

MEMORANDUM OF AGREEMENT  
BETWEEN  
NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
AND THE  
B. W. WELLS ASSOCIATION

This Memorandum of Agreement is between the North Carolina Department of Environment and Natural Resources (hereinafter referred to as the "Department"), and B. W. Wells Association (hereinafter referred to as the "Association"), acting through the Chairman of its Board of Directors or the Board's designee.

WITNESSETH:

WHEREAS, it is the purpose of the Department to preserve, interpret, and manage the State Park System for the benefit, education, and enjoyment of the people of North Carolina, as provided for in the State Parks Act (G.S. 113-44.7 through 113-44.14), and;

WHEREAS, the Department, through the establishment and management of the Division of Parks and Recreation, desires to provide facilities and services of recreational, interpretive, and educational value through the presentation of specified programs and services relating to the interpretive themes and various other approved and legally permissible operational needs of the State Park System, and;

WHEREAS, the purpose of the Association is to assist and offer services to the Army Corps of Engineers and the State of North Carolina, Division of State Parks and Recreation in the Department of Environmental and Natural Resources, in developing, maintaining, and interpreting the natural and cultural history of the B. W. Wells home site, Rock Cliff Farm, located in the Falls Lake Project. This includes the study of plants, birds, mammals, and other living organisms in their natural habitats and the study of the ecological relationships of the biological elements with the elements of the physical environment such as soils, geological formation, water, and climate. The Association will achieve its mission by promoting and supporting the environmental education and park interpretation endeavors of Falls Lake State Recreation Area.

NOW, THEREFORE, in consideration of the mutual benefits which will accrue to the Department and the Association, the parties agree as follows:

1. AUTHORIZATION

The Department hereby authorizes and allows the Association to solicit and accept donations from the visiting public of Falls Lake State Recreation Area via fund raising drives and the use of Department approved donation boxes, which will be located in Department approved locations at Falls Lake State Recreation Area. Proceeds from such solicitations will be used by the Association to support the mutually agreeable projects of the North Carolina Division of Parks and Recreation that focus on promoting the use of Falls Lake State Recreation Area and its environmental education opportunities.

The term of this Agreement shall commence on the **1st day of July, 2010** and expire on the **31st day of June, 2013**. The Agreement may be renewed by the parties for two (2) additional 36 month periods under the same terms and conditions.

The Department and the Association reserves the right to terminate the Agreement, or any part thereof, at any time upon a 30 day written notice without the necessity of any legal process.

The Department and the Association will meet prior to the termination setting forth the reasons for termination.

## 2. ASSOCIATION RESPONSIBILITIES

In addition to the activities authorized in Section 1 of this Agreement, the Association may provide other services or engage in other activities as herein below provided:

### A. Other Activities

- (1) The Association may be allowed to engage in interpretive and other educational programs related to Falls Lake State Recreation Area. The Association agrees to engage in Department approved activities only when operating in or at Falls Lake State Recreation Area, or at a location approved by the Park Superintendent.
- (2) The Association may use Department approved facilities and materials in the conduct of any approved Association activities.
- (3) The Association must adhere to the established permitting procedures of the North Carolina Division of Parks and Recreation when requesting or seeking permission to engage in the conduct of educational or interpretive programs.
- (4) The Association may propose and implement preservation and restoration projects in accordance with Department approval.
- (5) The Association must obtain Department approval prior to engaging in any advertising which will include the name(s) and/or insignia(s) of any Department agency.
- (6) The Association may engage in the sale of merchandise, food or beverages for the purpose of raising funds which go directly to supporting specific pre-approved projects for Falls Lake State Recreation Area.
- (7) If a vendor is donating time and profit in the sale of any merchandise, food or beverage, all resulting profits must be donated to the Association.
- (8) The Association may, with approval of the Park Superintendent, use park equipment and exhibits to promote Falls Lake State Recreation Area at fairs, festivals.
- (9) Upon approval of the Park Superintendent the Association may seek out grants and other sources of funding for use in the promotion, maintenance and improvement of Falls Lake State Recreation Area and the environmental education program. Any such grant applications must be reviewed and approved by the Park Superintendent prior to submittal.
- (10) Members of the Association will appropriately identify themselves, either by wearing name tags and/or marked Association attire, whenever engaging in activities included in the scope of this agreement.

### B. Records and Accounting

- (1) The Association shall conduct its fiscal operations in accordance with accepted business practices, utilizing purchase orders, receipts, invoices, and inventory records. The Association shall employ any other accounting procedures that are requested by the Director of the North Carolina Division of Parks and Recreation. Association accounting records must show separate entries for funds generated

from activities conducted pursuant to this Agreement and for funds generated from other sources.

- (2) The Director of the North Carolina Division of Parks and Recreation, or his/her designee, may review the financial records and accounts of the Association at any time during the term of this Agreement. An audit must be done annually. As necessary, the Association may be required to provide financial reports related to specific events.
- (3) All funds generated pursuant to this Agreement must be used to support State Park programs and causes for Falls Lake State Recreation Area; reasonable administrative fees excepted.
- (4) The Association may retain an amount not to exceed ten percent (10%) of the funds generated under this Agreement as an administrative fee. For purposes of this Agreement, the term "administrative fee" shall include, but not be limited to, sums spent to organize and promote the activities and programs of the Association, as such programs may relate to the improvement of Falls Lake State Recreation Area.
- (5) All funds collected from donation boxes at Falls Lake State Recreation Area must be accounted for by two persons. One of these persons must be a designated representative or member of the Association. The other person will be the Park Superintendent or his designee.

The forms used to account for the donated funds must be approved by the Department. If the Association fails to provide a form for accounting purposes that meets Department approval, the Department will supply the required accounting form(s). At a minimum, this form will show the name of the park, the date of the accounting, the locations or other identifying information of the donation boxes, the amounts collected separately for each location (all amounts will be broken down into separate totals for change, cash, and checks), the amount of the deposit, and the signatures of the individuals completing the accounting and preparing and verifying the deposit. The funds must be counted twice (once each by the individuals completing the accounting) to ensure that there are no discrepancies concerning the amounts deposited. Copies of these accounting forms must be held on file by the Association, Park management, and the Budget Officer of the North Carolina Division of Parks and Recreation.

Deposits will be made into the Association's account at a banking institution of the Association's choice. At a minimum, copies of deposit slips must be held for five years by the Association and the park management of Falls Lake State Recreation Area. All deposit slips held on file must contain the verification and acceptance insignia of the bank where the funds were deposited.

Receipted donations will be kept separate from other donated funds wherever possible. Such donations and receipts will be held for the Association's review and verification in the Park office safe. The Association must provide serially numbered receipts which will be issued sequentially to any donor upon request. Designated members of the Park staff may be authorized by the Park Superintendent to issue such receipts. Association members may issue such receipts at their convenience. Such receipts must have a numbering sequence that's continuous and that does not repeat itself more often than every three years. The Association must maintain a log of the receipt booklets used for purposes of this agreement. Such a log must contain the numbering sequence of all receipt booklets issued, the signatures of the issuing and accounting parties,

and the dates of issuance. Receipts must be issued sequentially. Any breaks on the numbering sequence must be explained. Receipts issued in error or for sales refunds must be held for review by Park management and/or the Association management. Refunds must be approved by the Park Superintendent or his designee.

At a minimum receipts will be prepared in quadruplicate. One copy of the receipts will be given to the donor or buyer. Separate copies will be held by the Association and Park management. One copy will be forwarded to the Budget Officer of the North Carolina Division of Parks and Recreation.

As a control measure, all donation boxes shall be designed and constructed to include two locking devices, which will be operated by two separate keys. The locking devices and keys shall be of a security grade to prevent the duplication of the keys that will operate the locks. The key(s) to one lock will be held by the Association. The key(s) to the other lock will be held by Park management. At all times, it shall take the presence of the appropriate persons from both the Association and Park management to access the funds collected in the donation boxes.

C. Personnel

The Association shall designate an association member or employee who is authorized to act as liaison with the Department. All activities of Association personnel at Falls Lake State Recreation Area are subject to the approval of the Park Superintendent.

D. Operations

An evident and distinct separation shall be maintained between the activities of the Association and those of the Department. All steps shall be taken to avoid even an appearance that the Department directs the management or decision-making process of the Association.

3. DEPARTMENT RESPONSIBILITIES

A. Facilities

The Department shall provide (wherever possible) such facilities as may hereafter [be] deemed necessary or desirable by the Department to properly promote approved Association activities.

B. Personnel

- (1) The Division of Parks and Recreation as the managing agency of this agreement on behalf of the Department shall designate an employee who shall act as liaison with the Association. This employee will be known as the Cooperating Association Coordinator.
- (2) Department personnel will assist the Association in performing the functions incident to the proper completion of Association activities, so long as such functions do not interfere with or delay the performance of the Departmental duties of those personnel.

C. Records and Accounting

The Department, through the management of the North Carolina Division of Parks and Recreation, will ensure that all accounting procedures are followed as herein stated above in section 2(B).

4. SUPPLEMENTAL AGREEMENTS

The Department and the Association further agree that, by supplemental agreement, the Association may offer additional services or engage in other approved activities which support the mission of State Parks and which are within the scope and purposes of the Association. All additional services and activities of the Association must be approved by the Director of the North Carolina Division of Parks and Recreation.

5. INDEMNIFICATION

The Association shall indemnify, save and hold harmless and defend the State of North Carolina against any and all fines, claims, damages, losses, judgements, and expenses arising out of or in any way connected with the performance of the duties covered by this agreement.

6. ASSOCIATION ORGANIZATION

- A. The Association's Articles of Incorporation and By-Laws shall comply with the requirements of the State of North Carolina. Non-profit status must be maintained in accordance with Federal and State laws and the Association will make available for inspection at the request of the Department documents demonstrating non-profit status. This contract will automatically terminate if non-profit status is lost.
- B. The Association Board of Directors may include Department personnel as ex officio members but only in an advisory, non-voting capacity.
- C. Department employees shall not participate in any Association decision concerning the relationship of the Association to the Department or represent the Association in any matter between the Association and the Department.
- D. The role of the Cooperating Association Coordinator is to represent the interest of the Department and to provide cooperative assistance to the Association. His or her scope of responsibility shall be limited to insuring Association compliance with the Agreement and serving as liaison between the Department and the Association, and providing assistance as needed.
- E. The Association treasurer shall not be a Department employee.

7. ASSIGNMENT

No transfer or assignment of this Agreement or of any part thereof or interest therein, directly or indirectly, voluntary or involuntary, shall be made unless such transfer or assignment is first approved by the Department in writing.

8. USE OF FUNDS GENERATED PURSUANT TO THIS AGREEMENT

All revenue generated pursuant to the rights and privileges granted by this Agreement must be used to support the programs and causes of the North Carolina Division of Parks and Recreation; reasonable administrative costs excepted. More specifically, the funds generated will be returned to the North Carolina State Park System in the form of goods and services of equal value for the improvement of the services and facilities at Falls Lake State Recreation Area, minus the necessary and appropriate administrative costs involved. The Association may

not encumber funds generated pursuant to this agreement without the approval of the North Carolina Division of Parks and Recreation. Every year starting with the expiration of the first annual term of this Agreement, the Association will submit to the Department a schedule of its projected uses of the funds generated pursuant to this Agreement. State park requests will be submitted to the Association 90 days prior to the end of the Association's fiscal year. State park requests will be considered by the Association when its annual budgeting plan is being completed. This plan shall be submitted to the Park Superintendent of Falls Lake State Recreation Area within 90 days after the expiration of each term of this agreement. Any disputes over the use of the funds will be settled by the Director of the North Carolina Division of Parks and Recreation.

9. MISCELLANEOUS

- A. The rights and benefits conferred by this Agreement shall be subject to the laws of the State of North Carolina governing the Department and to the rules and regulations promulgated thereunder, whether now in force or hereafter enacted or provided; and the mention of specific restrictions, conditions, and stipulations herein shall not be construed as in any way impairing the general powers of supervision, regulations and control by the Department.
- B. The Association agrees that all its activities shall be conducted in accordance with all applicable laws and regulations, local, State, and Federal.
- C. In all cases where rights or privileges are granted here in general or indefinite terms, the extent of the use of such rights or privileges by the Association shall be determined by further written agreement.
- D. The filing of a petition in bankruptcy court by or against the Association shall terminate this Agreement at the option of the Department. This agreement will automatically terminate upon the dissolution of the Association, for any reason whatsoever. Upon such termination the Association must immediately return any monies held pursuant to this agreement to the North Carolina Division of Parks and Recreation in the form of a certified check or money order.

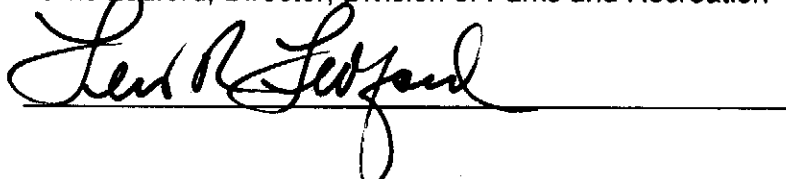
This Agreement is effective between the Association and the Department with regard to the following specified State Recreation Area, to wit:

FALLS LAKE STATE RECREATION AREA

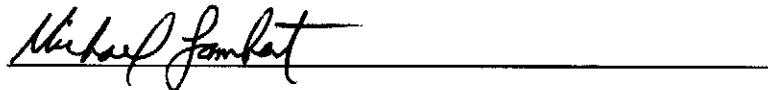
IN WITNESS WHEREOF, the Department has caused this Agreement to be executed in three (3) originals this 21 day of June, 2010.

North Carolina Department of Environment  
and Natural Resources

Lewis Ledford, Director, Division of Parks and Recreation

  
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Michael Lambert, Chief of Operations, Division of Parks and Recreation

  
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Erik Nygard, District Superintendent, Division of Parks and Recreation

  
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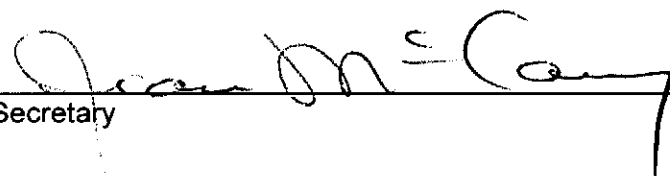
WITNESS:

  
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IN WITNESS THEREOF, the Association has caused this Agreement to be ratified in three (3) originals this 30 day of June, 2010.

By:   
\_\_\_\_\_  
President, B. W. Wells Association, Inc.

ATTEST:

  
\_\_\_\_\_  
Secretary

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