

**Cooperative Agreement**

P18AC01002

Between

THE UNITED STATES DEPARTMENT OF INTERIOR  
NATIONAL PARK SERVICE

AND

ACCESS FUND

DUNS No: 809321123

P.O Box 17010

Boulder, CO 80308

Boulder County

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CFDA: 15.954

Project Title: Providing Technical Assistance and Support for Sustainable Climbing in Parks

Amount of Federal Funds Obligated: Refer to Article VI (A) of this agreement.

Period of Performance: Date of final signature through 9/30/23

This Cooperative Agreement (Agreement) is entered into by the U.S. Department of the Interior, National Park Service (NPS), and Access Fund (Recipient).

**ARTICLE I – BACKGROUND AND OBJECTIVES**

The objective of this Agreement is to work jointly to promote, enhance and manage for sustainable climbing throughout the National Park Service. Through this Agreement, NPS and AF will carry out appropriate projects of mutual interest and public benefit in such areas as education, outreach, research, planning, management, volunteerism, coordination, technical assistance, and training on behalf of the National Park Service and climbing activities and areas contained within.

The Access Fund is the national advocacy organization whose mission keeps climbing areas open and conserves the climbing environment. A 501(c)(3) non-profit and accredited land trust representing millions of climbers nationwide in all forms of climbing—rock climbing, ice climbing, mountaineering, and bouldering—the Access Fund is the largest US climbing advocacy organization with over 13,000 members and 105 local affiliates. The Access Fund provides climbing management expertise, stewardship, project specific funding, and educational outreach. AF fulfills its mission through six core programs perfectly aligned to complete this Agreement.

The purpose of this Cooperative Agreement is to approve the Access Fund and authorize National Park Service to enter into individual Task Agreements to assist, cooperate and/or work together on specific projects related to climbing resources as requested by a specific National Park, which, for example, may include cost sharing and fund matching components.

## **ARTICLE II – AUTHORITY**

NPS enters into this Agreement pursuant to:

54 U.S.C. §101702(a) Cooperative Agreements, Transfer of Service Appropriated Funds

## **ARTICLE III – STATEMENT OF WORK**

A. Pursuant to the details, terms, and conditions of each Task Agreement, the AF agrees to:

1. Research, Planning and Management

- a) Provide technical assistance and support for research, planning and management of climbing areas in parks consistent with the conservation, stewardship and protection of national parks. This includes:
- Identifying suitable areas for recreational climbing activities within the National Park System;
  - Assisting and supporting sustainable design, development, installation and management of public access to climbing areas such as trails, staging areas and replacement bolting for climbing use areas within national parks and related climbing or mountaineering recreational opportunities in a safe and environmentally sound manner;
  - Assisting in the inventory, mapping, social and resource sciences, visitor or other research for planning and management activities for climbing areas;
  - Identifying best practices for management of human waste, noise and other human caused impacts;
  - Conducting research and monitoring that will contribute towards a better understanding of the values of climbing and outdoor recreation and its influence on the natural and cultural resources, scenic and aesthetic values, wildlife, visitor experience, and economic activities in parks and surrounding communities; and
  - Collaborating with NPS to incorporate best management practices consistent with applicable laws, regulations, and NPS policies for maintenance, construction, and impact mitigation and other management projects in areas where recreation climbing activities occur.

2. Interpretation, Training, Stewardship Information and Visitor Education

- a. Assist national park service managers, interpreters and others in the design and delivery of interpretation, training, stewardship educational information and other visitor informational or educational programming, materials, signing, presentations, websites or other media related to climbing, bouldering and similar activities. This includes:

- Creating and carrying out education, interpretation, and assistance efforts, and highlighting climbing programs, events, and initiatives in national parks;
- Providing effective communication, training, networking, information sharing and dissemination of information about best management practices and opportunities in national park areas where climbing occurs so that it may be conducted in a safe and environmentally sound manner that is consistent with NPS laws, regulations, and policies.
- Providing assistance to encourage responsible climbing practices and stewardship among the climbing community; and
- Developing and disseminating information that promotes stewardship and conservation, and encourages responsible use and outdoor ethics.

3. Public Service and Volunteers

- a. Provide coordination, event support and encourage volunteerism, public service and collaboration between climbing interests, clubs, organizations and others on mutually beneficial projects or activities within parks. This includes:
- Supporting restoration or stabilization projects, conservation, visitor use management activities etc.;
  - Providing assistance and support for youth programs and climbing stewards programs in parks;
  - Assisting park personnel in the monitoring or inventory of natural and cultural resources, visitor impacts or effects such as mapping vegetation, wildlife management and other research or natural and cultural resource management support - especially those activities that require specialized skill, technical equipment to access or conduct.

B. NPS agrees to:

1. Encourage NPS offices, units, regions, and programs to participate as fully as possible with this Agreement and to leverage the expertise of AF in climbing area management;
2. Provide assistance to identify suitable areas for recreational climbing activities and for other purposes as appropriate, within the National Park System;
3. Work with AF on efforts for research, planning, and management of climbing areas in parks consistent with the conservation, stewardship and protection of national parks;
4. Collaborate with AF on the design and delivery of interpretation, stewardship educational information and other informational or educational programming, materials, signing, presentations, websites, or other media related to climbing, bouldering and similar activities; and

5. Coordinate with AF on event support, volunteerism, public service and the collaboration efforts between climbing interest, clubs, organizations, and others on mutually beneficial projects or activities within parks.

C. The AF and NPS, jointly, agree to:

1. Cooperatively develop separate task agreements for jointly proposed projects, with each project or activity having a separate work plan and budget.

#### **ARTICLE IV – TERM OF AGREEMENT**

The Agreement will become effective upon the date of the last signature in Article XIII (Effective Date) and will expire 9/30/2023, unless terminated earlier per Article XI. The period from the Effective Date to the Expiration Date is the period of performance for the Agreement (Agreement Term).

#### **ARTICLE V – KEY OFFICIALS**

A. Key officials are essential to ensure maximum coordination and communications between the parties and the work being performed. They are:

**1. For the NPS:**

Awarding Officer (AO):

John M. Bechtold  
National Park Service  
Washington Support Office  
7333 W. Jefferson Ave.  
Lakewood, CO 80235  
303-969-2492  
johnmbechtold@gmail.com

Agreement Technical Representative (ATR):

Krista Sherwood  
Transportation and Recreation Planner  
Conservation and Outdoor Recreation  
National Park Service  
1849 C Street, NW  
Washington, DC 20240  
Phone: 202-513-7234  
Email: Krista\_Sherwood@nps.gov

**2. For the AF:**

Zachary Lesch-Huie  
Interim Executive Director (AFED)  
Access Fund  
P.O. Box 17010  
Boulder, CO 80308  
303-545-6772  
[zachary@accessfund.org](mailto:zachary@accessfund.org)

Ty Tyler  
Stewardship Director (AFSD)  
Access Fund  
P.O. Box 17010  
Boulder, CO 80308  
206-351-9239

Erik Murdock  
Policy Director (AFPD)  
Access Fund  
P.O. Box 17010  
Boulder, CO 80308  
720-588-3512

- B. **Communications.** AF shall address any communication regarding this Agreement to the ATR with a copy to the AO. Communications that relate solely to technical matters may be sent only to the ATR. NPS will address any communication regarding this Agreement to the AFSD with copies to the AFED and AFPD. Communications that relate solely to technical matters may be sent only to AFSD. Appropriate contacts are listed above.
- C. **Changes in Key Officials.** Neither the NPS nor AF may make any permanent change in any key official identified above in Article V without written notice to the other party reasonably in advance of the proposed change. The notice will include a justification with sufficient detail to permit evaluation of the impact of such a change on the scope of work specified within this Agreement. Termination of employment for any reason shall be deemed sufficient justification. Any permanent change in key officials will be made only by modification to this Agreement.

## ARTICLE VI – AWARD AND PAYMENT

- A. The commitment of funds in furtherance of this Agreement will be authorized by individual Task Agreements issued against this Cooperative Agreement identifying each project or group of projects, the amount of financial assistance and any other special terms or conditions applicable to that project tasks.

- B. For each Task Agreement, the AF shall request payment in accordance with the following:
1. **Method of Payment.** Payment will be made by advance and/or reimbursement through the Department of Treasury's Automated Standard Application for Payments (ASAP) system.
  2. **Requesting Advances.** Requests for advances must be submitted via the ASAP system. Requests may be submitted as frequently as required to meet the needs of the AF to disburse funds for the Federal share of project costs. If feasible, each request should be timed so that payment is received on the same day that the funds are dispersed for direct project costs and/or the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close to actual disbursements as administratively feasible.
  3. **Requesting Reimbursement.** Requests for reimbursements must be submitted via the ASAP system. Requests for reimbursement should coincide with normal billing patterns. Each request must be limited to the amount of disbursements made for the Federal share of direct project costs and the proportionate share of allowable indirect costs incurred during that billing period.
  4. **Adjusting Payment Requests for Available Cash.** Funds that are available from repayments to, and interest earned on, a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds must be disbursed before requesting additional cash payments.
  5. **Bank Accounts.** All payments are made through electronic funds transfer to the bank account identified in the ASAP system by the AF.
  6. **Supporting Documents and Agency Approval of Payments.** Additional supporting documentation and prior NPS approval of payments may be required when/if a AF is determined to be "high risk" or has performance issues. If prior Agency payment approval is in effect for an award, the ASAP system will notify the AF when they submit a request for payment. The AF must then notify the NPS AO that a payment request has been submitted. The NPS AO may request additional information from the AF to support the payment request prior to approving the release of funds, as deemed necessary. The AF is required to comply with these requests. Supporting documents may include invoices, copies of contracts, vendor quotes, and other expenditure explanations that justify the reimbursement requests.

- B. In order to receive a financial assistance award and to ensure proper payment, it is required that AF maintain their registration with the System for Award Management (SAM), accessed at <http://www.sam.gov>. Failure to maintain registration can impact obligations and payments under this Agreement and/or any other financial assistance or procurements documents the AF may have with the Federal government.
- C. Any award beyond the current fiscal year is subject to availability of funds; funds may be provided in subsequent fiscal years if project work is satisfactory and funding is available.
- D. **Allowable and Eligible Costs.** Expenses charged against awards under the Agreement may not be incurred prior to the beginning of the Agreement, and may be incurred only as necessary to carry out the approved objectives, scope of work and budget with prior approval from the NPS AO. The AF shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the expiration date stipulated in the award.
- E. **Travel Costs.** For travel costs charged against awards under the Agreement, costs incurred must be reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the AF in its regular operations as the result of the AF's written travel policy. If the AF does not have written travel policies established, the AF and its contractors shall follow the travel policies in the Federal Travel Regulation and may not be reimbursed for travel costs that exceed the standard rates. All charges for travel must conform to the applicable cost principles.
- F. **Indirect Costs.** Indirect costs will not be allowable charges against the award unless specifically included as a line item in the approved budget incorporated into the award.
- G. **AF Cost Share or Match.** Any non-Federal share, whether in cash or in-kind, is expected to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the AO based on sufficient documentation demonstrating previously determined plans for or later commitment of cash or in-kind contributions. In any case, the AF must meet their cost share commitment over the life of the award.

## ARTICLE VII – PRIOR APPROVAL

The AF shall obtain prior approval for budget and program revisions, in accordance with 2 CFR 200.308.

## ARTICLE VIII – INSURANCE AND LIABILITY

A. Insurance. The AF shall be required to (1) obtain liability insurance or (2) demonstrate present financial resources in an amount described in VIII C below, which is determined sufficient by the Government to cover claims brought by third parties for death, bodily injury, property damage, or other loss resulting from any negligent act or omission of the AF carried out in connection with this Cooperative Agreement and caused by AF.

B. Indemnification. The AF hereby agrees to indemnify the federal government and NPS from any negligent act or omission of the AF, its officers, employees, or (members, participants, agents, representatives, agents as appropriate), (1) against third party claims for damages arising from one or more identified activities carried out in connection with this Cooperative Agreement and (2) for damage or loss to government property resulting from such an activity. This obligation shall survive the termination of this Agreement.

C. To purchase public and employee liability insurance at its own expense from a responsible company or companies with a minimum limitation of one million dollars (\$1,000,000) per person for anyone claim, and an aggregate limitation of three million dollars (\$3,000,000) for any number of claims arising from any one incident. The policies shall name the United States as an additional insured, shall specify that the insured shall have no right of subrogation against the United States for payments of any premiums or deductibles due thereunder, and shall specify that the insurance shall be assumed by, be for the account of, and be at the insured's sole risk. Prior to beginning the work authorized herein, Access Fund shall provide the NPS with confirmation of such insurance coverage.

D. To pay the United States the full value for all damage to the lands or other property of the United States caused by the negligence of the Recipient, its officers, employees, or representatives.

E. To provide workers' compensation protection to the Recipient, its officers, employees, and representatives as required by law.

F. To cooperate with NPS in the investigation and defense of any claims that may be filed with NPS arising out of the activities of the Recipient, its agents, and employees.

G. In the event of damage to or destruction of the buildings and facilities assigned for the use of the Recipient in whole or in part by any cause whatsoever, nothing herein contained shall be deemed to require NPS to replace or repair the buildings or facilities. If NPS determines in writing, after consultation with the Recipient that damage to the buildings or portions thereof renders such buildings unsuitable for continued use by the Recipient, NPS shall assume sole control over such buildings or portions thereof. If the buildings or facilities rendered unsuitable for use are essential for conducting operations authorized under this Agreement, then failure to substitute and assign other facilities acceptable to the Recipient will constitute termination of this Agreement by NPS.



H. Flow-down: For the purposes of this clause, "recipient" includes such sub-recipients, contractors, or subcontractors as, in the judgment of the recipient and subject to the Government's reasonable determination of sufficiency, have sufficient resources and/or maintain adequate and appropriate insurance to achieve the purposes of this clause.

#### **ARTICLE IX – REPORTS AND/OR DELIVERABLES**

- A. Specific projects, tasks or activities for which funds are advanced will be tracked and reported by either quarterly, semi-annual, or annual submission of a SF-425 Federal Financial Report (FFR) and either quarterly, semi-annual, or annual submission of a Performance Report as defined by the funded agreement. A final SF-425 and Performance Report shall be submitted at the completion of the Agreement. For the final SF-425 and Performance Report, the reporting period end date shall be the end date of the agreement. Interim reports shall be submitted no later than 30 days after the end of each reporting period. Annual and final reports shall be submitted no later than 90 days after the end period date. All reports shall be submitted via email to [nps\\_wasos\\_financial\\_assistance@nps.gov](mailto:nps_wasos_financial_assistance@nps.gov) with a copy to the NPS Agreements Technical Representative via email.
- B. The Secretary of the Interior and the Comptroller General of the United States, or their duly authorized representatives, will have access, for the purpose of financial or programmatic review and examination, to any books, documents, papers, and records that are pertinent to the Agreement at all reasonable times during the period of retention in accordance with 2 CFR 200.333.

#### **ARTICLE X – PROPERTY UTILIZATION**

All tools, equipment, and facilities furnished by NPS will be on a loan basis. Tools, equipment and facilities will be returned in the same condition received except for normal wear and tear in project use. Property management standards set forth in 2 CFR 200.310 through 200.316 *applies* to this Agreement.

#### **ARTICLE XI – MODIFICATION, REMEDIES FOR NONCOMPLIANCE TERMINATION**

- A. This Agreement may be modified only by a written instrument executed by the parties. Modifications will be in writing and approved by the NPS AO and for the AF only by either the AFED or AFD.
- B. Additional conditions may be imposed by NPS if it is reasonably determined that the AF is non-compliant to the terms and conditions of this agreement, after notifying AF in writing of the alleged non-compliance and AF has not remedied or cured the non-compliance after 30 days' notice. Remedies for Noncompliance can be found in 2 CFR 200.338.

- C. This Agreement may be terminated consistent with applicable termination provisions for Agreements found in 2 CFR 200.339 through 200.342.

## **ARTICLE XII – GENERAL AND SPECIAL PROVISIONS**

### **A. General Provisions**

1. **OMB Circulars and Other Regulations.** The following Federal regulations are incorporated by reference into this Agreement (full text can be found at <http://www.ecfr.gov>):

**a) Administrative Requirements:**

*2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, in its entirety;*

**b) Determination of Allowable Costs:**

*2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E; and*

**c) Audit Requirements:**

*2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart F.*

**d) Code of Federal Regulations/Regulatory Requirements:**

*2 CFR Part 182 & 1401, “Government-wide Requirements for a Drug-Free Workplace”;*

*2 CFR 180 & 1400, “Non-Procurement Debarment and Suspension”, previously located at 43 CFR Part 42, “Governmentwide Debarment and Suspension (NonProcurement)”;*

*43 CFR 18, “New Restrictions on Lobbying”;*

*2 CFR Part 175, “Trafficking Victims Protection Act of 2000”;*

*FAR Clause 52.203–12, Paragraphs (a) and (b), Limitation on Payments to Influence Certain Federal Transactions;*

*2 CFR Part 25, System for Award Management ([www.SAM.gov](http://www.SAM.gov)) and Data Universal Numbering System (DUNS); and*

*2 CFR Part 170, “Reporting Subawards and Executive Compensation”.*

2. **Non-Discrimination.** All activities pursuant to this Agreement shall be in compliance with the requirements of Executive Order 11246, as amended; Title VI of the Civil Rights Act of 1964, as amended, (78 Stat. 252; 42 U.S.C. §§2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973, as amended, (87 Stat. 394; 29 U.S.C. §794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§6101 et seq.); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.
3. **Lobbying Prohibition.** 18 U.S.C. §1913, Lobbying with Appropriated Moneys, as amended by Public Law 107-273, Nov. 2, 2002 – No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Members or official, at his request, or to Congress or such official, through the proper official channels, requests for legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31. In addition to the above, the related restrictions on the use of appropriated funds found in Div. F, § 402 of the Omnibus Appropriations Act of 2008 (P.L. 110-161) also apply.
4. **Anti-Deficiency Act.** Pursuant to 31 U.S.C. §1341 nothing contained in this Agreement shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress, for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.
5. **Minority Business Enterprise Development.** Pursuant to Executive Order 12432 it is national policy to award a fair share of contracts to small and minority firms. NPS is strongly committed to the objectives of this policy and encourages all recipients of its Cooperative Agreements to take affirmative steps to ensure such fairness by ensuring procurement procedures are carried out in accordance with the Executive Order.

6. **Assignment.** No part of this Agreement shall be assigned to any other party without prior written approval of the NPS and the Assignee.
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 AF is not an agent or representative of the United States, the Department of the Interior, NPS, or the Park, nor will the AF represent its self as such to third parties. NPS employees are not agents of the AF and will not act on behalf of the AF.
9. **Non-Exclusive Agreement.** This Agreement in no way restricts the AF or NPS from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.
10. **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.
11. **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.
12. **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.
13. **No Employment Relationship.** This Agreement is not intended to and shall not be construed to create an employment relationship between NPS and AF or its representatives. No representative of AF shall perform any function or make any decision properly reserved by law or policy to the Federal government.

**14. No Third-Party Rights.** This Agreement creates enforceable obligations between only NPS and AF. Except as expressly provided herein, it is not intended nor shall it be construed to create any right of enforcement by or any duties or obligation in favor of persons or entities not a party to this Agreement.

**15. Foreign Travel.** The AF shall comply with the provisions of the Fly America Act (49 U.S.C. 40118). The implementing regulations of the Fly America Act are found at 41 CFR 301-10.131 through 301-10.143.

a) **Special Provisions**

1) **Public Information and Endorsements**

- a) AF shall not publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles, manuscripts or other publications) which states or implies governmental, Departmental, bureau, or government employee endorsement of a business, product, service, or position which the AF represents. No release of information relating to any project for which there is a signed Task Agreement in place may state or imply that the Government considers the AF's work product to be superior to other products or services.
- b) All information submitted for publication or other public releases of information regarding this project shall carry the following disclaimer.

The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government.

- c) AF must obtain prior Government approval for any public information releases concerning this Cooperative Agreement, which refer to the Department of the Interior or any bureau or employee (by name or title). The specific text, layout photographs, etc. of the proposed release must be submitted with the request for approval. Notwithstanding the foregoing, nothing herein is intended to nor shall prevent the AF from publicizing its work on any projects, including those for which there is a signed Task Agreement in place, in any media, news outlet or membership communications or newsletters.
- d) Recipient further agrees to include this provision in a subaward to a subrecipient, except for a subaward to a State government, a local government, or to a federally recognized Indian tribal government.

- 2) **Publications of Results of Studies.** No party will unilaterally publish a joint publication without consulting the other party. This restriction does not apply to popular publications of previously published technical matter. Publications pursuant to this Agreement may be produced independently or in collaboration with others; however, in all cases proper credit will be given to the efforts of those parties contribution to the publication. In the event no agreement is reached concerning the manner of publication or interpretation of results, either party may publish data after due notice and submission of the proposed manuscripts to the other. In such instances, the party publishing the data will give due credit to the cooperation but assume full responsibility for any statements on which there is a difference of opinion.
- 3) **Rights in Data.** The AF must grant the United States of America a royalty-free, non-exclusive and irrevocable license to publish, reproduce and use, and dispose of in any manner and for any purpose without limitation, and to authorize or ratify publication, reproduction or use by others, only any copyrightable material first produced or composed at the written request of the NPS under this Agreement by the AF, its employees or any individual or concern specifically employed or assigned to originate and prepare such material.
- 4) **Retention and Access Requirements for Records.** All AF financial and programmatic records, supporting documents, statistical records, and other grants-related records shall be maintained and available for access in accordance with 2 CFR Part 200.333–200.337.
- 5) **Audit Requirements**
  - a) Non-Federal entities that expend \$750,000 or more during a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and 2 CFR Part 200, Subpart F, which is available at <http://www.ecfr.gov/cgi-bin/text-id?SID=fd6463a517ccea3fa13e665e525051f4&node=sp2.1.200.f&rgn=d iv6>
  - b) Non-Federal entities that expend less than \$750,000 for a fiscal year in Federal awards are exempt from Federal audit requirements for that year, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).
  - c) Audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits. Additional audit requirements applicable to this agreement are found at 2 CFR Part 200, Subpart F, as applicable. Additional information



on single audits is available from the Federal Audit Clearinghouse at <http://harvester.census.gov/sac/>.

- 6) **Procurement Procedures.** It is a national policy to place a fair share of purchases with minority business firms. The Department of the Interior is strongly committed to the objectives of this policy and encourages all recipients of its grants and cooperative agreements to take affirmative steps to ensure such fairness. Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. AFs of Federal awards shall take all of the following steps to further this goal:
  - a) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
  - b) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
  - c) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
  - d) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
  - e) Use the services and assistance, as appropriate, of such organizations as the Small Business Development Agency in the solicitation and utilization of small business, minority-owned firms and women's business enterprises.
- 7) **Prohibition on Text Messaging and Using Electronic Equipment Supplied by the Government while Driving.** Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, was signed by President Barack Obama on October 1. This Executive Order introduces a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. Additional guidance enforcing the ban will be issued at a later date. In the meantime, please adopt and enforce policies that immediately ban text messaging while driving company-owned or -rented vehicles, government-owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government.

- 8) **Seat Belt Provision.** The AF is encouraged to adopt and enforce on-the-job seat belt use policies and programs for their employees when operating company-owned, rented, or personally owned vehicles. These measures include, but are not limited to, conducting education, awareness, and other appropriate programs for their employees about the importance of wearing seat belts and the consequences of not wearing them.
- 9) **Trafficking in Persons.** This term of award is pursuant to paragraph (g) of Section 106 of the Trafficking Victims Protections Act of 2000, as amended (2 CFR §175.15).
  - a) Provisions applicable to a recipient that is a private entity.
    1. You as the AF, your employees, subrecipients under this award, and subrecipients' employees may not—
      - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
      - ii. Procure a commercial sex act during the period of time that the Agreement is in effect; or
      - iii. Use forced labor in the performance of the Agreement.
    2. We as the Federal agency may unilaterally terminate this Agreement, without penalty, if you or a subrecipient that is a private entity—
      - i. Is determined to have violated a prohibition in paragraph a.1 of this Agreement; or
      - ii. Has an employee who is determined by the agency official authorized to terminate the Agreement to have violated a prohibition in paragraph a.1 of this Agreement through conduct that is either:
        - a. Associated with performance under this Agreement; or
        - b. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (NonProcurement)," as implemented by our agency at 2 CFR part 1400.



- b) Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this Agreement, without penalty, if a subrecipient that is a private entity–
1. Is determined to have violated an applicable prohibition in paragraph a.1 of this Agreement; or
  2. Has an employee who is determined by the agency official authorized to terminate the Agreement to have violated an applicable prohibition in paragraph a.1 of this Agreement through conduct that is either:
    - i. Associated with performance under this Agreement; or
    - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (NonProcurement),” as implemented by our agency at 2 CFR part 1400.
- c) Provisions applicable to any recipient.
1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this Agreement.
  2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
    - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
    - ii. Is in addition to all other remedies for noncompliance that are available to us under this Agreement.
  3. You must include the requirements of paragraph a.1 of this Agreement in any subagreement you make to a private entity.
- d) Definitions. For purposes of this award term:
1. “Employee” means either:
    - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this Agreement; or

- ii. Another person engaged in the performance of the project or program under this Agreement and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- 2. “Forced labor” means labor obtained by any of the following methods: The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- 3. “Private entity” means:
  - i. Any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25; and
  - ii. Includes:
    - a. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
    - b. A for-profit organization.
- 4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

**10) AF Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights**

- a) This Agreement and employees working on this Agreement will be subject to the whistleblower rights and remedies in the pilot program on Award AF employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239).
- b) The AF shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712.

- c) The AF shall insert the substance of this clause, including this paragraph (c), in all subagreements or subcontracts over the simplified acquisition threshold, 42 CFR § 52.203–17 (as referenced in 42 CFR § 3.908–9).

#### **11) Reporting Subawards And Executive Compensation**

- a) Reporting of first-tier subawards.
1. Applicability. Unless you are exempt as provided in paragraph D. of this Agreement, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery Act funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5) for a subaward to an entity (see definitions in paragraph E. of this award term).
  2. Where and when to report.
    - i. You must report each obligating action described in paragraph A.1. of this award term to <http://www.fsrs.gov>.
    - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
  3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.
- b) Reporting Total Compensation of AF Executives.
1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
    - i. The total Federal funding authorized to date under this Agreement is \$25,000 or more;
    - ii. In the preceding fiscal year, you received—
      - a. 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

- b. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.) It is agreed that the filing of Form 990 by the AF meets this requirement of public access to information about the compensation of the executives.
  - 2. Where and when to report. You must report executive total compensation described in paragraph A.1. of this award term:
    - i. As part of your registration profile at <https://www.sam.gov>.
- 12) **Conflict of Interest**
  - a) The AF must establish safeguards to prohibit its employees and Sub-recipients from using their positions for purposes that constitute or present the appearance of a personal or organizational conflict of interest. The AF is responsible for notifying the Awarding Officer in writing of any actual or potential conflicts of interest that may arise during the life of this award. Conflicts of interest include any relationship or matter which might place the AF or its employees in a position of conflict, real or apparent, between their responsibilities under the agreement and any other outside interests. Conflicts of interest may also include, but are not limited to, direct or indirect financial interests, close personal relationships, positions of trust in outside organizations, consideration of future employment arrangements with a different organization, or decision-making affecting the award that would cause a reasonable person with knowledge of the relevant facts to question the impartiality of the AF and/or AF's employees and Sub-recipients in the matter.
  - b) The Awarding Officer and the servicing Ethics Counselor will determine if a conflict of interest exists. If a conflict of interest exists, the Awarding Officer will determine whether a mitigation plan is feasible. Mitigation plans must be approved by the Awarding Officer in writing.

c) Failure to resolve conflicts of interest in a manner that satisfies the government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR § 200.338, Remedies/or Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

**13) Minimum Wages Under Executive Order 13658 (January 2015)**

(a) *Definitions.* As used in this clause—

“United States” means the 50 states and the District of Columbia.

“Worker”—

(1) Means any person engaged in performing work on, or in connection with, an agreement covered by [Executive Order 13658](#), and

(i) Whose wages under such agreements are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV),

(ii) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in [29 C.F.R. § 541](#),

(iii) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(2) Includes workers performing on, or in connection with, the agreement whose wages are calculated pursuant to special certificates issued under [29 U.S.C. § 214\(c\)](#).

(3) Also includes any person working on, or in connection with, the agreement and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(b) *Executive Order Minimum Wage rate.*

(1) The AF shall pay to workers, while performing in the United States, and performing on, or in connection with, this agreement, a minimum hourly wage rate of \$10.10 per hour beginning January 1, 2015.



(2) The AF shall adjust the minimum wage paid, if necessary, beginning January 1, 2016 and annually thereafter, to meet the Secretary of Labor's annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on [www.wdol.gov](http://www.wdol.gov) (or any successor Web site) and on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute. The applicable published E.O. minimum wage is incorporated by reference into this agreement.

(3) (i) The AF may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only if labor costs increase as a result of an increase in the annual E.O. minimum wage, and for associated labor costs and relevant subaward costs. Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(ii) Subrecipients may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). AFs shall consider any Subrecipient requests for such price adjustment.

(iii) The Awarding Officer will not adjust the agreement price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

(4) The AF warrants that the prices in this agreement do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(7) The AF shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The AF may make deductions that reduce a worker's wages below the E.O. minimum wage rate only if done in accordance with [29 C.F.R. § 10.23](#), Deductions.

(8) The AF shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

(9) Nothing in this clause shall excuse the AF from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the E.O. minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(10) The AF shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(11) The AF shall follow the policies and procedures in [29 C.F.R. § 10.24\(b\)](#) and 10.28 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

(c) (1) This clause applies to workers as defined in paragraph (a). As provided in that definition—

(i) Workers are covered regardless of the contractual relationship alleged to exist between the AF or Subrecipient and the worker;

(ii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under [29 U.S.C. § 214\(c\)](#) are covered; and

(iii) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(2) This clause does not apply to—

(i) Fair Labor Standards Act (FLSA) – covered individuals performing in connection with contracts covered by the E.O., *i.e.* those individuals who perform duties necessary to the performance of the agreement, but who are not directly engaged in performing the specific work called for by the agreement, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such agreements;

(ii) Individuals exempted from the minimum wage requirements of the FLSA under [29 U.S.C. § 213\(a\)](#) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to—

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under [29 U.S.C. § 214\(a\)](#).

(B) Students whose wages are calculated pursuant to special certificates issued under [29 U.S.C. § 214\(b\)](#).

(C) Those employed in a bona fide executive, administrative, or professional capacity ([29 U.S.C. § 213\(a\)\(1\)](#) and [29 C.F.R. § part 541](#)).

(d) *Notice.* The AF shall notify all workers performing work on, or in connection with, this agreement of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the AF shall post notice, utilizing the poster provided by the Administrator, which can be obtained at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts), in a prominent and accessible place at the worksite. AFs that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the AF, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

(e) *Payroll Records.* (1) The AF shall make and maintain records, for three years after completion of the work, containing the following information for each worker:

(i) Name, address, and social security number;

(ii) The worker's occupation(s) or classification(s);

(iii) The rate or rates of wages paid;

(iv) The number of daily and weekly hours worked by each worker;

(v) Any deductions made; and

(vi) Total wages paid.

(2) The AF shall make records pursuant to paragraph (e)(1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The AF shall also make such records available upon request of the Contracting Officer.



(3) The AF shall make a copy of the agreement available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

(4) Failure to comply with this paragraph (e) shall be a violation of [29 C.F.R. § 10.26](#) and this agreement. Upon direction of the Administrator or upon the Awarding Officer's own action, payment shall be withheld until such time as the noncompliance is corrected.

(5) Nothing in this clause limits or otherwise modifies the AF's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

(f) *Access.* The AF shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

(g) *Withholding.* The Awarding Officer, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the AF under this or any other Federal agreement with the same AF, sufficient to pay workers the full amount of wages required by this clause.

(h) *Disputes.* Department of Labor has set forth in [29 C.F.R. § 10.51](#), Disputes concerning AF compliance, the procedures for resolving disputes concerning an AF's compliance with Department of Labor regulations at [29 C.F.R. § 10](#). Such disputes shall be resolved in accordance with those. This includes disputes between the AF (or any of its Subrecipients) and the contracting agency, the Department of Labor, or the workers or their representatives.

(i) *Antiretaliation.* The AF shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

(j) *Subcontractor compliance.* The AF is responsible for Subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due Subcontractor workers.

(k) *Subawards.* The Recipient shall include the substance of this clause, including this paragraph (k) in all subawards, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the

Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

### ARTICLE XIII – ATTACHMENTS

The following completed documents are attached to and made a part of this Agreement:

- Attachment A. SF-424 – Application for Federal Assistance
- Attachment B. SF-424A – Budget Information – Non-Construction Programs
- Attachment C. SF-424 B – Assurances – Non-Construction Programs
- Attachment D. SF-LLL – Disclosure of Lobbying Activities

The Standard Forms (SF) can be downloaded electronically at [www.grants.gov](http://www.grants.gov) or by contacting the NPS Awarding Officer.

### ARTICLE XIV – SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) set forth below.

#### FOR THE ACCESS FUND

  
Zachary Lesch-Huie  
Interim Executive Director

  
Date

#### FOR THE NATIONAL PARK SERVICE

\_\_\_\_\_  
John M. Bechtold  
Awarding Officer

\_\_\_\_\_  
Date