

Donation Agreement
Between the
National Park Service, United States Department of the Interior
and the
County of Marin, Marin County Parks

This agreement (hereinafter "Agreement") is entered into by and between the National Park Service (hereinafter "NPS"), an agency of the United States Department of the Interior, acting through its Director, and the County of Marin, Marin County Parks (hereinafter "Donor"), acting pursuant to its applicable authorities. This Agreement sets forth the terms and conditions under which the Donor may donate in-kind to the NPS, and under which the NPS may accept those in-kind donations, in order to enable continued operations in Point Reyes National Seashore (hereinafter "PRNS") during the period when funds appropriated by the United States Congress for the operation of the National Park System are not available (hereinafter the "shutdown period"). Throughout this Agreement the NPS and the Donor may each be referred to as a "Party," and may be referred to jointly as "the Parties."

Article I - Background

A. Whereas, PRNS is located in Marin County, California and manages approximately 86,000 acres of NPS lands and annually attracts approximately 2.5 million visitors;

B. Whereas, the visitors to PRNS, through their economic activity, play a vital role in the economics and well-being of the towns, business, and cities located near or in the PRNS;

C. Whereas, the federal Anti-Deficiency Act 31 U.S.C. § 1341, prohibits federal employees from making or authorizing an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation or involving the federal government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law;

D. Whereas, as a result of a lapse in funds appropriated by the United States Congress for the operation of the National Park System, PRNS staffing levels were reduced to only essential personnel at 12:00 a.m. EDT on December 22, 2018;

E. Whereas, absent alternative funding, PRNS will remain at reduced staffing levels until Congress appropriates funds for the operation of the National Park System and the shutdown period ends;

F. Whereas, the Donor desires to donate restroom facility maintenance services (cleaning, stocking and garbage removal) to the NPS for the purpose of enabling the operation of the free-standing full-service restroom facility at the Bear Valley Visitor Center Parking Area of PRNS during part or all of the shutdown period;

G. Whereas, 54 U.S.C. § 101101 and 43 U.S.C. § 1473a authorize the Secretary of the Interior, in his administration of the NPS, to accept monies and other items, which may be donated for the purposes of the National Park System;

H. Whereas, the NPS desires to accept the Donor's donation on the terms and conditions described in this Agreement;

Now, therefore, the Parties agree as follows:

Article II - Statement of Agreement

A. The Donor agrees as follows:

1. For the sole purpose of enabling access to portions of PRNS to public use and visitation, the Donor will donate restroom facility maintenance services, for each day that PRNS is partially open to public use and visitation during the shutdown period.

2. The Donor will provide daily restroom facility maintenance services (cleaning, stocking and garbage removal) to operate and manage the Bear Valley Visitor Center Parking Lot Restroom Facility at PRNS for a period of up to 14 days beginning at 12:00 am Wednesday January 9, 2018, and ending at 11:59 p.m. on Wednesday, January 23, 2019.

3. If the Donor desires to continue to provide restroom facility maintenance services (cleaning, stocking and garbage removal) for the restroom to keep PRNS open beyond 11:59 p.m. on Wednesday, January 23, 2019, then the Donor will give notice to the NPS notice party to this Agreement. The NPS will accept, at a minimum, a donation sufficient to operate and manage portions of PRNS for three calendar days.

4. Because the shutdown of the PRNS facilities takes time and resources, the NPS will commence shutdown of PRNS facilities UNLESS THE Donor maintains that it will continue providing restroom facility maintenance services (cleaning, stocking and garbage removal) for at least the next two calendar days.

5. The Donor agrees that the donation is a gift with no conditions, and the Donor expects no benefit or credit to its contract in any form, such as reduction or abatement of its Franchise Fee or adjustment of its contract term, any reimbursement, or any other accommodation from the NPS in recognition of the donation.

6. The Donor agrees to reimburse, indemnify and hold harmless the United States of America, its agents, servants, employees, from and against any and all claims or causes of action of any kind, whether known or unknown, including without limitation claims for subrogation, indemnity, contribution, or liens of any kind or for fees, costs, expenses, survival or wrongful death that relate or pertain to or arise from, directly or indirectly, any act or omission that relates to the subject matter referenced in this Agreement.

B. The NPS agrees as follows:

1. Upon verification that Donor will be able to satisfactorily provide restroom facility maintenance services (cleaning, stocking and garbage removal), the NPS will allow public access to the Bear Valley Visitor Center Parking Lot Restroom at PRNS. The Parties understand and agree that if the Donor does not continue to provide the in-kind donation before Congress appropriates funds for the operation of the National Park System, then the NPS may immediately close any open portions of the PRNS to public use and visitation.

C. The Parties further agree as follows:

1. Notwithstanding the execution of this Agreement, the Donor has no obligation to provide any donation to the NPS.

2. The Parties' representatives who are signing this Agreement warrant that they have full authority to bind their respective parties to the terms and conditions of this Agreement.

3. Notwithstanding this Agreement, the National Park Service is under no obligation to accept the donation, and may, at any time, adjust park staffing and status as deemed necessary.

Article III - Term of Agreement

This Agreement will be effective on the date of final signature and will continue in effect for 30 days thereafter or until terminated in accordance with Article VIII below, whichever comes first.

Article IV - Designated Representatives

All notices and other written communications regarding this Agreement will be sent via email and first-class mail to the following designated representatives of the Parties:

For the NPS:

Julie Byerly, Chief Ranger, Incident Commander
National Park Service
1 Bear Valley Road
Point Reyes Station, CA 94956
Julie_byerly@nps.gov
415-464-5175

For the Donor:

Max Korten
Director, Marin County Parks
3501 Civic Center Drive, Suite 260
San Rafael, CA 94903
mkorten@marincounty.org
415-473-7010

Article V - Prior Approval

Not applicable.

Article VI – Reports

Not applicable.

Article VII - Property Utilization

Unless otherwise agreed to in writing by the Parties, any property furnished by one Party to the other will remain the property of the furnishing Party.

Article VIII - Modification and Termination

A. This Agreement may be modified only by a written instrument executed by the Parties.

B. Either Party may terminate this Agreement by providing the other Party with 24 hours' advance written notice of its intention to do so. If either Party provides the other Party with notice of its intention to terminate, then the Parties' representatives will communicate promptly to discuss the reasons for the notice and to try to resolve their differences amicably.

Article IX - Standard Clauses

A. Civil Rights

During the performance of this Agreement, the participants agree to abide by the terms of USDI-Civil Rights Assurance Certification, non-discrimination, and will not discriminate against any person because of race, color, religion, sex, or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, or national origin.

B. Officials Not to Benefit

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

C. No Third-Party Beneficiaries

Nothing in this Agreement is intended to grant any rights or provide any benefits to any third party.

D. Compliance with Applicable Laws

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

E. Merger

This Agreement, including its attachments, is the sole and entire Agreement of the Parties.

F. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a Party by facsimile transmission or PDF/email) as against the Party signing such counterpart, but which together shall constitute one and the same instrument.

Article X - Authorizing Signatures

In witness hereof, the following authorized representatives of the Parties have signed their names on the dates indicated, thereby executing this Agreement.

For the National Park Service:

Name (signature)

Regional Director, Pacific West Region

Date

For the Donor:

Name (signature)

President, Board of Supervisors, County of Marin

Date