

**COOPERATIVE AGREEMENT**  
**1443CA1720-99-005**  
**BETWEEN THE**  
**UNITED STATES DEPARTMENT OF THE INTERIOR**  
**NATIONAL PARK SERVICE**  
**AND**  
**THE FREEDOM TRAIL FOUNDATION, INC.**

THIS AGREEMENT is made and entered into between the United States Department of the Interior, National Park Service hereinafter called the “**SERVICE**”, and the Freedom Trail Foundation, Inc., a Massachusetts charitable cooperation hereinafter called the “**FOUNDATION**”.

**ARTICLE I - BACKGROUND AND OBJECTIVES:**

**WHEREAS**, the Act of October 1, 1974 (88 Stat. 1184) declared it a national policy to preserve for the benefit and inspiration of the people of the UNITED STATES as a national historical park certain historic structures and properties of outstanding national significance located in Boston, Massachusetts; and

**WHEREAS**, the Secretary of the Interior is authorized to enter into cooperative agreements with the City of Boston, the Commonwealth of Massachusetts, or any private organization to mark, interpret, restore and/or provide technical assistance for the preservation and interpretation of any sites associated with Boston National Historical Park pursuant to 16 U.S.C. § 410z-1(b); and

**WHEREAS**, the FOUNDATION provides support and assistance to Boston National Historical Park and the Freedom Trail Sites to enhance preservation and interpretation of these important sites; and

**WHEREAS**, it is the desire of the FOUNDATION to promote the preservation, exhibition, interpretation and use of the Freedom Trail Sites as part of Boston National Historical Park; and

**WHEREAS**, it is the desire of the SERVICE to cooperate with the FOUNDATION in preserving the integrity of the Freedom Trail Sites and to assist in furthering its preservation for the benefit of the American people as part of their national inheritance; and

**WHEREAS**, the said Act provides that, as a condition precedent to the expenditure or obligation of any federal funds, a binding, written cooperative agreement assuring the preservation of the property in question must be executed and kept in force and effect; and

**WHEREAS**, pursuant to 16 U.S.C. § 1g, the National Park Service may in fiscal year 1997 and thereafter enter into cooperative agreements that involve the transfer of National Park Service appropriated funds to State, local and tribal governments, other public entities, educational institutions, and private nonprofit organizations for the public purpose of carrying out National Park Service programs pursuant to 31 U.S.C. 6305 to carry out public purposes of National Park Service programs.

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter contained, it is hereby agreed by and between the parties hereto:

**ARTICLE II - STATEMENT OF WORK:**

A. The **FOUNDATION** agrees to:

1. Cooperate in the common goal of protecting and preserving the historical integrity of the Freedom Trail and exert its best effort to further the preservation, protection, operation and maintenance of the Freedom Trail in a manner consistent with "Management Policies" of the National Park Service; and
2. Cooperate in the preparation of publications dealing with the Freedom Trail and the FOUNDATION will distribute the official SERVICE folder concerning Boston National Historical Park; and

3. Cooperate in the common goal of interpreting the Freedom Trail. The FOUNDATION will accept training and guidance from the SERVICE, when the FOUNDATION determines that such training and guidance will benefit its employees; and
4. Cooperate in the formulation, planning, and implementation of interpretive programs, special events, curatorial and visitor services activities, associated with the Freedom Trail. Where the SERVICE and FOUNDATION mutually agree to jointly support such programs, events and activities, funds may be transferred between the parties to accomplish these ends, subject to availability of funds; and
5. Maintain books of accounts in accordance with acceptable accounting practices and make the same available for inspection, by the SERVICE, during normal business hours or by auditors representing the SERVICE; and
6. Prior to the commencement of each fiscal year, establish a tentative budget for its operation and, after it has been examined by the SERVICE, adopt and adhere to the same. In the event there are any amendments to the budget, which the FOUNDATION deems advisable, or necessary, the FOUNDATION will present such amendments to the SERVICE for examination.

B. The **SERVICE** agrees to:

1. Assist the FOUNDATION, when necessary, by providing funds for specific purposes, such as special exhibits, technical training, interpretive literature, public affairs programming, executive direction, and other special purposes, as mutually agreed to; and
2. Provide other technical assistance in a variety of fields associated with management of historical trails, such as maintenance, interpretation, curatorial management, general management and the like, as mutually agreed to; and
3. Include the FOUNDATION in pertinent Park literature and interpretive materials relating to the Freedom Trail, produced by the SERVICE or by others acting for or on behalf of the SERVICE and will consult with the FOUNDATION in connection with preparation of such literature and material; and
4. Review sales items and assist in locating appropriate books, literature, and other sales materials and suggest merchandising techniques as the FOUNDATION may, from time to time, request.

**ARTICLE III - TERM OF AGREEMENT:**

Unless earlier terminated by operation of the terms of this Agreement or by agreement of the parties in writing, this Cooperative Agreement shall remain in force for a term of five (5) years from the date of execution and at the end of the five years be re-executed, rewritten, or be permitted to expire.

**ARTICLE IV - KEY OFFICIALS:**

The personnel specified below are considered to be essential to ensure maximum coordination and communication between the parties and the work being performed hereunder. Either party, on notice to the other party, may designate another person or persons to act in his/her place in an emergency or otherwise. Permanent changes of key personnel must be made in writing to the Contracting Officer.

- A. The key officials for the SERVICE are:
  - John J. Burchill (617) 242-5644  
Superintendent
  - Peter C. Steele (617) 242-5646  
Deputy Superintendent
  - Peter A. Promutico (617) 242-5640  
Chief of Administration  
Boston National Historical Park

Charlestown Navy Yard  
Boston, Massachusetts 02129

- B. The key officials for the FOUNDATION are:  
J. Louis Newell (617) 227-8800  
President  
Linda C. McConchie (671) 227-8800  
Executive Director  
The Freedom Trail Foundation, Inc.  
3 School Street  
Boston, Massachusetts 02108

**ARTICLE V – AWARD, PAYMENT & INVOICES:**

The commitment of funds in furtherance of this Cooperative Agreement shall be authorized by individual modifications. When the work to be accomplished and the work program are mutually agreed upon by all parties, an appropriate modification shall be consummated obligating funds.

In accordance with the provisions found in OMB Circular A-102 or A-110, as appropriate, invoices and other required supporting statements or certificates (all properly identified with the agreement number, the name of the National Park Service Key Official and, where applicable, the amendment number) will be submitted by the FOUNDATION.

These provisions include the following:

Reimbursement claims shall be submitted on Standard Form 270 (Request for Advance or Reimbursement) or other format as approved by the Contracting Officer, in an original and one copy.

Advances of actual funds shall be requested by submittal of a Standard Form 270, (Request for Advance or Reimbursement), in an original and one copy.

The disposition of advanced funds shall be reported quarterly by submittal of Standard Form 272, Federal Transaction Report. This form must be submitted within 15 days after the end of each calendar quarter in which funds remain outstanding.

**ARTICLE VI - PRIOR APPROVAL:**

No transfer or assignment of this Agreement or of any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved by both parties hereto in writing.

**ARTICLE VII - REPORTS AND/OR DELIVERABLES:**

As the performing organization under this Agreement, the FOUNDATION shall follow the procedures set forth in OMB Circular A-102 or A-110, as appropriate. Reports shall be submitted to the Chief of Administration.

Performance Reports: The FOUNDATION shall submit an annual performance report. For multi-year projects, a final performance report shall be submitted 90 days after the expiration or termination of the agreement.

Financial Reports: (1) The FOUNDATION shall submit Standard Form 269 or 269A, Financial Status Report, which details program outlays and program income, on an annual basis; and (2) for agreements which are paid in advance, shall submit Standard Form 272, Federal Cash Transactions Report no later than 15 working days following the end of each quarter.

**ARTICLE VIII - PROPERTY UTILIZATION AND DISPOSITION:**

Property utilization and disposition shall be in accordance with OMB Circular A-102 or A-110, as appropriate.

#### **ARTICLE IX - TERMINATION:**

While it is the express intent of both parties that the activities described under this Agreement continue uninterrupted, this agreement may be terminated or suspended in accordance with the provisions set forth with 43 C.F.R. Part 12 which provides as follows:

Awards to Institutions of Higher Education, Hospitals and Other Non-Profit Organizations may be terminated in whole or in part only if paragraph (1), (2) or (3) of this section applies.

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Federal awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraph (a) (1) or (2) of this section.

Awards to State and Local Governments may be terminated in whole or in part only as follows:

(1) By the awarding agency with the consent of the grantee or sub-grantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(2) By the grantee or sub-grantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety.

#### **ARTICLE X - GENERAL AND SPECIAL PROVISIONS:**

##### **A. GENERAL PROVISIONS**

1. This Agreement shall be subject to the following provisions, which are incorporated herein by reference:

a. If the cooperator is an agency of a **state or local government:**

i. OMB Circular A-102, "Grants and Cooperative Agreements with State and Local Governments"

and

ii. OMB Circular A-133, "Audits of States, Local Governments and Nonprofit Organizations"

and

iii. OMB Circular A-87, "Cost Principles for State and Local Governments".

b. If the cooperator is an **institution of higher education, hospital, and/or other nonprofit organization:**

i. OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations"

and

ii. OMB Circular A-133, "Audits of States, Local Governments and Other Nonprofit Institutions"

and

iii. OMB Circular A-21, "Cost Principles for Educational Institutions"

or

iv. OMB Circular A-122, "Cost Principles for Nonprofit Organizations".

2. Additional Provisions which apply to all cooperators include:

a. 43 CFR Part 12 including

(1) Applicability of various OMB circulars

(2) Administrative requirements

(3) Government Debarment and Suspension

(4) Drug-Free Workplace Requirements

(5) Buy American Requirements for Assistance Programs

b. 43 CFR Part 18, Restrictions on Lobbying Disclosure Requirements

c. MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Other Federal Assistance Agreements, 505 DM 3.1 - 3.5C(1)(A) or 5.1 - 5.6E(1), as appropriate.

d. Limitations on Payments to Influence Certain Federal Transactions, FAR 52.203-12.

e. Non-discrimination Requirements. All activities pursuant to this Agreement and the provisions of Exec. Order No. 11246, 3 CFR 339 (1964-65) shall be in compliance with the requirements of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 USC Section 2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973 (87 Stat. 394; 29 USC Section 794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 USC Section 6101 et seq.); and with all other Federal laws and regulations prohibiting discrimination on the grounds of race, color, national origin, handicap, religious or sex in providing for facilities and service to the public.

3. The following certifications are required in accordance with the above provisions and are attached hereto and made a part of this agreement (the blue pages must be filled out, signed as appropriate, and returned with the signed agreement):

a. Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying (Attachment A, DI-2010, 3 pages). Note various segments and alternatives: Part A should be prepared by each partner plus Part B by any "Lower Tiered Party" (sub-contractors, sub-consultants, **NOT** employees) to this agreement; Part C, if other than an individual or Part D, if an individual; plus Part E for all agreements which will exceed \$100,000 Federal assistance.

b. Disclosure of Lobbying Activities (Attachment B, Standard Forms LLL and LLL-A, 3 pages) for all partners completing Attachment A, Part B.

## B. SPECIAL PROVISIONS:

### 1. Availability of Funding

This Agreement and the obligations of the SERVICE hereunder shall be subject to the availability of funding, and nothing herein contained shall be construed as binding the Service to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of the Agreement for the fiscal year, or to involve the SERVICE in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.

### 2. Public Information

#### a. Promotions

The FOUNDATION shall not publicize, or otherwise circulate, promotional material (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles, manuscripts or other publications) which states or implies Federal Governmental, Departmental, Service or Federal Government employee endorsement of a product, service, or position which the FOUNDATION represents. No release of information relating to this Agreement may state or imply that the Government endorses the FOUNDATION work product as superior to other products or services.

#### b. Federal Disclaimer

The FOUNDATION will ensure that all information submitted for publication or other public releases of information regarding this project shall carry the following disclaimer:

The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government.

#### c. Public Information Release

FOUNDATION must obtain prior approval from the Superintendent, or authorized representative, Boston National Historical Park for any public information releases which refer to the Department of the Interior, the National Park Service, any sub-unit or employee thereof (by name or title), or this Agreement

### 3. Direct Benefit Clause

No Member of, Delegate to, or Resident Commissioner in, Congress shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom, unless the share or part or benefit is for the general benefit of a corporation or company.

4. Lobbying Prohibition: The parties will abide by the provisions of 18 U.S.C. 1913 (Lobbying with Appropriated Moneys), which states:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by the Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent

officers of employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section shall be fined not more than \$500 or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment.

## 5. Indemnification

a. This Agreement is in consideration of and upon the express condition that the **United States of America**, its agents and employees shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury to any person or property of any kind whatsoever, whether to the person or property of the FOUNDATION or third parties, from any cause(s) whatsoever arising from any act or omission undertaken pursuant to this Agreement, and that the FOUNDATION hereby covenants and agrees to release, indemnify, defend, save and hold harmless the United States, its agents and employees from all such liabilities, expenses and costs on account of or by reason of any injuries, deaths, liabilities, claims, suits or losses however occurring or damages arising out of the same; provided, however, that the FOUNDATION shall bear no responsibility for any claim arising from the act or acts of any employee of the National Park Service.

## 6. Insurance and Related Liability

The FOUNDATION shall be fully responsible for the acts and omissions of its representatives, employees, contractors and subcontractors connected with the performance of this agreement and shall:

a. Procure and maintain during the term of the Agreement, insurance in a form satisfactory to the Contracting Officer and by an insurance company acceptable to the Contracting Officer. The policies shall name the United States of America as an additional insured, shall specify that the primary insured shall have no right of subrogation against the United States for payments of any premiums or deductibles due thereunder, and shall specify that the insurance shall be assumed by, be for the account of, and be at the primary insurer's sole risk. The amounts of the insurance shall not be less than as follows:

(1) Workman's Compensation and Employer's Liability Insurance: Compliance with applicable Federal and State worker's compensation and occupational disease statutes shall be required. Employer's liability coverage in the minimum amount of one hundred thousand dollars (\$100,000).

(2) General Liability Insurance: General liability insurance in the minimum amount of one million dollars (\$1,000,000) per person for any one claim and an aggregate limitation of three million dollars (\$3,000,000) for any number of claims arising from any one incident.

(3) Automobile Liability Insurance: This insurance shall be required on the comprehensive form of the policy and shall provide for bodily injury and property damage liability covering the operation of all licensed motor vehicles used in connection with performing the agreement. The minimum limits of two hundred thousand dollars (\$200,000) per person and five hundred thousand dollars (\$500,000) per occurrence for bodily injury and twenty thousand dollars (\$20,000) per occurrence of property damage shall be required.

b. Pay the United States the full value for all damages to the lands or other property of the United States caused by such person or organization, its representatives, or employees.

## 7. Public Laws

This Agreement is subject to all laws, regulations and policies governing the SERVICE whether now in effect or hereafter adopted.

**ARTICLE XI – ATTACHMENTS AND APPENDICES:**

This Agreement shall be subject to the following appendices, which are attached hereto and incorporated herewith by reference, except as amended or waived by joint agreement:

- 1. Attachment A - Certification Regarding Debarment, Suspension, and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying, DI-2010.
- 2. Attachment B - Disclosure of Lobbying Activities, SF-LLL and SF-LLL-A.

**ARTICLE XII - AUTHORIZING SIGNATURES:**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers or representatives the day and year written below:

**THE FOUNDATION TRAIL  
FOUNDATION, INC.**

**UNITED STATES DEPARTMENT  
OF THE INTERIOR  
NATIONAL PARK SERVICE**

By: \_\_\_\_\_ /s/  
J. Louis Newell  
President

By: \_\_\_\_\_ /s/  
John J. Burchill  
Superintendent  
Boston National Historical Park

Date: \_\_\_\_\_ 9/27/99 \_\_\_\_\_

Date: \_\_\_\_\_ 9/27/99 \_\_\_\_\_

By: \_\_\_\_\_ /s/  
Nancy Tansino  
Contracting Officer  
Boston National Historical Park

Date: \_\_\_\_\_ 9/28/99 \_\_\_\_\_