



HAYWOOD COUNTY  
BOARD OF COMMISSIONERS

AGENDA REQUEST

*Must be presented to the County Manager's Office  
NO LATER THAN 5 P.M. FRIDAY THE WEEK BEFORE THE MEETING*

DATE OF REQUEST: Monday, 9 May 2016  
FROM: Sheriff Greg Christopher  
MEETING DATE REQUESTED: Monday, June 6, 2016  
Regular meetings: First (1<sup>st</sup>) Monday of the month at 9:00 am  
Third (3<sup>rd</sup>) Monday of the month at 5:30 pm

SUBJECT:

Memorandum of Understanding with Great Smoky Mountains National Park

REQUEST:

To adopt the attached MOU between the Haywood County Sheriff's Office and the United States Department of the Interior – National Park Service, Great Smoky Mountains National Park, see (Attachment #1).

BACKGROUND:

The relationship between the National Park Service law enforcement and the Haywood County Sheriff's Office has been and will continue to be one of mutual respect and assistance. This agreement will continue this partnership as we continue to assist one another in the response to a variety of situations and incidents within the Great Smoky Mountains National Park.

IMPLEMENTATION PLAN: \$0.00

FINANCIAL IMPACT STATEMENT:

SUPPORTING ATTACHMENTS: YES X NO \_\_\_\_\_ HOW MANY? 10

LIST:

- 1. Copy of the MOU with Great Smoky Mountains National Park

If yes, please forward one ORIGINAL ATTACHMENT to the Clerk to the Board.

PowerPoint Presentation: YES \_\_\_\_\_ NO X

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PERSON MAKING PRESENTATION AT MEETING: Greg Christopher

TITLE: Sheriff

PHONE NUMBER: 828-356-2850

E-MAIL: gchristopher@haywoodnc.net

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THIS SECTION FOR OFFICE USE ONLY

Received (Date/Time): \_\_\_\_\_

County Manager / Clerk to the Board Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

In an effort to save paper, attachments should be copied on both front and back sides.

**Memorandum of Understanding**

**G5460160006**

**Between the  
DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE  
GREAT SMOKY MOUNTAINS NATIONAL PARK  
and  
HAYWOOD COUNTY, NORTH CAROLINA**

**ARTICLE 1 - PURPOSE**

This Memorandum of Understanding (MOU) is entered into by and between the United States Department of the Interior, National Park Service (NPS), Great Smoky Mountains National Park (GRSM), and Haywood County, North Carolina, acting through the elected Sheriff of Haywood County, North Carolina. The purpose of this agreement is to establish the terms and conditions under which the parties will provide mutual law enforcement assistance in and near the Great Smoky Mountains National Park.

As used in this agreement:

The term/title "Great Smoky Mountains National Park" encompasses the area authorized by 16 U.S.C. § 403 *et seq.* Unless otherwise noted, this includes the Foothills Parkway.

The term "Park Ranger" refers to a person designated by the Secretary of the Interior, per 54 U.S.C. § 102701 (a)(1), to "...maintain law and order and protect persons and property within areas of the National Park System." Rangers so designated are commonly referred to as "commissioned rangers."

The term Officer refers to the County Sheriff and persons employed and certified by the County as qualified law enforcement officers to perform law enforcement within the territorial jurisdiction of the County.

The term "lead agency" means the agency with primary responsibility for law enforcement activity in the referenced geographic area. The term cooperating agency means the agency without primary responsibility, i.e. the agency providing assistance to the lead agency.

The term "Unified Command" refers to operations within the Incident Command System where the County and GRSM would share command of an emergency incident.

Whereas the NPS and the County have determined that providing mutual law enforcement assistance will facilitate the economic administration of GRSM and the County, will be mutually advantageous and is in the public interest, and

Whereas it is their mutual desire to work in harmony and to cooperate in the use of trained personnel and equipment where threats to human life and property arise within their respective jurisdictions, and

Whereas current and future staffing levels at GRSM do not facilitate 24-hour law enforcement coverage, rarely facilitate a timely multi-Park Ranger response to a significant incident and do not facilitate a long-term multi-Park Ranger response to a major incident, and

Whereas staffing levels at GRSM cannot be significantly augmented by officers from other federal agencies in a timely manner, and

Whereas the following authorities are relevant to the NPS:

## **ARTICLE II - AUTHORITY**

### **54 U.S.C. 100101**: Promotion and regulation -- Effective September 22, 2015

In General.—The Secretary, acting through the Director of the National Park Service, shall promote and regulate the use of the National Park System by means and measures that conform to the fundamental purpose of the System units, which purpose is to conserve the scenery, natural and historic objects, and wildlife in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wildlife in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

- A. Concurrent criminal law enforcement jurisdiction was retroceded by the United States and accepted by the State of North Carolina for all the land heretofore under exclusive jurisdiction within the exterior boundaries of Great Smoky Mountains National Park and within the exterior boundaries of North Carolina, and concurrent jurisdiction was ceded by the State of North Carolina and accepted by the United States for all the land heretofore under proprietary jurisdiction within the exterior boundaries of Great Smoky Mountains National Park and within the exterior boundaries of North Carolina, by Memorandum of Agreement, dated July 27, 1984.<sup>1</sup>

### **54 U.S.C. 102701 (a)(1)(2)**

The Secretary, pursuant to standards prescribed in regulations by the Secretary, may designate certain officers or employees of the Department of Interior who shall maintain law and order and protect individuals and property within National Park Service units. Designated officers may:

- A. Carry firearms
- B. Make arrest without warrant for any offense against the United States in the presence of the officer, or for any felony under the laws of the United States if the officer has reasonable grounds to believe that the individual to be arrested has committed or is committing the felony, provided the arrest occur within NPS or the individual to be arrested is fleeing from the NPS to avoid arrest.
- C. Execute any warrant or other process issued by a court or officer of competent jurisdiction for the enforcement of the provisions of any Federal law or regulation issued pursuant to law arising out of an offense committed in the NPS or, where the individual subject to the warrant or process is in the NPS, in connection with any Federal offense.
- D. Conduct investigations of offenses against the United States committed with inside National Park Service units.

### **54 U.S.C. 102701 (b)(2)(A)**

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<sup>1</sup> The State of North Carolina ceded to the United States by Public Laws, Session 1929, Chapter 220, approved March 18, 1929, partial legislative jurisdiction for all lands deeded or conveyed by the North Carolina Park Commission to the United States for the purpose of establishing Great Smoky Mountains National Park. This jurisdiction was extended by Chapter 312, 1947 Session Laws, approved March 18, 1947, to all lands in the State of North Carolina "which have been or which may be acquired hereafter" from sources other than the State of North Carolina. (This act included the provision "provided, however, that nothing in this act shall be construed to affect any lands hereafter acquired by the Federal Government through purchase from citizens of Swain County." This potential restriction was not addressed in the 1984 MOU.) North Carolina General Statutes 104-32 reserved to the State concurrent jurisdiction for lands subsequently (i.e. after 1979) transferred to the United States, i.e. i.e. NPS tracts 16-101, 102 and 103 (Cities Service) and 12-103, 104, 105, 106 and 107 (the Purchase). These three acts were supplemented by the MOU of 1984. Also note that the retrocession/cession of concurrent jurisdiction includes those lands comprising the "Cataloochee Access Road" and those lands and waters acquired from the Tennessee Valley Authority.

Authorizes the NPS to cooperate, within the National Park System, with any state or political subdivision of a state in the enforcement or supervision of the laws or ordinances of that state or subdivision.

**54 U.S.C. 102701 (b)(3)**

The NPS, Acting behalf of the Secretary, has primary law enforcement authority within Great Smoky Mountains National Park and pursuant to 54 U.S.C 102701 (b)(3) is prohibited from delegating law enforcement responsibilities to State or local governments.

**54 U.S.C. 102711**: Provides that the Secretary of the Interior "may use applicable appropriations for the System to render emergency rescue, firefighting, and cooperative assistance to nearby law enforcement and fire prevention agencies and for related purposes..." outside the National Park System. National Park Service Law Enforcement emergency assistance outside Great Smoky Mountains NP generally stems from some type of an unexpected occurrence that requires immediate action and may include one or more of the following.

1. Emergency responses such as life or death incidents.
2. Accidents or incidents involving a serious injury or fatality
3. Crime scenes involving the protection of human life
4. Officer in trouble
5. Threats to public health or safety
6. Emergency or law enforcement incidents directly affecting visitor safety or resource protection
7. Probable cause felonies and felonies committed in the presence and observed by commission employees
8. Misdemeanors committed in the presence of commissioned employees that present an immediate threat to the health and safety of the public

**North Carolina General Statute 15A-406 provides:**

For the purposes of this section, "federal law enforcement officer" means.... (11) National Park Service officers;

1. A federal law enforcement officer is authorized under the following circumstances to enforce criminal laws anywhere within the State:
  - a. If the federal law enforcement officer is asked by the head of a state or local law enforcement agency, or his designee, to provide temporary assistance and the request is within the scope of the state or local law enforcement agency's subject matter and territorial jurisdiction; or
  - b. If the federal law enforcement officer is asked by a state or local law enforcement officer to provide temporary assistance when at the time of the request the state or local law enforcement officer is acting within the scope of his subject matter and territorial jurisdiction.
2. A federal law enforcement officer shall have the same powers as those invested by statute or common law in a North Carolina law enforcement officer, and shall have the same legal immunity from personal civil liability as a North Carolina law enforcement officer, while acting pursuant to this section.
3. Nothing in this section shall be construed to expand the authority of federal officers to initiate or conduct an independent investigation into violation of North Carolina law.

**Management of National Park Service Program, Paragraph 8.3.4 Enforcement Authority:**

Except where specifically provided by acts of Congress codified in the District of Columbia Code, sections 5-201 to 5-208 (2001), the Service may not assume law enforcement responsibility outside of a park in lieu of the legitimate responsibilities of nearby agencies. Cooperative assistance rendered to nearby law enforcement agencies outside park boundaries should be limited to only those actions or efforts that support or assist those agencies.

**THE FOLLOWING AUTHORITIES ARE RELEVANT TO HAYWOOD COUNTY:**

1. North Carolina General Statutes § 17E-1 documents that the General Assembly finds that the sheriff "... administers and executes criminal and civil justice...."
2. North Carolina General Statutes (NCGS) §§ 15A-103 and 162-24 entitle the sheriff to at least two deputies and authorize the sheriff to appoint a deputy or employ others to assist him in performing his official duties.
3. North Carolina General Statutes (NCGS) § 15A-402 authorizes county and city officers to "arrest persons within their particular cities or counties and on any property and rights-of-way owned by the city or county outside its limits."
4. North Carolina General Statutes §§ 153A-4, 153A-11 and 160A-17.1 authorize counties to enter into agreements with the United States.
5. Concurrent criminal law enforcement jurisdiction was retroceded by the United States and accepted by the State of North Carolina for all the land heretofore under exclusive jurisdiction within the exterior boundaries of Great Smoky Mountains National Park, and concurrent jurisdiction was ceded by the State of North Carolina and accepted by the United States for all the land heretofore under proprietary jurisdiction within the exterior boundaries of Great Smoky Mountains National Park, by Memorandum of Agreement, dated July 27, 1984.

Now, therefore, the parties agree as follows:

**ARTICLE III – STATEMENT OF WORK**

**A. Law Enforcement operations inside the boundaries of GRSM**

1. We mutually understand and agree that the NPS has the "... primary responsibility for maintaining law and order and for the protection of persons, property and resources upon Park lands..." and that it cannot delegate that responsibility to a State or local agency.<sup>2</sup>
2. The NPS may request the assistance of an appropriate North Carolina law enforcement agency which "... shall, if utilized, advise the National Park Service of its investigation and disposition regarding any incident in which its services are utilized."<sup>3</sup>
3. County officers may enforce state law within the territorial limits of the County and on any property and rights-of-way owned by the County outside its limits.<sup>4</sup>
4. The County agrees to provide available law enforcement personnel, tactical response team/s, and/or necessary equipment for cooperation with the NPS.

<sup>2</sup> 54 U.S.C. § 102701 (b)(3). See appendix A.

<sup>3</sup> Memorandum of Agreement, July 27, 1984.

<sup>4</sup> No county owned property or rights-of-way exist within the exterior boundaries of GRSM.

**B. Law Enforcement operations in the County outside the boundaries of GRSM:**

1. We mutually understand and agree that the County has the primary responsibility for maintaining law and order and for the protection of persons, property and resources within the County and outside the boundaries of GRSM.
2. We mutually understand and agree that Park Rangers have the authority to execute warrants and other process issued by a competent jurisdiction for offenses committed in GRSM.
3. We mutually understand and agree that Park Rangers have the authority to conduct investigations in the County for offenses committed in GRSM. We agree that Park Rangers, when appropriate, will notify the County and request assistance.
4. The NPS agrees to notify the County when Park Rangers are notified of or observe incidents or violations of law within the County.
5. The NPS agrees to provide emergency law enforcement assistance to the County, including but not limited to available law enforcement personnel, and/or necessary equipment.<sup>5</sup>
6. We mutually understand and agree that Park Rangers may exercise arrest authority pursuant to North Carolina General Statute (NCGS) § 15A-406, 54 U.S.C. § 102711 and NPS policy.
7. The NPS agrees to provide non-emergency cooperative assistance to the County limited to those actions which support and/or assist the County. Under no circumstances may NPS personnel take the lead role in performing law enforcement operations outside of Park boundaries, except as provided by 54 U.S.C. § 102711. Non-emergency cooperative assistance provided to nearby law enforcement and emergency service agencies must be at the request of the receiving agency, have a clear nexus to GRSM and its surrounding communities and be approved by the participating employee's supervisor.

**C. How will requests for assistance be made?**

Unless exigent circumstances preclude it, we agree that the lead agency will request assistance from the cooperating agency.

1. Requests for assistance may be made by one or more of the following methods or a combination thereof:
  - a. Verbally from Officer to Park Ranger and vice versa, including from supervisor to supervisor.
  - b. Verbally, from Communications Center to Communications Center.
  - c. Verbally, from Officer/Park Ranger or supervisor to Communications Center.
  - d. When time allows, a request for assistance shall be made in advance and in writing to the responsible agency's chief law enforcement officer.
2. Officers and Park Rangers are responsible for notifying their respective Communications Center or supervisor that a request for assistance has been made or received. Communications Centers are responsible for notifying appropriate supervisory personnel within their respective department.

**D. What are the general parameters for assistance provided by the cooperating agency?**

1. Officers or Park Rangers who observe an emergency situation in the other agency's jurisdiction, shall:

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<sup>5</sup> RM-9, Chapter 24. 2.2

Such assistance will generally stem "...from some type of an unexpected occurrence that requires immediate action and may include one or more of the following:

- a. Emergency responses such as life or death incidents, serious injury/fatality accident/incident scenes, crime scenes involving the protection of human life, officer in trouble, threat(s) to health or safety of the public.
- b. Emergency or law enforcement incidents directly affecting visitor safety or resource protection.
- c. Probable cause felonies and felonies committed in the presence and observed by NPS Rangers.
- d. Misdemeanors committed in the presence of NPS Rangers that present an immediate threat to the health and safety of the public."

- a. Secure and manage the scene.
  - b. Notify the lead agency of the incident.
  - c. Relinquish control of the incident to the first arriving Officer/Park Ranger from the lead agency, regardless of their rank.
  - d. Discontinue assistance when:
    - i) the lead agency has enough resources on the scene to manage/control the emergency;
    - ii) the emergency no longer exists; or
    - iii) requested to do so by the lead agency or by a supervisor in their own agency.
2. Officers or Park Rangers who respond to a request for emergency assistance shall:
- a. Notify their agency Communications Center or supervisor, if not already done.
  - b. Report as directed to a representative of the lead agency.
  - c. Provide assistance to the lead agency as directed, subject to the laws, regulations and policies of their own agency.
  - d. Discontinue assistance when:
    - i) the lead agency has enough resources on the scene to manage/control the emergency;
    - ii) the emergency no longer exists; or
    - iii) requested to do so by the lead agency or by a supervisor in their own agency.

**E. Who will exercise command and control at a mutual aid incident?**

1. All parties agree that the incident commander of the lead agency shall be in command of all Officers/Park Rangers who are rendering emergency or supplemental assistance, provided that command of Officers/Park Rangers from the cooperating agency shall be exercised through a supervisor or other employee designated by the cooperating agency.
  - a. During emergency incidents such as motor vehicle accidents, command and control will be exercised by communication between on-scene Officers/Park Rangers with or without a supervising Officer/Park Ranger. When incidents are more complicated, we agree that command and control will be exercised by a supervisor in the lead agency.
  - b. When possible we agree to:
    - i) Assign assisting Officers/Park Rangers to one or more Officers /Park Rangers from the lead agency.
    - ii) Utilize Unified Command or incorporate an Officer/Park Ranger, preferably a supervisor, from the cooperating agency as an agency representative in the incident command structure of the lead agency.
2. We mutually agree to conduct joint reviews of mutual aid incidents, when appropriate. Reviews may range from on-scene discussions among field personnel to scheduled meetings chaired by the department chief(s).
3. We agree that Officers and Park Rangers providing assistance will, to the extent practical, be on duty, and in the uniform and a marked vehicle of their respective department.
4. We agree that Officers and Park Rangers shall be subject to the laws, regulations and policies of their respective agency.
5. We agree that Officers and Park Rangers of the cooperating agency who are rendering emergency assistance pursuant to this agreement shall be deemed to be acting within the scope of their employment.
6. We agree that Park Rangers rendering non-emergency assistance pursuant to this agreement shall be deemed to be acting within the scope of their employment.

7. Command and control of law enforcement incidents in Great Smoky Mountains National Park will utilize the Incident Command System (ICS).<sup>6</sup>

**F. How will personnel and agencies be compensated for assistance?**

1. We agree that Officers and Park Rangers shall not receive any monetary compensation for services rendered except through their respective agency.
2. Each party shall bear its own costs for furnishing services under this agreement, and neither party shall collect reimbursement for those costs from the other.
3. Nothing in this agreement shall be construed to bind either party to expend in any one fiscal year any sum in excess of funds appropriated by its governing body or allocated by the party for the purpose of this agreement.
4. Each party hereby waives any and all claims, demands, and causes of action against the other party and its employees, and releases the other party and its employees from any and all liability, arising out of or resulting from activities under this agreement. Each party shall be solely responsible for any and all claims, demands, and causes of action filed by third parties arising out of or resulting from the activities of its employees under this agreement, including, but not limited to, the costs of investigating and defending against such claims, demands, and causes of action and the costs of paying any compromise settlements, judgement, assessed costs, or fees (including attorney's fees).

**G. Public Information Release**

The County must obtain prior Government approval from the Chief Park Ranger for any public information release which refers to the Department of the Interior, or to any bureau, park unit or employee (by name or by title), or to this agreement. The specific text, layout, photographs, etc. of the proposed release must be submitted with the request of the approval.

The NPS must obtain prior Government approval from the County for any public information release which refers to the County or any employee (by name or title), or to this agreement. The specific text, layout, photographs, etc. of the proposed release must be submitted with the request of approval.

Any on scene photographs or videos taken will not be released to any media outlet or be posted on public or private social media accounts without the written permission of the County or NPS.

**H. Miscellaneous provisions**

1. We agree to authorize the use of radio frequencies by the other agency in accordance with a Radio Frequency Use Agreement, which is attached as appendix B.
2. We agree to share law enforcement training opportunities.
3. We agree, on an annual basis, to assign a supervisor to "ride along" or "shadow" a supervisor in the other agency, for the purpose of fostering a mutual understanding of the other's responsibilities and methods of operation and for the purpose of fostering interagency cooperation.
4. Any on scene photographs/videos taken will not be released to any media outlet or be posted on public or private social media accounts without the permission of the County or NPS.

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<sup>6</sup> DO-9, 5.11.2; NPS Management Policies 2006 8.3.3

#### **ARTICLE IV – TERM OF AGREEMENT**

This MOU Agreement is effective from April 1, 2016 and will extend through March 31, 2021.

#### **ARTICLE V – KEY OFFICIALS**

**NPS:**

**Steve Kloster**

Chief Ranger  
Great Smoky Mountains NP  
107 Park Headquarters Road  
Gatlinburg, TN 37738  
865-436-1225 Office  
865-696-8541 Cell  
[Steven\\_Kloster@nps.gov](mailto:Steven_Kloster@nps.gov)

**Haywood County:**

**Greg Christopher**

Haywood County Sheriff  
1620 Brown Avenue  
Waynesville, NC 28786  
828-452-6768

#### **ARTICLE VI – MODIFICATION AND TERMINATION**

1. This AGREEMENT may be modified only by a written instrument executed by the Parties.
2. Either Party may terminate its participation in this AGREEMENT by providing at least sixty (60) days advance written notice (a "termination notice") to the other Party.

#### **ARTICLE VII – GENERAL AND SPECIAL PROVISIONS**

**1. Non-Discrimination:** All activities pursuant or in association with this Agreement shall be conducted in compliance with the requirements of Executive Order 11246; Title VI of the Civil Rights Act of 1964, as amended (78 Stat. 252; 42 U.S.C. § 2000d *et seq.*); Title V, Section 504 of the Rehabilitation Act of 1973 (87 Stat. 394; 29 U.S.C. § 794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§ 6101 *et seq.*); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin.

**2. NPS Appropriations:** Pursuant to 31 U.S.C. § 1341, nothing contained in this Agreement shall be construed to obligate the Department of the Interior or the United States to any current or future expenditure of funds in advance of the availability of appropriations from Congress. Nor does this

Agreement obligate the Department of the Interior or the United States to spend funds on any particular project or purpose, even if funds are available.

**3. Compliance with Applicable Laws:** This Agreement and performance hereunder is subject to all law, regulations, and management policies including those governing the NPS property and resources, whether now in force or hereafter enacted or promulgated. Nothing in this Agreement shall be construed as in any way impairing the general powers of the NPS for supervision, regulation, and control of its property under such applicable laws, regulations, and management policies. Nothing in this Agreement shall be deemed inconsistent with or contrary to the purpose of or intent of any Act of Congress.

**4. Disclaimers of Government Endorsement:** GRSM will not publicize or circulate materials (such as advertisements, solicitations, brochures, press releases, speeches, pictures, movies, articles, manuscripts, or other publications), suggesting expressly or implicitly, that the Government, the Department, NPS, or Government employees endorses GRSM's business, goods, or services. All materials referring to the Government must be approved by the NPS Key Official prior to publication. Nothing herein is intended to prevent the NPS or the Department of the Interior from recognizing the partnership or contributions made by the GRSM to NPS, and from authorizing an inclusion of such recognition in materials generated by the GRSM related to this Agreement.

**5. Liability:** Without waiving any defenses, including sovereign and official immunity, each Party accepts responsibility for any property damage, injury or death that occurs in connection with its implementation of this AGREEMENT to the extent that such damage, injury or death is caused by its own negligent acts or omissions, or willful misconduct, or the negligent acts, omissions, or willful misconduct of its officers, employees and/or agents acting within the scope of their employment, agency or official capacity, to the fullest extent permitted by law.

Except as expressly provided for herein, nothing in this AGREEMENT shall be construed as creating joint liability with regard to any of the activities undertaken in implementation of this AGREEMENT. Nothing in this AGREEMENT shall be construed as giving either of the Parties the right or ability to bind the other or create any joint liability with regard to, or as a result of, the activities undertaken to implement this AGREEMENT.

All employees or agents of a Party shall remain employees or agents of that Party and shall be subject to the laws, procedures, rules and policies governing that Party's employees and/or agents.

#### **ARTICLE VIII – AUTHORIZED SIGNATURES**

Electronic signatures to include scanned copies are not approved in the National Park Service. A scanned copy of the signed original document can be e-mailed to the Agreements Officer and will be accepted on a temporary basis, with confirmation an original signed document will be sent to the National Park Service Agreements Officer, by surface mail.

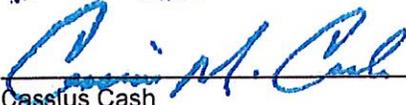
IN WITNESS HEREOF, the Parties hereto, by their duly authorized signatories, have executed this MOU as of the date first set forth above.

**Haywood County – North Carolina**

\_\_\_\_\_  
Greg Christopher  
Haywood County Sheriff

\_\_\_\_\_  
Date

**National Park Service**

\_\_\_\_\_  
  
Cassius Cash  
Superintendent, Great Smoky Mountains NP

\_\_\_\_\_  
3/14/14  
Date