guest Donation Program and the cooperation of our concessioner, (Concession Name)).

Provide information on the current program, the recipient of the funding, the amount generated, and what the funds are used for.

Describe the proposed expansion of the program. Identify what the funds will be used for and how visitors will be informed of the opportunity.

## **Chapter 7**

### 7.0 [Corporate Campaigns](#)

#### 7.1 [Corporate Campaign Agreements Undertaken in Association with the National Park Foundation](#)

##### 7.1.1 Proud Partner Marketing Exclusivity

#### 7.2 [Park-Based Corporate Campaigns](#)

## 7.0 Corporate Campaigns

A written agreement between the NPS, a park support organization and a corporate partner should be executed prior to initiation of corporate campaign activities.

Any agreement authorizing a corporate campaign must include the following and be reviewed by a Solicitor:

- Description of all promotional aspects: what they are, when they will occur, how often, for how long, and where they will occur (e.g., local newspaper, radio, television, mailings, etc.);
- Description of all promotional materials, with requirement for prior NPS review and approval of specific text, photos, etc., to ensure that the materials are factual and portray the support in a truthful and appropriate manner;
- Description of the amount of the support: the specific criteria, if any, for the donation (e.g., \$1 per pizza sold); any agreed upon use of the donated funds; a minimum or maximum donation; a payment schedule, if needed. (Note: The Better Business Bureau Philanthropic Advisory Service recommends that either a minimum guaranteed donation or the amount of contribution per purchase or per transaction be explicitly stated in the ad.)
- That the agreement can be terminated by either party with 30 days' written notice by one to the other.
- That the agreement is not exclusive. (Dave's Nursery cannot be, nor state in its ads that it is, the exclusive provider of native plants to the park. Other nurseries willing to agree to the terms Dave's Nursery has, and which are not otherwise precluded by law or policy from making a donation, can also donate plants and advertise the fact that they are doing so.

There is no prescribed format of the agreement, a local campaign may be authorized through a letter from the business to the park manager – or the park's nonprofit partner—addressing these terms and requiring the manager's signature to verify that the terms are agreeable.

The park manager must have the terms of the agreement reviewed by the Solicitors' Office and also seek approval of the regional/associate director, if required by the relevant delegation of authority.

Finally, park managers should understand the donation's relative *value to the park*, compared to the relative *value to the business* of advertising its donation. For instance, if Rapid Valley Bank & Trust plans to make a donation of \$500, but also proposes to buy prime-time television ads, and take out full-page ads in the Sunday edition of the local newspaper for the next six months, there may be more value than the company is willing to admit.

## **7.1 Corporate Campaign Agreements Undertaken in Association with the National Park Foundation**

### **Corporate Campaign Agreement between the National Park Service and The National Park Foundation**

#### **I. Purpose:**

This Agreement is entered into by the National Park Foundation (Foundation) and the National Park Service (NPS) for the purpose of establishing policies, principles and procedures governing corporate donation and fundraising agreements that grant corporate partners limited advertising and or marketing opportunities. It is required under Section 3.2(a) of the *General Agreement between the National Park Service and the National Park Foundation on Strategies, Policies and Procedures Governing Fundraising, Grant Making, Partnership Communications and Other Partnership Activities* (the General Agreement). This relates to all corporate campaign activities by the Foundation that reference NPS or NPS Programs including the “Proud Partners of America’s National Parks (Proud Partner).”

#### **II. Background**

Whereas, The United States Congress officially chartered the National Park Foundation in 1967 in order to encourage donations from individuals, foundations, and corporations to the National Park System.

Whereas, The Foundation is the only organization authorized by Congress to accept and receive gifts or donations for the NPS on a Service-wide basis and does not receive federal appropriations for its own operations.

Whereas, The Foundation and the NPS have worked as partners to continue the rich history of individual and corporate philanthropy associated with the National Park System since the early 1900s. Corporate campaigns have become part of that tradition and can serve to advance the mission and interests of the NPS. This agreement outlines procedures and policies to ensure that corporate campaigns meet NPS and Foundation standards, are of value and interest to the American people, and protect the integrity and the image of the National Park System and the Foundation.

**NOW THEREFORE, the parties agree that:**

#### **III. Definitions/Features of Corporate Campaigns**

- A. Corporate campaigns or cause-related marketing programs differ from philanthropic donations in their use of advertising and marketing activities.
- B. Corporate campaigns, sometimes referred to as cause-related marketing, attempt to:

1. Associate the interests of corporations with the mission and goals of the NPS and/or the Foundation;
2. Raise public awareness about the breadth, depth and importance of the National Park System;
3. Generate a sense of connection between the public and the national parks;
4. Build the public's sense of ownership and pride in the national parks;
5. Engage the public in support of parks;
6. Build goodwill with a corporate partner's customers by demonstrating the corporation's support for, and association with, the Foundation, the NPS and/or the National Park System.

C. The term "advertising" means the use of paid media designed to promote a business, product, service, or enterprise, e.g., paid newspaper, magazine, radio and television ads.

#### **IV. Principles Governing Corporate Campaigns**

- A. All corporate campaigns proposed by the Foundation and authorized by NPS will conform to the following criteria and principles:
1. The corporate campaign is consistent with the purpose, mission and goals of the NPS as well as applicable laws, regulations and policies, including, in particular NPS Director's Order 21 as amended, supplemented, or superseded;
  2. Marketing or advertising activities associated with a corporate campaign shall not state or imply an endorsement by the NPS of any business, product, or service;
  3. A written agreement among the NPS, the Foundation and a corporate partner will be executed prior to the initiation of corporate campaign activities unless the Foundation and the NPS mutually determine that other written documentation is sufficient;
  4. Corporate campaign agreements must specify when entities such as subsidiaries or affiliates are to be included within the authorized corporate campaign activities.
  5. Consistent with NPS regulations and policies, no advertising or marketing may occur within park unit boundaries. This does not preclude authorized donor recognition activities.
  6. NPS may request that the Foundation suspend or terminate a corporate campaign agreement, if it determines that campaign agreement, as implemented, compromises Department of the Interior or NPS policies

#### **V. NPS and Foundation Review and Approval of Campaigns**

A. In general, the Foundation shall submit all materials developed in conjunction with a corporate campaign and intended for public release to the NPS Partnership Office (NPO) for review and approval. The NPS will review materials to ensure that corporate campaigns avoid historical or other factual inaccuracies and that they are consistent with applicable NPS agreements, laws, policies and procedures. Corporate campaign materials to be submitted for review include, but are not limited to:

1. Materials that refer to the NPS or NPS programs;
2. Campaigns which feature a donation of a percentage of the sale of a product or service to the Foundation for the benefit of the National Park Service; or
3. Campaign activities not contemplated in an approved corporate campaign agreement or amendments to an existing corporate campaign agreement.

B. The NPS will use its best efforts to review and approve campaign materials intended for public release within five business days, and to consider expedited requests for review.

C. Permission to conduct in-park campaign related activities, including tours, must be requested initially through the NPS Key Official and then the respective park Superintendent, or other NPS officials, as appropriate. Some activities within park units may require issuance of a Special Use Permit (SUP) by NPS. The Superintendent of the affected park unit may impose, consistent with NPS' regular practices, insurance, bonding and/or other appropriate conditions and requirements in the SUP.

D. Corporate campaigns may not include photographs or visual representations of the NPS arrowhead symbol, uniformed employees of NPS or portions of the official NPS uniform, unless specifically approved in advance by NPS. The Foundation will monitor the use of its trademarks and other intellectual property rights.

## **VI. Vetting of Corporate Company Partners**

Pursuant to Director's Order 21 and Department of the Interior policy, the NPS may not accept donations, either directly or through the Foundation that may give rise to an appearance of a loss of integrity or impartiality, or otherwise reduce public confidence in the NPS or the U.S. Department of the Interior. Therefore, using best professional standards the Foundation will work closely with the NPO to ensure that all requirements with respect to vetting the potential selection of corporate campaign partners and benefits are consistent with the applicable provisions of NPS Director's Order 21.

## **VII. NPS/Foundation Communication and Program Management Procedures**

### **A. The Foundation will:**

1. Designate a "Corporate Partnership Manager" to facilitate all aspects of a particular partnership including review of proposals, site visits and the implementation of grants, and to coordinate specific partnership matters with the NPO;
2. Facilitate and support promotional and public relations events related to corporate campaigns, ensuring timely NPS Region, Park Superintendent and NPO notification and review;
3. Manage partnership grants, including competitive grant programs where applicable;

4. Notify corporate partners of, and monitor compliance with, all applicable NPS policies and procedures as communicated in writing to the Foundation by the NPS.

**B. The NPS will:**

1. Communicate concerning corporate campaign activities to the NPS regions and the field at least quarterly via such means as Inside NPS, the NPS Partnership Council, NLC meetings and additional communications as appropriate;
2. Determine whether any proposed donations, in cash or in-kind, resulting from a corporate campaign will meet the needs of the NPS;
3. Ensure that accepted donations are used for the purpose for which the donation was made, consistent with law, regulations, and NPS policies.

**VIII. Donor Recognition**

In consultation with the NPS, the Foundation will facilitate appropriate donor recognition for a partner consistent with NPS policies and regulations. NPS donor recognition statements, press releases, etc., may be included in marketing campaign materials.

**IX. Proud Partner of America's National Parks**

- A. Proud Partners are a special category of corporate partners who have joined with the Foundation and the NPS to connect National Parks to all Americans.

**1. Use of the NPS Arrowhead Symbol**

The NPS authorizes the Foundation to sublicense the NPS arrowhead mark for use by Proud Partners in furtherance of their respective Proud Partner agreements. In this regard, each license shall include terms consistent with the following:

- a. The Arrowhead may be used by the Proud Partner corporation solely for activities consistent with the terms of this Agreement and the respective agreements among the NPS, Foundation and Proud Partner corporation;
- b. Arrowhead use must be consistent with all requirements of the documents referenced in Section XIII of this Agreement;
- c. Prior to NPS authorization, text, design, and layout of all materials incorporating the Arrowhead will be reviewed for consistency with *The Proud Partners of America's National Parks Standards for Graphic Identity and Applications*. This document is to be developed pursuant to Section X. of this Agreement.

**B. Exclusivity**

1. Proud Partners have the opportunity to inform the public through national marketing and advertising activities that they are assisting the Foundation and the NPS in meeting the needs of the National Park System. A Proud Partner agreement affords a corporate Proud Partner industry "exclusivity" at the national marketing

level for a product or service category. This means that once a Proud Partner agreement is executed, no other nationwide corporate campaign agreements may be executed for corporate partnerships in the specified Proud Partner's product or service category. NPS only offers exclusivity through a Proud Partner relationship.

2. Unless otherwise excepted in Article IX.C. below, if the corporate partner's business involves a product or service for which exclusivity has been afforded to a Proud Partner, NPS will not execute a corporate campaign agreement permitting national, state, or regional press events or promotions, including internet-based activity, that publicize donations and park partnerships.

### **C. Exceptions to Exclusivity**

1. Where a corporate partner's business includes a product or service for which exclusivity has been afforded to a Proud Partner, NPS may execute a corporate campaign agreement that authorizes the use of paid and unpaid marketing and advertising activities in the local market in which the partnership exists. For the purpose of this Agreement, the term "local market" means the metropolitan area immediately surrounding or adjacent to the park unit. If the area surrounding the park unit is sparsely populated the metropolitan area will be determined through consultation between Foundation and NPS but will generally not exceed a 150-mile radius measured from the boundary of the park.

2. Where NPS or an NPS support organization wishes to enter into a cause related marketing agreement with a corporate partner whose business does not include products or services that fall within the areas of exclusivity authorized for a Proud Partner, after consultation with the President of Foundation, the Director may execute a corporate campaign agreement authorizing a corporate partner and / or an NPS support organization to inform the public about a partnership and resulting contributions to parks through paid media activities directed at state, regional or national audiences.

3. In the event NPS, the Foundation and a corporate partner execute a new Proud Partner agreement that occupies a product or service category occupied by another partner under a corporate campaign agreement entered prior to the effective date of the new Proud Partner agreement, that corporate campaign may continue only until the end of the existing term of that agreement.

4. Because the Statute of Liberty-Ellis Island Foundation's (SL-EIF) and Save Ellis Island (SEI) fundraising activities, including cause-related marketing, predate the initiation of the Proud Partner program, the exclusivity provisions of this Agreement shall not be construed to require NPS to modify any current or future SL-EIF or SEI fundraising activities.

### **D. NPO Exclusivity Enforcement**

1. The NPO will use due diligence, based on information provided by park units, NPS support organizations, the Foundation and corporate partners, to determine whether any proposed or executed, paid or unpaid media activity is consistent with this Agreement. This may consist of one or more philanthropic gifts by a corporate partner that are in an existing Proud Partner's business, product or service area in one or more parks and/or regions. If it is determined that NPS authorized corporate campaign or promotional activities in error, or that corporate campaign activities will violate provisions of this Agreement, the exclusive remedy for the Foundation and the Proud Partner is that the NPO will require the park(s) to cease inappropriate paid or unpaid promotional activity immediately. Upon notification of inappropriate promotional activity, the NPS will act to terminate such activity with these actions:
  - a. The NPO will contact the park or parks to determine the nature of the corporate campaign activities;
  - b. The NPO will work with the NPS parks(s), NPS support organizations, corporate donors, and other relevant parties to cease the corporate campaign activities within 5 business days;
  - c. If after 5 business days the matter has not been resolved, the Associate Director for Partnerships, Interpretation and Education, Volunteers, and Outdoor Recreation will send a cease and desist letter to the corporation copying the Foundation key official.
  - d. The NPO will notify the key official of the Foundation when it receives any response regarding the corporate campaign activities from the corporate partner in question.

#### **X. NPS/Foundation Proud Partner Management and Communication Procedures**

- A. The Foundation shall obtain approval of the Director for consideration of new Proud Partners;
- B. The Foundation shall provide Proud Partner proposal packages to the NPO for approval. The package shall contain a detailed description of the proposed Proud Partner program and activities, including proposed partner contributions, programmatic emphasis, and benefits that would be provided to NPS, the Foundation and the potential Proud Partner;
- C. The Foundation shall organize and the NPS shall participate in Proud Partner meetings on a regular basis;
- D. The NPS and the Foundation will finalize the Proud Partners of America's National Parks Standards Manual for Graphic Identity and Applications within 120 days of execution of this Agreement;

- E. The NPS and the Foundation are jointly committed to communication and education activities that will serve to inform the NPS field and regional employees about the relevant aspects of the Proud Partner program especially with regards to exclusivity restrictions. This will include, but will not be limited to, Foundation participation in satellite broadcasts by the NPS and Foundation participation with the NPS in relevant conferences, briefings or meetings with NPS field employees;
- F. The Foundation shall provide an opportunity for the Secretary of Interior and/or the Director of the NPS, as members of the Board of the Foundation, and/or their designees to review any material documents to ensure the documents are consistent with this Agreement. Upon request, the NPS shall provide written certifications of consistency, based on these reviews, to the Chairmen and Ranking Minority Members, respectively, of the House Appropriations Subcommittee and the Senate Appropriations Subcommittee.

## **XI. Other Fundraising by the Foundation**

Agreements with individuals, foundations, corporations or others that do not reference NPS or NPS Programs are not subject to the requirements of this Agreement. The Foundation has a responsibility to assure that these activities are consistent with the Foundation's charter and will not interfere with NPS programs or reflect poorly on the National Park System.

## **XII. Audits**

A. The Foundation will provide NPS as well as the Chairman and Ranking Minority Member of the House Appropriations Subcommittee on Interior, Environment and Related Agencies ("House Appropriations Subcommittee"), and the Chairman and Ranking Minority Member of the Senate Appropriations Subcommittee on Interior, Environment and Related Agencies ("Senate Appropriations Subcommittee") with 1) annual audited financial statement conducted by an independent public accounting firm; and 2) relevant portions of the Management and Board of Director's Letter which identifies financial and management issues of concern. The Foundation will require corporate partners, including Proud Partners, to represent, in writing to the Foundation, the assigned value of any in-kind donations during each of the Foundation's fiscal years for which an agreement is in effect. The Foundation will make IRS Form 990 equivalent financial information available to the public.

B. The value to the NPS of in-kind contributions made to the Foundation shall be reflected in the annual report of the Foundation. The Controller of the NPS in consultation with the senior finance executive of the Foundation will determine this value. Value will only be assigned to items that provide a direct benefit to the mission of the Service, contribute to the goal of a specific, existing NPS park or program and are recognized as priorities of NPS. Generally, the value will be based on the cost of comparable goods or services that NPS has acquired or could acquire through GSA schedules or open market competition. In addition to this, the Foundation's annual report

will include in-kind contributions made to support its own operations, communications, or development activities.

### **XIII. Authority and Relevant Documents**

- A. NPS enters this Agreement pursuant to authority provided by 16 U.S.C. §§ 1-3, 6. The Foundation enters this Agreement pursuant to authority provided by 16 U.S.C. §§ 19e-o;
- B. The following is a non-exclusive list of additional laws, policies, and agreements also applicable to this Agreement. As changes are made in these various authorities in the future, with appropriate written notice from NPS, those changes will be applied by the Foundation in implementing this Agreement:
  - 1. NPS Director's Order 21 regarding Donations and Fundraising, and associated documents. DO 21 includes, in part, direction regarding NPS personnel authorized to review and approve activities contemplated under this Agreement;
  - 2. The General Agreement;
  - 3. Federal laws and regulations pertaining to ethics, including 18 U.S.C. §§ 208; 1913; 5 C.F.R. §§ 2635.502, 2635.702(c), 2635.808;
  - 4. NPS regulations, including 36 C.F.R. §§ 1.6, 2.50, 2.52, 2.62, 5.1, 5.3;
  - 5. NPS Management Policies 2001, including § 9.6.

### **XIV. Key Officials**

- A. The personnel specified below, with their successors, shall ensure coordination and communication between the parties to this Agreement for the work to be performed. Upon written notice, a party may designate an alternate to act in the place of the designated key contact:

**For the National Park Service:**

Christopher K. Jarvi, Associate Director  
Partnerships, Interpretation and Education, Volunteers, and Outdoor Recreation  
National Park Service  
1849 C. Street, NW  
Room 3127  
Washington, D.C. 20240-0001  
(202) 208-6954  
[christopher\\_jarvi@nps.gov](mailto:christopher_jarvi@nps.gov)

John Piltzecker

Chief, NPS Partnership Office  
National Park Service  
1849 C Street, NW  
Washington, DC 20240  
202-354-2150  
[john\\_piltzecker@nps.gov](mailto:john_piltzecker@nps.gov)

**For the National Park Foundation:**

John Reynolds  
Executive Vice President, Park Grants and Strategic Alliances  
National Park Foundation  
11 Dupont Circle, NW Suite 600  
Washington, DC 20036  
202-238-4200  
[jreynolds@nationalparks.org](mailto:jreynolds@nationalparks.org)

- B. For purposes of review by the Secretary of the Interior and the Director of any agreements or other material documents, the designee for the Secretary of the Interior will be the Deputy Associate Solicitor, Division of Parks and Wildlife, and the designee for the Director, National Park Service will be the Associate Director Partnerships, Interpretation and Education, Volunteers, and Outdoor Recreation. If these designees are unable to fulfill their duties, the Secretary or Director will inform the Foundation prior to selecting additional designees.

**XV. Term**

This Agreement will become effective upon signing by all parties, and unless otherwise extended by the parties in writing, will continue for five years from the date of execution by the last signatory hereto.

**XVI. Termination**

Any party may terminate this Agreement with sixty-days (60) written notice.

**XVII. Additional Provisions**

- A. Appropriations: Nothing contained in this Agreement shall be construed to obligate the Department of the Interior or the United States to any current or future expenditure of funds in excess, or in advance, of the availability of appropriations from Congress nor does this Agreement obligate the Department of the Interior or the United States to spend appropriated funds on any particular project or purpose, even if funds are available.
- B. Compliance with Applicable Laws: This Agreement and performance hereunder is subject to all laws, regulations and policies governing NPS property and resources, whether now in force or hereafter enacted or promulgated. Nothing in the Agreement shall be construed as in

any way impairing the general powers of NPS for supervision, regulation, and control of its property under such applicable laws, regulations, and management policies.

- C. Merger: With the exception of documents referenced in this Agreement, this Agreement contains the sole and entire agreement of the parties on the subject matter hereof. No oral representations of any nature form the basis of or may amend this Agreement. This Agreement may be extended, renewed or amended only as agreed to in writing by NPS and the Foundation. This Agreement replaces all prior agreements addressing corporate campaigns, the most recent of which was dated November 12, 2004.
- D. Modifications and Waiver: All modifications to this Agreement shall be in writing and shall be signed by the Foundation and NPS and shall be numbered and affixed to this Agreement as amendments. The waiver of any provision of this Agreement must be express and in writing.

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Vin Cipolla  
President and CEO  
National Park Foundation

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Fran Mainella  
Director  
National Park Service

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## 7.2 Park-Based Corporate Campaigns

Is it Philanthropy or a Corporate Campaign?

The following items will help a park manager assess an offer of corporate support:

- a) Did the call originate from the corporate marketing division or a marketing, advertising or public relations firm engaged by the corporation?
- b) Will there be **any** advertising, marketing, promotion or public relations pertaining to the donation? If so, is it part of a state, regional, national campaign? A “national” campaign is one where the company:
  - Proposes to advertise or market its support of that park beyond the local community surrounding the park;
  - Proposes to advertise or market its support of more than one park or the national parks generally;
  - Has outlets, franchises, offices, stores, plants, etc. in areas outside the local community, if so does the marketing proposal include these places;

If the answer to either a) or b) is yes, the proposed support would be through a corporate campaign.

### 7.2(b) State, Regional, or National Area Marketing and Advertising Outside Proud Partner Categories

The request for Director’s approval of a national corporate campaign proposal must be submitted in writing through the appropriate regional director and include, at a minimum, the following information:

- The name of the corporation and the date it was submitted for vetting;
- The nature (cash, in-kind), amount (guaranteed minimum or maximum), and purpose of the proposed donation;
- The duration of the agreement governing the partnership and the proposed marketing relationship;
- The placement and nature of the advertising and marketing elements and the general points likely to be developed into media goals;
- The NPS point of contact responsible for reviewing and approving the promotional materials; and
- The name of any nonprofit partner involved in the proposal.

## Chapter 8

### 8.0 Fundraising by Outside Entities

#### 8.1 [Thresholds and Agreements](#)

##### 8.1.1 [Model Basic Fundraising Agreement](#)

##### 8.1.2 [Model Comprehensive Fundraising Agreement](#)

#### 8.2 Contents of Fundraising Agreements

#### 8.3 [Determination of Feasibility for Fundraising Success](#)

#### 8.4 [Fundraising Plans](#)

#### 8.5 Review of Contributions

#### 8.6 Fundraising Costs

#### 8.7 Endowments

## 8.1 Thresholds and Agreements

This Reference Manual contains two model agreements that are designed to assist NPS staff in crafting fundraising agreements. These model agreements are not templates in which to fill in the blanks. NPS staff and partners should use the model agreements to craft agreements based upon the circumstances specific to a project or fundraising effort. These model agreements and their uses are described briefly below.

The model Comprehensive Fundraising Agreement (CFA) is a tool for crafting fundraising agreements that involve significant thresholds or actions such as: 1) a fundraising goal in excess of \$100,000.00; 2) donation of construction in a park; or 3) the establishment of an endowment. In most instances, these agreements will be with long-standing park partners and will be in effect for multiple years. The CFA is intended to help drafters identify clauses that could be included in their fundraising agreement. In addition, the model agreement contains some standard clauses that in most cases must be included in new agreements. Standard clauses are *italicized*, bold, and where appropriate explained in the body of the CFA.

In contrast to the CFA, the Basic Fundraising Agreement (BFA) is designed to expedite low dollar value (de-minimus), short-term, fundraising campaigns with occasional park partners. De-minimus fundraising activities are those intended to raise contributions valued up to \$100,000.00 either in cash or in in-kind goods or services. Partners authorized to raise funds and make philanthropic donations using a BFA may be individuals, organizations, or even businesses (see also Section 7 of Director Order #21 regarding corporate donation activities). The BFA cannot be used to authorize partner construction of facilities within park units. Construction is authorized pursuant to a separate agreement or permit. Additionally, the BFA will generally not authorize fundraising to establish an endowment. Endowments must be authorized separately. However, a BFA may authorize a partner to raise funds for an existing NPS approved endowment.

## 8.1.1 Model Basic Fundraising Agreement

### Basic Fundraising Agreement

#### 1. Part I. Instructions

##### A. What Does This Agreement Do and What Doesn't It Do?

The National Park Service (NPS) is the grateful recipient of philanthropic support from many individuals, organizations, and businesses. This Agreement authorizes individuals and entities to fundraise for the benefit of NPS. For purposes of this agreement the term “fundraising” and derivatives thereof means seeking donations of money, goods, or services for the benefit of NPS.

This document is intended to expedite the approval of fundraising proposals with a total annual fundraising goal of between \$2,500.00 and \$100,000.00. No agreement is necessary for fundraising totaling below \$2,500.00 annually.

Once completed, this document should provide the NPS with sufficient information to evaluate an applicant's fundraising proposal. Additionally, if signed by both parties this document guides all fundraising activities described therein.

A Basic Fundraising Agreement (BFA) may authorize a partner to raise funds for an existing NPS approved endowment but a BFA will generally not authorize fundraising to establish an endowment. Endowments must be authorized separately. Additionally, a BFA may not authorize a partner to construct facilities for NPS within parks. Construction is authorized pursuant to a separate agreement or permit.

##### B. Who May Use this Agreement?

**Individuals and Organizations Lacking Non-Profit Status:** This agreement may be used by individuals and organizations, that lack non-profit status under state and federal law, and that propose raising money, goods, or services for the benefit of NPS in amounts totaling between \$2,500.00 and \$100,000.00 annually.

**Businesses:** Businesses may use this agreement to raise money, goods, or services for the benefit of NPS in amounts totaling between \$2,500.00 and \$100,000.00 annually. All donations must be strictly philanthropic - that is they are not used as part of a campaign to publicly promote the business, its products, or services. For purposes of this agreement, a typical business could seek contributions from employees, subsidiaries, or affiliates, but not from the general public or the businesses' customers. NPS has policies in place addressing fundraising and donation activities of businesses seeking to advertise their association with the NPS to the general public. Please consult NPS officials and or Section 7 of NPS Director's Order #21 for additional information:

**<http://www.nps.gov/policy/DOrders/DO21-reissue.html>**



D. How will funds be expended or used?

E. What is the fundraising goal? For example, how much money is intended to be raised and/or what goods or services are being sought as donations?

F. If fundraising for a specific project, e.g., a park shelter, restoring a structure, creating an exhibit, creating a park interpretive program, etc., will the funds, goods, or services raised be sufficient to undertake and maintain the project or will additional resources be needed. If additional resources will be needed what are they and how are they to be acquired?

G. Is the applicant recognized as non-profit by the Internal Revenue Service?

Yes \_\_\_\_\_

No \_\_\_\_\_

H. Is the applicant: 1) doing business or seeking to do business with the Department of the Interior, NPS, or another Department of the Interior bureau, 2) litigating with the Department of the Interior, NPS, or another Department of the Interior bureau, or 3) regulated by the NPS or another Department of the Interior bureau?

Yes \_\_\_\_\_

No \_\_\_\_\_

If the answer to any of the above questions is yes please explain.

I. How will donors to the project be recognized for their contributions?

**Part III. Fundraising Agreement Terms**

A. Upon execution of this agreement the applicant, agrees:

1. That no more than 20 percent of funds raised may be used to pay for actual overhead costs incurred in fundraising. Additionally, any fundraising consultants and staff, if compensated, will be paid a salary or flat fee as opposed to a commission.
2. Not to state or imply Department of the Interior, NPS's, or Government employee endorsement of you, your organization or your business, or any business product or service including those of your donors.
3. That all funds raised will be deposited in a federally insured bank account and will be used for the purposes described in this agreement. Further, if funds raised for the benefit of NPS are commingled with other Partner funds they will be accounted for separately and all records will be made available to NPS upon request. Alternatively, upon completion of all fundraising activities under this Agreement funds may be provided directly to NPS for deposit in a Government account to be used solely for the purposes of this agreement.
4. To inform potential donors that funds raised may be directed by the NPS to other park projects if the funds cannot be used for their intended purpose.
5. To inform potential donors of the tax implications of their donations to the extent required by state and Federal law.
6. That unless expressly agreed to by NPS in **Part III.B.6.** of this Agreement, nothing in this agreement is intended to require NPS to expend any appropriated funds on any matter related to this Agreement. If NPS has agreed to expend appropriated funds under this Agreement, nothing contained in this Agreement shall be construed to obligate the Department of the Interior or the United States to any current or future expenditure of funds in advance of the availability of appropriations from Congress. Nor does this Agreement obligate the Department of the Interior or the United States to spend funds on any particular project or purpose, even if funds are available.

7. Not to 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 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 will this paragraph be construed as NPS requesting, authorizing or supporting advocacy before Congress.
8. Not portray either Congress or the NPS as having failed to meet their responsibilities to fund NPS operations.
9. Not accept donations for the benefit of NPS that associates NPS with alcohol or tobacco products.
10. Not accept donations for the benefit of NPS from NPS concessionaires unless approved in writing by NPS.
11. Recognize donors consistent with the park's donor recognition plan (Attachment A).
12. Obtain written approvals or permits for in-park activities associated with this Agreement.
13. Prior to accepting any single donation of \$50,000 or more or a series of donations valued at \$50,000 or more from a single donor, contact the NPS Key Official so the NPS can review the donation and determine whether it is appropriate for NPS to accept the donation.

B. The NPS agrees:

1. To provide a description of how NPS will recognize donors, including the applicant, for donations made pursuant to this Agreement.
2. To the extent practicable, to provide materials and or NPS staff to explain activities that may be funded through this Agreement.
3. To consider requests to conduct in-park activities intended to further the goals of this Agreement and to issue approvals when appropriate.
4. Review proposed donations of in-kind goods and services to ensure that they meet NPS needs, requirements and specifications.

5. To provide an NPS Key Official to assist in implementing this Agreement. The Key Official currently assigned to this Agreement and corresponding contact information follows:

6. Additional Terms and Clarifications:

C. Term and Termination:

This agreement will terminate one year from the date it is signed by both parties unless terminated earlier by either party for convenience. This agreement may be extended by NPS, in writing, for an additional term of one year. Upon termination all goods and funds raised to benefit the NPS, less acceptable costs incurred in fundraising, will be provided to NPS.

**Part IV. Signatures**

\_\_\_\_\_ Date \_\_\_\_\_  
Name: \_\_\_\_\_  
Title (if applicable): \_\_\_\_\_  
Organization/Business (if applicable): \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_  
Superintendent's Name: \_\_\_\_\_  
NPS Unit: \_\_\_\_\_

## 8.1.2 Model Comprehensive Fundraising Agreement

Agreement Number \_\_\_\_\_

### AGREEMENT

Between the

NATIONAL PARK SERVICE

And

PARTNER ORGANIZATION(S)

#### **Introductory Paragraph:**

The introductory paragraph of a fundraising agreement restates the names of the parties to the agreement. The abbreviated form of the parties' titles or acronym should be introduced here, if appropriate, for later use in the agreement. The purpose of the agreement should be stated. Some examples are:

This Agreement is entered into between the National Park Service (NPS), a bureau of the United States Department of the Interior, and the Park Partner (Partner) for the purpose of raising funds to construct a visitor center in Picture Perfect National Park (Park).

This Agreement is entered into between the National Park Service (NPS), a bureau of the United States Department of the Interior, and the Park Partner (Partner) for the purpose of creating an endowment to fund operation and maintenance of curatorial facilities at Antiquities National Historic Park (Park).

This Agreement is entered into between the National Park Service (NPS), a bureau of the United States Department of the Interior, and the Park Partner (Partner) for the purpose of funding a children's educational program at Youthful National Park (Park).

#### **I. Definitions:**

Include a definition section to define terms of art, critical terms, etc., which will be used in the agreement. Do not assume the reader knows these definitions.

#### **II. Background and Objectives:**

As a general rule, background information and the objectives of the parties are explained through a series of clauses at the beginning of an agreement. These clauses should concisely convey the relevant context, history and facts underpinning the agreement. Additionally, they should convey the intent of each party entering into the agreement and educate the reader on:

- 1) Who the parties to the agreement are;
- 2) The history of the relationship between the parties;
- 3) The subject matter of the agreement;
- 4) The facts critical to understanding the agreement;
- 5) How existing or related agreements affect the fundraising agreement, e.g., do they control in the event of a conflict with fundraising agreement.
- 6) What the individual or mutual goals of each party are.

Do not underestimate the importance of the Background and Objectives section of an agreement. Often the original individuals involved in negotiating the agreement are no longer involved, or their perspectives or recollections change over time. Furthermore, if irreconcilable differences of opinion arise, courts often look at the background and objectives section to assist them in understanding the original intent of the parties.

While there is technically no limit on the length of the Background and Objectives section, if there is more than a page and a half of explanatory clauses the section should be reviewed to determine if unnecessary information is included.

### **III. Authority:**

The authority section of an agreement lists the legal authorities NPS is relying on to support the action it will take under the agreement. Where our partner is another governmental entity or is congressionally chartered, the partner's legal authorities should also be listed in the legal authority section. Generally, the underlying law providing legal authority for an action, as opposed to its implementing regulation, is cited in the authority section. Documents such as Executive Orders or NPS Director's Orders do not provide legal authority and should not be cited as legal authority. Such documents may, however, be cited in the Background and Objectives section, or elsewhere in the agreement to help explain NPS and partner motivations, goals and objectives.

Authority to undertake an action can be expressed in a statute or implied by a statute. Always try to list legal authorities that expressly authorize the activity contemplated. For example, NPS authority to accept most donations is expressly provided for by 16 U.S.C. § 6. This statute provides that:

“The Secretary of the Interior in his administration of the National Park Service is authorized, in his discretion, to accept patented lands, rights-of-way over patented lands or other lands, buildings, or other property within the various national parks and national monuments, and moneys that may be donated for the purposes of the national park and monument system.”

16 U.S.C. § 6 should be cited in most, if not all, fundraising agreements. The Department’s *Partnership Legal Primer* contains a partial list of additional legal authorities NPS may rely on to authorize fundraising. It can be found on the Department of the Interior’s Partnership web page:

**[http://www.doi.gov/partnerships/partnership\\_legal\\_framework.html](http://www.doi.gov/partnerships/partnership_legal_framework.html)**

Statutes can also be cited as authority if the action contemplated is implied by a statute’s terms. The Solicitor’s Office can assist in interpreting statutes that may imply NPS authority to undertake an activity.

While 16 U.S.C. § 6 and other statutes provide NPS authority to accept donations, acceptance of a donation must still be consistent with other laws, such as the NPS Organic Act. Thus, for purposes of an Organic Act example, NPS could not accept a donation if it would impair park values and purposes.

If NPS is to provide a portion of funds for a joint partnership project, NPS staff must make sure that NPS has: 1) the statutory authority permitting the expenditure of funds for the activity at issue; and 2) funds appropriated for that activity. Statutory authority to expend funds does not mean there are funds to spend. Funding is generally provided through annual appropriations bills. Expending funds in the absence of funds being appropriated violates the Anti-Deficiency Act and may result in personal liability for NPS employees.

Sometimes fundraising partners seek to undertake multiple fundraising events to support multiple projects over the course of multiple years. When such a long-term, multi-faceted relationship is contemplated it is best to execute an agreement that addresses the relationship of the parties in broad terms and to incorporate clauses universally applicable to all future authorized fundraising activities. Subsequent authorized fundraising initiatives, of which there may be many during the life of a partnership, can be memorialized in separate agreements that tier off the initial agreement that establishes the relationship between the parties.

Occasionally partners want to use agreements to address more than just fundraising. For example, they might also want an agreement that authorizes them to operate an NPS facility for the benefit of NPS. NPS should use an agreement modeled in DO #20 to authorize such activities. Such an agreement could also authorize the partner to raise funds to support partner activities benefiting NPS, provided that such fundraising activities are consistent with DO #21 and associated guidance. In contrast, a separate fundraising agreement that tiers off such an agreement would be required if the partner wishes to embark on a public fundraising campaign for a specific purpose, e.g., creating an endowment for operation and maintenance of an NPS facility.

**In addition to the above, please remember that the Solicitors Office should be consulted early in consideration of a partnership relationship to help NPS and its potential partner understand what is legally possible. Further, if an agreement establishing the relationship of the parties is needed (as opposed to a fundraising agreement authorizing a specific fundraising campaign) the agreement framework contained in this model agreement and the DO #20 Agreements Handbook can be used to assist in generating such an agreement.**

#### **IV. Responsibilities and Understandings of the Parties:**

The Responsibilities and Understandings section of a fundraising agreement sets out what each party agrees to do. Each party should be assigned its own subsection listing its own responsibilities and understandings. For example, there should be a subsection entitled “NPS agrees to” and counterpart subsections should be established for each additional partner, e.g., the “Partner agrees to.”

Sometimes, NPS and its partners will want to state common understandings or jointly to undertake certain actions. These joint understandings should be captured in a separate subsection. An example of such could be joint agreement on a process for dispute or conflict resolution.

It is impossible to provide a list of standard clauses for incorporation into the Responsibilities and Understandings section for all fundraising agreements because the facts vary from partnership to partnership. The following identifies topics that should be considered and, if found relevant, converted into appropriate clauses and inserted in the Responsibilities and Understanding section of a fundraising agreement. This list is not exhaustive; NPS staff, and in some instances the Solicitor’s Office, might determine that additional or alternative clauses should be included in a particular agreement.

The Responsibilities and Understandings section below is organized as follows. Section A addresses topics that should be considered in association with all agreements. Section B addresses topics that should be considered in association with a fundraising agreement that calls for capital improvements and construction. Section B has two parts: 1) those topics that should be addressed when NPS is responsible for construction; and 2) those topics that should be addressed when the partner is responsible for construction.

##### **A. Responsibilities and Understandings – In General**

##### **1. NPS agrees to:**

- a. Comply with DO #21, as amended, supplemented or superseded in the implementation and administration of the fundraising agreement.

- b. Upon NPS receipt of all appropriated and or donated funds necessary to undertake an activity or project, NPS will: [list NPS obligations]. [Note NPS may initiate a portion of a project without having funds to implement the entire project provided that the portion of the project at issue has independent utility to NPS and can be fully paid for with funds administered by NPS. For example, project planning may have independent utility even if funds to provide staff to implement the project have yet to be obtained. This concept may be incorporated into the agreement if appropriate.] .
- c. Authorize NPS employees to undertake the following activities to support the efforts of the fundraising partner: [List activities, e.g., providing information on the need for and scope of a project to a partner's prospective donors or attending a partner's fundraising events.]
- d. Review and approve or deny all proposed third-party agreements of a material nature submitted to NPS. Examples of such agreements include proposed agreements with firms hired to assist the partner with fundraising.
- e. Subject to appropriate conditions, provide the partner with appropriate use of the following resources in furtherance of the partner's philanthropic efforts: [List resources, structures, equipment, etc., if any, and conditions on use, if any].
- f. Consider applications from the partner for Special Use Permits to authorize the following future activities: [List activities that may occur in conjunction with the agreement such as special events within the park.]
- g. Review proposed donations of in-kind goods and services to ensure that they meet NPS needs, requirements and specifications.

**2. Partner agrees to:**

- a. Cooperate with and assist the NPS in meeting all NPS obligations under DO #21.
- b. Take specific actions under this fundraising agreement to raise funds, and or seek in-kind goods or services to support NPS approved plans, projects, programs, or activities addressed by this Agreement.
- c. Make a good faith effort to attain the following specified fundraising goal(s) of this Agreement during the term of the Agreement: [List and discuss both monetary and in-kind donations.]
- d. Limit reimbursement for expenses incurred in association with its fundraising efforts to the amount allowable under DO #21. Currently the partner may retain up to 20 percent of funds raised to cover actual expenses and overhead incurred by the partner in fundraising.

- e. Pay any fundraising consultants or staff, if compensated, a salary or flat fee as opposed to a commission on funds raised.
- f. Consistent with the terms of this Agreement, expend donated funds received for the benefit of NPS as follows: [List authorized expenditures, if any, and any associated NPS requirements].
- g. If a partner represents itself to NPS as a non-profit organization, and or intends to represent itself to the public as a non-profit organization include the following provision. Remain for the term of this Agreement, fully qualified to seek and receive philanthropic contributions under state and federal law.
- h. Comply with the terms of the NPS approved Donor Recognition Plan, Fundraising Plan, Fundraising Feasibility Study incorporated as Attachments (X,Y and Z) to this Agreement.
- i. Obtain a Special Use Permit or other appropriate approvals prior to undertaking activities in a park unit that are not expressly authorized by this Agreement.
- j. Not portray either Congress or the NPS as having failed to meet their responsibilities to fund NPS operations.
- k. Submit all proposed third-party agreements of a material nature to NPS for review and approval.
- l. Not accept donations for the benefit of NPS that associates NPS with alcohol or tobacco products.
- m. Not accept donations for the benefit of NPS from NPS concessioners unless approved in writing by NPS.

**3. NPS and the Partner jointly agree to:**

- a. Participate in regular meetings, to foster close cooperation on agreement implementation.
- b. Work together in good faith to resolve differences at the level of the Key Officials listed in this agreement prior to elevating matters within the partner organizations or appealing elsewhere within NPS or the federal government. [Note: NPS staff may consider inserting a period for discussions, e.g. 30 or 60 days, in which the Key Officials will work together to resolve issues prior to elevation.]
- c. Make timely decisions on matters necessary to proper implementation and administration of this agreement.

- d. Implement the following donor review process: [include donor review process provisions.]

[Note: where a partner's donor provides a significant donation, the Departmental Manual policy on donation acceptance (374 DM 6) and DO #21 require review of a donor to ensure that the proposed donation does not give rise to an appearance of loss of integrity or impartiality or otherwise reduce public confidence in the partner or the NPS. Both the NPS and its partner have responsibilities relating to donor review. Pursuant to NPS policy, donor review is not required for single donations or a planned series of donations from a single donor to a partner totaling less than \$50,000.

Attachment A to this CMFA contains a sample donor review provision. The provision was drafted for incorporation into a fundraising agreement with a large, experienced, and well organized fundraising partner. The partner has successfully raised hundreds of millions of dollars over the course of a two-decade long relationship with NPS. Therefore, the provisions of the sample, including dollar thresholds for donor review, were drafted to give the partner primary responsibility for donor review. In this example, NPS donor review only occurs at relatively high dollar thresholds and or when corporate donations are involved.

NPS staff retains discretion to draft donor review procedures that are appropriate given a partner's level of fundraising experience and its history of fundraising for the benefit of NPS. But such provisions cannot be less restrictive than those contained in Attachment A. NPS staff can adjust the sample language, e.g., by lowering the dollar thresholds triggering donor review, or incorporating other appropriate safeguards, to ensure compliance with the text and intent of the Departmental Manual and DO #21. The WASO Partnership Office, the Solicitor's Office, and the Departmental Ethics Office are some of the resources available to assist in the drafting donor review provisions and process.]

## **B. Responsibilities and Understandings - Construction:**

### **1. Where NPS Constructs a Project Using Appropriated and or Donated Funds:**

#### **A. NPS agrees to:**

1. Bear the following costs associated with project planning, design and construction:  
[List, if any]

2. Expend donated funds on the following tasks associated with project planning, design and construction: [List]
3. Consult with the Partner regarding construction design. [Note: it is appropriate to solicit the views of partners contributing funds to construct projects on project design, but final design decisions must be left to NPS discretion.]
4. Consistent with applicable law and NPS policy, enter into planning, design, or construction contracts for the project contemplated by this agreement. Contracts will be issued only after NPS determines that either: 1) all funds necessary to complete the entire project have been transferred to NPS, or 2) funds necessary to complete a portion of a project that has independent utility to NPS have been transferred to NPS.

[Note: NPS may, on a case-by-case basis, initiate construction of portions of a project prior to having funds available for the entire project provided: 1) the portion of the project to be authorized has independent utility, and 2) the NPS has received all funds necessary to complete that independent portion. For example, generation of project plans is a component of an overall project and has independent utility. Also, one of a series of buildings contemplated in a project may have independent utility to NPS and therefore constructing that building may be justified. Where donated funds are used on construction, the partner must determine that construction of a portion of the project is consistent with the representations made to donors during fundraising.]

5. Ensure that all NPS construction complies with applicable laws, NPS policies and NPS construction standards.

## 2. **When a Partner Constructs a Project Using Donated Funds**

In evaluating whether to authorize a partner to engage in construction, consideration must be given to a partner's experience and capability of undertaking and managing construction.

NPS staff should incorporate the clauses set out below into a fundraising agreement that anticipates partner construction. These provisions should be incorporated into the "NPS agrees to" or the "Partner agrees to" sections of the agreement, as appropriate. The following list of clauses is not exhaustive nor the clauses discussed applicable in all situations. In addition, NPS may require that construction be addressed, in whole or part, in a separate construction agreement or in a Special Use Permit. Be aware that Congress must review all partnership construction projects costing \$5 million or more. Please review the Partnership Construction Process found in Section 9 of this Reference Guide for more information.

### **A. NPS agrees to:**

- a. Review and approve in writing all construction plans, engineering documents, environmental compliance documents, change orders, or other related construction documents generated by the Partner, or the Partner's Agent.

- b. Review and approve agreements with all Architectural and Engineering (A and E) firms, general contractors, etc. to ensure that the contractors have the appropriate experience and credentials to undertake the planning and construction related activities contemplated.
- c. Establish site-specific construction standards and requirements.

[Note: such provisions may be included in Special Use Permits or, in particularly complex projects may be included in separate project agreements. In this case, a clause may be inserted in the fundraising agreement that listing general topics that may be addressed in the Special Use Permit or a project agreement, e.g., project location within a park, construction standards, safety precautions, contractor and NPS access, construction monitoring, etc., in order to give the partner a better idea of what must be addressed in the future.]

- d. Prior to approving construction activities, ensure that the partner has the financial means to achieve its commitments regarding the project.
- e. Monitor and periodically inspect the construction site, work products, etc., to ensure compliance with law, the terms of the agreement, construction plans, NPS construction standards, the Special Use Permits, NPS policies, etc.

**B. Partner Agrees to:**

- a. Initiate construction or execute any construction contract only after receiving written NPS approval.
- b. Obtain a financial security instrument satisfactory to NPS, e.g., performance bond, irrevocable letter of credit, etc., to ensure that sufficient funds are available to achieve the partner's commitments regarding the project.
- c. Ensure that its contractors obtain sufficient insurance and provide financial security acceptable to NPS [Note: see Article X of this model agreement for contractor insurance and financial security clauses.].
- d. Forego any claim to right, title or other property interest in any capital improvements or associated donations it funds or constructs.
- e. Unless otherwise specified by written agreement with NPS, forego compensation for any improvements provided for the benefit of NPS.
- f. Permit NPS to monitor, inspect, and to at all times have access to the construction site and associated deliverables, e.g., exhibits.

- g. Promptly take any steps necessary to address any concerns raised by NPS during inspection.
- h. Follow, and ensure through written agreement that its contractors will follow, any NPS order to suspend or terminate work.
- i. Work cooperatively with NPS in adhering to NPS Partnership Construction Process set out in Section 9 of Director's Order #21.
- j. Provide NPS with the names of proposed A&E firms, construction contractors, etc. for review and approval prior to execution of any construction related agreement.
- k. Include in any material agreement between the partner and a third-party, e.g., A&E firm, construction contractor, professional fundraiser, etc., a provision making NPS a third-party beneficiary of that agreement.
- l. Provide in each agreement between the partner and a contractor that the contractor has no recourse against the United States in association with any aspect of the construction activity.
- m. Assume specified operation and maintenance costs associated with donated projects. [Use where appropriate.]
- n. Use best practices in selecting contractors and in administering construction contracts. [For example, this section could require partners to commit to undertaking a fair and open bidding process and to avoiding real or apparent conflicts of interest when contracting].
- o. Provide NPS with draft and final copies of all contract administration documents, including: bid solicitations, demolition/construction contract awards, documents relating to contract administration and contractor payments, and demolition/construction supervision and inspection reports.
- p. Comply and cause all of its contractors to comply with all applicable laws, regulations and NPS policies.
- q. Ensure it uses only licensed contractors who meet licensing, bonding and certification requirements for the State in which construction occurs.

## V. Endowments

An endowment is an account that generates interest or earnings to pay for long-term operation and maintenance costs (O&M) of NPS structures, resources, or programs. Generally, the base amount (or corpus) is not withdrawn from the endowment investment account(s), thereby helping to create a lasting source of income. The intent of this section is to ensure that the NPS and the partner can both meet their legal, fiduciary, and public responsibilities associated with

the stated purpose of the endowment. All parties share responsibility for providing the public with information about the purpose and limits of an endowment to guard against unrealistic expectations about the use and availability of funds.

As a practical matter, the partner is likely to have more success fundraising for an O&M endowment if the endowment is packaged together with project and or construction fundraising. Therefore, the creation of endowments should be considered and, where appropriate, addressed in a fundraising agreement. The following clauses should be considered when creating an endowment. Sample endowment language is included in Attachment B to this model CFA.

1. Before executing a fundraising agreement authorizing an endowment, ensure that NPS has an opportunity to review a professionally prepared investment plan addressing, at a minimum: investment goals and assumptions, the level of acceptable risk, the targeted amount of annual support for NPS, the expertise of the investment managers, and the cost of investment management.

[Note: Experience suggests that it is not unreasonable to set a goal of 8 percent annual earnings on the endowment corpus of which 5 percent would be used for the benefit of NPS annually. The remaining 3 percent would be reinvested in the endowment. These are only goals, however, and partners must have flexibility to manage endowment funds responsibly in light of prevailing investment market conditions.]

2. Identify general categories of activities endowment funds may be used for, e.g., program or facility maintenance. Insert a provision ensuring that NPS retains discretion to expend endowment funds it receives consistent with the agreed to general categories without partner review and approval.
3. Identify under what circumstances, if any, the endowment corpus may be used.
4. Identify who will administer the endowment, e.g., the partner or a third-party. The NPS lacks legal authority to manage an endowment.
5. Include appropriate accounting and reporting clauses.
6. Address disposition of the endowment in the event that the Partner cannot or does not want to manage the endowment after its establishment. Generally, endowment funds would be transferred to a third-party which would manage and disburse the funds to the NPS in accordance with the terms of the original endowment agreement.

## **VI. Property Utilization**

The “Property Utilization” section describes NPS property that may be used by a partner in obtaining the goals and objectives of an agreement. For example, NPS may permit an organization to use surplus office space and associated NPS equipment in a park to assist the partner in attaining fundraising campaign goals. The property utilization section addresses, in

part, what property may be used by the partner, the duration of that use, maintenance responsibilities, site and safety conditions, payment of utilities, compatibility of partner activities with other NPS responsibilities, hours of operation, etc.

## **VII. Term of Agreement**

No partnership agreement, including fundraising agreements, should exceed a term of 5 years. Fundraising agreements can be renewed for additional periods of up to 5 years if agreed to by the parties in writing prior to expiration of the agreement. If a general agreement was used to establish the relationship between the parties, and a separate fundraising agreement was executed authorizing a fundraising campaign, the fundraising agreement should run no longer than the term of the general agreement it tiers from. The following is language that may be used to establish the agreement term:

Unless earlier terminated by operation of the terms of this Agreement, or by agreement of the parties in writing, this Agreement will run for a period of  X  years beginning on the date the last signature is affixed to this Agreement.

## **VIII. Termination and Expiration**

The termination and expiration section of any fundraising agreement addresses: 1) a party's ability to terminate the agreement; and 2) what happens to donations after termination or expiration of the agreement.

Generally, any party should be able to terminate a partnership agreement, including a fundraising agreement, with 30 days notice to the other party. Depending on the nature of the agreement, e.g., risk to the Government, it may be appropriate including a clause permitting termination for the convenience of the Government (TFC). For example, if protection of park resources is a concern, as is always the case with construction, a TFC should be included in the agreement.

### **A. Termination:**

Below are examples of termination clauses that may be incorporated into fundraising agreements. NPS should work with the Solicitor's Office to ensure that termination clauses are properly crafted given the facts of a particular partnership.

1. The following termination clause alternative does not require a "cause," such as breach of the agreement, for termination. This clause may be appropriate where the primary function of an agreement is to facilitate philanthropic donations:

Either party may terminate this Agreement for any reason by giving thirty (30) days written notice. Termination will be effective at the end of the thirty (30) day period.

2. The following alternative clause requires cause for termination. This clause is appropriate where the parties to the agreement intend to have a legally enforceable obligation to the other.

If either party fails to observe the terms and conditions of this Agreement, the other party may terminate this Agreement for default without any legal process whatsoever by giving thirty (30) days written notice of termination, the termination will be effective at the end of the thirty (30) day period.

3. The following TFC clause may be used in conjunction with either alternative above and, as note, is often used when harm to NPS resources or the public may result from a partner's or its agents failure to perform.

The National Park Service 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 effected parties shall be notified within 5 working days following termination.

#### B. Expiration:

All fundraising agreements should require that upon termination or expiration of the agreement, donated goods or funds, less expenses reasonably incurred by the partner (taking into account the DO #21 limitation on fundraising expenses), should be transferred to NPS or an NPS designee for uses consistent with the terms of the agreement, or consistent with the purposes for which they were donated. Fundraising agreements should also provide that if donations cannot be used for the purposes for which they were donated, such funds will either be returned to the donor, or the donor should be contacted for further instructions regarding disposition of the donation. In light of this, partners may wish to make donors aware of contingencies for the use of funds if they cannot be used as intended, e.g. the funds may be used both for construction and the operation and maintenance of the constructed facility.

#### **IX. Key Officials:**

List the names and contact information of Key Officials of each organization responsible for administration and implementation of the agreement. Provide that the parties should be notified if a Key Official changes.

Key Officials play a very important role in ensuring smooth implementation of fundraising agreements. Therefore, consideration should be given to whether the Key Official has the time and expertise needed to discharge this function.

**Note to Reader:** *Clauses contained in Articles X, XI, and XII below cannot be easily modified or deleted. Therefore, modifications to these standard clauses are rarely authorized by NPS or the Solicitor's Office. The standard clauses appear in bolded italics below. When needed, discussion of these clauses appears as normal text. The discussion section addresses when NPS staff may have flexibility to modify a particular standard clause.*

**X. Liability, Insurance and Financial Security:**

**A. Standard Liability and Insurance Clauses**

- 1. In connection with activities that are the subject of this Agreement, the Partner will procure public and employee liability insurance from a responsible company or companies with a minimum limitation of One Million Dollars (\$1,000,000) per person for any one claim, and an aggregate limitation of Three Million Dollars (\$3,000,000) for any number of claims arising from any one incident. The 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 thereunder, and shall specify that the insurance shall be assumed by, be for the account of, and be at the insured's sole risk. Prior to beginning the work authorized herein, the Partner shall provide the NPS with confirmation of such insurance coverage. Insurance coverage shall be reviewed every two years beginning on the date of execution of this Agreement and shall be modified if necessary to ensure consistency with generally accepted insurance practices and NPS policies.***

Clause X.A.1 contains the recommended minimum insurance coverage for NPS partner activities. But the \$1 million per person or \$3 million per claim figure used in this standard is a guideline only. NPS staff must use due diligence in determining the appropriate amount of coverage for each project. For example, the \$1 million / \$3 million minimum may be sufficient to cover most partner sponsored fundraising events within a park, e.g., a tour of a site by prospective donors. However, if a partner tour involves use of watercraft the insurance coverage needed may be higher. Conversely, it may be appropriate to require less insurance coverage if the partner rarely enters the park. NPS may require partners to obtain additional insurance in association with in-park special events authorized through special use permits. NPS is currently reviewing insurance requirements to determine whether additional guidance respecting insurance is needed.

Where a partner will not be undertaking activities within park units no insurance is required. If NPS intends to authorize a fundraising agreement that does not contain a insurance clause for this reason, the fundraising agreement should state that NPS retains the right to require the partner to acquire insurance should the partner propose future in-park activities, e.g., a donor recognition event. Insurance requirements could be inserted in the Special Use Permit authorizing the event.

Since NPS partners must indemnify NPS for losses incurred as a result of their or their agents' actions, it may be in the partner's best interest to research appropriate insurance coverage.

Information regarding appropriate coverage generated by the partner's insurer may be helpful to NPS' analysis of insurance sufficiency, but NPS should not defer to such information without critical evaluation.

NPS does not require state or local governments to acquire insurance. These entities are considered self-insured.

2. ***The Partner 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, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way arising out of, the activities of the Partner, its employees, agents or contractors under this Agreement. This indemnification shall survive the termination or expiration of this Agreement.***

This provision is self explanatory. We note, however, that partners occasionally ask that NPS indemnify them. The Anti-Deficiency Act bars Federal agencies from providing indemnification. NPS may only be found liable to partners through processes established in applicable federal law, such as those contained in the Federal Tort Claims Act.

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

This clause should be included where a Partner is occupying and using NPS property, e.g., where its offices are located in a park owned structure.

4. ***The Partner shall procure and maintain fire and hazard protection insurance in an amount equal to the replacement cost of NPS structures and facilities utilized by the Partner. The Partner shall provide the NPS with confirmation of such insurance coverage. Any repairs or reconstruction carried out on structures and facilities on parkland with the proceeds of this insurance are subject to approval by the Superintendent.***

Consider inserting this clause in agreements that allow a partner to occupy a NPS structure for partnership related purposes. The NPS may consider waiving or pro-rating this clause where a structure is shared with NPS employees, e.g., where the NPS and the partner have offices in the same NPS facility. This insurance clause is used in addition to - and not in place of - other required insurance clauses discussed above.

**B. Contractor Insurance and Contractor Financial Security for Construction Undertaken By a Partner.**

As noted, sometimes partners undertake and donate capital improvements to NPS. The clauses set out below should be used when the partner will hire individuals or entities to plan, construct, or remodel structures on NPS property. Should the partner wish to conduct these activities itself, i.e., the partner is a general contractor, the partner would acquire the insurance and financial security instruments below. Note that these clauses do not incorporate specific levels of insurance coverage, or the amount of necessary financial security instruments, e.g., performance bonds, needed to satisfy NPS requirements. If that information is available at the time the agreement is drafted it should be incorporated into the agreement.

- 1. *The Partner will require that any contractor undertaking construction, remodeling, or renovation projects within the park acquire Builders Risk Coverage acceptable to NPS. The United States shall be an additionally insured party. The Builders Risk policy shall provide for loss recovery on a Replacement Cost basis.***
- 2. *The Partner will require that any contractor undertaking construction, remodeling, or renovation projects within the park acquire Commercial General Liability Insurance, Automobile Liability Insurance, Worker's Compensation Insurance, and Professional Liability Insurance (i.e., insurance for architectural or engineering service) that is acceptable to NPS and makes the United States an additional insured party.***
- 3. *The Partner will provide NPS with Certificates of Insurance setting out in sufficient detail coverage limits, and coverage amendments so that NPS may determine whether the insurance is sufficient for the project at issue.***
- 4. *The Partner will require that any contractor undertaking construction, remodeling, or renovation projects within the park acquire a Performance Bond acceptable to NPS.***
- 5. *All insurers for all coverages must be rated no lower than A- by the most recent edition of the Best's Key Rating Guide (Property-Casualty Edition).***
- 6. *All insurers for all coverages must have a Best's Financial Size Category of at least VII according to the most recent edition of A.M. Best's Key Rating Guide (Property-Casualty Edition).***
- 7. *All insurers must be admitted, licensed, and approved to operate in the state in which the project will occur.***
- 8. *The Partner will require its contractor(s), subcontractors, manufacturers or suppliers to provide warranties for work performed and materials furnished (i) that would be given in normal commercial practice; and (ii) are executed, in writing, for the benefit of the United States.***

- 9. *The Partner will insert a provision making the United States a third-party beneficiary to all agreements between the Partner and architects, engineers, or contractors relating to work performed and materials furnished pursuant to this Agreement.***

Clauses X.B.8. and X.B.9. allow the NPS to take legal action against a party that has contracted with a partner to produce construction related goods or services for the benefit of NPS and has failed to meet its contractual obligations.

## **XI. Accounting and Reports**

The following general accounting clauses can be included into almost any fundraising agreement and are designed to account for donations held by a partner for the benefit of NPS. NPS may want to include additional reporting requirements on a case-by-case basis. .

- A. *The Partner will maintain accounting books and records under a system of accounts and financial controls meeting generally accepted accounting practices.***

This clause is self-explanatory.

- B. *The Partner will furnish to NPS an annual financial report on \_\_\_date\_\_\_ of each year including financial statements generated by an independent licensed or certified public accountant. The annual financial report shall be in such detail that all interest, investment income, gross receipts and expenses incurred by, or accruing to, the Partner in connection with activities under this Agreement will be clearly addressed.***

This clause may be modified to require an audited financial statement. Audits are a more structured and detailed form of financial accounting. Factors that should be considered in determining whether to request an audited financial statement include: the amount of funds at issue, the experience of the partner, and NPS' history of working with the partner.

- C. *The Partner will permit NPS or its designee, or the Comptroller General to verify and audit the financial report from the books, correspondence, memoranda and other records of the Partner, during the period of this Agreement, and for such time thereafter as may be necessary to accomplish such verification.***

This clause is self-explanatory.

- D. *The Partner will ensure that if any funds raised under this Agreement are commingled with other funds held or managed by the Partner, an accounting system will be utilized which independently tracks and distinguishes funds raised under this Agreement from such other funds.***

This clause is intended to track funds commingled with other funds held by a partner.

## **XII. Required and Miscellaneous Clauses**

- 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 (78 Stat. 252; 42 U.S.C. § 2000d *et seq.*); Title V, Section 504 of the Rehabilitation Act of 1973 (87 Stat. 394; 29 U.S.C. § 794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§ 6101 *et seq.*); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.

This clause is self-explanatory.

- B. **NPS APPROPRIATIONS**: Pursuant to 31 U.S.C. § 1341, nothing contained in this Agreement shall be construed to obligate the Department of the Interior or the United States to any current or future expenditure of funds in advance of the availability of appropriations from Congress. Nor does this Agreement obligate the Department of the Interior or the United States to spend funds on any particular project or purpose, even if funds are available

Clause XII.B. is designed to help ensure that NPS and its employees comply with the Anti-Deficiency Act. Under the Act, NPS cannot obligate funds not yet appropriated by Congress.

- C. **LOBBYING WITH APPROPRIATED MONEYS** (18 U.S.C. § 1913): 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 of Congress, at his request, or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the 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 of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.

This clause prohibits partners and NPS from expending or authorizing the expenditure of appropriated funds for lobbying activities.

D. D. **PRIOR APPROVAL:** Below is a sample checklist of items requiring prior NPS approval.

***The Partner shall obtain prior written approval from NPS before:***

1. *Holding special events within the Park;*
2. *Entering into third-party agreements of a material nature;*
3. *Assigning this Agreement or any part thereof;*
4. *Constructing any structures or making any improvements within the Park;*
5. *Releasing any public information that refers to the Department of the Interior, NPS, the Park, any NPS employee (by name or title), this Agreement or the fundraising campaign or Projects contemplated hereunder.*

The above prior approval clause is generally used to restate or consolidate prior approval requirements contained in other parts of the agreement. However, new prior approval requirements may be added here as well. The above examples of prior approvals are representative of prior approval clauses found in many fundraising agreements. But they may not be appropriate for inclusion in all agreements.

NPS policy generally prohibits execution of fundraising agreements that are contingent on future actions outside the control of NPS. For example, NPS would not enter into a fundraising agreement for the purchase of land outside the boundary of a park if Congressional approval was required before the land could be accepted by NPS. NPS staff should consult the WASO Partnership Office if staff wishes to explore the possibility of making a fundraising agreement contingent on future actions.

***E. Compliance with Applicable Laws: This Agreement and performance hereunder is subject to all laws, regulations and management policies governing NPS property and resources, whether now in force or hereafter 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 deemed inconsistent with or contrary to the purpose of or intent of any Act of Congress.***

This clause is a general savings clause which helps ensure that legal or policy requirements not expressly addressed in the agreement apply to the activity at issue. .

***F. Disclaimers of Government Endorsement: The Partner 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, NPS, or Government employees endorse the Partner's work, services, or positions, or that the Partner's work or services are superior to work or services performed by others. All materials referring to the Government must be approved by the NPS Key Official prior to publication. Nothing herein is intended to prevent NPS or the Department of the Interior from recognizing contributions made by the Partner to NPS, and***

*from authorizing, on a case-by-case basis, inclusion of such recognition in materials generated by the Partner related to this Agreement.*

This clause is self-explanatory.

***G. Release of Information: The Partner must obtain prior Government approval through the NPS Key Official for any public information releases which refer to the Department of the Interior, any bureau, park unit, or employee (by name or title), or this Agreement. The specific text, layout, photographs, etc., of the proposed release must be submitted with the request for approval.***

This clause is self-explanatory

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

This clause is self-explanatory.

***I. Modifications: This Agreement may be extended, renewed or amended only when agreed to in writing by the NPS and the Partner.***

This clause is self-explanatory.

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

Waiver is a legal term used to describe a permission to take an action contrary to the terms of an existing agreement. A waiver can be: 1) formal, i.e., written permission to take an action; 2) informal, i.e., verbal permission to take an action; or 3) implied, i.e., a party is on notice that an action is occurring, or will occur, the action is inconsistent with the terms of an agreement, and the party fails to object in a timely way. Difficult partnership problems can arise when an informal or implied waiver is alleged by one party and rejected by the other. The waiver clause requires that all waivers must be made in writing to minimize problems that otherwise could arise.

***K. Assignment: No part of this Agreement shall be assigned to any other party without prior written approval of the other party.***

This clause prevents one party from granting a third-party the rights and obligations it has under a fundraising agreement. The agreement can be amended to permit assignment on a case-by-case basis if agreed to by all parties.

***L. 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.***

Sometimes it is logistically difficult for all parties to sign the same copy of an agreement. This clause permits execution through the signature of separate copies of the agreement.

***M. No Lobbying for Federal Funds: The Partners will not seek appropriations from Congress to support any ongoing or proposed Partner 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 Partners 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.***

Current NPS policy bars partners from seeking appropriations for partnership activities unless the activity is included in the President's budget to Congress. This clause was designed to ensure that Partners do not seek funds from Congress to replace funds they have agreed to raise under a fundraising agreement. This is a required clause in all fundraising agreements and cannot be altered.

***N. 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.***

This clause is self-explanatory

***O. Agency: The Partner is not an agent or representative of the United States, the Department of the Interior, or NPS, nor will the Partner represent its self as such to third parties.***

This clause helps to ensure that a partner's representations to donors, and a partner's actions with respect to donations, are not misconstrued as representation by, or actions of, the Government. Conversely, it also clarifies that NPS employees do not act on behalf of its partners.

***P. Non-Exclusive Agreement: 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.***

This clause is self-explanatory.

***Q. 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.***

This clause is self-explanatory.

**R. Survival:** Any and all provisions which, by themselves or their nature, are reasonably expected to be performed after the expiration or early termination of this Agreement, shall survive and be enforceable after the expiration or early 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.

This clause is self-explanatory.

**S. 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.*

This clause is self-explanatory.

**T. Captions and Headings:** the captions, headings, article numbers and paragraph numbers appearing in this Agreement are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provision of this Agreement nor in any way affecting this Agreement.

This clause is self-explanatory.

**U. Drug Free Workplace Act:** *The Partners certify that comprehensive actions will be taken to ensure the workplace is drug-free.*

This clause is self-explanatory.

### **XIII. Signatures**

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth above.

---

[For the National Park Service, Name, Title]

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[For the Partner, Name, Title]

**Include the name and title of each signatory to the agreement. Make sure that DO #21guidance is followed with respect to appropriate NPS signature levels.**

## Attachment A

### Sample Donation Review Process For Long-Standing Experienced NPS Partners

1. The Partners share a long-standing relationship and trusted partnership that has successfully resulted in protecting and enhancing the public's appreciation for the Park. The NPS recognizes that the Partner, as a professional fundraising organization, has a campaign-tested process for determining the suitability of donors for the fundraising campaign contemplated by this Agreement. The Partners share a mutual objective that the Partner's fundraising and donation activities not give rise to an appearance of a loss of integrity or impartiality or otherwise reduce public confidence in the Partner or the NPS. Therefore, the Partner agrees to exercise due diligence in accepting donations consistent with the following:

(a) Definitions. For the purposes of this Paragraph 1, the following definitions apply:

- (i) "Donor" shall include (x) individuals; (y) business entities, including parent companies, majority-owned subsidiaries and affiliates and any related corporate Partner as to which a majority of the Partner's directors are also employees, officers, or directors of the corporation; and (z) any state, local, or tribal government, or a subdivision thereof. Persons who are both employees and officers or directors of corporations, *i.e.* excluding independent, outside directors acting on their own behalf, or who hold comparable positions of control in a business entity, or who have interests that are subject to regulation by the NPS, shall be treated as business entities regardless of whether their contribution comes from their personal funds.
- (ii) "Spent on NPS-approved projects" shall include any cash or in-kind donation raised for the purpose of directly supporting physical or programmatic improvements at the Park, including goods or services purchased by the Partner with donated funds, as well as any donation for which the NPS is requested to provide donor recognition.

(b) Donation Review Process.

- (i) For donations or planned series of donations to be spent on NPS-approved projects totaling in excess of Fifty Thousand Dollars (\$50,000.00), in cash or in-kind, from donors other than individuals, the Partner will take reasonable efforts to determine whether the donor:

- (1) is currently involved in litigation involving the NPS or the Department of the Interior or any of its other bureaus;

- (2) is currently engaged in or seeking a business relationship with the NPS;
  - (3) has been debarred from contracting with the Department of the Interior or another Government agency;
  - (4) has a recent public history of violations, whether criminal or civil in nature, as disclosed by an Internet search, for which acceptance of the donation could lead to public controversy; or
  - (5) is regulated by or is seeking a permit from the NPS.
- (ii) In the event that the Partner, after reasonable efforts, concludes that one or more of the above factors is applicable, the Partner will inform the NPS Key Official (or his or her designate) so that the Partner can assist the NPS in determining whether the NPS will accept or decline having such contribution spent on NPS-approved projects. Notwithstanding the foregoing, the Partner retains the exclusive right to determine whether it will accept or decline any donation not intended to be spent on NPS-approved projects.
  - (iii) For donations or a planned series of donations to be spent on NPS-approved projects totaling One Million Dollars (\$1,000,000.00) or more, whether in cash or in kind, from any source, the Partner will provide the donor's identity and other pertinent information to the NPS at least one month prior to the time when such donations are expected to be spent on NPS-approved projects or any type of public donor recognition is to be provided. All such contributions must be reviewed and approved by the NPS.
  - (iv) The Partner will consult with the NPS before accepting donations, including grants, to be spent on NPS-approved projects from state, local, or tribal governments.
  - (v) Because the potential exists for an actual conflict of interest, or the appearance of a conflict of interest, donations to be spent on NPS-approved projects from business entities engaged in or seeking concession contracts with the NPS must be approved in writing by the NPS Key Official (or his or her designate), who is required under NPS policies to obtain the written approval of the Director of the National Park Service for such contributions.
  - (vi) The NPS will use its best efforts to complete any approval required of it under this Agreement within twenty (20) business days. The NPS will promptly notify the Partner as to whether or under what circumstances the NPS may accept the donations intended to be spent on NPS-approved projects or provide donor recognition.
- (c) Exceptions: Notwithstanding subsection (b):

- (i) The Partner may request the NPS to assume responsibility for undertaking any portion of this donation review process.
  - (ii) Where the Partner intends donations to be anonymously spent on NPS-approved projects and the Partner will not engage in any public donor recognition or request donor recognition from the NPS for such donations, no vetting or review by the NPS is required.
  - (iii) Where the Partner determines that the donor is a non-profit charitable or philanthropic Partner that is not affiliated with a business entity or an individual engaged in business with or before the NPS or the Department of the Interior, no further approval of the NPS is required under this Agreement, irrespective of the amount of the donation.
- (d) The Partner has provided, and NPS has approved, a written description of the Partner's donation review process and its policies regarding retention of donor vetting information (Attachment Z).

## **Attachment B**

### Sample Endowment Clauses

The Partner will:

1. Establish an endowment to provide annual and continuing support for the [insert uses], Deposit all funds received for this purpose into a dedicated endowment account.
2. Manage and administer the endowment fund according to the Statement of Investment Policy (herein after referred to as the Investment Policy) the Investment Policy is contained in Attachment \_\_\_\_). The statement Investment Policy provides procedures for determining the annual level of funding available, how funds for a given year will be allocated, and how funds will be invested (i.e., permissible level of risk, etc.). In consultation with the Superintendent, the Investment Policy will be reviewed every two years and updated as necessary. Investment Policy revisions will be incorporated into this Agreement with the concurrence of the parties.
3. Manage the endowment assets responsibly and conservatively on a total return basis, consistent with the guidelines befitting a prudent investor. Retain an experienced and credentialed investment advisor to assist the Partner's Board of Trustees in carrying out their duties and responsibilities. The advisor will prepare an investment policy statement, recommend an investment allocation, specify managers, monitor performance of the managers and report to the Board of Trustees regarding performance of the endowment assets. The fees of any investment counselors or fund managers utilized shall be consistent with industry standards for management of non-profit endowment portfolios.
4. Implement the following investment objectives for the endowment: 1) preservation of the real (after inflation) value of the endowment portfolio assets; 2) achieving an annual rate of return of 8.0 percent measured over rolling three year periods; and 3) growing the total value of assets as allowed by the capital markets, and consistent with goals one and two of this Paragraph, and the 5.0 percent support goal contained in Paragraph 5.
5. Abide by a goal of providing 5.0 percent of the endowment annual earnings to the Park to support agreed to programs. Any earnings in excess of the spending policy shall be reinvested in the endowment fund and it will be the goal of the Board of Trustees to preserve the corpus of the endowment. In the event of a shortfall in annual portfolio earnings, i.e., annual earnings of less than 8.0 percent, the Partner will make every effort to maintain the continuity of funding to the Park by providing up to 5.0 percent of the endowments annual earns to the Park. However, such funding determinations must be made by the Partner in light of the investment objectives of Paragraph 4.
6. Upon termination of this Agreement, dissolution of the Partner, voluntary relinquishment of the Partner commitment to manage the endowment, or dissolution of the endowment, transfer all funds and all in-kind donations not previously transferred to NPS for the benefit of Park, if any,

less outstanding expenses reasonably incurred by the Partner and allowable under this Agreement, either to a mutually acceptable third-party who will continue to manage the endowment, as appropriate. In the event that funds cannot be transferred to a third-party for management they will be transferred to NPS. To the extent possible, such funds will continue to be used consistent with the purpose for which they were donation donated. If the donations cannot be used for their intended purposes, after consultation with the Partner, NPS will either return the donations or, with the assistance of the Partner, contact the donors for further instructions regarding their use or disposition. The disposition of donations made for the sole and express purpose of supporting Partner operations shall be governed by Partner policies.

### **8.3. Determination of Feasibility for Fundraising Success**

The feasibility study evaluates the readiness of an organization (both the park and the nonprofit support partner) to undertake the proposed fundraising effort, the willingness of potential donors to support it, and the likelihood of success. It is conducted by a consultant or campaign counsel and can take three to six months to complete. The feasibility study typically includes an assessment of the following:

- **Credibility:** Do prospective donors have confidence in the mission, programs and leadership of both organizations?
- **Case for support:** Is there a clearly articulated reason for giving and do potential donors understand it?
- **Prospect base:** How many prospective donors can be identified? Are these highly cultivated relationships that are eager to support the campaign? Are there enough prospects with the ability to give at the levels needed to reach the goal?
- **Campaign leadership:** Is a group of highly influential and committed volunteers in place?
- **Institutional readiness:** Are the organization's systems in place to support the day-to-day business of running a fundraising effort? Is the park staffed to support the partnership?
- **Fundraising environment:** What external factors might influence the campaign's success?

Feasibility studies would continue to be required for projects over \$1 million with the option for a partner to request a waiver submitted to the Director through the National Partnership Office. Assessment of waiver requests is based on the experience of the partner in fundraising efforts of the magnitude proposed and the experience of the superintendent and park staff in executing the type of project contemplated.

### **8.4 Fundraising Plans**

The fundraising plan considers organizational, philanthropic and societal issues that may impact fundraising, outlines financial goals and strategies and presents budgets and timelines. The fundraising plan should generally include the following information:

- The goal of the effort;
- A description of the campaign's relationship to the mission/strategic plan of the nonprofit fundraising partner organization;
- A description of the results of the feasibility study (if applicable);
- The target audience or market;
- Fundraising and solicitation strategies;
- Cultivation and socialization plans;
- Composition of the campaign committee (the "campaign committee," formed of board members and volunteers, leads and manages the fundraising effort);
- Identification of the NPS role (including the role of the superintendent, senior staff, other NPS employees);
- Acknowledgement and reporting requirements;
- Donor Recognition (may reference a Donor Recognition Plan);
- The timeline;

- The fundraising budget and financial plan; and
  - Benchmarks and evaluation procedures/deadlines.

The National Partnership Office must be notified if the partner anticipates the solicitation of entities holding or seeking concession contracts during the fundraising effort. The National Partnership Office will notify the WASO Concessions Office of the intent and coordinate a formal consultation with the Park, Region, and WASO to determine whether such a solicitation is appropriate.

In addition, should the partner anticipate soliciting contributions from companies which would result in associating the NPS with the manufacture or sales of alcohol or tobacco, the National Partnership Office must be notified. The notification should explain the nature of the solicitation and the donor recognition that will be accorded to the donor.

# Chapter 9

## 9.0 Construction – Partnership Construction Projects

## 9.0 Partnership Construction Process

Construction of facilities in the National Park System is primarily accomplished with appropriated funds. However, various construction projects throughout the system have been built at least in part utilizing donated funds. Construction projects undertaken with donations are considered “Partnership Construction Projects” and are further described in this section and on the NPS Partnership web site: ([www.nps.gov/partnerships/capital\\_campaigns.htm](http://www.nps.gov/partnerships/capital_campaigns.htm)).

Partnership construction projects are evaluated using the same criteria as those used for appropriated funds. They must:

- (a) Be for a previously identified priority, consistent with general management plans and support the NPS’ mission;
- (b) Be included in the NPS five-year capital plan if any appropriated funds are to be used for the project;
- (c) Be sustainable over time in terms of maintenance and operations.

Section 9.1 of NPS Management Policies contains additional information on construction and facility planning and design. Additional guidance on NPS construction is available from the Regional Construction or Facility Management contacts, the WASO Office of Construction Management, and the Denver Service Center.

The Partnership Construction Process is a five-phase process that is designed to guide a partnership project from its initial conception through project definition and development, to implementation. Partnership Construction Projects are reviewed and approved through the process as generally described in the Partnership Construction Process flowchart and checklist (see below). The five phases of the process are:

1. Initial Phase: Project is generally defined and determined a park priority and appropriate for fundraising. A partner is agreeable to work on the project and the project is a priority of the appropriate region.
2. Project Definition Phase: In depth definition and project scoping. Regional Director reviews and recommends. Development Advisory Board (DAB) reviews (over \$500,000), WASO review and recommendation. Projects over \$5 million reviewed by Congress for appropriateness.
3. Agreement Phase: Requirements of DO 21 addressed. WASO review and recommendation. Congressional review of projects over \$5 million. Director and/or Regional Directors approve and sign appropriate agreements.
4. Development Phase: Fundraising undertaken by partner, project plans and specifications developed for project either by NPS or partner depending on agreement, DAB review and final approval.
5. Implementation Phase: Project constructed.



**CHECKLIST FOR PRIVATE-PUBLIC PARTNERSHIP CONSTRUCTION  
PROJECTS GREATER THAN \$500,000  
BY PHASES OF DEVELOPMENT**

The following represents a list of criteria that should be addressed before the Director will approve a private-public<sup>[1]</sup> partnership construction project.

**INITIAL PHASE**

1. The project is a desired priority for the park, and as such, is included along with the park's other non-recurring needs in PMIS. If not presently identified in PMIS, the project must be entered into PMIS.
2. The concept is identified in an approved park general management plan and/or other park planning documents.
3. The park staff has assessed the compliance requirements and prepared an initial plan to ensure that those and other statutory obligations will be met.
4. The project is appropriate for a fundraising partnership.
5. The superintendent and the partner have demonstrated the capacity to undertake a project of this size and scope. The superintendent and partner have reviewed the relevant policy, and understand the partnership construction process and its requirements. A primary point of contact has been identified in the region to work with the park and partner on project-related issues.
6. The Regional Director has received and concurs with a statement of mutual interests, roles and responsibilities with regard to the development of the potential partnership contained in a memo of intent signed by the superintendent and the partner.
7. The Regional Director has determined that the potential partnership is ready to move forward to the Project Definition Phase and has identified it as a regional priority.

**PROJECT DEFINITION PHASE**

1. The project's scope, in terms of location, size and function, is clearly defined.
2. Appropriate NPS planning models have been applied. Deviations from the models have been identified and justified. (Note: A project consistent with the model does not guarantee that NPS will deem the facility size acceptable.)
3. The projected visitation of the facility has been determined and verified through accepted procedures.
4. The gross construction cost of the project is clearly estimated (Class C).
5. The estimated life cycle costs of operation and maintenance for the project to be incurred by the NPS and/or the partner (as applicable) are identified.
6. There is a decision as to whether an endowment for operation and maintenance of the facility or other improvement will be established.
7. The project's architectural themes, style and vocabulary are established.

8. The proposed functions of the building or other improvement are further refined and fully described.
9. The roles and responsibilities of the partners in the funding, construction, use and operation of the building are clearly delineated. All sources of funding for this project and responsibility for generating such funding have been determined and the initial understanding of the program to fund and operate the project is developed.
10. Estimated revenue from the building, if applicable, is determined based upon elements of the building size and visitor use projections by qualified consultants.
11. The Regional Director has reviewed and approved the project to be submitted to DAB for review and approval of the concept.
12. Projects proposed for park sites in areas with joint management or legislated oversight by external bodies have secured the appropriate approval from those organizations.
13. DAB has seen the project and approved the conceptual design.
14. After the DAB review/approval of the concept, for projects valued \$1 million and greater, the project is submitted to the AD-PPFL for review to determine if the criteria and requirements of the partnership construction process have been satisfied. For projects valued from \$1 million to \$5 million that have satisfied the requirements of the process, the AD-PPFL recommends to the Director that the project be approved to move to the next phase of the process, the Agreements Phase. For projects valued at \$5 million and greater that have satisfied the criteria of the process the AD-PPFL recommends to the Director that the project be sent for Congressional Consultation. The Director reviews and concurs, and the project is submitted among other projects on a quarterly basis through the Department and OMB for congressional consultation for a 30-day period of time.
15. Once a project has completed the 30-day period of congressional consultation, the AD-PPFL notifies the region and park that the Project Definition Phase has been completed and that the project is ready to move into the Agreements Phase.

## **AGREEMENT PHASE**

1. A fundraising feasibility study has been conducted to determine if the proposed fundraising goal is feasible for the proposed project, and if not what level is feasible as well as how best to position the case statement, the board of directors, and the park support personnel to succeed in reaching the fundraising goal.
2. A fundraising plan has been developed. Elements include: case statement, fundraising goal, results of the feasibility/planning study, target market or audience, the fundraising strategies, NPS role, acknowledgement and reporting requirements, fundraising budget, and the benchmark and evaluation pieces.
3. A donor recognition plan has been developed.
4. A communications plan has been developed to describe all aspects of the public communication on the project. Elements include: 1) the proposed timing of the announcement of any public fundraising campaign, 2) communications within the NPS, and with the media, Interior Department Officials, and Congress, and 3) a description of how the campaign will be conducted.

5. A financial management plan has been developed.
6. All other documents required under DO #21 have been prepared and submitted to WASO along with the recommendation for approval memorandum addressed to the AD-PPFL from the appropriate Regional Director.
7. The partner has agreed that soliciting Congress is not to be part of the fundraising strategy and a non-lobbying statement is included in the draft fundraising agreement.
8. An exit strategy has been developed to describe how the project will be managed if conditions change and the partnership fundraising effort is not successful.
9. The project is phased in such a way as to allow components to be built in the event that the partner is not able to raise all of the funds in the agreed to timeline.
10. The roles and responsibilities of the NPS and partners are clearly delineated with regard to fundraising, government funding (if any), project design, funding for legal and regulatory compliance, operation and maintenance responsibilities, liability issues resulting from cost over-runs and design and construction standards, processes, oversight, and approvals.
11. A fundraising agreement has been prepared with the input from the park contracting officer if appropriate, the Solicitor's Office, the Regional Office and the WASO Partnership Office.
12. Once the recommendation for approval memo accompanied by all documentation has been received by the WASO Partnership Construction Program Manager, the policy review will commence and be completed. A memorandum of recommendation will be prepared for transmittal by the AD-PPFL, through the Deputy Director for Operations recommending:
  - a). for projects valued from \$1 million to \$5 million dollars that have satisfied all the requirements of the partnership construction process and have satisfied the requirements of DO #21 that the project be approved and that the Director sign the fundraising agreement;
  - b) for projects valued \$5million and great that have satisfied the requirements of the partnership construction process and have satisfied the requirements of DO #21, that the project be submitted for congressional review and concurrence.
13. After a project has been successfully through the congressional approval process, the project is approved by signature of the Director and/or Regional Director and notification that approval is granted with the signing of the fundraising agreement by the appropriate NPS official and the transmittal of the NPS signed agreement to the partner(s) for their signature(s). Once the partner(s) sign the fundraising agreement and return two signed copies to the NPS (one for the park, one for WASO), the Agreement Phase is completed and the project moves into the Development Phase.

## **DEVELOPMENT PHASE**

1. All projects will proceed through the design process in accordance with established policy of the NPS for design and construction and must complete another presentation to the DAB, following established procedures.

2. Changes in the scope or cost of the project, or the funding requirements of the NPS or the partner, require that the fundraising agreements be revised and approved by the Director in accordance with the requirements of the “Agreements Stage”. Changes in scope and cost may also require DAB Review.
3. Changes in the requirements of the “Quiet Campaign and Public Campaign” may require the fundraising agreement to be revised and approved by the Director in accordance with the requirements of the “Agreement Stage”.

## **IMPLEMENTATION PHASE**

1. Once all funds are in hand, then the contracting process moves through the established rules and procedures of the NPS for contracting and construction.

The partnership construction process is further described at:

[http://www.nps.gov/partnerships/capital\\_campaigns.htm](http://www.nps.gov/partnerships/capital_campaigns.htm)

Templates of transmittal memoranda will be included at a later date.

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<sup>[1]</sup> A joint project between NPS and a non-governmental entity (a Friends Group, for example) where the partner will be engaged in fundraising.