

STATE OF CALIFORNIA  
**AGREEMENT SUMMARY**

STD 215 (Rev. 04/2020)

<b>AGREEMENT NUMBER</b> <b>P19CM002</b>	<b>AMENDMENT NUMBER</b>
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CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED

1. CONTRACTOR'S NAME Fort Ross Conservancy		2. FEDERAL I.D. NUMBER
3. AGENCY TRANSMITTING AGREEMENT Department of Parks and Recreation	4. DIVISION, BUREAU, OR OTHER UNIT Partnerships Division	5. AGENCY BILLING CODE 53642
6a. CONTRACT ANALYST NAME Rene Hamlin	6b. EMAIL rene.hamlin@parks.ca.gov	6c. PHONE NUMBER (916) 653-6022

7. HAS YOUR AGENCY CONTRACTED FOR THESE SERVICES BEFORE?  
 No     Yes (If Yes, enter prior Contractor Name and Agreement Number)  
 PRIOR CONTRACTOR NAME \_\_\_\_\_ PRIOR AGREEMENT NUMBER \_\_\_\_\_

8. BRIEF DESCRIPTION OF SERVICES  
 Co-Management agreement with Fort Ross Conservancy to manage Fee Collection and Campground Management at Fort Ross State Historic Par

9. AGREEMENT OUTLINE (Include reason for Agreement: Identify specific problem, administrative requirement, program need or other circumstances making the Agreement necessary; include special or unusual terms and conditions.)  
 The agreement allows the Conservancy to o operate and co-manage certain activities conducted at Fort Ross SHP, or portions thereof, which otherwise would cost the Department more to operate and manage, for the enjoyment and benefit of the public.

This agreement is allowable pursuant to Public Resources Code 5080.42.

10. PAYMENT TERMS (More than one may apply)  
 Monthly Flat Rate     Quarterly     One-Time Payment     Progress Payment  
 Itemized Invoice     Withhold \_\_\_\_\_ %     Advanced Payment Not To Exceed \_\_\_\_\_  
 Reimbursement / Revenue \_\_\_\_\_ or \_\_\_\_\_ %  
 Other (Explain) \_\_\_\_\_

11. PROJECTED EXPENDITURES

FUND TITLE	ITEM	FISCAL YEAR	CHAPTER	STATUTE	PROJECTED EXPENDITURES
<input type="checkbox"/>					\$0.00
<input type="checkbox"/>					
<input type="checkbox"/>					
<input type="checkbox"/>					
<input type="checkbox"/>					
<input type="checkbox"/>					

OBJECT CODE	<b>AGREEMENT TOTAL</b>	<b>\$0.00</b>
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OPTIONAL USE	AMOUNT ENCUMBERED BY THIS DOCUMENT	\$0.00
	PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT	\$0.00

I certify upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.

TOTAL AMOUNT ENCUMBERED TO DATE	\$0.00
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ACCOUNTING OFFICER'S SIGNATURE	ACCOUNTING OFFICER'S NAME (Print or Type)	DATE SIGNED
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12. AGREEMENT

AGREEMENT	TERM FROM	TERM THROUGH	TOTAL COST OF THIS TRANSACTION	BID, SOLE SOURCE, EXEMPT
Original	NTP	5 years	\$0.00	Exempt
<input type="checkbox"/> + <input type="checkbox"/> - Amendment 1				
<input type="checkbox"/> + <input type="checkbox"/> - Amendment 2				
<input type="checkbox"/> + <input type="checkbox"/> - Amendment 3				
<b>TOTAL</b>			\$0.00	

13. BIDDING METHOD USED

- Request for Proposal (RFP) *(Attach justification if secondary method is used)*
 Use of Master Service Agreement  
 Invitation for Bid (IFB)
  Exempt from Bidding *(Give authority for exempt status)*
 Sole Source Contract *(Attach STD. 821)*  
 Other *(Explain)* Negotiated per PRC 5080.42

*Note: Proof of advertisement in the State Contracts Register or an approved form STD. 821, Contract Advertising Exemption Request, must be attached*

14. SUMMARY OF BIDS *(List of bidders, bid amount and small business status) (If an amendment, sole source, or exempt, leave blank)*

N/A

15. IF AWARD OF AGREEMENT IS TO OTHER THAN THE LOWER BIDDER, EXPLAIN REASON(S) *(If an amendment, sole source, or exempt, leave blank)*

N/A

16. WHAT IS THE BASIS FOR DETERMINING THAT THE PRICE OR RATE IS REASONABLE?

This Agreement requires all revenue support the park units with any net profit returned to the State in accordance with PRC 5080.32(b) (2).

17a. JUSTIFICATION FOR CONTRACTING OUT *(Check one)*

- Contracting out is based on cost savings per Government Code 19130(a). The State Personnel Board has been so notified.
  Contracting out is justified based on Government Code 19130(b). When this box is checked, a completed JUSTIFICATION - CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 547.60 must be attached to this document.  
 Not Applicable (Interagency / Public Works / Other \_\_\_\_\_)

17b. EMPLOYEE BARGAINING UNIT NOTIFICATION

- By checking this box, I hereby certify compliance with Government Code section 19132(b)(1).*

AUTHORIZED SIGNATURE	SIGNER'S NAME <i>(Print or Type)</i>	DATE SIGNED
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18. FOR AGREEMENTS IN EXCESS OF \$5,000: Has the letting of the agreement been reported to the Department of Fair Employment and Housing? <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A	22. REQUIRED RESOLUTIONS ARE ATTACHED <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A
19. HAVE CONFLICT OF INTEREST ISSUES BEEN IDENTIFIED AND RESOLVED AS REQUIRED BY THE STATE CONTRACT MANUAL SECTION 7.10? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A	
20. FOR CONSULTING AGREEMENTS: Did you review any contractor evaluations on file with the DGS Legal Office? <input type="checkbox"/> None on file <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A	
21. IS A SIGNED COPY OF THE FOLLOWING ON FILE AT YOUR AGENCY FOR THIS CONTRACTOR? A. Contractor Certification Clauses <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A B. STD 204 Vendor Data Record <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A	
23. IS THIS A SMALL BUSINESS AND/OR A DISABLED VETERAN BUSINESS CERTIFIED BY DGS? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes SB/DVBE Certification Number: _____	

24. ARE DISABLED VETERANS BUSINESS ENTERPRISE GOALS REQUIRED? *(If an amendment, explain changes if any)*  No *(Explain below)*  Yes \_\_\_\_\_ % of Agreement

Does not apply to co-management agreements.

25. IS THIS AGREEMENT (WITH AMENDMENTS) FOR A PERIOD OF TIME LONGER THAN THREE YEARS?  No  Yes *(If Yes, provide justification below)*

Does not apply to co-management agreements.

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*I certify that all copies of the referenced Agreement will conform to the original agreement sent to the Department of General Services.*

SIGNATURE <i>Rene Hamlin</i>	NAME/TITLE <i>(Print or Type)</i> Rene Hamlin	DATE SIGNED 9/22/2021
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**JUSTIFICATION - CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 547.60**

In the space provided below, the undersigned authorized state representative documents, with specificity and detailed factual information, the reasons why the contract satisfies one or more of the conditions set forth in Government Code section 19130(b). Please specify the applicable subsection. Attach extra pages if necessary.

*The undersigned represents that, based upon his or her personal knowledge, information or belief the above justification correctly reflects the reasons why the contract satisfies Government Code section 19130(b).*

SIGNATURE	NAME/TITLE ( <i>Print or Type</i> )	DATE SIGNED	
PHONE NUMBER	STREET ADDRESS		
EMAIL	CITY	STATE	ZIP

Co-Management Agreement

with

Fort Ross Conservancy

for

Fee Collection and Campground Management at Fort Ross State Historic Park

STATE OF CALIFORNIA – NATURAL RESOURCES AGENCY  
DEPARTMENT OF PARKS AND RECREATION  
PARTNERSHIPS DIVISION  
1416 NINTH STREET, 14<sup>TH</sup> FLOOR  
SACRAMENTO, CA 95814



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**Co-Management Agreement  
with  
Fort Ross Conservancy  
for  
Fee Collection at Fort Ross State Historic Park**

This Co-Management Agreement (“Agreement”) is entered into by and between the State of California, Department of Parks and Recreation (“Department”) and Fort Ross Conservancy, a non-profit corporation incorporated under the laws of the State of California (“Conservancy”), collectively the “Parties”, for the co-management of Fort Ross State Historic Park (SHP) within the Sonoma-Mendocino Coast District (“District”).

**Recitals**

Whereas, the District is part of the California State Park system under the jurisdiction of the Department; and

Whereas, pursuant to Public Resources Code (“PRC”) § 5080.42, the Department may enter into an operating agreement with a qualified nonprofit organization for the development, improvement, restoration, care, maintenance, administration, or operation of a State Park system unit or units, or portions of a unit; and

Whereas, pursuant to PRC § 513, Conservancy is formally recognized as a Cooperating Association through Agreement Z16-IE-653-016 whereby Conservancy may furnish educational and interpretive materials, or educational and interpretive services, or educational and interpretative materials and services, for sale to the public; and



Whereas, pursuant to PRC § 5080.42, the Department is not precluded from entering into operating agreements with nonprofit organizations to co-manage portions of a unit involving the sharing of operational and financial responsibilities that have the effect of reducing state costs; and

Whereas, Conservancy is a nonprofit organization certified under § 501(c)(3) of the Internal Revenue Code, and represents that it is in compliance with the Supervision of Trustees and Fundraisers for Charitable Purposes Act, Government Code § 12580 et seq., whose principal purposes is to promote the educational and interpretive activities of the State Park System, principally in Fort Ross SHP; and

Whereas, Conservancy desires to operate and co-manage certain activities conducted at Fort Ross SHP, or portions thereof, which otherwise would cost the Department more to operate and manage, for the enjoyment and benefit of the public; and

Whereas, the Department and Conservancy desire to enter into this Agreement to allow Conservancy to operate, administer and manage certain activities at Fort Ross SHP, as specifically set forth in Section 1, Premises (hereinafter referred to as "Premises"), and to articulate the duties, obligations, and rights of each of the Parties related to such operation, administration and management so that all core operations of Premises are delineated between the Parties.

Now therefore, in consideration of the mutual covenants hereinafter contained, the Parties hereto agree as follows:

### **1. Premises**

Conservancy agrees to accept Premises "Exhibit A", which shall include the central kiosk at the park entrance for the purpose of collecting fees and the camping and day use areas of Reef Campground covered by this Agreement, and take the same in their present condition "AS IS" with all faults, and agrees to maintain the same in a safe and tenable condition, and, at any termination of this Agreement, to promptly return the

Premises to Department in the same or better condition, reasonable wear and tear excepted. Department shall not be obligated to make any alterations, additions, or betterments to the Premises except as otherwise provided for in this Agreement.

## **2. Term**

- A. The term of this Agreement shall be for a period of five (5) years, with an option to renew for an additional five (5) year term upon written mutual agreement of the Parties, and said Agreement shall not be effective until the Notice to Commence is issued or the first of the month following approval by the State of California, Department of General Services (“DGS”), whichever is later.

## **3. Use of Premises**

- A. Conservancy agrees that the purpose and objective of this Agreement is for the development, improvement, restoration, care, maintenance, administration, or operation of Fort Ross SHP, or portions thereof, in the Sonoma-Mendocino Coast District of California State Parks, and Conservancy agrees to work collaboratively with Department to fulfill this purpose. Any additional roles and responsibilities beyond what is defined in this Agreement shall be defined in the Annual Plan consistent with the terms of the Cooperating Association Agreement.
- B. For purposes of this Agreement Conservancy shall open and close the kiosk, collect fees as set forth in sections 4.D, Standard Fee Collection, in this Agreement, and provide some housekeeping as needed and directed by the District. The Department shall be responsible for all other maintenance and operational needs of the Premises.
- C. All work undertaken by Conservancy pursuant to this Agreement shall not adversely affect the use and enjoyment of the Premises by the public. It shall be in the Department’s sole discretion to determine if such an adverse impact exists.
- D. Conservancy may charge State Park fees (“Standard Fees”), as described in section 4.A., upon the prior written approval of the District Superintendent, with the exception of State Park Passes the fees for which will be set by California

State Parks. Fee collection services will be provided during periods deemed necessary for effective operations of Premises, to be determined by the Department. In the event of adverse weather or operating conditions which do not fall into the definition of Force Majeure as defined in section 14, Conservancy may request approval from the District Superintendent or his/her authorized representative to close collection points.

- E. Conservancy shall not use or permit the Premises to be used in whole or in part during the term of this Agreement for any purpose other than as herein set forth without the prior written consent of the District Superintendent or designee.
- F. Upon availability and installation of camping reservation system equipment, all reservations shall be taken by Department's reservation contractor. Conservancy shall receive from Department all overnight, walk-up, or day use fees collected by the camping reservation contractor, consistent with Section 4.A.3. Fees for firewood or interpretive programs are subject to the Cooperating Association Agreement and are passed through at 100% to the Conservancy. In no event shall Conservancy receive any part of the reservation, registration, or administrative transaction fees paid by customers to book or reserve campsites.
  - 1) Advance reservations shall not be included in gross receipts until the services that relate to the deposit have been rendered by Conservancy or the reservation has been canceled and the deposit has been retained by Conservancy in accordance with the deposit policy as approved in advance in writing by the Department. The term "gross receipts," wherever used in this Agreement, is intended to and shall mean all moneys, property, or any other thing of value received by or owed to Conservancy, through or in connection with the operation of the Premises, including any business carried on through the internet or catalog sales, or from any other business carried on or in connection with the Premises, or from any other use of the Premises, and/or of any business of any kind that uses the names licensed by this Agreement, or that associates with or implies an endorsement by Department, all without deduction. The term "gross receipts" shall not include any sales taxes imposed by any governmental entity and collected by the Conservancy.

- 2) At the Department's sole discretion, such advance deposits may be retained by the Department until the revenue is earned, at which time the Department will release payment to the Conservancy less any merchant or related fees. Should the Department elect not to retain the advance deposits, they shall be retained by Conservancy in an interest-bearing joint trust account. All earned interest, including interest earned on a reservation deposit, shall be included in gross receipts for the month such earned interest is reported to the Conservancy. If advance deposits are collected by Conservancy and Conservancy is not in recipient of a new Agreement, upon termination of this Agreement all advance reservation deposits shall be transferred to the Department or the new contractor.
- 3) Conservancy shall honor all State Park Passes including, but not limited to, Disabled Discount Passes and Distinguished Veterans Passes. Department shall provide Conservancy with its Disabled Discount Pass and Distinguished Veterans Pass Policies.

#### **4. Duties of Conservancy**

- A. Roles and Responsibilities. With approval from the District Superintendent, Conservancy agrees to undertake the following responsibilities in carrying out the objectives of this Agreement:
  - 1) Provide visitor services, facilitate public access to park resources, improve park facilities, support and provide interpretive and educational services, provide protection of and stewardship of natural, cultural and historical lands and resources;
  - 2) Provide and manage Conservancy's staff to fulfill the obligations set forth in this Agreement, including but not limited to collecting fees, provide day-to-day housekeeping of the Premises, and assist with visitor services;
  - 3) Collect all Fees, which includes, but are not limited to, Day Use Fees, Annual Day Use Fees, Senior Day Use Discount, Regular Camping, Senior Camping, Reserved Camping, and Extra Vehicle Camping Fees. Conservancy shall

retain 50% of the gross fee for day use, and remit 50% to the Department. Conservancy shall retain 100% of camping and related fees. In addition, Conservancy is authorized to sell the "California Explorer," "Golden Poppy," "Oversized Vehicle Pass," and "Historian Passport," at the Premises, at Conservancy' office location, and online at FortRoss.org, retaining 25% of the gross fee for passes and remitting 75% to the Department. Department shall set prices for these passes.

B. Annual Operations Plan

Sixty Days from the Notice to Commence or approval from DGS, whichever is later, Conservancy shall submit for approval to the Department an Annual Operations Plan that covers the current fiscal year. After the first year of execution, the Annual Operations Plan covering the subsequent fiscal year, shall be submitted prior to January 1 every year for Department approval. The plan shall include how Conservancy intends to fulfill its duties, including but not limited to those set forth in Paragraph 4A, Duties of Conservancy, of this Agreement.

The Annual Operations Plan shall also include:

- 1) Hours of kiosk operation;
- 2) Fee schedule;
- 3) Delineation of housekeeping and maintenance duties of the parties.

C. Administration / Staffing

- 1) Conservancy's employees will be under the general supervision of the CEO of the Conservancy or Conservancy Board Chair.
- 2) Conservancy will provide and manage their own staff, including Conservancy staff who collect fees and provide day-to-day housekeeping of the Premises, consultants, or volunteers. The Conservancy will staff the kiosk at Fort Ross SHP main entrance and Reef Campground. Conservancy shall utilize competent and qualified persons to carry out any obligations under this Agreement. Conservancy shall comply with the Department's background check requirements set forth in the Department Operations Manual, which will be provided upon request.

- 3) All of Conservancy's field employees are to receive an orientation on the State Park System, the Premises, and local points of interest, which will be sufficient to permit such employees to reply adequately to inquiries from the visiting public. The employee orientation will be provided collaboratively by Department and Conservancy staff and is subject to approval by the District Superintendent.
- 4) Uniforms for each Conservancy employee shall be the standard seasonal class field uniform as worn in the District, with a Conservancy Patch to be affixed on the left shoulder, instead of the Department Patch. Uniforms or uniform replacement will not be provided by the Department.

D. Standard Fee Collection

- 1) **Point of Sale System.** When Conservancy charges fees through the Department's reservation contractor, which uses the contractor's Point of Sale ("POS") system, Conservancy shall receive a percentage of the fees ("Conservancy Fees"), regardless of payment type, collected by the reservation contractor, less any reservation, administrative, transaction, merchant, or related fees. The entirety of all cash payments accepted through the POS system shall be remitted to the Department, by Conservancy in a manner authorized and directed by the Department. Credit card revenues collected at Premises with the Reserve California system will be deposited directly to the Department through the POS system. All fees charged through the POS system, will be reconciled and adjusted by the Department, which may include debiting or crediting subsequent payments. Reservation and transaction fees shall be charged before the split is calculated, and then Conservancy's share will be transferred to Conservancy on a semi-monthly basis. The Department will make every effort to deduct merchant fees incurred for any given month in the second monthly distribution. If funds are not available to cover any incurred fees from the second monthly distribution, the Department shall invoice Conservancy for the fees.
- 2) **Fees Collected Outside Point of Sale.** When Conservancy collects fees outside the POS system, Conservancy shall transfer to the Department the

Department's portion of the fees. Conservancy shall, at the close of business every day, reconcile and remit to the Department its fees, in a manner authorized and directed by the Department.

- 3) **Cash Registers.** Until the Department's reservation contractor installs its POS system in the Premises, Conservancy shall ensure that cash registers or similar equipment used to record and transact sales, are installed at the Premises. The equipment must be acceptable to the Department, shall be non-resettable, and shall supply an accurate recording of all sales on tape and produce a receipt for each transaction. All such equipment shall have a customer display that is visible to the public. Conservancy shall make all cash register tapes available to the Department upon Department's request. Conservancy shall provide a cash register receipt to each customer recording the total amount of the sale. Upon such time the Department's POS system, or equivalent, is offered to Conservancy, Conservancy is obligated to use the POS system.
- 4) **Remittance Procedure.** Within 20 days from the Notice to Commence or approval from DGS, whichever is later, Conservancy and Department will meet and prepare a written procedure for fee collection and remittances to the Department. The written fee collection and remittance procedure is subject to the approval of the Department.
- 5) Conservancy will use a system acceptable to the Department for all Standard Fee collections.
- 6) Conservancy agrees to any process for pass fulfillment that may be determined by the Department.
- 7) Conservancy shall comply with PRC 5080.42 and use all revenues collected under this Agreement, including but not limited to Conservancy's Fees, shall be expended only for the development, improvement, restoration, care, maintenance, administration, or operation of Fort Ross State Historic Park.
- 8) Fees collected for advanced reservations may be retained by the Department until the services are provided or cancelled.

E. Facilities/Operation

- 1) The District shall issue necessary kiosk keys. All keys are to be returned to the District by Conservancy within 48 hours from the expiration or termination of this Agreement.
- 2) Conservancy will comply with the District Superintendent's instructions as to the location of all Conservancy's vehicles and equipment and will cooperate fully with the Department in its efforts to improve the appearance and interpretation of Premises.
- 3) Conservancy will open and close the campgrounds at Fort Ross SHP daily at hours set by State. The Conservancy will staff the kiosk at Fort Ross SHP at the levels, days and times agreed to in the Annual Operating Plan.

F. Public Safety and Enforcement

Conservancy will cooperate with law enforcement personnel by reporting any public safety concerns, as defined in orientation, while performing their normal duties.

G. Non-Interference

Conservancy agrees to provide access to the Department's employees, contractors, or agents to allow the Department to carry out its duties as stated herein and responsibilities as a landowner and manager.

H. Revenue Development

Consistent with the terms of the Cooperating Association Agreement and Section 3.F of this Agreement, Conservancy shall receive 100 percent of the following fees, except as otherwise stated in this Agreement:

- 1) All fees and other amounts paid for the educational programs, special events, and other activities and events at Fort Ross SHP, other than fees for the use of Reef campground.
- 2) All proceeds from the sale of books and other items at the visitor centers at Fort Ross SHP.
- 3) All proceeds from the sale of firewood at Fort Ross SHP.
- 4) All donations made to the Conservancy, whether made via the internet, US mail, in person at the Parks or otherwise.



## **5. Duties of Department**

### **A. Planning and Compliance**

1) The Department is designated Lead and Trustee Agency as defined by the California Environmental Quality Act (CEQA) and will be the only party responsible for planning and compliance

### **B. Cultural and Natural Resources Management**

1) The Department shall be responsible for prioritizing and carrying out responsibilities related to management and protection of cultural and natural resources and has primary responsibility for stewardship of cultural resources within the State Park System under PRC and other applicable statutes.

### **C. Standard Fee Remittance**

- 1) All fees collected by the reservation contractor, payable to Conservancy under this Agreement, shall be deposited by Department to a State deposit account under the Conservancy's subsidiary identification number. Conservancy's Fees shall be swept daily to the Department Trust Account. Conservancy's Fees will be paid to Conservancy on a semi-monthly basis after reconciliation and required adjustments are made which may include debiting or crediting subsequent payments, consistent with the process defined in Section 4.D.1. The first semi-monthly payment shall begin with the first day of the month and the second semi-monthly payment shall end with the last day of the month. Conservancy shall have access to Department records that support the Department's reconciliation of the amounts paid and the amounts collected.
- 2) Conservancy and Department will meet and prepare a written procedure for fee collection and remittance to the District. The written fee collection and remittance procedure is subject to the approval of the Department. Department reserves the right to change its accounting and payment process with reasonable notice to Conservancy.
- 3) Conservancy accepts payments with the understanding that all funds shall be expended in accordance with Section 4 D.7 of this agreement.

#### **D. Other Operational Duties**

Any operational duty not defined in Section 4 falls on the Department, unless agreed upon in the Annual Plan.

#### **6. Consideration**

In consideration of the obligations to be performed by Conservancy pursuant to this Agreement, the Department hereby authorizes the use of the Premises by Conservancy on a rent-free basis on the condition that Conservancy perform the terms and conditions of this Agreement. In the event that Conservancy fails to perform the terms and conditions set forth in this Agreement, consistent with the process defined in Section 19, the Premises shall revert back to the Department, at the Department's option, and the Department shall have the right to pursue any other remedies available under this Agreement and/or otherwise available by law.

#### **7. Concessions**

Conservancy is not authorized to grant concessions in or upon the Premises. Any existing concessions shall be managed solely by Department.

#### **8. Maintenance**

During the term of this Agreement, Department shall provide maintenance of the Premises. Maintenance is defined as all repair and preservation work necessary to maintain facilities, personal property, and equipment in a good state of repair, as well as to preserve them for their intended purpose for an optimum useful life.

#### **9. Taxes**

By signing this Agreement, Conservancy acknowledges and agrees that occupancy interest and rights to do business on Department property may create a possessory interest as that term is defined in Revenue and Taxation Code § 107.6, which possessory interest may subject Conservancy to liability for the payment of property taxes levied on such possessory interest. Conservancy shall pay all lawful taxes, assessments, or charges that may be levied by the state, county, city, or any tax or

assessment levying body at any time upon any interest in or created by this Agreement, or any possessory right that Conservancy may have in or to the Premises or the improvements thereon, by reason of Conservancy's use or occupancy thereof or otherwise, as well as all taxes, assessments, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by Conservancy in or about the Premises.

#### **10. Records and Accounts, Public Meeting**

- A. Recordkeeping: At all times during the term of this Agreement, Conservancy shall keep separate, true, and complete books, records, and accounts of all revenues received and all expenditures made by Conservancy in relation to events, special services, and all other matters incident to the development, control, operation, and maintenance of the Premises. The books, records, and accounts applying to the operation of the Premises and kept by Conservancy shall be open for audit or inspection by the Department at all reasonable times. All records shall be kept by Conservancy for a minimum of 4 years. Conservancy shall be subject to the Department's audit requirements and remedies as set forth herein.
- B. Annual Revenue and Expenditure Report: Conservancy shall report income and expenditures to the Department on an Annual Revenue and Expenditure Report, which may be submitted on form DPR 973c, Part 1. Financial Report for Co-Managers and Cooperating Associations, on an annual basis. This form can be found at <https://partnersreg.parks.ca.gov/>. In the alternative, Conservancy may submit an Annual Revenue and Expenditure Report on its own form, as long as said report contains the same information required on the Annual Revenue and Expenditure Report. The report shall be submitted for the period commencing July 1<sup>st</sup> (or the start date of the Agreement for the first year of operation) and ending June 30<sup>th</sup> of each fiscal year and shall be filed with the Department no later than December 15<sup>th</sup> of that year. The report shall contain a certification that all gross receipts covered by the time period of the report have been duly and properly reported to the Department. Within ninety (90) days of the expiration or

termination of this Agreement, Conservancy shall submit to the Department an Annual Revenue and Expenditure Report for the period of operation not previously reported.

- C. Attendance Report: If requested by Department, Conservancy shall provide the Department with a monthly attendance report to include a reasonable monthly estimate of the number of visitors and vehicles to Premises which have entered at the park entrance during hours the kiosks are open. Such monthly reports shall be submitted to the Department by the 15<sup>th</sup> day of the following month.
- D. Operations Reports: On an annual basis, Conservancy shall submit to the Department a written Operations Report regarding all of Conservancy' activities at Premises during the prior year. The Operations Report shall be submitted to the Department for the period commencing January 1<sup>st</sup> (or the start date of the Agreement for the first year of operation) and ending December 31<sup>st</sup> of each year, and shall be filed with the Department no later than the following March 1<sup>st</sup>. In addition, within 45 days of the expiration or termination of this Agreement, Conservancy shall submit to the Department an Operations Report for the period not previously reported. The Operations Report shall be available to the public upon request. Furthermore, the Department and Conservancy shall post the Operations Report on each of their respective websites. The Operations Report shall include the Annual Revenue and Expenditure Report and detail of activities performed including, but not limited to operating activities, such as:
- 1) Hours of operation
  - 2) Fee schedule
  - 3) Personnel support
  - 4) Projects or programs undertaken
- E. Joint Public Meeting: Within 60 days following the submittal of the Operations Report, Conservancy and the Department shall hold a joint public meeting for discussion of the Operations Report. Conservancy shall bear the expenses, if any, of this joint meeting.
- F. Financial Compliance and Audit: If Conservancy has annual gross revenues of \$2,000,000 or more, the organization must prepare annual financial statements

using Generally Accepted Accounting Principles (GAAP) that are audited by an independent certified public accountant in conformity with generally accepted auditing standards. If Conservancy has annual gross revenues of more than \$500,000 and less than \$2,000,000, an annual independent financial statement review is required. If Conservancy has annual gross revenues of more than \$100,000 and less than \$500,000, an annual independent financial statement compilation is required. Conservancy is responsible for obtaining all audit reports. Conservancy must also comply with all state and federal requirements for nonprofit organizations. A copy of the independent audited financial statements, Federal 990 tax return, and state tax returns will be provided to the Department as completed, but not later than the submission of the annual report.

## **11. Insurance**

- A. **Liability Insurance**: At its sole expense, Conservancy agrees to maintain in force during the term of this Agreement comprehensive general liability insurance, insuring against claims for injuries to persons or property occurring in, upon, or about the Premises. The insurance shall have limits of not less than One Million Dollars (\$1,000,000) for injuries to person or persons; not less than One Million Dollars (\$1,000,000) for property damage; and said limits shall be per occurrence and shall be adjusted annually to reflect changes in the prior year's Consumer Price Index (CPI). Should Conservancy have volunteers not in the Volunteer In Parks ("VIP") Program, as described in section 50, Conservancy shall obtain and maintain liability coverage with limits of not less than One Million Dollars (\$1,000,000.) to cover volunteers not in the VIP Program for personal injury, accidents and property damage occurring during the course of the volunteer assignment
- B. **Motor Vehicle Liability Insurance**: Conservancy shall maintain motor vehicle liability insurance with limits not less than \$1,000,000 combined single limit each accident. Such insurance shall cover liability arising out of an accident involving a

motor vehicle in use by Conservancy, including, but not limited to, Conservancy owned, hired, and non-owned motor vehicles.

- C. Worker's Compensation and Employer's Liability Insurance: Conservancy shall maintain statutory worker's compensation and employer's liability insurance for all of Conservancy' employees who will be engaged in the performance of work under this Agreement, including special coverage extensions where applicable. The workers' compensation policy shall contain a waiver of subrogation in favor of the Department for work performed under this Agreement. The waiver of subrogation endorsement shall be provided. VIP Program volunteers and Department employees are covered under the Department's Worker Compensation Insurance, and not subject to Conservancy's worker's compensation coverage requirements.
- D. Each policy of liability insurance shall contain additional named insured endorsements in the name of the State of California, through its Department of Parks and Recreation, as to all insurable interests of the Department, including, but not limited to, the Premises and all contents as follows:
- 1) State of California, its officers, employees, and servants are included as additional insured but only insofar as operations and facilities under this Agreement are concerned;
  - 2) The insurer will not cancel or reduce the insured's coverage without thirty (30) days prior written notice to the Department.
- E. No cancellation provision in any insurance policy shall diminish the responsibility of Conservancy to furnish continuous insurance throughout the term of the Agreement. Each policy shall be underwritten to the satisfaction of the Department. A signed Certificate of Insurance, with each endorsement required, shall be submitted to the Department at the time this Agreement is executed, showing that the required insurance has been obtained. Further, at least 30 days prior to the expiration of any such policy, Conservancy shall submit to the

Department a signed and completed Certificate of Insurance, with all endorsements required by this section, showing, to the satisfaction of the Department, that such insurance coverage has been renewed or extended. Within 15 days of the Department's request, Conservancy shall furnish the Department with a signed and complete copy of the required policy.

## **12. Hold Harmless Agreement**

- A. Conservancy waives all claims and recourse against the Department, its officers, employees and/or agents, including the right to contribution, for any and all loss, injury, death or damage to persons or property, caused by, arising out of, or in any way connected with or incident to the condition or use of the Premises, this Agreement, or the rights or obligations herein granted or imposed, except those arising out of the sole active negligence or willful misconduct of the Department.
  
- B. Conservancy shall protect, save, hold harmless, indemnify and defend the Department, its officers, employees and/or agents from any and all liability, loss, damage, injury, death, claims, demands, expenses, costs and fees, including, but not limited to, expert costs and attorney fees, that may be suffered or incurred by the Department, its officers, employees and/or agents from any cause whatsoever, arising directly or indirectly out of or in any way connected with this Agreement, the exercise or performance of any of the rights or obligations herein granted or imposed, or the use, development, operation, management, control, condition, repair or maintenance of the Premises, including those arising from the alleged violations of any state or federal law, statute or regulation, including, but not limited to, the Americans with Disabilities Act of 1990 Titles I, II, and III (ADA), except those arising out of the sole active negligence or willful misconduct of the Department. Conservancy will further cause such indemnification and waiver of claims in favor of the Department to be inserted in each contract that Conservancy executes for the provision of services in connection with the Premises and/or this Agreement.

C. In the event Department is named as a co-defendant in any legal action related to this Agreement and served with process of such legal action, Department shall immediately notify Conservancy of such fact and Conservancy shall represent Department in such legal action as provided herein, unless Department undertakes to represent itself as co-defendant in such legal action, in which event Conservancy shall reimburse and indemnify Department as provided in sections 12.A and 12.B, for all its own litigation costs, expenses and attorney fees.

### **13. Eminent Domain Proceedings**

If the Premises or any portion thereof are taken by proceedings in eminent domain, the Department shall receive the entire award for such taking.

### **14. Force Majeure**

If either Party is prevented, hindered or delayed in performance or observance of any of its obligations under this Agreement by reason of any circumstances beyond its reasonable control, including but not limited to fire, flood, earthquake, extraordinary weather conditions acts of war, acts of terrorism, labor disputes, riots, civil disorders, rebellions or revolutions in any country, in each case, whether or not reasonably foreseeable by the party, that party shall be excused from any further performance or observation of the obligations so affected for as long as such circumstances prevail and that party continues to use all commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. The party affected by such an event shall advise the other party in reasonable detail of the event, including its estimated duration, as promptly as practicable and keep the other party reasonably apprised of progress in resolving the event.

### **15. Public Trust**

Nothing in this Agreement shall be construed as the Department's transferring, assigning, or delegating any public trust responsibilities of the Department, including, but not limited to, those public trust responsibilities required by PRC § 5019.53 et seq.



**16. Prohibitions Against Assigning, Subletting**

This Agreement and/or any interest therein or thereunder shall not be assigned, delegated, mortgaged, hypothecated, or transferred by Conservancy without obtaining the prior written consent of the Department.

**17. Notices**

Any notice and/or report required to be given or that may be given by either Party to the other Party shall be deemed to have been fully given when made in writing and deposited in the United States Postal Service, postage prepaid, and addressed as follows:

Department: State of California  
Department of Parks and Recreation  
Sonoma-Mendocino Coast District  
12301 North Highway 1  
Mendocino, CA 95460

Copy to: State of California  
Department of Parks and Recreation  
Partnerships Division  
Post Office Box 942896  
Sacramento, California 94296-0001  
partnerships@parks.ca.gov

Conservancy: Fort Ross Conservancy  
Attn: Sarah Sweedler, Chief Executive Officer  
19005 Coast Highway 1  
Jenner, CA 95450  
sarahs@fortross.org

**18. Defaults and Remedies**

- A. Any failure by a Party to this Agreement to observe or perform a provision of this Agreement, where such failure continues for 30 days after receipt by such Party of written notice of such failure, shall constitute a default and breach of this Agreement. However, if the nature of the default is such that it cannot be reasonably remedied within the 30-day period, the offending Party shall not be deemed to be in default if an effective cure has been commenced within the 30-day period and thereafter diligently prosecuted to completion.
  
- B. Upon an event of default by the Department, Conservancy shall have the right to terminate this Agreement by providing 30 days' prior written notice to the Department.
  
- C. Upon an event of default by Conservancy, the Department shall have the right to terminate this Agreement and obtain immediate possession of the Premises at any time by written notice to Conservancy. In such event, the Department shall be entitled to all rights and remedies of law and/or in equity, including but not limited to, costs and expenses incurred by the Department in recovering possession of and/or restoring the Premises and compensation for all detriment proximately caused by Conservancy's failure to perform its obligations under this Agreement.

**19. Termination**

- A. Notwithstanding the provisions of Section 18, Defaults and Remedies, either Party may terminate this Agreement for any reason. The Party who wishes to terminate the Agreement shall give written notice of its intention to the other Party no later than 180 days before the scheduled termination date. Such notice shall be given in writing and shall be effective on the date given in the notice as the scheduled date for the termination of the Agreement.

- B. Within forty-five (45) days of the expiration or termination of this Agreement, Conservancy shall submit to the Department a profit and loss statement for the period of operation not previously reported prepared in section 11.B. Upon termination of this Agreement, Conservancy shall distribute the balance of any funds earned or raised under this Agreement to the Department. Notwithstanding the above, Conservancy may retain a reserve in an amount determined by both Parties to be sufficient to cover tax liability, fees, expenses and any other charges arising out of this Agreement.
- C. Automatic Termination of Agreement. This Agreement shall terminate upon the occurrence of any of the following events:
1. Conservancy loses its qualified nonprofit status as defined by PRC §5080.42;
  2. Conservancy is dissolved voluntarily or involuntarily pursuant to law; or
  3. PRC §5080.42 expires and is not extended or is repealed by law.

## **20. Surrender of the Premises, Holding Over**

- A. Surrender: On expiration or within thirty (30) days after notice of termination of this Agreement, Conservancy shall surrender the Premises to Department with all fixtures, improvements, and Alterations in good condition, except for fixtures, improvements, and Alterations that Conservancy is obligated to remove. Conservancy shall remove all of its personal property and shall perform all restoration required by the terms of this Agreement within the above stated time unless otherwise agreed to in writing. If Conservancy fails to surrender the Premises to the Department within 30 days after notice of termination of the term as required by this section, Conservancy shall hold the Department harmless for all damages resulting from Conservancy's failure to surrender the Premises.
- B. Hold-Over: After the expiration or earlier termination of the Term and if Conservancy remains in possession of the Premises with the express or implied consent of the Department, such holding over shall be deemed to be a temporary

tenancy terminable on 30 days' written notice given at any time by either Party. All provisions of this Agreement except those pertaining to the Term shall apply to the temporary tenancy.

## **21. Real Property Acquisition**

It is understood and agreed to by the Parties that all applications for real property rights, appurtenant to the Premises, shall be made in the name of and on behalf of the Department, and shall be subject to the prior written approval of the Department.

## **22. Compliance with Laws, Rules, Regulations, and Policies**

As it pertains to the terms of this agreement, Conservancy and its officers, agents, employees, contractors, and subcontractors shall comply with all applicable laws, rules, regulations, and orders existing during the term of this Agreement, including obtaining and maintaining all necessary permits and licenses. Conservancy acknowledges and warrants that it is, or will make itself, through its responsible managers, knowledgeable of all pertinent laws, rules, ordinances, regulations, or other requirements having the force of law affecting the operation of the Premises, including but not limited to laws affecting health and safety, hazardous materials, pest control activities, historical preservation, environmental compliance, and building standards.

## **23. Non-discrimination**

- A. Pursuant to PRC § 5080.34, this Agreement and every contract on lands that are subject to this Agreement shall expressly prohibit discrimination against any person because of sex, sexual orientation, race, color, religious creed, marital status, ancestry, national origin, medical condition, age (40 and above), and disability (mental and physical) including HIV and AIDS.
- B. Conservancy shall comply with the provisions of the Fair Employment and Housing Act, Government Code § 12900 et seq., and the applicable regulations promulgated thereunder (CA Code Regs, tit. 2, § 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing

Government Code § 12990 (a-f), are incorporated into this agreement by reference and made a part hereof as if set forth in full (2 CCR's § 7285.0). Conservancy shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Conservancy shall include the non-discrimination and compliance provisions of this clause in all contracts to perform work under and/or in connection with this Agreement.

- C. In the event of violation of this section, the Department will have the right to terminate this Agreement, and any loss of revenue sustained by the Department by reason thereof shall be borne and paid for by Conservancy.

#### **24. Disability Access Laws**

- A. With regard to all operations and activities that are the responsibility of Conservancy under this Agreement, and without limiting Conservancy's responsibility under this Agreement for compliance with all laws, Conservancy shall be solely responsible for complying with the requirements of the Americans with Disabilities Act of 1990 (ADA) (Public Law 101-336, commencing at §12101 of Title 42, United States Code, including Titles I, II, and III of that law), the Rehabilitation Act of 1973, the California Unruh Civil Rights Act (California Civil Code Section 51) and all related regulations, guidelines, and amendments to both laws.
- B. With regard to facilities for which Conservancy is responsible for operation, maintenance, construction, restoration, or renovation under this Agreement, Conservancy shall work collaboratively with the Department and comply with Government Code § 4450, et seq., Access to Public Buildings by Physically Handicapped Persons, and Government Code § 7250, et seq., Facilities for Handicapped Persons, and any other applicable laws, regulations, guidelines and successor statutes. Written approval from the Department is required prior to

implementation of any construction activity to ensure plans to comply with accessibility requirements.

- C. Notwithstanding Sub-Sections A. and B., Conservancy is not responsible for barrier removal projects identified in the *Bonnie Tucker, et al. v. State of California, Department of Parks and Recreation*, United States District Court, Northern District of California Case Number C 98-04935 CRB (PJH), Consent Decree.

## **25. National Labor Relations Board Certification**

By signing this Agreement, Conservancy does hereby swear, under penalty of perjury, that no more than one final, unappeasable finding of contempt of court by a federal court has been issued against Conservancy within the two (2) year period immediately preceding the date of this Agreement because of Conservancy's failure to comply with a federal court order that Conservancy shall comply with pursuant to an order of the National Labor Relations Board.

## **26. Environmental Compliance and Resource Protection**

- A. Conservancy shall work collaboratively with the Department and comply with the Department's Cultural and Natural resource management mandates in the conduct of all activities that may potentially affect cultural, natural, and/or scenic values. These mandates include but are not limited to the California Environmental Quality Act (CEQA/PRC § 21000 et seq.), the Memorandum of Understanding between the Department of Parks and Recreation and the Office of Historic Preservation Executive Orders W-26-92 and B-10-11, Departmental Notice 2004-02, PRC §§ 5024, 5024.5 and 5097 et seq., the Native American Graves Protection and Repatriation act (NAGPRA) (PL 101-601, 25 U.S.C. 3001 et seq., 104 stat. 3048) Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings, California Endangered Species Act, the Federal Endangered Species Act, the Clean Air Act, Clean Water Act, and the

Porter Cologne Water Quality Act. When an undertaking has a Federal nexus, the National Historic Preservation Act (NHPA) - § 106 (36 CFR Part 800.1 to 800.16) and the National Environmental Policy Act (42 U.S.C. § 4321) will be required as well. The Department of Parks and Recreation Departmental Operation Manuals (DOM 300, 400, 2000) for natural and cultural resources shall also be complied with for projects with a potential to affect resources.

- B. All resource management projects proposed within the Premises will be undertaken with the oversight provided by the appropriate Department staff, specifically Environmental Scientists, State Historians, and State Archaeologists.
- C. Sensitive information will be safeguarded from general public distribution as required by state and federal law (California Government Code §§ 65040.2(g)(3); 6254.10; 43 CFR 7, § 7.18(a)).

## **27. Hazardous Substances**

- A. At or in the Premises, Conservancy shall not:
  - 1) Keep, store, or sell any goods, merchandise, or materials that are in any way explosive or hazardous;
  - 2) Carry on any offensive or dangerous trade, business, or occupation;
  - 3) Use or operate any machinery or apparatus that shall injure the Premises or adjacent buildings in any way; or
  - 4) Do anything other than is provided for in this Agreement.
- B. Nothing in this section shall preclude Conservancy from bringing, keeping, or using on or about said Premises such materials, supplies, equipment, and machinery as is appropriate or customary in the care, maintenance, administration, and control of parklands. Gasoline, oils, and all other materials considered under law or otherwise to be hazardous to health and safety shall be stored, handled, and dispensed as required by law.
- C. Conservancy shall comply with all laws, federal, state, or local, existing during the term of this Agreement pertaining to the use, storage, transportation, and

disposal of any hazardous substance, as that term is defined in such applicable law. In the event the Department [or any of its affiliates, successors, principals, employees, or agents] should incur any liability, cost, or expense, including attorney fees and costs, as a result of Conservancy's illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, Conservancy shall protect, indemnify, defend, and hold harmless any of these individuals against such liability. Where Conservancy is found to be in breach of this provision due to the issuance of a government order directing Conservancy to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition directly caused by Conservancy or any person acting under Conservancy's direct control or authority, Conservancy shall be responsible for all costs and expenses of complying with such order including any and all expenses imposed on or incurred by the Department in connection with or in response to such government order.

- D. Notwithstanding the foregoing, in the event a government order is issued naming Conservancy, or Conservancy incurs any liability during or after the term of the Agreement in connection with contamination that preexisted Conservancy's obligations and occupancy under this Agreement, or prior agreements or that were not directly caused by Conservancy, the Department shall be solely responsible as between Conservancy and the Department for all expenses and efforts in connection therewith, and the Department shall reimburse Conservancy for all reasonable expenses actually incurred by Conservancy therewith.
- E. All pest control activities, chemical and non-chemical, shall be approved by the Department prior to action by Conservancy. Conservancy or the pest control business acting on behalf of Conservancy shall submit a Pest Control Recommendation (form DPR 191), or equivalent, to the Department for approval. The Department shall approve or deny the request within 14 days of receipt of such request. The Department's review and approval shall be solely for



compliance with Department policies and in no way shall relieve Conservancy or its contractors, employees, agents, or representatives from compliance with all laws and regulations concerning such activities, or from carrying out the work in a workmanlike manner.

- F. Conservancy shall submit a report of completed work for each pest management action to the Department no later than 7 days after performance of the work. The report may be submitted on a Pest Control Recommendation (DPR 191), or equivalent.

### **28. Signs and Advertising**

No commercial signs, logos, names, placards, or advertising matter shall be inscribed, painted, or affixed upon the Premises without prior written approval of the Department. Approval will be granted only when said signs or advertising is consistent with the purposes of this Agreement.

### **29. Photography**

The Department may grant permits to persons or corporations engaged in the production of still and motion pictures and related activities for the use of the Premises for such purposes when such permission shall not interfere with the primary purpose of park operations. Permits authorized by the Department shall not be deemed to be a competitive activity with regard to Conservancy's rights to possession and operation under this Agreement.

### **30. Intellectual Property Rights**

#### **A. Clarify Ownership of Pre-existing Intellectual Property Rights:**

Other than as specifically identified and authorized in this Agreement, no names, logos, trademarks or copyrighted materials belonging to the Department shall be used, circulated, or published without the express written consent of the Department. Further, no such use, even if permitted herein, or otherwise, shall be deemed to instill in Conservancy any rights of ownership on such names, logos,

trademarks, copyrights or other materials, and any rights to such use shall not, under any circumstances, continue beyond the term of the Agreement. Any and all materials provided to Conservancy by the Department to aid their performance under this Agreement shall be used by Conservancy for the exclusive benefit of the Department and for the authorized purposes under this Agreement only. Such materials shall be treated as proprietary by Conservancy, for the benefit of the Department. In the event that Conservancy wishes to use materials provided by the Department for any other purpose, Conservancy must obtain a separate license from the Department that specifically identifies the licensed material and rights granted in connection therewith.

- 1) Any trademarks and/or copyrights belonging to Conservancy prior to the commencement of the Agreement shall remain in Conservancy's sole ownership upon termination of the Agreement.
- 2) During the course of this relationship, Conservancy shall use the name Fort Ross Conservancy. Any additional and/or different names may be used only upon written agreement of the Department.

B. Ownership of New Logos and Trademarks Developed During Agreement:

Any names, logos, and/or trademarks developed during and/or pursuant to this Agreement that in any way associate with, identify or implicate an affiliation with the Department and/or are funded by the Department shall be approved in writing by the Department, shall belong to the Department upon creation, subject to express written agreement otherwise, and shall continue in the Department's exclusive ownership upon termination of the Agreement. Further, all good will and other rights in said marks shall inure to the benefit of the Department as the mark owner.

C. Ownership of new Copyrights, and Intellectual Property Rights Developed by Conservancy for the Department, Absent a Separate Written Agreement:

All copyrighted materials developed and created by Conservancy for the Department during the term of this Agreement shall be deemed to be "works for

hire” under the United States Copyright Act 17 USC § 101 et seq. and shall, unless otherwise agreed to in writing, belong to the Department upon creation, and continue in the Department’s exclusive ownership upon termination of this Agreement. Unless otherwise agreed to in writing, Conservancy intends and agrees to assign to the Department all rights, title, and interest in and all works created pursuant to this Agreement as well as all related intellectual property rights.

- 1) Conservancy agrees to cooperate with the Department and to execute any document reasonably necessary to give the foregoing provisions full force and effect including, but not limited to, an assignment of copyright.

D. Conservancy Rights in Separately Created Works:

Any copyrighted materials and/or trademarks developed and created by Conservancy, separate and apart from this Agreement and Department funding shall belong to Conservancy and shall continue in Conservancy’s exclusive ownership upon termination of this Agreement. In the event that any trademarks and/or copyrights are created by Conservancy during the term of this Agreement and same are proposed for use in connection with Conservancy’s performance under the Agreement, Conservancy shall promptly notify the Department in writing of its intention to retain ownership in the specific trademarks and/or copyrights.

E. Intellectual Property Rights Governing Construction Projects and/or Conservancy Deliverables:

- 1) As stated above, any works developed by Conservancy pursuant to this Agreement, including all related copyrights and other proprietary rights therein, shall be deemed to be “works for hire” under the United States Copyright Act, 17 USC § 101 et seq., and shall belong to the Department upon creation, and continue in the Department’s exclusive ownership upon termination of this Agreement. These works shall include, but are not limited to, all drawings, designs, reports, specifications, notes, images,

interpretive panels, and other works developed in the performance of this Agreement. Upon request, Conservancy shall deliver to the Department the disk or tape (or any other electronic storage device) that contains the design files of any work that is performed with the assistance of computer Aided Design and Drafting Technology and shall specify the supplier of the software and hardware necessary to use said design files.

Conservancy intends and agrees to assign to the Department all rights, title, and interest in and to such materials as well as all related copyrights and other proprietary rights therein, unless otherwise agreed to in writing.

- 2) Conservancy warrants that it is the sole exclusive owner and has the full right, power, and authority over all tangible and intangible property deliverable to the Department in connection with this Agreement, and that title to such materials conveyed to the Department shall be delivered free and clear of all claims, liens, charges, judgments, settlements, encumbrances, or security interests.
- 3) Conservancy agrees not to incorporate into or make any deliverables dependent upon any original works of authorship or Intellectual Property Rights of third parties without (1) obtaining the Department's prior written permission, and (2) granting to or obtaining for the Department a nonexclusive, royalty-free, paid-up, irrevocable, perpetual, world-wide license to use, reproduce, sell, modify, publicly and privately perform, publicly and privately display, and distribute, for any purpose whatsoever, any such prior works.
- 4) Conservancy further warrants that all deliverables do not infringe or violate any patent, copyright, trademark, trade secret, or any other intellectual property rights of any person, entity, or organization. Conservancy agrees to execute any documents reasonably requested by the Department in connection with securing the Department's registration of patent and/or copyrights or any other statutory protection in such work product including an assignment of copyright in all deliverables. Conservancy further agrees

to incorporate these provisions into all of its contracts with architects, engineers, and other consultants or contractors.

- 5) Conservancy, at its sole expense, shall hold harmless, protect, defend, and indemnify the Department against any infringement action and/or dispute brought by a third party in connection with any deliverable hereunder. Conservancy shall pay all costs, expenses, losses, damages, judgments, and claims including reasonable attorney fees, expert witness fees, and other costs.

### **31. Grant of State's Trademark License**

- A. The Department hereby grants Conservancy, and Conservancy hereby accepts a non-exclusive, non-assignable license to use the Department Logo (sometimes referred to as the "Trademark" or "Mark"), created and owned by the Department, in accordance with the terms and conditions of the License/Permission for Use of Trademarks which is attached hereto as "**Exhibit B1**" and is incorporated herein by this reference. After signature by both Conservancy and the Department, this License shall authorize the use of the Trademark and associated goodwill in connection with this Agreement only.
- B. A record of each authorized use by Conservancy of the Trademark shall be maintained by Conservancy and by the Department.
- C. Conservancy and the Department will use the Department name, Trademark, and brand consistent with the Department's License/Permission for Use of Trademark-"Exhibit A", which is attached hereto as "**Exhibit B2**" and incorporated here by reference, and the Department Brand Standards Handbook available at <https://www.parks.ca.gov/pages/735/files/brandhandbookjanuary2007.pdf> .
- D. The Department name, Trademark and brand will not be used on Conservancy's social media pages.

**32. Participation in Department Marketing Programs**

Conservancy acknowledges that the Department has an established advertising and marketing program designed to promote additional revenue for the Department and to deliver a consistent and positive image of the Department to the public. Conservancy agrees to cooperate in this program in the manner described below without compensation from the Department for such cooperation:

- A. Conservancy agrees to honor all statewide graphic standards, licensing, and merchandising agreements entered into with corporate sponsors of the Department.
- B. Conservancy agrees to place on the Premises any advertising or marketing that the Department approves under this program. Any advertising or marketing approved by the Department under this program will be placed at the Department's expense.

**33. Donor Recognition**

Conservancy agrees that any recognition for donations made related to operation of maintenance of the Premises shall be made in accordance with the Department's Donor and Sponsorship Recognition Guidelines, located at:

[https://www.parks.ca.gov/pages/23071/files/finaldonorguidelinesrevise9\\_07b.pdf](https://www.parks.ca.gov/pages/23071/files/finaldonorguidelinesrevise9_07b.pdf)

**34. Child Support Compliance Act**

- A. Conservancy recognizes the importance of child and family support relating to child and family support enforcement, including but not limited to, disclosure of information and compliance with earnings assignment orders as obligations and shall fully comply with all applicable state and federal laws provided in Family Code § 5200 et seq.

B. To the best of its knowledge, Conservancy is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department located at [edd.ca.gov](http://edd.ca.gov).

**35. No Third Party Beneficiaries**

This Agreement is not intended to and does not create any third party rights and in no event shall be relied on by any party other than Conservancy and the Department.

**36. Disputes**

Conservancy shall continue with any and all responsibilities under this Agreement during any dispute.

**37. Limitation**

This Agreement is subject to all valid and existing claims of title that may affect Premises.

**38. Section Titles**

The section titles in this Agreement are inserted only as a matter of convenience and reference and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect this Agreement.

**39. Agreement in Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original.

**40. Inspection**

The Department or its authorized representative shall have the right at all reasonable times to inspect the Premises to determine compliance with the provisions of this Agreement.

**41. Successors in Interest**

Unless otherwise provided in this Agreement, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the Parties hereto, all of who shall be jointly and severally liable hereunder.

**42. Partial Invalidity**

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

**43. Time of Essence**

Time shall be of the essence in the performance of this Agreement.

**44. Duration of Public Facilities**

By entering into this Agreement, the Department makes no stipulation as to the type, size, location, or duration of public facilities to be maintained at this unit, or the continuation of the Department's ownership thereof, nor does the Department guarantee the accuracy of any financial or other factual representation that may be made regarding the Premises.

**45. Waiver of Rights, Claims, and Agreement Terms**

Unless otherwise provided by this Agreement, no waiver by either Party at any time of any of the terms, conditions, or covenants of this Agreement shall be deemed as a waiver at any time thereafter of the same or of any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure, or omission of the Department to re-enter the Premises or to exercise any right, power, or privilege, or option arising from any breach, shall impair any such right, power, privilege, or option, or be construed as a waiver of such breach or relinquishment of any right or acquiescence therein. No notice to Conservancy shall be required to restore or revive



time as of the essence after the waiver by the Department of any breach. No option, right, power, remedy, or privilege of the Department shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options, and remedies given to the Department by this Agreement shall be deemed cumulative.

#### **46. Interpretation of Agreement**

This Agreement is made under and is subject to the laws of the State of California in all respects as to interpretation, construction, operation, effect, and performance.

#### **47. Independent Contractor**

In the performance of this Agreement, Conservancy and its officers, agents, and employees shall act in an independent capacity and not as officers or employees or agents of the Department.

#### **48. Modifications and Approval of Agreement**

This Agreement contains and embraces the entire Agreement between the Parties hereto and neither it nor any part of it may be changed, altered, modified, limited, or extended orally or by any Agreement between the Parties unless such Agreement be expressed in writing, signed, and acknowledged by the Department and Conservancy or their successors in interest.

#### **49. State District Superintendent**

For the purposes of this Agreement, the District Superintendent is the Department's representative responsible for the Premises. The District Superintendent is charged with the day-to-day administration of this Agreement and is Conservancy's initial contact with the Department for information, contract performance, and other issues that may arise. The District Superintendent may delegate these responsibilities to a Sector or Park Superintendent or other individual. The District Superintendent is not authorized to make amendments or other modifications to this Agreement. Only the Director of the Department of Parks and Recreation is authorized to make amendments or other

modifications to the agreement. Amendments and other modifications are subject to review and approval of agencies having regulatory oversight.

## **50. Volunteers**

### **A. Volunteers outside the Volunteers in Parks (VIP) Program**

- 1) Conservancy may recruit and utilize volunteers outside the VIP Program (hereinafter referred to as "Conservancy Volunteers") to perform various tasks and duties to ensure the continued operation and maintenance of the Premises.
- 2) Conservancy Volunteers shall sign a Waiver and Release of Claims agreement whereby the volunteer releases and discharges, agrees to indemnify and hold harmless, the State of California, the Department of Parks and Recreation, and their agents, employees and representatives from all claims, demands, actions or judgments arising from volunteer activity outside the VIP Program.
- 3) Conservancy Volunteers will not be allowed to wear the Department logo patch or count hours earned at Premises toward VIP Program benefits.

## **51. Construction and Completion of Improvements**

The Conservancy is not permitted to construct or improve any facility as part of this Agreement.

## **52. Miscellaneous**

Unless otherwise stated, all references to "days" in this Agreement shall mean calendar days.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement and shall be effective once approved by the Department and control agencies as applicable.

**Fort Ross Conservancy**

**State of California  
Department of Parks and Recreation**

By: DocuSigned by:  
*Sarah Sweedler*  
9864819DE26B4E3

By: DocuSigned by:  
*Armando Quintero*  
8637583B53AB4CD...

Title: CEO

Title: Director

Date: 8/31/2021

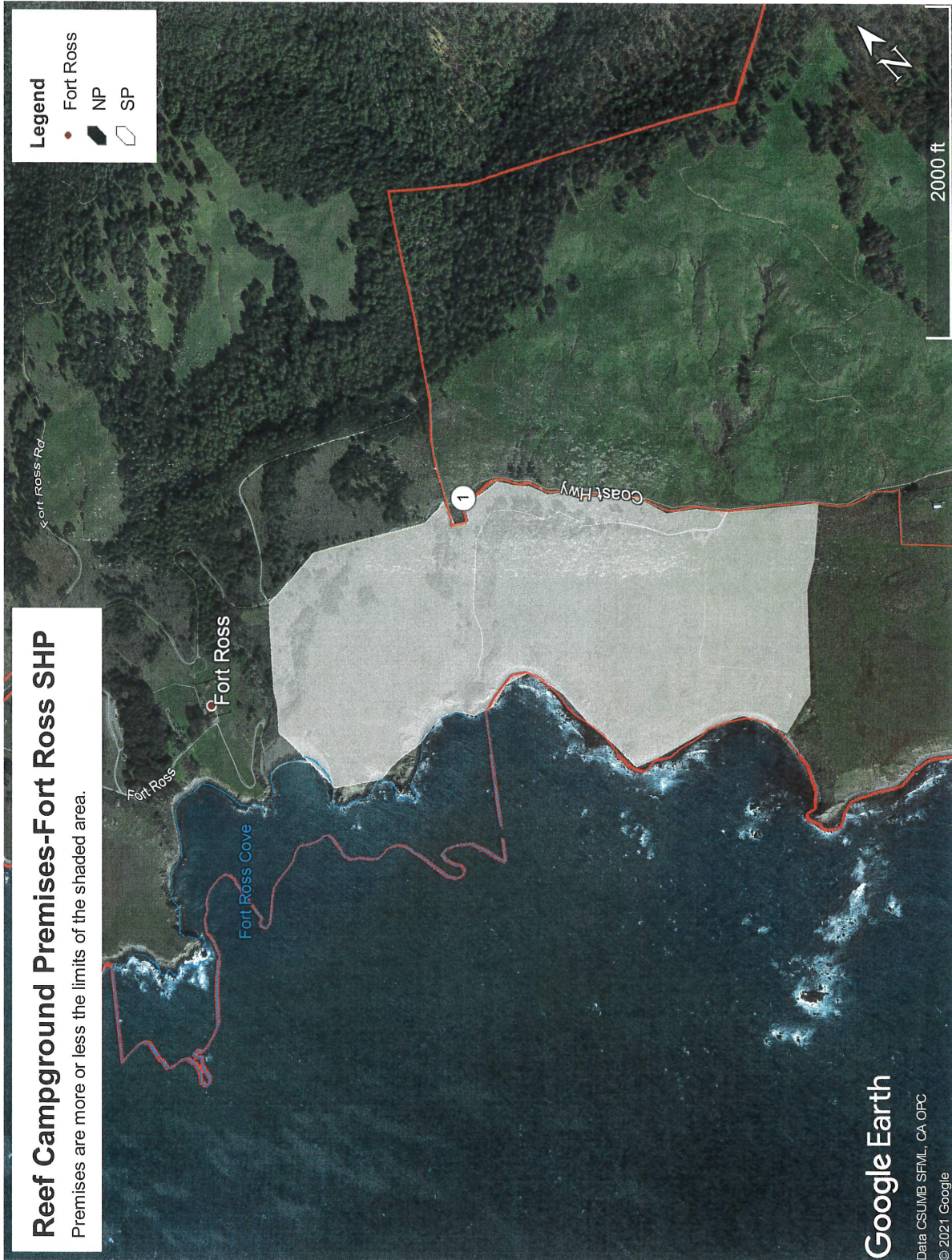
Date: 9/1/2021

**APPROVED:**



**DEPARTMENT OF GENERAL SERVICES:** \_\_\_\_\_

**53. EXHIBIT A: Premises**







## 54. EXHIBIT B1: License/Permission for Use of Trademarks

### LICENSE/PERMISSION FOR USE OF TRADEMARKS

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION

REQUESTER NAME  
Fort Ross Conservancy hereafter called the "Licensee."

Subject to the terms and conditions of this Agreement, the California Department of Parks and Recreation (the "Department") grants permission to use certain trademarks (the "Mark(s)"), created and owned by the Department, in accordance with the terms and conditions of this License, identified as follows:

**California State Parks logo USPTO Reg. No. 2437051**

See attached exhibit "A" for additional provisions regarding use of the logo, including specifications, registration, and logo usage guidelines.

The Department hereby grants to the Licensee the non-exclusive, non-transferable, non-sublicenseable right and license to use, reproduce, duplicate and distribute the Marks pursuant to the terms and conditions of this license for a term of one year from the date of execution by both parties but not to exceed the duration of the Co-Management agreement between the Department and Licensee. This License is intended to run concurrently with the Co-Management agreement and shall automatically terminate upon early termination of said agreement. Licensee shall own all right, title and interest in and to the new works created; provided, however, that the Department shall retain all right, title and interest in and to the Marks provided hereunder.

This license shall authorize the use of the Marks and associated goodwill, in connection with the following only:

Fort Ross State Historic Park

Any additional use shall require written permission and/or the payment of fees. This permission is non-transferable and non-sublicenseable (except as described above). This is not an exclusive privilege to the user, and the Department reserves the right to make the Marks available to others.

One copy of any published work or product using the Marks pursuant to this grant of license must be provided to the Department at no cost to the Department unless agreed otherwise in writing. Licensee shall not modify or alter the Marks in any way without prior written approval from the Department.

All uses of the State Parks Mark must be accompanied by the trademark symbol TM until such time that Licensee is notified by the Department that the federal registration symbol (®) should be used. All uses of the California State Parks logo must be accompanied by the trademark symbol ®.

IN NO EVENT SHALL THE DEPARTMENT BE LIABLE FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT. THE DEPARTMENT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. PERMISSION TO USE THE MARKS IS GRANTED "AS IS."

Licensee agrees to indemnify, protect, hold harmless, and defend the Department from and against any liability that might arise from any and all use of the Marks by Licensee, its licensees, successors or assigns.

Licensee agrees to pay the Department, upon acceptance of this Agreement, all expenses as follows:

Goodwill and Quality Control

A. Licensee recognizes the great value and goodwill associated with the Marks and acknowledges that such goodwill belongs to the Department. Licensee further acknowledges that the Marks have acquired a secondary meaning among the public. Licensee agrees not to take any action that could be detrimental to the goodwill associated with the Marks or to the Department.

B. The Department shall have the right to approve the quality of any reproduction of the Marks on any materials, as well as the associational use or co-joining of the Marks with any event, cause, or third party. The Department shall not unreasonably withhold such approval.

C. Licensee agrees to inspect and approve its own sponsored uses of the Mark(s) to ensure quality and content of materials, consistent with the good will represented by the Mark(s).

Third Party Infringement

The Department, at its sole discretion, shall take whatever action it deems advisable in connection with any unauthorized use of the Marks by a third party. The Department shall bear the entire cost and expense associated with any such action, and any recovery or compensation that may be awarded or otherwise obtained as a result of any such action shall belong to the Department.

**The provisions above constitute page 1 of 2 of this agreement. Page 2 must be initialed by both parties for this agreement to be valid.**

AGREED AND ACCEPTED			
DocuSigned by: State of California Department of Parks and Recreation		DocuSigned by: LICENSEE Fort Ross Conservancy	
BY <i>Armando Quintero</i> 8637583B53AB4CD	DATE 8/31/2021	BY <i>Sarah Sweedler</i> 9864819DF26B4E3	DATE 8/31/2021
Armando M. Quintero		Sarah Sweedler, Executive Director	
TITLE Director	DISTRICT/SECTION California State Parks	ADDRESS 19005 Coast Highway 1, Jenner, CA 95450	
PHONE NO. 916 651-1153	EMAIL Armando.Quintero@parks.ca.gov	PHONE NO. 530-273-8522	EMAIL sarahs@fortross.org

03/2005



**LICENSE/PERMISSION FOR USE OF TRADEMARKS**

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION

The provisions below constitute page 2 of 2 of this agreement. This page must be initialed by both parties for this agreement to be valid.

Ownership Rights

Licensee acknowledges the Department's exclusive right, titles and interest in and to the Marks. Licensee further covenants that it shall not at any time challenge or contest the validity, ownership, title and registration of the Department in and to the intellectual property or the validity of this License. Licensee's use of the Marks shall inure to the benefit of the Department. If Licensee acquires any trade rights, trademarks, equities, titles, or other rights in and to the Marks, by operation of law, usage, or otherwise, Licensee shall, upon the expiration of this License, assign and transfer the same to the Department without any consideration other than the consideration of the License. All rights not specifically transferred by this License are reserved to the Department.

Termination

A. The Department shall have the right to terminate the License without cause upon sixty (60) days notice, whereupon all rights granted herein shall revert immediately to the Department.  
B. Upon early termination by the Department or by expiration of the License, the License shall terminate, Licensee's rights shall cease immediately and Licensee shall discontinue all use of the Marks and/or other licensed property at once. Licensee shall dispose of all goods, works and materials bearing or relating to the Marks in accordance with the Department's instructions.

No Partnership or Agency Created

Nothing herein shall be construed to constitute the parties hereto as partners or joint venturers, nor shall any similar relationship be deemed to exist between them. Further, nothing in this License shall make one party the agent of the other, and neither party has power or authority to bind the other.

Applicable Law

This License shall be construed in accordance with the laws of the State of California; Licensee consents to jurisdiction of the courts of Sacramento, California.

Integration

This License, the \_\_\_\_\_ Co-Management \_\_\_\_\_ agreement, and Exhibit A attached hereto constitute the entire agreement between the parties hereto and shall not be modified, amended, or changed in any way except by written agreement signed by both parties hereto. This License shall be binding upon and shall inure to the benefit of the parties, their successors, and assigns.

Notices

All notices and reports to be sent to the Department shall be in writing and shall be mailed or delivered to California Department of Parks and Recreation, Partnerships Office, PO Box 942896, Sacramento, CA 94296-0001. All notices to be sent to Licensee shall be mailed or delivered to the address specified on the first page of the License form. All notices and reports shall be deemed delivered immediately upon personal delivery, or, if mailed, three (3) days after being deposited in the United States mail system, postage prepaid, first class mail, and properly addressed. The Department and Licensee shall provide notice to the other of any change in address.

Modifications

This License may not be modified except by a written instrument, signed by both parties, making specific reference to this License by date, parties and subject matter.

Severability

The invalidity or unenforceability of any provision of this License, or the invalidity or unenforceability of any provision of this License as applied to a particular occurrence or circumstance, shall not affect the validity or enforceability of any of the other provisions of this License or any other applications of such provisions, as the case may be.

Attorneys Fees

If litigation becomes necessary to secure compliance with the terms and conditions of this License, to recover damages and/or to terminate the License, the prevailing party in any legal action shall be entitled to recover reasonable attorney fees and expenses incurred.

DS		DS	
L1P		[Signature]	
<b>AGREED AND ACCEPTED</b>			
LICENSOR'S INITIALS	DATE	LICENSEE'S INITIALS	DATE
▷	9/1/2021	▷	8/31/2021

## **55. EXHIBIT B2: License/Permission for Use of Trademarks**

### **California State Parks License/Permission for Use of Trademarks Exhibit A**

#### **Logo Use by External Entities**

Use of the logo is restricted to Department publications and activities, unless the Department allows otherwise. Use of the logo by external entities must not be allowed unless any association created through use of the logo is consistent with promoting the goodwill of the Department and the Department's goals. Logo use by external entities must be documented with specific licensing language, signed by both parties, either as part of a contract or as a stand-alone licensing agreement. When the Department allows the logo to be used by an external entity on material not copyrighted to the Department, the following policies apply:

- A written license agreement must be executed by the Department and the third party entity, confirming the terms and conditions of use. This may be incorporated into an existing agreement (e.g., a cooperating association contract, concession contract, or donor agreement) or may be crafted as a separate license agreement. Separate license agreements must be approved by the Interpretation and Education Division.
- The logo may not be the most prominent design element (unless the license agreement states otherwise, such as when the logo is used on uniforms and merchandise).
- The logo may not be used in a manner that implies editorial content has been authored by or represents the views or opinions of the Department.
- The logo may not be used in any venue that displays adult content, promotes gambling, involves the sale of tobacco or alcohol, or otherwise violates applicable law.
- The logo may not be used in a manner that is determined by the Department in its sole discretion to be misleading, defamatory, infringing, libelous, disparaging, obscene, or otherwise objectionable.
- For each specific use of the logo (except in the cases of use by cooperating associations and concessionaires), advance approval must be obtained from the Chief of the Interpretation and Education Division.

#### **Visual Display of the Logo**

Unless otherwise authorized by the Chief of the Interpretation and Education Division, use the logo only as represented in these Guidelines.

#### **Registration Symbol**

- Because the logo is a trademark registered with the U.S. Patent and Trademark Office, the registration symbol ® must be used in connection with each use of the logo, unless it is infeasible from a design or fabrication standpoint (such as for patches or decals).

#### **Logo Components**

- Do not alter the logo components or use the components of the logo separately. For instance, the bear cannot be used alone or replaced with another element and/or the lettering cannot be used without the bear or replaced with different words.
- The font used for the text in the logo is Lithos. The text in the logo has been converted so that users do not need to have this font loaded on their computers in order to reproduce the logo.

#### **Colors**

- It is best to reproduce the logo using the Pantone (PMS) colors shown below. When reproducing these colors in four-color process inks (CMYK), or on screen (RGB), the screen tints listed below



should be used. The following Pantone colors are used in the design of the logo: PMS 123-Yellow, PMS 281-Blue, PMS 364-Green, PMS 490-Brown, PMS 4715 Brown (outline). The yellow background is a gradation of PMS 123. No other colors may be used in the four-color version of the logo.

PMS 123-Yellow	CMYK: C-0, M-21, Y-88, K-0	RGB: R-253, G-200, B-47
PMS 281-Blue	CMYK: C-100, M-85, Y-5, K-20	RGB: R-0, G-38, B-100
PMS 364-Green	CMYK: C-73, M-9, Y-94, K-39	RGB: R-66, G-119, B-48
PMS 490-Brown	CMYK: C-29, M-85, Y-54, K-72	RGB: R-91, G-43, B-47
PMS 4715-Brown	CMYK: C-13, M-47, Y-43, K-38	RGB: R-150, G-109, B-91

- Do not convert the four-color logo to grayscale. Instead use the black-and-white version of the logo.
- Do not copy the four-color logo on a black ink photocopier (except in the case of providing printouts of presentations that use the logo). Instead the black-and-white version of the logo should be used.
- The logo, in both four-color and black-and-white, may be used on colored paper and fabric.
- When printing in one or two colors, use the black-and-white version of the logo in a color being used for printing. When printing in two colors, the logo should be printed in the darker of the two colors.
- When embroidering the logo or screening it onto fabric, use the four-color version of the logo or reproduce the logo in any single color. Do not reproduce the logo in any two- or three-color combinations.

#### Appearance

- The logo must always appear clear and crisp. In order to meet this requirement, it should be printed at a minimum of 300 DPI.
- Do not tilt, skew, or distort the logo.
- In order to maintain clarity, do not use the logo at a size smaller than 5/8" in diameter.
- Reproduce the logo only from camera-ready proofs or electronic printing files. Do not redraw or trace the logo.
- Do not download and use the logo from the Department's web site. It is not suitable due to its low resolution.

#### Placement

- Do not crop, overprint, screen or superimpose the logo or print it behind art or copy.
- To make sure the logo stands out clearly, it must be placed within an area of unobstructed space. This also applies to the placement of the logo relative to the edge of a page or screen. There are two ways to determine the clear zone around the logo:
  1. The space must be the height of the letter "I" in the word "CALIFORNIA" in the logo.
  2. The space must be approximately 1/8 of the width of the logo. For example, if the logo is 2 inches across, then the clear zone would measure 1/4 of an inch.

