

## FRIENDS GROUP AGREEMENT

This Friends Group Agreement (Agreement) is entered into between the National Park Service (NPS) and the St. Croix River Association (Friends Group).

The NPS recognizes the long and valuable tradition of philanthropy in the national parks. Friends groups have played a critical role in the success of this country's national parks, and it is the policy of the NPS to support and strengthen its relationships with friends groups. This document is intended to provide the legal and policy framework for the work done by the St. Croix National Scenic Riverway (Park) and the St. Croix River Association (Friends Group), and to encourage innovation and creativity to meet mutual goals.

### **I. Background.**

The St. Croix River is a national treasure, offering clean water to the Mississippi River, high quality natural ecosystems, beautiful scenery, unique cultural resources, abundant recreation opportunities and striking geologic features.

The St. Croix National Scenic Riverway, a unit of the National Park System, was established by the Wild and Scenic Rivers Act in 1968; it is one of a group of eight rivers in the country which first received this recognition. For 255 miles, the St. Croix and Namekagon rivers flow through some of the most scenic and least developed country in the Upper Midwest. Visitors canoe, boat, camp, fish, hike, and view wildlife in the area, renowned for spectacular scenery. There are approximately 92,749 acres (40,487 federal and 52,262 non-federal) within the Riverway's authorized boundary. Management is divided between a federal zone managed by the National Park Service and a state zone where the states of Minnesota and Wisconsin manage the lower 25 miles of the St. Croix River to its confluence with the Mississippi River.

The Park currently has a general agreement (signed January 30, 2008) in place with the St. Croix Valley Foundation (SCVF). An endowed fund (the St. Croix National Scenic Riverway Fund) was established at SCVF in 2007 as a result of a mitigation payment from the American Transmission Company related to an electric transmission line crossing the Namekagon River.

SCRA was founded in 1911 to encourage stewardship of the St. Croix River. It is a 501(c)3 private, non-profit organization, incorporated in Minnesota and doing business under the laws of the States of Minnesota and Wisconsin. SCRA has a headquarters office in St. Croix Falls, Wisconsin. For its first 98 years, SCRA functioned as a volunteer-run association. In 2008, with threats to the St. Croix increasing, key leaders, including former Vice President Walter Mondale, came together to call for increased work to protect the St. Croix before it is lost to future generations. SCRA has risen to the challenge and has greatly expanded its work, enlarging its Board of Directors, hiring its first staff (an executive director in October 2009), and working to become the "go to" group for the St. Croix River and its life-sustaining watershed as well. SCRA's current Board of Directors consists of approximately 21 individuals that bring to SCRA

a record of demonstrated civic-mindedness, generosity, a network of significant resources, and a commitment to the stewardship of the St. Croix River and its watershed.

SCRA's mission is to protect, restore and celebrate the St. Croix River and its watershed. Its goal is to become a catalyst for sustainable conservation in the St Croix basin and ensure that 1) land use decisions and management are conducted in a manner that improves and sustains water quality, wildlife habitat and scenic qualities in the St Croix basin; and 2) community education programs are in place to enhance St Croix basin quality awareness, advancing the understanding of the consequences of decisions and how they affect the health of the St Croix.

Principles guiding SCRA's work include a commitment to:

- Act with thoughtful urgency.
- Take strategic action, focusing on and achieving results that make a difference.
- Respect, engage and leverage the passion of local people in their communities.
- Collaborate with and empower others instead of working alone.
- Recognize the watershed's biological and cultural diversity in all respects.
- Conduct its work with a spirit of respect, transparency and openness.
- Enhance the efforts of the National Park Service, the states of Minnesota and Wisconsin and locally based groups working to protect the St Croix, the Namekagon and the watershed.
- Seek sustainable solutions that contribute to a thriving watershed.
- Foster new initiatives.

It is important to remember that the mission of the SCRA extends beyond the park boundaries. It is only through a watershed-wide approach that the St. Croix River will ultimately achieve protection. SCRA's work as a Friends Group will be one component of its larger role in the watershed.

The parties hereby agree as follows:

**II. Legal Authority.** NPS is authorized to enter into this Agreement pursuant to 16 U.S.C. §§ 1-4 and 6, 43 U.S.C. § 1473a.

**III. Responsibilities of the Parties.** Subject to the terms and conditions set forth in this Agreement:

A. Joint Responsibilities of NPS and Friends Group. NPS and Friends Group shall:

1. Promote this relationship as a way of accomplishing mutual goals pursuant to this Agreement, and recognizing the partnership as a way of leveraging scarce resources so that, together, more is accomplished than either party could do on its own.

2. Increase partnering skills and management capacity and motivate and empower NPS and Friends Group employees and board members to develop a supportive and collaborative culture for the benefit of the park resources and the public.

3. Increase productivity and collective competency by building on successes and expanding capacities for future achievement.
4. Commit energy, people and resources to goals of mutual interest, as identified in the Annual Work Plan, described in Article IV.
5. Respect the role that donors, volunteers, philanthropy, Friends Groups and NPS staff contribute to the achievement of the National Park System.
6. Expedite decisions and agreements considered vital to the parties' mutual goals and to this Agreement.
7. Promote and utilize policies and best practices relating to philanthropy and donor appreciation in all activities related to this Agreement, such as those expressed within NPS Director's Order #21 on Donations and Fundraising (DO #21) and its Reference Guide; the Donor Bill of Rights (created by the Association of Fundraising Professional, the Association for Healthcare Philanthropy, the Council for Advancement and Support of Education, and the Giving Institute: Leading Consultants to Non-Profits).
8. Submit all materials that are intended for public distribution and that refer to the partnership or each other, to one another for advance review and approval. The Parties agree that they may develop standard language that does not require approval beyond the initial approval. Where standard language has not been developed, the parties will use best efforts to review, approve, or deny such materials within seven (7) business days of receipt. NPS agrees that failures on its part to meet the seven (7) day target may be brought to the attention of the Regional Director of NPS who will use his or her best efforts to make sure such reviews are completed in the future in the seven (7) day target.
9. Parties agree that the Park Superintendent, or his/her designee, shall be a non-voting liaison to the Board of the Friends Group.
10. Review proposed donations of funds and in-kind goods and services that are intended to be provided to the Park to ensure that they meet NPS needs, requirements and specifications.

B. Responsibilities of NPS. NPS shall:

1. Work with Friends Group to encourage community engagement in shared stewardship of the Park by the local and national community.
2. Publicly recognize Friends Group as an official park support organization.

3. Support Friends Group in its growth, viability and public impact by identifying projects and programs that will showcase the value of the Friends Group and donor investments in the national parks.

4. Meet with the Friends Group to discuss the requirements of DO #21 and other NPS policies that relate to the work of the partnership.

C. Responsibilities of Friends Group. Friends Group shall:

1. Support the mission of NPS.

2. Establish and maintain a collaborative relationship with NPS with the goal of accomplishing philanthropic projects and encouraging volunteer contributions.

3. Be qualified to solicit and accept philanthropic contributions under applicable state and federal laws.

4. Conform to standards of best practices and ethics common to all nonprofit organizations, as well as applicable local, state and federal government laws and regulations.

5. Fundraising costs for Identified Projects<sup>1</sup> will not exceed 20% of funds raised. Fundraising consultants or staff, if compensated, are to be paid a salary or flat fee; no payment may be made as commissions or as a percentage of funds raised.

6. Ensure that its Articles of Incorporation and Bylaws are consistent with the terms of this Agreement.

**IV. Annual Work Plan.**

A. Annual Work Plan.

1. Prior to March 1 of each year, NPS and Friends Group shall jointly develop a written plan (Annual Work Plan) that (i) identifies the projects and programs (Identified Projects) that the parties agree to undertake in a specific year; (ii) specifies the respective roles of NPS and Friends Group in carrying out the Identified Projects; (iii) describes the proposed expenditure of available funds held by the Friends Group in connection with the Identified Projects and/or identifies any funds the parties have agreed to set aside for use in future approved projects and/or programs; (iv) identifies NPS' intent, if any, to accept such funds to support the Identified Projects; and (v) authorizes Friends Group to provide appropriate in-kind goods or services to support specific NPS

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<sup>1</sup> Identified Projects are those projects and programs that the NPS and Friends Group agree to undertake in a specific year. See Article IV – Annual Work Plan.

projects or programs. The parties may modify the Annual Work Plan, as appropriate, during the course of the Agreement term by mutually executed amendments.

2. Annual Work Plans may authorize Friends Group to raise funds to support one or more Identified Projects. If so authorized, Friends Group may raise up to the fundraising goal specified in the Annual Work Plan, not to exceed \$1 million for each Identified Project. Identified Projects must be truly independent and must not be a phase or segment of a larger project or program. When an Annual Work Plan is used to authorize fundraising, it shall include the following additional information for each Identified Project: (1) the fundraising goal, (2) a description of how Friends Group will raise funds and review donors and donations, and (3) a description of specific donor recognition that will be provided. A Friends Group Fundraising Agreement must be used to authorize fundraising for any Identified Project where the fundraising goal is \$1 million or more.

B. Limitation on Solicitations and Fundraising. Friends Group shall not solicit donations of money and/or in-kind goods or services for the benefit of NPS unless the Identified Project for which such donations are to be solicited (i) is set forth in the Annual Work Plan; or (ii) if required under DO #21, a Friends Group Fundraising Agreement has been entered into by NPS and Friends Group. This does not limit Friends Group from fundraising for its general operations or mission.

C. Limitation on Other Actions. Friends Group shall obtain the written approval of NPS, including but not limited to a Special Use Permit, Volunteer Service Agreement, Corporate Campaign Agreement, or Partner Construction Agreement, as appropriate, before (i) holding special events or other activities on NPS property; (ii) bringing volunteers into the Park; (iii) initiating Corporate Campaigns (See DO#21, Section 7.0) or cause-related marketing activities that state or imply NPS involvement or that NPS will benefit; or (iv) constructing any structure or making any improvements on NPS property.

## V. Property Utilization.

A. **Government-Owned Property:** The Standard Form Property Use Agreement (PUA) must be executed by the parties before Friends Group's use of Government-owned real and/or other property in furtherance of this Agreement.

B. **Intellectual Property:** If any activity of either party is expected to result in the creation or donation of any intellectual property rights, or if Friends Group or NPS requires a license to any intellectual property rights of the other party (including website links), the parties shall abide by the terms described in the Intellectual Property License Attachment (IP Attachment) to this Agreement (Attachment A), which addresses the terms and conditions applicable to such intellectual property rights. Friends Group shall not use any intellectual property of the United States of America, including NPS and park specific logos, marks, images of NPS employees in uniform, and taglines, unless authorized in accordance with the IP Attachment.

**VI. Term.** Unless earlier terminated in accordance with its terms, this Agreement shall remain in effect for a period of 5 years beginning on the date the last signature is affixed. This Agreement may be extended for an additional term of 5 years by the mutual written agreement of the parties prior to expiration.

**VII. Termination and Disposition of Assets.**

A. Termination.

1. Each party may terminate this Agreement for any reason by giving advance written Notice of Termination for Convenience. Termination shall be effective 60 calendar days from the date of receipt of the Notice, or upon the termination date specific in the Notice, whichever is later.

2. Each party may immediately terminate this Agreement for a material breach of this Agreement by the other party. In this event, this Agreement shall terminate upon the breaching party's receipt of a written Notice of Termination for Breach. Alternatively, the non-breaching party may provide the breaching party with an opportunity to cure the breach by a date specified in a Cure Letter. If the breach is not cured to the satisfaction of the non-breaching party by the specified date, this Agreement will terminate upon the breaching party's receipt of a Notice of Termination for Breach.

3. Unless expressly provided for in this Agreement or related agreements, neither party shall be liable for any costs, damages, or other claims that result directly or indirectly from termination of this Agreement. All other rights and claims of the parties shall be preserved.

B. Disposition of Assets upon Termination or Expiration of this Agreement or Cessation of Friends Group Operations. Upon the termination or expiration of this Agreement or cessation of the operations of the Friends Group for any reason, those funds held to benefit NPS including all interest and earnings thereon, and all in-kind contributions held by Friends Group for the benefit of NPS shall be transferred to NPS or to a third-party deemed acceptable by NPS (under such terms and conditions as are deemed acceptable by NPS) for use consistent with the purposes for which the donations were made. Nothing herein shall prevent Friends Group from satisfying allowable outstanding obligations reasonably incurred in association with this Agreement prior to the termination or expiration of this Agreement.

**VIII. Insurance**

A. Friends Group should, in keeping with best practices in the nonprofit industry, acquire appropriate insurance. However, where NPS grants Friends Group permission to undertake a specific activity, NPS may condition that permission upon Friends Group acquiring appropriate insurance that is acceptable to NPS.

B. Where Friends Group has acquired insurance, the Department of the Interior and NPS shall be listed as additional insureds. The insurance policy or policies shall specify

that the insurer shall have no right of subrogation against the United States and shall have no recourse against the United States for payments of any premiums or deductibles due thereunder. NPS will not be responsible for any omissions or inadequacies of any insurance coverage and amounts in the event that the insurance purchased by Friends Group is inadequate or otherwise insufficient for any reason whatsoever.

- C. NPS reserves the right to file insurance claims on its own behalf or to require the transfer of insurance proceeds from Friends Group to NPS where, in NPS's judgment, NPS will undertake remedial work for which the claim is paid.

**IX. Liability and Indemnification.** Friends Group shall indemnify, defend and hold harmless the United States of America and its agents and employees from and against any and all liabilities, obligations, losses, damages, judgments, claims, actions, suits, penalties, fines, costs and expenses (including reasonable attorneys' fees and experts' fees) of any kind and nature whatsoever arising out of the acts or omissions of Friends Group, its employees, agents or contractors (including any contractor's subcontractors), including injury to persons (including injury resulting in death) and damage to property. Friends Group shall promptly pay the United States of America the full value of all damages to the lands or other property of the United States of America caused by Friends Group, its employees, agents, representatives, or contractors (including any contractor's subcontractors) or, as agreed to by the parties, shall undertake the remedial work to repair or replace the damaged lands or property. Friends Group will cooperate with the NPS in the investigation and defense of any claims that may be filed with the NPS arising out of the activities of Friends Group, its employees, agents, representatives or contractors (including any contractor's subcontractors).

**X. Financial Matters**

A. In General.

- 1. Friends Group shall maintain proper accounting books and records under a system of accounts and financial controls that is consistent with Generally Accepted Accounting Principles of the United States ("GAAP").

B. Right of Inspection and Audit. Friends Group shall permit the Department of the Interior or its designee, including the NPS Comptroller and Office of the Inspector General, to verify and audit any financial audit or records from the books, correspondence, memoranda and other records of Friends Group relating to this Agreement or any other agreement executed in connection herewith, during the term of this Agreement and for such time thereafter as may be necessary to accomplish such verification. Friends Group agrees to take appropriate corrective action based on these audit findings.

C. Provision of Certain Information. By June 1, Friends Group shall provide NPS (i) a copy of its IRS Form 990 and any amendments thereto and (ii) an annual report of aid (Nonprofit Organization Annual Report of Operations and Aid to Federal Land Management Agency(ies)) and a short narrative as described at:

[http://www.nps.gov/interp/coop\\_assn/resources.htm](http://www.nps.gov/interp/coop_assn/resources.htm) in the section titled “20XX Call for Submissions.”

D. \$1 Million Threshold for Audit. Once Friends Group raises \$1 million or more in funds for the benefit of NPS, either in a single effort or cumulatively over time, Friends Group shall thereafter annually furnish NPS with a financial audit. The audit will be prepared by an independent certified public accountant (CPA) in conformance with both GAAP and guidelines provided in the DO #21 Reference Guide. Friends Group agrees to take appropriate corrective action based on audit findings. The audit shall be provided to the Superintendent of the affected park(s) within 9 months of the end of Friends Group’s fiscal year.

E. Establishment of Endowment or Investment Accounts. NPS and Friends Group shall mutually determine the need for an Endowment Account and/or Investment Account, where the account will be established for the benefit of NPS. If such a need is identified, the parties shall execute and abide by the terms of the Standard Form Endowment and Investment Account Agreement (EIAA), which describes the use, terms and conditions applicable to such accounts. For purposes of this Agreement, the terms “Endowment Account” and “Investment Account” are defined in the EIAA.

**XI. Key Officials and Notices**

A. Key Officials. Each party shall designate one or more key personnel to be responsible for coordination and communication between Friends Group and NPS in connection with the activities to be performed pursuant to this Agreement (Key Official). Upon written notice to the other party, either party may designate an alternate to act in the place of the designated Key Official, or designate a new Key Official.

**For NPS:**

Christopher E. Stein  
Superintendent  
401 N. Hamilton Street  
St. Croix Falls, WI 54024  
(715) 483-2290  
Fax: (715) 483-3288  
chris\_stein@nps.gov

**For Friends Group:**

Deb Ryun  
Executive Director  
P.O. Box 655  
St. Croix Falls, WI 54024  
(715) 483-3300  
Fax:  
debryun@scramail.com

B. Notices. Notices from one party to the other party with respect to this Agreement shall be in writing and delivered by mail, personal delivery, electronic delivery or other appropriate means, to the first listed Key Official of the other party at the address or contact number indicated above, or at such other address or contact number for such Key Official as may be provided by the other party from time to time, and shall be considered to have been delivered upon receipt at the specified address of such Key Official or such other person as mutually agreed by the parties.



## **XII. Miscellaneous**

A. Non-Discrimination. All activities pursuant to or in association with this Agreement shall be conducted without discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex, as well as in compliance with the requirements of any applicable federal laws, regulations, or policies prohibiting such discrimination.

B. NPS Appropriations. Pursuant to 31 U.S.C. § 1341, nothing contained in this Agreement shall be construed to obligate NPS, the Department, or the United States of America to any current or future expenditure of funds in advance of the availability of appropriations from Congress and their administrative allocation for the purposes of this Agreement, nor does this Agreement obligate NPS, the Department, or the United States of America to spend funds on any particular project or purpose, even if funds are available.

C. Limitations on Lobbying.

To the extent that the Friends Group commits in this agreement or any related agreement to raise funds from non-federal sources for a particular purpose or project to benefit NPS, the Friends Group agrees that it will not lobby for or otherwise seek the appropriation of funds from Congress to meet that commitment. The Friends Group may not use any appropriated funds (including property, utilities, or services acquired with, or supported by, appropriated funds) to lobby or attempt to influence Congress or any official of any government.

D. Compliance with Applicable Laws. This Agreement and performance hereunder is subject to all applicable laws, regulations and government policies, whether now in force or hereafter enacted or promulgated. Nothing in this Agreement shall be construed as (i) in any way impairing the authority of the NPS to supervise, regulate, and administer its property under applicable laws, regulations, and management plans or policies as they may be modified from time-to-time or (ii) inconsistent with or contrary to the purpose or intent of any Act of Congress.

E. Disclaimers of Government Endorsement. Friends Group shall not publicize or circulate any materials (including advertisements, solicitations, brochures, press releases, speeches, pictures, movies, articles, manuscripts, or other publications) suggesting, expressly or implicitly, that the United States of America, the Department, NPS, or any government employee endorses any business, brands, goods or services.

F. Merger. This Agreement, together with each Annual Work Plan, any Friends Group Fundraising Agreement, and any other agreement or written agreement modification entered into pursuant hereto, contains all the terms and conditions agreed to by the parties, and supersedes any prior agreements between the parties, with respect to the subject matter hereof.

G. Modifications. This Agreement may be extended, renewed, supplemented or amended only when agreed to in writing by the NPS and Friends Group.

H. Waiver. No waiver of any provisions of this Agreement shall be effective unless made in writing and signed by the waiving party. No waiver of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof.

I. Assignment; Binding Effect. Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. The parties waive the defense of lack of consideration.

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

K. Member of Congress. Pursuant to 41 U.S.C. § 22, no Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States of America, or to any benefit to arise thereupon.

L. No Agency. Friends Group is not an agent or representative of the United States of America, the Department, or NPS, nor will Friends Group represent itself as such to third parties. NPS employees are not agents of Friends Group and will not represent themselves as such to third parties. Nothing in this Agreement shall at any time be construed so as to create the relationship of employer and employee, principal and agent, or joint venture as between Friends Group and NPS.

M. Non-Exclusive Agreement. This Agreement in no way restricts either NPS or Friends Group from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.

N. No Third-Party Beneficiaries. Unless expressly stated herein, nothing in this Agreement is intended to grant any legally enforceable rights or provide any benefits to any third party.

O. Survival. The terms of this Agreement that by their nature are reasonably intended by the parties to survive termination, including the terms of Article VII.B, Article VIII.D, Article IX and Article X.B, shall survive the expiration or termination of this Agreement.

P. Partial Invalidity. If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Q. Interpretation. The headings of the Articles in this Agreement are inserted only as a matter of convenience and shall in no way be construed to define or limit the scope or intent, or affect the meaning or interpretation, of this Agreement. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Additionally, the phrase “for the benefit of NPS” means donations of money (including interest and earnings thereon) and / or in-kind donations that were solicited for the express purpose or implied purpose of using them, whether in whole or in part, to support NPS, or NPS’s projects, programs or resources. This Agreement shall not be construed in favor of or against either party by reason of the extent to which such party or its professional advisors participated in the preparation of this Agreement or based on a party’s undertaking of any obligation under this Agreement.

R. Further Assurances. If reasonably requested by one party, the other party shall execute and deliver such other documents and take such other action as may be necessary to effect the terms of this Agreement.

S. Disputes and Venue. The parties agree that in the event of a dispute between them, NPS and Friends Group shall promptly use their best efforts to resolve the dispute in an informal fashion through communication and consultation, or other forms of non-binding alternative dispute resolution that are mutually acceptable to the parties. The parties agree that the venue to commence litigation of any disputes stemming from this Agreement shall be a Federal court with appropriate jurisdiction.

**XIII. Signatures**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date the last signature is affixed.

ST. CROIX RIVER ASSOCIATION

By: \_\_\_\_\_  
Name: Peter Gove  
Title: Chair, Board of Directors

\_\_\_\_\_  
Date

NATIONAL PARK SERVICE

By: \_\_\_\_\_  
Name: Christopher E. Stein  
Title: Superintendent

\_\_\_\_\_  
Date

**ATTACHMENTS**

Attachment A – Intellectual Property Attachment

Attachment B – Donor Review Process

Attachment C – Memo Dated November 3, 2008 from Superintendent, St. Croix to Regional Director, Midwest Region (Donor Recognition Plan)

Attachment D – Friends Group Articles of Incorporation

Attachment E– Friends Group By-laws

Attachment F – IRS Determination Letter

Check if included at the time of execution of this Friends Group Agreement []

Attachment G– Standard Form Property Use Agreement

Check if included at the time of execution of this Friends Group Agreement []

Attachment H– Standard Form Endowment and Investment Account Agreement

Check if included at the time of execution of this Friends Group Agreement []