

TEXAS HISTORICAL COMMISSION

MEMORANDUM OF AGREEMENT

**FRIENDS OF FORT McKAVETT STATE HISTORIC SITE
and the
TEXAS HISTORICAL COMMISSION**

Whereas, the Texas Historical Commission ("COMMISSION"), an agency of the state of Texas, is responsible for acquiring, maintaining and operating a system of State Historic Sites for the benefit of the people of the State of Texas; and

Whereas, the [Name of Friends] ("FRIENDS") is a duly incorporated nonprofit corporation in accordance with the Texas Non-Profit Corporation Act in good standing with the Secretary of State and has obtained from the Internal Revenue Service a valid determination letter that it is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 organized exclusively for charitable and educational purposes; and

Whereas, the mission of the FRIENDS is to support the operations, maintenance and educational programs of the Fort McKavett State Historic Site operated by the COMMISSION through its Historic Sites Division.

Now, therefore, the FRIENDS and COMMISSION, acting by and through duly authorized officers, enter into the following MEMORANDUM OF AGREEMENT.

Nature of Agreement

The parties agree that their relationship is for the purpose of working to interpret the history and cultural resources of the Historic Site; preserve and protect the cultural resources of the Historic Site; and attract and serve all visitors to and users of the Historic Site.

The FRIENDS will generate resources for the site by receipt, solicitation, administration and disbursement of gifts, grants or bequests related to the Historic Site; assisting with programs that might include volunteer labor, hosts, living history, research and other purposes for the benefit of the operation, maintenance and preservation of the Historic Site and maintaining a membership open to all people with an interest in the Historic Site and its mission.

The FRIENDS and the COMMISSION expressly acknowledge that nothing in this agreement is intended or should be construed to assign any control, management, direction, or policy influence over the Historic Site or the COMMISSION to the FRIENDS.

No joint venture, partnership or agency exists or shall be implied between the FRIENDS and the COMMISSION by the terms of the agreement.

The FRIENDS does not have any authority to represent or bind the COMMISSION to third parties. The COMMISSION does not have any authority to represent or bind the FRIENDS.

The COMMISSION designee for all matters related to this agreement shall be the duly appointed Site Manager of the Historic Site (hereinafter referred to as the "SITE MANAGER"), unless specifically stated otherwise in the agreement. In the event there is no duly appointed SITE MANAGER, the designee will be the COMMISSION'S Director of Historic Sites.

Organization of FRIENDS

The affairs of the FRIENDS shall be managed by its Board of Trustees (hereinafter referred to as the "TRUSTEES") with no fewer than five members. Each new member of the Board of Trustees shall be given a notebook with copies of this agreement, Articles of Incorporation, bylaws, and the FRIENDS' most recent financial statements. TRUSTEES shall not receive any compensation for their services.

The FRIENDS shall not elect or designate or otherwise select a COMMISSION employee as an officer or director, other than as a non-voting uncompensated representative of the COMMISSION.

The FRIENDS shall hold regular meetings of its Trustees, at least twice each fiscal year. The FRIENDS shall notify the SITE MANAGER of all meetings and allow that SITE MANAGER to attend all regular and special meetings, including, but not limited to, meetings of its general membership, board and committees. Meeting notices must be provided to the SITE MANAGER at least three days in advance of the meeting so that the COMMISSION representative has ample opportunity to attend.

The FRIENDS shall deliver to the SITE MANAGER copies of all FRIENDS meeting notes, announcements, changes to bylaws or articles of incorporation and minutes, and keep the SITE MANAGER informed of all FRIENDS activities.

Joint Planning and Reporting

By October 1 of each year the FRIENDS, in consultation with the SITE MANAGER, will prepare an Annual Plan for the following calendar year. This plan will detail all activities to generate revenue, including solicitation, grant writing, fundraising activities, and planned activities, programs and projects as well as the FRIENDS annual budget.

Any major programs or projects of the FRIENDS that are not included in the Annual Plan require separate approval from the COMMISSION. Proposals for new activities will be submitted at least 30 days before the date of the proposed activity for review and approval.

The FRIENDS will submit an annual audit, compilation or review along with an annual report on their activities of the previous year detailing the accomplishments, adjustments to the plan, and all revenue and expenditures of the organization. If the FRIENDS annual operating budget is more than \$100,000 a complete audit is required. If the FRIENDS annual operating budget is between \$25,000 and \$100,000 a CPA-conducted Compilation may substitute for a full audit. The Compilation is a report based on financial data supplied by the organization and organized into standard financial reporting formats. If the FRIENDS annual operating budget is less than \$25,000, a CPA-conducted Review, a more limited examination of the financial statements, may

substitute for a full audit. The Review includes evaluation of the organization and some analysis, but does not undertake the extensive testing required for an audit.

The fiscal year of the FRIENDS shall be January 1 through December 31. The FRIENDS shall prepare an annual federal tax return (Form 990) if required by the IRS and provide a copy to the COMMISSION.

All FRIENDS records, reports, and files will be retained for a period of five years and made available to the COMMISSION on request.

The FRIENDS will promptly notify the COMMISSION of any change in its legal or tax-exempt status.

The FRIENDS will submit all materials prepared for public distribution relative to projects or programs at the Historic Site, including but not limited to promotional flyers, brochures, web sites or any other form of publicity or visual media to the COMMISSION for review and approval prior to its release.

The COMMISSION will work closely with the FRIENDS to support and promote the activities of the FRIENDS.

The COMMISSION will provide free admission to the Historic Site for members of the FRIENDS.

The COMMISSION will provide the FRIENDS all written policies, annual operational plans, interpretive and master plans prepared by the COMMISSION relating to the Historic Site, and keep the FRIENDS apprised of any revisions. Projects proposed by the FRIENDS must be consistent with the site plans and policies.

Conflict of Interest

The FRIENDS shall conduct business in a way that will ensure public access and transparency and will not engage in any activity for the private profit of any individual or organization.

The FRIENDS must adopt and maintain a conflict of interest policy which includes safeguards to prevent board members or their families from benefiting financially from any action or business decision of the FRIENDS.

The FRIENDS shall not donate funds to a political campaign or endorse a political candidate. However, this subsection is not intended to restrict the FRIENDS from providing information to the legislature or to other elected or appointed officials.

Except as approved in writing by the Executive Director, the FRIENDS shall not collect additional artifacts of a historic nature, and where collections are currently held, FRIENDS and COMMISSION agree to work together to document and unify existing site-related collections.

Funds

The FRIENDS shall not hold or obligate COMMISSION funds, and the COMMISSION shall not hold or obligate FRIENDS funds except at the request of the FRIENDS described in a written document approved by the COMMISSION'S Executive Director.

Funds accepted or generated by the FRIENDS are to be managed as a prudent person would manage funds if acting on his or her own behalf and under a system of accounts and financial controls meeting Generally Accepted Accounting Principles (GAAP).

The FRIENDS will use all income as may be derived from its activities for the benefit of the Historic Site and for the purposes authorized in and in the manner prescribed in this agreement and Annual Plan.

FRIENDS shall decline contributions that require actions, including recognition, by the COMMISSION for which the COMMISSION has not given prior written consent.

The FRIENDS shall not hold in their accounts an amount greater than \$10,000 or 30% of their annual budget, whichever is larger, without the written approval of the COMMISSION.

Expenses

The COMMISSION may allow the FRIENDS to use equipment, facilities, or services of employees on the Historic Site for purposes outlined in an Annual Plan that identifies the need and benefit to the Historic Site for such use. Use of state equipment or staff for activities outside the Historic Site must have the prior approval of the Executive Director of the COMMISSION.

If the FRIENDS desire to use the Historic Site facilities for concessionaire or other related commercial purpose, the FRIENDS agrees to enter into a separate concessionaire contract with the COMMISSION, subject to all applicable COMMISSION rules and policies. The COMMISSION is not a guarantor of any obligation of the FRIENDS.

Employees

The FRIENDS shall not employ a COMMISSION employee in a paid position or otherwise provide compensation or a direct personal benefit to a COMMISSION employee. The FRIENDS may reimburse a COMMISSION employee for legitimate, documented expenses.

Members of the FRIENDS are encouraged to engage in volunteer activity at the Historic Site, but are at all times subject to the direction and control of the SITE MANAGER. Volunteers may be required to sign a waiver of liability or other release.

General

All financial obligations of the COMMISSION hereunder are subject to the availability of funds and to such direction and instructions as may have been or are hereafter provided by the State Legislature.

This agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas, without giving effect to the principles of conflicts of law.

Non-Assignability

This agreement or any part hereof or the administration or performance of any activity or service performed by the Association cannot be assigned or sublet, contracted away, or in any manner transferred without prior written consent and approval by the COMMISSION.

The FRIENDS will not discriminate in its employment practices against any individual because of race, color, religious creed, ancestry, age, sex, national origin, or disability.

The FRIENDS will comply with the requirements of Chapter 21 of the Texas Labor Code to the extent applicable, and will not deny to any person because of his or her race, color, sex, religious creed, ancestry, national origin, or handicap or disability any of the accommodations, advantages, facilities, or privileges of the premises or made available in connection with activities conducted at the Historic Site.

Termination

Each party shall have the right, without limitation, to terminate this agreement upon 30 days written notice to the other party. If changes in state law or COMMISSION policy render it necessary, the COMMISSION may terminate this agreement with ten days written notice to the FRIENDS.

Upon termination of this agreement or upon dissolution of the FRIENDS' Corporation, unless otherwise agreed, all assets of the FRIENDS solicited and received for the benefit of the Historic Site pursuant to all Annual Plans and any other activities will become the property of the COMMISSION, if so desired by the COMMISSION, without consideration therefore.

Any funds received by the COMMISSION as a consequence of the termination of this Agreement or of a Project Agreement will be deposited in the COMMISSION'S account and will be used exclusively for the development of the Fort McKavett State Historic Site.

Integration

This agreement sets forth the entire agreement and understanding among the parties relating to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings not specifically set forth herein. This agreement may not be modified or changed other than by an agreement in writing executed by all of the parties hereto.

Consent to Breach Not Waiver


No term or provision of this agreement will be deemed waived and no breach excused unless such waiver or consent is in writing and signed by an authorized representative of the COMMISSION. Any consent by the State to, or waiver of a breach by the FRIENDS, whether express or implied, will not constitute a consent to or waiver of or excuse for any other different or subsequent breach.

Term

This agreement shall be for a term of five years from the effective date. The agreement will renew for an additional five years with the mutual written agreement of both parties.

This agreement takes effect on January 1, 2009 and expires on December 31, 2013.

Attest: FRIENDS OF FORT McKAVETT STATE HISTORIC SITE


Signature: 

Name: John Cobb

Title: President

Date: 1-28-09

Attest: TEXAS HISTORICAL COMMISSION

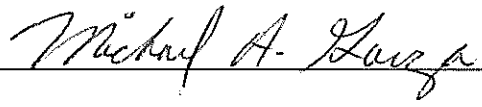
Signature: 

Name: F. Lawrence Oaks

Title: Executive Director

Date: _____

Attest: FORT McKAVETT STATE HISTORIC SITE

Signature: 

Name: Michael "Buddy" Garza

Title: Site Manager

Date: 1-29-09