April 16, 2014

AGREEMENT

BETWEEN: STATE OF OREGON acting by and through the Oregon Parks and Recreation Department ("Department")

AND: OREGON STATE PARKS FOUNDATION, an independent, federally tax exempt, 501(c)(3) nonprofit, organization having its principal office in Portland, Oregon and being a "donor organization" under Oregon Administrative Rule 736-002-0015(3)(f) ("Foundation")

The Department and the Foundation are sometimes individually referred to herein as a "Party" or collectively as "Parties."

RECITALS

a. The purpose of this Agreement is to further the strategic priorities of the Department and to specifically set forth the resources to be provided by the Department and the deliverables and services to be provided by the Foundation.

b. The 2013 Oregon Legislature enacted Oregon law, chapter 299, section 2, authorizing the Director of the Department to enter into agreements with private, nonprofit

organizations by which such organizations shall solicit and donate gifts, grants and donations for the benefit of the Department.

c. The Oregon Parks and Recreation Commission subsequently approved Oregon Administrative Rule ("OAR") 736-002-0015 to provide procedures regarding agreements with donor organizations, including necessary provisions and notifications.

d. A proposal to enter into an agreement was submitted in October 2013 by the Foundation in accordance with that rule, and that proposal was evaluated by the Department and it formed the basis of this Agreement.

e. The Foundation's mission is to *enrich the experience of Oregon state parks for generations to come.* By inspiring a new generation of users and by growing statewide membership, the Foundation will enhance its ability to add value to state parks by raising funds to support iconic projects as well as add people to the equation – volunteers, and contributors.

f. While the Foundation provides charitable donations to improve Oregon state parks, it must remain independent from the Department in order for it to fulfill its obligations as an independent operating entity under section 501(c)(3) of the IRS Code and the Nonprofit Act of the State of Oregon. This Agreement together with the bylaws of the Foundation and independent governance by its Board of Trustees ensure a proper separation.

g. The Department retains ultimate authority over everything that happens to or regards Oregon state parks. Funds provided by the Foundation enhance but do not supplant public support or governance. Foundation and Department funds are not commingled, and this

Agreement is intended to ensure transparency and public trust around how Department resources and Foundation donations are accounted for.

h. The intention of this Agreement is for the Foundation to solicit, receive, and subsequently transfer a net benefit of Donations to the Department to enhance its work as a park and recreation provider.

NOW THEREFORE, the situation being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

ARTICLE 1 - DEFINITIONS

1.1 "Administrative Charge" shall refer to the percentage of a Donation that is used or retained by the Foundation to cover its administrative and operating costs;

1.2 "Agreement" shall collectively refer to and mean this agreement and accompanying Exhibit A (Intent to Fundraise Form), Exhibit B (Department Resources) and Exhibit C (Insurance Requirements), which are incorporated herein by this reference;

1.3 "Annual Review Meeting" shall refer to the meeting between the Parties to be held in the month of December each calendar year through the term of this Agreement, and initially upon execution of the Agreement, with the exact date set by the Foundation for the purpose of establishing, reviewing, and renewing fundraising priorities and activities that the Parties agree are likely to benefit the Department, State Parks, or both;

1.4 "Annual Ledger" shall refer to the report due from the Foundation in the month of January each calendar year beginning after the Effective Date and continuing through the term of this Agreement that accounts for the Department Resources as debits and Donations as credits;

1.5 "Capital Project" shall mean a project that results in a new Department asset such as, but not limited to, a building, transportation facility, utility system, or property right that has a replacement value in excess of $5,000;

1.6 "Department" shall refer to the Oregon Parks and Recreation Department, an entity of the State of Oregon government, established under Oregon Revised Statutes, chapter 390;

1.7 "Department Resources" shall refer to those goods or services identified as available for transfer in Exhibit B by the Department for use by the Foundation;

1.8 "Donations" shall refer to gifts, grants, cash donations, goods, and volunteer service donations made for the ultimate benefit of the Department;

1.9 "Donors" shall refer to the people, organizations, and entities of government who make Donations;

1.10 "Effective Date" shall refer to the date this Agreement has been signed by all Parties and all required State of Oregon approvals have been obtained;

1.11 "Foundation" shall refer to the Oregon State Parks Foundation, an independent, federally tax exempt, 501(c)(3) nonprofit, organization having its principal office in Portland, Oregon and being a "donor organization" under OAR 736-002-0015(3)(f);

1.12 "Gateway" shall refer to a requirement or set of requirements that must be completed in order for a fundraising project phase to be considered complete and thereby trigger the commencement of a subsequent project phase;

1.13 "General Donations" shall refer to Donations made that are not associated with or attributed to a Priority Campaign;

1.14 "General Donation Initiative" shall refer to a general effort or approach to raising Donations that is not centered around a specific target project or Priority Campaign, but is characterized by a type of fundraising method or use of Department Resources such as, but not limited to, a Foundation direct mail effort with day-use parking pass incentive or installation of a park donation kiosk;

1.15 "Intent to Fundraise Form" shall refer to a written statement in a format generally as provided in Exhibit A that is acceptable to the Department and establishes the specific plans and details regarding a fundraising effort pursuant to this Agreement;

1.16 "Party" shall refer to the Department or the Foundation individually, and "Parties" shall refer to the Department and the Foundation collectively;

1.17 "Priority Campaign" shall refer to specific, major initiative areas for fundraising and may consist of Capital Projects or Programmatic Projects.

1.18 "Programmatic Project" shall refer to efforts to raise funding or in-kind goods and services to support a program area of mutual interest such as, but not limited to, the Let's Go program, volunteer appreciation, or brand awareness;

1.19 "Restricted Donations" shall refer to Donations that come with Donor conditions or restrictions, for example, a condition that a Donation may only be used at a particular park or for a particular project;

1.20 "State Parks" shall refer to the lands and access points managed by the Department in the State of Oregon;

ARTICLE 2 - SCOPE OF SERVICES

2.1 *Solicit Donations.* The Foundation shall seek Donations using the following approach:

2.1.1 *Annual Review Meeting.* The Foundation shall initiate, organize, and hold an Annual Review Meeting with the Department.

2.1.2 *Intent to Fundraise Form.* The Foundation shall submit to the Department, and the Department will evaluate for approval, an Intent to Fundraise Form for each new Priority Campaign or General Donation Initiative, or, in the case of an ongoing effort, an annual updated Intent to Fundraise Form.

2.1.3 *Fundraising.* The Foundation shall implement Priority Campaigns and General Donation Initiatives in accordance with the terms and conditions of a Department-

approved Intent to Fundraise Form and the provisions of this Agreement. If a new Intent to Fundraise Form or an updated Intent to Fundraise Form is not accepted and signed by the Department, then it is not agreed to, and therefore not valid.

2.1.4 *Department Resources.* The Foundation shall only use and leverage Department Resources made available by the Department in accordance with an approved Intent to Fundraise Form to accomplish agreed upon Priority Campaigns and General Donation Initiatives.

2.1.5 *Restricted Donations.* The Foundation shall offer opportunities for Donors to make Restricted Donations as part of a Priority Campaign or as a General Donation Initiative only as consistent with an approved Intent to Fundraise Form, or as otherwise approved by the Department in advance in writing. If a proposed restriction is not consistent with Department policy or otherwise acceptable to the Department, the Foundation shall seek alternative terms and conditions for the Donation in consultation with the Donor and the Department.

2.1.6 *Foundation Responsibilities.* The Foundation shall be responsible for the following deliverables, services, and related costs for each Priority Campaign and General Donation Initiative, including but not limited to:

.01 planning and operations;

.02 developing, producing, and distributing solicitation materials including provision of all office materials, supplies, photocopying, and postage;

.03 creating and maintaining Priority Campaign and General Donor Initiative content on the Foundation's website;

.04 identifying and soliciting prospective Donors;

.05 providing financial and administrative services related to Donations, Priority Campaigns, and General Donation Initiatives;

.06 entering and maintaining records of Donors and Donations;

.07 acknowledging and thanking Donors;

.08 fulfilling donor incentives and premiums offered in accordance with this Agreement;

.09 planning and carrying out special events;

.10 advertising and marketing;

.11 paying for travel and other related expenses incurred by Foundation staff and volunteers;

.12 writing and sending required funding reports as required by Donors;

.13 processing Department-project invoices including printing and mailing reimbursement checks to the Department;

.14 providing and paying for staff and contractors, who are employed by the Foundation.

2.1.7 *Periodic Review.* The Foundation shall periodically review progress on Priority Campaigns and General Donation Initiatives with the Department throughout the course of each year, and at the Annual Review Meeting and to consider, as needed, potential changes, additions, or amendments.

2.1.8 *Donor Communications.* While engaged in a Priority Campaign or General Donation Initiative, prior to accepting a Donation, the Foundation shall clearly communicate to prospective Donors, the following information, that:

.01 The Foundation is an independent, federally tax exempt, 501(c)(3) nonprofit, organization authorized to receive Donations in support of its mission including but not limited to benefitting the Department and enriching the experience of, access to, and appreciation of State Parks;

.02 The Foundation is independent from the Department and does not act at the behest of, does not perform as an agent for, and cannot represent, compel, or commit the Department in any way;

.03 Checks for Donations solicited pursuant to this Agreement should be made payable to the Foundation, which shall be exclusively responsible for such Donations;

.04 All Donations shall be subject to compliance with Department policy, rule, and governing statute, which may limit the ability of the Department to accept or expend proposed restrictions on donations;

.05 Restricted Donations shall be dedicated to that restricted use less any disclosed Administrative Charge;

.06 There is a Foundation policy on the return or repurposing of Priority Campaign and Restricted Donations, if the intended project is cancelled or overfunded;

.07 No information provided by the Foundation or the Department may be received or relied upon by a Donor as advice about the legal, tax, or accounting consequences of any Donation, and that such determinations and considerations are the sole responsibility of the Donor.

2.1.9 *Donation Acknowledgement.* The Foundation shall provide written and timely acknowledgement to all Donors for all Donations.

2.2 *Transfer Donations.* The Foundation shall transfer Donations to the Department using the following approach:

2.2.1 *Transfer Discretion.* Donations shall be transferred to the Department at the Foundation's discretion and in accordance with its mission. Restricted Donations shall be disbursed to the Department at the discretion of the Foundation, consistent with the Donor's wishes and any requirements of the Department, including those in the written approval required under section 2.1.5 of this Agreement.

2.2.2 *Investment Income.* When appropriate, as determined by the Foundation, income from investments made from the holding of Donations shall be transferred to the Department.

2.2.3 *Priority Campaigns.* The Foundation shall transfer Donations raised from Priority Campaigns to the Department in accordance with the agreed upon Intent to Fundraise Form and in close coordination with the Department's Accounting Manager by:

.01 meeting Gateways per the agreed upon Intent to Fundraise Form prior to informing the Department of Donation availability;

.02 informing the Department's Accounting Manager of Donation availability, Administrative Charges to be retained, and confirming details of any previously approved Restricted Donations, prior to transfer;

.03 providing remittances of Donations to the Department's Accounting Manager within thirty (30) calendar days of the Foundation's receipt of a Department invoice;

.04 informing the Department in a timely manner, but no later than the Annual Review Meeting, if insufficient funds are raised to complete a Priority Campaign or advance beyond a Gateway so that the Department and Foundation can work together to decide whether to amend the schedule, abandon the campaign, or re-prioritize the use of any Donations raised and secure any required Donor approval for such re-prioritization;

.05 closing out Priority Campaigns in accordance with the terms of the agreed upon Intent to Fundraise Form and this Agreement, and communicating the completion of the campaign to the Department.

2.2.4 *Donation Management for Priority Campaigns.* The Foundation shall manage Donations associated with Priority Campaigns by:

.01 reallocating any Donations raised beyond what is sufficient to meet the scope of the Priority Campaign in accordance with current Foundation policy unless otherwise specified by the Donor;

.02 accruing any interest or dividends earned on the Donations raised for the Priority Campaign to the Foundation as unrestricted revenues unless otherwise specified by the Donor;

.03 refraining from investing Donations raised from Priority Campaigns in any instrument with a maturity that would restrict the ability to make the needed transfers in accordance with the agreed upon Intent to Fundraise Form, unless it obtains the Department's advanced written consent.

2.2.5 *General Donation Initiatives.* The Foundation shall transfer Donations from General Donation Initiatives to the Department in accordance with the agreed upon Intent to Fundraise Form and in close coordination with the Department's Accounting Manager by:

.01 transferring to the Department, on at least a semi-annual basis, the timing of which to be agreed upon by the Parties to best coincide with their respective fiscal years, any available Donations from General Donation Initiatives held by the Foundation and received for the purpose of benefitting the Department;

.02 informing the Department's Accounting Manager of available Donations from General Donation Initiatives, Administrative Charges to be retained, and confirming details of any previously approved Restricted Donations, prior to transfer;

.03 providing remittances of General Donations to the Department's Accounting Manager within thirty (30) days of the Foundation's receipt of a Department invoice;

2.2.6 *Administrative Charges.* The Foundation shall retain Administrative Charges not to exceed 25% of Donations for Priority Campaigns, Restricted Donations, and Donations from General Donation Initiatives and in accordance with an agreed upon Intent to Fundraise Form. The Foundation shall retain Administrative Charges upon transfer of the Donation to the Department.

2.3 *Report on Activities.* The Foundation shall report on activities carried out pursuant to this Agreement as follows:

2.3.1 *Annual Ledger.* The Foundation shall provide a report to the Department in January of each year that accounts for and summarizes the following information as it occurred in the previous calendar year and cumulatively for the term of this Agreement:

.01 types, amounts, and value of Department Resources conveyed to the Foundation for leveraging Donations (i.e., debits);

.02 types, amounts, and value of Donations transferred by the Foundation to the Department (i.e., credits);

2.3.2 *Financial Reports.* The Foundation shall provide a copy of its IRS Form 990 and its annual financial reports to the Department on an annual basis within sixty (60) days of its filing.

2.3.3 *Priority Campaign Reporting.* For Priority Campaigns, the Foundation shall:

.01 submit information in accordance with any reporting requirements in an agreed upon Intent to Fundraise Form;

.02 provide a summary monthly report on progress including progress towards Gateways of Priority Campaigns;

.03 provide the Department's Accounting Manager with a final accounting of expenditures made including any in-kind, volunteer hours with rates, and donated material costs upon completion of Priority Campaigns for Capital Projects;

.04 report at the Annual Review Meeting on the status of all outstanding Priority Campaigns including, but not limited to, a detailed accounting of Donations pledged and received, Donations transferred to the Department, Administrative Charges retained, Department Resources attributed to campaigns, progress towards

Gateways, and a recommendation to either renew or close campaigns.

2.4 *Department Resources.* The Department will provide the Foundation with the goods or services described in Exhibit B, which includes the estimated cost of Department Resources and the manner in which the Department will provide such goods or services.

ARTICLE 3 - COMPENSATION FOR SERVICES

3.1 *Consideration.* The Parties agree that the Foundation's duties under this Agreement are not directly monetarily compensated by the Department and that the Foundation is executing this Agreement in consideration of and solely for the purpose of assisting in the betterment of State Parks and advancement of the Department's mission.

3.2 *Net Flow.* The Parties agree that the intent of this Agreement is to generate a positive net flow of Donations above and beyond the value of Department Resources from the Foundation to the Department for Priority Campaigns and General Donation Initiatives through the term of the Agreement. All values of Department Resources that are provided are to be calculated at their fair market value at the time of transfer to the Foundation.

3.3 *Cost of Department Resources.* Both Parties shall account for the cost of Department Resources used to leverage Donations and the Foundation shall report this cost in the Annual Ledger. The Foundation shall not be invoiced for Department Resources other than as a debit in the Annual Ledger.

3.4 *Administrative Charges.* The Foundation shall retain an Administrative Charge not to exceed 25% of Donations solicited on behalf of the Department that is intended to cover the Foundation's administrative and operating costs. This Administrative Charge must be disclosed to Donors prior to accepting a Donation and the amount must be reported to the Department at the Annual Review Meeting or upon request. The Administrative Charge shall be specified in each agreed upon Intent to Fundraise Form and incorporated into campaign budgets. The Administrative Charge may be Donor specific rather than campaign specific so long as it does not exceed what was agreed upon in the applicable Intent to Fundraise Form.

ARTICLE 4 - SCHEDULE OF PERFORMANCE

4.1 *Performance.* The Foundation shall provide the deliverables and services according to the following schedule each year through the term of this Agreement:

4.1.1 *Annual Schedule.* In accordance with the specific provisions of this Agreement, the Foundation shall:

.01 conduct the Annual Review Meeting;

.02 make at least semi-annual transfers of available Donations to the Department;

.03 provide the Annual Ledger to the Department in January;

.04 provide IRS Form 990, and annual financial reports within sixty (60) calendar days of filing.

4.1.2 *Project Schedules.* The Foundation shall adhere to the schedules in each agreed upon Intent to Fundraise Form.

ARTICLE 5 - GENERAL TERMS AND CONDITIONS

5.1 *Entire Agreement.* This Agreement shall constitute the entire agreement between the Parties, and is intended to describe duties and responsibilities of the Parties with regard to the services to be provided hereunder. This Agreement supersedes any and all written or verbal agreements between the Parties with regard to the subject matter of this Agreement, and this Agreement may not be amended or modified except in a written instrument duly executed by the Parties hereto and all necessary State approvals have been obtained. Any failure by either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

5.2 *Agreement Controls.* To the extent this Agreement conflicts with the terms of any proposal, form, work plan, invoice, or other document submitted to or by either Party, the terms of this Agreement shall be controlling. In the event that any of the terms and conditions herein conflict with the terms and conditions of any accompanying exhibit, the terms and conditions herein shall control.

5.3 *No Agency Relationship.* The Foundation understands and agrees that it is not an "officer", "employee", or "agent" of the Department (or any other agency, office, or

department of the State of Oregon), as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary. Neither Party shall make any statements, representations, or commitments of any kind or to take any action binding on the other without the explicit prior written approval of the Party to be bound.

5.4 *Authority to Refuse Donation.* The Department may at its sole discretion refuse any Donation or disallow any Department Resource from being conveyed, used, or leveraged by the Foundation.

5.5 *No Shared Governance.* No Foundation employee or member of the Foundation Board of Trustees may serve on the State Parks and Recreation Commission, and no Department employees or member of the State Parks and Recreation Commission may serve on the Foundation Board of Trustees provided that the Department Director may serve as an ex-officio, nonvoting member.

5.6 *Fund Separation.* The Department shall track all Donations accepted by the Department pursuant to this Agreement separately from other public funds as subaccounts of the State Parks and Recreation Fund.

5.7 *Ownership.* All Donations including but not limited to funds, gifts, grants, donations, assets, goods, materials, facilities, information, products, or service deliverables conveyed by the Foundation to the Department or purchased or earned by the Department with such Donations are or become the property of the Department subject only to any pre-agreed restrictions or conditions as agreed upon in writing.

5.8 *Constraint of Limitation.* The Foundation understands that the Department's expenditure of accepted Donations are constrained by available budget limitation and that this may affect schedules, project completion dates, and expectations about when accepted Donations are used.

5.9 *Donor Confidentiality.* The Foundation understands and acknowledges that the Department, as a public entity, is subject to public records and public meetings laws; however, both the Department and the Foundation will take all reasonable measures to protect donor confidentiality and the privacy of Foundation business to the fullest extent allowed by law. If the Department receives from a third party any request under the Oregon Public Records Law for disclosure of information pertaining to a Donor or the Foundation's business, the Department shall notify the Foundation within a reasonable period of time of the request. The Foundation is exclusively responsible for defending the Foundation's position concerning the confidentiality of the requested information. The Department is not required to assist the Foundation in opposing disclosure of confidential information.

5.10 *Grant Coordination.* The Parties shall collaborate, consult, and coordinate on State and Federal grant solicitation and grant management activities relevant to this Agreement.

5.11 *Use of State Seal.* The Foundation shall not use the Oregon state seal in any printed materials or on any promotional items.

5.12 *Use of Department Logo.* Any printing that includes the Department logo is subject to ORS 282.010 to 282.150, and the Foundation shall comply with these restrictions. The Foundation may use the Department logo, name, names of parks and programs, images

provided by the Department, and other information associated with the identity or brand of the Department only under separate written permission for each instance and the Foundation shall cease use of such information immediately upon written request of the Department, without liability to the Department.

5.13 *Notice of Public Communications.* The Parties shall give each other reasonable notice of and submit to the other in advance for review any press release, brochure, advertisement, press or public event that the Parties plan to undertake in connection with the Agreement and shall afford the other Party an opportunity to participate in any such undertakings.

5.14 *Disputes.* If the Parties are unable to resolve issues of dispute arising under or relevant to the terms set forth in this Agreement, the Parties agree to seek non-binding mediation to reach a resolution. The Parties agree that the laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any Party bringing a legal action or proceeding against the other Party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. Notwithstanding the above, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the U.S. District Court for the District of Oregon. This section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This section is also not a

waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

5.15 *Access to Records and Audits.* The Parties shall maintain complete and accurate records in readily accessible files on all of their activities in connection with this Agreement including the keeping of accounting records and data in accordance with generally accepted accounting practices. The Parties shall provide copies of documents to each other upon request, as permitted by law. Using standard accepted accounting and fiscal record practices, the Foundation shall maintain records of the receipt and expenditure of all funds subject to this Agreement for a minimum period of six (6) years after the end of the Agreement, or for such longer period as may be required by applicable law or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Accounting records related to this Agreement will be maintained so as to be easily extracted from overall Foundation accounting records. The Oregon Secretary of State, Attorney General of the State of Oregon, and the Director of Department or any other duly authorized representative of the Department shall have access to and the right to examine any records of transactions related to this Agreement for a minimum of six (6) years after the termination of this Agreement or per applicable law.

5.16 *Credit Cards.* The Foundation shall ensure that all credit card transactions occurring pursuant to this Agreement comply with the Payment Card Industry Data Security Standards and the Oregon Identity Theft Act.

5.17 *Breach of Security.* The Foundation shall not breach or permit breach of the security of any personal information as that term is used in ORS 646A.602(11), that is contained in any document, record, compilation of information or other item to which the Foundation receives access, possession, custody or control under this Agreement. The Foundation shall report to the Department, as promptly as possible, any failure to meet this standard.

5.18 *Default.* Either Party shall be in default of this Agreement if it fails to perform or observe any of its obligations under this Agreement, and such failure continues or is not remedied to the satisfaction of the other Party within thirty (30) calendar days after written notice from that Party specifying the failure. If the failure is of such a nature that it cannot be remedied within the thirty (30) calendar day period, the Party shall not be in default as long as it begins diligently to remedy the failure and continues diligently until the failure is corrected.

5.19 *Evaluation.* The Department shall evaluate the Foundation's performance based on the results reported and confirmed in the Annual Ledger, and satisfactory completion of duties specified in this Agreement.

5.20 *Termination.* This Agreement may be terminated by either Party for any reason without cause upon thirty (30) calendar days written notice to the other Party. In addition, at its sole discretion, the Department may terminate this Agreement:

.01 immediately upon written notice, if the Department fails to receive funding, appropriations, limitations, allotments or other

expenditure authority at levels sufficient to allow the Department, in the exercise of its reasonable administrative discretion, to perform its obligations under this Agreement; or

.02 immediately upon written notice, if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Department's participation under this Agreement is prohibited.

Upon termination of this Agreement, the Foundation shall immediately deliver to Department all of Department's property (including without limitation any Department Resources) that is in the possession or under the control of the Foundation. Upon receiving a notice of termination of this Agreement, the Foundation shall immediately cease all activities hereunder, unless the Department expressly directs in such notice that all or a portion such activities shall be continued during the period prior to the effective date of termination.

5.21 *INDEMNIFICATION.* INDEMNIFICATION SHALL BE AS FOLLOWS:

.01 Subject to the limitations of Article XI, § 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), the Department shall defend, save, hold harmless, and indemnify, within the limits of and subject to the restrictions in the Tort Claims Act, the Foundation against any liability for personal injury or damage to life or property arising from the State's negligent activity under this Agreement provided, however, the

State shall not be required to defend, save, hold harmless, and indemnify the Foundation for any such liability arising out of the wrongful acts of Foundation, its officers, employees or agents.

.02 THE FOUNDATION SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON AND THE DEPARTMENT AND THEIR OFFICERS, EMPLOYEES, AGENTS FROM ANY AND ALL CLAIMS, DEMANDS, SUITS, ACTIONS, PROCEEDINGS, LOSSES, DAMAGES, LIABILITIES, AWARDS, COST AND EXPENSES OF ANY NATURE WHATSOEVER (INCLUDING REASONABLE ATTORNEY FEES AND EXPENSES AT TRIAL, ON APPEAL AND IN CONNECTION WITH ANY PETITION FOR REVIEW), WHICH MAY BE BROUGHT OR MADE AGAINST THE DEPARTMENT THE STATE OF OREGON, OR THEIR AGENTS, OFFICIALS OR EMPLOYEES ARISING OUT OF OR RELATING TO THE ACTS OR OMISSIONS OF THE FOUNDATION OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS AGREEMENT, provided, however, the Foundation shall not be required to defend, save, hold harmless, or indemnify the State for any such liability arising out of the wrongful acts of the State, its officers, employees or agents.

5.22 *Control of Defense and Settlement.* The Foundation shall have control of the Defense and Settlement of any claim that is subject to section 5.20.02; however, neither the Foundation nor any attorney engaged by the Foundation shall defend the claim in the name of the State of Oregon or any Agency of the State of Oregon, nor purport to act as

legal representative of the State of Oregon or any of its Agencies, without first receiving from the Oregon Attorney General, in a form and manner determined appropriate by the Attorney General, Authority to Act as Legal Counsel for the State of Oregon, nor shall the Foundation settle any claim on behalf of the State of Oregon without the Approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that the Foundation is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

5.23 *Liability Insurance.* The Foundation shall maintain insurance as set forth in Exhibit C, which is attached hereto.

5.24 *Binding Provisions.* The provisions of this Agreement are binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, if any. Neither Party shall assign, delegate or transfer any of its rights or obligations under this Agreement without the other Party's prior written consent.

5.25 *Responsibility.* The Parties shall not be responsible for the work, direction, compensation and personal conduct of the other Party's employees, agents, contractors, subcontractors, or consultants.

5.26 *Imposition of Liability.* Nothing in this Agreement shall impose any liability or duty on a Party for the acts, omissions, liabilities, or obligations of the other Party or any of its agents.

5.27 *Investment Risk.* The Foundation assumes all risk for Donations received and invested by the Foundation, and the Department shall have no liability for losses incurred by the Foundation.

5.28 *Lobbying.* The Foundation shall report in writing any political lobbying activities related to this Agreement to the Department within seven (7) calendar days of undertaking the activity.

5.29 *Amendment and Renewal.* This Agreement may be amended or renewed by mutual written agreement of the Parties, subject to applicable law, including, but not limited to, the notice requirements in OAR 736-002-0013. No changes to or waivers of provisions of this Agreement will be valid until they have been reduced to writing, approved and signed by the Parties and all required State approvals have been obtained.

5.30 *Notices.* Unless otherwise stated, the designees named below shall be the contacts for all activities and notices related to the deliverables and services to be performed under this Agreement:

For the Foundation: John Hoffnagle, Executive Director
Oregon State Parks Foundation
888 SW Fifth Ave, Suite 1600
Portland, Oregon 97204
Phone: 503-802-5750
Email: john.hoffnagle<at>oregonstateparksfoundation.org

For the Department: John Potter, Assistant Director, Operations

Oregon Parks and Recreation Department

725 Summer St NE, Suite C

Salem, Oregon 97301-1266

Phone: 503-986-0729

Email: john.potter<at>state.or.us

5.31 *Term.* This Agreement shall be in effect from its Effective Date through January 31, 2020, unless terminated in accordance with the terms of this Agreement or renewed or extended in accordance with applicable law.

5.32 *Tax Certification.* The Foundation is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321, and 323 and the elderly rental assistance program under ORS 305.620.

5.33 *Certification.* By signature of this Agreement, the undersigned hereby certify under penalty of perjury that they are authorized to act on behalf of the respective Parties and have delegated authority to enter into this Agreement.

AGREED: The Parties, by execution of this Agreement on the date set forth below, hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.

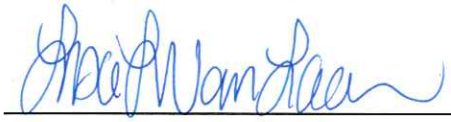
Oregon State Parks Foundation:

John Hoffnagle, Executive Director

April 15, 2014

Date

State of Oregon, by and through its Oregon Parks and Recreation Department:



Lisa Van Laanen, Director

4/15/14

Date

EXHIBIT A - INTENT TO FUNDRAISE FORM

Project Name:

Purpose of Fundraising:

Type: (e.g., Capital or Programmatic Priority Campaign, General Donation Initiative)

Scope of Work:

Projected Value of Donation:

Administrative Charge:

Department Resources Requested:

Estimated Value of Department Resources:

Target Net Donation (e.g., projected Donation less value of Department Resources received):

Strategy:

Fundraising Budget:

Foundation Staff Time:

Department Staff Time:

Fundraising Timeline:

Phasing/Gateways/Milestones:

Essential Components / Anticipated Costs:

Reach Components / Anticipated Costs:

Special Considerations:

Reporting Requirements:

Date of Reconciliation:

Signatures:

EXHIBIT B - DEPARTMENT RESOURCES

Department Resource	Manner of Request	Manner Provided	Estimated Cost	Charge to Annual Ledger
copies of Department architectural and conceptual drawings	discussions during Priority Campaign planning	electronic pdf files, typical	variable, per sheet	no charge
Department budget estimates to support Priority Campaigns	discussions during Priority Campaign planning	electronic spreadsheet, typical	variable	no charge
copies of Department appraisals, CERCLA reports and other due diligence documents	discussions during priority campaign planning	electronic, paper files, typical	variable	no charge
units of 1,000 copies of the Oregon State Parks Guide for distribution by the Foundation	Intent to Fundraise	for pick-up at Department offices	$500	at cost
promotional space in the Oregon State Parks Guide and in Department brochures and publications	discussions during publication design planning	galley proofs and finals	variable	at cost
units of 500 copies of a Department brochure for distribution by the Foundation	Intent to Fundraise	for pick-up at Department offices	$50 per unit, typical	at cost
meeting space use waivers for Foundation meetings	Intent to Fundraise, reservation with waiver	variable, per park manager	$100 per day, typical	at public rate
overnight accommodation waivers or discounts at campsites, yurts, cabins, and other available facilities	Intent to Fundraise, reservation in advance with waiver	variable, per park manager	$19-40 per night, average	at public rate

units of 100 single day use parking passes for distribution by the Foundation	Intent to Fundraise	for pick-up at Department offices	$500	at public rate
units of 100 12-month park day use parking passes for distribution by the Foundation	Intent to Fundraise	for pick-up at Department offices	$3,000	at public rate
units of 100 annual participation waivers for programs like Let's Go	Intent to Fundraise	for pick-up at Department offices	$2,800 average	at public rate
day use pass and program participation discounts	Intent to Fundraise	variable, per assistant director	variable	at public rate
Department staff time and equipment to present park information on Foundation field trips and to support volunteer work days	Intent to Fundraise, written request to park manager	variable, per park manager approved in advance	variable, $35 per hour, average	at public rate
links on Department owned or contracted websites to Foundation website	Intent to Fundraise, written request, discussions, as needed	galley proofs and finals	variable	at cost
information about Department parks, programs, visitors, projects, and events for cross promotion and distribution including photographs and video	Intent to Fundraise, written request, discussions, as needed	variable, per associate director	variable	no charge
park visitor contact information otherwise available as public records	Intent to Fundraise, written request, as needed	electronic spreadsheet files, typical	variable	at cost
Department staff time to send email directing visitors or contacts to the Foundation	Intent to Fundraise, written request, as needed	approved by staff manager in advance work order, electronic mail	$50 per hour, average	at cost
potential estate planning	ongoing	electronic	variable	at cost

or legacy donor contact information	discussions	spreadsheet files, typical		
access to park locations for conducting interpretive programs, soliciting memberships, placing brochures, and demonstrating relevant vendor products and services	Intent to Fundraise, written request to park manager, as needed	written permission, variable, per park manager and assistant director	variable	at public rate
promotion through Department channels and offering the public a "premium" 12-month day use parking pass with Foundation membership as a benefit	Intent to Fundraise	electronic spreadsheet files, typical	to be determined	at cost
non-exclusive, revocable permission to use the Department logo in promotional materials and sales products	Intent to Fundraise, written request for each instance	written permission each instance	to be determined	no charge
Department staff time to support and advise the Foundation on marketing, promotion, and electronic commerce efforts	Intent to Fundraise, written request	variable, per associate director approved in advance work order	$50 per hour, average	at cost
Department staff time to assist with Foundation grant-writing	Intent to Fundraise, written request	variable, per assistant director approved in advance work order	$55 per hour, average	at cost
printing and fulfillment of Foundation brochures	Intent to Fundraise, written request, discussions, as needed	variable, per associate director	to be determined	at cost
prototype electronic donation machines installed at park locations	Intent to Fundraise, written request, discussions, as needed	special use permit each instance	to be determined	at cost

Department promotional merchandise and sales products for electronic commerce site	Intent to Fundraise	for pick-up at Department offices	variable	at cost
Department staff time to create and maintain a database of donors	Intent to Fundraise, written request, discussions, as needed	variable, per assistant director approved in advance work order	$50 per hour, average	at cost
Department approved naming agreements that set forth necessary gifting amounts, length of memorialization, and recognition plaque locations and size	Intent to Fundraise, written request from a pre-approved naming rights inventory	provided for significant legacy endowment gifts or Priority Campaign donations	to be determined	to be determined
Department approved recognition agreements that set forth necessary gifting amounts, length of memorialization, and placement of recognition items such as trees or benches	Intent to Fundraise, written request from a pre-approved recognition inventory	variable, per park manager	variable	at cost
Department staff time to provide the Foundation with documentation of work completed with donated funds	written request, as needed	variable, per assistant director approved in advance work order	$50 per hour, variable	at cost
listing of the Foundation as a sponsor in public communications including use of the Foundation logo whenever possible	written request, discussions, as needed	variable, per associate director	to be determined	no charge
display of signs at park and project locations indicating the Foundation's involvement with the Department	written request, discussions, as needed	written special use permit or incorporation into Department materials	variable	at cost for sign materials
access to Department photos and archives	Intent to Fundraise	electronic files, typical	variable	no charge

EXHIBIT C - INSURANCE REQUIREMENTS

A. REQUIRED INSURANCE. The Foundation shall obtain at Foundation's expense the insurance specified below prior to performing under this Agreement and shall maintain it in full force and at its own expense throughout the duration of this Agreement and all warranty periods. Foundation shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to Department.

i. WORKERS COMPENSATION. All employers, including Foundation, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Foundation shall require and ensure that each of its subcontractors complies with these requirements.

ii. COMMERCIAL GENERAL LIABILITY. Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products, and completed operations. Coverage shall be written on an occurrence basis. Foundation shall provide proof of insurance of not less than the following amounts as determined by the Department: $1,000,000.

iii. AUTOMOBILE LIABILITY INSURANCE. Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Foundation shall provide proof of insurance of not less than the following amounts as determined by the Department: $1,000,000.

iv. EXCESS/UMBRELLA INSURANCE. A combination of primary and excess/umbrella insurance is acceptable. If you are using excess/umbrella insurance to meet the minimum insurance requirement, your certificate must include a list of the policies that fall under the excess/umbrella insurance. Sample wording is "The Excess/Umbrella policy is excess over General Liability, Auto Liability, etc."

B. ADDITIONAL INSURED. The Commercial General Liability insurance and Automobile Liability insurance required under this Contract shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Foundation's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

C. "TAIL" COVERAGE. If any of the required professional liability insurance is on a "claims made" basis, Foundation shall either maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Foundation's completion and Department's acceptance of all Services required under this Contract, or, (ii) The expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing 24-month requirement, if Foundation elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Foundation shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. Foundation shall provide to Department, upon Department's request, certification of the coverage required under this Section C.

D. CERTIFICATE(S) OF INSURANCE. Foundation shall provide to Department Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Foundation shall pay for all deductibles, self-insured retention, and self-insurance, if any. **The Foundation shall immediately notify the Department of any change in insurance coverage.**