

AGREEMENT
between
the
NATIONAL PARK SERVICE
and the
AMERICAN MUSEUM OF NATURAL HISTORY
on
Management of NPS Tissue Collections

This Agreement (the “Agreement”), effective July 7, 2009 ("Effective Date"), and expiring June 30, 2014, is made and entered into between the American Museum of Natural History, a not-for-profit organization located at Central Park West at 79th Street New York, NY 10024 (“AMNH”), and the United States of America, United States Department of the Interior, National Park Service (“NPS”).

I. PURPOSE AND BACKGROUND

The purpose of this Agreement is to allow the Ambrose Monell Collection for Molecular and Microbial Research also known as the Ambrose Monell Cryo Collection (“AMCC”) at the AMNH to act as a repository for NPS tissue samples of organisms listed under the Endangered Species Act (ESA) and thereby establish a collection of NPS Specimens designated as the National Park Service Special Collection (the “Collection”). NPS Specimens are collected in NPS units pursuant to permits issued under 36 CFR 2.5 and subject to NPS General Permit Conditions.

NPS is authorized to enter into this repository loan Agreement pursuant to the authority contained in the National Park Service Organic Act, 16 U.S.C. § 1, the National Parks Omnibus Management Act of 1998, 16 U.S.C. § 5935, and 16 U.S.C. § 18f and 18f-2 to 18f-3 (Management of Museum Properties).

The Agreement is subject to the following web-accessible NPS and AMCC/AMNH policies, procedures, and conditions in force at the effective date of this Agreement. Each party agrees to inform the other of subsequent changes to these policies, procedures, and/or conditions, which will apply to this Agreement upon written concurrence of both parties. Differing requirements between NPS and AMCC/AMNH policies known at the initiation of the Agreement have been identified and harmonized procedures provided herein. The Agreement may be amended to resolve any conflicting requirements that may be identified in the future.

NPS References:

1. Director’s Order #24: NPS Museum Collections Management
(https://www.nps.gov/subjects/policy/upload/DO_24_9-3-2008.pdf)
2. General Permit Conditions
(<https://www.nps.gov/subjects/science/general-conditions-for-scientific-research-and-collecting-permits.htm>)

3. Loan (<https://www.nps.gov/subjects/science/investigator-collections-tasks.htm>)

AMCC/AMNH References:

1. AMCC Collection Policy (http://research.amnh.org/amcc/coll_pol.html)
2. AMCC Loan Procedures (<http://research.amnh.org/amcc/Loan.html#request>)

II. SCOPE OF WORK (ROLES AND RESPONSIBILITIES)

A. Pursuant to this agreement NPS hereby:

1. Authorizes parks and NPS Permittees to coordinate in depositing a subsample of each collected sample (NPS Specimen) of ESA organisms in the Collection using the AMNH/AMCC NPS Specimen Deposit Form (“Deposit Form”) in Appendix 1.
2. Agrees to provide the Deposit Form on the NPS permit website and establish a hyperlink to the AMCC website.
3. Authorizes AMNH to loan NPS Specimens to third-party researchers using the AMNH-AMCC Loan Invoice and accompanying Outgoing Loan Conditions for NPS Special Collection (“Outgoing Loan”) in Appendix 2.
4. Grants AMNH authority to grant third-party loans of the NPS Specimens that will include destructive analysis of loaned specimens.
5. Grants AMNH authority to approve or refuse requested loans of NPS Specimens and to accept or refuse deposit of NPS Specimens on a case-by-case basis.
6. Agrees to ensure that parks accession and catalog NPS Specimens in the NPS catalog (ANCS+ or its successor) prior to deposit with AMNH.
7. Agrees, upon receipt of a completed Deposit Form with the NPS and AMCC catalog numbers, to complete a park loan to AMNH. In lieu of AMNH signature on the NPS Outgoing Loan Agreement (Form 10-127), parks will reference the NPS Specimen Deposit Form and this Agreement. The loan termination date will be no later than the termination date for this Agreement. The loan record is for tracking purposes only and is not provided to AMNH except upon request.
8. Agrees to ensure that parks notify AMNH of Confidential Information that must be withheld from release to the public in addition to within-park locality information, which will always be withheld pending specific authorization by NPS.

9. Agrees to pay fees to AMNH for services related to the Collection in accordance with a separate fee agreement that may be established as needed.
10. Agrees to provide copies of NPS and U.S. Fish and Wildlife Service permits upon request by AMNH.
11. Waives the requirement for AMNH to complete an NPS Checklist for Preservation and Protection of Museum Collections.

B. Pursuant to this agreement AMNH will:

1. Act as a repository for NPS Specimens and identify NPS Specimens in the online AMCC Database.
2. Make available on the AMNH website the NPS Specimen Deposit Form and instructions for depositing NPS Specimens.
3. Send NPS park unit a copy of the completed Deposit Form, with AMCC catalog number, when a deposit is accepted.
4. Label specimens according to standard AMCC procedures and include NPS catalog number on label in the twelve (12)-character format: "NPS PARK #####" where "PARK" is the acronym of the park.
5. Make NPS Specimens available for distribution through the AMCC online catalog, which includes:
 - a. NPS catalog number (including park acronym)
 - b. The name "National Park Service" and the name of the national park system unit where the specimen was collected
 - c. Scientific name
6. Provide access to and distribute NPS Specimens to requesting researchers according to AMCC access protocols and loan policy using the AMCC loan invoice and the Outgoing Loan Conditions for NPS Special Collection. Distribute only specimens with NPS catalog numbers. Maintain an ongoing record of distributions. Request NPS authorization prior to a third-party loan that would result in an NPS specimen being fully consumed.
7. Provide to NPS by June 30 an annual inventory of all deposits and third-party loans fully consumed specimens, and losses of specimens including
 - a. NPS catalog number (including park acronym)
 - b. Scientific name
 - c. Material description, including quantity
 - d. Copies of completed NPS Specimen Deposit Forms
 - e. Copies of completed AMCC Loan Invoices

8. Randomly select and annually inventory at least 20 NPS Specimens or 20 percent of Collection, whichever sample includes fewer specimens. Report the annual inventory findings to NPS as part of the annual inventory (see Item 7). The inventory will be completed and signed by the responsible AMCC manager and witnessed and signed by another AMNH staff member who does not have direct responsibility for the Collection.
 9. Keep on file copies of executed AMCC loan invoices for NPS Special Collection materials and corresponding executed Outgoing Loan Conditions for NPS Special Collection. Make copies available to NPS upon request.
 10. Return NPS Specimens to NPS or follow NPS instructions for disposition, if AMCC determines that NPS Specimens are no longer appropriate for AMCC retention. Return specimens within 60 days of receipt of an NPS purchase order or other fee agreement covering the cost of return.
- C. Pursuant to this agreement, both Parties agree to:
1. Meet annually at AMNH, or through alternate means, to review the Collection following submission of the annual inventory.
 2. Meet, as needed, to discuss matters of concern.
 3. The Parties agree to cite in publications referencing NPS Specimens the following terms: "National Park Service Special Collection at Ambrose Monell Cryo Collection, American Museum of Natural History," park name, specimen name, NPS catalog number, and AMNH number.

III. KEY OFFICIALS AND CONTACTS

For purposes of mailings of notices or other communications, the addresses of the Parties are given below. A Party may change its address by giving written notice to the other Party.

A. For NPS:

1. Key Official for Threatened and Endangered Species matters:
 Peter Dratch
 Endangered Species Program Manager
 National Park Service
 1201 Oakridge Drive,
 Fort Collins, CO 80525
 Tel: 970-225-3596
 Fax: 970-225-3585
 E-mail: peter_dratch@nps.gov

2. Key Official for Legal, Administrative, and Collections Management matters:

Ann Hitchcock
 Curator and Senior Advisor for Scientific Collections
 National Park Service
 1849 C Street, NW (2301)
 Washington, DC 20240
 Tel: 202-354-2271
 Fax: 202-371-2422
 E-mail: ann_hitchcock@nps.gov

B. For AMNH:

1. Key Official for Legal and Administrative matters:

Darrel R. Frost
 Associate Dean of Collections, Curator-in-Charge
 American Museum of Natural History
 Central Park West at 79th Street
 New York, NY 10024
 Tel: 212-769-5852
 Email: frost@amnh.org

2. Key Official for Collections Management matters:

George Amato
 Director, Sackler Institute for Comparative Genomics
 American Museum of Natural History
 Central Park West at 79th Street
 New York, NY 10024
 Tel: 212-769-5736
 Fax: 212-769-5736
 Email: gamato@amnh.org

Julie Feinstein
 Collection Manager
 Ambrose Monell Collection for Molecular and Microbial Research
 American Museum of Natural History
 Central Park West at 79th Street
 New York, NY 10024
 Tel: 212-769-5663
 Fax: 212-496-3380
 Email: jfstein@amnh.org

IV. CONFIDENTIALITY

- A. **"Confidential Information"** shall mean information concerning the nature and specific location (including exact collection site) of NPS specimens which are endangered, threatened, rare, or commercially viable.
- B. Protection of Confidential Information. Except as required under court order or the Freedom of Information Act (5 U.S.C. 552), AMNH must withhold Confidential Information from any form of release to non-NPS entities. Confidential Information shall not be disclosed, copied, reproduced or otherwise made available to any non-NPS person or entity without the consent of NPS.

V. INTELLECTUAL PROPERTY

- A. Ownership: NPS Specimens and Materials are the property of the United States Government.
- B. Enforcement of Rights: Any future action or lawsuit to enforce intellectual property rights involving NPS Specimens distributed by AMNH pursuant to Articles IV and V shall be initiated solely at the discretion of NPS. AMNH agrees to advise NPS of any events that cause AMNH to suspect that the transfer of an NPS Specimen to a third party is or may be violating the Outgoing Loan Conditions for NPS Special Collection. Nothing in this Agreement shall be construed to affect AMNH's rights, title and interests in and to trademarks registered or owned by the AMNH and any and all AMNH catalog numbers or AMNH specific designations of biological Materials.
- C. License: Any transfer of NPS Specimens from NPS or NPS Permittees to AMNH shall constitute a nonexclusive worldwide royalty-free license to use the NPS Specimens in accordance with Articles IV and V. AMNH agrees that the transfer of the NPS Specimens does not imply in any way a grant of any rights under any patents claiming the NPS Specimens or any right to use the NPS Specimens for commercial purposes or any other rights to the NPS Specimens except as stated herein.
- D. Advertising and Endorsements: AMNH may use the terms "NPS," "National Park Service," and the NPS arrowhead logo to identify NPS Specimens and the NPS Special Collection on the AMNH website, and in brochures and associated documentation, such as packing receipts, distribution sheets, and specimen labels. AMNH shall not otherwise publicize or circulate promotional material (such as advertisements, brochures, or press releases) which states or implies NPS endorsement of a product, service, or position which AMNH represents, unless approved in advance by NPS. No release of information relating to this Agreement may state or imply that the NPS approves of the work product of AMNH to be superior to other products or services.

VI. WARRANTY, LIABILITY AND INDEMNIFICATION

- A. No indemnification for any loss, claim, damage, or liability is intended or provided by any party under this Agreement. The NPS shall be liable for the acts or omissions of its employees, acting within the course and scope of their employment, to the extent provided under the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2671-80. To the extent permitted by applicable law, AMNH shall be liable for the negligent or wrongful acts or omissions of its employees, acting within the course and scope of their employment. Any Materials transferred from one party to the other under this Agreement shall be provided as is; furthermore, the Parties make no representations whatsoever as to the Materials. They are provided without warranty of merchantability or fitness for a particular purpose or any other warranty, express or implied. The parties make no representation or warranty that the use of the material will not infringe any patent or other proprietary right.
- B. AMNH shall provide proof of public and employee liability insurance from a responsible company or companies with a minimum limitation of One Million Dollars (\$1,000,000) for any one claim, and an aggregate limitation of Two Million Dollars (\$2,000,000) from any number of claims arising from one incident.
- C. Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected Party (hereinafter, a Force Majeure event). Upon the occurrence of any Force Majeure event, the affected Party shall give written notice of such event to the other Party and shall use reasonable efforts to overcome such Force Majeure event.

VII. TERM OF AGREEMENT

- A. This Agreement shall be in force until June 30, 2014. The Agreement may be renewed for an additional term upon written consent of the parties.

VIII. TERMINATION

- A. This Agreement will terminate June 30, 2014, unless renewed in writing by the parties.
- B. Either Party may terminate this Agreement by giving the other party sixty (60) days written notice of termination, effective at the end of the sixty (60) day period.
- C. Notwithstanding the foregoing, the NPS may terminate this Agreement at any time, when it is determined to be in the best interest of the public to do so. NPS will notify AMNH in writing within five (5) working days following the termination.

- D. Upon termination, NPS is responsible for removing the specimens from AMNH, which agrees to make them available. AMNH will return specimens within 60 days of receipt of an NPS purchase order or other fee agreement covering the cost of return.
- E. Surviving any termination or expiration are:
 - 1. Any cause of action or claim of AMNH or NPS, accrued or to accrue, because of any breach or default by the other Party; and
 - 2. Any provisions in this Agreement that by their nature are intended to survive. This shall specifically include Articles IV, V, VI, and Sections VIII(E) and IX(B),(C).

IX. REQUIRED AND STANDARD CLAUSES

- A. Non-Discrimination: The parties shall not discriminate in the selection of employees or participants for any employment or other activities undertaken pursuant to this Agreement on the grounds of race, creed, color, sex, age disability, or national origin, and shall observe all of the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000(d) *et seq*).
- B. Anti-Deficiency Act: Pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1), nothing contained in this Agreement shall be construed as binding the United States to expend any sum in excess of appropriations made by Congress for the purposes of this Agreement, or as involving the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations.
- C. Compliance with Applicable Law: The parties shall comply with all applicable laws and regulations. This Agreement is subject to all laws, regulations and rules governing NPS property, 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 rules.

X. ADDITIONAL TERMS

- A. No transfer or assignment of this Agreement, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by all parties.
- B. The Agreement may be modified by written consent of all of the parties to cover the need for any alterations that may arise subsequent to the Effective Date of this Agreement.

- C. If any term or provision of this Agreement is held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions.
- D. No term or provision of this Agreement shall be waived and no breach excused unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. No waiver of a breach shall be deemed to be a waiver of a different or subsequent breach.
- E. In the event that further lawful performance of this Agreement or any part hereof by either Party shall be rendered impossible by or as a consequence of any law, regulation, order, or any other official action by any instrumentality or agency of any government or political subdivision thereof having jurisdiction over such Party, such Party shall not be considered in default hereunder by reason of any failure to perform occasioned thereby.
- F. Except as expressly stated herein, neither Party has the right or authority to assume or create any obligation, accept legal process, make commitments, incur any charges or otherwise bind or act on behalf of the other or limit the other in any manner whatsoever. Neither this Agreement nor any act hereunder shall be construed as constituting the foundation of a partnership, association, agency, joint venture or any other entity.
- G. The NPS and AMNH acknowledge that failure to perform the obligations and agreements set out herein and/or failure amicably and quickly to resolve disputes may result in irreparable injury to either Party. Accordingly, the Parties agree to use their best efforts to settle all disputes between them.
- H. Appendices. This Agreement includes Appendices 1 and 2, which are hereby incorporated by reference.
- I. Notice of Potential Hazard in Museum Collections. Because of the nature of the specimens covered by this agreement and the preservation of deposited specimens according to standard AMCC procedures, this Notice is not required.

XI. AUTHORIZING SIGNATURES

Agreed between the parties:

National Park Service

American Museum of Natural History




Herbert C. Frost
Associate Director, Natural Resource
Stewardship and Science

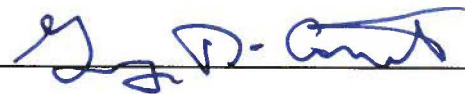
Darrel R. Frost
Associate Dean of Collections,
Curator-in-Charge

July 7, 2009
Date

7 July 2009
Date

Concurred:

Concurred:

Ronald C. Wilson
Chief Curator and Manager, Park Museum
Management Program

George Amato
Director, Sackler Institute for
Comparative Genomics

7 July 2009
Date

July 7, 2009
Date

American Museum of Natural History
Ambrose Monell Collection for Molecular and Microbial Research
Central Park West at 79th Street, New York, NY 10024-5192

National Park Service SPECIMEN DEPOSIT FORM

Consistent with the applicable NPS Scientific Research and Collecting Permit, the specimens described below were collected from a unit of the national park system and are hereby submitted for deposit in the National Park Service Special Collection on loan from the National Park Service to the Ambrose Monell Cryo Collection, American Museum of Natural History.

Collector Name: _____ Tel: _____

Institution of Affiliation, if relevant: _____

Address:

Fax: _____

Email: _____

List Collector's # and NPS Catalog # for each specimen (attach list if necessary). AMNH provides AMCC catalog #.

Collector's #	NPS Catalog #	AMCC Catalog #

I collected the material through legal means under the following permit numbers:

Date of delivery of object(s) to AMNH: _____

Collector's Signature: _____

Date: _____

AMNH Curator's Signature: _____

Date: _____

**American Museum of Natural History
Ambrose Monell Collection for Molecular and Microbial Research**

OUTGOING LOAN CONDITIONS for NATIONAL PARK SERVICE SPECIAL COLLECTION

The American Museum of Natural History (AMNH) is providing the Institution named in the Ambrose Monell Collection for Molecular and Microbial Research (AMCC) Loan Invoice with biological tissue material ("Material") that requires prior authorization from the U.S. National Park Service ("NPS"). The Borrower (Recipient Investigator and Institution) specifically acknowledges and agrees to the following conditions.

1. Loans are made to institutions, not individuals.
2. Specimens are not to be moved to another address without prior written permission from the AMNH. Loans to third parties are prohibited.
3. By accepting Material, the Borrower agrees to comply with all applicable terms and conditions of the NPS Scientific Research and Collecting Permit (available from NPS or at <https://www.nps.gov/subjects/science/research-permit.htm>) that govern the distribution and use of specimens collected from U.S. national park units.
4. Material and any components thereof is property of the U.S. Government.
5. Any additional research not included in the original proposal requires the express written permission of AMNH. Violation constitutes a breach of contract.
6. The Borrower agrees to return a signed Loan Invoice and a signed copy of the Outgoing Loan Conditions for NPS Special Collection ("Conditions") immediately upon receipt of the Material. Loaned Material must be stored appropriately and to professionally accepted standards while in care of the Borrower.
7. The Material is to be consumed in or discarded after analysis. Any unused Material should be returned to the AMCC. Specimens being returned should be carefully packaged in the same manner as when they were sent.
8. Loan applications must include a timeframe for completion of the proposed research. Time extensions should be requested in writing before the loan expiration date. Typically, the Borrower will not receive a 'due' notice. It is the borrower's responsibility to fulfil the terms of the loan by complying with any conditions placed upon the recipient by the Loan Invoice and the Conditions.
9. The Borrower agrees to cite in any publication, presentation, and patent application referencing the Material the following terms: "National Park Service," name of U.S. national park unit where NPS Specimen was originally collected, specimen name, NPS catalog number, and AMNH catalog number. In addition, the Borrower agrees to provide notice in writing to NPS not less than sixty (60) days before filing an application for a patent or other intellectual property claim resulting from use of Material.
10. Borrower agrees to provide three (3) copies of any publications resulting in part or whole from this loan, and/or three (3) copies of assay results. (AMNH will provide one [1] copy to NPS.)
11. The Borrower agrees to inform AMCC of all electronic database submissions (such as GenBank accession numbers) associated with the analytical procedures resulting from the specimens loaned. This additional specimen data should be submitted electronically (on a spreadsheet) to the AMCC.

12. To the extent allowable by law, the Borrower hereby agrees to hold harmless and indemnify the U.S. Department of the Interior, National Park Service and any unit thereof, the United States Government, and persons acting on their behalf, including AMNH, for any claim asserted by a third party related to Investigator's and/or Institution's possession, use, storage, or disposal of the loaned material.
13. Federal laws and policies governing NPS museum collections take precedence over state and local laws.
14. AMNH and NPS reserve the right to inspect or audit the loaned Material at any time.
15. Surviving termination or expiration of the loan are any provisions in these conditions that by their nature are intended to survive.

BY SIGNING BELOW WE, THE DULY AUTHORIZED REPRESENTATIVES OF THE BORROWER (RECIPIENT INSTITUTION AND INVESTIGATOR), ACKNOWLEDGE THAT WE HAVE READ AND UNDERSTAND THESE CONDITIONS AND AGREE TO THESE CONDITIONS AS EVIDENCED BY OUR SIGNATURES BELOW.

FOR INVESTIGATOR'S INSTITUTION:

By: _____

Printed Name: _____

Title: _____

Date: _____

PRINCIPAL INVESTIGATOR:

By: _____

Printed Name: _____

Title: _____

Date: _____

AMCC Loan Invoice No. _____