



CONTRACT

(no cost contract, involving no monetary obligation between the parties, with an individual, business, non-profit, or government entity of another state or country)

Begin Date August 1, 2011	End Date July 31, 2016	Agency Tracking # 32701-00828	Edison ID 22868
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Contractor Legal Entity Name Friends of Fall Creek Falls State Park	Edison Vendor ID (optional)
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Service Caption
Provide support to the Fall Creek Falls State Park as authorized by T.C.A. 11-3-201 et seq.

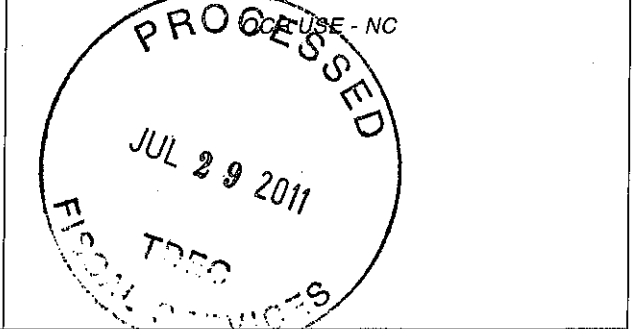
Ownership/Control

African American
 Asian
 Hispanic
 Native American
 Female
 Person w/Disability
 Small Business
 Government
 NOT Minority/Disadvantaged
 Other:

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

<input type="checkbox"/> RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.
<input type="checkbox"/> Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.
<input type="checkbox"/> Alternative Competitive Method	The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.
<input type="checkbox"/> Non-Competitive Negotiation	The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.
<input checked="" type="checkbox"/> Other	The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."

DN 11 33830-00



**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
AND
FRIENDS OF FALL CREEK FALLS STATE PARK**

WHEREAS, the 98th General Assembly enacted Public Chapter 40 to authorize the creation of non-profit organizations such as the Friends of Fall Creek Falls State Park for purposes of supporting and enhancing state park programs; and,

WHEREAS, T. C. A. Section 11-3-203 authorized the Commissioner of the Department of Environment and Conservation to enter into agreements with non-profit citizen support groups for the provision of support, financial and otherwise, to specific parks or the state park system; and,

WHEREAS, THE FRIENDS OF FALL CREEK FALLS STATE PARK is a citizen support organization as defined in T. C. A. Section 11-3-202;

This Contract, by and between the State of Tennessee, Department of Environment and Conservation, hereinafter referred to as the "State" and Friends of Fall Creek Falls State Park hereinafter referred to as the "Friends" is for the provision of assistance in the preservation, acquisition, development, maintenance and operation of Fall Creek Falls State Park as further defined in the "SCOPE OF SERVICES."

The Contractor is a NON-PROFIT CORPORATION

Contractor Place of Incorporation or Organization: Tennessee

A. SCOPE OF SERVICES:

- A.1. The Friends shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this contract.
- A.2. The Friends shall work to enhance the operations of the Park by contributing resources as they become available.
- A.3. The Friends will provide support for Park operations and special needs through membership fees, on-site fund raising activities, the operation of on-site donation boxes as well as other fund raising activities.
- A.4. The Friends may provide support for and co-sponsor Park programs.
- A.5. The Friends will actively seek community involvement through Board leadership, special events leadership, and volunteerism. The Friends will provide volunteer services. The volunteer activities may include, but not be limited to, trail maintenance and construction, staff assistance, and educational programming. The State will assist the Friends by providing site information and orientation for volunteer activities..
- A.6. The Friends may use its funds for research projects or other projects that will enhance the Park.
- A.7. The Friends shall exercise all powers and purposes as set forth in T.C.A. Sections 11-3-201 et.seq., without limitations, to achieve the stated purposes

- A.8. The Friends may assist with the negotiation and acquisition of identified Park acquisition priorities as approved by the State Building Commission and in conjunction with state procedures.
- A.9. The Friends shall provide the Park Manager with draft copies of any brochures, advertisements, and printed information before final printing, publishing, or distribution.
- A.10. The Friends may purchase or provide funding for the purchase of operational supplies and equipment to enhance the Park.
- A.11. The Friends shall be responsible for all funds or other properties that are specifically donated to the Friends for use in preservation, acquisition, development, and/or operation of the Park. Donations of funds for the reasonable operation expenses of the Friends, and the preservation, development or operation of the Park shall be kept in the Friends' account to be used by the Friends exclusively for such purposes. Any funds generated from the Friends' use of the Park such as, but not, limited to, sales and admission fees, shall also be deposited into the Friends' account. The Friends are not entitled to fees charged by the Division of State Parks

Notwithstanding any other remedy available to the State, use of the funds for any purposes other than the reasonable operation expenses of the Friends and the preservation, development, or operation of the Park may result in the immediate termination of this agreement. If this agreement is terminated or not renewed, the Friends agree that any funds obtained for the purposes identified in this agreement and any property, both real and personal, acquired or donated for these purposes, shall be conveyed to Fall Creek Falls State Park. In the event of dissolution of the Friends, all funds and property, both real and personal, shall be conveyed to the Park subject to any obligations of the Friends. Any donation of personal property with a value of more than \$5000.00 and any donation of personal property requiring annual maintenance costs to preserve and protect shall be reviewed and approved in writing by the State before the State can accept the donation..

- A.12. The Friends may assist the State in providing effective interpretation of the Park.
- A.13. By January 1 of each year, the Friends shall provide the Park a list of regularly scheduled annual events or activities to be placed on file at the Park office.

B. CONTRACT TERM:

Contract Term. This contract shall be effective for the period commencing on August 1, 2011, and ending on July 31, 2016.

C. PAYMENT TERMS AND CONDITIONS

There shall be no cost to the State for the performance of services under this contract as described in Section A. of this contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Said termination shall not be deemed a breach of contract. Upon such termination, neither the State nor the Friends shall have a right to any actual general, special, incidental, consequential, or and other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Friends fail to properly perform its obligations under this Contract in a timely or proper manner, or if the Friends violate any terms of this Contract, the State shall have the right to immediately terminate the Contract. Notwithstanding the above, the Friends shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Friends.
- D.5. Subcontracting. The Friends shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Friends shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Friends warrant that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Friends in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Friends hereby agree, warrant, and assure that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Friends on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Friends shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the State of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Friends hereby attest, certify, warrant, and assure that the Friends shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Friends shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document as Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Friends and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Friends shall

obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Friends and made available to state officials upon request.

- c. The Friends shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Friends understand and agree that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

D.9. Records. The Friends shall maintain documentation of services rendered under this Contract. The books, records and documents of the Friends, insofar as they relate to work performed under this Contract, shall be maintained for a period of three (3) full years from the final date of this Contract and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or duly appointed representatives.

D.10. Monitoring. The Friends activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Friends, being an independent contractor and not an employee of the State, agree to carry adequate public liability and other appropriate forms of insurance, including

adequate public liability and other appropriate forms of insurance on the Friends' employees, and to pay all applicable taxes incident to this Contract.

- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Friends shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Friends agree that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Friends acknowledge and agree that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Nancy Schelin, Volunteer and Community Service Coordinator
Tennessee State Parks
401 Church Street, 7th Floor

Nashville, Tennessee 37243
Telephone # 615-532-5249
FAX # 615-532-0732
Email: nancy.schelin@tn.gov

Friends of Fall Creek Falls State Park:

Ann McCormick, President
Friends of Fall Creek Falls State Park
1250 Baker Mountain Rd.
Spencer, Tennessee 38585
Telephone # 423-881-5356
FAX # 731-423-881-3103
Email: vbchamber@blomand.net

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Printing Authorization. The Friends agree that no publication coming within the jurisdiction of Tennessee Code Annotated, Section 12-7-101, et. seq. shall be printed unless a printing authorization number has been obtained and affixed as required by Tennessee Code Annotated, Section 12-7-103 (d).
- E.4. State Furnished Property. The Friends shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Friends' temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Friends shall be responsible to the State for the residual value of the property at the time of loss.
- E. 5. Copyrights and Patents. The Friends agree to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Friends performance of this Contract. In any such action brought against the State, the Friends shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Friends further agree it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Friends to the State. The State shall give the Friends written notice of any such claim or suit and full right and opportunity to conduct the Friends' own defense thereof.
- E. 6. Environmental Tobacco Smoke. Pursuant to the provisions of the Federal "Pro-children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995", the Friends shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Friends shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.7. Lobbying. The Friends certify, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of ANY Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Friends shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Friends shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

E.8. Annual Reports.

- a. All annual reports and all books of accounts and financial records of the Friends shall be subject to audit annually by the Comptroller of the Treasury. With prior approval of the Comptroller of the Treasury, the audit may be performed by a licensed independent public accountant selected by the Friends. If an independent public accountant is employed, the audit contract between the Friends and the independent public accountant shall be on contract forms prescribed by the Comptroller of the Treasury. The cost of any audit shall be paid by the Friends; provided, however, that if the Friends have gross receipts of less than \$25,000.00 for the fiscal period under audit, then any audit performed by the Comptroller of the Treasury will be paid by the State.
- b. The Comptroller of the Treasury shall ensure that audits are prepared in accordance with generally accepted governmental auditing standards and determine if the audits meet minimum audit standards prescribed by the Comptroller of the Treasury. No audit may be accepted as meeting the requirements of this section until approved by the Comptroller of the Treasury.
- c. One (1) copy of each audit shall be furnished to each member of the Board of the Friends, the Department of Environment and Conservation and the Comptroller of the Treasury.
- d. The Department and the Comptroller of the Treasury, or their designated representative, shall have access to the Friend's books, records and accounts whenever deemed necessary by either office.

e. If the Comptroller of the Treasury determines that due to size or insignificant financial activities by the Friends the requirement of this section for an audit is unnecessary or would be burdensome on the Friends, then the Comptroller may waive the required audit.

E.9. The Friends will be required to provide financial information annually on a form provided by the State.

FRIENDS OF FALL CREEK FALLS STATE PARK

Ann McCormick 5/11/2011
CONTRACTOR SIGNATURE DATE
Ann McCormick, President FRIENDS OF Fall CREEK Falls
PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF ENVIRONMENT AND CONSERVATION:

kek *Robert J. Martineau, Jr.* 7/28/11
ROBERT J. MARTINEAU, Jr., COMMISSIONER DATE

RECEIVED
2011 JUN 14 AM 11:28
DEPT. OF ENVIRONMENT
& CONSERVATION
FISCAL SERVICES

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Friends of Fall Creek Falls State Park, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	62-1573547

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

Ann M. Cormick

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

ANN MCCORMICK, PRESIDENT FRIENDS OF FALL CREEK FALLS

PRINTED NAME AND TITLE OF SIGNATORY

5/11/2011

DATE OF ATTESTATION

From: "Van Buren Chamber of Commerce" <vbchamber@blomand.net>
To: "Nancy Schelin" <Nancy.Schelin@tn.gov>
Date: 6/21/2011 1:12 PM
Subject: Re: Important: Please read and respond as soon as you can.

Nancy,

Please accept my approval to make the necessary changes to the date of the contract between Friends of Fall Creek Falls & TDEC.

Hope all is well with you.

Ann McCormick
931 946-7033

> **** High Priority ****

>

> Hi Anne,

> I'm currently handling the contracting process while Bob is out on a
> short leave of absence. We did receive the signed Friends of Fall Creek
> Falls contract back, but the contract had already begun (June 1, 2011)
> before we secured the Commissioner's signature. I have changed the start
> date on the contract now to August 1, 2011 and the end date to July 31,
> 2016 so that we can have all the necessary signatures prior to the start
> of the contract. I just needed you and the group to be aware of this
> small change and to send an e-mail back to me acknowledging and accepting
> the new start and end dates. I need this e-mail response by this Friday,
> June 24, 2011 so that I have adequate time to circulate the contract to
> the Commissioner's Office for signature.

>

> Thank you so much for your patience and cooperation in getting the
> contract between the Friends and TDEC in place. Please don't hesitate to
> call with any questions of concerns.

> Best,

> Nancy

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> Nancy Schelin

> Volunteer & Community Services Coordinator

> Tennessee State Parks

> 401 Church Street, 7th Floor

> Nashville, TN 37243

> ph (615) 532-5249

> fx (615) 532-0732

> Nancy.Schelin@tn.gov

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