



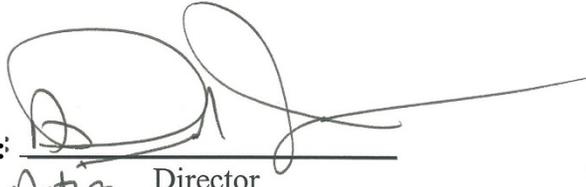
United States Department of the Interior

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

IN REPLY REFER TO:

DIRECTOR'S ORDER #20: AGREEMENTS

Approved: _____


Acting Director

Effective Date: July 23, 2003

Sunset Date: December 31, 2004

Note: This is an interim renewal of Director's Order #20, without substantive changes to the version that was approved July 23, 1999. Substantive changes will be under consideration in the coming months, and they will be circulated Servicewide for review and comment.

The *Federal Assistance and Interagency Agreement Guideline, NPS-20, Release No. 3*, dated August 1986, and any other conflicting instructions which pre-date this Director's Order, are superseded and replaced by this Director's Order #20 and by the *National Park Service Agreements Handbook*.

1. PURPOSE AND BACKGROUND

1.1 The purpose of this Director's Order is to: (1) establish NPS policies and procedures for administering agreements; (2) identify and describe the types of agreements that the NPS enters into with Federal and non-Federal entities; (3) identify and describe the responsibilities and functions of NPS officials in administering agreements; and (4) affirm the NPS's commitment to comply with the regulations, policies and procedures imposed by the Office of Management and Budget (OMB) Circulars, the Code of Federal Regulations (CFR), the Federal Acquisition Regulation (FAR), Executive Orders (E.O.), the Department of the Interior (DOI) regulations and other applicable governmental laws and regulations.

1.2 The National Park Service (NPS) is authorized by law to enter into agreements with other agencies, organizations and individuals. These agreements establish formal relationships that allow the NPS to more efficiently and economically accomplish its mission. To some extent,

applicable laws and regulations prescribe the manner or conditions under which agreements may be entered into. But NPS managers also have substantial latitude in crafting and entering into agreements. This combination of authority and latitude has resulted in a confusing proliferation of agreements that have often been more complicated than they needed to be. At the same time, the approval process has sometimes taken more time than should have been necessary, because basic elements or requirements have been overlooked by the agreement's author, or because there has been uncertainty as to roles and responsibilities in the approval process, or because an inappropriate agreement instrument has been selected. This situation indicates a need within the NPS to clarify the distinctions between various agreements, to standardize agreement formats, and to clarify roles and responsibilities.

1.3 This Director's Order is a "Level 2" document issued under the Director's signature. It does not contain detailed information and procedures or processes. However, the Associate Director for Administration will prepare and issue a *NPS Agreements Handbook* (a "Level 3" document) which will include detailed information regarding procedures and processes, and specific examples of the various agreement formats.

2. LEGAL AUTHORITY

2.1 This Director's Order is authorized by the National Park Service Organic Act (16 U.S.C. 1 through 4), and delegations of authority contained in Part 245 of the Department of the Interior Manual. In addition, there are other laws that authorize the NPS to enter into agreements and that prescribe the form and content of agreements. These other laws are referenced as appropriate within this Director's Order and, to a greater extent, within the *NPS Agreements Handbook*.

3. POLICIES/INSTRUCTIONS/REQUIREMENTS

3.1 NPS park and program managers should actively seek opportunities to efficiently and economically accomplish the NPS mission by entering into advantageous relationships with Federal and non-Federal entities. The NPS will formalize and document these relationships through Cooperative Agreements, Interagency Agreements, and General Agreements (formerly called Memoranda of Agreement and Memoranda of Understanding) which will explain how the relationships are managed.

3.2 All agreements in which the NPS is a party will be carried out in accordance with applicable laws, regulations and policies. The NPS will ensure, to the extent practicable, uniform implementation of procedures governing its agreements with Federal and non-Federal entities.

3.3 The terms *Memorandum of Understanding* (MOU) and *Memorandum of Agreement* (MOA) will no longer be used to describe an agreement in which the NPS is a party. The terms MOU and MOA will be replaced by the new term, *General Agreement*.¹ An MOU or MOA which pre-dates this Director's Order may continue to be called MOU or MOA until it expires. If or when the agreement is renewed, it will be converted to a *General Agreement*. Exceptions to this nomenclature may be made for international agreements, or when the non-NPS party is required by their agency or institutional protocol to use MOU, MOA, or some other term.

3.4 In the past, Interagency Agreements were sometimes used to document an agreement or understanding between the NPS and another Federal agency to assist one another on a reciprocal basis. Henceforth, the NPS will use Interagency Agreements only to document arrangements that entail the transfer of funds, goods, property or services between the NPS and another Federal agency. When the purpose of the agreement is merely to document mutually-agreed-to policies, procedures, objectives and/or relationships, with no funds, goods, property or services exchanged, a General Agreement will be the instrument of choice.

3.5 The Associate Director, Administration, through the Contracting and Procurement Office, will issue the *NPS Agreements Handbook*. The handbook will provide a comprehensive compilation of detailed information and instructions that will assist NPS personnel in the development, implementation, and management of agreements. The handbook will also include legal authorities for entering into agreements and the responsibilities of NPS personnel for processing agreements. NPS personnel must comply with the mandatory elements contained in the *NPS Agreements Handbook*, which will be available through contracting offices at the regional level and through the WASO Contracting and Procurement Office.

4. COOPERATIVE AGREEMENTS

4.1 Congress has specifically defined in the Federal Grant and Cooperative Agreement Act (FGCAA--codified at 31 U.S.C. 6305) the term "Cooperative Agreement," and the circumstances under which a Cooperative Agreement must be used. In the past, the NPS has had limited authority to use cooperative agreements as a means of carrying out its mission because it had few legal authorities to undertake activities that met the FGCAA definitions. However, as a result of the Omnibus Consolidated Appropriations Act of 1997 (P.L. 104-208), section 203 of the National Parks Omnibus Management Act of 1998 (P.L. 105-391), and section 818 of the Omnibus Parks and Public Lands Management Act of 1996 (P.L. 104-333), the NPS has three

¹ The terms MOU and MOA are being eliminated at the suggestion of the Office of the Solicitor, and in response to a recommendation from the Vail Partnership Committee to reduce the confusion in selecting agreement instruments. Both these terms--and the types of relationships they characterized in the past--will be encompassed within the more generic *General Agreement*. Although confusion will never be totally eliminated, the range of options should help simplify choices.

new statutory authorities that expand the opportunities to use cooperative agreements. These new authorities are 16 U.S.C. 1g for park programs, 16 U.S.C. 5933 for cooperative study units, and 16 U.S.C. 1a-2(j) for park research. These new authorities, in addition to the other existing specific authorities, allow the NPS to carry out any of the NPS's legally authorized activities through a Cooperative Agreement, as long as the following conditions are met:

(a) The agreement is used to transfer money, property, services, or anything else of value from the NPS to the partner; and

(b) The principal purpose of the NPS assistance is:

1. To carry out a public purpose of support or stimulation authorized by a law of the United States between the NPS and a state, local government, tribal government or other non-Federal partner. [A few examples of those laws include 16 U.S.C. 460(f) (research relating to outdoor recreation); 16 U.S.C. 462(e) (the Historic Sites Act of 1935); 16 U.S.C. 1246 (the National Trails System Act); 16 U.S.C. 1281(e) (the Wild and Scenic Rivers Act); 16 U.S.C. 3119 (Alaska National Interest Lands Conservation Act)]; or

2. To carry out the public purpose of any National Park Service program, authorized by law or by appropriation, with a state, local or tribal government, other public entity, educational institution, or private nonprofit organization. [This authority, 16 U.S.C. 1g, provides a very broad authority to use cooperative agreement instruments in support of park programs]; or

3. To develop adequate, coordinated, cooperative research and training programs concerning the resources of the National Park System with a public or private educational institution, state, or a political subdivision of a State, as authorized by 16 U.S.C. 1a-2(j); and

(c) The NPS anticipates substantial involvement during performance of the contemplated activity. [Anticipated involvement during performance would exist and, depending on the circumstances, could be substantial where the relationship includes, for example: NPS involvement in program management decisions; NPS collaboration in the accomplishment of the activity; or NPS operational involvement or participation during the project. The NPS Agreements Handbook provides additional guidance on determining whether substantial involvement is anticipated.]

4.2 Although the NPS frequently “cooperates with” or participates in a “cooperative arrangement with” other Federal and non-Federal entities, unless the arrangement meets the criteria in paragraph 4.1, above, it will not be the subject of a “Cooperative Agreement.” Instead, such arrangements will be the subject of a “General Agreement” or “Interagency Agreement.”

4.3 Cooperative Agreement administration requires record keeping and compliance with any reporting requirements specified in the agreement and by regulations applicable to Cooperative Agreements. The *NPS Agreements Handbook* provides detailed information on these requirements.

4.4 Cooperative Agreements must be reviewed by a Contracting Officer and the Office of the Solicitor.

4.5 Cooperative Agreements must be signed by a Contracting Officer who possesses a Level IIB or higher warrant, and who has had Cooperative Agreement training from an accredited educational institution.

4.6 Cooperative Agreements are not to be used to circumvent applicable Federal acquisition laws and regulations. Competition should be encouraged, where deemed appropriate, in the award of cooperative agreements.

Note: If an end product will be delivered to the NPS, without substantial involvement by the NPS during performance, then a simplified purchase or a formal contract is the appropriate course of action, rather than a Cooperative Agreement.

5. INTERAGENCY AGREEMENTS

5.1 An Interagency Agreement is the appropriate instrument for:

(a) The acquisition or provision of goods or services between the NPS and another Federal agency, as authorized by the Economy Act (31 U.S.C. 1535, as amended);

or,

(b) The acquisition or provision of services between the NPS and the District of Columbia government, as authorized by the Economy Act (31 U.S.C. 1537, as amended).

5.2 Interagency Agreements which obligate NPS funds must be reviewed and signed by a Contracting Officer who possesses a level IIB or higher warrant. Interagency Agreements that exceed \$250,000 must be reviewed for approval or disapproval by the Manager, Contracting and Procurement Program Office, WASO. If superintendents, program managers, or Contracting Officers have questions on a specific Interagency Agreement, they should contact the Office of the Solicitor for guidance.

5.3 Interagency Agreements which involve the receipt of funds by the NPS do not require the signature of the NPS Contracting Officer unless required by the other Federal agency. If the

other Federal agency does not require the signature of the NPS Contracting Officer, the responsible NPS official will sign the Interagency Agreement.

5.4 An Interagency Agreement which does not meet the requirements of 5.1, above, and which pre-dates this Director's Order, may continue to be called an Interagency Agreement until it expires. However, if and when the agreement is renewed, it will be renamed *General Agreement*.

6. COOPERATIVE MANAGEMENT AGREEMENTS

[NOTE: Policy guidance on the use of Cooperative Management Agreements for the acquisition or provision of supplies and services between the NPS and a State or local government agency, as authorized by section 802 of the National Park Omnibus Management Act of 1998, 16 U.S.C. 1a-2(l), is being developed and will be inserted here when it is completed.]

7. GENERAL AGREEMENTS

7.1 A General Agreement is a generic instrument used to document a wide range of mutually-agreed-to policies, procedures, objectives, understandings and/or relationships with Federal and non-Federal entities. The term "General Agreement" may be applied to any agreement not defined above as a Cooperative Agreement or an Interagency Agreement. Examples include:

- (a) Agreements with "friends" organizations;
- (b) Programmatic agreements with other Federal agencies;
- (c) Planning and development agreements;
- (d) Cooperating association agreements;
- (e) Fund-raising or donation agreements;²
- (f) Reimbursable and non-reimbursable law enforcement assistance and fire-fighting agreements with state or local agencies;
- (g) Arrangements under which a non-governmental entity will reimburse the NPS for supplies or services authorized under 16 U.S.C. 1b(5).

² A gift to the NPS from a grant-making foundation may be documented in whatever format is used by the foundation, provided that the document does not contain stipulations that are otherwise unacceptable to the NPS. (Consult with the Office of the Solicitor or the Partnerships Office if further guidance is needed.)

7.2 While the generic term “General Agreement” will define the type of instrument, a more explicit descriptive phrase may be used within the title to help distinguish its purpose. Examples include:

- (a) “General Agreement – to Document a Fund-raising Relationship between”
- (b) “General Agreement – to Document a Cooperating Association Relationship between....”
- (c) ”General Agreement – to Document a Fire-fighting Assistance Relationship between....”

7.3 General Agreements must not commit the NPS to provide financial assistance in any form, nor transfer NPS goods or services to Federal or non-Federal entities.³ However, a General Agreement may establish an administrative framework under which a subsequent Cooperative Agreement or Interagency Agreement will be entered. When used this way, the General Agreement may be incorporated into and succeeded by the Cooperative Agreement.

7.4 General Agreements are not required to be reviewed or signed by a Contracting Officer. However, if a General Agreement establishes an administrative framework under which a subsequent Cooperative Agreement or Interagency Agreement will be entered into, it is recommended that a Contracting Officer review the General Agreement.

7.5 If NPS park or program managers have questions regarding the legal implications of their General Agreements (such as tort claim liability), they are encouraged to consult with the Office of the Solicitor. Solicitor’s Office review is required for all fundraising agreements.

7.6 General Agreements may be reviewed and signed by the Director or by a deputy director, associate director, regional director, superintendent, or service/administrative program center manager. General Agreements intended for signature by the Director will be referred to the Office of Policy for prior review. Regional and associate directors may impose additional reviews and/or approval procedures for General Agreements within their jurisdiction.

8. CHALLENGE COST-SHARE PROGRAM

The criteria in sections 4 and 7 of this Director’s Order should be applied to determine whether a Cooperative Agreement or a General Agreement is the appropriate instrument for documenting a Challenge Cost-Share Program (CCSP) activity. In some cases, a contract will be the appropriate instrument. Further guidance for the CCSP may be found in Director’s Order #27, which is currently being developed. For additional information, contact the Washington

3 This does not prohibit the NPS from providing services to Cooperating Associations under 16 U.S.C. 17j-2(e).

Coordinator for the CCSP, or visit the following website: <http://www.nps.gov/legacy/ccsp.htm>.

9. RESPONSIBILITIES OF OFFICIALS

- 9.1 **Department of the Interior Office of Acquisition and Property Management.** Issues, through the Department of the Interior Manual, policies, procedures and regulations to implement Government-wide statutory or regulatory requirements for agreements.
- 9.2 **Office of the Solicitor.** Reviews agreements to ensure that the appropriate legislative authority is cited and the agreement is legally sufficient.
- 9.3 **Office of the Inspector General.** Conducts audits and negotiates cost rates for Cooperative Agreements.
- 9.4 **Director, Deputy Director, and Associate Directors.** Ensures that established policies, procedures, and requirements for agreements are met. On a case-by-case basis, each may sign General Agreements that have Service-wide impact.
- 9.5 **Associate Director, Administration.** Ensures that established servicewide policies and procedures for agreements are implemented.
- 9.6 **Regional Director.** Signs General Agreements which have regionwide impact.
- 9.7 **Manager, Contracting and Procurement Program Office, WASO.** Develops and issues Service-wide policies and procedures to comply with OMB Circulars, Federal Acquisition Regulation, Executive Orders, the Departmental Manual, and other sources of guidance on agreements; provides Service-wide oversight of Cooperative and Interagency Agreements; reviews NPS and office internal controls to ensure compliance as set forth in 43 CFR 12 and 505 DM .
- 9.8 **Superintendents, Managers, Service Centers and Administrative Program Centers.** Authorized to sign General Agreements that affect areas and matters over which they have jurisdiction.
- 9.9 **Contracting Officers with Level IIB or higher warrant.** Authorized to sign and administer Cooperative and Interagency Agreements.
- 9.10 **Program Managers/Contracting Officer's Technical Representatives.** Provide technical information, statements of work and technical assistance for agreements, and receipt of reports and other deliverables.

9.11 **Property Office.** Maintains accountable property records for property furnished under agreements and disposes of excess property acquired under agreements, in accordance with Director's Order #44.

9.12 **Partnership Office.** Reviews, and provides technical assistance with regard to, General Agreements relating to fundraising campaigns which require the Director's approval.

9.13 **Office of Policy.** Reviews, and provides technical assistance with regard to, General Agreements intended for signature by the Director (other than fundraising).

9.14 **Accounting Operations Center.** Ensures invoices are reviewed for accuracy and payments are processed in accordance with the terms and conditions of agreements.

Note: Although the authority to sign and administer cooperative agreements or interagency agreements which obligate funds rests with the appropriate level contracting officer, Regional Directors and/or park superintendents may co-sign agreements signifying their endorsement of the partnership arrangement.

----- End of Director's Order -----