GENERAL AGREEMENT
between
National Park Service and Smithsonian Institution
for Custodianship of National Park Service Natural History Collections

I. Introduction

This Agreement, effective as of the date of the last approving signature, between the National Park Service (NPS) and the Smithsonian Institution (SI) ("Effective Date"), conveys to the SI custodial responsibilities as more fully set forth herein, while retaining for NPS ownership responsibilities for NPS natural history specimens and collections ("NPS collections") including those covered by this Agreement ("Collections") and copies of associated documentation (e.g., field notes, databases, maps, photographs, permits, and other related materials).

II. Objectives

A. To provide increased value to the American public by expanding access to information about natural history specimens from units of the National Park System ("NPS units") and related projects and using the resulting information to inform science, NPS resource management practices and stewardship responsibilities, education, public interpretation programs, and benefits sharing, and to enhance the biological and geographical diversity represented in SI collections; and

B. To enable the SI to assume full and permanent custodial responsibility for the Collections; and

C. To enable NPS to retain ownership of the Collections to carry out NPS's legal and policy requirements for management of park and museum resources.

III. Scope

This Agreement covers Collections and copies of associated records that NPS provides to SI for custodial purposes on or after the Effective Date of this Agreement. Individual items within the Collections will be referred to as Specimens in this Agreement. The Collections are limited to biological, paleontological, and geological Specimens collected from NPS units and permanently retained in NPS museum collections. This Agreement excludes collections of an archeological, anthropological or historical nature, but may be amended in the future to include such collections upon mutual agreement of the parties. For NPS collections collected prior to the Effective Date or that are covered by existing loan agreements or other arrangements between NPS and SI, either party may submit a written proposal to the other party to cover such NPS collections under this Agreement, and, if deemed mutually acceptable, such NPS collections will become Collections.

IV. Legal Authorities

A. NPS is authorized to enter into this Agreement pursuant to the authority contained in the National Park Service Organic Act, 16 USC Section 1-4, the National Parks Omnibus Management Act of 1998, 16 USC Sections 5931-5932 and 5934-5936, and Management of Museum Properties Act, 16 USC Section 18f, 18f-2, and 18f-3.

B. SI is authorized to enter this Agreement pursuant to the Act establishing the Smithsonian Institution, 20 USC Section 41 et seq., and in particular Sections 50, 59, and 65a.

V. Responsibilities for Implementing the Agreement

A. SI Responsibilities. To promote the objectives of this Agreement, the SI will:

1. Acquisition

   a. Where feasible, consult with NPS and NPS permittees early in the permitting and collecting processes to identify possible NPS collections for coverage by this Agreement;

   b. Review NPS collections offered to SI to identify NPS collections suitable for coverage under the terms of this Agreement, such review to include identifying NPS collections for SI to retain as Collections and culling NPS collections that SI determines to be of no scientific value or duplicates, with the latter NPS collections to be destroyed or returned to NPS, at NPS's discretion;

   c. Provide NPS, park staff and permittees with SI metadata standards for preparing, labeling and databasing the Collections to facilitate incorporation of data into SI collections databases;

   d. Assume full custodial responsibility for the Collections subject to the collections management and research policies of the SI, the National Museum of Natural History or other SI collecting unit;

   e. Import Specimen catalog metadata provided by NPS into SI collections management databases, to ensure that the Collections may be tracked and located;

   f. For NPS collections that may not have been prepared, labeled or cataloged in conformance with NPS's policy and procedures and which SI requests to be included in the Collections, NPS will approve such requests within thirty (30) days unless NPS provides compelling reasons, unrelated to the manner in which the NPS collections have been prepared, labeled or cataloged, to deny such requests. Upon NPS approval, the Collections will be processed, cataloged and labeled by SI, subject to NPS's right thereafter to catalog and add NPS labels;

   g. Periodically provide NPS with updated catalog data on Collections digitally formatted to NPS specifications to facilitate import to NPS collection management databases;

2. Use

   a. For researchers and users of the Collections on-site at the Smithsonian, include notice of the terms of use set forth in the Appendix;

   b. Lend Collections to NPS and third parties in accordance with SI loan practices, which will be modified for NPS Collections to include the terms of use set forth in the Appendix; NPS shall be a beneficiary of the terms of use.

3. Reporting

a. Insofar as SI conducts cyclical inventories that include Collections, provide NPS with an electronic copy of inventory results, except that NPS understands that SI does not inventory some invertebrates that are small, numerous in quantity and species, and poorly known except for holotypes and other Specimens of high scientific value;

b. Provide NPS with an annual electronic report of transactions involving the Collections generated from existing SI collections database information;

c. Respond to public, Congressional or other third party requests for information about the Collections in accordance with applicable law and SI records disclosure policy, provided that if such request originates with NPS or its Inspector General and compliance would involve a significant commitment of SI time and resources, NPS agrees to accept responsibility to comply with such request and provide necessary support.

B. NPS Responsibilities. To promote the objectives of this Agreement, NPS will:

1. Acquisition

a. Where feasible, consult with SI and NPS permittees early in the permitting and collecting processes to identify possible NPS collections for coverage by this Agreement;

b. Where an SI unit has agreed to assume custodial responsibility for the Collections, advise NPS permittee and park to identify SI as the repository in collecting permits or park employee study plans;

c. To the extent feasible, offer SI the opportunity to review NPS collections proposed for coverage by this Agreement in advance to enable SI to make informed decisions about whether to accept all, some, or none of the NPS collections offered;

d. Notify SI in advance if a Collection from an identified NPS accession must be maintained together within the SI so that SI can comply with such condition; otherwise SI may, at its discretion, cull the Collection and return the non-selected NPS collections to NPS or its designee or, at NPS's discretion, destroy them;

e. Prepare, label and catalog the Specimens according to NPS policy and procedures; export catalog data digitally formatted to SI metadata specifications for incorporation into SI collection management databases; and consultation with SI on Collections that are not prepared, labeled and cataloged to NPS specification as set forth in Section V(A)(1)(f) above.

f. Include in the associated documentation for all Collections, copies of permits required prior to collecting, including NPS and other permits.

2. Use and Reporting

a. Require that NPS staff provide credit to NPS and SI when NPS staff references the Collections or their metadata in print or digital publications.

b. Accept responsibility, as may be needed, to comply with NPS record-keeping or reporting requirements imposed by law, court order, Inspector General, Congress, or other mandate that exceed the SI responsibilities identified in this Agreement and provide necessary support to SI to accomplish any such requirements;

3. Tracking

Use the NPS loan system, or other appropriate system, to track movement of NPS collections for SI consideration under this Agreement and Collections between the parties. For NPS collections and Collections, the terms of this Agreement shall be cited in lieu of signatures on loan documents.

VI. Term and Termination of Agreement

This Agreement and SI's custodial responsibilities shall remain in effect permanently, except as follows:

A. SI will return Collections if required by law or court order and NPS has documented such requirement to SI; or

B. NPS may request the permanent return of Collections for park management purposes or other good cause shown, subject to mutual agreement of the parties;

C. NPS may seek the return of Collections under extraordinary circumstances that present an imminent and serious threat to the Collections, provided that NPS has documented such circumstances and that any such return shall be subject to the mutual agreement of the parties;

D. If the parties are unable to reach a mutual agreement regarding return of Collections to NPS under clause B or C, the parties agree to mutually select a neutral third-party arbitrator to resolve the dispute.

E. Non-material breaches of the administrative and reporting obligations set forth in this Agreement shall not be grounds for termination of this Agreement.

VII. Intellectual Property

A. Rights in Intellectual Property: Except as set forth herein, all intellectual property resulting from use of the Collections shall be owned in accordance with applicable intellectual property laws, unless modified by contract. Each party reserves the right to pursue any future action or lawsuit to enforce such rights as it may have in the Collections or intellectual property arising from use of the Collections. Nothing in this Agreement shall be construed to affect either party's right, title and interest in trademarks registered to or owned by either party.

B. Trademarks, Advertising and Endorsements: SI may use the terms "NPS," "National Park Service," and the NPS arrowhead logo to identify the Collections and associated documentation on the SI website, and in brochures and publications. Neither party may use the other party's name, logo or trademarks for any purpose without the other party's prior review of an example of the proposed use and written permission.

VIII. Specimen Consumption and Destruction

Consistent with its custodial responsibilities, SI may use, and authorize third parties to use Collections for consumptive and destructive sampling and analysis consistent with SI policies, except as follows:

A. In connection with consumptive or destructive sampling of threatened and endangered species, as defined by the Endangered Species Act; extinct species; holotypes; or other rare and high profile/charismatic species identified by NPS as restricted Specimens in NPS catalog metadata exported to the SI, SI must obtain NPS's concurrence, such concurrence only to be withheld for compelling reasons. In the unusual circumstance that an unrestricted Specimen later becomes a restricted Specimen, NPS will notify SI to modify the records accordingly, and such restricted Specimen shall become subject to this provision.

B. When a proposed use of the Collections would result in complete destruction of a Specimen, with no part or residuum remaining in the Specimen (including DNA), SI agrees to consult with NPS as set forth in D below.

C. Manipulation or dissection of Specimens for accepted taxonomic practice will not be deemed to be consumptive or destructive sampling subject to this clause.

D. NPS agrees to respond to any SI request regarding the above uses within thirty (30) days of the request, but may request an additional thirty (30) days for complex requests involving large numbers of Specimens. Absent any response from NPS after 30 days (or after 60 days if extended), SI may proceed.

IX. Deaccession and Return

SI may deaccession Collections in accordance with SI collections management policies, provided that SI shall notify NPS of its intention in advance. SI will return the deaccessioned Collections to NPS or may recommend a third-party to receive them. NPS will make the final decision regarding disposition of the Collections and notify SI within sixty (60) days of SI's notification. Delivery of the Collections to the designated recipient shall be at SI's expense. In making decisions to deaccession Collections, SI will make a good faith effort to keep Collections with a common NPS accession number together unless specifically exempted by the appropriate park Superintendent; however, NPS agrees and understands that it may be impractical and infeasible for Collections with a common accession number always to remain together.

X. Confidentiality

A. The parties agree not to disclose confidential information of the other party as defined herein. Unless otherwise required by law or policy with respect to Collections and NPS collections, confidential information shall include, but not be limited to, information concerning the nature and specific location of mineral or paleontological resources; endangered, threatened, rare or commercially valuable resources; proprietary business information including the valuations; data noted as restricted on NPS labels or catalog records; or personal information about collectors, users

and researchers. Each party will use good faith efforts to identify confidential information when providing it to the other party.
B. SI is not covered by the Freedom of Information Act (FOIA) (5 U.S.C. 552), but it provides equivalent access to collection information according to the terms in SD 807, Requests for Smithsonian Institution Information (available at http://www.si.edu/about/documents/SD807.pdf). NPS records associated with the Collections are covered by FOIA. New records, research and other documentation that SI generates after receipt of Collections are subject to the SI's SD 807. SI will handle all requests for access to SI records, and copies of SI records, maintained by the SI and associated with the Collections in accordance with SI policy, but SI agrees to provide NPS with a copy of records disclosure requests and responses pertaining to Collections. NPS will process all FOIA requests for NPS records associated with the Collections and agrees to provide SI with a copy of the FOIA request and responses pertaining to the Collections. Each party will refer requests to the appropriate party, and the parties agree to cooperate in good faith to resolve any conflicts between FOIA and the Smithsonian's SD 807.

XI. Warranty, Liability and Indemnification

A. Each party accepts full responsibility for any property damage, injury, or death caused by the acts or omissions of its respective employees, acting within the scope of their employment, or its contractors' scope of work, to the fullest extent of the law.

B. No indemnification for any loss, claim, damage, or liability is intended or provided by any party under this Agreement.

C. Any NPS collection, Collection, associated record copy, or confidential information conveyed under this Agreement shall be provided AS IS; furthermore, the parties make no representations as to the NPS collections, Collections, associated record copies or confidential information. They are provided without warranty of merchantability or fitness for a particular purpose or any other warranty, express or implied. The parties make no representation or warranty that the use of the NPS collections, Collections, associated record copies, or confidential information will not infringe any patent or other proprietary right.

XII. Authorized Representatives

For purposes of this Agreement, each party shall designate an individual to serve as the authorized representative for purposes of carrying out the day-to-day obligations of this Agreement and shall notify the other party in writing of such authorized representative. The authorized representative may delegate to others responsibility for carrying out specific parts of this Agreement. The parties shall notify each other in writing of any changes to the authorized representatives and their contact information. Authorized representatives designated by the parties will coordinate the resolution of any issues arising from the implementation of this Agreement. For purposes of this Agreement, the NPS authorized representative shall serve as the contact for the individual NPS units and shall disseminate communication from SI to the NPS unit representatives as needed.

XIII. Compliance with Law

A. Non-Discrimination: The parties shall not discriminate in the selection of employees or participants for any employment or other activities undertaken pursuant to this Agreement on the

grounds of race, creed, color, sex, age, disability, or national origin, and shall observe all of the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000(d) et seq.).

B. Anti-Deficiency Act: Pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1), nothing contained in this Agreement shall be construed as binding the United States to expend any sum in excess of appropriations made by Congress for the purposes of this Agreement, or as involving the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations.

C. Compliance with Applicable Law: The parties shall comply with all applicable laws and regulations.

XIV. Additional Terms

A. This Agreement may not be transferred, assigned or amended except by written consent of both parties.

B. If any term of this Agreement is held to be invalid or illegal, such term shall not affect the validity or enforceability of the remaining terms and the parties shall not be considered in default for failure to comply with such term.

C. No term or provision of this Agreement shall be waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. No waiver of a breach shall be deemed to be a waiver of a different or subsequent breach.

D. Except as expressly stated herein, neither party has the right or authority to assume or create any obligation, accept legal process, make commitments, incur any charges or otherwise bind or act on behalf of the other or limit the other in any manner whatsoever. Neither this Agreement nor any act hereunder shall be construed as constituting the foundation of a partnership, association, agency, joint venture or any other entity.

E. The parties agree to meet as needed to review implementation of this Agreement.

F. Any disputes between the parties shall be resolved promptly and in good faith by the authorized representatives. If the authorized representatives are unable to resolve such disputes, the matter may be referred to the SI Under Secretary for Science and the NPS Director for resolution.

G. The person signing below on behalf of each party warrants and represents that such person has the authority to execute this Agreement and to bind the respective party to the terms and conditions set forth herein.

AGREED

National Park Service

By
Director
National Park Service

Date: 4/26/12

Smithsonian Institution

By
Under Secretary for Science
Smithsonian Institution

Date: 4/26/12

Appendix

Terms of Use

1. Educational and scientific uses of the Collections are allowed except that any use that involves commercializing any Specimen research results, such as useful discoveries and inventions, requires prior consultation with SI and NPS and NPS may require users to enter into a benefits-sharing agreement.

2. Research based on the Collections generally should be made publicly accessible.

3. Users of the Collections must acknowledge or credit the NPS and SI when referencing the Collections, associated documentation or their metadata in exhibits or publications, including but not limited to print and digital formats.

4. A copy of print publications or a URL address for digital publications shall be provided to NPS and SI.

5. Failure to comply with NPS requirements regarding benefits-sharing may render the user liable to NPS for payment of 20% of the gross revenue from sales and may result in NPS's imposition of additional penalties and remedies including injunctive relief, and NPS is a beneficiary of these terms of use.