**INSTRUCTIONS FOR THE USE OF A**

**PARTNER DESIGN & CONSTRUCTION AGREEMENT**

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

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

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

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

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

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

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

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

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

**PARTNER DESIGN & CONSTRUCTION AGREEMENT**

**Between**

**NATIONAL PARK SERVICE**

**UNITED STATES DEPARTMENT OF THE INTERIOR**

**and**

**[PARTNER’S NAME]**

**For**

**[PROJECT NAME]**

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

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

**ARTICLE I. BACKGROUND**

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

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

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

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

**ARTICLE II. DEFINITIONS**

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

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

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

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

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

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

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

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

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

**ARTICLE III. RESPONSIBILITIES OF THE PARTIES**

A. The NPS agrees to--

1. Provide timely review and, in writing, approve or deny:

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

[NOTE: NPS STAFF MAY, ON A CASE-BY-CASE BASIS, DECIDE NOT TO REVIEW A THIRD-PARTY CONTRACT PROVIDED THAT (1) NPS HAS CONFIDENCE IN THE ABILITY OF THE PARTNER TO EXECUTE CONTRACTS THAT ARE CONSISTENT WITH THE TERMS OF THIS AGREEMENT, AND (2) THE PARTNER HAS PROVIDED THE SIGNED CONTRACTOR CERTIFICATION FORM IDENTIFIED IN ARTICLE III.B.13.h AND INCORPORATED AS ATTACHMENT E HEREIN.]

b. All design plans, construction drawings, engineering documents, environmental compliance documents, change orders, and cost estimates generated by the Partner or the Partner’s contractors. NPS may, in its discretion, identify in writing categories of *de minimus* activities, such as minor change orders, that do not require NPS approval.

2. Review requests for access to the Park to accomplish work under this Agreement.

3. Monitor the general implementation of the Project, to include periodic inspection and tests for compliance with the requirements of this Agreement, any Project Development Plan, project implementation plan or applicable special use permit, and relevant laws, regulations, and policies.

4. Inspect the Project to determine whether to accept the Project as complete. In the event that NPS cannot accept the Project as complete, NPS must identify in writing what the Partner must accomplish to allow NPS to accept the project as complete.

5. Notify the Partner of any change in NPS policy that may affect implementation of this Agreement.

6. Subject to the availability of appropriations, undertake NPS activities identified in this Agreement.

B. The Partner agrees to--

1. Ensure that the Project meets NPS standards and requirements and to donate to NPS the Project identified in this Agreement. This donation is made by the Partner on its own volition and without compensation.
2. Contact NPS in a timely manner with requests for access to the Park to accomplish the Project in accordance with law, NPS policies, and the terms of this Agreement. Ensure that Partner’s contractors and any subcontractors do the same.
3. Undertake and complete in a timely manner, at its sole cost and expense, the Project identified in this Agreement and attachments hereto.
4. Provide to the NPS, prior to entering into any contract or agreement between the Partner and any third-party related to the Project, a copy of the proposed Third-Party Contract.
5. Execute any Third-Party Contract only after receiving either written NPS approval or written notification that NPS will not review the proposed Third-Party Contract.
6. Provide to the NPS in advance of entering into any Third-Party Contract, written certification that--
   1. The third-party:
      1. Has all required licenses to do the work contemplated by the agreement in the state(s) in which the work will be performed, or in the District of Columbia (D.C.) if the work will be performed in D.C.;
      2. Is not suspended or debarred from federal contracting; and
      3. Demonstrates relevant experience and competence to perform the work contemplated in the Third-Party Contract.
   2. The Partner:
      1. Used competition in selecting the third-party to perform the work;
      2. Has taken measures to avoid or mitigate conflicts of interest; and
      3. Has incorporated provisions reflecting best practices in contract management and project administration into the Third-Party Contract.
7. Make the NPS an express third-party beneficiary of all Third-Party Contracts, and require that all Third-Party Contracts contain the following clause:

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

1. Submit all plans, designs, and specifications for NPS approval prior to the commencement of construction.
2. Ensure and cause its contractors to ensure that the Project design complies with:
3. All applicable laws, regulations, rules, orders, or other legal requirements;
4. All applicable building codes and environmental, cultural, safety, accessibility, and sustainable design requirements; and
5. NPS management documents.
6. Prior to initiating work on the Project, demonstrate to NPS’s satisfaction that all funds necessary to pay for the Project have been secured, and will remain available to pay Partner’ expenses associated with the Project.
7. Undertake the Project only when all necessary written NPS approvals have been obtained.
8. Establish and maintain, or ensure that its contractor(s) establish and maintain, throughout the course of the Project, (i) security in favor of the United States in the form of a surety bond guaranteeing performance (performance bond) of the Partner’s obligations under this Agreement, or where a contractor obtains the performance bond, the contractor’s performance of its contract with the Partner, and (ii) a payment bond assuring payment of all persons supplying labor and material in the execution of the work undertaken for the Project, with the following conditions:
   1. All bonds shall be in an amount equal to at least 100% of the total project cost, as approved by the NPS. The NPS may require additional performance and payment bond protection if the estimated costs increase during Project planning or construction;
   2. All bonds shall be in the form of a firm commitment, supported by corporate sureties that appear on the list contained in Treasury Department Circular 570;
   3. No term of any bond obtained pursuant to this Article shall be inconsistent with the term of this Agreement; and
   4. Should any bond issued pursuant to this section be canceled or withdrawn, the Partner must immediately notify NPS in writing.

**[**NOTE: bonds are not required for A&E design work. A&E Contractors are required to obtain PROFESSIONAL Error and Omission Insurance pursuant to Article VIII.A.3.c of this Agreement.**]**

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

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| “The Contractor agrees—   * 1. To comply with all applicable laws, regulations, rules, orders, other legal requirements, and NPS policies;   2. To comply with the terms and conditions of any Project Development Plan, project implementation plan or special use permits relating to the Project;   3. To follow any NPS order to suspend work;   4. To obtain and provide all warranties that would be given in normal commercial practice from subcontractors, manufacturers or suppliers for work performed and materials furnished:      1. For a period of not less than one year; and      2. Executed, in writing, for the benefit of the Partner and the United States;   5. To be responsible for all damages to persons or property that occur as a result of the contractor’s fault or negligence because of, or in any way growing out of or connected to, the Project;   6. To waive any defense to any claim of breach or negligence based on the contractor’s alleged reliance on the Partner’s or NPS’s Project monitoring, inspections or tests. All monitoring, inspections or tests are for the sole benefit of the Partner and / or NPS and do not relieve the Contractor of responsibility for (i) providing adequate quality control measures, or (ii) ensuring against damage or loss prior to Project acceptance. In addition, such monitoring, inspections or test do not imply acceptance of the Contractor’s work by either the Partner or NPS, nor does it affect the continuing rights of the Partner or NPS after acceptance of the Contractor’s work.   7. That neither the Partner’s nor NPS’s review, approval or acceptance of, nor the Partner’s payment for, contractor services shall be construed to operate as a waiver of any rights of the Partner or NPS, nor of any cause of action that the Partner or NPS may have, and the Contractor shall be and remain liable to the Partner and the NPS in accordance with the terms of this Contract and applicable law for all damages for which the Contractor is legally responsible.   8. That in the event of a conflict between the provisions of this Contract and the provisions of the Partner Design and Construction Agreement between NPS and the [INSERT PARTNERS NAME] dated [INSERT], recognize that the terms of the Partner Design and Construction Agreement controls.   9. To obtain and maintain insurance consistent with the requirements of Article VIII;   10. That the Contractor has no recourse against the United States with respect to any aspect of construction activities and shall not lien any land, structures, fixtures, or improvements associated with this Contract; and   11. To be jointly and severally liable under this Contract if the Contractor is comprised of more than one legal entity.” |

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

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| “The Contractor agrees--   * 1. That it is solely responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor and warrants that the project can be built as designed; and   2. To correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services without any additional compensation.   3. That the final signed and sealed Final Construction Documents provided by the Contractor, as reviewed and approved in writing by NPS, are the only true contract documents of record for this Project. By submission of the Final Construction Documents to the Partner, the Contractor warrants that all review comments have been resolved to the satisfaction of the Partner and incorporated into the Final Construction Documents.” |

1. Permit the NPS to monitor, inspect, and to at all times have access to the construction site and construction-related materials and documents.
2. Promptly take steps necessary, including the suspension of work, at no cost to NPS, to address any concerns raised by NPS.
3. Certify in writing that upon NPS’s acceptance of the Project as complete, all right, title, and interest to any completed construction, improvements, installations, fixtures, or associated donations, are free and clear of all debts, liabilities, or obligations.
4. Consistent with the Partner’s intent to donate the Project to the NPS as stated herein, waive any claim or right to any property interest, including use rights, or to compensation for any Project components donated to NPS by or on behalf of the Partner.
5. Comply with, and cause its contractors to comply with, the wage requirements of the Davis Bacon Act, 40 U.S.C. § 3142 *et seq.*, and the relevant Department of Labor regulations, 29 C.F.R. Part 5.
6. Act in accordance with any Project Development Plan, project implementation plan or special use permit that may be in place at the time of the execution of this Agreement, or that is subsequently agreed to by the parties for the furtherance of the Project.
7. Ensure that no Third-Party Contract contains a binding arbitration clause or other clause that may interfere with NPS’s ability to seek judicial review in its capacity as a third-party beneficiary to the Third-Party Contract.
8. Provide NPS with the signed Contractor Certification Form, included as Attachment E to this Agreement, prior to executing any Third-Party Contract.
9. Provide NPS with a copy of Third-Party Contracts upon execution.

C. The Partner and NPS jointly agree that--

1. The Project’s overall cost is estimated to be approximately [INSERT]. The [INSERT “PARTNER’S”…OR IF NPS IS ALSO CONTRIBUTING FUNDS TOWARD THIS PROJECT, INSERT “PARTIES’”] financial obligations are detailed in Attachment B.

* + 1. In making certain programmatic and resource-related decisions, NPS is relying upon the Partner’s promise to undertake and diligently pursue the Project in accordance with this Agreement.

1. The attached Project Development Plan (Attachment C), as may be amended or supplemented by written agreement of the parties, addresses without limitation, deliverables, design elements, construction standards, mitigation measures, safety precautions, site access, construction monitoring, coordination between the parties, contractor requirements, and design modifications.
2. Project land and facilities shall not be subject to liens by the Partner or any third-parties.
3. The Partner and NPS are not establishing a joint venture, a joint enterprise or other entity by entering into this Agreement, and neither is liable for the contracts or actions of the other party relating to this Agreement or otherwise.
4. Other Contracts: [STATE THE RELATIONSHIP BETWEEN THIS AGREEMENT AND OTHER CONTRACTS, IF ANY.]
5. NPS review and approval of documents pursuant to Article III.A.1 of this Agreement shall not be construed to operate as a waiver of any rights of the NPS, nor a waiver of any cause of action that NPS may have arising under this Agreement or any Third-Party Contract.

**ARTICLE IV. ATTACHMENTS**

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

**ARTICLE V. AUTHORITY**

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

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

**ARTICLE VI. KEY OFFICIALS**

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

**[Name of Partner Organization]**

name

title

address

phone

fax

e-mail

**NPS**

name

title

address

phone

fax

e-mail

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

**ARTICLE VII. TERM OF AGREEMENT**

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

**ARTICLE VIII. INSURANCE AND LIABILITY**

A. Insurance

1. The Partner and all contractors must comply with all insurance related provisions of this Article. The Partner and its contractors are responsible for ensuring that these insurance requirements are included, as appropriate, in their respective contracts with subcontractors. Unless otherwise specified herein, the term “contractor(s)” as used in this Article means entities providing any construction, utility, architectural, engineering, or design related labor, materials, products, or services.

2. Insurance coverage must be commensurate with foreseeable risk, and coverage limits may ultimately be greater than the minimum limitations required below. NPS will not be responsible for any omissions or inadequacies of any insurance coverage or amounts in the event that insurance purchased by the Partner or a contractor proves to be inadequate or insufficient for any reason.

3. The Partner and all contractors must acquire and maintain the following insurance and comply with the following associated requirements:

a. The Partner and all contractors must have appropriate insurance including coverage for commercial general liability, contractual liability, automobile, valuable papers, umbrella coverage, and workers’ compensation, from a responsible company or companies. Unless higher limits are required by the NPS in writing, commercial general liability insurance and automobile insurance shall each have a minimum limitation of One Million Dollars ($1,000,000) per person for any one claim, and an aggregate limitation of Three Million Dollars ($3,000,000) for any number of claims arising from any one incident. Insurance must be acquired prior to the initiation of any in-park activities and must be maintained until the Project is accepted as complete by NPS.

b. The Partner or the Partner’s Prime Contractor or General Contractor must have Builder’s Risk Insurance sufficient to cover the replacement cost of the Project.

1. The Partner and contractors, as appropriate, must have appropriate insurance coverage when warranty work is conducted. This provision shall survive termination or expiration of this Agreement. Warranty work requires the NPS Superintendent’s prior approval.

d. Contractors providing architectural or engineering service must have Professional Error and Omissions Insurance coverage that, at a minimum, conforms to the requirements of applicable state law, or Washington, D.C. law if the Project occurs there.

e. Where a Partner or contractor is authorized to utilize NPS structures or facilities in conjunction with this Agreement, the Partner or contractor shall procure and maintain, at its sole cost and expense, fire and hazard protection insurance in an amount equal to the replacement cost of structures or facilities utilized. This insurance shall be maintained for the term of use.

4. All insurance policies required by this Agreement, whether or not they are acquired by contractors, shall be payable to the Partner, and the Partner shall use insurance proceeds to correct the damage, harm, or deficiency that is the basis of the insurance claim. Partner expenditure of insurance proceeds shall be in conformance with law, NPS policies, and NPS approvals. Insurance proceeds that are paid to the Partner, but that are not needed, or cannot be used to correct the harm or deficiency at issue, must, if allowed under the insurance policy, be used to further Park projects and programs as agreed to by the parties.

5. All insurance policies required by this Agreement shall name the United States as an additional insured and shall specify that the insurer has no right of subrogation against the United States. If in NPS’s judgment the Partner is unable to meet its obligation to correct the damage, harm, or deficiencies at issue, NPS may file insurance claims and use insurance proceeds consistent with law and NPS policies.

6. Prior to beginning the work authorized herein, the Partner shall provide the NPS with copies of Certificates of Insurance demonstrating that the Partner and contractors have acquired all insurance required by this Article. Insurance coverage shall be reviewed every year beginning on the date of execution of this Agreement and shall be modified if necessary to ensure consistency with generally accepted insurance practices and NPS policies. The Partner and contractors must immediately notify NPS if an insurance policy is canceled or terminates for any reason.

7. Insurance Carrier Requirements:

1. Each issuer of the insurance required by this Article must be rated no lower than A- by the most recent edition of the A.M. Best’s Key Rating Guide (Property-Casualty Edition).
2. All insurers for all coverage must have a Best’s Financial Size Category of at least VII according to the most recent edition of A.M. Best’s Key Rating Guide (Property-Casualty Edition).
3. All insurers must be admitted, licensed, and approved to operate in the state in which the Project will occur, or Washington, D.C. if the Project occurs there.

B. Liability

1. The Partner assumes liability for and does hereby agree to save, hold harmless, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys’ fees and experts’ fees) of any kind and nature whatsoever including fire or other peril, bodily injury, death, or real, personal, or intellectual property damage of any nature whatsoever, and by whomsoever made, in any way arising out of the activities of the Partner, or the Partner’s employees, agents or contractors (including a contractor’s subcontractor) in furtherance of the Project. This indemnification shall survive the termination or expiration of this Agreement.
2. The Partner must pay the United States the full value of all damages to the lands or other property of the United States directly caused by the Partner, its employees, agents, representatives, or contractors (including a contractor’s subcontractor) in connection with any activities under this Agreement.

3. The Partner must cooperate with the NPS in the investigation and defense of any claims that may be filed with or against the NPS arising out of the activities of the Partner, or the Partner’s employees, agents, representatives, or contractors (including a contractor’s subcontractor).

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

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

1. NPS Review of Bid Proposals

1. The Partner will receive all bid proposals, associated documents, and other

communications from bidders and provide copies of them to the NPS Key Official identified in this Agreement so that they may be distributed to appropriate NPS personnel for review. Any information delivered in writing or by other tangible form from the Partner to NPS, or from NPS to the Partner, that is to be considered Confidential Information must be conspicuously labeled on every page as “Confidential and Proprietary” at the time of delivery. If proprietary information is delivered orally by either the Partner (including information provided by the bidder) or NPS, the Partner or NPS (as the case may be) must identify such information at the time of disclosure, subsequently reduce it to writing, label it “Confidential and Proprietary,” and provide this writing to the appropriate Key Official. Each Party will implement reasonable internal controls to protect confidential information in its possession. The Partner will destroy Confidential Information provided by losing bidders after termination of the bid selection process, unless the Partner’s Key Official has been provided a written request that the Confidential Information be returned at the time it is received by the Key Official. NPS retention, release, and destruction of information that is labeled “Confidential Information” is governed by applicable federal law.

1. Both Parties will ensure their compliance with applicable state or federal law. Confidential Information does not include information that:

i. Is generally known and available in the public domain through no fault of the receiver;

ii. Was known by the receiver prior to the date of disclosure;

iii. Was received from a third party without any obligation of confidentiality; or

iv. Was independently developed without reliance on Confidential Information.

1. In all bid solicitations, the Partner shall notify bidders of all provisions in this Article IX that affect their interests, and shall provide that all such provisions will be binding on all bidders including the winning Contractor.
2. This Article IX.A.1 shall survive termination or expiration of this Agreement.
3. Rights to Works Produced in the Performance Contract
4. The Partner is bound by the following provisions. Additionally, the Partner will ensure that provisions b through d below are incorporated into all contracts and subcontracts with Contractors that are executed in furtherance of this Agreement. These provisions should be modified by including the Partner’s name and the Contractor’s name when such provisions are inserted into any contract.
5. NPS shall own any and all rights, titles, and interests, including any and all patents, copyrights, trademarks, trade secrets, inventions, products or other intellectual property rights created as a result of, arising from, or relating to this Agreement, including without limitation intellectual property utilized in bid proposals and any pre-existing intellectual property belonging to the Partner and/or Contractor that is provided in association with the Project, provided, however, that the Partner may request from NPS a non-exclusive license to use any intellectual property for purposes related to the Partner’s educational mission. NPS shall consider the request for such non-exclusive license on a case-by-case basis. This provision shall survive expiration or termination of this Agreement.
6. The Partner and the Contractor shall fully cooperate with the NPS in the protection and enforcement of any intellectual property rights resulting from activities and services performed in connection with this Agreement. This obligation includes timely execution, acknowledgment, and delivery to the NPS of all documents and papers that may be necessary to enable the NPS to utilize in any manner any copyrights, patents, trademarks, trade secrets, and other intellectual property and proprietary rights.
7. In the event that any invention or material created in the course of performing tasks under this Agreement or any associated agreement is patentable intellectual property, the Contractor shall report the invention or patentable intellectual property to the Partner within thirty days of its creation. Upon receiving notice of the creation of an invention or patentable intellectual property, the Partner will immediately report the invention or intellectual property to the NPS.

**ARTICLE X. DEFAULT AND TERMINATION**

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

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

**ARTICLE XI*.* dISPUTES, venue and choice of law**

A. The parties agree that in the event of a dispute between them, NPS and the Partner shall promptly use their best efforts to resolve the dispute in an informal fashion through communication and consultation, or other forms of non-binding alternative dispute resolution that are mutually acceptable to the parties.

B. The parties agree that the venue to commence litigation of any disputes stemming from this Agreement shall be a Federal court with appropriate jurisdiction.

**Article XII. ACCOUNTING AND REPORTS**

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

**ARTICLE XIII. COMPLIANCE WITH APPLICABLE LAW**

A. This Agreement and performance hereunder is subject to all applicable laws and regulations whether now in force or hereafter enacted or promulgated. This Agreement and performance hereunder is also subject to applicable government policies. Nothing in this Agreement shall be construed as in any way limiting the general powers of the NPS for supervision, regulation, and control of its property under such applicable laws, regulations, and management policies. Nothing in this Agreement shall be deemed inconsistent with or contrary to the purpose of or intent of any Act of Congress.

B. In addition to other laws, regulations, and policies referenced in this Agreement, the Partner is on notice that, where applicable, it must comply with, and assist NPS in complying with additional laws, regulations, Executive Orders and policies including, but not limited to the Americans with Disabilities Act (42 U.S.C. § 12101), Architectural Barriers Act (42 U.S.C. § 4151 *et seq*.), the Rehabilitation Act (29 U.S.C. § 701 *et seq*., as amended), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, *et seq*.), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4801, *et* *seq*.), the National Environmental Policy Act (42 U.S.C. § 4321, *et seq*.), the Coastal Zone Management Act (16 U.S.C. § 1451 *et seq.)*, Clean Air Act (42 U.S.C. § 7401 *et seq*.), the Safe Drinking Water Act (42 U.S.C. § 300, *et seq.)*, the Endangered Species Act (16 U.S.C. § 1531 *et seq.*), the Wild and Scenic Rivers Act (16 U.S.C. § 1271, *et seq.*), the National Historic Preservation Act (16 U.S.C. § 470), the Archaeological and Historic Preservation Act (16 U.S.C. § 469), Strengthening Federal Environmental, Energy and Transportation Management (Exec. Order No. 13423), Notification of Violating Facilities (Exec. Order No.11738), Wetlands Protection (Exec. Order No. 11990), and Flood Hazards in Floodplains (Exec. Order No. 11988).

**ARTICLE XIV. REQUIRED AND MISCELLANEOUS CLAUSES**

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

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

C. Limitations on Lobbying. To the extent that the Partner commits in this Agreement or

any related agreement to raise funds from non-federal sources for a particular purpose or

project to benefit the NPS, the Partner agrees that it will not lobby for or otherwise

seek the appropriation of funds from Congress to meet that commitment. The Partner

may not use any appropriated funds (including property, utilities, or services acquired

with, or supported by, appropriated funds) to lobby or attempt to influence Congress or

any official of any government.

1. Release of Information: The Partner must obtain prior government approval through the NPS Key Official for any public information releases which refer to the Department of the Interior, any bureau, a park or park unit, a government employee (by name or title), or this Agreement. The specific text, layout, photographs, etc., of the proposed release must be submitted with the request for approval.
2. Merger: This Agreement, including any attachments hereto and documents incorporated by reference herein, contains the sole and entire agreement of the parties with respect to the subject matter of this Agreement.

1. Modifications: This Agreement may be extended, renewed or amended only when agreed to in writing by the NPS and the Partner.
2. Waiver: If a party fails to exercise any right or to insist that the other party comply with any obligation, no such failure or insistence shall be a waiver of a right of a party to demand strict compliance with each duty or obligation. No custom or practice of the parties which varies from this Agreement shall constitute a waiver of the right of a party to demand exact compliance. Waiver by one party of any particular default by the other party shall not affect or impair a party’s rights in connection with any subsequent default of the same or of a different nature, nor shall any delay or omission of a party to exercise any rights arising from such default affect or impair the rights of that party as to such default or any subsequent default. All waivers of any duty or obligation by a party must be express and evidenced in writing.
3. Effect of Approval: Any approval or consent given by the NPS regarding any contract or contractor, or by operation of inspection, or any other consent or approval given by the NPS under this Agreement, or NPS’s decision to decline review of a Third-Party Contract, does not relieve the Partner or the Partner’s contractors of responsibility for any errors or omissions, or from the responsibility to comply with the requirements of this Agreement.
4. Effect of Acceptance: Any acceptance by the NPS of the Project or any component thereof does not relieve the Partner or the Partner’s contractors from liability for any known defect, or any latent defect, fraud, or gross mistake or negligence.
5. Assignment: No part of this Agreement shall be assigned to any other party without prior written approval of the NPS and the Assignee.
6. 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.
7. 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.
8. Agency: The Partner is not an agent or representative of the United States, the Department of the Interior, or NPS, or the Park, nor will the Partner represent its self as such to third parties. NPS employees are not agents of the Partner and will not act on behalf of the Partner.
9. Non-Exclusive Agreement: This Agreement in no way restricts the Partner or NPS from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.
10. No Third-Party Beneficiaries: Unless expressly stated herein, nothing in this Agreement is intended to grant any rights or to provide any benefits to any third-party.
11. Survival: Any and all provisions which, by themselves or their nature, are reasonably expected to be performed after the expiration or termination of this Agreement shall survive and be enforceable after the expiration or termination of this Agreement. Any and all liabilities, actual or contingent, which have arisen during the term of and in connection with this Agreement shall survive expiration or termination of this Agreement.
12. 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.
13. Captions and Headings: The captions, headings, article numbers and paragraph numbers appearing in this Agreement are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provision of this Agreement, nor in any way affecting this Agreement.

S. Drug Free Workplace Act: The Partner shall take comprehensive action to ensure the workplace is drug-free.

T. Jointly Drafted: This Agreement shall be deemed to have been jointly drafted by both parties and, in the event of a dispute, shall not be construed against either party.

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

**ARTICLE XV. AUTHORIZING SIGNATURES**

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

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

**NATIONAL PARK SERVICE**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_

Name, Title Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_

Name, Title Date

[**PARTNER ORGANIZATION**]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_

Name, Title Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_

Name, Title Date

**Attachments**:

Attachment A – Project Description

Attachment B – Financial Obligations

Attachment C – Project Development Plan

Attachment D - Site Plan

Attachment E – Contractor Certification Form

**ATTACHMENT E – CONTRACTOR CERTIFICATION FORM**

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

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

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

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name, Title Date

Partner

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name, Title Date

Contractor