

Memorandum of Understanding (MOU)
Between Friends of the Mohawk Hudson Bike-Hike Trail and
New York Parks and Conservation Association

Friends of the Mohawk Hudson Bike Hike Trail (FMHBHT), (hereinafter referred to as **Client**) and the **New York Parks and Conservation Association** (hereinafter referred to as **NYPCA**) wish to define their relationship by way of this Memorandum of Understanding (hereinafter referred to as MOU)

Whereas, Client is a volunteer organization whose mission is to develop through public education and stewardship the historical, recreational, and economic opportunities of the Mwhawk-Hudson Trail

Whereas, NYPCA is a 501 (c)(3) statewide non-profit organization whose mission includes the provision of temporary fiscal agent status for groups performing volunteer activities on the Canalway Trail compatible with the Canalway Trail Partnership Project;

Whereas, Client's activities are considered by **NYPCA** to be compatible with the Canalway Trail Partnership Project;

Whereas, Client has requested **NYPCA** to be a fiscal agent for the duration of this MOU for specific funds donated to the **Client** by corporate, individual, or other sources;

Whereas, “fiscal agent” is defined as the provision of custodial account, fiscal, and record keeping services under the auspices of **NYPCA** under **NYPCA’s** federal and state non-profit status;

Whereas, “custodial funds” are defined as those donated or grant originated moneys provided to **Client**, in accordance with all pertinent laws and regulations that are deposited in a **NYPCA** bank account on behalf of **Client**;

Whereas, NYPCA has the requisite expertise and knowledge required in the keeping of both fiscal books and records, and the maintenance of a fiscal agent relationship with **Client**, and further, **NYPCA** desires to provide temporary fiscal agent services for **Client** as requested;

NOW THEREFORE, NYPCA and **Client** mutually agree as follows:

1. **NYPCA** shall provide the following services to **Client**:

- a. Provide fiscal agent services including the temporary use of **NYPCA's** tax-exemption status, for custodial funds specified above allocated to **Client** and deposited in a **NYPCA** account;
 - b. Deposit custodial funds in a group custodial account, which will be included in **NYPCA's** annual audit;
 - c. Release or expend said custodial funds as appropriately directed by **Client**. **NYPCA** will not release said custodial funds without prior written authorization from **Client**. However, **NYPCA** specifically reserves the right to refuse to release or expend any funds within its group custodial account should the requested expenditure be illegal or jeopardize the 501 (c)(3) status of **NYPCA**;
 - d. Conduct all required reporting in a timely manner;
 - e. Provide bookkeeping services to **Client**. Said services will include:
 1. the production of a year-end and quarterly financial reports,
 2. maintenance of a general ledger,
 3. processing and depositing of cash receipts,
 4. any necessary cash disbursements,
 5. adherence to reporting requirements relating to custodial funds.
2. **Client** shall:
- a. Fully adhere to and comply with all applicable fundraising laws and regulations, and be subject to the **Financial Management Standards** attached hereto as *Schedule A*.
 - b. Fully adhere to and comply with all contractual agreements or obligations entered into by **Client** that regard any, or all funds, in the custodial account, and make **NYPCA** immediately aware of any such contractual agreements or obligations.
 - c. Agree not to retain, use or otherwise engage a proprietary fundraising firm or individual.
 - d. Shall not refer to or use **NYPCA's** name in any written materials, proposals, or solicitations without the express written approval of the Executive Director of **NYPCA**, except to instruct donors or grantors how to make out checks and to inform them of NYPCA's 501 (c)(3) status. In this case the client shall use the following phrase:

"Checks should be made payable to New York Parks and Conservation Association (NYPCA). NYPCA is the fiscal agent for the Friends of the Mohawk-Hudson Bike-Hike Trail"

and is a non-profit, tax-exempt organization under IRS code 501(c)(3). Gifts may be tax deductible."

- e. Conduct all reporting as required by third party sources and **NYPCA** in a timely manner, including the filing of IRS Form 990 if at any point in the duration of this agreement **Client's** revenues exceed the gross receipts test identified in the Internal Revenue Code.
- f. Identify any individual(s) responsible for authorizing all expenditures from the **Client's** custodial account, via an authorized Check Request Form provided by **NYPCA** and in accordance with any other procedures developed by **NYPCA**. Said individual(s) on behalf of **Client** shall be solely authorized to make such demands for expenditures from **Client's** custodial account.

Authorized Individual(s):

Please Print, then sign and date

- g. Reimburse **NYPCA** in accordance with the **Fee Statement** attached hereto and made a part of as *Schedule B*, as well as agree that all interest earned on custodial funds will be retained by **NYPCA**.
 - h. If any adopt-a-trail groups are planned the **Client** shall enter into an agreement with the owner or owners of the Canalway Trail segment being adopted giving **Client** permission to assist on that trail segment and in what ways **Client** may assist, further, that the trail owner will provide insurance coverage for **Client** and **Client's** volunteers working on the trail, or, **Client** shall provide proof of event insurance for events held by **Client**.
 - i. Shall hold harmless **NYPCA**, its directors, officers and staff against all judgments, fines, and amounts paid in connection with any claim asserted against a director, officer or staff member of **NYPCA** who has acted reasonably and in good faith in carrying out the responsibilities stated or otherwise implied in this MOU.
 - j. Shall conduct management of all programs and services associated with its operations, including selection and monitoring of consultants, and agree that these activities are the sole responsibility of **Client**.
3. **Client** is an independent organization whose decisions, actions, and activities or that of its representatives to not necessarily represent the decisions, actions or positions

of the Board of Directors or staff of **NYPCA**. Similarly, the decisions, actions of the Board of Directors or staff of **NYPCA** or its representatives do not necessarily reflect those of **Client**.

4. This MOU states the terms and conditions of **NYPCA**'s Canalway Trail Fiscal Agent program to **Client** only, and does not express nor imply, in any way, **NYPCA**'s endorsement of any decisions, actions, proposal, fundraising activities or any other activity undertaken by **Client**.
5. Unclaimed funds that are remaining in the **Client**'s custodial account for one year after the termination of this Agreement shall be returned, if appropriate and feasible, to the source or will become the property of **NYPCA**.
6. This agreement may be amended or extended by mutual agreement, in writing, at any time.
7. It is understood that this agreement expires on June 1, 2003, and will automatically renew annually on the anniversary date unless either party exercises the option to terminate as defined herein. This agreement may be terminated in advance of the expiration date at any time, by either party with or without stated cause when written notice of such premature termination is provided by regular mail.
8. The relationship defined in this agreement will become effective June 1, 2002.

The parties are in agreement on this date May 20, 2002.

Authorized Representative *Title*
Client

Executive Director
NYPCA

Schedule A

Financial Management Standards

These standards apply to all client organizations participating in the NYPCA Canalway Trail Fiscal Agent Program. (CTFAP)

The Purpose of CTFAP is to help nurture fledgling volunteer organizations, whose mission is to help develop, maintain and manage the Canalway Trail, by providing them with access to nonprofit status at a time in their development where their energy can be best put to programmatic issues. It is expected that eventually, as these organizations grow in size and experience, they will obtain their own non-profit status. CTFAP is also intended to assist Canalway Trail volunteer organizations to be faithful stewards of funds entrusted to them. Participating organizations are expected to exercise prudence in their financial practices; maintain accurate records; comply with generally accepted accounting

principles; be respectful of the intent and desire of members, donors and prospective donors; and act in ways that ensures that the organization's financial resources are used solely in furtherance of its mission.

Client organizations should observe the following standards:

a) Financial Accountability

- Operate in accordance with the annual budget that has been submitted to and approved by NYPCA prior to the beginning of each fiscal year.
- Submit financial statements, including the comparison of actual to budgeted revenue and expense at the end of each fiscal quarter.
- Submit and maintain internal financial policies governing the following:
 - Internal control procedures for handling donated funds.
 - Purchasing practices
 - Petty cash
 - Receipt and treatment of charitable gifts and grants
 - NYPCA will provide a financial statement quarterly and an annual statement at the end of its fiscal year (June 30)

b) Fundraising Activities

- Fundraising costs should be reasonable in terms of a percentage of total revenue collected.
- Fundraising methods should promote the public's trust in the stewardship of funds collected.
- Solicitation, promotional materials, and grant applications should be accurate, honest and ethical. All such materials should clearly identify the organization, its mission, and the intended use of solicited funds.
- Any known intentions of a donor or grant source should be followed to the greatest extent possible with respect to the use of the funds. All correspondence from the funding source related to intent and use of funds must be submitted to NYPCA. Participating organizations are expected to fully comply with all donor/grantor requirements and to do so with complete accuracy.
- All statements an organization makes in its fundraising activities or grant applications about the use of the funds should be honored or renegotiated.
- Organizations should only use the services of professional fundraisers who are registered with the Office of New York State Attorney General, Charities Division. Consultants should not be paid on a percentage of amount raised or other commission formula.
- Organizations shall maintain control over any volunteers, consultants, contractors or other organizations, businesses that are known to be soliciting contributions on the behalf of the organization.

c) Donor Relationship and Privacy

- Organizations shall respect the privacy of donors and safeguard the confidentiality of information that a donor would reasonably expect to be kept private.
- Organizations should provide individual donors with an opportunity to maintain anonymity.
- Organizations should receive written permission from donors before including any information about them in any mailing lists that are sold, rented or exchanged and should respect the requests of donors to curtail mailings or telephone solicitations from in-house lists.
- Solicitations should be respectful and free from coercion, undue influence or excessive pressure.

Schedule B

Fee Statement

NYPCA will charge 10% of each deposit as a fee for operating the CTFAP program and for maintaining the organization as a client. This fee includes all bookkeeping and tax services rendered.