

ANNUAL LICENSE AGREEMENT FOR
EDUCATIONAL AND HISTORICAL PROGRAMMING WITH BUDGET
BETWEEN
COMMONWEALTH OF PENNSYLVANIA
HISTORICAL AND MUSEUM COMMISSION
AND
ECKLEY MINERS' VILLAGE ASSOCIATES

THIS AGREEMENT, effective July 1, 2016 through June 30, 2017, by and between the Commonwealth of Pennsylvania, acting through the Historical and Museum Commission, hereinafter referred to as "COMMISSION", and Associates of Eckley Miners' Village, hereinafter referred to as the "ASSOCIATES."

WHEREAS, the ASSOCIATES is duly incorporated as a nonprofit corporation in accordance with the Pennsylvania Not-For-Profit Corporation Act; and

WHEREAS, the role of the ASSOCIATES is to assist financially and otherwise cooperate with the Commission in the development and support of the Pennsylvania historic site or facility known as Eckley Miners' Village, hereinafter referred to as the "facility"; and

WHEREAS, the relationship between the COMMISSION and the ASSOCIATES is established and governed by a separate Associates Agreement on file at the COMMISSION'S Bureau of Historic Sites and Museums; and

WHEREAS, the Associates Agreement allows the ASSOCIATES to undertake programs on the premises of the facility for the express benefit of the facility; and

WHEREAS, the ASSOCIATES has requested permission to conduct an annual program of activities to support the facility and the mission of the COMMISSION; and

WHEREAS, the COMMISSION has administrative jurisdiction of said facility and has determined that the intended organized activity is compatible with the uses and protection of said facility and is willing to permit such activities;

NOW THEREFORE, the parties agree to the following terms and conditions:

I. Agreement for Facility Use

- A. Supplemental Visitors Services: The COMMISSION hereby grants permission to the ASSOCIATES to use the facility for the express purpose of offering supplemental visitor services on every date and time listed as Part I of **Exhibit A**, subject to the following conditions:
1. Supplemental Visitor Services Responsibilities: The ASSOCIATES may charge visitors a reasonable fee on dates the ASSOCIATES provide

supplemental visitor services at the facility. On those dates, the ASSOCIATES shall be responsible for maintaining appropriate staffing levels to ensure the safety of the facility, its collections and visitors.

2. Facility Use Fee: In consideration for the COMMISSION'S agreement to permit the ASSOCIATES to offer supplemental visitor services at the facility, the ASSOCIATES agrees to pay to the COMMISSION a daily fee as defined in Part I of Exhibit A. On or before the last day of September, December, March and June of each fiscal year in which this Agreement is in effect, the ASSOCIATES shall remit payment in full to the COMMISSION for each day it offered supplemental visitor services at the facility the previous quarter pursuant to this Agreement. Should the ASSOCIATES, with the agreement of the COMMISSION, choose to cancel supplemental visitor services at the facility on any date listed in Part I of Exhibit A, the daily fee for that date shall be subtracted from the ASSOCIATES' quarterly remittance.
3. Inspection: On each day listed in Part I of Exhibit A, the ASSOCIATES agrees to ensure that the facility is left in good order, consistent with normal wear and tear, and be responsible for any reckless acts, and/or acts of negligence or lack of due care by the ASSOCIATES' individual participants in the activity.

B. ASSOCIATES Evening Programs: The COMMISSION hereby grants permission for the ASSOCIATES to conduct at the facility the evening programs listed in Part II of Exhibit A, subject to the following conditions:

1. Permitted Hours: It is explicitly agreed and understood that the programs listed in Part II of Exhibit A shall occur outside normal operating hours of the facility.
2. Facility Use Fee: In consideration for the COMMISSION'S agreement to permit the ASSOCIATES to offer the evening programs listed in Part II of Exhibit A at the facility on the dates described therein, the ASSOCIATES agrees to pay to the COMMISSION a fee as described in Part II of Exhibit A for each program so described. On or before the last day of September, December, March and June of each fiscal year in which this Agreement is in effect, the ASSOCIATES shall remit payment in full to the COMMISSION for evening programs held at the facility pursuant to this Agreement. Should the ASSOCIATES, with the approval of the COMMISSION, choose to cancel any evening program listed in Part II of Exhibit A, the facility use fee for that event shall be subtracted from the ASSOCIATES' quarterly remittance.
3. Inspection: On each day the COMMISSION permits the ASSOCIATES to

offer the evening programs at the facility pursuant to this section, the FRIENDS agrees to leave the facility in good order, consistent with normal wear and tear, and be responsible for any reckless acts, and/or acts of negligence or lack of due care by the ASSOCIATES' individual participants in the activity.

- C. Special Events: The COMMISSION hereby grants permission for the ASSOCIATES to conduct at the facility the special events listed in Part III of Exhibit A, subject to the following conditions:
1. The ASSOCIATES agree to plan, promote and execute the special events listed in Part III of Exhibit A to further the mission of the COMMISSION and the facility.
 2. The ASSOCIATES agree that any proposal for additional special events not listed in Part III of Exhibit A will be submitted to the COMMISSION for written approval at least thirty days prior the event.
 3. In consideration for the ASSOCIATES' agreement to conduct special events pursuant to this section, the COMMISSION agrees that the ASSOCIATES may collect a special event fee from facility visitors on the dates described in Part III of Exhibit A. The ASSOCIATES' special event fee shall be separate and in addition to the reduced admission fee charged by the COMMISSION on special event days, as described in Part III of Exhibit A.
 4. The COMMISSION and the ASSOCIATES agree to document jointly the number of admissions and collections of the COMMISSION'S admission fee and the ASSOCIATES' special event fee at the close of every day of a special event. Such documentation shall be conducted according to the procedures described by the COMMISSION'S Director, Bureau of Management Services. COMMISSION admission fees will be credited to the Historical Preservation Fund.
- D. Group Programs: The COMMISSION hereby grants permission to the ASSOCIATES to conduct at the facility the group programs listed in Part IV of Exhibit A, subject to the following conditions:
1. The ASSOCIATES agree to deliver the group programs using volunteers approved by the COMMISSION. The COMMISSION agrees to provide training to volunteers as agreed by both parties.
 2. In consideration for the ASSOCIATES' agreement to conduct group programs pursuant to this section, the COMMISSION agrees that the ASSOCIATES may collect a group program fee from participants. The

ASSOCIATES' group program event fee shall be separate and in addition to the reduced admission fee charged by the COMMISSION to group program participants, as described in Part IV of Exhibit A.

II. Agreement for Other Licensed Activities

- A. Research Services: The COMMISSION hereby grants the ASSOCIATES permission to perform research services, as listed in Exhibit A, at the facility for outside individuals and/or organizations. The COMMISSION may also grant permission to the ASSOCIATES to provide certain document and photograph reproductive services for outside individuals and/or organizations. Permission for reproduction by the ASSOCIATES and use of reproductions by outside organizations may be given on a case-by-case basis and entirely at the COMMISSION'S discretion. The ASSOCIATES agree to abide by all applicable collections policies, including but not limited to those addressing reproduction rights of the COMMISSION, in providing services under this paragraph. The COMMISSION agrees the ASSOCIATES may solicit a reasonable fee from the individual or organization requesting the service. The reasonable fee should take into consideration an hourly rate for services provided under this paragraph and on the cost of producing copies of documents.
- B. Outreach Programs: The COMMISSION hereby grants the ASSOCIATES permission to conduct outreach programs promoting the mission of the facility to service clubs and other off-site groups. The COMMISSION agrees the ASSOCIATES may solicit a reasonable fee from the individual or organization requesting the programs. In calculating the reasonable fee, the ASSOCIATES may take into consideration the cost of all expenses related to the program, including travel.

III. General Terms and Conditions

- A. Associates Agreement: The relationship between the COMMISSION and the ASSOCIATES is established through the **2007** Associates Agreement, which is on file at Commission offices in the Bureau of Historic Sites and Museums, Keystone Building, 400 North Street, E-107, Harrisburg, PA 17120, or upon request to the Director of the Bureau of Historic Sites and Museums. This Associates Agreement is the primary agreement between the parties and is incorporated herein by reference and made part of this Agreement.
- B. Profits: The ASSOCIATES agree that all profits accrued by the ASSOCIATES from any revenue-generating activity, including any profits accrued from the operation of any facility shop as allowed by the separate

Associates Agreement on file at the COMMISSION'S Bureau of Historic Sites and Museums, shall be applied to the benefit and support of the facility, as described in the ASSOCIATES' budget, attached as **Exhibit B**.

- C. Additional Activities: The COMMISSION may approve additional activities that are not listed in Exhibit A. The ASSOCIATES must submit a written proposal for approval of added activities at least thirty days prior the event.
- D. Coordination and Approval: In every circumstance, all activities conducted by the ASSOCIATES at the facility shall be fully coordinated with the COMMISSION. The ASSOCIATES shall provide any additional services as may be deemed necessary by the COMMISSION.
- E. Development of Promotional Materials: The ASSOCIATES agrees to cooperate with COMMISSION staff to develop appropriate promotional materials pertaining to programs and services described herein. The ASSOCIATES agrees to submit all promotional materials to Executive Director's designee, the Site Administrator at the facility, for written approval before distributing any of said materials to the public. The COMMISSION agrees that the Site Administrator shall review and respond to all requests for approval of promotional materials in a reasonable and timely fashion.
- F. Liability and Indemnification: The ASSOCIATES hereby remises, releases and forever discharges the COMMISSION, its agents, servants and employees of any and all claims, demands, rights and causes of action of whatsoever kind or nature, arising from, resulting from or by reason of, any and all bodily and personal injuries, damage to property and the consequences thereof, whether from known or unknown, foreseen or unforeseen or unforeseeable risks, which might occur to or be sustained by the ASSOCIATES or any other person, persons or property, from the conduct of the aforesaid organized activities, the condition of the property of the COMMISSION or the actions or failure to act by the COMMISSION, its agents, servants or employees. And further, for this purpose the ASSOCIATES expressly stipulates and agrees to defend, indemnify, and forever hold harmless the COMMISSION, its agents, servants and employees of and from all claims, demands, rights and causes of action whatsoever, for any and all injury or damage sustained by any person or property, at any time, as a consequence of the ASSOCIATES' activities or presence on the property of the COMMISSION. It is not the intention of this section or anything herein provided to confer a third party beneficiary right of action upon any person whatsoever and nothing hereinafter set forth shall be construed so as to confer upon any person other than the Commonwealth of Pennsylvania a right of action under this

agreement or in any manner whatsoever. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of the Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations. This provision supersedes any conflicting provision in any attachment hereto.

- G. Safety: It is specifically understood and agreed that the COMMISSION does not assume any responsibility of liability for the safety of the ASSOCIATES or for the consequences of the ASSOCIATES' activities, nor shall this agreement be construed as a waiver of any immunity the COMMISSION may now, or in the future, have.
- H. Insurance: The ASSOCIATES has consented to furnish a Certificate of Insurance in the amount of **\$1,000,000** combined single limit liability for bodily injury and property damage coverage; in the amount of **\$1,000,000** combined single limit liability for automobile liability coverage; and if required, in the amount of **\$1,000,000** to cover the loss of said building(s). The ASSOCIATES also agree to provide Workers Compensation insurance coverage, also reflected on the Certificate of Insurance, for any individuals it employs. The Commonwealth of Pennsylvania, Pa. Historical and Museum Commission, Room 527, State Museum of Pennsylvania, 300 North Street, Harrisburg, PA 17120-0024 is to be named as an additional insured in all necessary policies. A Certificate of Insurance is attached as **Exhibit C** to each copy of this Agreement. The Certificate of Insurance must be effective for the duration of this agreement. Additionally, the ASSOCIATES are required to purchase and maintain Directors and Officers Insurance.
- I. Admissions Revenue:
- (a) The COMMISSION will refund the ASSOCIATES \$1.00 (one dollar) from each general admission ticket, on COMMISSION-operated days, to be used by the ASSOCIATES to market the museum/site. An additional \$1.00 (one dollar) from each general admission ticket will be placed in a fund that will be used to market all COMMISSION museums/sites through the office of the COMMISSION'S Marketing Director.
- (b) The ASSOCIATES will refund the COMMISSION \$1.00 (one dollar) from each general admission ticket, on ASSOCIATES-licensed days, to be used

by the COMMISSION to market all COMMISSION museums/sites through the office of the COMMISSION'S Marketing Director. This will pertain to only general admission tickets and not to associate evening programs, special events, school groups or group/motor coaches as outlined in Exhibit A (List of Programs and Activities).

- J. Professional Standards. The ASSOCIATES are required to abide by the BHSM Standards Program, including the development of a mission statement, ethics policy, long-range plan, emergency/disaster plan, internal financial controls, and HR policy.
- K. Marketing Partnership – The Management Group agrees to comply with the marketing requirements attached hereto as **Exhibit D** and entitled “The Marketing Partnership—Associate Group and the PHMC/PA Trails of History,” which is incorporated herein by reference.
- L. Additional Terms and Conditions. The Management Group agrees to comply with the terms and conditions attached hereto as **Exhibit E** and incorporated herein by reference.
- M. Incorporated Documents: The Management Group acknowledges having received and reviewed a copy of the following documents, which are available at Commission offices in the Bureau of Historic Sites and Museums, Keystone Building, 400 North Street E-107, Harrisburg, PA 17120 or upon request to the Director of the Bureau of Historic Sites and Museums. These documents are incorporated herein by reference and made a part of this Agreement:
 - 1. Audit and Financial Review Policy [Rev. Dec. 2014]
 - 2. Fundraising Policy [Rev. Oct. 2005]
 - 3. Media Development and Production Policy [Rev. June 2011]
 - 4. Open Flames Policy [Rev. June 2011]
 - 5. Safety Manual For Historic Weapons Demonstrations
 - 6. Facility Use Program Policy [Rev. Dec. 2015]
- N. Supersedes: This Agreement supersedes and cancels any and all oral negotiations or previously executed agreements between the Parties hereto pertaining to the subject matter herein.
- O. Amendments: Amendments to this agreement shall become effective only upon the execution of a written instrument signed by both Parties.
- P. Headings: The headings herein have been included for convenience of reference only and shall not be considered in interpreting this Agreement.

