

**ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
COOPERATIVE AGREEMENT
WITH
AMIGOS DE CERRILLOS HILLS STATE PARK**

THIS COOPERATIVE AGREEMENT (Agreement) is between the New Mexico Energy, Minerals and Natural Resources Department (EMNRD), State Parks Division (Division) and Amigos de Cerrillos Hills State Park (Group).

The parties agree as follows:

1. General Terms: All terms used herein shall have the meanings given them by state statutes, NMSA 1978, §16-2-1 *et seq.*, or 19.5.1 NMAC, and if not defined therein, shall have their common meaning in everyday use.

2. Group Purposes: The Group's primary and authorized purpose is to complement, contribute to and support, or aid the function of or forward the Division's purposes through financial support or contribution of services, goods, data, or information that helps or aids the Division in carrying out its statutory purpose and goals. The Division has reviewed the Group's bylaws, attached as Exhibit A, and finds them acceptable. The Group shall not alter or amend the bylaws without the Division's written consent.

A. The Group's members may provide services for or in aid of interpretive functions, visitor services, conservation measures and development, or other activities in and related to Cerrillos Hills State Park (Park) and other conservation and natural resource activities the Division administers. Activities may include, but are not limited to, conducting projects and events, fund-raising, collecting donations within the Park, providing aid for the Park's educational and interpretive programs, and assisting with conservation measures and park development that the Division administers.

B. Other than as set forth in this Agreement, the Division exercises no authority over the Group, which is autonomous. The parties shall share and report information relating to the Group's responsibilities, as needed, or as the Division requests. The Group and its members shall comply with all of the Division's applicable rules and policies and NMSA 1978, § 16-2-2.1.

3. Agreement's Purposes: The Division and the Group enter this Agreement to:

A. define and describe the relationship between the Division and the Group;

B. define and describe the Group's purposes, functions, and roles as they relate to the Park;

C. define and clarify the Group's financial reporting requirements; and

- D. provide the Group with the legal authority to:
 - 1) conduct Group activities and events within the Park;
 - 2) authorize the Group to place donation collection boxes within the Park, at the Park Manager/Superintendents discretion, in locations designated by the Park.
 - 3) accept passes on behalf of its members, who if the group is providing park passes pay a minimum of \$20 in dues, for entry only into Cerrillos Hills State Park. The Group may only provide park passes to members who are in good standing, as defined in, and who meet any other requirements the Group may have identified in Exhibit A; and
 - 4) lease space within the Park for inventory and supplies if so desired.

4. Definitions

For purposes of this Agreement, the following definitions shall apply:

- A. "Approval" means a written statement signed by the Park Superintendent/Manager pursuant to the terms of this Agreement.
- B. "Dissolution" means the act of dissolving the Group, including the Board of Directors, such that the Group no longer maintains a membership and no longer functions for its stated purpose.
- C. "Net Receipts" means the total amount of receipts from sales, donations, etc. (gross receipts), less the amount of gross receipts taxes.
- D. "Park Benefit" means the use of Group resources to purchase or otherwise provide supplies or services to the park that solely benefit the Park or Division and fulfills the mission of the Division and the Group as defined in Exhibit A.
- E. "Superintendent/Manager" means a Division employee who is in charge of a specific park ; which includes a park superintendent or manager. For purposes of this Agreement, this means the Superintendent/Manager in charge of Cerrillos Hills State Park.

5. Term and Scope: This Agreement becomes effective when executed by EMNRD. The term shall be for four consecutive years immediately thereafter, unless otherwise terminated pursuant to this Agreement's provisions. EMNRD may negotiate a new Agreement at the end of the current term at EMNRD's sole discretion. Any use of the Park by the Group is subordinate to the Division's use in all circumstances. The Group shall not be entitled to any damages in any form from the State of New Mexico or from EMNRD related to the Division's use of the Park.

6. The Division agrees to:

A. accept donations from the Group pursuant to this Agreement or to NMSA 1978, § 16-2-18;

B. provide the Group with non-transferable park passes to be issued by the Division pursuant to 19.5.2.38.D NMAC, for distribution to its active members in good standing, as defined in Exhibit A, for day-use entry into the Park for a period of 12 months, and to, thereafter, renew the park passes annually so long as the Group members continue to be members in good-standing and this Agreement is in effect. The Division may immediately revoke the park passes of any Group member at its sole discretion at any time. The Group's use of the park passes shall comply with 19.5.2 NMAC;

C. maintain a program that accepts the services of the Group's members who support the Division programs;

D. assist the Group with reasonable efforts, subject to availability of funds at the Division's sole discretion, to provide services for, or in aid of, the Park's educational functions, conservation measures and park development, and other activities such as conservation efforts and the Division-administered natural resource activities; and

E. respond in a timely manner to any properly submitted Group requests for Approval this Agreement requires, such as proposals for promotional publications and advertisements.

7. Group agrees:

A. that the Group and its members shall comply with all applicable statutes and Division rules and policies, including, but not limited to, NMSA 1978, § 16-2-2.1 and 19.5.2.38.D NMAC, and any and all other relevant statutes, rules, and regulations as they exist or as they may be amended from time to time. In the event that the Group is a non-profit organization with a 501(c)(3) tax exempt status, the Group must be organized and operated exclusively for the exempt purposes set forth in Internal Revenue Code section 501(c)(3).

B. that a Group member is not a state employee and shall not be subject to the provisions of law relating to state employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and state employee benefits;

C. that the Group shall obtain a Special Use Permit for its group activities and events, pursuant to 19.5.2.40 NMAC, before occupying any space or location within the Park for any time period of 14 or less consecutive days, but is exempt from 19.5.5 NMAC as it relates to the Group conducting commercial activities within the Park. In the event the Group decides it wants to establish and operate a concession within the Park, it shall comply with the requirements of 19.5.5. NMAC;

D. in the event that the Group elects to perform seasonal or other non-permanent activities, such as selling firewood or crushed ice to visitors, that exceed a time period of more than 14 consecutive days, but which do not require the lease of space as provided within this Section, then the Group must obtain written Approval from the Park Superintendent/Manager prior to the performance of such activities;

E. that the Group shall not occupy any permanent space within the Park except as allowed by a special use permit, or concessions permit, without participating in a competitive bidding process for the lease of space in the park (Exhibit B) as the Division defines in compliance with the Procurement Code, NMSA 1978, §§ 13-1-1 *et seq.*, or any other applicable statute, rule, or regulation;

F. that the Group shall submit proposed promotional publications and advertisements to the Park Superintendent/Manager for Approval of their use.

G. that if the Group desires to use the Division logo in any manner the Group shall submit a written request for Approval to the Volunteer Program Coordinator and the EMNRD Public Information Officer for any of the Group's proposed promotional publications and advertisements;

H. that in the event the Group establishes a social media presence, the page or website shall contain a disclaimer indicating the page or website is not part of EMNRD's or the Division's domain and is operated independently by the Group;

I. that the Group shall provide the Park Superintendent/Manager and Volunteer Program Coordinator, with a list of its members in good-standing who are eligible to receive a park pass, upon the Park Superintendent/Manager's request;

J. that the Group shall provide a written Annual Report to the Park Superintendent/Manager and Volunteer Program Coordinator by January 31st following the end of the calendar year. The report shall consist of a brief one- to two-page summary of the Group's events, fundraisers, concessions, activities, and financials (Exhibit C);

K. that the Group shall consult with the Park Superintendent/Manager annually on its planned activities and budget for the coming year and long-range plans relative to the Park's current and long-term needs;

L. that the Group shall give, transfer to, or expend for the Park's benefit, for each year in which this Agreement is in effect no less than 15% of its annual Net Receipts.

M. that the Group may carry over the remaining funds it earned, after deducting expenses for the Park's benefit and the Group's necessary costs and expenses, for projects that may require multi-year savings (*e.g.* special events, grants and contracts, park projects), if the Park Superintendent/Manager grants prior written Approval. However,

the Group may not carry over the balance of the funds beyond this Agreement's current term, unless the parties enter into a new Agreement prior to the closure of the current term, and may not carry over the funds for more than four years unless approved in writing by the Division Director;

N. that in the event that the Group fails to expend at least 15% of its annual Net Receipts for the Park's benefit and is unable to pay or donate the required amount, then the Division may suspend the provision of park passes;

O. that the Group shall invest all funds it holds in accordance with the Uniform Prudent Investor Act, NMSA 1978, § 45-7-601 *et seq.*, and shall hold such funds in an FDIC insured account denoted to provide that the funds are dedicated exclusively for the Park's benefit;

P. that all property that the Group purchases for the Park pursuant to this Agreement shall become the Division's property immediately upon delivery to or installation in the Park and shall be assigned to the Park;

Q. that property purchased for the administrative needs of the Group, such as office computers, shall remain property of the Group;

R. that all funds or property the Group transfers to the Division are subject to all state laws and rules governing the disbursement and administration of public funds and public property, except to the extent that any specific conditions of the transfer are acceptable to the Division and do not require actions that do not comply with state or federal law;

S. that the Group shall track all hours spent on behalf of the Park and submit hours to the Park Superintendent/Manager on a quarterly basis, or more frequently if the Park Superintendent/Manager requests it.

8. Financial:

A. The Group shall furnish the Superintendent/Manager and the Volunteer Program Coordinator annually on or before January 31st of each year this Agreement is in effect, and within 30 days after expiration or termination of this Agreement, one of the following reports, as determined by the criteria in Paragraphs 1 or 2 below, certified by two of the Group's board members:

1) If the Group's gross annual income is \$250,000 or less, the Group shall submit a statement annually to the Program Coordinator and Superintendent/Manager on or before January 31st in the form of an Annual Report (Exhibit C).

2) If the Group's Gross Annual Income exceeds \$250,000, the Group shall have a financial accounting system considered adequate under customarily and currently

accepted accounting standards. The Group shall have its financial affairs audited annually in accordance with generally accepted governmental auditing standards by an independent professional auditor who shall furnish copies of the annual audit to the Volunteer Program Coordinator and Superintendent/Manager by January 31st of each year this Agreement is in effect, and make the associated working papers available to EMNRD for review upon its written request for a period of six years after the audit report date. The annual audit shall be a public record.

B. The Group's financial and other records shall disclose all financial transactions related to this Agreement in an accurate, truthful manner and shall be available at all times for inspection by the Department, the Division, and other state officials.

C. EMNRD, the Department of Finance and Administration, the State Treasurer, the State Auditor, and any of their duly authorized representatives shall have access to and may examine and audit all pertinent books, documents, papers, and other records of the Group involving this Agreement during the term of this Agreement and until six years after this Agreement expires or is terminated. The Group shall make such records available upon demand at the Division office in Santa Fe, or at a designated area agreed upon by both parties. Such records include but are not limited to financial, employer, and equipment records.

9. Lease: In the event the Group decides to sell merchandise at the Park in support of the Park, the parties shall enter into a lease agreement for merchandising space attached hereto as Exhibit B and amend this Agreement to match the term of the lease agreement. The Division must competitively procure such lease. Pursuant to 1.5.23.10 New Mexico Administrative Code, the lease term is limited to five years in length unless the Lessor seeks approval for a longer term from the New Mexico Board of Finance.

10. Non-Discrimination: The Group agrees to abide by all federal and state statutes and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Group assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation, or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If the Group is found not to be in compliance with these requirements during the life of this Agreement, the Group agrees to take appropriate steps to correct these deficiencies.

11. Default, Notice, Remedy, and Non-Waiver of Defaults: The Division's failure to take any action with respect to any breach or default by the Group hereunder shall not constitute a waiver of any other breach or default. In the event of a default by the Group hereunder, the Division shall notify the Group in writing of the default. Thereafter, the Group shall have not more than 30 days to correct the default to the Division's satisfaction.

12. Termination:

A. EMNRD's participation in this Agreement is contingent upon sufficient appropriation and authorization being granted by the New Mexico State Legislature. If sufficient appropriation or authorization is not granted, this Agreement shall terminate upon 30 days' written notice from EMNRD to the Group. EMNRD's decision as to whether sufficient appropriations are available shall be final, binding, and accepted by the Group.

B. EMNRD may terminate this Agreement after 30 calendar days' written notice on account of the Group's failure to perform any essential portion of operations hereunder, or if the Group fails to comply with any terms and conditions of this Agreement, unless noncompliance creates a life-endangering situation, in which case termination can be immediate and without notice.

C. EMNRD or the Group may terminate this Agreement after 30 calendar days' written notice to the other if EMNRD or the Group determines it is convenient to do so.

D. In the event that EMNRD deems it necessary to terminate this Agreement or in the event of Dissolution of the Group, all of the Group's assets, less pending accounts-payable, shall be delivered within six months to Cerrillos Hills State Park. Special event funds must be turned over to the non-profit organization that has been designated to handle those future scheduled events, unless there is no non-profit organization designated to receive such funds or unless the designated non-profit organization is not able to receive such funds for whatever reason, then remaining funds must be turned over to Cerrillos Hills State Park.

13. Tort Claims Act and Volunteer Coverage:

A. The parties agree that the Group, its officers, members, and employees are not EMNRD employees and as such are not entitled to state employee workers' compensation benefits, salary, or medical insurance. The parties agree that the Tort Claims Act, NMSA 1978 § 41-4-1 *et seq.*, extends coverage only to those Group members who are also registered as state parks volunteers and who are sued as a result of acts occurring while they are performing approved volunteer activities.

B. The Group shall insure its officers and members under an insurance policy that provides at least one million dollars (\$1,000,000.00) of comprehensive public liability protection covering property damage and personal injury liability. Such insurance policy or policies shall name the State of New Mexico, EMNRD, and State Parks Division as additional insured. The Group shall provide proof of insurance pursuant to this section to the Volunteer Program Coordinator upon EMNRD's request.

14. Notice: Except as otherwise specified herein, all notices hereunder shall be in writing (including, without limitation, notice by facsimile) and shall be given to the relevant

party at its address or facsimile number set forth below, or such other address or facsimile number as such party may hereafter specify by notice to the other given by courier, by United States certified or registered mail, by facsimile, or by other telecommunication device capable of creating a written record of such notice and its receipt:

1) to the President of the Amigos de Cerrillos Hills State Park, at 37 Main St., Cerrillos, NM, 87505 or to 505-424-2206; and

2) to the Division, at EMNRD, State Parks Division, 1220 S. St. Francis Drive, Santa Fe, N.M., 87505, Attn: Volunteer Program Coordinator or to (505) 476-3361.

Either party may change its designated notice address by giving written notice of such change at least 10 calendar days before the change becomes effective.

15. Severability: Should any part of this Agreement be rendered or declared invalid by a court of competent jurisdiction of the State of New Mexico, such invalidation of such part or portion of this Agreement shall not invalidate the remaining portions thereof, and they shall remain in full force and effect. The parties further agree that if part of the Agreement is determined invalid, either party may open negotiations solely with respect to a substitute for such Section, or portion, within two weeks after a ruling has been made.

16. Merger, Integration, and Amendment: This Agreement and the exhibits attached hereto contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements, and understandings with respect thereto. This Agreement may only be amended by a written document duly executed by both parties.

[Signatures are on next page.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date of EMNRD signature:

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

By: _____ Date: _____
Cabinet Secretary or Designee

AMIGOS DE CERRILLOS HILLS STATE PARK

By: _____ Date: _____
Authorized Representative Signature

Printed Name and Title

Exhibit A
Bylaws

**Amigos de Cerrillos Hills State Park
BYLAWS**

ARTICLE I- NAME

The name of this group shall be Amigos de Cerrillos Hills State Park, referred to in this document as "Group".

ARTICLE II- PURPOSE

This Group is a private entity whose principle and authorized purpose is to complement, contribute to and support, aid the function of and forward the purpose of Cerrillos Hills State Park and the Division. The group will support the park and the Division in accordance with these Bylaws and the signed Cooperative Agreement between the Group and Energy, Minerals and Natural Resources Department (EMNRD).

ARTICLE III- MEMBERSHIP

- A. Membership in the Group is open to all individuals and groups (families, businesses, private and non-profit organizations), who are interested in pursuing the purpose of the Group, are committed to Groups activities, and comply with the Cooperative Agreement and these Bylaws. Each individual member and each group member will be entitled to one vote.
- B. The Group Board of Directors at the annual general meeting will set annual dues for the following year.
- C. Membership shall be as follows:
 - 1. Active Membership: Active members are those, individual or group, who are entitled to vote at annual meetings and must participate in at least one of the following activities:
 - a. Serving as a Board Member or Officer.
 - b. Serving on at least one committee.
 - c. Serving in at least two activities or events.
 - 2. Sponsoring Membership: Sponsoring members pay annual dues, but do not participate, and therefore have no voting privileges.
- D. Active Membership Benefits include:
 - Free Park Pass to Cerrillos Hills State Park.

ARTICLE IV- BOARD OF DIRECTORS

- A. The Group's Board of Directors shall govern the Group in accordance with the signed Cooperative Agreement between the Group and Energy, Minerals and Natural Resources Department (EMNRD) and these Bylaws.
- B. The Board of Directors shall consist of not less than 3 (three) members to be elected at the annual meeting. For the first year only, Board of Directors shall be elected for a one-year term. In additional subsequent years, Board of Directors shall be elected for one-year terms. Board of Directors whose terms expire may stand for re-election, for up

to three consecutive terms, after which a one year absence is required prior to re-election.

- C. The Group Board of Directors will approve or disapprove all Group activities and expenditures.
- D. Each Board member will have one vote, with the President voting only in the case of a tie.
- E. If an officer resigns or if the membership is increased, the position will be filled by Board appointment for the remaining term.

ARTICLE V - OFFICERS

The Officers serve as board members and are elected by a simple majority vote of the members present at the first meeting, following the Annual General Meeting.

A. Election of Officers

- 1. All elected Officers shall serve one-year terms, which will commence with the first meeting.
- 2. An elected Officer may serve three consecutive terms and is eligible for subsequent elections after being out of office for one year.
- 3. If there is more than one candidate for office, the election will be conducted by written ballot. Board members must be present to vote, and must be present to be elected to an office.
- 4. When an Officer resigns or is removed from office, a replacement shall be appointed by the Board for the remaining term.

B. Duties of Officers

- 1. President
 - a. Shall preside over all meetings
 - b. Shall appoint committee chairpersons, as appropriate.
 - c. Shall be designated representative of the Group.
- 2. Vice President
 - a. Shall assume the duties of the president in the absence of the President or at the President's request.
 - b. Shall assist the President in carrying out his or her duties as necessary or requested.
- 3. Secretary
 - a. Shall keep minutes of all regular and special Board meetings and the annual general meeting.
 - b. Shall provide draft minutes to members as requested in advance of the regularly scheduled meetings.
 - c. Shall prepare such official Group correspondence as may be necessary.
 - d. Shall ensure all Annual Reports are filed in accordance with the signed Cooperative Agreement between the Group and EMNRD.
- 4. Treasurer

- a. Shall keep accurate account of all monies and properties accumulated and maintain the bank account.
- b. Present monthly financial reports to the board
- c. Assure that all tax reporting forms and financial statements are submitted to the appropriate State and Federal Agencies in the event that they are required.
- d. Advise the Board of any fiscal conditions that may impact operations.
- e. Shall be responsible for the bank checking account. The signatures of two officers are required on all checks.
- f. Prepare and submit all financial requirements in accordance with the Cooperative Agreement between the Group and EMNRD.

ARTICLE VI- REMOVAL OF OFFICER, OR MEMBER OF THE BOARD OF DIRECTORS

The procedure for the removal of an Officer or Member of the Board of Directors who has proven on more than one occasion to be unsupportive of the Group or who has violated the Cooperative Agreement or Bylaws shall be as follows:

- A. A motion for removal of an Officer or Member shall be made in writing to the Board of Directors. The vote on the motion for removal shall be at a Special General Meeting called by the Board of Directors for the purpose of voting on removal.
- B. Notice of the motion to remove shall be sent to the Officer at least fourteen days prior to the meeting at which the vote is to be taken.
- C. A majority of the Members of the Board of Directors is required for the removal of the individual.

ARTICLE VII- MEETINGS

A. General Meetings:

The procedure of all meetings shall be in accordance with the Robert's Rules of Order, Revised.

1. Annual General Meeting
 - a. The Group's fiscal year shall commence on January 1st. The Annual General Meeting of the membership shall be held in February on a date established by the Board.
 - b. Written notice of the meeting and agenda shall be sent to all members on record or made available, in post office and at park, at least 14 days in advance.
 - c. Election of the officers shall take place at this meeting.
 - d. Quorum will be met when 10% of the general membership is in attendance. A quorum, once attained at a meeting, shall be deemed to continue until adjournment.
2. Special General Meeting
May be called by the Board or by a majority of the general membership by written or electronic notice, at least 14 days in advance.

B. Board Meetings:

1. The Board shall meet as needed, but not less than twice annually.
2. Board meetings shall be open to the general membership.
3. Members shall elect the Officers at the Annual General Meeting.
4. The President or any two Board members can call Special Board Meetings.
5. The procedure of all meetings shall be in accordance with the Robert's Rules of Order, Revised.
6. A quorum for Board meetings shall consist of a 60% of the Board being present. A quorum, once attained at a meeting, shall be deemed to continue until adjournment.

C. Written notice and agenda of General and Board Meetings shall be sent to the Manager of the Cerrillos Hills State Park at least 14 days in advance of the meeting. The Manager or designee shall be allowed to attend the meetings to act as liaison between the Cerrillos Hills State Park and the Amigos de Cerrillos Hills State Park.

ARTICLE VIII- AMENDMENTS

These by-laws may be amended as follows:

- A. Any member can make recommendations for amendment at a regularly scheduled Annual General Meeting in written form. The vote on the proposed amendment shall be at the Annual General Meeting.
- B. Notice of "intent to amend" and a copy of the proposed amendment(s) shall be sent to the membership 14 days prior to the meeting at which the vote is to be taken.

ARTICLE IX- DISSOLUTION

In case of dissolution of the Group and subsequent to settlement of all outstanding debts and obligations of the organization, all remaining assets on hand at the time of such dissolution shall be donated to Cerrillos Hills State Park. Special event funds must be turned over to the non-profit organization that has been designated to handle those future scheduled events, unless there is no non-profit organization designated to receive such funds or unless the designated non-profit organization is not able to receive such funds for whatever reason, then remaining funds must be turned over to Cerrillos Hills State Park.

ARTICLE X- APPLICATION

The above-described Bylaws apply to Amigos de Cerrillos Hills State Park which shall be included in the signed Cooperative Agreement between the Group and EMNRD.

ARTICLE XI- RECORDS

The Group retains a copy of the Bylaws, the minutes of official meetings and the financial reports and they are available for perusal by any member, or any employee of EMNRD upon request.

ADOPTED IN Cerrillos, NM ON THE 11 DAY OF August 2011

Signed by the officers of Amigos de Cerrillos Hills State Park.

<u>Chip Purkins</u> Chip Purkins, President	<u>8-11-11</u> Date
<u>Mark Kaltenbach</u> Mark Kaltenbach, Vice President	<u>8-11-11</u> Date
<u>Linnah Neidel</u> Linnah Neidel, Secretary	<u>8-11-11</u> Date
<u>Ruth Center</u> Ruth Center, Treasurer	<u>8-11-11</u> Date

Exhibit B

Lease

(Note: Italicized items either are (1) instructional in nature or (2) require information be inserted. If they require information to be inserted, insert the information and remove the italics. If they are instructional, please delete them.)

**ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,
STATE PARKS DIVISION
LEASE AGREEMENT
WITH
<Insert Friends Group Name>**

THIS LEASE AGREEMENT (Lease) for lease of space within <insert Park name> (Park) is made by and between the New Mexico Energy, Minerals and Natural Resources Department (EMNRD), State Parks Division (Lessor), and the Friends of <insert Park name>, Inc., a New Mexico non-profit corporation (Lessee).

WHEREAS, Lessee has, or shall enter into, a Cooperative Agreement (Cooperative Agreement) with Lessor; and

WHEREAS, the lease of space (Premises) within the Park to Lessee shall enhance opportunities for the Lessee to complement, support, and contribute to the Park's mission objectives by conducting certain activities; and

WHEREAS, Lessee's activities within the space located at the Park have been or will be approved by Lessor pursuant to the Cooperative Lease; and

WHEREAS, Lessor's award of this Lease to Lessee is the result of a competitive selection process conducted by the Lessor.

NOW, THEREFORE, in consideration of the foregoing, the covenants herein contained, and for good and valuable consideration, Lessor does hereby lease, demise, and let unto Lessee the Premises as described below for the term and in accordance with the conditions herein set forth. The parties agree as follows:

1. Authorization: Lessee is authorized to execute the Lease pursuant to the by-laws of the Friends of <insert Park name> State Park.
2. Premises Description: The Premises leased by Lessor to Lessee shall consist of space to be designated by Lessor located within the Park and is more particularly described by the description attached hereto as

Attachment 1. The parties agree that the Premises shall consist of the following: *<insert premises description>*

3. Term: The term of this Lease shall commence upon EMNRD's signature on this Lease and a Cooperative Agreement and shall terminate at midnight X years thereafter, unless terminated earlier pursuant to Section 12, Termination, of the underlying Cooperative Agreement, and Section 22, Default of Lessee and Remedies of Lessor, below. Pursuant to 1.5.23.10 New Mexico Administrative Code, the lease term is limited to five years in length unless the Lessor seeks approval for a longer term from the New Mexico Board of Finance.

4. Rental Fee and Additional Rent:

a. The Rental Fee shall be one dollar (\$1.00) per year, which shall be due upon execution of this Lease, and shall be due annually on or before the Lease anniversary date.

b. As additional rent the Lessee shall give, transfer to, or expend for the benefit of the Park each fiscal year an amount representing no less than X% of the Lessee's annual net receipts (gross receipts minus gross receipt tax) from all sales, membership fees, and other sources of revenue during the course of each of Lessee's fiscal year during which this Lease remains in effect.

5. Condition of Premises: Lessee hereby acknowledges that Lessee has made an on-site inspection of the Premises and acknowledges the condition of said Premises, that no representations as to the condition of the Premises have been made by Lessor, and Lessee hereby accepts the Premises in their existing condition, as is.

6. Liability Disclaimer: Lessor expressly disclaims all liability and responsibility for, and Lessee waives any liability of or claim against Lessor involving, theft, vandalism, loss, damage, or spoilage of Lessee's tangible personal property that Lessee stores or maintains at the Park, as well as all records, furniture, office equipment, inventory, and any other materials belonging to or comprising part of Lessee's activities.

7. Ownership of Improvements: Lessee shall not make any permanent improvements to the Premises. Lessee shall own all temporary improvements it makes to the Premises during the term of this Lease. Upon Lease termination or expiration, Lessee shall remove any improvements it makes to the Premises within 30 calendar days from such termination or expiration. Any temporary improvements Lessee does not so remove shall become Lessor's property after 30 calendar days.

8. Utilities and Furnishings: Lessor shall provide reasonable use of potable water and electricity to Lessee during normal hours of Park operation without charge during this Lease's term. Lessee shall be responsible for provision of any additional services including but not limited to: telephone, internet data line(s)/connection(s); data transfer line(s)/connection(s), alarm system(s), or any other service other than potable water and

electricity. Lessee shall promptly pay any and all charges and bills connected with these services, shall not allow a lien or other encumbrance to be placed on the Premises for non-payment, and shall hold Lessor harmless therefrom. Any and all furnishings, office equipment, materials, etc. Lessee requires to use the Premises are Lessee's sole responsibility.

9. Maintenance: Lessee shall, at Lessee's sole expense, keep and maintain the Premises and all improvements thereon, in a reasonable state of repair and preservation in accordance with Lessor's standard of care for the Park and visitor facilities, and shall not suffer or permit any safety hazards or continuing nuisance thereon.

10. Assignment and Subletting: Lessee may not assign, sublet, mortgage, subordinate, alienate, or hypothecate the Premises, or any part thereof.

11. Signs and Personal Property: Lessee may place a permanent sign or signs on the Premises only with Lessor's advance written Approval and in accordance with Lessor's established policy governing signs within a state park. Lessee shall obtain Approval by submitting a letter to the Park Superintendent/Manager not less than 60 calendar days before desired placement, describing in detail the wording of the requested sign and containing a drawing of the requested sign(s). The Park Superintendent/Manager shall review the requested signage and shall provide his/her approval or disapproval within 15 calendar days of letter receipt. All of Lessee's personal property, signs, and improvements, or of its employees, agents, customers, and invitees kept on the Premises shall be at Lessee's sole risk, and Lessor shall not be liable for any damage thereto or theft thereof.

12. Taxes: Lessee assumes and agrees to pay, before they become delinquent, all applicable taxes that may be assessed, levied, or become due on account of Lessee's presence and operations on the Premises, including but not limited to, taxes against the Lessee's Gross Receipts, the temporary improvements constructed thereon, or the contents therein during the term of this Lease.

13. Inspection: Lessee shall permit Lessor to enter the Premises at all reasonable times in order to inspect the condition, use, safety, and security of the Premises and any improvements or furnishings thereon. Lessee shall promptly address and rectify to Lessor's satisfaction, within two calendar days, any deficiencies Lessor identifies as communicated to Lessee in writing by Lessor.

14. Laws: Lessee shall comply with all applicable federal, state, and local laws and with all applicable rules and regulations of Lessor, and shall ensure that those persons using the Premises so comply.

15. Non-Discrimination: Lessee agrees to abide by all federal and state statutes and rules and regulations, and executive orders pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, Lessee assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry,

sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation, or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Lessee is found not to be in compliance with these requirements during this Agreement's term, Lessee agrees to take appropriate steps to correct these deficiencies.

16. Indemnification: Lessee shall defend, indemnify and hold harmless EMNRD, its officers, employees, agents, and representatives and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent or intentional act or failure to act of Lessee, its officers, employees, servants, sublessees, consultants, clients, or agents, or if caused by the actions of any client of Lessee resulting in injury or damage to persons or property during the time when Lessee, Lessee's officers, agents, employees, servants, sublessees, or consultants thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by Lessee, Lessee's officers, agents, employees, servants, sublessees, clients, or consultants under this Agreement is brought against Lessee, or any of Lessee's officers, agents, employees, servants, sublessees, clients, or consultants, Lessee shall, as soon as practicable but no later than two days after it receives notice thereof, notify EMNRD's legal counsel and the Risk Management Division of the New Mexico General Services Department by certified mail. Nothing in this Agreement shall be deemed to be a waiver by the State of New Mexico of the provisions of the Tort Claims Act, NMSA 1978, §§ 41-4-1 *et seq.*

17. Notice: Except as otherwise specified herein, all notices hereunder shall be in writing (including, without limitation, notice by facsimile) and shall be given to the relevant party at its address or facsimile number set forth below, or such other address or facsimile number as such party may hereafter specify by notice to the other given by courier, by United States certified or registered mail, by facsimile, or by other telecommunication device capable of creating a written record of such notice and its receipt.:

Lessor: Business Enterprise Coordinator
EMNRD, State Parks Division
1220 S. Saint Francis Dr.
Santa Fe, NM 87505

Director,
EMNRD, State Parks Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

Lessee: *<insert Group contact information here>*

Either party may change its designated notice address by giving written notice of such change to the other party at least 10 calendar days before the change becomes effective.

18. Waiver: No failure on Lessor's part to exercise, and no delay in exercising, any right, power or privilege hereunder, shall preclude other or further exercise thereof, or the exercise of any other right, power, or privilege. The rights or limitations herein provided are cumulative and not exclusive of any rights and remedies otherwise provided by law or equity.

19. Expiration: Upon cessation of this Lease by reason of the expiration of the term, Lessee shall peaceably surrender to Lessor possession of the Premises. Lessee's personal property including any temporary improvements must be removed within 30 calendar days.

20. Insurance: Lessee shall carry and maintain in full force and effect during the term of this Lease, at Lessee's sole cost and expense, a policy or policies of insurance providing comprehensive general liability coverage for Lessee's activities in an amount not less than \$1,000,000 limit per occurrence, including coverage for property damage, bodily injury, and wrongful death. Such insurance policy or policies shall name the State of New Mexico, EMNRD, and State Parks Division as additional insured. Further, Lessee shall maintain such Workers' Compensation and Employer's Liability coverage as may be required by law. Prior to commencement of occupancy of the Premises, Lessee shall deliver to Lessor proof of the foregoing coverage(s) by providing a Certificate of Liability Insurance to Lessor evidencing the same. Lessee shall notify Lessor forthwith after cancellation or expiration of any required coverage(s). Lessee releases and discharges Lessor and its "public employees" as defined in the Tort Claims Act from any and all claims, damages, and causes of action arising out of any damage to or destruction of the Premises where such damage or destruction was not caused by Lessor's or its "public employees" willful acts.

21. Lessee's Records: EMNRD, the Department of Finance and Administration, the State Treasurer, the State Auditor, and any of their duly-authorized representatives shall have access to and may examine and audit all pertinent books, documents, papers, and other records of Lessee involving this Lease during the term of this Lease and until the expiration of six years after Lessee's final day of operations. Lessee shall make such records available upon demand during usual business hours at the Premises or at the Division's office in Santa Fe. Such records include, but are not limited to, financial, employer, and equipment records.

22. Default of Lessee and Remedies of Lessor: If any of the following "Events of Default" occur:

a. Lessee's failure to pay any tax or special assessment that Lessee is obligated to pay pursuant to this Lease lawfully assessed against the Premises so that it becomes delinquent for a period of 90 calendar days, unless the payment thereof is contested

in good faith by Lessee within such period of time in the manner stated in Section 11, Taxes, hereof;

- b. Lessee's abandonment of the Premises for a period of 30 continuous calendar days;
- c. Lessee's breach or default under any other term, covenant, or condition of this Lease;
- d. Lessee's failure to pay when due any insurance premiums required to be paid hereunder; or
- e. termination of the Cooperative Agreement executed by and between Lessor and Lessee, pursuant to the Cooperative Lease (in which case termination of this Lease shall be simultaneous therewith),

then, Lessor may give Lessee written notice by Certified Mail, Return Receipt Required, specifying what Event of Default has occurred. Unless Lessee remedies or obviates the Event of Default within 30 calendar days after its receipt of such notice or a shorter period if otherwise provided for herein, or unless within such 30 calendar day period Lessee shall have commenced and shall continue to take action for the purpose of remedying or obviating such Event of Default and shall thereafter in good faith prosecute such action to completion, at its sole discretion Lessor may declare the forfeiture of the interest of Lessee in this Lease by giving Lessee written notice thereof by Certified Mail, Return Receipt Required, and this Lease shall terminate forthwith.

Upon receipt of such notice of forfeiture, Lessee shall immediately peacefully surrender the Premises, together with all improvements, building (except as otherwise provided herein), and fixtures thereon. If Lessee fails to surrender the Premises, Lessor may forthwith take possession of the Premises, together with all improvements, furnishings, or fixtures thereon, either by force, summary proceedings, or by any other suitable action or proceedings at law or otherwise, without being liable for damages. Lessee agrees that in the event of forfeiture hereunder it shall, upon request of Lessor, assign, convey, and transfer to Lessor the title to all improvements and fixtures on the Premises. Under this remedy, Lessee shall be liable for the costs, expenses, and attorneys' fees of Lessor in enforcing its rights under this Lease, including injunctive relief or the obtaining of possession, and Lessor shall have a lien on all property of Lessee on the Premises as security for the payment of such costs, expenses, and attorneys' fees, and Lessor shall have no further obligation to Lessee under this Lease.

23. Uses to be Made of Premises: Lessee shall use the Premises for the conduct and operation of Lessee's activities and for such other lawful purposes to which Lessor shall consent in writing. In no event shall Lessee use the Premises for any unlawful purpose or other purpose constituting or creating a public or private nuisance. Lessee shall submit a proposed schedule of months, days, and hours of operation to the Park

Superintendent/Manager not later than January 15th annually. The Park Superintendent/Manager shall approve or disapprove the proposed schedule in writing within 10 calendar days. In the case of disapproval, the Park Superintendent/Manager shall state the reason(s) for disapproval in a letter to the Lessee within 10 calendar days of receiving Lessee's proposed schedule. Within 10 calendar days after receipt of the disapproval letter, Lessee shall resubmit a revised schedule to the Park Superintendent/Manager. An approved schedule shall constitute the required months, days, and hours of operation. No operations shall continue 20 calendar days the Park Superintendent/Manager disapproves it.

24. Succession: This Lease shall extend to and be binding upon the successors and assigns of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as follows:

**STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL RESOURCES
DEPARTMENT**

By: _____ Date: _____
Cabinet Secretary or Designee

FRIENDS OF <INSERT GROUP NAME> PARK
<If there is only one signatory, delete the second signature block>

By: _____ Date: _____
Authorized Representative Signature

Printed Name and Title

By: _____ Date: _____
Authorized Representative Signature

Printed Name and Title

Exhibit C
Annual Report

Template for Friends Group Annual Report

Please include all the following:

1. Officer names and contact information
2. Non-profit status
3. Group status and activity summary
 - a. Total number of members
 - b. Number of active members (*Active members as defined in bylaws. Otherwise, members that have served on the Board or a committee or have participated in at least one group-sponsored event.*)
 - c. Number of board meetings held
 - d. Number of park passes distributed to members
 - e. Summary of events, projects, activities for the year (e.g. park events, park improvement projects, recruitment activities)
 - f. Summary of plans for upcoming year
4. Financial summary
 - a. Annual gross revenue for most recent fiscal year
 - i. Membership fees collected
 - ii. Other income (event income, donations, interest)
 - b. Annual expenses for most recent fiscal year
 - i. Group administrative expenses
 - ii. Gross receipts tax paid
 - iii. Expenses for Park Benefit, including a list of items purchased or projects completed (*Total of expenses directly benefitting the park or park staff. Do not include group salaries or retail shop expenses.*)
 - c. Balances in checking/savings accounts
 - d. Total percent of annual gross revenues spent on park (*“annual gross revenue” means all gross receipts obtained in the last fiscal year; all membership dues collected; all interest income earned; all donations received; and all other sources of revenue minus any gross receipts tax.*)
5. Profit and loss statement or balance sheet (optional)
6. Photos (optional)

Note: Please submit your Annual Report by January 31st of each year the Agreement is in effect.