

## **GUIDANCE on the Use of Philanthropic Partnership Agreement Templates**

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#### **1--TEMPLATE LANGUAGE:**

Agreement template language has been developed, in coordination with DOI Solicitors, in response to field requests and to reflect current policies and legal requirements. Approximately 80% of each template is “pre-written” and is be used, as is, in all agreements. The other 20% is inserted by the park and partner to describe the activity or project being undertaken, the authorities that support these activities, background information about the park and partner, and the roles and responsibilities of the parties.

The .pdf editions of the templates are provided in this document. The .doc/docx editions are available from Regional Partnership Coordinators, who are listed in Section 10.

#### **2--INSTRUCTIONS:**

An Instructions Sheet is provided for each type of agreement. Instruction Sheets explain the purpose of each agreement and when to use it. They also describe signature/approval thresholds, how to show proposed modifications, and provide information related to reviews and approvals.

#### **3—SIGNATURES / APPROVALS:**

Each agreement has specific signature authority, which corresponds with the approval thresholds in Director’s Order #21 on Donations and Fundraising. These thresholds are summarized here for your convenience.

#### **NOTES:**

- a) “Fundraising” includes solicitations for goods or services as well as for funds.
- b) Refer to DO#21, Section 4.3, for additional conditions and thresholds.
- c) Delegations of authority need to be in writing and retained in agreement files.

Your Regional Partnership Coordinator, in consultation with the WASO Office of Partnerships and Philanthropic Stewardship, can help you with any questions you may have regarding the intellectual property provisions of the agreements.

## GUIDANCE for Partnership **Agreements: updated 4.2.12**

**Basic Fundraising Agreements:** Used when fundraising goal is between \$25,000 and \$100,000.

- Regional Directors sign Basic Fundraising Agreements, unless a written delegation of authority is issued.

### **Friends Group Agreements:**

- Superintendents sign Friends Group Agreements.

**Friends Group Agreement Annual Work Plans:** When the fundraising goal per Identified Project is:

- Less than \$25,000 -- Superintendent signs.
- \$25,000 to \$1 million -- Regional Director signs.
- Regional Director may delegate authority to Superintendent when the fundraising goal for each Identified Project is less than \$100,000.

**Friends Group Fundraising Agreements:** Used when fundraising goal is \$1 million and above.

- The Director signs Friends Group Fundraising Agreements.
- The Director may delegate authority to a Regional Director where the fundraising goal is less than \$5 million and there is no federal contribution of funds to the project or program. See DO#21, Section 4.3, for additional conditions and details.

**Comprehensive Fundraising Agreements:** When the fundraising goal is:

- \$100,000 to \$1 million – Regional Director signs.
- \$1 million and above – Director signs.
- The Director may delegate authority to a Regional Director where the fundraising goal is less than \$5 million and there is no federal contribution of funds to the project or program. See DO#21, Section 4.3, for additional conditions and details.

**Partner Design & Construction Agreements:** When the project cost is:

- \$100,000 to \$1 million – Regional Director signs.
- \$1 million and above – Director signs.
- The Director may delegate authority to a Regional Director where the project cost is less than \$5 million and there is no federal contribution of funds to the project or program. See DO#21, Section 4.3, for additional conditions and details.

**AMENDMENTS TO AGREEMENTS are signed at the same level as the original agreement.**

**4--ATTACHMENTS:**

Each agreement requires certain attachments. The following charts reflect those attachments that are required and those attachments that may be required, if applicable to the particular park-partner situation.

The Annual Work Plan, Intellectual Property, Endowment and Investment Account, Property Use, and Contractor Certification attachments are included as part of this document with their respective agreements.

**Basic Fundraising Agreements:**

<b>Required Attachments</b>	<b>May be Required, if applicable</b>
	Property Use Agreement
	Intellectual Property Agreement

**Friends Group Agreements:**

<b>Required Attachments</b>	<b>May be Required, if applicable</b>
Intellectual Property Agreement	Property Use Agreement
Donor Review Process (Partner-produced)	Endowment and Investment Account Agreement
Donor Recognition Plan (produced by Park and Partner)	
Articles of Incorporation (Partner's)	
IRS Determination Letter (Partner's)	
Annual Work Plan	

**Friends Group Fundraising Agreements:**

<b>Required Attachments</b>	<b>May be Required, if applicable</b>
Friends Group Agreement	Property Use Agreement
Fundraising Feasibility Study (Partner-produced)	Endowment and Investment Account Agreement
Fundraising Plan (Partner-produced)	Business / Financial Plan (Partner-produced)
Donor Review Process (Partner-produced)	
Donor Recognition Plan (produced by Park and Partner)	

### Comprehensive Fundraising Agreements:

Required Attachments	May be Required, if applicable
Intellectual Property Agreement	Property Use Agreement
Fundraising Feasibility Study (Partner-produced)	Endowment and Investment Account Agreement
Fundraising Plan (Partner-produced)	Business / Financial Plan (Partner-produced)
Donor Review Process (Partner-produced)	
Donor Recognition Plan (produced by Park and Partner)	
Articles of Incorporation (Partner's)	
By-Laws (Partner's)	
IRS Determination Letter (Partner's)	

### Partner Design & Construction Agreements:

Required Attachments	May be Required, if applicable
Project Description	Property Use Agreement
Financial Obligations	
Project Development Plan	
Site Plan	
Contractor Certification Form	

### 5--MODIFICATIONS:

You may find that some template clauses are **not applicable** to a particular park-partner situation. In those cases, please retain the Article / Section number and heading, insert the words “Not Applicable,” and provide an explanation in “New Comment” box. Should other modifications be proposed, please use “Track Changes” to reflect proposed modifications and “New Comment” to describe why a modification is needed. This will enable Regional and Washington reviewers to focus their reviews on the proposed changes. This will also enable the Office of Partnerships & Philanthropic Stewardship to track, over time, the types and frequency of certain modifications to determine if there is a need to revise the template itself.

Documents that do not show track changes or are not clearly marked to indicate no changes were made to the template will not be reviewed until the Park provides a “Track Changes” copy.

[**Note:** Click the REVIEW tab in WORD to locate “Track Changes” and “New Comment” features.]

### 6--SAMPLE AGREEMENTS:

Upon request, Regional and Washington Partnership Offices may be able to provide examples of other agreements that have recently been approved. These can often trigger program or project ideas or SOPs that can be put to use in other partnerships or simply get the creative juices flowing. However, please note that language that has been altered to fit one partnership will not necessarily be appropriate for

another partnership and the template should be the starting point for all new agreements. In addition, some information in a fundraising package, such as a partner's fundraising feasibility study, funding plan or business plan may contain confidential information that is not appropriate to circulate. Parks, as well as Regional and Washington Partnership Offices, are responsible for withholding that information.

## **7--REVIEWS:**

### **Regional Reviews**

Since each Region may have different review protocols, please check with your Regional Partnership staff. In general, Regional Partnership staff coordinates the regional reviews, including Regional Solicitors, and facilitates getting the Regional Director's approval or concurrence, as per approval authority. [*See Item 3 – Signatures / Approvals*] Regional staff also assists parks in identifying and resolving any issues or gaps in information prior to sending Agreement packages forward to WASO.

### **WASO Reviews**

#### ***WASO Review of DRAFT Agreements***

- WASO Partnership Staff and Washington Solicitors will review Draft Agreements, if requested by the Park or Region. These reviews can help identify and resolve issues or questions before the document is finalized and formally submitted. However, these draft reviews do not constitute official final review, and there may be other comments or questions asked during the final review.
- Some parks generate several Draft Agreements before they are finalized. Please DATE each Draft and use "Track Changes" to differentiate one draft from the others.

#### ***Submitting FINAL Draft Agreements to WASO for Approval***

- When a Final Draft Agreement package is submitted to WASO for review and approval, it is reviewed by a several people – including the Office of Partnerships & Philanthropic Stewardship; the Washington Solicitor's Office; the Assistant Director for Partnerships and Civic Engagement, other Associates or program managers as appropriate; both Deputy Directors; and the Chief of Staff, before being signed by the Director.
- The length of time for final review / signature varies from project to project and is based primarily on the reviewers' schedules and whether questions or concerns are raised about the project.

#### **Parks can help expedite final reviews and approvals by doing the following:**

**1)—Submit all components of an Agreement as a package at the same time.** For instance, a Fundraising Agreement package consists of a *Transmittal Memo* from the Park through the Regional Director to the Director, *Summary Sheet*, the *Fundraising Agreement*, and all applicable *Attachments*.

<p><b>PLEASE NOTE:</b> WASO does not begin its formal review until all components of an agreement package have been submitted, as each component adds to the complete understanding of the project and of the roles and responsibilities of the involved parties.</p>
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**2)—Use “Track Changes” to show variances from the Agreement template language, and use “New Comment” to explain why changes or omissions are being proposed.** This expedites reviews by focusing reviewers on changes to template language.

- WASO Office of Partnerships & Philanthropic Stewardship will initially review the documents and contact the Park if there are questions or needs additional information.
- If there are no questions, etc. Washington Partnership staff will finalize the documents (i.e., produce a clean document) and enter the package into DTS (Data Tracking System), which circulates the package for surnames and signatures.

**3)—Send the Agreement to WASO without any signatures.** The Director signs first to reflect his approval of the agreement and associated activity. The Agreement, with Director’s signature, will be returned to the Park for additional signatures.

**4)—When you receive the Agreement, signed by the Director, and have obtained all other signatures,** please submit a PDF version of the fully executed (fully signed) agreement to WASO Office of Partnerships & Philanthropic Stewardship for its files.

**5)—IMPORTANT: Changes proposed after an Agreement has been signed by the Director need to be discussed with the WASO Office of Partnerships & Philanthropic Stewardship.** Changes may trigger policy or legal issues or revise previously held assumptions. Changes to project scope, scale, funding sources and funding responsibilities are considered major changes and may require additional approvals by the Director, the Development Advisory Board, Solicitors or Congress.

## **8--TRAINING:**

WASO and Regional Offices offer regular training on the use of partnership agreements and related partnership issues. Information about future TELNET and Webinar classes will be circulated to all Regional Partnership Coordinators and posted on DOI Learn. Past training on partnership construction projects is available at:

<https://npspartnerships.webex.com/npspartnerships/lsr.php?AT=pb&SP=EC&rID=18421077&rKey=c1716f1cddfb738c> (*Webinar - May 11, 2011*)

<http://www.samo.nps.gov/11video> (*TELNET – April 14, 2011*)

**9--QUESTIONS:**

If you have questions about the use of the templates, please contact your Regional partnership coordinator or the Washington Office of Partnerships and Philanthropic Stewardship.

**10--CONTACTS:** (as of March, 2012)

**Regional Partnership Contacts:**

Alaska	Alex Carter
Intermountain	Krista Muddle
National Capital	Wendy O'Sullivan
Northeast	Leslie Dietrich
Midwest	Diane Keith
Southeast	Chris Abbett
Pacific West	Ray Murray

**WASO Contacts:**

Karyn Ferro  
Linda Neal

**Regional Construction Contacts:**

Alaska	John Chekan
Intermountain	Rick Shireman
National Capital	Doug Jacobs
Northeast	John Piltzecker
Midwest	Kathy Schneider, Mark Wolterman
Pacific West	Debbie Campbell
Southeast	Dennis McCarthy

**WASO Contact:** Mike LeBorgne

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## **INSTRUCTIONS FOR THE USE OF A BASIC FUNDRAISING AGREEMENT**

A **Basic Fundraising Agreement** is used to authorize individuals, non-profit organizations, for-profit organizations or businesses (Applicant) to solicit funds and/or in-kind goods or services\* for the benefit of the NPS, where the fundraising goal is \$25,000\*\* or more, up to \$100,000.

[\*The estimated value of in-kind donations is provided by the Applicant. \*\*An agreement is not necessary for fundraising totaling below \$25,000 annually but, at the request of an Applicant, NPS will process voluntarily submitted Agreement applications for fundraising below \$25,000 to ensure that NPS may accept the proposed donation.]

This Basic Fundraising Agreement template is used for organizations that do **not** have a Friends Group Agreement.

**Term:** The term of the Basic Fundraising Agreement is 2 years maximum.

### **Signatures / Approvals:**

- ° Regional Directors sign Basic Fundraising Agreements.
- ° Regional Director may delegate authority to Superintendent.

Delegations of authority should be in writing and retained in agreement files.

**Solicitor Review:** The Regional Solicitor should review Basic Fundraising Agreements to ensure that the appropriate authorities are cited and cover the activities described in the agreement, and review any proposed changes to approved template language. If proposing changes, use “Track Changes” and “Comment” box when submitting drafts to Solicitors or other reviewers.

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### **Frequently Asked Questions:**

**1. May an Applicant raise funds for an existing NPS-approved endowment?**

Yes, but the Basic Fundraising Agreement does not authorize the establishment of an endowment.

**2. May an Applicant (1) state or imply that the Department of the Interior, NPS or Government employee endorse a business, brand, product or service, or (2) use the fact that it provided a donation to NPS to market a business, brand, product, or service?**

No. Federal law generally prohibits the Department of the Interior, NPS or Government employees from stating or implying an endorsement of a business, brand, product or service. NPS may, however, publicly thank individuals, organizations, and businesses for their philanthropic contributions. Likewise, Applicants may inform the public of donations to NPS, e.g., through press releases or newsletters. But Applicants may not utilize the fact that they made a donation in a marketing campaign designed to promote a business, brand, product or service. Marketing campaigns designed to showcase a donation and demonstrate the goodwill of a corporate donor are authorized through a separate Corporate Campaign Agreement.

**3. If the Applicant is a for-profit business, from whom may they solicit donations?**

For purposes of this Agreement, a business may seek contributions from its employees, a parent company, subsidiaries, or affiliates, but not from the general public or the business’s customers.

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

**BASIC FUNDRAISING AGREEMENT**

This Basic Fundraising Agreement (Agreement) is entered into between the [Insert Name of Park], National Park Service, and [Insert Name of Applicant] (Applicant) for the purpose of [insert purpose].

The Article headings in this Agreement are inserted only as a matter of convenience and shall in no way be construed to define or limit the scope or intent, or affect the meaning or interpretation of this Agreement. The phrase “for the benefit of NPS” means donations of money (including interest thereon) and / or in-kind donations that were solicited for the express purpose or implied purpose of using them, whether in whole or in part, to support NPS, or NPS’s projects, programs or resources. This Agreement shall not be construed in favor of or against either party by reason of the extent to which such party or its professional advisors participated in the preparation of this Agreement or based on a party’s undertaking of any obligation under this Agreement.

**I. Background Information** [Applicant to fill in Part I]

A. Applicant’s name and address.

B. What is the Applicant’s status? Check applicable line.

\_\_\_\_\_ Individual

\_\_\_\_\_ Non-profit organization incorporated under state law  
[If checked, insert name of State]

\_\_\_\_\_ For-profit business  
[If checked, 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 [If “yes” is selected, please explain.]

\_\_\_\_\_ No

C. What is the fundraising goal? Please include the monetary fundraising goal and / or the type and estimated value of any in-kind donations of goods or services.

- D. How will funds or in-kind donations be expended or used by the Applicant and / or by NPS?
- E. If the Applicant is fundraising for a specific project or program; e.g., restoring a structure, creating a park interpretive program, etc., will the funds, goods or services raised be sufficient to undertake and maintain the project or program, or will additional resources be needed. If additional resources will be needed, please identify them and explain how these resources will be acquired.
- F. How will funds and / or in-kind donations be raised; e.g., special events, personal solicitations, website or newsletter solicitations, other?
- G. How will donors be recognized for their contributions?

## **II. Agreement Terms**

### **A. The Applicant agrees –**

1. That fundraising costs will not exceed 20% of funds raised. Fundraising consultants or staffs, if compensated, are to be paid a salary or flat fee; no payment may be made as commissions or as a percentage of funds raised.
2. Not to state or imply Department of the Interior, NPS, or Government employee endorsement of any business, brand, product or service.
3. That except as provided in Part II.A.1 above, all funds held by the Applicant in association with this Agreement will be deposited in a federally insured bank account and will be used consistent with the terms of this Agreement. Such funds will not be commingled with other funds held by the Applicant.
4. That cash donations will either (a) be provided by check to NPS for deposit in a Government account and used by NPS consistent with the terms of this Agreement; or (b) with the written concurrence of NPS, be expended by the Applicant on agreed to goods and services for the benefit of NPS.
5. To inform potential donors that NPS may use their donations to support other park projects if their donations cannot be used for their originally intended purpose.
6. To inform potential donors of the tax implications of their donations to the extent, if any, the Applicant is required to do so by state or federal law.

## Basic Fundraising Agreement Template 9.13.11

7. To the extent that the Applicant commits in this Agreement or any related agreement to raise funds from non-federal sources for a particular purpose or project to benefit the NPS, the Applicant agrees that it will not lobby for or otherwise seek the appropriation of funds from Congress to meet that commitment. The Applicant may not use any appropriated funds (including property, utilities, or services acquired with, or supported by, appropriated funds) to lobby or attempt to influence Congress or any official of any government.
8. Not to portray either Congress or the NPS as having failed to meet its responsibilities to fund NPS operations or units of the National Park System.
9. Not to accept donations for the benefit of the NPS that associates NPS with alcohol or tobacco products.
10. Not to solicit or accept donations for the benefit of the NPS from NPS's concessioner unless NPS approves the acceptance of such donations in writing.
11. To recognize donors consistent with applicable NPS donor recognition policies and applicable Park Donor Recognition Plans.
12. To obtain written approvals or permits from the Park before undertaking in-park activities associated with this Agreement.
13. That 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, the Applicant will contact the NPS Key Official identified in Part II.C below so that NPS may review the donation to ensure its consistency with NPS policies.
14. To permit the Department of the Interior or its designee, including the NPS Comptroller and Office of the Inspector General, to verify and audit any financial audit or records from the books, correspondence, memoranda and other records of the Applicant, relating to this Agreement, during the period of this Agreement, and for such time thereafter as may be necessary to accomplish such verification.

### **B. The NPS agrees -**

1. To recognize the Applicant and donors in conformance with applicable NPS donor recognition policies. NPS will provide applicable donor recognition policies and Park Donor Recognition Plans to the Applicant.
2. That to the extent practicable, NPS will provide staff to explain to prospective donors how their donations will assist in meeting NPS needs.

3. To process applications submitted by the Applicant for proposed in-park activities.
4. To review and approve in writing proposed donations of in-kind goods and services prior to their acceptance by either the Applicant or NPS, thereby helping to ensure that the donations meet NPS's needs, requirements, and specifications.

**C. Key Officials:** Each party shall designate key personnel (Key Official) to be responsible for coordination and communication between the parties in connection with the activities to be performed pursuant to this Agreement. Changes to Key Officials will be communicated in writing.

**For NPS:**

Name:  
Title:  
Address:  
Phone:  
Fax:  
E-mail:

**For Applicant:**

Name:  
Title:  
Address:  
Phone:  
Fax:  
E-mail:

**D. Term:** This Agreement will expire one year from the date it is signed by the Superintendent. This Agreement may be extended by the parties, in writing, prior to the expiration date, for up to an additional one year term, and may not be renewed thereafter.

**E. Termination or Expiration:**

1. Each party may immediately terminate this Agreement for a material breach of this Agreement. In this event, the Agreement shall terminate upon the breaching party's receipt of a written notice.
2. Each party may terminate this Agreement for any other reason by giving thirty (30) days written notice. The termination will be effective at the end of the thirty (30) day period.
3. Unless expressly provided for in this Agreement or related agreements, neither party shall be liable for any costs, damages, or other claims that result directly or indirectly from termination of this Agreement. All other rights and claims of the parties shall be preserved. All funds and in-kind donations raised for the benefit of the NPS or a unit of the National Park System, less costs allowable under Part II.A.1. of this Agreement, will be transferred to NPS within 60 days of termination or expiration of this Agreement.

**F. NPS Appropriations:** Pursuant to 31 U.S.C. § 1341, nothing contained in this Fundraising Agreement shall be construed to obligate the NPS, 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 and their administrative allocation for the purposes of this Agreement. Nor does this Fundraising Agreement obligate the NPS, the Department of the Interior, or the United States to spend funds on any particular project or purpose, even if funds are available.

**G. Compliance with Applicable Laws:** This Agreement and performance hereunder is subject to all applicable laws, regulations, and government policies, 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.

**H. Additional Terms, Modifications and Clarifications:** [Reserved for the Superintendent's Use]

**III. Signatures:** IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date the last signature is affixed.

**[NOTE: Check Instructions Sheet for signature authority. NPS signs first, then Applicant.]**

**NATIONAL PARK SERVICE**

\_\_\_\_\_ Date \_\_\_\_\_  
[Superintendent / Regional Director]

**[APPLICANT'S NAME]**

\_\_\_\_\_ Date \_\_\_\_\_  
Name:  
Title [if applicable]:  
Organization/Business [if applicable]:

## **INSTRUCTIONS FOR THE USE OF A FRIENDS GROUP AGREEMENT**

A **Friends Group Agreement** is used with non-profit organizations that are established primarily to assist or benefit a specific park area, a series of park areas, a program, or the entire National Park System. A Friends Group Agreement provides the legal and policy framework for the work done by the Park and Friends Group. This work is described in an Annual Work Plan.

**Annual Work Plans:** [See Friends Group Agreement, Article IV for further details]

- Identify the specific projects and programs (Identified Projects) that the Park and the Friends Group agree to undertake in a specific year;
- Specify the respective roles of NPS and the Friends Group in carrying out those Identified Projects;
- Describe the budgets for Identified Projects and how they will be funded;
- Authorize the Friends Group to raise up to \$1 million for each Identified Project.

### **Signatures / Approvals:**

- Superintendents sign Friends Group Agreements.
- Superintendents sign Annual Work Plans when the fundraising goal for each Identified Project is less than \$25,000.
- Regional Directors sign Annual Work Plans when the fundraising goal for each Identified Project is \$25,000 to \$1 million.
- Regional Director may delegate authority to Superintendent when the fundraising goal for each Identified Project is less than \$100,000.

Delegations of authority should be in writing and retained in project files.

**[BRACKETED TEXT]** within the Agreement provides explanatory information or direction and should not be included in the final draft Agreement. All other text is pre-approved template language and must be included. Proposed changes to template language should be shown through “Track Changes” and “Comment” boxes. Some provisions may not be applicable to your situation. In those cases, retain the Article number and heading, type in “N/A,” use Track Changes to delete the provision and provide an explanation in the “Comment” box.

**Reviews and Approvals:** When submitting final draft agreements to Regional and Washington Offices for final review and approval, please send the “Track Changes” marked-up copy. This will allow reviewers to focus on proposed changes and information specific to your project and partner.

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

## FRIENDS GROUP AGREEMENT

This Friends Group Agreement (Agreement) is entered into between the National Park Service (NPS) and [INSERT NAME OF FRIENDS GROUP] (Friends Group).

The NPS recognizes the long and valuable tradition of philanthropy in the national parks. Friends groups have played a critical role in the success of this country's national parks, and it is the policy of the NPS to support and strengthen its relationships with friends groups. This document is intended to provide the legal and policy framework for the work done by the [INSERT NAME OF PARK] (Park) and Friends Group, and to encourage innovation and creativity to meet mutual goals.

### **I. Background.**

[Briefly describe the NPS unit involved; the Friends Group, including a description of the Friends Group's nonprofit status; e.g., "the Friends Group is a 501(c)3 organization, incorporated and doing business in the State of [INSERT]. The Friends Group headquarters office is located at [INSERT ADDRESS]; a description of what the parties want to accomplish together (scope of the work) or the relationship they are establishing; a brief history of the relationship between the parties (if applicable); relevant legislation (if it exists); e.g., a statute that directs or authorizes the NPS to undertake activities contemplated in the Friends Group Agreement; other facts critical to understanding the Friends Group Agreement (if applicable); and an explanation of existing or related agreements and/or relationships that affect the Friends Group Agreement (if applicable).]

The parties hereby agree as follows:

### **II. Legal Authority.**

NPS is authorized to enter into this Agreement pursuant to 16 U.S.C. §§ 1-4 and 6, 43 U.S.C. § 1473a and [CITE SUPPLEMENTAL OR ALTERNATIVE STATUTORY AUTHORITIES, IF ANY. CITE LEGAL AUTHORITY OF FRIENDS GROUP, IF NECESSARY.]

### **III. Responsibilities of the Parties.**

Subject to the terms and conditions set forth in this Agreement:

#### **A. Joint Responsibilities of NPS and Friends Group.** NPS and Friends Group shall:

1. Promote this relationship as a way of accomplishing mutual goals pursuant to this Agreement, and recognizing the partnership as a way of leveraging scarce resources so that, together, more is accomplished than either party could do on its own.

2. Increase partnering skills and management capacity and motivate and empower NPS and Friends Group employees and board members to develop a supportive and collaborative culture for the benefit of the park resources and the public.
3. Increase productivity and collective competency by building on successes and expanding capacities for future achievement.
4. Commit energy, people and resources to goals of mutual interest, as identified in the Annual Work Plan, described in Article IV.
5. Respect the role that donors, volunteers, philanthropy, Friends Groups and NPS staff contribute to the achievement of the National Park System.
6. Expedite decisions and agreements considered vital to the parties' mutual goals and to this Agreement.
7. Promote and utilize policies and best practices relating to philanthropy and donor appreciation in all activities related to this Agreement, such as those expressed within NPS Director's Order #21 on Donations and Fundraising (DO #21) and its Reference Guide; the Donor Bill of Rights (created by the Association of Fundraising Professional, the Association for Healthcare Philanthropy, the Council for Advancement and Support of Education, and the Giving Institute: Leading Consultants to Non-Profits).
8. Submit all materials that are intended for public distribution and that refer to the partnership or each other, to one another for advance review and approval. The Parties agree that they may develop standard language that does not require approval beyond the initial approval. Where standard language has not been developed, the parties will use best efforts to review, approve, or deny such materials within seven (7) business days of receipt. NPS agrees that failures on its part to meet the seven (7) day target may be brought to the attention of the Regional Director of NPS who will use his or her best efforts to make sure such reviews are completed in the future in the seven (7) day target.
9. Parties agree that the Park Superintendent, or his/her designee, shall be a non-voting liaison to the Board of the Friends Group.
10. Review proposed donations of funds and in-kind goods and services that are intended to be provided to the Park to ensure that they meet NPS needs, requirements and specifications.

B. Responsibilities of NPS. NPS shall:

1. Work with Friends Group to encourage community engagement in shared stewardship of the Park by the local and national community.
2. Publicly recognize Friends Group as an official park support organization.
3. Support Friends Group in its growth, viability and public impact by identifying projects and programs that will showcase the value of the Friends Group and donor investments in the national parks.
4. Meet with the Friends Group to discuss the requirements of DO #21 and other NPS policies that relate to the work of the partnership.
5. Review proposed donations of funds and in-kind goods and services that are intended to be provided to the Park to ensure that they meet NPS needs, requirements and specifications.

C. Responsibilities of Friends Group. Friends Group shall:

1. Support the mission of NPS.
2. Establish and maintain a collaborative relationship with NPS with the goal of accomplishing philanthropic projects and encouraging volunteer contributions.
3. Be qualified to solicit and accept philanthropic contributions under applicable state and federal laws.
4. Conform to standards of best practices and ethics common to all nonprofit organizations, as well as applicable local, state and federal government laws and regulations.
5. Ensure that fundraising costs for Identified Projects<sup>1</sup> do not exceed 20% of funds raised. Fundraising consultants or staff, if compensated, is to be paid a salary or flat fee; no payment may be made as commissions or as a percentage of funds raised.
6. Ensure that its Articles of Incorporation and Bylaws are consistent with the terms of this Agreement.

**IV. Annual Work Plan.**

A. Annual Work Plan.

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<sup>1</sup> Identified Projects are those projects and programs that the NPS and Friends Group agree to undertake in a specific year. See Article IV – Annual Work Plan.

1. Prior to [INSERT DATE] of each year, NPS and Friends Group shall jointly develop a written plan (Annual Work Plan) that (i) identifies the projects and programs (Identified Projects) that the parties agree to undertake in a specific year; (ii) specifies the respective roles of NPS and Friends Group in carrying out the Identified Projects; (iii) describes the proposed expenditure of available funds held by the Friends Group in connection with the Identified Projects and/or identifies any funds the parties have agreed to set aside for use in future approved projects and/or programs; (iv) identifies NPS' intent, if any, to accept such funds to support the Identified Projects; and (v) authorizes Friends Group to provide appropriate in-kind goods or services to support specific NPS projects or programs. The parties may modify the Annual Work Plan, as appropriate, during the course of the Agreement term by mutually executed amendments.
  
2. Annual Work Plans may authorize Friends Group to raise funds to support one or more Identified Projects. If so authorized, Friends Group may raise up to the fundraising goal specified in the Annual Work Plan, not to exceed \$1 million for each Identified Project. When an Annual Work Plan is used to authorize fundraising, it shall include the following additional information for each Identified Project: (1) the fundraising goal, (2) a description of how Friends Group will raise funds and review donors and donations, and (3) a description of specific donor recognition that will be provided. A separate Friends Group Fundraising Agreement must be used to authorize fundraising for any Identified Project where the total fundraising goal over one or more years is \$1 million or more.

B. Limitation on Solicitations and Fundraising. Friends Group shall not solicit donations of money and/or in-kind goods or services for the benefit of NPS unless the Identified Project for which such donations are to be solicited (i) is set forth in the Annual Work Plan; or (ii) if required under DO #21, a Friends Group Fundraising Agreement has been entered into by NPS and Friends Group. This does not limit Friends Group from fundraising for its general operations or mission.

C. Limitation on Other Actions. Friends Group shall obtain the written approval of NPS, including but not limited to a Special Use Permit, Volunteer Service Agreement, Corporate Campaign Agreement, or Partner Design and Construction Agreement, as appropriate, before (i) holding special events or other activities on NPS property; (ii) bringing volunteers into the Park; (iii) initiating Corporate Campaigns (See DO#21, Section 7.0) or cause-related marketing activities that state or imply NPS involvement or that NPS will benefit; or (iv) constructing any structure or making any improvements on NPS property.

## V. Property Utilization.

### A. Government-Owned Property:

[Use the following provision if Friends Group intends to use Government property in furtherance of this Agreement. If Government property will not be used, delete the provision below, type in “N/A,” and retain Section number and heading.]

“Partner may use Government-owned real and/or other property in furtherance of this Agreement in accordance with the Property Use Agreement, included as Attachment \_\_\_.”

B. **Intellectual Property:** If any activity of either party is expected to result in the creation or donation of any intellectual property rights, or if Friends Group or NPS requires a license to any intellectual property rights of the other party (including website links), the parties shall abide by the terms described in the Intellectual Property License Attachment (IP Attachment) to this Agreement (Attachment A), which addresses the terms and conditions applicable to such intellectual property rights. Friends Group shall not use any intellectual property of the United States of America, including NPS and park specific logos, marks, images of NPS employees in uniform, and taglines, unless authorized in accordance with the IP Attachment.

**VI. Term.** Unless earlier terminated in accordance with its terms, this Agreement shall remain in effect for a period of [INSERT TERM] beginning on the date the last signature is affixed. This Agreement may be extended for an additional term of [INSERT TERM] by the mutual written agreement of the parties prior to expiration.

**VII. Termination and Disposition of Assets.**

A. **Termination.**

1. Each party may terminate this Agreement for any reason by giving advance written Notice of Termination for Convenience. Termination shall be effective 60 calendar days from the date of receipt of the Notice, or upon the termination date specific in the Notice, whichever is later.
2. Each party may immediately terminate this Agreement for a material breach of this Agreement by the other party. In this event, this Agreement shall terminate upon the breaching party’s receipt of a written Notice of Termination for Breach. The non-breaching party may, but is not required to, provide the breaching party with an opportunity to cure the breach by a date specified in a Cure Letter. If the breach is not cured to the satisfaction of the non-breaching party by the specified date, this Agreement will terminate upon the breaching party’s receipt of a Notice of Termination for Breach.
3. Unless expressly provided for in this Agreement or related agreements, neither party shall be liable for any costs, damages, or other claims that result directly or indirectly from termination of this Agreement. All other rights and claims of the parties shall be preserved.

B. Disposition of Assets upon Termination or Expiration of this Agreement or Cessation of Friends Group Operations. Upon the termination or expiration of this Agreement or cessation of the operations of the Friends Group for any reason, those funds held for the benefit of NPS, including all interest and earnings thereon and all in-kind contributions, shall be transferred to NPS or to a third-party deemed acceptable by NPS (under such terms and conditions as are deemed acceptable by NPS) for use consistent with the purposes for which the donations were made. Nothing herein shall prevent Friends Group from satisfying allowable outstanding obligations reasonably incurred in association with this Agreement prior to the termination or expiration of this Agreement.

### **VIII. Insurance**

A. Friends Group should, in keeping with best practices in the nonprofit industry, acquire appropriate insurance. However, where NPS grants Friends Group permission to undertake a specific activity, NPS may condition that permission upon Friends Group acquiring appropriate insurance that is acceptable to NPS.

B. Where Friends Group has acquired insurance, the Department of the Interior and NPS shall be listed as additional insureds. The insurance policy or policies shall specify that the insurer shall have no right of subrogation against the United States and shall have no recourse against the United States for payments of any premiums or deductibles due thereunder. NPS will not be responsible for any omissions or inadequacies of any insurance coverage and amounts in the event that the insurance purchased by Friends Group is inadequate or otherwise insufficient for any reason whatsoever.

C. NPS reserves the right to file insurance claims on its own behalf or to require the transfer of insurance proceeds from Friends Group to NPS where, in NPS's judgment, NPS will undertake remedial work for which the claim is paid.

**IX. Liability and Indemnification.** Friends Group shall indemnify, defend and hold harmless the United States of America and its agents and employees from and against any and all liabilities, obligations, losses, damages, judgments, claims, actions, suits, penalties, fines, costs and expenses (including reasonable attorneys' fees and experts' fees) of any kind and nature whatsoever arising out of the acts or omissions of Friends Group, its employees, agents or contractors (including any contractor's subcontractors), including injury to persons (including injury resulting in death) and damage to property. Friends Group shall promptly pay the United States of America the full value of all damages to the lands or other property of the United States of America caused by Friends Group, its employees, agents, representatives, or contractors (including any contractor's subcontractors) or, as agreed to by the parties, shall undertake the remedial work to repair or replace the damaged lands or property. Friends Group will cooperate with the NPS in the investigation and defense of any claims that may be filed with the NPS arising out of the activities of Friends Group, its employees, agents, representatives or contractors (including any contractor's subcontractors).

## **X. Financial Matters**

A. In General. Friends Group shall maintain proper accounting books and records under a system of accounts and financial controls that is consistent with Generally Accepted Accounting Principles of the United States (GAAP).

B. Right of Inspection and Audit. Friends Group shall permit the Department of the Interior or its designee, including the NPS Comptroller and Office of the Inspector General, to verify and audit any financial audit or records from the books, correspondence, memoranda and other records of Friends Group relating to this Agreement or any other agreement executed in connection herewith, during the term of this Agreement and for such time thereafter as may be necessary to accomplish such verification. Friends Group agrees to take appropriate corrective action based on these audit findings.

C. Provision of Certain Information. By [INSERT DATE], Friends Group shall annually provide NPS (i) a copy of its IRS Form 990 and any amendments thereto and (ii) an annual report of aid (Nonprofit Organization Annual Report of Operations and Aid to Federal Land Management Agency(ies) and a short narrative as described at: [http://www.nps.gov/interp/coop\\_assn/resources.htm](http://www.nps.gov/interp/coop_assn/resources.htm) in the section titled “20XX Call for Submissions.”

D. \$1 Million Threshold for Audit. Once Friends Group raises \$1 million or more in funds for the benefit of NPS, either in a single effort or cumulatively over time, Friends Group shall thereafter annually furnish NPS with a financial audit. The audit will be prepared by an independent certified public accountant (CPA) in conformance with both GAAP and guidelines provided in the DO #21 Reference Guide. Friends Group agrees to take appropriate corrective action based on audit findings. The audit shall be provided to the Superintendent of the affected park(s) within 9 months of the end of Friends Group’s fiscal year.

E. Establishment of Endowment or Investment Accounts. NPS and Friends Group shall mutually determine the need for an Endowment Account and/or Investment Account, where the account will be established for the benefit of NPS. If such a need is identified, the parties shall execute and abide by the terms of the Standard Form Endowment and Investment Account Agreement (EIAA), which describes the use, terms and conditions applicable to such accounts. For purposes of this Agreement, the terms “Endowment Account” and “Investment Account” are defined in the EIAA.

## **XI. Key Officials and Notices**

A. Key Officials. Each party shall designate one or more key personnel to be responsible for coordination and communication between Friends Group and NPS in connection with the activities to be performed pursuant to this Agreement (Key Official). Upon written notice to the other party, either party may designate an alternate to act in the place of the designated Key Official, or designate a new Key Official.

**For NPS:**

Name:  
Title:  
Address:  
Phone:  
Fax:  
E-mail:

**For Friends Group:**

Name:  
Title:  
Address:  
Phone:  
Fax:  
E-mail:

B. Notices. Notices from one party to the other party with respect to this Agreement shall be in writing and delivered by mail, personal delivery, electronic delivery or other appropriate means, to the first listed Key Official of the other party at the address or contact number indicated above, or at such other address or contact number for such Key Official as may be provided by the other party from time to time, and shall be considered to have been delivered upon receipt at the specified address of such Key Official or such other person as mutually agreed by the parties.

**XII. Miscellaneous**

A. Non-Discrimination. All activities pursuant to or in association with this Agreement shall be conducted without discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex, as well as in compliance with the requirements of any applicable federal laws, regulations, or policies prohibiting such discrimination.

B. NPS Appropriations. Pursuant to 31 U.S.C. § 1341, nothing contained in this Agreement shall be construed to obligate NPS, the Department of the Interior, or the United States of America to any current or future expenditure of funds in advance of the availability of appropriations from Congress and their administrative allocation for the purposes of this Agreement, nor does this Agreement obligate NPS, the Department of the Interior, or the United States of America to spend funds on any particular project or purpose, even if funds are available.

C. Limitations on Lobbying. To the extent that the Friends Group commits in this agreement or any related agreement to raise funds from non-federal sources for a particular purpose or project to benefit NPS, the Friends Group agrees that it will not lobby for or otherwise seek the appropriation of funds from Congress to meet that commitment. The Friends Group may not use any appropriated funds (including property, utilities, or services acquired with, or supported by, appropriated funds) to lobby or attempt to influence Congress or any official of any government.

D. Compliance with Applicable Laws. This Agreement and performance hereunder is subject to all applicable laws, regulations and government policies, whether now in force or hereafter enacted or promulgated. Nothing in this Agreement shall be construed as (i) in any way impairing the authority of the NPS to supervise, regulate, and administer its property under

applicable laws, regulations, and management plans or policies as they may be modified from time-to-time or (ii) inconsistent with or contrary to the purpose or intent of any Act of Congress.

E. Disclaimers of Government Endorsement. Friends Group shall not publicize or circulate any materials (including advertisements, solicitations, brochures, press releases, speeches, pictures, movies, articles, manuscripts, or other publications) suggesting, expressly or implicitly, that the United States of America, the Department of the Interior, NPS, or any government employee endorses any business, brands, goods or services.

F. Merger. This Agreement, together with each Annual Work Plan, any Friends Group Fundraising Agreement, and any other agreement or written agreement modification entered into pursuant hereto, contains all the terms and conditions agreed to by the parties, and supersedes any prior agreements between the parties, with respect to the subject matter hereof.

G. Modifications. This Agreement may be extended, renewed, supplemented or amended only when agreed to in writing by the NPS and Friends Group.

H. Waiver. No waiver of any provisions of this Agreement shall be effective unless made in writing and signed by the waiving party. No waiver of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof.

I. Assignment; Binding Effect. Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. The parties waive the defense of lack of consideration.

J. 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.

K. 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 of America, or to any benefit to arise thereupon.

L. No Agency. Friends Group is not an agent or representative of the United States of America, the Department of the Interior, or NPS, nor will Friends Group represent itself as such to third parties. NPS employees are not agents of Friends Group and will not represent themselves as such to third parties. Nothing in this Agreement shall at any time be construed so as to create the relationship of employer and employee, principal and agent, or joint venture as between Friends Group and NPS.

M. Non-Exclusive Agreement. This Agreement in no way restricts either NPS or Friends Group from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.

N. No Third-Party Beneficiaries. Unless expressly stated herein, nothing in this Agreement is intended to grant any legally enforceable rights or provide any benefits to any third party.

O. Survival. The terms of this Agreement that by their nature are reasonably intended by the parties to survive expiration or termination shall survive expiration or termination of this Agreement.

P. 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.

Q. Interpretation. The headings of the Articles in this Agreement are inserted only as a matter of convenience and shall in no way be construed to define or limit the scope or intent, or affect the meaning or interpretation, of this Agreement. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Additionally, the phrase “for the benefit of NPS” means donations of money (including interest and earnings thereon) and / or in-kind donations that were solicited for the express purpose or implied purpose of using them, whether in whole or in part, to support NPS, or NPS’s projects, programs or resources. This Agreement shall not be construed in favor of or against either party by reason of the extent to which such party or its professional advisors participated in the preparation of this Agreement or based on a party’s undertaking of any obligation under this Agreement.

R. Further Assurances. If reasonably requested by one party, the other party shall execute and deliver such other documents and take such other action as may be necessary to effect the terms of this Agreement.

S. Disputes and Venue. The parties agree that in the event of a dispute between them, NPS and Friends Group shall promptly use their best efforts to resolve the dispute in an informal fashion through communication and consultation, or other forms of non-binding alternative dispute resolution that are mutually acceptable to the parties. The parties agree that the venue to commence litigation of any disputes stemming from this Agreement shall be a Federal court with appropriate jurisdiction.

### **XIII. Signatures [NOTE: NPS signs first, then partner]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date the last signature is affixed.

NATIONAL PARK SERVICE

By: \_\_\_\_\_  
Name:  
Title: Superintendent

\_\_\_\_\_  
Date

[FRIENDS GROUP]

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date

**ATTACHMENTS**

Attachment A – Intellectual Property Attachment

Attachment B – Donor Review Process

Attachment C – Donor Recognition Plan

Attachment D – Friends Group Articles of Incorporation

Attachment E – Friends Group By-laws

Attachment F – IRS Determination Letter

Check if included at the time of execution of this Friends Group Agreement []

Attachment G – Standard Form Property Use Agreement

Check if included at the time of execution of this Friends Group Agreement []

Attachment H– Standard Form Endowment and Investment Account Agreement

Check if included at the time of execution of this Friends Group Agreement []

Attachment I – Annual Work Plan

Check if included at the time of execution of this Friends Group Agreement []

## ATTACHMENT [ ] – INTELLECTUAL PROPERTY

### **I. The NPS and Friends Group agree that:**

#### **A. Specific Authorizations to Use Intellectual Property**

1. As used herein, "Marks" means all trademarks, service marks and corporate and brand identification and indicia, including without limitation word marks, logos and other picture marks, phrases, composite marks, institutional images, look and feel, and identifications of each party, whether registered or not. The parties grant to each other use of their respective Mark(s) during the term of this Agreement, for use solely in connection with this Friends Group Agreement (Agreement), and only in the form described and depicted in exhibits to this Attachment A. This Attachment A may be amended to include new exhibits. The license to use Marks does not include the right to use or incorporate the Mark(s) in any other capacity, including collateral marketing, outreach or advertising, or as trade names or internet domain names, without prior written permission.
2. The parties acknowledge and agree that the parties own or otherwise have the exclusive right to use and to license their respective Marks. All uses of Marks by the parties, including all goodwill arising therefrom, shall inure solely to the benefit of the respective owner. A party retains all rights with respect to its Marks that are not specifically granted to another party. Each party, in its sole discretion, may object to use of the Marks by another party by providing written notice to the other. A notice recipient shall have five (5) business days to cure the alleged violation identified in the notice or to reach a mutually agreed to resolution with the notice sender. If the matter is not cured or resolved to the satisfaction of the notice sender by the end of the cure period, use of the Mark(s) at issue by the notice recipient shall discontinue immediately.
3. Each party retains the right to concurrently use and license others to use its Marks anywhere in connection with any purpose.

#### **B. Limited License to Use of Trademarks/Tradenames/Taglines/Logos**

1. All uses by one party of the other party's Marks shall be in accordance with such quality control standards as the licensing party may promulgate from time to time, and each party agrees to refrain from all uses of a licensing party's Marks to which the licensing party objects. All promotional literature and other materials prepared by a party in connection with this Agreement shall bear appropriate copyright and trademark notices as prescribed by the other party, if the other party's content or branding is included therein. Each party agrees that it will not use, register or attempt to register in any jurisdiction, or otherwise appropriate or adopt any name, Mark or logo that is confusingly similar to the other party's Marks. At no time during the term of the Agreement or thereafter shall a Partner attack, challenge or file any application with respect to any NPS

Mark. At no time during the term of the Agreement or thereafter shall NPS attack, challenge or file any application with respect to any Friends Group Mark.

2. In any identification of either party pursuant to this Agreement, one party shall not impair the branding or other identification of the other party, nor alter or remove any copyright, trademark or other protective notices of such other party.

3. The parties agree that, except as may be reasonably necessary, they shall not mask, frame, overlay or otherwise materially alter or affect the images, information, perception, service quality or security of the Marks.

4. All rights, licenses and privileges not expressly granted herein shall remain the sole and exclusive property of the respective parties. Except as provided in this Agreement, upon the termination or expiration of this Agreement, (1) all rights conveyed shall cease and revert to the respective party, and (2) each party shall discontinue all use of the other's Marks.

5. Notwithstanding the foregoing, NPS must review and approve in writing each proposed use of the NPS Arrowhead symbol.

### **C. Rights to Content Created in Furtherance of the Partnership**

For purposes of this Agreement, "Background Intellectual Property" means all rights to copyright, trademark, and to other rights owned by a party prior to the commencement of this Agreement and that are used in the performance of any work under this Agreement. In recognition that each party will be licensing its intellectual property in furtherance of the goals of this Agreement, the following applies to each party as Licensor or Licensee, as the case may be:

1. Licensee acknowledges and agrees that Licensor owns all rights, title and interest in the licensed Background Intellectual Property worldwide, and that Licensee shall not acquire and shall not claim rights in or title to any intellectual property adverse to Licensor.

2. If at any time Licensee acquires (a) any rights in, or trademarks, applications or registration for any licensed Marks; or (b) copyright ownership in any licensed works; or (c) domain names incorporating any of the licensed Marks, upon Licensor's request and at no expense to Licensor, Licensee shall assign all such rights, applications, registrations, ownership, or domain names to Licensor.

3. Licensee's use of the licensed items shall inure to the benefit of Licensor.

4. Licensee may not challenge the validity of licensed Marks or assert any claim adverse to Licensor.

#### **D. Website Links**

1. For the term of this Agreement, the parties grant each other permission to provide a hypertext link from their respective websites to the other's website for the limited purpose of achieving the goals of this Agreement. All destination web pages must be reviewed and approved by the other party and must be consistent applicable laws, policies, and with all terms and provisions of this Agreement.
2. Either party may terminate permission to link to a website at any time, with or without cause, by giving notice in writing. If this permission is terminated, the party receiving the notice must remove the hypertext link within five (5) business days of receipt of notice.
3. When linking from an NPS webpage to a webpage belonging to the Friends Group, NPS may require the display of a disclaimer of government endorsement. NPS typically requires a disclaimer where a website contains references to commercially available brands, goods, or services, or where a website is used for advocacy. When display of a disclaimer is required by NPS, the disclaimers must be satisfactory to NPS and may either be continuously displayed or viewed through a pop-up window.

#### **E. Disposition of Materials Created in Furtherance of this Agreement**

1. Unless otherwise agreed to through written amendment of this Agreement, NPS shall own all right, title, and interest in data and materials produced in the performance of this Agreement, including without limitation, b-roll, rough & fine cuts, final products, and derivative works.
2. Unless otherwise agreed to through written amendment of this Agreement, all intellectual property created in association with this Agreement, including without limitation, b-roll, rough & fine cuts, final products, and derivative works, shall be used by Friends Group solely in furtherance of the goals of this Agreement and for internal reporting purposes.
3. NPS grants Friends Group a royalty-free, non-exclusive, non-sublicensable worldwide license to use, reproduce, distribute, transmit and publicly display content in furtherance of the goals of this Agreement and for internal reporting purposes. Should NPS agree to allow Friends Group to own any of the materials identified in Article Paragraph E.1., Friends Group will provide NPS with a written license agreement to use of such materials upon such terms and conditions as are acceptable to NPS.
4. Friends Group shall provide NPS with signed releases or license agreements for full use of all stock footage, performers, still photographs, music, and other works secured or acquired by Friends Group and used in the creation of

materials in association with this Agreement. All performance, release or copyright fees shall be paid by Friends Group.

5. Friends Group must obtain NPS's written permission prior to sublicensing the right to use materials to a third-party.

[NOTE: The Intellectual Property Attachment is required of all Friends Group Agreements. By signing the Friends Group Agreement, parties are agreeing to the terms of this attachment and do not need to provide additional signatures below. All other users of this attachment should use the signature language below.]

**II. Signatures:**

IN WITNESS WHEREOF, the parties have executed this document as of the date the last signature is affixed.

NATIONAL PARK SERVICE

By: \_\_\_\_\_  
Name:  
Title: Superintendent

\_\_\_\_\_  
Date

[FRIENDS GROUP]

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date

\*\*\*

## ATTACHMENT [ ] – PROPERTY USE

### **I. The NPS and Friends Group agree that:**

A. Subject to the conditions set out in Paragraph B (below), the NPS will provide Friends Group with appropriate use of Government-owned property in furtherance of activities authorized by the Friends Group Agreement dated [insert]. Government-owned property available for Friends Group's use is limited to the property identified and describe in exhibits to this Property Use Agreement (PUA). Each exhibit shall be signed and dated by the parties.

B. Unless otherwise expressly specified in the signed exhibit authorizing the use of specific identified Government-owned property, Friends Group is responsible and will reimburse NPS for all utilities, routine maintenance, and janitorial costs associated with the Friends Group's use of Government-owned property. NPS will use reasonable efforts to calculate reimbursable costs to the Friends Group before June 30 of each year. Friends Group will annually transfer requested reimbursements to NPS by August 30 of the fiscal year in which the costs were incurred.

C. If NPS provides Friends Group with access to NPS computer systems, Friends Group agrees to comply with all NPS Information Technology security and training requirements.

D. Friends Group's access to NPS facilities is dependent on compliance with laws and Government policies respecting Government facility security and NPS's ability to obtain security clearance for Friends Group's access.

E. Permission to use any NPS property is not exclusive to Friends Group. NPS may allow third parties to use the property as well. Friend Group has no property interest or leasehold interest.

F. NPS may terminate its permission to use Government-owned property at any time. NPS will not be liable for any alleged or actual damages resulting from such termination.

G. Friends Group will not use Government-owned property in any lobbying activities.

H. This PUA and associated exhibits are subject to all terms and conditions of the Friends Group Agreement.

**II. Signatures:**

IN WITNESS WHEREOF, the parties have executed this document as of the date the last signature is affixed.

NATIONAL PARK SERVICE

By: \_\_\_\_\_

Name:

Title: Superintendent

\_\_\_\_\_

Date

[FRIENDS GROUP]

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_

Date

\*\*\*

## ATTACHMENT [ ] – ENDOWMENT AND INVESTMENT ACCOUNT AGREEMENT

### I. Definitions:

The term “**Endowment Account**” means a financial account established to produce an income stream through investment vehicles such as stocks and bonds. The base amount in the endowment (the corpus) is generally not expended, and a portion of annual earnings generally remains in the endowment account allowing it to grow at a pace that is equal to inflation. The remainder of earnings will be expended for the benefit of NPS.

The term “**Investment Account**” means a financial account established to produce income through investment vehicles such as stocks and bonds. Investment Accounts are more flexible than Endowment Accounts. Generally, all funds deposited into an Investment Account, including interest and earnings thereon, will be expended for the benefit of NPS. For purposes of this Endowment and Investment Account Agreement (EIAA), low risk interest bearing accounts shall not be considered Investment Accounts.

### II. The NPS and Friends Group agree that:

A. If Friends Group establishes either an Endowment Account(s), or an Investment Account(s), or both, it will do so according to a professionally prepared Statement of Investment Policy (Investment Policy) that conforms to applicable legal requirements and ethical standards for non-profit organizations. The Investment Policy must be provided to the NPS Key Official upon request. The Investment Policy will be updated by the Friends Group as necessary.

B. Friends Group will also utilize an experienced and credential investment advisor to assist the Friends Group with Endowment and/or Investment Account management.

C. Nothing in Paragraphs A or B (above) is intended to grant NPS the ability to interfere in day-to-day Friends Group financial management decisions.

D. Consistent with the provisions of Paragraphs II.A and II.B (above), the Friends Group will establish and manage the Endowment and/or Investment Accounts identified in exhibits to this EIAA. Each exhibit authorizing an Endowment Account or an Investment Account will signed and dated by each party and will contain the following information:

1. The type of account, i.e., Investment Account or Endowment Account.
2. The amount of money the parties anticipate will be deposited in the account over the term of the Friends Group Agreement.
3. A detailed description of how funds deposited in each account will be used for the benefit of NPS.

4. Additional understandings of the parties, if any.

E. The amount of funds (including interest and earnings, as applicable) available for expenditure from an Endowment Account in a given year will be determined by the Friends Group with the assistance of its financial advisors. This determination will take into account sound financial management principles. Nothing herein is intended to require depletion of the corpus of an Endowment Account. Expenditures of an Endowment Account's corpus may only to be undertaken with the written concurrence of NPS.

F. Investment Account funds and Endowment Account funds will be allocated for use in accordance with the terms of the Annual Work Plan process identified in Article IV of the Friends Group Agreement.

G. In appropriate circumstances, NPS may request in writing that Friend Group continue to manage any Endowment Account established by the Partner for the benefit of NPS after termination or expiration of the Friends Group Agreement. In this event, Endowment Account management shall continue to be subject to the provisions of this EIAA, except that Friends Group will make Endowment Account Funds available to NPS upon NPS's written request. NPS may terminate continued Friends Group operation of an Endowment Account by written notice. In this event, Endowment Account funds shall be transferred in accordance with the disposition provisions of Article VII.B of the Friends Group Agreement.

H. This EIAA and associated exhibits are subject to all terms and conditions of the Friends Group Agreement.

**III. Signatures:**

IN WITNESS WHEREOF, the parties have executed this document as of the date the last signature is affixed.

NATIONAL PARK SERVICE

By: \_\_\_\_\_  
Name:  
Title: Superintendent

\_\_\_\_\_  
Date

[FRIENDS GROUP]

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date

## ATTACHMENT [ ] -- ANNUAL WORK PLANS – GUIDANCE + SAMPLE PLAN

### **ANNUAL WORK PLANS are now a required part of every new or extended Friends Group Agreement.**

Many parks have been developing annual work plans with their partners for years; for others, this is a new concept. In a nutshell, an Annual Work Plan summarizes, in writing, what a Park and its Friends Group mutually agree to do each year.

#### **Annual Work Plans:**

- Identify the **projects and programs** (known as “Identified Projects”) that the parties agree to undertake in a specific year. (“Year” can be the federal fiscal year or the Friends Group’s fiscal year);
- Specify the respective **roles** of NPS and Friends Group in carrying out the Identified Projects;
- Include any NPS **property** that Friends Group will be permitted to use and any terms and conditions (in addition to those contained in Attachment A to the Friends Group Agreement) that are applicable to such use;
- Describe the proposed **expenditure of available funds** held by the Friends Group in connection with the Identified Projects, or identify any funds the parties have agreed to set aside for use in future approved projects and/or programs;
- Identify NPS’s intent, if any, to **accept such funds** to support the Identified Projects;
- Identify NPS’s intent, if any, to **utilize available appropriated federal funds** to support the Identified Projects;
- Authorize Friends Group to provide appropriate **in-kind goods or services** to support specific NPS projects or programs;

#### **Include the following provisions:**

- a. “This Annual Work Plan is part of the Friends Group Agreement, dated \_\_\_\_\_, and all terms and conditions of the Friends Group Agreement are hereby incorporated by reference.”
- b. “Proposed deviations from the final Annual Work Plan require the concurrence of both parties in writing.”

#### **Fundraising:**

- Annual Work Plans **may authorize Friends Group to raise funds** to support one or more Identified Projects.
- If so authorized, Friends Group may raise **up to** the fundraising goal specified in the Annual Work Plan, **not to exceed \$1 million** for **each** Identified Project.
- Identified Projects must be **truly independent** and must **not** be a phase or segment of a larger project or program.
- When an Annual Work Plan is used to authorize fundraising, it shall include the following additional information for **each** Identified Project:

- 1--the fundraising goal;
- 2--a description of how Friends Group will raise funds and review donors and donations;
- 3--a description of specific donor recognition that will be provided;

**Additional Guidance:**

- Develop the Annual Work Plan with a **solid understanding** of the terms of the Friends Group Agreement and its Attachments.
- Develop the Annual Work Plan at the **same time each year**. This will facilitate project tracking and completion.
- **Be realistic** as to what is accomplishable in a year. Focus on a few activities and do them well.
- Consult with the Solicitor's Office to ensure that NPS and Friends Group have sufficient **legal authority** to permit the activities identified in the Annual Work Plan and to accept the funds, goods and services being provided by the Friends Group.
- The ability of a Park and Friends Group to carry out the activities described in the Annual Work Plan is always **subject to the availability of funding and staff**. Although both parties may fully intend to commit certain resources, emergencies or other unanticipated situations may occur.
- **Document, in writing, any modifications to the Annual Work Plan**. This will help ensure that Park and Friends Group have the same understandings and expectations throughout the year.

**Annual Work Plans do not authorize:**

- Fundraising efforts of \$1 million or more for each Identified Project;
- Multi-year fundraising efforts;
- Multi-phase projects where each phase is dependent on the other phases;
- Partner-funded design or construction projects (such as facilities, trails, exhibits);
- Corporate campaigns;
- The establishment of an Endowment.

**A SAMPLE ANNUAL WORK PLAN FOLLOWS...**

**SAMPLE ANNUAL WORK PLAN.**

- A. **PARTIES:** This Annual Work Plan is part of the Friends Group Agreement between Reindeer National Park (Park) and Friends of Reindeer (Friends Group), dated \_\_\_\_\_. All terms and conditions of the Friends Group Agreement are hereby incorporated by reference.
  
- B. **YEAR:** Park and Friends Group mutually agree to undertake certain projects and programs (Identified Projects) in the year starting \_\_\_\_\_, and ending \_\_\_\_\_.
  
- C. **IDENTIFIED PROJECTS, ROLES and SCHEDULE:** Identified Projects to be undertaken are described below, along with the respective roles of Park and Friends Group, and a schedule for completion:

Identified Project	Park Role	Friends Role	Schedule
A—			Start: Complete:
B--			Start: Complete:
C--			Start: Complete:

- D. **AUTHORITIES:** Park has consulted with the DOI Solicitor’s Office re: the authorities to carry out the Identified Projects described above, and to accept the donated funds, goods and services described in Item E. Solicitor has confirmed that the following authorities are appropriate for these activities:

*[Insert authorities]*

E. **BUDGET:** The estimated cost to carry out the Identified Projects identified in this Annual Work Plan is \$48,000. Budget breakdown and funding sources are described below:

Identified Project	Estimated Cost	CASH Funding Amount & Source	VALUE OF IN-KIND GOODS AND SERVICES
A	\$7,000.	\$2,000 Park— Unrestricted Donations Acct \$5,000 Friends Group— Available funds	N/A
B	\$18,000	\$16,000 Friends Group – <i>To be raised</i>	\$2,000 -- 120 volunteer hours
C	\$23,000	\$8,000 Friends Group – <i>To be raised</i>	\$15,000 – Equipment rental donation
TOTALS	\$48,000	\$31,000	\$17,000

F. **FUNDRAISING:** This Annual Work Plan authorizes Friends Group to raise \$24,000 and to provide in-kind goods and services valued at \$17,000 to support the Identified Projects described above. Friends Group agrees to comply with all relevant fundraising-related terms, conditions and processes contained in the Friends Group Agreement and in NPS Director’s Order #21.

Identified Project	Fundraising Goal
A	N/A
B	\$16,000
C	\$ 8,000

- A. Friends Group will raise funds by... *[Ex: seeking \$16,000 from “Save the Reindeer Foundation” and tapping 10 Board Members for \$800 each for a total of \$8,000.]*
- B. Friends Group will review donors and donations by... *[Ex: vetting prospective donors for any potential conflict of interest or NPS prohibited sources].*
- C. Donors will be recognized in the following way: *[Ex: Letters of appreciation, signed by Friends Group Executive Director and Park Superintendent, will be sent to all donors.]*



## **INSTRUCTIONS FOR THE USE OF A FRIENDS GROUP FUNDRAISING AGREEMENT**

A **Friends Group Fundraising Agreement** is used to authorize a Friends Group to solicit money and/or in-kind goods or services for the benefit of specifically identified NPS projects or programs. This agreement is used only when there is already an executed Friends Group Agreement (dated post March, 2010), and when the amount to be raised is \$1 million or greater.

### **Signatures / Approvals:**

- The Director signs Friends Group Fundraising Agreements.
- The Director may delegate signing authority to a Regional Director where the fundraising goal is less than \$5 million and there is no federal contribution of funds to the project or program. See DO#21, Section 4.3, for additional conditions and details.

Delegations of authority should be in writing and retained in project files.

[**BRACKETED TEXT**] within the Agreement provides explanatory information or direction and should not be included in the final draft Agreement. All other text is pre-approved template language and must be included. Proposed changes to template language should be shown through “Track Changes” and “Comment” boxes. Some provisions may not be applicable to your situation. In those cases, retain the Article number and heading, type in “N/A,” use Track Changes to delete the provision and provide an explanation in the “Comment” box.

**Reviews and Approvals:** When submitting final draft agreements to Regional and Washington Offices for final review and approval, please send the “Track Changes” marked-up copy. This will allow reviewers to focus on proposed changes and information specific to your project and partner.

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

## FRIENDS GROUP FUNDRAISING AGREEMENT

Between the

National Park Service

and

**[Insert Name of Friends Group]**

This Friends Group Fundraising Agreement (Agreement) is entered into between the National Park Service (NPS) and [INSERT NAME OF FRIENDS GROUP] (Friends Group) for the purpose of raising funds and or in-kind goods and services to support [DESCRIBE THE PROJECT OR PROGRAM].

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound and expressly waiving the defense of lack of consideration, hereby agree as follows:

### **I. Background**

[Briefly describe the NPS unit involved; the Friends Group, including a description of the Friends Group's nonprofit status; e.g., "the Friends Group is a 501(c)3 organization incorporated and doing business in the State of [INSERT]. The Friends Group's headquarters is located at [INSERT ADDRESS]; a description of the project or program that will be supported through fundraising; a brief history of the relationship between the parties (if applicable); special or park-specific legislation (if it exists); e.g., a statute that directs or authorizes the NPS to undertake activities contemplated in the Friends Group Fundraising Agreement; and an explanation of existing or related agreements and/or relationships that affect the Friends Group Fundraising Agreement (if applicable).]

### **II. Definitions**

The term "Friends Group Agreement" means the agreement between the parties dated [INSERT], as may be amended by the parties from time-to-time, and which is included herein as Attachment A.

[INCLUDE OTHER DEFINITIONS AS NEEDED.]

**III. Legal Authority**

NPS is authorized to enter into this Agreement pursuant to 16 U.S.C. §§ 1-4, 43 U.S.C. § 1473a, and [Cite supplemental or alternative statutory authorities, if any. Cite legal authority of Friends Group, if necessary.]

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

**A. The NPS and the Friends Group jointly agree -**

1. That the Friends Group Agreement is hereby incorporated into this Agreement by reference. Unless expressly stated otherwise in this Agreement, the terms of the Friends Group Agreement shall control in the event of any conflict or ambiguity between this Agreement and the Friends Group Agreement.
2. [Include other mutual agreements of the parties, if any.]

**B. The NPS agrees to-**

1. Authorize NPS employees to undertake the following activities to support the efforts of the Friends Group including, but not limited to: [List for example (a) providing information on the need for, and scope of, a project to the public, (b) attending the Friends Group's fundraising events, and (c) assisting the Friends Group in recognizing donors.]
2. Review proposed donations of funds and in-kind goods and services that are intended to be provided to the Park to ensure that they meet NPS needs, requirements and specifications.
3. [Include other NPS obligations, if any.]

**C. The Friends Group agrees to-**

1. Use best efforts to raise [insert monetary fundraising goal] and donate to the NPS for the [insert project/program].
2. Use best efforts to raise the following in-kind goods and / or services [insert description] with an estimated value of [insert].
3. Implement the NPS-approved Fundraising Feasibility Study, Fundraising Plan, Donor Review Process and Donor Recognition Plan, included as Attachments B, C, D and E to this Agreement.

4. Ensure that fundraising costs for Identified Projects do not exceed 20% of funds raised. Fundraising consultants or staffs, if compensated, are to be paid a salary or flat fee; no payment may be made as commissions or as a percentage of funds used.
5. [Include other Friends Group obligations, if any, e.g. the Friends Group's commitment to fund operation and maintenance activities.]

**V. Endowments and Investment Accounts**

[Use the following provision when a Friends Group proposes to deposit funds raised pursuant to this Agreement into an Endowment or Investment Account that will be used to support NPS projects or programs. If this section does not apply, delete provision, type in "N/A" and retain Article number and heading.]

"The Friends Group will establish [insert Endowment or Investment Account or both] in accordance with the Endowment and Investment Account Agreement included as Attachment \_\_. "

**VI. Use of Property**

[Use the following provision if the Friends Group intends to use Government property in furtherance of this Agreement. If Government property will not be used, delete the provision, type in "N/A" and retain Article number and heading.]

"The Friends Group may use Government-owned real and/or other property in furtherance of this Agreement in accordance with the Property Use Agreement included as Attachment \_\_."

**VII. Term of Agreement**

Unless earlier terminated by completion of the fundraising campaign outlined in this Agreement, or by agreement of the parties in writing, this Agreement runs for a period of [Insert term. NOTE: The term cannot exceed the term of the Friends Group Agreement and generally should not exceed 5 years.], beginning on the date the last signature is affixed to this Agreement. This Agreement may be extended by the mutual written agreement of the parties prior to expiration.

**VIII. Termination and Asset Distribution**

Termination and asset disposition is governed by Article [insert number] of the Friends Group Agreement.

**IX. Signatures**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date the last signature is affixed.

**[NOTE: NPS signs first, then Partner. See Instructions for Signature authority]**

NATIONAL PARK SERVICE

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Jonathan B. Jarvis, Director

Date

[NAME OF FRIENDS GROUP]

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[Name, Title]

Date

**ATTACHMENTS**

Attachment A: **Friends Group Agreement**

Attachment B: **Fundraising Feasibility Study**

**[NOTE: SUBMIT ENTIRE STUDY, NOT A SUMMARY]**

Attachment C: **Fundraising Plan**

Attachment D: **Donor Review Process**

Attachment E: **Donor Recognition Plan** [Partner's]

Attachment F: **Endowment and Investment Account Agreement**

Attachment G: **Property Use Agreement**

**ATTACHMENT [ ] – PROPERTY USE**

**I. The NPS and Friends Group agree that:**

A. Subject to the conditions set out in Paragraph B (below), the NPS will provide Friends Group with appropriate use of Government-owned property in furtherance of activities authorized by the Friends Group Agreement dated [insert]. Government-owned property available for Friends Group's use is limited to the property identified and describe in exhibits to this Property Use Agreement (PUA). Each exhibit shall be signed and dated by the parties.

B. Unless otherwise expressly specified in the signed exhibit authorizing the use of specific identified Government-owned property, Friends Group is responsible and will reimburse NPS for all utilities, routine maintenance, and janitorial costs associated with the Friends Group's use of Government-owned property. NPS will use reasonable efforts to calculate reimbursable costs to the Friends Group before June 30 of each year. Friends Group will annually transfer requested reimbursements to NPS by August 30 of the fiscal year in which the costs were incurred.

C. If NPS provides Friends Group with access to NPS computer systems, Friends Group agrees to comply with all NPS Information Technology security and training requirements.

D. Friends Group's access to NPS facilities is dependent on compliance with laws and Government policies respecting Government facility security and NPS's ability to obtain security clearance for Friends Group's access.

E. Permission to use any NPS property is not exclusive to Friends Group. NPS may allow third parties to use the property as well. Friend Group has no property interest or leasehold interest.

F. NPS may terminate its permission to use Government-owned property at any time. NPS will not be liable for any alleged or actual damages resulting from such termination.

G. Friends Group will not use Government-owned property in any lobbying activities.

H. This PUA and associated exhibits are subject to all terms and conditions of the Friends Group Agreement.

**II. Signatures:**

IN WITNESS WHEREOF, the parties have executed this document as of the date the last signature is affixed.

NATIONAL PARK SERVICE

By: \_\_\_\_\_  
Name: \_\_\_\_\_ Date \_\_\_\_\_  
Title: \_\_\_\_\_

[FRIENDS GROUP]

By: \_\_\_\_\_  
Name: \_\_\_\_\_ Date \_\_\_\_\_  
Title: \_\_\_\_\_

\*\*\*

**ATTACHMENT [ ] –  
ENDOWMENT AND INVESTMENT ACCOUNT AGREEMENT**

**I. Definitions:**

The term “**Endowment Account**” means a financial account established to produce an income stream through investment vehicles such as stocks and bonds. The base amount in the endowment (the corpus) is generally not expended, and a portion of annual earnings generally remains in the endowment account allowing it to grow at a pace that is equal to inflation. The remainder of earnings will be expended for the benefit of NPS.

The term “**Investment Account**” means a financial account established to produce income through investment vehicles such as stocks and bonds. Investment Accounts are more flexible than Endowment Accounts. Generally, all funds deposited into an Investment Account, including interest and earnings thereon, will be expended for the benefit of NPS. For purposes of this Endowment and Investment Account Agreement (EIAA), low risk interest bearing accounts shall not be considered Investment Accounts.

**II. The NPS and Friends Group agree that:**

A. If Friends Group establishes either an Endowment Account(s), or an Investment Account(s), or both, it will do so according to a professionally prepared Statement of Investment Policy (Investment Policy) that conforms to applicable legal requirements and ethical standards for non-profit organizations. The Investment Policy must be provided to the NPS Key Official upon request. The Investment Policy will be updated by the Friends Group as necessary.

B. Friends Group will also utilize an experienced and credential investment advisor to assist the Friends Group with Endowment and/or Investment Account management.

C. Nothing in Paragraphs A or B (above) is intended to grant NPS the ability to interfere in day-to-day Friends Group financial management decisions.

D. Consistent with the provisions of Paragraphs II.A and II.B (above), the Friends Group will establish and manage the Endowment and/or Investment Accounts identified in exhibits to this EIAA. Each exhibit authorizing an Endowment Account or an Investment Account will signed and dated by each party and will contain the following information:

1. The type of account, i.e., Investment Account or Endowment Account.

2. The amount of money the parties anticipate will be deposited in the account over the term of the Friends Group Agreement.
3. A detailed description of how funds deposited in each account will be used for the benefit of NPS.
4. Additional understandings of the parties, if any.

E. The amount of funds (including interest and earnings, as applicable) available for expenditure from an Endowment Account in a given year will be determined by the Friends Group with the assistance of its financial advisors. This determination will take into account sound financial management principles. Nothing herein is intended to require depletion of the corpus of an Endowment Account. Expenditures of an Endowment Account's corpus may only be undertaken with the written concurrence of NPS.

F. Investment Account funds and Endowment Account funds will be allocated for use in accordance with the terms of the Annual Work Plan process identified in Article IV of the Friends Group Agreement.

G. In appropriate circumstances, NPS may request in writing that Friend Group continue to manage any Endowment Account established by the Partner for the benefit of NPS after termination or expiration of the Friends Group Agreement. In this event, Endowment Account management shall continue to be subject to the provisions of this EIAA, except that Friends Group will make Endowment Account Funds available to NPS upon NPS's written request. NPS may terminate continued Friends Group operation of an Endowment Account by written notice. In this event, Endowment Account funds shall be transferred in accordance with the disposition provisions of Article VII.B of the Friends Group Agreement.

H. This EIAA and associated exhibits are subject to all terms and conditions of the Friends Group Agreement.

**III. Signatures:**

IN WITNESS WHEREOF, the parties have executed this document as of the date the last signature is affixed.

NATIONAL PARK SERVICE

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date

Friends Group FUNDRAISING Agreement Template and Attachments 9.13.11

[FRIENDS GROUP]

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_ Date

## INSTRUCTIONS FOR THE USE OF A COMPREHENSIVE FUNDRAISING AGREEMENT

A **Comprehensive Fundraising Agreement** authorizes non-profit organizations to solicit money and/or in-kind goods or services for the benefit of specifically identified NPS projects or programs. A Comprehensive Fundraising Agreement is used when there is no current Friends Group Agreement\* in place and when the fundraising goal is \$100,000 or more.

[\* “Current” means signed after March, 2010]

**Signatures / Approvals:** When the fundraising goal is:

- \$100,000 to \$1 million – Regional Director
- \$1 million and above – Director
- Director may delegate signing authority to a Regional Director where the fundraising goal is less than \$5 million and there is no federal contribution of funds to the project or program. See DO#21, Section 4.3, for additional conditions and details.

Delegations of authority should be in writing and retained in agreement files.

**[BRACKETED TEXT]** within the Agreement provides explanatory information or direction and should not be included in the final draft agreement. All other text is approved template language and must be included. Proposed changes to template language should be shown through “Track Changes” and “Comment” boxes. Some provisions may not be applicable to your situation. In those cases, retain the Article number and heading, type in “N/A,” use Track Changes to delete the provision and provide an explanation in the “Comment” box.

**Reviews and Approvals:** When submitting final draft agreements to Regional and Washington Offices for final review and approval, please send the “Track Changes” marked-up copy. This will allow reviewers to focus on proposed changes and information specific to your project and partner.

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

## COMPREHENSIVE FUNDRAISING AGREEMENT

Between the

National Park Service

And the

[NAME OF PARTNER ORGANIZATION]

This Comprehensive Fundraising Agreement (Agreement) is entered into between the National Park Service (NPS) and [INSERT NAME OF PARTNER ORGANIZATION] (Partner) for the purpose of [INSERT PURPOSE] for [INSERT NAME OF PARK] (Park).

### I. Background.

[BRIEFLY DESCRIBE in narrative form:

- the NPS unit involved;
- the Partner, including a description of the Partner’s nonprofit status; e.g., “The Partner is a 501(c)3 organization incorporated and doing business in the State of [INSERT];
- The Partner headquarters office is located at [INSERT ADDRESS]”;
- a description of what the parties want to accomplish together (scope of the work);
- the Partner’s role if it extends beyond fundraising;
- a brief history of the relationship between the parties (if applicable);
- special or park-specific legislation (if it exists);
- other facts critical to understanding the Agreement (if applicable); and
- an explanation of existing or related agreements and/or relationships that affect this Fundraising Agreement (if applicable).]

**The NPS and Partner (Parties) hereby agree as follows:**

II. **Legal Authority.** NPS is authorized to enter into this Agreement pursuant to 16 U.S.C. §§ 1-4 and 6, 43 U.S.C. § 1473a and [CITE SUPPLEMENTAL OR ALTERNATIVE STATUTORY AUTHORITIES, as needed to describe the authority(ies) NPS has to undertake activities deriving from this fundraising effort.]. [CITE LEGAL AUTHORITY OF PARTNER, IF NECESSARY.]

### III. Responsibilities and Understandings of the Parties.

A. NPS and Partner (Parties) jointly agree:

1. To expedite decisions and agreements considered vital to the parties’ mutual

goals and to this Agreement.

2. To promote and utilize policies and best practices relating to philanthropy and donor appreciation in all activities related to this Agreement, such as those expressed within NPS Director's Order #21 on Donations and Fundraising (DO #21) and its Reference Guide, and the Donor Bill of Rights (created by the Association of Fundraising Professional, the Association for Healthcare Philanthropy, the Council for Advancement and Support of Education, and the Giving Institute: Leading Consultants to Non-Profits).
3. To submit all materials that are intended for public distribution that refer to the fundraising effort, or to each other, to one another for advance review and approval. Parties agree that they may develop standard language that does not require approval beyond the initial approval. Where standard language has not been developed, Parties will use best efforts to review, approve, or deny such materials within seven (7) business days of receipt.
4. That the Park Superintendent, or his/her designee, will be a non-voting liaison to the Partner's Board of Directors for matters related to this Agreement.
5. To work in good faith to execute additional agreements as necessary to meet the mutual objectives of the Parties.

B. NPS agrees to:

1. Publicly recognize Partner as an official park support organization, which is authorized to raise funds for the projects or programs identified in this Agreement, in conformance with the terms of this Agreement.
2. Meet with Partner to discuss the requirements of DO #21 and other laws or policies that relate to this Agreement.
3. Provide Partner with the Park's Donor Recognition Plan.
4. Review proposed donations of funds and in-kind goods and services that are intended to be provided to the Park to ensure that they meet NPS needs, requirements and specifications.
5. [INCLUDE ANY OTHER NPS OBLIGATIONS RELATED TO THIS AGREEMENT.]

C. Partner agrees to:

1. Use best efforts to raise and donate to the NPS approximately [INSERT

AMOUNT] in support of [INSERT SPECIFIC PROJECT / PROGRAMS TO BE FUNDED AND WHETHER RAISED FUNDS WILL COVER LONG-TERM COSTS OF THE PROJECT/PROGRAM].

2. Use best efforts to raise the following in-kind goods and/or services [INSERT DESCRIPTION] with an estimated value of [INSERT AMOUNT].
3. Ensure that fundraising costs will not exceed 20% of funds raised. Fundraising consultants or staffs, if compensated, are to be paid a salary or flat fee; no payment may be made as commissions or as a percentage of funds raised.
4. Ensure that its Articles of Incorporation and Bylaws are consistent with the terms of this Agreement.
5. Obtain NPS's written approval (through a Special Use Permit, Volunteer Service Agreement, Corporate Campaign Agreement, Partner Design and Construction Agreement, or other agreement) before (i) holding special events or other activities on NPS property; (ii) bringing volunteers into the Park; (iii) initiating Corporate Campaigns (See DO#21, Section 7.0) or cause-related marketing activities that state or imply NPS involvement or that NPS will benefit; or (iv) designing /constructing any structure, exhibit, trail or making any improvements on NPS property.
6. Implement the NPS-approved Fundraising Feasibility Study, Fundraising Plan, Donor Review Process and Donor Recognition Plan, included as Attachments B, C, D and E to this Agreement.
7. [INCLUDE ANY OTHER PARTNER OBLIGATIONS RELATED TO THIS AGREEMENT.]

#### **IV. Use of Property.**

##### **A. Government-Owned Property.**

[Use the following provision if Partner intends to use Government property in furtherance of this Agreement. If Government property will not be used, delete the provision below, type in "N/A" and retain Section number and heading.]

“Partner may use Government-owned real and/or other property in furtherance of this Agreement in accordance with the Property Use Agreement, included as Attachment \_\_\_\_.”

##### **B. Intellectual Property.**

Parties shall abide by the terms described in the Intellectual Property Agreement, included as Attachment A.

**V. Term.**

Unless earlier terminated in accordance with its terms, this Agreement shall remain in effect for a period of 5 years, beginning on the date the last signature is affixed. This Agreement may be extended for an additional term of [INSERT TERM—generally not-to-exceed the original term] by the mutual written agreement of the Parties prior to expiration.

**VI. Termination and Disposition of Assets.**

A. Termination.

1. Each party may terminate this Agreement for any reason by giving advance written Notice of Termination for Convenience. Termination shall be effective 60 calendar days from the date of receipt of the Notice, or upon the termination date specific in the Notice, whichever is later.

2. Each party may immediately terminate this Agreement for a material breach of this Agreement by the other party. In this event, this Agreement shall terminate upon the breaching party's receipt of a written Notice of Termination for Breach. The non-breaching party may, but is not required to, provide the breaching party with an opportunity to cure the breach by a date specified in a Cure Letter. If the breach is not cured to the satisfaction of the non-breaching party by the specified date, this Agreement will terminate upon the breaching party's receipt of a Notice of Termination for Breach.

3. Unless expressly provided for in this Agreement or related agreements, neither party shall be liable for any costs, damages, or other claims that result directly or indirectly from termination of this Agreement. All other rights and claims of the parties shall be preserved.

B. Disposition of Assets upon Termination or Expiration of this Agreement or Cessation of Partner Operations. Upon the termination or expiration of this Agreement or cessation of the operations of the Partner for any reason, those funds held for the benefit of NPS, including all interest and earnings thereon and all in-kind contributions, shall be transferred to NPS or to a third-party deemed acceptable by NPS (under such terms and conditions as are deemed acceptable by NPS) for use consistent with the purposes for which the donations were made. Nothing herein shall prevent Partner from satisfying allowable outstanding obligations reasonably incurred in association with this Agreement prior to the termination or expiration of this Agreement.

**VII. Insurance.**

A. Partner should, in keeping with best practices in the nonprofit industry, acquire insurance appropriate to the type and level of activities associated with this Agreement. Where NPS grants Partner permission to undertake a specific activity, NPS may require Partner to acquire additional appropriate insurance that is acceptable to NPS.

B. Where Partner has acquired insurance, the Department of the Interior and NPS shall be listed as additional insureds. The insurance policy or policies shall specify that the insurer shall have no right of subrogation against the United States and shall have no recourse against the United States for payments of any premiums or deductibles due thereunder. NPS will not be responsible for any omissions or inadequacies of any insurance coverage and amounts in the event that the insurance purchased by Partner is inadequate or otherwise insufficient for any reason whatsoever.

C. NPS reserves the right to file insurance claims on its own behalf or to require the transfer of insurance proceeds from Partner to NPS where, in NPS's judgment, NPS will undertake remedial work for which the claim is paid.

### **VIII. Liability and Indemnification.**

Partner shall indemnify, defend and hold harmless the United States of America and its agents and employees from and against any and all liabilities, obligations, losses, damages, judgments, claims, actions, suits, penalties, fines, costs and expenses (including reasonable attorneys' fees and experts' fees) of any kind and nature whatsoever arising out of the acts or omissions of Partner, its employees, agents or contractors (including any contractor's subcontractors), including injury to persons (including injury resulting in death) and damage to property. Partner shall promptly pay the United States of America the full value of all damages to the lands or other property of the United States of America caused by Partner, its employees, agents, representatives, or contractors (including any contractor's subcontractors) or, as agreed to by the parties, shall undertake the remedial work to repair or replace the damaged lands or property. Partner will cooperate with the NPS in the investigation and defense of any claims that may be filed with the NPS arising out of the activities of Partner, its employees, agents, representatives or contractors (including any contractor's subcontractors).

### **IX. Financial Matters.**

A. In General. Partner shall maintain proper accounting books and records under a system of accounts and financial controls that is consistent with Generally Accepted Accounting Principles of the United States (GAAP).

B. Right of Inspection and Audit. Partner shall permit the Department of the Interior or its designee, including the NPS Comptroller and Office of the Inspector General, to verify and audit any financial audit or records from the books, correspondence, memoranda and other records of Partner relating to this Agreement or any other agreement executed in connection herewith, during the term of this Agreement and for such time thereafter as may be necessary to accomplish such verification. Partner agrees to take appropriate corrective action based on these audit findings.

C. Provision of Certain Information. By [INSERT DATE], Partner shall annually provide NPS (i) a copy of its IRS Form 990 and any amendments thereto and (ii) an annual report of aid (Nonprofit Organization Annual Report of Operations and Aid to Federal Land

Management Agency[ies]) and a short narrative as described at: [http://www.nps.gov/interp/coop\\_assn/resources.htm](http://www.nps.gov/interp/coop_assn/resources.htm) in the section titled “20XX Call for Submissions.”

D. \$1 Million Threshold for Audit. Once Partner raises \$1 million or more in funds for the benefit of NPS, either in a single effort or cumulatively over time, Partner shall thereafter annually furnish NPS with a financial audit. The audit will be prepared by an independent certified public accountant (CPA) in conformance with both GAAP and guidelines provided in the DO #21 Reference Guide. Partner agrees to take appropriate corrective action based on audit findings. The audit shall be provided to the Superintendent of the affected park(s) within 9 months of the end of Partner’s fiscal year.

E. Establishment of Endowment or Investment Accounts. NPS and Partner shall mutually determine the need for an Endowment Account and/or Investment Account, where the account will be established for the benefit of NPS. If such a need is identified, the Parties shall execute and abide by the terms of the Endowment and Investment Account Agreement, included as Attachment \_\_\_\_\_.

**X. Key Officials and Notices.**

A. Key Officials. Each party shall designate one or more key personnel (Key Official) to be responsible for coordination and communication between Partner and NPS in connection with the activities to be performed pursuant to this Agreement. Upon written notice to the other party, either party may designate an alternate to act in the place of the designated Key Official, or designate a new Key Official.

**For NPS:**

Name:  
Title:  
Address:  
Phone:  
Fax:  
E-mail:

**For Partner:**

Name:  
Title:  
Address:  
Phone:  
Fax:  
E-mail:

B. Notices. Notices from one party to the other party with respect to this Agreement shall be in writing and delivered by mail, personal delivery, electronic delivery or other appropriate means, to the first listed Key Official of the other party at the address or contact number indicated above, or at such other address or contact number for such Key Official as may be provided by the other party from time to time, and shall be considered to have been delivered upon receipt at the specified address of such Key Official or such other person as mutually agreed by the parties.

**XI. Miscellaneous.**

A. Non-Discrimination. All activities pursuant to or in association with this Agreement shall be conducted without discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex, as well as in compliance with the requirements of any applicable federal laws, regulations, or policies prohibiting such discrimination.

B. NPS Appropriations. Pursuant to 31 U.S.C. § 1341, nothing contained in this Agreement shall be construed to obligate NPS, the Department, or the United States of America to any current or future expenditure of funds in advance of the availability of appropriations from Congress and their administrative allocation for the purposes of this Agreement, nor does this Agreement obligate NPS, the Department, or the United States of America to spend funds on any particular project or purpose, even if funds are available.

C. Limitations on Lobbying. To the extent that the Partner commits in this Agreement or any related agreement to raise funds from non-federal sources for a particular purpose or project to benefit NPS, the Partner agrees that it will not lobby for or otherwise seek the appropriation of funds from Congress to meet that commitment. The Partner may not use any appropriated funds (including property, utilities, or services acquired with, or supported by, appropriated funds) to lobby or attempt to influence Congress or any official of any government.

D. Compliance with Applicable Laws. This Agreement and performance hereunder is subject to all applicable laws, regulations and government policies, whether now in force or hereafter enacted or promulgated. Nothing in this Agreement shall be construed as (i) in any way impairing the authority of the NPS to supervise, regulate, and administer its property under applicable laws, regulations, and management plans or policies as they may be modified from time-to-time or (ii) inconsistent with or contrary to the purpose or intent of any Act of Congress.

E. Disclaimers of Government Endorsement. Partner shall not publicize or circulate any materials (including advertisements, solicitations, brochures, press releases, speeches, pictures, movies, articles, manuscripts, or other publications) suggesting, expressly or implicitly, that the United States of America, the Department, NPS, or any government employee endorses any business, brands, goods or services.

F. Merger. This Agreement, together with any other agreement or written agreement modification entered into pursuant hereto, contains all the terms and conditions agreed to by the Parties, and supersedes any prior agreements between the Parties, with respect to the subject matter hereof.

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

H. Waiver. No waiver of any provisions of this Agreement shall be effective unless made in writing and signed by the waiving party. No waiver of any provision of this Agreement

shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof.

I. Assignment; Binding Effect. Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. The Parties waive the defense of lack of consideration.

J. 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.

K. 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 of America, or to any benefit to arise thereupon.

L. No Agency. Partner is not an agent or representative of the United States of America, the Department, or NPS, nor will Partner represent itself as such to third parties. NPS employees are not agents of Partner and will not represent themselves as such to third parties. Nothing in this Agreement shall at any time be construed so as to create the relationship of employer and employee, principal and agent, or joint venture as between Partner and NPS.

M. Non-Exclusive Agreement. This Agreement in no way restricts either NPS or Partner from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.

N. No Third-Party Beneficiaries. Unless expressly stated herein, nothing in this Agreement is intended to grant any legally enforceable rights or provide any benefits to any third party.

O. Survival. The terms of this Agreement that by their nature are reasonably intended by the parties to survive expiration of termination shall survive expiration or termination of this Agreement.

P. 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.

Q. Interpretation. The headings of the Articles in this Agreement are inserted only as a matter of convenience and shall in no way be construed to define or limit the scope or intent, or affect the meaning or interpretation, of this Agreement. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Additionally, the

phrase “for the benefit of NPS” means donations of money (including interest and earnings thereon) and / or in-kind donations that were solicited for the express purpose or implied purpose of using them, whether in whole or in part, to support NPS, or NPS’s projects, programs or resources. This Agreement shall not be construed in favor of or against either party by reason of the extent to which such party or its professional advisors participated in the preparation of this Agreement or based on a party’s undertaking of any obligation under this Agreement.

R. Further Assurances. If reasonably requested by one party, the other party shall execute and deliver such other documents and take such other action as may be necessary to effect the terms of this Agreement.

S. Disputes and Venue. The parties agree that in the event of a dispute between them, NPS and Partner shall promptly use their best efforts to resolve the dispute in an informal fashion through communication and consultation, or other forms of non-binding alternative dispute resolution that are mutually acceptable to the parties. The Parties agree that the venue to commence litigation of any disputes stemming from this Agreement shall be a Federal court with appropriate jurisdiction.

**XIII. Signatures. [NOTE: See Instructions for Signing Authority. NPS signs first, then partner]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date the last signature is affixed.

NATIONAL PARK SERVICE

By: \_\_\_\_\_  
Name: \_\_\_\_\_ Date \_\_\_\_\_  
Title: \_\_\_\_\_

[INSERT PARTNER ORGANIZATION]

By: \_\_\_\_\_  
Name: \_\_\_\_\_ Date \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENTS:**

Attachment A – Intellectual Property Agreement

Attachment B – Fundraising Feasibility Study [**NOTE: Submit entire study, not a summary**]

Attachment C – Fundraising Plan

Attachment D – Donor Review Process

Attachment E – Donor Recognition Plan [**Partner’s plan**]

Attachment F – Partner’s Articles of Incorporation

Attachment G – Partner’s By-laws

Attachment H – IRS Determination Letter

Attachment I – Property Use Agreement

Check if included at the time of execution of this Agreement []

Attachment J – Endowment and Investment Account Agreement

Check if included at the time of execution of this Agreement []

## ATTACHMENT [ ] – INTELLECTUAL PROPERTY

[NOTE: AS APPROPRIATE, SUBSTITUTE THE WORD “PARTNER” FOR “FRIENDS GROUP” THROUGHOUT]

### **I. The NPS and Friends Group agree that:**

#### **A. Specific Authorizations to Use Intellectual Property**

1. As used herein, "Marks" means all trademarks, service marks and corporate and brand identification and indicia, including without limitation word marks, logos and other picture marks, phrases, composite marks, institutional images, look and feel, and identifications of each party, whether registered or not. The parties grant to each other use of their respective Mark(s) during the term of this Agreement, for use solely in connection with this Friends Group Agreement (Agreement), and only in the form described and depicted in exhibits to this Attachment A. This Attachment A may be amended to include new exhibits. The license to use Marks does not include the right to use or incorporate the Mark(s) in any other capacity, including collateral marketing, outreach or advertising, or as trade names or internet domain names, without prior written permission.

2. The parties acknowledge and agree that the parties own or otherwise have the exclusive right to use and to license their respective Marks. All uses of Marks by the parties, including all goodwill arising therefrom, shall inure solely to the benefit of the respective owner. A party retains all rights with respect to its Marks that are not specifically granted to another party. Each party, in its sole discretion, may object to use of the Marks by another party by providing written notice to the other. A notice recipient shall have five (5) business days to cure the alleged violation identified in the notice or to reach a mutually agreed to resolution with the notice sender. If the matter is not cured or resolved to the satisfaction of the notice sender by the end of the cure period, use of the Mark(s) at issue by the notice recipient shall discontinue immediately.

3. Each party retains the right to concurrently use and license others to use its Marks anywhere in connection with any purpose.

#### **B. Limited License to Use of Trademarks/Tradenames/Taglines/Logos**

1. All uses by one party of the other party's Marks shall be in accordance with such quality control standards as the licensing party may promulgate from time to time, and each party agrees to refrain from all uses of a licensing party's Marks to which the licensing party objects. All promotional literature and other materials prepared by a party in connection with this Agreement shall bear appropriate copyright and trademark notices as prescribed by the other party, if the other party's content or branding is included therein. Each party agrees that it will not use, register or attempt to register in any jurisdiction, or otherwise appropriate or adopt any name, Mark or logo that is confusingly similar to the

other party's Marks. At no time during the term of the Agreement or thereafter shall a Partner attack, challenge or file any application with respect to any NPS Mark. At no time during the term of the Agreement or thereafter shall NPS attack, challenge or file any application with respect to any Friends Group Mark.

2. In any identification of either party pursuant to this Agreement, one party shall not impair the branding or other identification of the other party, nor alter or remove any copyright, trademark or other protective notices of such other party.

3. The parties agree that, except as may be reasonably necessary, they shall not mask, frame, overlay or otherwise materially alter or affect the images, information, perception, service quality or security of the Marks.

4. All rights, licenses and privileges not expressly granted herein shall remain the sole and exclusive property of the respective parties. Except as provided in this Agreement, upon the termination or expiration of this Agreement, (1) all rights conveyed shall cease and revert to the respective party, and (2) each party shall discontinue all use of the other's Marks.

5. Notwithstanding the foregoing, NPS must review and approve in writing each proposed use of the NPS Arrowhead symbol.

### **C. Rights to Content Created in Furtherance of the Partnership**

For purposes of this Agreement, "Background Intellectual Property" means all rights to copyright, trademark, and to other rights owned by a party prior to the commencement of this Agreement and that are used in the performance of any work under this Agreement. In recognition that each party will be licensing its intellectual property in furtherance of the goals of this Agreement, the following applies to each party as Licensor or Licensee, as the case may be:

1. Licensee acknowledges and agrees that Licensor owns all rights, title and interest in the licensed Background Intellectual Property worldwide, and that Licensee shall not acquire and shall not claim rights in or title to any intellectual property adverse to Licensor.
2. If at any time Licensee acquires (a) any rights in, or trademarks, applications or registration for any licensed Marks; or (b) copyright ownership in any licensed works; or (c) domain names incorporating any of the licensed Marks, upon Licensor's request and at no expense to Licensor, Licensee shall assign all such rights, applications, registrations, ownership, or domain names to Licensor.
3. Licensee's use of the licensed items shall inure to the benefit of Licensor.
4. Licensee may not challenge the validity of licensed Marks or assert any claim adverse to Licensor.

**D. Website Links**

1. For the term of this Agreement, the parties grant each other permission to provide a hypertext link from their respective websites to the other's website for the limited purpose of achieving the goals of this Agreement. All destination web pages must be reviewed and approved by the other party and must be consistent applicable laws, policies, and with all terms and provisions of this Agreement.
2. Either party may terminate permission to link to a website at any time, with or without cause, by giving notice in writing. If this permission is terminated, the party receiving the notice must remove the hypertext link within five (5) business days of receipt of notice.
3. When linking from an NPS webpage to a webpage belonging to the Friends Group, NPS may require the display of a disclaimer of government endorsement. NPS typically requires a disclaimer where a website contains references to commercially available brands, goods, or services, or where a website is used for advocacy. When display of a disclaimer is required by NPS, the disclaimers must be satisfactory to NPS and may either be continuously displayed or viewed through a pop-up window.

**E. Disposition of Materials Created in Furtherance of this Agreement**

1. Unless otherwise agreed to through written amendment of this Agreement, NPS shall own all right, title, and interest in data and materials produced in the performance of this Agreement, including without limitation, b-roll, rough & fine cuts, final products, and derivative works.
2. Unless otherwise agreed to through written amendment of this Agreement, all intellectual property created in association with this Agreement, including without limitation, b-roll, rough & fine cuts, final products, and derivative works, shall be used by Friends Group solely in furtherance of the goals of this Agreement and for internal reporting purposes.
3. NPS grants Friends Group a royalty-free, non-exclusive, non-sublicensable worldwide license to use, reproduce, distribute, transmit and publicly display content in furtherance of the goals of this Agreement and for internal reporting purposes. Should NPS agree to allow Friends Group to own any of the materials identified in Article Paragraph E.1., Friends Group will provide NPS with a written license agreement to use of such materials upon such terms and conditions as are acceptable to NPS.
4. Friends Group shall provide NPS with signed releases or license agreements for full use of all stock footage, performers, still photographs, music,

and other works secured or acquired by Friends Group and used in the creation of materials in association with this Agreement. All performance, release or copyright fees shall be paid by Friends Group.

5. Friends Group must obtain NPS's written permission prior to sublicensing the right to use materials to a third-party.

**II. Signatures:**

IN WITNESS WHEREOF, the parties have executed this document as of the date the last signature is affixed.

NATIONAL PARK SERVICE

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date

[FRIENDS GROUP]

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date

\*\*\*

## ATTACHMENT [ ] – PROPERTY USE

[NOTE: AS APPROPRIATE, SUBSTITUTE THE WORD “PARTNER” FOR “FRIENDS GROUP” THROUGHOUT.]

### **I. The NPS and Friends Group agree that:**

A. Subject to the conditions set out in Paragraph B (below), the NPS will provide Friends Group with appropriate use of Government-owned property in furtherance of activities authorized by the Friends Group Agreement dated [insert]. Government-owned property available for Friends Group’s use is limited to the property identified and describe in exhibits to this Property Use Agreement (PUA). Each exhibit shall be signed and dated by the parties.

B. Unless otherwise expressly specified in the signed exhibit authorizing the use of specific identified Government-owned property, Friends Group is responsible and will reimburse NPS for all utilities, routine maintenance, and janitorial costs associated with the Friends Group’s use of Government-owned property. NPS will use reasonable efforts to calculate reimbursable costs to the Friends Group before June 30 of each year. Friends Group will annually transfer requested reimbursements to NPS by August 30 of the fiscal year in which the costs were incurred.

C. If NPS provides Friends Group with access to NPS computer systems, Friends Group agrees to comply with all NPS Information Technology security and training requirements.

D. Friends Group’s access to NPS facilities is dependent on compliance with laws and Government policies respecting Government facility security and NPS’s ability to obtain security clearance for Friends Group’s access.

E. Permission to use any NPS property is not exclusive to Friends Group. NPS may allow third parties to use the property as well. Friend Group has no property interest or leasehold interest.

F. NPS may terminate its permission to use Government-owned property at any time. NPS will not be liable for any alleged or actual damages resulting from such termination.

G. Friends Group will not use Government-owned property in any lobbying activities.

H. This PUA and associated exhibits are subject to all terms and conditions of the Friends Group Agreement.

**II. Signatures:**

IN WITNESS WHEREOF, the parties have executed this document as of the date the last signature is affixed.

NATIONAL PARK SERVICE

By: \_\_\_\_\_  
Name:  
Title: Superintendent

\_\_\_\_\_  
Date

[FRIENDS GROUP]

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date

\*\*\*

## ATTACHMENT [ ] – ENDOWMENT AND INVESTMENT ACCOUNT AGREEMENT

[NOTE: AS APPROPRIATE, SUBSTITUTE THE WORD “PARTNER” FOR “FRIENDS GROUP” THROUGHOUT.]

### I. Definitions:

The term “**Endowment Account**” means a financial account established to produce an income stream through investment vehicles such as stocks and bonds. The base amount in the endowment (the corpus) is generally not expended, and a portion of annual earnings generally remains in the endowment account allowing it to grow at a pace that is equal to inflation. The remainder of earnings will be expended for the benefit of NPS.

The term “**Investment Account**” means a financial account established to produce income through investment vehicles such as stocks and bonds. Investment Accounts are more flexible than Endowment Accounts. Generally, all funds deposited into an Investment Account, including interest and earnings thereon, will be expended for the benefit of NPS. For purposes of this Endowment and Investment Account Agreement (EIAA), low risk interest bearing accounts shall not be considered Investment Accounts.

### II. The NPS and Friends Group agree that:

A. If Friends Group establishes either an Endowment Account(s), or an Investment Account(s), or both, it will do so according to a professionally prepared Statement of Investment Policy (Investment Policy) that conforms to applicable legal requirements and ethical standards for non-profit organizations. The Investment Policy must be provided to the NPS Key Official upon request. The Investment Policy will be updated by the Friends Group as necessary.

B. Friends Group will also utilize an experienced and credential investment advisor to assist the Friends Group with Endowment and/or Investment Account management.

C. Nothing in Paragraphs A or B (above) is intended to grant NPS the ability to interfere in day-to-day Friends Group financial management decisions.

D. Consistent with the provisions of Paragraphs II.A and II.B (above), the Friends Group will establish and manage the Endowment and/or Investment Accounts identified in exhibits to this EIAA. Each exhibit authorizing an Endowment Account or an Investment Account will signed and dated by each party and will contain the following information:

1. The type of account, i.e., Investment Account or Endowment Account.
2. The amount of money the parties anticipate will be deposited in the account over the term of the Friends Group Agreement.

3. A detailed description of how funds deposited in each account will be used for the benefit of NPS.
4. Additional understandings of the parties, if any.

E. The amount of funds (including interest and earnings, as applicable) available for expenditure from an Endowment Account in a given year will be determined by the Friends Group with the assistance of its financial advisors. This determination will take into account sound financial management principles. Nothing herein is intended to require depletion of the corpus of an Endowment Account. Expenditures of an Endowment Account's corpus may only to be undertaken with the written concurrence of NPS.

F. Investment Account funds and Endowment Account funds will be allocated for use in accordance with the terms of the Annual Work Plan process identified in Article IV of the Friends Group Agreement.

G. In appropriate circumstances, NPS may request in writing that Friend Group continue to manage any Endowment Account established by the Partner for the benefit of NPS after termination or expiration of the Friends Group Agreement. In this event, Endowment Account management shall continue to be subject to the provisions of this EIAA, except that Friends Group will make Endowment Account Funds available to NPS upon NPS's written request. NPS may terminate continued Friends Group operation of an Endowment Account by written notice. In this event, Endowment Account funds shall be transferred in accordance with the disposition provisions of Article VII.B of the Friends Group Agreement.

H. This EIAA and associated exhibits are subject to all terms and conditions of the Friends Group Agreement.

**III. Signatures:**

IN WITNESS WHEREOF, the parties have executed this document as of the date the last signature is affixed.

NATIONAL PARK SERVICE

By: \_\_\_\_\_  
Name:  
Title: Superintendent

\_\_\_\_\_  
Date

[FRIENDS GROUP]

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_

Date

## **INSTRUCTIONS FOR THE USE OF A PARTNER DESIGN & CONSTRUCTION AGREEMENT**

A **Partner Design & Construction Agreement** is used when a Partner proposes to design, construct, or renovate facilities, structures\*or trails located on NPS property, and to donate all work to NPS. The Agreement provides the legal and policy framework for the partner’s services and the services of the partner’s consultants and contractors.

[\* “Structures” may include, without limitation, exhibits that (1) may pose inherent risks to public safety, (2) may cause NPS to incur significant maintenance costs, or (3) must comply with government construction standards or building codes.

**Signatures / Approvals:** When the Project cost is:

- \$100,000 to \$1 million – Regional Director
- \$1 million and above – Director
- Director may delegate authority to a Regional Director where the project cost is less than \$5 million and there is no federal contribution of funds to the project or program. See DO#21, Section 4.3., for additional conditions and details.

Delegations of authority should be in writing and retained in agreement files.

**[BRACKETED TEXT]** in the Partner Design & Construction Agreement provides explanatory information or direction and should not be included in the final draft Agreement. All other text is approved template language and must be included. Proposed changes to template language should be shown through “Track Changes” and “Comment” boxes. Some provisions may not be applicable to your situation. In those cases, retain the Article number and heading, type in “N/A,” use Track Changes to delete the provision and provide an explanation in the “Comment” box.

**BOXED TEXT** is part of this Agreement and should be retained.

**Reviews and Approvals:** When submitting draft and semi-final agreements to Regional and Washington offices for review and approval, please send the “Track Changes” marked-up copy. This will allow reviewers to focus on proposed changes and information specific to your project and partner.

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

**PARTNER DESIGN & CONSTRUCTION AGREEMENT**

**Between**

**NATIONAL PARK SERVICE  
UNITED STATES DEPARTMENT OF THE INTERIOR**

**and**

**[PARTNER'S NAME]**

**For**

**[PROJECT NAME]**

This Partner Design & Construction Agreement (Agreement) is hereby entered into and between [PARTNER'S NAME] (Partner) and the National Park Service (NPS) and establishes the parameters by which the Partner will provide and donate to the NPS [DESCRIBE SERVICES TO BE PROVIDED AND PROJECT NAME] (Project).

In consideration of the Partner's offer to complete and donate the Project described herein to the NPS, the NPS agrees to allow the Partner access to NPS property for purposes identified herein. In reliance on this Agreement the NPS will not seek Federal appropriations for the Project to be designed and constructed by the Partner. Further, NPS is using appropriated funds to work with the Partner and to implement the Project. It is the intent of both parties to be legally bound by this Agreement and both expressly waive the defense of lack of consideration. The waiver of the defense of lack or failure of consideration shall inure to any assign, surety or insurer of the parties hereto.

**ARTICLE I.           BACKGROUND**

[BRIEFLY DESCRIBE the NPS unit involved; the Partner – including a description of the Partner's non-profit status; e.g., "The [Partner name] is a 501(c)3 organization, incorporated and doing business in the State of [INSERT]. The Partner's headquarters office is located at [INSERT ADDRESS]." Further describe what the Park and Partner want to accomplish together (scope of work); a brief history of the relationship between the parties (if applicable); relevant legislation (if it exists); e.g., a statute that directs or authorizes the NPS to undertake activities contemplated in this Agreement; other facts critical to the understanding of this Agreement; and a description of any existing or related agreements that affect this Agreement (if applicable).]

The Partner wishes to undertake the Project and seeks to be authorized to conduct activities necessary to accomplish the design and construction of the Project such that the NPS will be able to accept the Partner's donation of the Project.

This Agreement establishes the obligations and understandings of the Partner and the NPS regarding the Partner's design and construction of the Project, such that the Partner may accomplish its goal of designing and constructing the Project within parameters acceptable to the NPS, and in compliance with applicable laws, regulations, government policies and Park management plans.

The Project will [GIVE A BRIEF OVERVIEW OF THE PROJECT]. A detailed description of the Project is contained in Attachment A to this Agreement.

## **ARTICLE II. DEFINITIONS**

[IN ADDITION TO THE DEFINITIONS BELOW, DEFINE OTHER TERMS AS NEEDED.]

As used in this Agreement, the following terms shall have the following meanings, and are applicable to both capitalized and non-capitalized forms of the term, and to both the singular and plural forms of the term:

**“Contractor”** means any entity (including without limitation, General Contractors and subcontractors, vendors, suppliers, architectural and engineering firms, landscape architecture firms, design firms, exhibit fabricators, or other professional service firms) retained by the Partner or its agents to provide any design, construction, fabrication, utility, architectural, engineering, project management, construction management, regulatory compliance, labor, materials, products, or services.

**“Construction”** means any fabrication, installation, improvements to, or modification of NPS real property or personal property, including any ground or site disturbance.

**“Construction document”** means the drawings and specifications, generated in association with this Agreement, that fully describe the construction work to be completed.

**“Cost estimate”** means a cost estimate appropriate for the level and complexity of design and/or construction of a project, as determined by NPS, including NPS designated Class C estimates for Conceptual Design; Class B estimates for Design Development; and Class A estimates for Construction Documents.

**“Design”** defines the construction requirement (including the functional relationships and technical systems to be used, such as architectural, landscape architectural, environmental, structural, electrical, mechanical, and fire protection) producing the technical specifications and drawings, and preparing the construction cost estimate. Design includes the development of a range of conceptual alternatives through a variety of means including design, design build or design competition; at the sole discretion of NPS, the development of regulatory compliance documentation for NPS review and approval, including National Environmental Policy Act and

National Historic Preservation Act documentation; value analysis and alternative refinement during schematic design and design development; required NPS design-related reviews and approvals; and the preparation of construction documents.

“**Project Development Plans**” contain detailed instructions regarding project-specific design and construction and are attached to most Partner Construction Contracts. Project Development Plans generally address (1) design elements and NPS construction standards that must be addressed in Project designs, (2) NPS’s Development Advisory Board reviews, and (3) Project deliverables and delivery dates.

“**Third-Party Contract**” means any contract between the Partner and any contractor, furnishing design, construction, labor, supplies or services.

### **ARTICLE III.           RESPONSIBILITIES OF THE PARTIES**

A. The NPS agrees to--

1. Provide timely review and, in writing, approve or deny:
  - a. Any Third-Party Contract to determine whether it is appropriate and consistent with this Agreement. NPS may, at its sole discretion, decline to review a Third-Party Contract. If NPS declines to review a Third-Party Contract NPS will notify the Partner of its decision in writing.

[NOTE: NPS STAFF MAY, ON A CASE-BY-CASE BASIS, DECIDE NOT TO REVIEW A THIRD-PARTY CONTRACT PROVIDED THAT (1) NPS HAS CONFIDENCE IN THE ABILITY OF THE PARTNER TO EXECUTE CONTRACTS THAT ARE CONSISTENT WITH THE TERMS OF THIS AGREEMENT, AND (2) THE PARTNER HAS PROVIDED THE SIGNED CONTRACTOR CERTIFICATION FORM IDENTIFIED IN ARTICLE III.B.13.h AND INCORPORATED AS ATTACHMENT E HEREIN.]
  - b. All design plans, construction drawings, engineering documents, environmental compliance documents, change orders, and cost estimates generated by the Partner or the Partner’s contractors. NPS may, in its discretion, identify in writing categories of *de minimus* activities, such as minor change orders, that do not require NPS approval.
2. Review requests for access to the Park to accomplish work under this Agreement.
3. Monitor the general implementation of the Project, to include periodic inspection and tests for compliance with the requirements of this Agreement, any Project Development Plan, project implementation plan or applicable special use permit, and relevant laws, regulations, and policies.

4. Inspect the Project to determine whether to accept the Project as complete. In the event that NPS cannot accept the Project as complete, NPS must identify in writing what the Partner must accomplish to allow NPS to accept the project as complete.
5. Notify the Partner of any change in NPS policy that may affect implementation of this Agreement.
6. Subject to the availability of appropriations, undertake NPS activities identified in this Agreement.

B. The Partner agrees to--

1. Ensure that the Project meets NPS standards and requirements and to donate to NPS the Project identified in this Agreement. This donation is made by the Partner on its own volition and without compensation.
2. Contact NPS in a timely manner with requests for access to the Park to accomplish the Project in accordance with law, NPS policies, and the terms of this Agreement. Ensure that Partner's contractors and any subcontractors do the same.
3. Undertake and complete in a timely manner, at its sole cost and expense, the Project identified in this Agreement and attachments hereto.
4. Provide to the NPS, prior to entering into any contract or agreement between the Partner and any third-party related to the Project, a copy of the proposed Third-Party Contract.
5. Execute any Third-Party Contract only after receiving either written NPS approval or written notification that NPS will not review the proposed Third-Party Contract.
6. Provide to the NPS in advance of entering into any Third-Party Contract, written certification that--
  - a. The third-party:
    - i. Has all required licenses to do the work contemplated by the agreement in the state(s) in which the work will be performed, or in the District of Columbia (D.C.) if the work will be performed in D.C.;
    - ii. Is not suspended or debarred from federal contracting; and
    - iii. Demonstrates relevant experience and competence to perform the work contemplated in the Third-Party Contract.
  - b. The Partner:

- i. Used competition in selecting the third-party to perform the work;
- ii. Has taken measures to avoid or mitigate conflicts of interest; and
- iii. Has incorporated provisions reflecting best practices in contract management and project administration into the Third-Party Contract.

7. Make the NPS an express third-party beneficiary of all Third-Party Contracts, and require that all Third-Party Contracts contain the following clause:

<p>“The National Park Service is a third-party beneficiary of this contract, with all legal rights associated with that status, including the right to enforce the contract.”</p>
---

8. Submit all plans, designs, and specifications for NPS approval prior to the commencement of construction.
9. Ensure and cause its contractors to ensure that the Project design complies with:
  - a. All applicable laws, regulations, rules, orders, or other legal requirements;
  - b. All applicable building codes and environmental, cultural, safety, accessibility, and sustainable design requirements; and
  - c. NPS management documents.
10. Prior to initiating work on the Project, demonstrate to NPS’s satisfaction that all funds necessary to pay for the Project have been secured, and will remain available to pay Partner’ expenses associated with the Project.
11. Undertake the Project only when all necessary written NPS approvals have been obtained.
12. Establish and maintain, or ensure that its contractor(s) establish and maintain, throughout the course of the Project, (i) security in favor of the United States in the form of a surety bond guaranteeing performance (performance bond) of the Partner’s obligations under this Agreement, or where a contractor obtains the performance bond, the contractor’s performance of its contract with the Partner, and (ii) a payment bond assuring payment of all persons supplying labor and material in the execution of the work undertaken for the Project, with the following conditions:
  - a. All bonds shall be in an amount equal to at least 100% of the total project cost, as approved by the NPS. The NPS may require additional performance and payment bond protection if the estimated costs increase during Project planning or construction;
  - b. All bonds shall be in the form of a firm commitment, supported by corporate sureties that appear on the list contained in Treasury Department Circular 570;

- c. No term of any bond obtained pursuant to this Article shall be inconsistent with the term of this Agreement; and
- d. Should any bond issued pursuant to this section be canceled or withdrawn, the Partner must immediately notify NPS in writing.

[NOTE: BONDS ARE NOT REQUIRED FOR A&E DESIGN WORK. A&E CONTRACTORS ARE REQUIRED TO OBTAIN PROFESSIONAL ERROR AND OMISSION INSURANCE PURSUANT TO ARTICLE VIII.A.3.C OF THIS AGREEMENT.]

13. Include the following requirements identified in quotations verbatim in any Third-Party Contract for the performance of any work or for fulfilling any obligation related to the Project:

“The Contractor agrees—

- a. To comply with all applicable laws, regulations, rules, orders, other legal requirements, and NPS policies;
- b. To comply with the terms and conditions of any Project Development Plan, project implementation plan or special use permits relating to the Project;
- c. To follow any NPS order to suspend work;
- d. To obtain and provide all warranties that would be given in normal commercial practice from subcontractors, manufacturers or suppliers for work performed and materials furnished:
  - i. For a period of not less than one year; and
  - ii. Executed, in writing, for the benefit of the Partner and the United States;
- e. To be responsible for all damages to persons or property that occur as a result of the contractor’s fault or negligence because of, or in any way growing out of or connected to, the Project;
- f. To waive any defense to any claim of breach or negligence based on the contractor’s alleged reliance on the Partner’s or NPS’s Project monitoring, inspections or tests. All monitoring, inspections or tests are for the sole benefit of the Partner and / or NPS and do not relieve the Contractor of responsibility for (i) providing adequate quality control measures, or (ii) ensuring against damage or loss prior to Project acceptance. In addition, such monitoring, inspections or test do not imply acceptance of the Contractor’s work by either the Partner or NPS, nor does it affect the continuing rights of the Partner or NPS after acceptance of the Contractor’s work.
- g. That neither the Partner’s nor NPS’s review, approval or acceptance of, nor

the Partner's payment for, contractor services shall be construed to operate as a waiver of any rights of the Partner or NPS, nor of any cause of action that the Partner or NPS may have, and the Contractor shall be and remain liable to the Partner and the NPS in accordance with the terms of this Contract and applicable law for all damages for which the Contractor is legally responsible.

- h. That in the event of a conflict between the provisions of this Contract and the provisions of the Partner Design and Construction Agreement between NPS and the [INSERT PARTNERS NAME] dated [INSERT], recognize that the terms of the Partner Design and Construction Agreement controls.
- i. To obtain and maintain insurance consistent with the requirements of Article VIII;
- j. That the Contractor has no recourse against the United States with respect to any aspect of construction activities and shall not lien any land, structures, fixtures, or improvements associated with this Contract; and
- k. To be jointly and severally liable under this Contract if the Contractor is comprised of more than one legal entity."

14. In addition to the provisions of Paragraph 13 (above), any Third-Party Contract for the provision of architectural or engineering services must contain verbatim the following provisions identified in quotations:

"The Contractor agrees--

- a. That it is solely responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor and warrants that the project can be built as designed; and
- b. To correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services without any additional compensation.
- c. That the final signed and sealed Final Construction Documents provided by the Contractor, as reviewed and approved in writing by NPS, are the only true contract documents of record for this Project. By submission of the Final Construction Documents to the Partner, the Contractor warrants that all review comments have been resolved to the satisfaction of the Partner and incorporated into the Final Construction Documents."

15. Permit the NPS to monitor, inspect, and to at all times have access to the construction site and construction-related materials and documents.
16. Promptly take steps necessary, including the suspension of work, at no cost to NPS, to address any concerns raised by NPS.

17. Certify in writing that upon NPS's acceptance of the Project as complete, all right, title, and interest to any completed construction, improvements, installations, fixtures, or associated donations, are free and clear of all debts, liabilities, or obligations.
18. Consistent with the Partner's intent to donate the Project to the NPS as stated herein, waive any claim or right to any property interest, including use rights, or to compensation for any Project components donated to NPS by or on behalf of the Partner.
19. Comply with, and cause its contractors to comply with, the wage requirements of the Davis Bacon Act, 40 U.S.C. § 3142 *et seq.*, and the relevant Department of Labor regulations, 29 C.F.R. Part 5.
20. Act in accordance with any Project Development Plan, project implementation plan or special use permit that may be in place at the time of the execution of this Agreement, or that is subsequently agreed to by the parties for the furtherance of the Project.
21. Ensure that no Third-Party Contract contains a binding arbitration clause or other clause that may interfere with NPS's ability to seek judicial review in its capacity as a third-party beneficiary to the Third-Party Contract.
22. Provide NPS with the signed Contractor Certification Form, included as Attachment E to this Agreement, prior to executing any Third-Party Contract.
23. Provide NPS with a copy of Third-Party Contracts upon execution.

C. The Partner and NPS jointly agree that--

1. The Project's overall cost is estimated to be approximately [INSERT]. The [INSERT "PARTNER'S"...OR IF NPS IS ALSO CONTRIBUTING FUNDS TOWARD THIS PROJECT, INSERT "PARTIES'"] financial obligations are detailed in Attachment B.
2. In making certain programmatic and resource-related decisions, NPS is relying upon the Partner's promise to undertake and diligently pursue the Project in accordance with this Agreement.
3. The attached Project Development Plan (Attachment C), as may be amended or supplemented by written agreement of the parties, addresses without limitation, deliverables, design elements, construction standards, mitigation measures, safety precautions, site access, construction monitoring, coordination between the parties, contractor requirements, and design modifications.
4. Project land and facilities shall not be subject to liens by the Partner or any third-parties.

5. The Partner and NPS are not establishing a joint venture, a joint enterprise or other entity by entering into this Agreement, and neither is liable for the contracts or actions of the other party relating to this Agreement or otherwise.
6. Other Contracts: [STATE THE RELATIONSHIP BETWEEN THIS AGREEMENT AND OTHER CONTRACTS, IF ANY.]
7. NPS review and approval of documents pursuant to Article III.A.1 of this Agreement shall not be construed to operate as a waiver of any rights of the NPS, nor a waiver of any cause of action that NPS may have arising under this Agreement or any Third-Party Contract.

**ARTICLE IV.        ATTACHMENTS**

A detailed Project description is provided in Attachment A. A breakdown of the financial obligations of [INSERT EITHER “THE PARTNER” OR “THE PARTIES”] is provided in Attachment B. A Project Development Plan is provided in Attachment C. A Site Plan schematic drawing of the Project is provided in Attachment D. The Contractor Certification Form is included as Attachment E. Attachments A-E are hereby incorporated into this Agreement.

**ARTICLE V.        AUTHORITY**

NPS enters into this Agreement pursuant to (a) 16 U.S.C. § 6, which authorizes NPS to accept donations for purposes of the National Park System; (b) 43 U.S.C. § 1473a, which gives the Secretary authority to accept and use contributions for cooperative projects with other Federal, State, or private agencies; (c) 16 U.S.C. § 1f, which authorizes the Secretary to enter into agreements with individuals and entities to share costs and services in support of NPS projects; and (d) 16 U.S.C. §§ 1-4 (the NPS Organic Act), which authorizes NPS to take actions in furtherance of the mission of the National Park System.

[NOTE: SUPPLEMENT THE ABOVE AUTHORITIES WITH OTHER STATUTORY AUTHORITY, AS APPROPRIATE.]

**ARTICLE VI.        KEY OFFICIALS**

- A. Key Officials: The personnel specified below are considered essential to successful coordination and communication between the Partner and NPS for the work to be performed under this Agreement. Upon written notice to the other party, either party may designate an alternate to act in the place of the designated Key Official, or designate a new Key Official.

**[Name of Partner Organization]**

name

title

address

phone  
fax  
e-mail

**NPS**  
name  
title  
address  
phone  
fax  
e-mail

- B. Notices: Any notice from one party to the other party required or provided in association with this Agreement shall be delivered in writing, by mail, personal delivery, electronic delivery or other appropriate means, to the first listed Key Official of the other party, at the address or contact number indicated in this Article, or at such other address or contact number for such Key Official as may be provided from time to time, and shall be considered delivered upon receipt at the office of such Key Official.

## **ARTICLE VII. TERM OF AGREEMENT**

Unless modified by the parties in writing, or unless terminated by operation of the terms of this Agreement, this Agreement shall be in effect for a period of [INSERT] years beginning on the date of the last signature hereto. Nothing in this Article shall alter or affect the term of any bond or insurance coverage obtained in furtherance of the Project.

## **ARTICLE VIII. INSURANCE AND LIABILITY**

### **A. Insurance**

1. The Partner and all contractors must comply with all insurance related provisions of this Article. The Partner and its contractors are responsible for ensuring that these insurance requirements are included, as appropriate, in their respective contracts with subcontractors. Unless otherwise specified herein, the term “contractor(s)” as used in this Article means entities providing any construction, utility, architectural, engineering, or design related labor, materials, products, or services.
2. Insurance coverage must be commensurate with foreseeable risk, and coverage limits may ultimately be greater than the minimum limitations required below. NPS will not be responsible for any omissions or inadequacies of any insurance coverage or amounts in the event that insurance purchased by the Partner or a contractor proves to be inadequate or insufficient for any reason.
3. The Partner and all contractors must acquire and maintain the following insurance and comply with the following associated requirements:

- a. The Partner and all contractors must have appropriate insurance including coverage for commercial general liability, contractual liability, automobile, valuable papers, umbrella coverage, and workers' compensation, from a responsible company or companies. Unless higher limits are required by the NPS in writing, commercial general liability insurance and automobile insurance shall each have 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. Insurance must be acquired prior to the initiation of any in-park activities and must be maintained until the Project is accepted as complete by NPS.
  - b. The Partner or the Partner's Prime Contractor or General Contractor must have Builder's Risk Insurance sufficient to cover the replacement cost of the Project.
  - c. The Partner and contractors, as appropriate, must have appropriate insurance coverage when warranty work is conducted. This provision shall survive termination or expiration of this Agreement. Warranty work requires the NPS Superintendent's prior approval.
  - d. Contractors providing architectural or engineering service must have Professional Error and Omissions Insurance coverage that, at a minimum, conforms to the requirements of applicable state law, or Washington, D.C. law if the Project occurs there.
  - e. Where a Partner or contractor is authorized to utilize NPS structures or facilities in conjunction with this Agreement, the Partner or contractor shall procure and maintain, at its sole cost and expense, fire and hazard protection insurance in an amount equal to the replacement cost of structures or facilities utilized. This insurance shall be maintained for the term of use.
4. All insurance policies required by this Agreement, whether or not they are acquired by contractors, shall be payable to the Partner, and the Partner shall use insurance proceeds to correct the damage, harm, or deficiency that is the basis of the insurance claim. Partner expenditure of insurance proceeds shall be in conformance with law, NPS policies, and NPS approvals. Insurance proceeds that are paid to the Partner, but that are not needed, or cannot be used to correct the harm or deficiency at issue, must, if allowed under the insurance policy, be used to further Park projects and programs as agreed to by the parties.
  5. All insurance policies required by this Agreement shall name the United States as an additional insured and shall specify that the insurer has no right of subrogation against the United States. If in NPS's judgment the Partner is unable to meet its obligation to correct the damage, harm, or deficiencies at issue, NPS may file insurance claims and use insurance proceeds consistent with law and NPS policies.

6. Prior to beginning the work authorized herein, the Partner shall provide the NPS with copies of Certificates of Insurance demonstrating that the Partner and contractors have acquired all insurance required by this Article. Insurance coverage shall be reviewed every year 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. The Partner and contractors must immediately notify NPS if an insurance policy is canceled or terminates for any reason.
7. Insurance Carrier Requirements:
  - a. Each issuer of the insurance required by this Article must be rated no lower than A- by the most recent edition of the A.M. Best's Key Rating Guide (Property-Casualty Edition).
  - b. All insurers for all coverage 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).
  - c. All insurers must be admitted, licensed, and approved to operate in the state in which the Project will occur, or Washington, D.C. if the Project occurs there.

**B. Liability**

1. 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 including fire or other peril, bodily injury, death, or real, personal, or intellectual property damage of any nature whatsoever, and by whomsoever made, in any way arising out of the activities of the Partner, or the Partner's employees, agents or contractors (including a contractor's subcontractor) in furtherance of the Project. This indemnification shall survive the termination or expiration of this Agreement.
2. The Partner must 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 (including a contractor's subcontractor) in connection with any activities under this Agreement.
3. The Partner must cooperate with the NPS in the investigation and defense of any claims that may be filed with or against the NPS arising out of the activities of the Partner, or the Partner's employees, agents, representatives, or contractors (including a contractor's subcontractor).

**ARTICLE IX. CONFIDENTIAL AND PROPRIETARY INFORMATION AND INTELLECTUAL PROPERTY**

A. With respect to confidential and proprietary information and intellectual property created in association with this Agreement the Partner agrees that --

1. NPS Review of Bid Proposals

- a. The Partner will receive all bid proposals, associated documents, and other communications from bidders and provide copies of them to the NPS Key Official identified in this Agreement so that they may be distributed to appropriate NPS personnel for review. Any information delivered in writing or by other tangible form from the Partner to NPS, or from NPS to the Partner, that is to be considered Confidential Information must be conspicuously labeled on every page as “Confidential and Proprietary” at the time of delivery. If proprietary information is delivered orally by either the Partner (including information provided by the bidder) or NPS, the Partner or NPS (as the case may be) must identify such information at the time of disclosure, subsequently reduce it to writing, label it “Confidential and Proprietary,” and provide this writing to the appropriate Key Official. Each Party will implement reasonable internal controls to protect confidential information in its possession. The Partner will destroy Confidential Information provided by losing bidders after termination of the bid selection process, unless the Partner’s Key Official has been provided a written request that the Confidential Information be returned at the time it is received by the Key Official. NPS retention, release, and destruction of information that is labeled “Confidential Information” is governed by applicable federal law.
- b. Both Parties will ensure their compliance with applicable state or federal law. Confidential Information does not include information that:
  - i. Is generally known and available in the public domain through no fault of the receiver;
  - ii. Was known by the receiver prior to the date of disclosure;
  - iii. Was received from a third party without any obligation of confidentiality; or
  - iv. Was independently developed without reliance on Confidential Information.
- c. In all bid solicitations, the Partner shall notify bidders of all provisions in this Article IX that affect their interests, and shall provide that all such provisions will be binding on all bidders including the winning Contractor.
- d. This Article IX.A.1 shall survive termination or expiration of this Agreement.

2. Rights to Works Produced in the Performance Contract

- a. The Partner is bound by the following provisions. Additionally, the Partner will ensure that provisions b through d below are incorporated into all contracts and subcontracts with Contractors that are executed in furtherance of this Agreement. These provisions should be modified by including the Partner's name and the Contractor's name when such provisions are inserted into any contract.
- b. NPS shall own any and all rights, titles, and interests, including any and all patents, copyrights, trademarks, trade secrets, inventions, products or other intellectual property rights created as a result of, arising from, or relating to this Agreement, including without limitation intellectual property utilized in bid proposals and any pre-existing intellectual property belonging to the Partner and/or Contractor that is provided in association with the Project, provided, however, that the Partner may request from NPS a non-exclusive license to use any intellectual property for purposes related to the Partner's educational mission. NPS shall consider the request for such non-exclusive license on a case-by-case basis. This provision shall survive expiration or termination of this Agreement.
- c. The Partner and the Contractor shall fully cooperate with the NPS in the protection and enforcement of any intellectual property rights resulting from activities and services performed in connection with this Agreement. This obligation includes timely execution, acknowledgment, and delivery to the NPS of all documents and papers that may be necessary to enable the NPS to utilize in any manner any copyrights, patents, trademarks, trade secrets, and other intellectual property and proprietary rights.
- d. In the event that any invention or material created in the course of performing tasks under this Agreement or any associated agreement is patentable intellectual property, the Contractor shall report the invention or patentable intellectual property to the Partner within thirty days of its creation. Upon receiving notice of the creation of an invention or patentable intellectual property, the Partner will immediately report the invention or intellectual property to the NPS.

**ARTICLE X. DEFAULT AND TERMINATION**

- A. In the event that the NPS reasonably believes that the Partner is in breach of its obligations under this Agreement, the NPS must provide the Partner written notice (Default Notice) of such alleged breach. The Partner shall have thirty (30) days (the Cure Period) after receipt of the Default Notice to cure such alleged breach, or if the alleged breach cannot be cured within the Cure Period, the Partner shall obtain the NPS's approval of a written remedial plan specifying the Partner's intent to cure the alleged

breach as promptly as is reasonably practical and within a deadline determined by mutual agreement.

- B. In the event that the Partner fails to cure the alleged breach within the Cure Period or to diligently pursue the action detailed in the remedial plan, the NPS may, without first obtaining a judgment or declaration of breach by any court, board, arbitrator or any other adjudicator, exercise its rights to proceed against the surety bonds required in Article III.B.12.a-d of this Agreement, and / or seek any alternative or additional remedies available to it including termination of this Agreement.

**ARTICLE XI. DISPUTES, VENUE AND CHOICE OF LAW**

- A. The parties agree that in the event of a dispute between them, NPS and the Partner shall promptly use their best efforts to resolve the dispute in an informal fashion through communication and consultation, or other forms of non-binding alternative dispute resolution that are mutually acceptable to the parties.
- B. The parties agree that the venue to commence litigation of any disputes stemming from this Agreement shall be a Federal court with appropriate jurisdiction.

**ARTICLE XII. ACCOUNTING AND REPORTS**

The Partner and its contractors and subcontractors shall maintain accounting books and records under a system of accounts and financial controls meeting Generally Accepted Accounting Principles, and must permit the Department of the Interior or its designee, including the NPS Comptroller and Office of the Inspector General, to verify and audit financial documents from the books, correspondence, memoranda and other records of the Partner relating to this Agreement, during the period of this Agreement, and for such time thereafter as may be necessary to accomplish such verification. Such period shall be a minimum of three years after the Project is completed.

**ARTICLE XIII. COMPLIANCE WITH APPLICABLE LAW**

- A. This Agreement and performance hereunder is subject to all applicable laws and regulations whether now in force or hereafter enacted or promulgated. This Agreement and performance hereunder is also subject to applicable government policies. Nothing in this Agreement shall be construed as in any way limiting 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.
- B. In addition to other laws, regulations, and policies referenced in this Agreement, the Partner is on notice that, where applicable, it must comply with, and assist NPS in complying with additional laws, regulations, Executive Orders and policies including, but not limited to the Americans with Disabilities Act (42 U.S.C. § 12101), Architectural Barriers Act (42 U.S.C. § 4151 *et seq.*), the Rehabilitation Act (29 U.S.C. § 701 *et seq.*,

as amended), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, *et seq.*), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4801, *et seq.*), the National Environmental Policy Act (42 U.S.C. § 4321, *et seq.*), the Coastal Zone Management Act (16 U.S.C. § 1451 *et seq.*), Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Safe Drinking Water Act (42 U.S.C. § 300, *et seq.*), the Endangered Species Act (16 U.S.C. § 1531 *et seq.*), the Wild and Scenic Rivers Act (16 U.S.C. § 1271, *et seq.*), the National Historic Preservation Act (16 U.S.C. § 470), the Archaeological and Historic Preservation Act (16 U.S.C. § 469), Strengthening Federal Environmental, Energy and Transportation Management (Exec. Order No. 13423), Notification of Violating Facilities (Exec. Order No. 11738), Wetlands Protection (Exec. Order No. 11990), and Flood Hazards in Floodplains (Exec. Order No. 11988).

**ARTICLE XIV. REQUIRED AND MISCELLANEOUS CLAUSES**

- A. Non-Discrimination: All activities pursuant to or in association with this Agreement shall be conducted without discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex, as well as in compliance with the requirements of any applicable federal laws, regulations, or policies prohibiting such discrimination.
- B. NPS Appropriations: Pursuant to 31 U.S.C. § 1341, nothing contained in this Agreement shall be construed to obligate the government to any current or future expenditure of funds in excess or advance of the availability of appropriations from Congress. Nor does this Agreement obligate the government to spend funds on any particular project or purpose, even if funds are available.
- C. Limitations on Lobbying. To the extent that the Partner commits in this Agreement or any related agreement to raise funds from non-federal sources for a particular purpose or project to benefit the NPS, the Partner agrees that it will not lobby for or otherwise seek the appropriation of funds from Congress to meet that commitment. The Partner may not use any appropriated funds (including property, utilities, or services acquired with, or supported by, appropriated funds) to lobby or attempt to influence Congress or any official of any government.
- D. 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, a park or park unit, a government 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.
- E. Merger: This Agreement, including any attachments hereto and documents incorporated by reference herein, contains the sole and entire agreement of the parties with respect to the subject matter of this Agreement.
- F. Modifications: This Agreement may be extended, renewed or amended only when agreed to in writing by the NPS and the Partner.

- G. Waiver: If a party fails to exercise any right or to insist that the other party comply with any obligation, no such failure or insistence shall be a waiver of a right of a party to demand strict compliance with each duty or obligation. No custom or practice of the parties which varies from this Agreement shall constitute a waiver of the right of a party to demand exact compliance. Waiver by one party of any particular default by the other party shall not affect or impair a party's rights in connection with any subsequent default of the same or of a different nature, nor shall any delay or omission of a party to exercise any rights arising from such default affect or impair the rights of that party as to such default or any subsequent default. All waivers of any duty or obligation by a party must be express and evidenced in writing.
- H. Effect of Approval: Any approval or consent given by the NPS regarding any contract or contractor, or by operation of inspection, or any other consent or approval given by the NPS under this Agreement, or NPS's decision to decline review of a Third-Party Contract, does not relieve the Partner or the Partner's contractors of responsibility for any errors or omissions, or from the responsibility to comply with the requirements of this Agreement.
- I. Effect of Acceptance: Any acceptance by the NPS of the Project or any component thereof does not relieve the Partner or the Partner's contractors from liability for any known defect, or any latent defect, fraud, or gross mistake or negligence.
- J. Assignment: No part of this Agreement shall be assigned to any other party without prior written approval of the NPS and the Assignee.
- K. 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.
- L. 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.
- M. Agency: The Partner is not an agent or representative of the United States, the Department of the Interior, or NPS, or the Park, nor will the Partner represent its self as such to third parties. NPS employees are not agents of the Partner and will not act on behalf of the Partner.
- N. Non-Exclusive Agreement: This Agreement in no way restricts the Partner or NPS from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.
- O. No Third-Party Beneficiaries: Unless expressly stated herein, nothing in this Agreement is intended to grant any rights or to provide any benefits to any third-party.

- P. **Survival:** Any and all provisions which, by themselves or their nature, are reasonably expected to be performed after the expiration or termination of this Agreement shall survive and be enforceable after the expiration or termination of this Agreement. Any and all liabilities, actual or contingent, which have arisen during the term of and in connection with this Agreement shall survive expiration or termination of this Agreement.
- Q. **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.
- R. **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.
- S. **Drug Free Workplace Act:** The Partner shall take comprehensive action to ensure the workplace is drug-free.
- T. **Jointly Drafted:** This Agreement shall be deemed to have been jointly drafted by both parties and, in the event of a dispute, shall not be construed against either party.
- U. **Further Assurances:** If requested by one party, the other party shall execute and deliver such other documents and take such other action as may be necessary to effect the terms of this Agreement.

**ARTICLE XV.      AUTHORIZING SIGNATURES**

[NOTE: SEE INSTRUCTIONS FOR SIGNING AUTHORITY. NPS SIGNS FIRST, THEN PARTNER]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date the last signature is affixed:

**NATIONAL PARK SERVICE**

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

Partner Design and Construction Agreement Template and Attachment E 9.13.11

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

**[PARTNER ORGANIZATION]**

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

**Attachments:**

- Attachment A – Project Description
- Attachment B – Financial Obligations
- Attachment C – Project Development Plan
- Attachment D - Site Plan
- Attachment E – Contractor Certification Form

**ATTACHMENT E – CONTRACTOR CERTIFICATION FORM**

[INSERT CONTRACTOR’S NAME] (Contractor) agrees and certifies that any contract between the Contractor and the [INSERT PARTNER’S NAME], or any subcontract between the Contractor and a subcontractor, including any associated addendum, attachment, exhibit, modification, or change order thereto, whether executed in writing or not, must be consistent with the terms of the Partner Design and Construction Agreement between the [INSERT PARTNER’S NAME] and the National Park Service dated [INSERT].

The Contractor agrees and certifies that in the event of a conflict between the Partner Design and Construction Agreement, as it may be amended from time-to-time, and any contract or subcontract relating to the Partner Design and Construction Agreement to which the Contractor is a party, the terms of the Partner Design and Construction Agreement will control.

Nothing herein is intended to prohibit the Contractor from seeking payment from the [INSERT PARTNER’S NAME] in association with potential modifications to the Partner Design and Construction Agreement, consistent with law and the payment terms of its contract with [INSERT PARTNERS NAME]. [INSERT PARTNER’S NAME] will promptly provide the Contractor with copies of any modifications to the Partner Design and Construction Agreement.

The Contractor agrees and certifies that it has received a copy of the Partner Design and Construction Agreement date [INSERT] and that it has reviewed that Partner Design and Construction Agreement. The Contractor will provide certification of receipt of any modifications to the Partner Design and Construction Agreement provided by the [INSERT PARTNER’S NAME] upon request of the [INSERT PARTNER’S NAME].

\_\_\_\_\_  
Name, Title  
Partner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name, Title  
Contractor

\_\_\_\_\_  
Date