

What is a Friends Group Agreement?

When an ongoing relationship is anticipated between the National Park Service (NPS) and a specific park or program support organization, (hereinafter referred to as a “Friends Group) it is best to execute a Friends Group Agreement that addresses the relationship in broad terms, and incorporates clauses that are universally applicable to future Partnership activities. These agreements are designed to formalize the relationship between the NPS and its support organizations (herein after “Partners”). Other activities such as fundraising, in-park construction, the transfer of federal funds, program development and operations, acquisitions, etc. are administered through other types of agreements, which may tier off and or incorporate by reference the Friends Group Agreement.

Friends Group Agreements may authorize non-project specific fundraising activities such as annual or membership campaigns, planned giving, events, e-philanthropy, grant applications, etc. to help the Partner in its efforts to support a park where such support is explicit. Additionally, Partners need not seek NPS approval to raise funds expressly restricted to use in administration of the Partners organization. In contrast, pursuant to Chapter 8 of Director’s Order 21, a formal Fundraising Agreement is required when a Partner wishes to initiate a project or program specific fundraising campaign, e.g., fundraising for construction of a facility or support of a specific educational program. In addition, a Fundraising agreement is required for when raising funds for the establishment of an endowment or similar investment account. Two model Fundraising Agreements are contained in the Director’s Order 21 Reference Guide.

Model Friends Group Agreement

Agreement Number _____

FRIENDS GROUP AGREEMENT

Between the

**NATIONAL PARK SERVICE,
Site Name**

And

PARK SUPPORT/PARTNER ORGANIZATION(S)

Introductory Paragraph:

The introductory paragraph of a Friends Group Agreement states what the Partnership is about. It also restates the names of the parties to the agreement (including their abbreviated versions). For example:

This Agreement is entered into between the National Park Service (NPS), a bureau of the United States Department of the Interior, and the Friends of the

Park (Partner) for the purpose of implementing mutually agreed to projects, programs and activities for the benefit of Picture Perfect Park (Park), Montana.

I. Background and Objectives:

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

- 1) Who the parties to the Friends Group Agreement are, e.g., the Friends Group is a 501(c)3 incorporated and doing business in the State of Montana.
- 2) The history of the relationship between the parties;
- 3) The subject matter of the agreement;
- 4) Relevant legislation, e.g., a Park enabling act that contemplates or directs that the NPS undertake activities in the agreement;
- 5) The critical facts necessary to understand the agreement;
- 6) How existing or related agreements (if any) affect the agreement; and

Do not underestimate the importance of the Background and Objectives section of a Friends Group Agreement. Often the individuals originally involved in negotiating a Friends Group Agreement are no longer involved, or their perspectives or recollections change over time. Therefore, if differences of opinion arise, the Background and Objectives section can assist in understanding the original intent of the parties

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

II. Enforceability:

Whether an agreement is enforceable is a fact dependant determination. Generally, courts look to see whether necessary elements of contract are present in an agreement. The following provision may assist a court in a finding that a contract is enforceable and should be included in any Friends Group Agreement immediately after the *Background and Objectives* section. **Do not include this provision as a separate article.**

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, hereby agree as follows:

III. Definitions:

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

IV. Statutory Authority:

This section lists the statutory authorities NPS is relying on to support the actions it will take pursuant to the Friends Group Agreement. Where our Partner is congressionally chartered, the Partner's legal authorities should also be listed in the statutory authority section.

The underlying law providing the NPS the statutory authority for an action, as opposed to its implementing regulation, is cited in this section. Usually the citation is expressed as a section of the United States Code where laws governing the National Park Service and National Park System are codified. Thus, a typical statutory authority section might read as follows:

Statutory Authority: NPS enters into this Friends Group Agreement pursuant to 16 U.S.C. § 1-4, 6.

These authorities are explained in detail below:

16 U.S.C. § 1-4 – General Authority to Take Actions That Promote and Regulate Units of the National Park System -- The NPS Organic Act directs the Secretary of the Interior to promote and regulate national Park System lands by such means and measures as to conform to the fundamental purpose of such lands, namely conservation of the scenery and natural and historic objects and wildlife therein, and to provide for the enjoyment of these resources in a manner and by such means as will leave them unimpaired for the enjoyment of future generations. The Organic Act provides broad authority to operate and manage parks.

16 U.S.C. § 6 – General Authority for NPS to Accept Donations -- The Secretary of the Interior is authorized to accept patented lands, rights-of-way over patented lands or other lands, buildings, or other property within the various national parks and monuments, and moneys which may be donated for the purposes of the national park and monument system.

In addition, the relationship described in many Friends Group Agreements includes the volunteer activities of its members. In that case, the following citation would be included in the statutory authority section:

16 U.S.C. 18g-j – Acceptance of Volunteer Services -- The Secretary of the Interior is authorized to recruit, train, and accept the services of individuals without compensation as volunteers for or in the aid of interpretive functions, or other visitor services or activities in and related to areas of the National Park System. Such volunteers may not be used for hazardous duty or law enforcement work or in policymaking processes or to displace any employee. A special exception allows the acceptance of the services of individuals that the Secretary determines “are skilled in performing hazardous activities.”

The foregoing list is by no means exhaustive, and many parks have specific statutory authorities that allow or mandate certain activities and relationships occur at parks. These specific authorities should also be cited in this section as well. The Department of Interior’s *Partnership Legal Primer* contains a partial list of additional legal authorities NPS may rely on to enter into Friends Group Agreements. The section on NPS authorities is quite extensive and lists most park-specific authorities. The *Partnership Legal Primer* can be found on the Department of the Interior’s Partnership web page:

http://www.doi.gov/Partnerships/pdfs/national_parks_service_authorities.pdf

In contrast to statutes, documents such as Executive Orders or NPS Director’s Orders do not provide legal authority for NPS actions and should not be cited as legal authority. Such documents may, however, be cited in the Background and Objectives section or elsewhere in the agreement to help explain NPS and Partner motivations, goals and objectives.

It is advisable to consult Regional Office Partnership Coordinators early in the process of considering any Partnership relationship. They can help identify the appropriate authorities, or bring in the Regional Solicitor’s Office where necessary to help NPS and its potential Partner identify legal authorities and understand what is legally possible.

V. Responsibilities and Understandings of the Parties:

The Responsibilities and Understandings section of a Friends Group Agreement sets out what each party agrees to do. NPS and its Partner will want to state common understandings or make commitments to jointly undertake certain actions. These joint understandings and commitments should be captured in a separate subsection labeled “NPS and the Partner jointly agree to:” Examples of provisions that could be contained in this section are processes for consultation, coordination, and dispute resolution.

Each party should also be assigned its own subsection in the Friends Group Agreement listing its own responsibilities and understandings. For example, there should be a subsection entitled “NPS agrees to:” and a counterpart subsection should be established for the Partner(s), i.e., the “Partner agrees to:”

It is impossible to provide a list of standard agreement clauses for incorporation into the Responsibilities and Understandings section for all Friends Group Agreements because agreement provisions must be tailored to the facts presented by a specific partnership.

The following identifies provisions that should be considered and, if found relevant, addressed in the Responsibilities and Understanding section of a Friends Group Agreement. This list is not exhaustive. NPS staff and in some instances the Solicitor's Office might determine that additional or alternative clauses should be included in a particular case.

A. NPS and the Partner jointly agree to:

1. Participate in regular meetings, to foster close cooperation on agreement implementation.
2. Make a good faith effort to achieve the following specified goal and objectives during the term of this Agreement: [List and discuss goals and objectives.]
3. Work together in good faith to resolve differences at the level of the Key Officials identified in Article XI of this Agreement prior to elevating matters within the Partner organizations or appealing elsewhere within NPS or the federal government. [Note: the partners may consider inserting a period for discussions, e.g. 30 or 60 days, in which the Key Officials will work together to resolve issues prior to elevation.]
4. Make timely decisions on matters necessary to proper implementation and administration of this Agreement.
5. Work in good faith to execute sub agreements to this agreement necessary to meet the mutual objectives of the parties. Such agreements may include without limitation Fundraising Agreements.
6. Work actively and collaboratively to ensure that all NPS Director's Order #21 requirements, as amended, supplemented or superseded, are met in the implementation and administration of this Agreement and sub agreements executed hereto.

B. NPS agrees to:

1. Authorize NPS employees to undertake the following activities to support the efforts of the partnership: [List activities]
2. Review and approve or deny all proposed agreements between a Partner and a third-party that materially bear on the subject matter of this Agreement. An example of material agreement might be a proposed agreements with a firm hired to conduct, or assist the Partner in conducting, fundraising activities.
3. Authorize NPS employees to undertake the following activities to

support the efforts of the Partner: [List activities, e.g., providing information on the need for, and scope of, a project to a Partner's prospective donors, and attend Partner' fundraising events.]

4. Consider applications from the Partner for Special Use Permits to authorize in-park activities in connection with this Agreement.
5. Provide the Partner with the Park's donor recognition plan that outlines how and where donors may be recognized in a park. All donor recognition also must comply with Director's Order #21.

C. Partner agrees to:

1. Comply with the terms of applicable laws, regulations and Government policies.
2. Conduct general fundraising activities in support of NPS in conformance with the terms and conditions of NPS Director's Order #21.
3. Remain for the term of this Agreement, fully qualified to seek and receive philanthropic contributions under state and federal law.
4. Obtain a Special Use Permit or other appropriate approvals prior to undertaking activities in a park unit.
5. Implement the goals specific to the Partner described in Paragraph A.2. (List Partner specific responsibilities.)
6. Not use funds or other benefits made possible by this Agreement or related agreements, its relationship with NPS, or NPS property to support or benefit any individual, or other entity or cause.
7. Review the contributions of donors to ensure that proposed donations do not give rise to an appearance of loss of integrity or impartiality or otherwise reduce public confidence in the Partner or the NPS. To this end, the Partner will implement the donor review process contained in Attachment A to this Agreement.

Note: Respecting the Donor Review Process:

Where a Partner's donor provides a significant donation, the Departmental Manual (374 DM 6) and DO #21 respecting donation acceptance require review of the donor to ensure that the proposed donation does not give rise to an appearance of loss of integrity or impartiality, or otherwise reduce public confidence in the Partner or the NPS. Both the NPS and its Partners have responsibilities relating to donor review.

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

NPS staff retains discretion to draft donor review procedures that vary from Attachment A, but such provisions cannot be less restrictive than those contained in Attachment A. For example, NPS staff may decide to lower the vetting thresholds triggering donor review, or to incorporate other appropriate safeguards where a Partner has little or no track record of substantial fundraising for NPS. The WASO Partnership Office, the Solicitor's Office, and the Departmental Ethics Office are available for consultation in such matters.

Notwithstanding the foregoing, it is unlikely that fundraising activities occurring under a Friends Group Agreement will trigger intensive donor review. Only non-project specific fundraising may occur pursuant to a Friends Group Agreement and large donors generally want to support specific projects. Therefore, Attachment A will most likely be used in conjunction with a fundraising campaign authorized by a specific and separate Fundraising Agreement.

VI. Property Utilization

- A. In General: the "Property Utilization" section of a Friends Group Agreement describes NPS property that a Partner may use to assist NPS in obtaining mission-related objectives. The Property Utilization section also places conditions on such use. Partners may not undertake activities on federal park property that support, in whole or part, non-NPS related interests.

NPS must have statutory authority to permit Partners to use Government property. While in many cases the NPS Organic Act may provide sufficient statutory authority for temporary Partner use of Government property, NPS staff should consult with the Solicitor's Office to identify applicable legal authorities on a case-by-case basis. Permission to utilize NPS property may be contained in a Friends Group Agreement and may be incorporated by reference into a Fundraising Agreement.

The following are example property utilization provisions:

1. Subject to the conditions set out in Paragraph 2 (below), provide the Partner with appropriate use of NPS resources in furtherance of activities authorized by this Agreement. Resources available for Partner use are limited to the following: [List resources, structures, equipment, etc.]

2. The Partner will abide by the following terms and conditions respecting use of property authorize herein: [List, e.g., the duration of use, maintenance responsibilities, site and safety conditions, payment of utilities, compatibility of Partner activities with other NPS responsibilities, hours of operation, compliance with NPS IT security requirements, etc.]

Note: Terms and conditions of property use may also be addressed in an attachment to this agreement or, where appropriate, in a separate agreement.

3. The Partner will acquire and maintain insurance coverage associated with the use of NPS property in accordance with the requirements of X of this Agreement.
4. During the term of this Agreement, the Partner may direct future requests for the use of NPS property to the NPS Key Official identified in Article X. The Key Official may provide written authorization for such use including conditions thereon, in a form deemed appropriate by NPS (including but not limited to issuance of Special Use Permit), and the authorization will be incorporated as an appendix to this Agreement.

[Note to reviewers: an argument can be made that permission to use government property must be granted through a cooperative agreement under 16 U.S.C. 1g and pursuant to 43 C.F.R Part 12 regulations. This question is currently being considered by the Division of General law. Should it be decided that a cooperative agreement is necessary, this section and related provisions will be revised accordingly.]

B. Intellectual Property

Occasionally Partner organizations wish to use NPS intellectual property, e.g., the NPS Arrowhead, pictures of NPS rangers in uniform, NPS taglines, park photos, etc., in their educational or fundraising efforts. Similarly, NPS may wish to use a Partners' intellectual property to further mission objectives. Should this occur, appropriate intellectual property licenses and protections must be included in an agreement between the parties, e.g., a Friends Group Agreement, a Fundraising Agreement, or a stand alone agreement.

Intellectual property issues normally arise in the context of Corporate Campaigns and Article X of the Model Corporate Campaign Agreement contains Intellectual property provisions. For purposes of economy these provisions are not duplicated here, however, the Model Corporate Campaign Agreement provisions can be adapted for use in a Fundraising Agreement where appropriate. Further, the WASO Partnership Office and the Solicitor's Office, Division of General Law in Washington have special expertise in intellectual property issues involving Partners. These offices are a useful resource should an intellectual property issue arise.

VII. Term of Agreement

The term of a Friends Group Agreement should not exceed a term of 5 years. Friends Group Agreements may be renewed for additional periods of up to 5 years if agreed to by the parties in writing prior to expiration of the Agreement. The following language may be used to establish the Agreement term:

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

Note: Where NPS uses a Friends Group Agreement as a base agreement from which one or more sub agreements tier, e.g., Fundraising Agreements, the term of the Friends Group Agreement must be no less than the term of the sub agreement. This may require NPS to extend the term of the existing Friends Group Agreement (to the extent permissible under NPS policy), shorten the term of proposed sub agreement, or both.

VIII. Termination and Expiration

The termination and expiration section of any Fundraising Agreement addresses: 1) a party's ability to terminate the agreement; and 2) what happens to donations and interest and earnings thereon after termination or expiration of the Agreement

A. Termination:

The following three termination clauses would typically be incorporated into any agreement. The parties would determine which to use based on an assessment of facts in consultation with legal counsel.

1. The following termination clause alternative does not require a "cause" such as breach of the agreement, for termination. This clause may be appropriate where the primary function of an agreement is to facilitate philanthropic donations. Depending on the circumstances, NPS and the Partner may choose to lengthen the notice period for termination suggested below.

Either party may terminate this Agreement for any reason by giving thirty (30) days written notice. Neither party shall be liable to the other for any damages, costs or claims in the event of termination. Termination will be effective at the end of the thirty (30) day period.

2. The following alternative clause requires cause for termination. This clause is appropriate where the parties intend to preserve the right to seek judicial or other remedies in the event they are harmed by a material

breach of the agreement. Depending on the facts of the situation the parties may choose to allow the breaching party to cure the breach within a specific amount of time, e.g., 30 days.

If either party fails to observe the terms and conditions of this Agreement, the other party may terminate this Agreement for default without any legal process whatsoever by giving thirty (30) days written notice of termination, the termination will be effective at the end of the thirty (30) day period. In the event of termination for a material breach of the agreement, all claims at law or in equity, all defenses to such claims, and recourse to all administrative or judicial forums with appropriate jurisdiction is preserved.

3. The following “Termination for Convenience of the Government” (TFC) clause may be used in conjunction with either alternative above and is often used when harm to public and government interests may result from the actions of a Partner or its agents. We note, however, that in most cases a TFC provision is not needed where a Partner is not authorized to undertake in-park activities. If NPS uses a Special Use Permit to authorize in-park activities a TFC may be included in the permit.

The National Park Service may terminate this Agreement for the convenience of the Government, at any time, when it is determined to be in the best interest of the public to do so. The effected parties shall be notified within 5 working days following termination

B. Partner Disposition of Assets in the Event Termination or Expiration of the Agreement; Cessation of Partner Operations.

Once funds and in-kind goods are donated for the benefit of NPS, all parties, including donors, should expect the donations to be used for the purposes for which they were donated.

Tax laws governing formation and operation of non-profit entities require that upon closure of an organization, or its merger with another organization, the disposition of the organization’s remaining funds is governed by the organization’s Articles of Incorporation. Generally, funds may be expended for the purposes for which they were donated, or they may be given to the federal government, or state or local governments. Thus, organizations are not necessarily required to ensure that funds it holds are used for the benefit of NPS. Therefore it is important that the text of the Partner’s Articles of Incorporation is, and remains, clearly consistent with the disposition provisions of the Fundraising Agreement.

Since donated funds must be used for the purposes for which they were donated, NPS and its Partner should reach agreement on the scope of Partner’s solicitations to donors. This agreement may be memorialized in the Fundraising Agreement. For example, donors may be informed through written solicitations and other Partner

communications that in the event that donated funds or in-kind goods cannot be used for “Program A” they will be used for “Program B.”

The following provision may be used to address disposition of Partner assets donated for the benefit of NPS projects or programs.

- 1. Upon termination or expiration of this Agreement, or cessation of Partner operations for any reason, all funds including interest and earnings thereon, and all in-kind contributions held by the Partner for the benefit of NPS or its projects or programs, shall be transferred to NPS or to a third-party deemed acceptable by NPS (under such terms and conditions deemed acceptable by NPS) for use consistent with the purposes for which the donations were made. Nothing herein shall prevent the Partner from satisfying allowable outstanding obligations reasonably incurred in association with this Agreement prior to its termination or expiration.*
- 2. Within thirty (30) days of execution of this Agreement the Partner will ensure that its Articles of Incorporation expressly incorporate the disposition provision of Article VIII.B.1 and will remove any conflicting provisions from its Articles of incorporation.*
- 3. Nothing herein is intended to conflict with State law governing non-profit dissolution and asset disposition.*
- 4. To the greatest extent allowable under law, both parties shall take actions necessary to give full force and effect to the text and intent of Article VIII.B.*

IX. Key Officials:

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

Key Officials play a very important role in ensuring smooth implementation of Friends Group Agreements. Therefore, consideration should be given to whether the Key Officials have the time and expertise needed to discharge this function. The Key Officials should generally be the party primarily responsible for maintaining the Partnership.

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

X. Liability and Insurance:

The NPS recognizes that the type and amount of insurance coverage required of Partners should be determined by risk. Therefore, where a Partner will not be undertaking activities within park units no insurance is required. If NPS intends to authorize a Fundraising Agreement that does not contain an insurance clause because the Partner has no plans for in-park activities, the Fundraising Agreement should state that NPS retains the right to require the Partner to acquire insurance should the Partner propose future in-park activities, e.g., a donor recognition event. Insurance requirements could be inserted in the Special Use Permit authorizing the event.

Since NPS Partners must indemnify NPS for losses incurred as a result of their or their agents' actions, it may be in the Partner's best interest to research appropriate insurance coverage. Information regarding appropriate coverage generated by the Partner's insurer may be helpful to NPS' analysis of insurance sufficiency, but NPS should not defer to such information without critical evaluation. NPS is in the process of developing tools and resources to assist NPS staff in determining whether a Partner's insurance proposal is appropriate. Partner

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

The following clauses are recommended for inclusion in all fundraising agreements:

- A. ***Prior to undertaking any authorized activities within a park unit the Partner shall procure comprehensive general liability insurance and other appropriate insurance coverage from a responsible company or companies in coverage amounts and upon terms acceptable to NPS. The policy or policies shall name the United States as an additional insured, shall specify that the insured shall have no right of subrogation against the United States for payments of any premiums or deductibles due there under, and shall specify that the insurance shall be assumed by, be for the account of, and be at the insured's sole risk. After consultation with insurance professionals, the Partner will consult with NPS regarding the adequacy of proposed insurance coverage and terms. If the insurance proposal is accepted in writing by NPS, the Partner will provide NPS with written confirmation that agreed to coverage was procured prior to undertaking any activities within the park unit at issue. Insurance shall be reviewed every two years beginning on the date of purchase of insurance coverage, and shall be updated and modified if necessary to ensure consistency with generally accepted insurance practices and NPS policies. NPS reserves the right to require the Partner to acquire additional or supplemental insurance, or other form of security such as a bond, if NPS determines that the Partner's insurance is not adequate to cover liability associated with in-park activities.***
- B. ***The Partner assumes liability for and does hereby agree to, save, hold harmless, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses,***

damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys' fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way arising out of, the activities of the Partner, its employees, agents or contractors under this Agreement. This indemnification shall survive the termination or expiration of this Agreement.

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

If it is determined, through the terms of the Agreement, that the Partner will occupy and use NPS property, e.g., where the Partner's offices are located in a park owned structure, the following clauses should be included. In the instance of shared space between the NPS and the Partner, the NPS may consider waving or pro-rating the insurance requirement. The insurance clause is used in addition to – not in place of – other required insurance clauses discussed above.

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

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

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

- E. The Partner will provide worker's compensation protection to Partner officers, employees, and representatives.***

[**Note to reviewers:** This provision has appeared in other NPS agreements such as cooperative agreement. However, worker's compensation is governed by state law. Therefore, there is question as to its legal necessity in this agreement. NPS may want to include it for policy reasons, however.]

XI. Financial Management

The following general accounting clauses are designed to account for donations held by a Partner for the benefit of NPS. NPS may want to include additional reporting requirements on a case-by-case basis. These provisions may be incorporated by reference into sub agreements, including Fundraising Agreements that tier off this Friends Group Agreement.

- A. The Partner will maintain accounting books and records under a system of accounts and financial controls that is consistent with Generally Accepted Accounting Principles.*
- B. The Partner will permit NPS or its designee, or the Comptroller General to verify and audit any financial auditor records from the books, correspondence, memoranda and other records of the Partner, during the period of this Agreement, and for such time thereafter as may be necessary to accomplish such verification.*
- C. The Partner will ensure that if any funds raised under this Agreement are commingled with other funds held or managed by the Partner, an accounting system will be utilized which independently tracks and distinguishes funds raised under this Agreement from such other funds.*
- D. NPS provide that Partner with a detailed report(s) on the use of funds or in-kind donations made available to the NPS as a result of this Agreement. The report(s) shall be provided [insert date or dates] until all funds or in-kind donations provided have been expended or utilized by NPS.*
- E. Where the Partner continues to manage endowment or investment accounts that may be used to benefit NPS projects or program, this Article [insert number] shall survive termination or expiration of this Agreement.*
- F. Financial Audits. In addition to provisions A-D of this Article, if during the term of this Agreement the Partner may or does raise or manage a total of One Million Dollars (\$1,000,000) or more in funds (including interest and earnings thereon) for the benefit of NPS and or NPS projects or programs, the Partner will annually furnish NPS with: 1) a copy of its IRS 990 form and 2) a financial audit generated by an independent certified public accountant (CPA) in conformance with Generally Accepted Accounting Principles.. The financial audit shall at a minimum:
 - (a) Comprehensively assess the overall operational and financial position of the Partner.*
 - (b) Specifically assess the operational and financial position of the Partner with respect to activities authorized by this Agreement or sub**

agreements executed hereto. Include in this assessment: cash donations and interest and earnings thereon, endowment income, pledged donations, in-kind donations, other income, fundraising expenses, expenditures, etc.

(c) Recommend corrective actions where appropriate and note where problems identified in the prior year audits persist.

(d) Incorporate notes that describe the significant accounting policies used in preparing the financial audit.

i) Partner agrees to take appropriate corrective action based on the audit findings when doing so may further the goals of this Agreement or related agreements.

ii) The financial audit shall be provided to the Comptroller of the National Park Service within 9 months of the end of the Partner's fiscal year which ends on (month / day) of each year.

Alternative auditing and reporting requirements may apply where federal appropriated funds are transferred to a Partner through a grant or cooperative agreement. NPS staff should consult with their contracting officer and the Solicitor's Office to identify appropriate audit provisions in such cases.

XII. Required and Miscellaneous Clauses

A. NON-DISCRIMINATION: *All activities pursuant or in association with this Agreement shall be in conducted in compliance with the requirements of Executive Order 11246; Title VI of the Civil Rights Act of 1964, as amended (78 Stat. 252; 42 U.S.C. § 2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973 (87 Stat. 394; 29 U.S.C. § 794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§ 6101 et seq.); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.*

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

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

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

The Partner shall obtain prior written approval from NPS before:

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

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

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 in any way impairing the general powers of the NPS for supervision, regulation, and control of its property under such applicable laws, regulations, and management policies. Nothing in this Agreement shall be deemed inconsistent with or contrary to the purpose of or intent of any Act of Congress.

This clause is a general savings clause which helps ensure that applicable legal or policy requirements not expressly addressed in the Friends Group Agreement apply regardless.

E. Disclaimers of Government Endorsement: The Partner will not publicize or circulate materials (such as advertisements, solicitations, brochures, press releases, speeches, pictures, movies, articles, manuscripts, or other publications), suggesting expressly or implicitly, that the Government, the Department, NPS, or Government employees endorse the Partner's business, goods, or services. All materials referring to the Government must be approved by the NPS Key Official prior to publication. Nothing herein is intended to prevent NPS or the Department of the Interior from recognizing the Partnership or contributions made by the Partner to NPS, and from authorizing an inclusion of such recognition in materials generated by the Partner related to this Agreement.

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

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.

In order to streamline approvals, language about the Partnership and fundraising effort can be jointly developed and agreed to early in the development of campaign or communication materials. This jointly developed language can then be used by either party without additional review and approval.

G. Merger: This Agreement, including any attachments and or documents incorporated by reference is the sole and entire agreement of the parties.

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

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

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

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.

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

L. No Lobbying for Federal Funds: The Partners will not seek appropriations from Congress to support any ongoing or proposed Partner activity or project relating to the subject matter of this Agreement or sub agreements hereto, including without limitation federal appropriations for construction, renovation, property acquisition, leasing, administration or operations. Nothing in this paragraph is intended to preclude Partners from applying for and obtaining a competitive or non-competitive grant of federal financial assistance from a federal agency or from undertaking otherwise lawful activities with respect to any project or proposal included in the President's budget request to Congress. Nothing in this paragraph should be construed as requesting, authorizing or supporting advocacy by nonfederal entities before Congress.

Current NPS policy bars Partners from seeking appropriations for Partnership activities unless the activity is included in the President's budget to Congress. Pursuant to NPS policy, this is a required clause in all Friends Group Agreements and Fundraising Agreements and cannot be altered.

M. 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.

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

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

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

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

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

R. 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.

S. 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.

T. Force Majeure: Neither party shall be liable for failure to perform its obligations under this Agreement due to events beyond its reasonable control, including, but not

