

**CALIFORNIA HISTORICAL RESOURCES INFORMATION SYSTEM
Information Access and Use Agreement**

Agreement Number: _____

Issued To: _____ (**"Recipient"**)

Region/Office: _____

Address: _____

Phone: _____ **Facsimile:** _____

E-Mail: _____

Issued By: _____ **Information Center**

Date Issued: _____ **Expiration Date:** _____

Recitals

WHEREAS, Pursuant to the National Historic Preservation Act of 1966, the State Historic Preservation Officer ("SHPO") shall direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties; and

WHEREAS, Pursuant to Public Resources Code § 5020.4(a)(2), the State Historical Resources Commission ("SHRC") shall conduct a statewide inventory and maintain comprehensive records of historical resources; and

WHEREAS; Pursuant to Public Resources Code § 5024.6(n), the Office of Historic Preservation ("OHP") shall administer and maintain the State Historic Resources Inventory in accordance with procedures developed by OHP and adopted by the SHRC; and

WHEREAS, the above-described inventories are referred to as the California Historical Resources Information System ("CHRIS") Inventory; and

WHEREAS, the SHPO and OHP have entered into agreements with various entities to host Information Centers ("IC") to carry out some of the SHRC's, SHPO's and OHP's responsibilities related to the CHRIS Inventory, and these ICs, SHRC, SHPO and OHP constitute the CHRIS; and

WHEREAS, in fulfillment of their obligations to the SHRC, SHPO and OHP, the ICs gather, archive, and provide access to records, maps, and other documents and materials that constitute the CHRIS Inventory and provide guidance in the use and interpretation of the documents and materials of the CHRIS Inventory; and

WHEREAS, the CHRIS Inventory contains confidential information and pursuant to federal and state laws, including but not limited to the California Public Records Act, Government Code § 6250 et seq., and the Information Practices Act of 1977, Civil Code § 1798 et seq., the SHRC, the SHPO, OHP, and the ICs are required to protect from public disclosure such confidential information; and

WHEREAS, this Information Access and Use Agreement (“Agreement”) governs access to, protection from public disclosure of confidential information, and use of the documents and materials of the CHRIS Inventory by the Recipient; and

WHEREAS, this Agreement is issued by one IC, on behalf of the SHRC, SHPO and OHP, this Agreement applies to all ICs and all ICs are bound by this Agreement.

Covenants

NOW THEREFORE, the Parties hereto agree as follows:

1. Definitions

A. CHRIS Data: All information and material included in the CHRIS Inventory, and any non-generalized data created from this information and material by CHRIS personnel as part of conducting CHRIS business and operations. CHRIS Data are either Non-Confidential or Confidential as defined below.

B. Non-Confidential CHRIS Data: All CHRIS Data that do not fall under an exemption to the California Public Records Act, or any other similar federal or state law, are not protected by the Information Practices Act, or by any other federal or state law regarding public disclosure of information. This includes non-archaeological data or archaeological data that are either general enough or of a nature that their disclosure will not put one or more archaeological sites or resources in danger of being located and/or damaged, should the information deliberately or inadvertently be made available to the public or to unauthorized individuals. It is within the sole discretion of the IC(s)

possessing such data to classify Non-Confidential CHRIS Data in accordance with law and CHRIS policies.

C. Confidential CHRIS Data: All CHRIS Data that fall under an exemption to the California Public Records Act, or any other similar federal or state law, are protected by the Information Practices Act, or by any other federal or state law regarding public disclosure of information. This includes archaeological data that are either specific enough or of a nature that their disclosure will put one or more archaeological sites or resources in danger of being located and/or damaged, should the information deliberately or inadvertently be made available to the public or to unauthorized individuals. This also includes personal information as defined by the Information Practices Act. It is within the sole discretion of the IC(s) possessing such data to classify Confidential CHRIS Data in accordance with law and CHRIS policies.

2. Recipient

The Recipient (“Recipient”) is the individual or organization acquiring CHRIS Data for use pursuant to this Agreement.

3. Responsible Individual

The Responsible Individual (“Responsible Individual”) signing this Agreement on behalf of the Recipient shall be the primary point of contact for all matters concerning this Agreement. In the event the Responsible Individual is replaced, within 10 calendar days of such replacement, the Recipient shall notify in writing the IC issuing this Agreement of the name of the new Responsible Individual. The rights and responsibilities of a Responsible Individual shall include all those of an Authorized User.

4. Authorized Users

A. The Responsible Individual shall designate one or more Authorized Users (“Authorized Users”) that are authorized to act on behalf of the Recipient pursuant to the terms of this Agreement. An Authorized User must be, or work under the supervision of, a qualified individual pursuant to the requirements of the CHRIS Information Center Rules of Operation Manual 2013 (“ICROM”), Section III and Appendix II, or the appropriate section or sections of an updated version or replacement of that Manual. This designation shall be provided in writing to the IC issuing this Agreement via the CHRIS Authorized User Form (see www.ohp.parks.ca.gov) and shall be attached hereto and incorporated herein to this Agreement.

B. If the Recipient is a government agency participating in a program through which access to CHRIS Information has been established through a fully-executed memorandum of understanding or other agreement, individuals granted access to CHRIS Information through that agreement shall be classified as Authorized Users without further action by the Recipient or Responsible Individual, so long as the memorandum of understanding or other agreement and this Agreement are in effect.

C. If the Authorized User will be receiving Confidential CHRIS Data, the Authorized User shall have on file with the IC issuing this Agreement a Statement of Qualifications for Access to Confidential CHRIS Data (see www.ohp.parks.ca.gov) and a curriculum vitae.

5. Allowable Users

A. All CHRIS Data acquired under this Agreement shall be provided exclusively for research use by the Recipient, Responsible Individual, or Authorized Users, with the following exceptions for Allowable Users:

i. Access by individuals employed by or under contract with the Recipient that are officially involved in an emergency response incident, where one or more government agencies are responding to a specific, identified emergency incident and said individuals require access to CHRIS Data to carry out their duties.

ii. Access by individuals who are not employed or under contract with the Recipient, but are emergency personnel assigned to plan for or provide resource protection or avoidance strategies in conjunction with agencies involved in an emergency response incident, where said individuals require access to CHRIS Data to carry out their duties.

iii. Access by individuals employed by or under contract with the Recipient whose duties include providing Information Technology support services.

iv. Access by individuals employed by or under contract with the Recipient whose duties include providing database or Geographic Information System support services.

B. Access to CHRIS Data under one of these exceptions shall be to the extent and duration necessary for those receiving access to carry out their duties as described in this section, and shall be under the supervision of the Recipient, Responsible Individual, or an Authorized User.

6. Terms of Use

- A. Subject to the terms of this Agreement, CHRIS Data acquired under this Agreement shall only be used for scholarly research, Native American tribal use, land use planning, cultural resource management, education, emergency management, and/or similar purposes.
- B. Other than as allowed pursuant to this Agreement or required by law, CHRIS Data acquired pursuant to this Agreement shall not be sold, leased, marketed, loaned, transferred, published, or otherwise redistributed without written permission from the IC providing such CHRIS Data via a CHRIS Information Conditional Use Agreement.
- C. All CHRIS Data acquired under this Agreement shall be used in full compliance with applicable federal, state, local, and other governmental laws and regulations related to historical resources information and properties.
- D. All products based in part or entirely on the use of CHRIS Data acquired under this Agreement shall clearly identify the IC(s) that provided such data and the date of acquisition.
- E. Unless otherwise prohibited by law, a copy of any written report or historical resource record based in part or entirely on the use of CHRIS Data acquired under this Agreement shall be submitted to the IC(s) that provided such data within sixty (60) calendar days following creation of said product. If digital data are provided under this agreement, any written report, historical resource record, and/or locational data submitted to one or more IC(s) in compliance with this section shall, if available, be submitted in digital format.

7. Request for CHRIS Data and Related Services

Requests for CHRIS Data shall be made using a CHRIS Data Request form.

8. Payment for CHRIS Data and Related Services

IC(s) shall charge for CHRIS Data and related services in accordance with Section VIII: Service Fee Schedule of the ICROM, as specified in a memorandum of agreement, or as separately approved by the SHRC. Failure of the Recipient to make payment per the applicable Fee Schedule, memorandum of agreement, and/or CHRIS Data Request is a material breach of this Agreement.

9. CHRIS Data Accuracy, Completeness, and Updating

- A. CHRIS Data are provided as-is, and with the exception of error or omission corrections, will only be updated by an IC through a separate purchase or a subscription to CHRIS Data, if available. CHRIS Data are only as current as the date on which the data were provided.
- B. The SHRC, the SHPO, OHP, and the ICs are under no obligation to inform the User of CHRIS Data about updates, alterations, or accuracy errors that are discovered once the data have been delivered to the Recipient.
- C. If the Recipient reports in writing errors or omissions in the CHRIS Data to the IC(s) that provided such data, the IC(s) shall make a good faith effort to resolve the errors and omissions and provide corrected data to the Recipients. To ensure proper processing, error and omission reports shall be transferred to the relevant IC(s) pursuant to the terms of this Agreement. If error or omission documentation is inadequate to determine the nature of an error or omission, or to confirm its veracity, the IC(s) may not be able to resolve the reported issue.

10. CHRIS Data Transmission and Storage Security

All CHRIS Data obtained by Recipient, Responsible Individual, or Authorized User shall be maintained in a safe and secure manner so as to preclude unauthorized access. CHRIS Data in paper format shall be appropriately secured when not in use. CHRIS Data in digital format ("Digital CHRIS Data") shall be stored and managed as follows:

- A. Physical access to the Digital CHRIS Data shall be controlled, and Digital CHRIS Data shall be stored on media and/or equipment in a locked, secure location. Temporary storage of Digital CHRIS Data on portable media or systems is acceptable provided such storage complies with this Agreement.
- B. Access to Digital CHRIS Data shall be limited by all of the following:
- i. Strong user passwords; Users shall not share passwords.
 - ii. Data and/or File Encryption.
 - iii. Limited system access.
- C. Security logging and auditing shall be enabled and periodically monitored for systems storing or accessing Digital CHRIS Data.
- D. Systems storing Digital CHRIS Data shall have current:
- i. Anti-virus and anti-spyware/malware.

- ii. An appropriately configured firewall.
- iii. Host-based intrusion detection software active at all times.

If CHRIS Data are not being stored or managed in compliance with this Agreement, and/or are being stored or managed in a way that is allowing unauthorized access to CHRIS Data, the Recipient shall either remove all CHRIS Data from the device(s), equipment, or circumstances that are non-compliant, or modify the situation so that the CHRIS Data are being stored or managed in a compliant manner.

The terms of this section shall survive the termination of this Agreement.

11. Ownership of CHRIS Data

The Parties to this Agreement acknowledge and accept that ownership rights to CHRIS Data may be held variously by Native American Tribes, federal, state, or local governments, organizations, firms, individuals, and other entities, or may be held by no entity and reside in the public domain, and that payment of fees by Recipient, or provision of CHRIS Data to the Recipient, does not in any way constitute or imply purchase or sale of CHRIS Data or any rights or title pertaining thereto.

12. Notifications

Recipient shall notify any and all pertinent IC(s) immediately upon the occurrence of any violation, whether intentional or unintentional, by the Recipient, Responsible Individual, Authorized User, or Allowable User of any term of this Agreement, including, but not limited to, the unauthorized release, distribution, and/or use of CHRIS Data.

13. Term of Agreement

This Agreement shall be effective upon signature by authorized representatives of the Parties hereto, and, unless terminated sooner, shall remain in full force and effect until _____. Within 10 calendar days of execution of this Agreement, the IC issuing this Agreement shall provide a copy of it to all other ICs.

14. Termination of Agreement

A. The Recipient may terminate this Agreement for any reason upon receipt of 10 calendar days' written notice to the IC issuing this Agreement.

B. If the Recipient has failed to comply with any of the terms of this Agreement, the relevant IC, or the SHPO, after providing the Recipient receipt of 10 calendar days'

written notice specifying the defaults to be remedied, and if such defaults are not remedied in the time specified, may terminate this Agreement for cause.

C. Upon termination of this Agreement, the Recipient shall immediately cease using CHRIS Data, certify in writing to the IC issuing this Agreement that CHRIS Data shall not be further used in any way, and pay any outstanding balances due the IC(s).

D. Upon termination of this Agreement, the Recipient shall be denied access to any new CHRIS Data not currently in the Recipient's possession, and all processing of any CHRIS Data Requests submitted by the recipient shall cease immediately at all ICs.

E. Upon termination of this Agreement, within 10 calendar days the IC issuing this Agreement shall notify all other ICs of same.

15. Dispute Resolution

If the Recipient wishes to appeal a decision regarding this Agreement, the appeal shall be submitted in writing to the relevant IC Coordinator and include a statement of the basis of the appeal with supporting documentation as appropriate. The IC Coordinator shall respond in writing to the appeal within 15 calendar days of receipt of the appeal. If the IC Coordinator's decision does not satisfy the Recipient, the Recipient may, within 15 calendar days of receipt of the IC Coordinator's decision, appeal the decision to the SHPO. This appeal shall be submitted in writing with supporting documentation as appropriate. The SHPO shall consult with the relevant IC Coordinator and respond in writing to the appeal within 30 calendar days of its receipt. The decision of the SHPO shall be final.

16. Liability

Recipient agrees that the SHRC, the SHPO, OHP, and the IC(s) shall not be liable under any circumstances for lost revenue or other consequential damage arising out of or related to the use of the CHRIS Data, if the CHRIS Data does not enable the Recipient to achieve the objectives for which the CHRIS Data was acquired, or if the CHRIS Data are lost, corrupted, or otherwise damaged following the Recipient's receipt of the CHRIS Data.

17. Indemnification

Recipient agrees to indemnify, defend, and save harmless the State of California, the SHRC, the SHPO, OHP, the ICs, and each of their officers, agents, and employees from any and all claims and losses accruing or resulting to any and all persons or

entities who may be injured or damaged by the Recipient, Responsible Individual, Authorized Users, or Allowable Users in the performance of this Agreement.

18. Compliance with Laws

Recipient, Responsible Individual, Authorized Users, and Allowable Users shall comply with all applicable Federal, State, and local laws, regulations, and ordinances.

19. Amendment

A. This Agreement, including but not limited to the Term of Agreement, may only be amended by written agreement signed by the Recipient and the IC issuing this Agreement. Within 10 calendar days of execution of an amendment, the IC issuing the Amendment shall provide a copy of the amendment to all other ICs.

B. This Agreement, other than the Term of Agreement and the named Responsible Individual, may not be amended without written approval of the SHPO.

20. Assignment

This Agreement is not assignable by either Party, in whole or in part, without prior written consent of the other Party, which shall not be withheld unreasonably. Any such transfer or assignment made in violation of this section shall be void.

21. Force Majeure

Neither Party shall be responsible for delays or failures to comply with the terms of this Agreement resulting from events or other factors beyond their control, including, but not limited to, fire, flood, earthquake, natural disaster, nuclear accident, act of war or terrorism, labor strike or lockout, riot, freight embargo, or governmental statutes or regulations superimposed after the fact.

22. Jurisdiction

This Agreement shall be governed by the laws of the State of California.

23. Severability

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, it shall be severable from

this Agreement and the remaining terms, covenants, conditions, and/or provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

SIGNATORIES:

Recipient:

Under penalty of perjury, the undersigned represents and warrants that he or she has full authority to execute this Agreement on behalf of the Recipient, understands and agrees to the terms and conditions of this Agreement, and warrants full compliance of the Recipient with the terms and conditions of this Agreement.

(Printed Name of Recipient)

By: _____ Date: _____
(Signature of Responsible Individual)

(Printed Name and Title of Responsible Individual)

IC (on behalf of SHPO):

(Printed Name of IC)

By: _____ Date: _____
(Signature of IC Representative)

(Printed Name and Title of IC Representative)