

Appendix E

Sample Cooperating Association Agreement

Author's note: The following is provided for reference only. Each Region has its own requirements and is likely to have different wording for their agreements. Contact your regional office for direction in establishing a cooperating association.

AGREEMENT BETWEEN

U.S. FISH AND WILDLIFE SERVICE
DEPARTMENT OF THE INTERIOR
AND THE

_____ ASSOCIATION

This Memorandum of Agreement is between the U.S. Fish and Wildlife Service (hereinafter referred to as the "Service"), an agency of the United States Department of the Interior, acting through the Director, U.S. Fish and Wildlife Service (hereinafter referred to as "Director"), or his/her Regional Director designee and the _____ 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 a purpose of the Service to provide recreational opportunities within Service administrative units when they are compatible with the primary conservation objectives of such units, as provided in the Refuge Recreation Act of 1962 (16 U.S.C. 460k et. seq.); and

WHEREAS, interpretive and educational materials and programs enhance the appreciation of our Nation's fish and wildlife resources and thereby encourage utilization of the recreational opportunities provided on Service administrative units; and

WHEREAS, the Association has the educational, historical, biological, and nonprofit purposes of assisting educational, interpretive and biological activities of the Service; and

WHEREAS, the Service desires to provide facilities, equipment, and cooperating services for the sales of interpretive and educational materials for the benefit of the visiting public; and

WHEREAS, the Service desires that the nonprofit Association donate financial proceeds, goods, and/or services to advance Service purposes and objectives, endeavors which would otherwise result in increased costs to the taxpayer or a lower level of services and benefits to the public.

WHEREAS, the Association has been formed to:

(This Section describes the general reasons the Association has been founded at this specific administrative site.)

NOW THEREFORE, pursuant to authority contained in the Acts of September 28, 1962 (16 U.S.C. 460k-2); May 28, 1963 (16 U.S.C. 460l-(f)(1)); October 14, 1966 (16 U.S.C. 668dd(b)(1)); November 8, 1978 (16 U.S.C. 742f(a)(4)); March 10, 1934 (16 U.S.C. 661); and other laws supplemental thereto and amendatory thereof, and in consideration of the mutual benefits which will accrue to the Service and the Association, the parties agree as follows:

1. AUTHORIZATION

The Service authorizes the Association to provide, and the Association agrees to provide, the hereinafter described interpretive, educational, recreational, and biological support services to the visiting public and the Service for a period of 5 years commencing on the day following the ratification of this Agreement by the Service. This Agreement will automatically renew for one additional 5-year period on October 1 of the last year, unless 60 days written notice of cancellation is given by either party before the date of renewal.

While the Service reserves the right to terminate the agreement, or any part thereof, without the necessity of any legal process upon 60 days written notice, the Service will hold a meeting with the Association, prior to termination, to discuss reasons for termination.

2. ASSOCIATION AND SERVICE RESPONSIBILITIES

The Association shall be entitled to use the facilities within the Service administrative units, listed in Section 2C(1) and designated in Exhibit A, for the sale of educational and interpretive materials for the benefit of the visiting public.

A. Donations

Donations to the Service of money, goods, or services shall be used primarily to improve, maintain, and update the refuge's interpretive, educational, recreational and biological programs. Guidance on developing priority projects can be determined through review of the Station's Master Plan, Public Use Plan, and public use requirements documents. Donations shall not be used to circumvent government regulations or policies.

B. Sales Terms

- (1) Both parties shall cooperate in the planning and design of merchandise to be sold by the Association and in the facilities provided by the Service.
- (2) Interpretive and educational materials, such as videos, publications, maps, visual aids, handicrafts, and other objects which illustrate the purpose of the administrative unit or reinforce the goals of the Service are the only items to be sold. Postcards, t-shirts, patches, pins, caps, etc., that reinforce Service and station mission fall into this category and may be sold. This policy does not prohibit the Service from granting a concession permit to an Association authorizing the sale of other items.
- (3) Original artifacts are not to be sold. This includes such things as potsherds or battlefield relics to which the Antiquities Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. Sec 431-433) or Archaeological Resources Protection Act of 1979 (43 CFR, Parts 3 and 7) would apply if discovered on public lands, notwithstanding whether such objects were in fact discovered on lands owned or controlled by the United States.
- (4) This Agreement does not grant the Association the right to make sales which infringe on applicable rights of a concessionaire.
- (5) The Association and the Project Leader (or a Service employee designated by him/her) will work together to maintain a high standard of quality in all materials produced or sold.
- (6) The Project Leader (or a Service employee designated by him/her) is responsible for approving the sale of any item proposed by the Association before the item can be offered for sale. Both parties will review new publications to ensure a high editorial and design quality.
- (7) Both parties will work together to set sales prices that are fair and equitable.
- (8) Both parties will work together to ensure that sales items are displayed in good taste and in keeping with the general design and decor of the administrative unit.

C. Facilities

- (1) The Service shall provide the Association with such sales, storage, work, or other facility space deemed necessary or desirable as agreed to by both parties and as identified in Exhibit A. The Service reserves the right to relocate or withdraw these facilities upon 60 days written notice. The Service shall have access to all facilities for protection and survey purposes.
- (2) Either party may redesign, renovate, or construct new sales, storage, work, or other facility space subject to the agreement by both parties. This includes display structures, furnishings, equipment, signing, and display lighting in the immediate area. All permanent improvements made by the Association shall become the property of the United States. The Project Leader must give final approval prior to any redesign or construction.

- (3) The Service shall provide the Association with incidental utility services, including water, electricity, heat, and air conditioning to the extent that these utilities are available and required for the operation of the building for governmental purposes. All other utilities are to be provided by the Association.
- (4) The Service shall provide all general maintenance and repair services for the Government-owned buildings in which the Association facilities are located. The Association shall at all times keep the facilities identified in Exhibit A clean and presentable.
- (5) Reasonable care shall be exercised by both parties to prevent damage to Association and Government property.
- (6) Special Provisions:
(Provisions that distinguish how this Association will use Government facilities are specified here.)

D. Records and Accounting

- (1) The Association shall conduct its fiscal operations in accordance with generally accepted business and accounting practices as identified in Exhibit B.
- (2) Service policy is that a CPA audit is recommended when the Association's sales exceed \$250,000 during one year. An annual audit, verified by an independent CPA or public accountant, is necessary.
- (3) The Association shall submit to the Service Director, through the Project Leader and the Regional Director, following the end of each fiscal year (October 1 - September 30), a complete fiscal report (Exhibit C). This report shall be accompanied by a written summary of Association activities for the year. This report will be submitted through the Service Liaison at the administrative unit to the Regional Coordinator by November 30 of each year.
- (4) The Director, or his/her designee, may review any of the records of the Association during the term of this agreement.

E. Personnel

- (1) The Project Leader and the Association's Board of Directors shall each designate a person to act as liaison with the other party.
- (2) Association employees and Board of Directors shall be oriented to the Service mission and the administrative unit's operational activities.
- (3) Association employees may not be assigned to visitor contact activities until approval to assume such duties is granted by the Project Leader.
- (4) The Association shall make every effort to provide the personnel necessary to operate its sales and administrative functions. If the Association hires personnel to provide these services, the Project Leader or designated alternate will monitor and direct those personnel. Personnel hired by the Association can perform only the functions for which they were employed.
- (5) Service employee assistance may be requested of the Project Leader when the Association's level of sales will not support salaries and the Association cannot locate volunteer assistance. Service personnel may offer sales items to the public as an individual supplement, incidental to their duties.
- (6) The Service and the Association will maintain an evident and distinct separation between their activities. All steps shall be taken to avoid even the appearance that the Service directs the management or any decision-making process of the Association.
- (7) Association personnel are not Government employees and are not authorized to undertake any Governmental function or activity on behalf of the Service beyond agreed upon duties.
- (8) No Association employee shall wear a Service or other Government uniform. All Association employees shall wear some easily observable and readily identifiable insignia of the Association affiliation when at the administrative unit and on Association business.

F. Approval and Activities

- (1) Association decisions on the outlet's operation hours, selection of merchandise, rates of visitor services, prices of merchandise, and standards of service shall be subject to approval by the Project Leader.
- (2) To ensure that Service standards are met, the Association must acquire the Projects Leader's approval before it engages in any projects or activities.

3. SUPPLEMENTAL AGREEMENTS

The Service and the Association further agree that, by supplemental agreement, the Association may offer additional educational, interpretive, and biological services if these services support the mission of the Service. Services may include, but are not limited to, employment of personnel for the sales outlet, the sale of products, and the purchase of supplies for the station.

4. INDEMNIFICATION AND INSURANCE

- A. The Association shall indemnify, save and hold harmless, and defend the United States against all fines, claims, damages, losses, judgments, and expenses arising out of or from any omission or activity of the Association in connection with activities under this Agreement.
- B. The Association shall procure public and employee liability insurance with a minimum limitation of \$250,000 for any number of claims from any one incident, with respect to the Association and its employees. The United States of America shall be named as an additional insured on all such policies. All such policies shall specify that the insurer shall have no right of subrogation against the United States for payment of any premiums or deductibles thereunder, and such insurance policies shall be assumed by, credited to the account of, and undertaken at the Association's sole risk.
- C. The liability of the United States arising out of the conduct of this agreement shall be governed by the Federal Tort Claims Act, now and as may be amended.
- D. Association members who are also official station volunteers and have a signed Volunteer Agreement on file will be covered under the Federal Tort Claims Act and the Federal Employees Compensation Act, now and as may be amended.

5. ASSOCIATION ORGANIZATION

- A. The Association's Articles of Incorporation and By-laws shall comply with requirements of the State in which the Association is incorporated. Nonprofit and tax exempt status must be maintained in accordance with applicable State and Federal laws; such as Internal Revenue Service Section 501(c)(3). This contract will automatically terminate if nonprofit status is lost.
- B. The Association's Board of Directors must have a non-Service member majority. Service employees may be voting members of the Association; however, they must not hold any voting position on the Association's Board of Directors. The Board of Directors must include, as a minimum, a chairperson, treasurer, executive secretary, and the Service Liaison who serves as an ex officio (nonvoting) member. Notwithstanding these four Board positions, Service employees may hold other Board positions, serving as ex-officio members only.
- C. The Association business manager, or the Service employee who occupies the equivalent position, represents the interests of the Fish and Wildlife Service. The scope of responsibility for this position shall be limited to assistance in oversight of the Association's day-to-day routine business and provision of cooperative assistance as a liaison to the Association. Service employees will at all times comply with the Employee Responsibility and Conduct regulations of the Department of the Interior appearing at 43 C.F.R. Part 20.
- D. Service employees shall not participate in any Association decision concerning the relationship of the Association with the Service, including but not limited to, executing or negotiating contracts, signing checks, or hiring or firing Association employees.
- E. The Association Treasurer shall not be a Service employee.

6. ASSIGNMENT

No transfer or assignment of this Agreement or of any part thereof or interest herein, directly or indirectly, voluntary or involuntary, shall be made unless transfer or assignment is approved by both parties in writing.

7. MISCELLANEOUS

A. The rights and benefits conferred by this Agreement shall be subject to the laws of the United States governing the Service and its employees, and to the rules and regulations promulgated thereunder, whether now in force or hereafter enacted or provided. The mention of specific restrictions, conditions, and stipulations herein shall not be construed as in any way impairing the general powers of supervision, regulation, and control by the Service.

B. No member of, or delegate to, Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom, but this restriction shall not be construed to extend to this Agreement if made with a corporation or company for its general benefit.

C. The Association agrees that all of its activities shall be conducted in accordance with all applicable laws and regulations, both State and Federal. Specifically, the Association shall comply with the requirements of (a) Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967 (b) Title V., Section 503 of the Rehabilitation Act of September 26, 1973 (P.L. 93-112), as amended, which requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified handicapped individuals, as set forth in Exhibit D, attached hereto and made part hereof (c) the Age Discrimination in Employment Act of December 15, 1967, as amended, 29 U.S.C. Section 621, et. seq, and (d) with regulations heretofore or hereinafter promulgated, relating to nondiscrimination in employment and in providing facilities and service to the public, as set forth in Exhibit E, attached hereto and made a part thereof.

D. In all cases where rights or privileges are granted herein 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.

This agreement is effective between the Association and the Service with regard to the following specified Service administrative units, to wit:

(NAME OF THE ASSOCIATION)

E. Termination: This cooperative agreement may be terminated by either party with 60 days written notice to the other party. While the Service reserves the right to terminate the agreement or any part thereof, at any time upon at least 60 days written notice without the necessity of any legal process, the Service will hold a meeting with the Association prior to the termination, setting forth the reasons for the termination. The Service reserves the right to terminate the agreement immediately if it is in the public interest to do so.

IN WITNESS WHEREOF, the Association has caused this agreement to be executed this _____ day of _____.

By: _____

President
(name of association)

IN WITNESS WHEREOF, the Service has caused this Agreement to be ratified this _____ day of _____.

U.S. Fish and Wildlife Service

By: _____

Regional Director
U.S. Fish and Wildlife Service

Exhibit A

This exhibit describes those facilities within the National Wildlife Refuge which are designated for use by the Association. A clear, concise written description and/or floor plan shall be used to designate facilities assigned for use by the Association to carry out its educational, historical, scientific, and non-profit purposes.

Exhibit B

INTRODUCTION TO STANDARD ACCOUNTING SYSTEM

The Cooperating Association Standard Accounting System prescribed herein covers the basic requirements for enabling associations to comply with regulations under Section 501(c)(3) of the Internal Revenue Code and therefore provides the Fish and Wildlife Service with financial information to satisfy its needs.

Associations will no longer be required to use the old standard accounting system account numbers prescribed in the National Park Service Cooperating Association Management Handbook; however, most associations will find it convenient to continue to use those accounts and numbers that are necessary to meet the requirements of the annual financial report. Each Association should consult with its own certified public accountant or auditor, and operate according to their individual needs to meet day-to-day business requirements and the requirements of the annual reporting form. Two published guidelines are herewith recommended:

Financial Recordkeeping for Small Stores, Small Business Management Series No. 32, Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402

A Manual on Bookselling, How to Open and Run Your Own Book-Store, Crown Publishers, Inc., One Park Ave., New York, NY 10016

There are many other simplified accounting guides on the market. Choose the one which best meets your requirements. The following annual report requirements must be met:

1. The Cooperating Association fiscal year runs from October 1 through September 30.
2. Audits by a C.P.A. are not required for associations with gross sales amounting to less than \$250,000.
3. A complete annual financial report, supported by an audit verification when necessary, will be submitted through the appropriate Regional Director to the Director, FWS, Washington, D.C., 20240, ATTN: Cooperating Association Coordinator, within 90 days of the end of the fiscal year or by January 1. This report should be accompanied by a completed information form. The Washington Office will provide an information form by October 15 of each year.

Please note that the IRS requirement for submission of Form 990 is the 15th of the month following the end of the fiscal year.

4. Non-profit and tax exempt status must be maintained in accordance with State and local specifications. In order to maintain tax exempt status with the Internal Revenue Service, you must file an application for recognition under Section 501(c)(3) of the Internal Revenue Code (Form 1023).
5. Complete IRS Form 990 according to instructions and copy for submission as part of your annual report to the Service. (Note there are penalties for late submission of Form 990 to the IRS. Keep up to date on IRS revisions and new rulings on Form 990. Also note that Form 990 is subject to public inspection.

New Information Requested

13. Provide narrative and statistics that describe outstanding persons or community outreach projects which supported the mission of the U.S. Fish and Wildlife Service, the National Refuge System, or the field station. Because narrative descriptions are a key source for material used in the Service's cooperating association annual report, provide specifics. (You may attach additional pages or photographs.)
14. Please describe any new or big sale items the association has that enhance the public's awareness of wildlife and its habitat, appreciation of U.S. Fish and Wildlife Service efforts to conserve natural resources, and support for greater resource stewardship responsibility. (examples: videos, special books, native plant nursery, tours, or other creative items).

Exhibit D

EMPLOYMENT OF THE HANDICAPPED

(a) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, as amended.

(c) In the event of the Contractor's noncompliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(d) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor, provided by or through the Contracting Officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(e) The Contractor will notify each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

(f) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 503 of the Act, so that such provision will be binding upon each subcontractor or vendor.

The Contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.

*Exhibit E**EQUAL OPPORTUNITY*

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contract agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provision of this Equal Opportunity clause.