

**Office of Consumer Protection
Montana Department of Justice**



**MONTANA ATTORNEY GENERAL'S
INVESTIGATIVE REPORT**

**of
Greg Mortenson
and
Central Asia Institute**

April 2012

ATTORNEY GENERAL

STATE OF MONTANA

Steve Bullock
Attorney General



Department of Justice
215 North Sanders
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Re: Investigation of Central Asia Institute and Greg Mortenson

The story of Central Asia Institute and Greg Mortenson evokes notions of the best of our aspirations to do good and the generosity of the American public. It involves the efforts of a complicated person who has worked tirelessly on behalf of a noble pursuit, even while acting in a way that jeopardized that pursuit. The story also demonstrates how things can go wrong when officers and directors of a charitable organization fail to abide by fundamental principles of management and oversight.

Over the past 17 years, Mortenson, an author and mountaineer, has made it his life's mission to promote peace through education in remote alpine regions of central Asia. During that time, Mortenson and the charity he co-founded, the Central Asia Institute, set out to arm the remote regions of Pakistan and Afghanistan with knowledge.

In his two books, "Three Cups of Tea" and "Stones into Schools," Mortenson paints a picture of the significant difference his and CAI's charitable work has made. These stories galvanized a global audience and thrust Mortenson and the nonprofit organization into the limelight. Due to his work, Mortenson was even named a finalist for the 2009 Nobel Peace Prize – the humanitarian equivalent of summiting Mount Everest.

Mortenson's pursuits are noble and his achievements are important. However, serious internal problems in the management of CAI surfaced. As Attorney General, I'm tasked with overseeing nonprofit charities operating in Montana. Through our investigation, the Montana Department of Justice sought to determine whether Mortenson and the leadership of his organization had violated the law governing nonprofit corporations.

Our investigation centered on whether CAI's officers and directors satisfied their legal duties with regard to Mortenson's books and speaking engagements, and in managing the financial and operational affairs of the organization. We concluded that the board of directors failed to fulfill some of its important responsibilities in governing the nonprofit charity. Further, Mortenson failed to fulfill his responsibilities as executive director and as a member of the board.

Despite policies that committed him to do so, Mortenson failed to make contributions to CAI equal to the royalties he earned on the books the organization purchased. Nor did he and CAI devise an equitable way to split the costs to advertise and promote the book, which was required by his 2008 employment agreement. Mortenson also accepted travel fees from event sponsors at the same time that CAI was paying his travel costs. Moreover, he had significant lapses in judgment resulting in money donated to CAI being spent on personal items such as charter flights for family vacations, clothing and internet downloads.

Despite consistent and repeated warnings about a lack of financial controls for the money CAI spent abroad and here at home, the board of directors failed to close those gaps over a period of nearly ten years.

Nonprofits are big business in America. Charitable giving exceeds \$300 billion a year. Americans continue to donate their money despite weathering challenging economic times. When charities take the money people give for specific purposes, it is essential that the money be spent as intended. When it is not, the underlying public trust erodes and can be difficult to restore.

Greg Mortenson and the Central Asia Institute can learn from their missteps. The settlement we negotiated provides an opportunity to make meaningful changes and reestablish the charity going forward. Despite the severity of their errors, CAI is worth saving. Its pursuit remains admirable, and it still has significant assets to advance its cause and fulfill the donors' intent. As a nonprofit organization, it should be able to execute its mission well into the future.

That's why the Montana Attorney General's Office, under my direction, ultimately sought a resolution that would enable this organization to move beyond its troubles. We entered into a settlement agreement with Mortenson and CAI which guarantees in excess of \$1 million in restitution from Mortenson for his past financial transgressions. We have also implemented stricter organizational and financial controls within CAI that will help ensure charity dollars are spent as intended so that the donating public's trust can be restored.

This includes removing Mortenson from any position of financial oversight and as a voting member of the board of directors. He will be allowed to continue in a role that best complements his goals as they pertain to CAI's mission. A new executive director will be hired to better manage the day-to-day operations. After a transitional period of 12 months, the settlement also calls for the two remaining board members to step down while, in the meantime, a new board consisting of at least seven members will be appointed.

CAI's mission is worthwhile and important. Its accomplishments, driven by the vision and dedication of Mortenson, are significant – as even their harshest critics acknowledge. It has substantial assets which, if properly managed, can be used to pursue the charity's mission and, in the process, improve the lives of people in a very challenging and complex region of the world. The settlement agreement allows CAI to move forward positively in pursuit of its mission. It includes monitoring provisions that will allow the Montana Attorney General to assure that the agreed-upon corrective measures are effectively implemented and that will allow donors to be confident that their contributions are being used properly.

This settlement is a fair and appropriate approach to resolving the issues and securing a brighter future for this organization and the central Asian children it seeks to educate.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Bullock', with a long horizontal flourish extending to the right.

STEVE BULLOCK
Montana Attorney General

I. INTRODUCTION

This report summarizes the results of the Montana Attorney General's investigation of the Central Asia Institute ("CAI") and its co-founder, longtime executive director and board member, Greg Mortenson. CAI is a nonprofit corporation, organized under the laws of Delaware, with its principal place of business in Bozeman, Montana. It has been recognized as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and classified as a public charity. CAI's charitable mission is to empower communities of central Asia through literacy and education, especially for girls, and to educate the American public about the need to promote peace through expanding educational opportunities in this region.

While serving as a member of CAI's board and as its executive director, Mortenson co-authored the books, "Three Cups of Tea" and "Stones into Schools." Those books tell a story about his personal history and the work CAI has done in central Asia to build schools and promote peace.

The Attorney General's investigation was precipitated by widely publicized media allegations of financial improprieties in the management of CAI and subsequent inquiries made to the office by donors. The media stories also included accusations of inaccuracies and falsehoods in the narratives of the books. Those matters were not the subject of the Attorney General's investigation. Rather, the investigation focused on matters relating to the financial and operational issues involving Mortenson and CAI to determine whether they had violated the law governing nonprofit corporations.

Based on the results of the investigation, the Attorney General has concluded that CAI's board of directors failed to fulfill some of their responsibilities as board members of a nonprofit charity. Further, Mortenson failed to fulfill some of his responsibilities as executive director and as an officer and director of the organization.

The Attorney General has further determined that an agreed-upon resolution with CAI and Mortenson is appropriate. That resolution is reflected in the Settlement Agreement and Assurance of Voluntary Compliance ("Settlement Agreement"), attached to this report. Through this resolution, CAI has implemented and will continue to implement operational and management changes to assure that it is operating in full compliance with the law. Mortenson has resigned as executive director. Through the settlement he has agreed to repay in excess of \$1 million, including credit for some payments already made, to compensate the charity for financial issues relating to the books, travel and personal charges on CAI's accounts.

CAI's mission is worthwhile and important. Its accomplishments, driven by the vision and dedication of Mortenson, are significant – as even their harshest critics acknowledge. It has substantial assets which, if properly managed, can be used to pursue the charity's mission and, in the process, improve the lives of people in a very challenging and complex region of the world. The Settlement Agreement allows CAI to move forward positively in pursuit of its mission. It includes monitoring provisions that will allow the Montana Attorney General to assure that the agreed-upon corrective measures are effectively implemented and that will allow donors to be confident that their contributions are being used properly.

II. OVERVIEW OF ATTORNEY GENERAL'S AUTHORITY

State attorneys general have broad authority through common law and statute to oversee and regulate charities and charitable assets. These powers date back to English common law when courts of chancery began to enforce trusts for the benefit of the poor, to support churches and generally provide benefits to the community. Attorneys general began to protect all charitable trusts using *parens patriae* authority, a doctrine that grants the inherent power and authority of the state to protect persons who are legally unable to act on their own behalf.

Today, state civil statutes – including the Nonprofit Corporation Act, Trust Codes, and the Consumer Protection Act – provide a robust framework for the Montana Attorney General's Office to police the solicitation, use and management of charitable assets. The Attorney General's Office is primarily concerned with protecting charitable assets against waste, fraud, conflicts of interest and other abusive practices by charities. In exercising enforcement powers, the Attorney General's Office works to protect the interests of a charity's donors and its intended beneficiaries. This enforcement authority also serves the public's interest in assuring that charitable organizations serve the purposes for which they were created.

The Montana Attorney General's Office responds to allegations of impropriety in the nonprofit sector raised by various entities, including the media and complaints from donors, officers or board members of nonprofits. While this office does monitor some financial documents filed periodically by charities for obvious and apparent wrongdoing, as a function of limited resources, it is typically through these other channels that this office investigates abuses in the nonprofit sector.

After reviewing complaints lodged with this office, the Attorney General will conduct an investigation if warranted. If insufficient evidence of wrongdoing is found, the inquiry is dropped. If evidence supporting the allegations is discovered amounting to a violation of applicable law, the state begins an enforcement action against the organization and/or its officers. These enforcement actions can be resolved through a settlement, in which the charity and its principals agree to discontinue the wrongful activity, make necessary changes in organizational structure to comply with the laws, and provide restitution to restore charitable assets for their intended purpose, if applicable. Enforcement actions can also be pursued through litigation and are then resolved through court judgments.

III. A BRIEF HISTORY OF CAI

While there is now controversy over the story of how it came to be, there is no question that Greg Mortenson is the inspiration behind, and motivating force of the Central Asia Institute. His idea, apparently formed in the early 1990s, was to build schools to bring education to children in the remote regions of central Asia.

In the summer of 1994, Mortenson obtained the first sizable donation to pursue his idea. After reading about Mortenson's plight in an American Himalayan Foundation newsletter, Dr. Jean Hoerni, a renowned Swiss physicist and avid mountaineer, donated \$12,000 specifically for a school in a small village in northeast Pakistan. Hoerni later offered to establish a

foundation, called the Central Asia Institute, to pursue a goal of building more schools. On June 4, 1996, CAI was incorporated in Delaware, and began operating with Hoerni's \$1 million donation. Mortenson, who with his wife had just moved to Bozeman, Montana, was appointed executive director.

That December, the construction of a school Korphe, Pakistan, was finished. One month later, on January 12, 1997, Dr. Hoerni died. His widow, Jennifer Wilson, remained involved and was a member of CAI's original board of directors, which formed in early 1997. Mortenson also recruited friend Tom Vaughn, a Marin County pulmonologist and fellow mountain climber, and Dr. Andrew Marcus, then the chairman of the Montana State University Earth Sciences Department (and now a professor at the University of Oregon). Later that year Julia Bergman, San Francisco City College head librarian, joined the board. Mortenson was not, himself, a member of the original board of directors.

The board continued to grow over the next couple of years. Gordon Wiltsie, a famous adventure photographer from Bozeman, joined the board in 1998. Three new members joined in 2000: Thomas Hornbein, a doctor and esteemed American mountaineer from Bellevue, Washington; Robin Houston, a Bozeman physician; and Scott Tweedy, a friend of Jennifer Wilson's from Newcastle, Washington. Jennifer Wilson stepped down in 2001, and Sally Uhlmann, an entrepreneur from Missouri, joined in early 2002. Tweedy left the board in 2002.

With Hoerni's initial donation almost depleted by 2001, it was clear the board needed to find new ways to remain viable. In May 2001, Mortenson raised the idea of writing a book to help with CAI fundraising and history. A year later, the book became one of the organization's highest priorities. During this same time period, the board also had discussions about relieving Mortenson of his responsibilities as executive director and finding someone more capable of managing the nonprofit's assets to fulfill those responsibilities.

During this time, tensions grew between Mortenson and certain members of the board, relating to management issues, accountability and differing visions about the direction of the charity. Hornbein, Uhlmann and Wiltsie all resigned in September 2002. Marcus was named board chair and Mortenson was voted on. Mortenson has been a board member ever since.

The first seven years of CAI's life showed relatively modest growth. That changed on April 6, 2003, with a cover story in *Parade*, a popular weekly magazine inserted in newspapers across the country. Reporter Kevin Fedarko's written and photographic account brought CAI's overseas mission work to an audience larger than the general mountaineering community. The results were overwhelming. Bags of mail with thousands of checks poured into the CAI office.

To accommodate the growth as a result of the *Parade* story, CAI hired Debbie Raynor as its chief financial officer¹ in September 2003. Soon thereafter she provided Mortenson and the board with a detailed list of objectives to bring tighter fiscal control and more financial integrity to the organization – including conducting the corporation’s first financial audit.

Raynor only lasted a year as CFO. She resigned in September 2004, frustrated about the lack of response to her recommendations and concerns, and specifically with respect to Mortenson’s failure to comply in any meaningful manner with the financial controls she set in place. Jennifer Sipes took over as operations manager in 2005 and still serves in that capacity today.

The year 2003 saw the final major changes in the board. Vaughn and Houston stepped down in September 2003, and were replaced by Dr. Abdul Jabbar and Karen McCown. Dr. Jabbar, the current board chair, grew up in Pakistan before a career as a professor of English and interdisciplinary studies at City College of San Francisco, where Bergman was head librarian. Karen McCown has spent years supporting education for young children in northern California. With Mortenson and Bergman, the board now totaled four – the size it would remain until 2009 when Bergman resigned. Mortenson, Jabbar and McCown are all who remain today.

Meanwhile, the book idea began to materialize and gain traction. It was a priority for CAI, and meeting minutes reflect that it also fit squarely into Mortenson’s vision for his own ideal work structure. On November 9, 2003, Mortenson signed a collaboration agreement with reporter David Oliver Relin to write a book about Mortenson and CAI’s mission. Mortenson and Relin signed an agreement with publisher Viking Penguin on March 2, 2004, to write the book, which became “Three Cups of Tea.” CAI was not a party to the publishing agreements, was not privy to the terms of the agreements, and did not obtain any rights to share in royalties.

On March 20, 2006, the hard back version of “Three Cups of Tea” was released. A year later, on January 30, 2007, the paperback version published. The paperback sold approximately 4 million copies and spent 57 weeks on *The New York Times* bestseller list. The book became CAI’s main outreach tool. The charity paid virtually all the costs to produce the book – approximately \$367,000 – and in the following years bought and gave away thousands of copies to libraries, schools, places of worship, military installations, and similar organizations. Mortenson also began making hundreds of public appearances at which he promoted the book, his story, and CAI’s mission. The advertising and travel costs for these speaking tours were paid by CAI until 2011 when Mortenson began paying the travel costs for his speaking engagements.

¹ Counsel for CAI and Mortenson believe that Ms. Raynor is most accurately described as a bookkeeper and believe that referring to her as CFO of the organization overstates her role. They note that she is not listed on the organization’s Form 990 tax filing document as an officer or key employee. Our review of documents reveals that from the first time Ms. Raynor is mentioned in CAI’s board minutes or correspondence until the time of her resignation she was at all times, with one exception, referred to by board members and herself as CFO. Furthermore, CAI’s board entertained a proposal to add Ms. Raynor to the board and she was later identified in minutes as “Treasurer.” We therefore refer to Ms. Raynor throughout this report as CFO. Her official title, however, is not material to the report. It is clear that she was the employee responsible for financial controls, monitoring, and reporting during her employment with CAI.

With the success of “Three Cups of Tea,” Mortenson developed an idea to write a second book. This time, he used two ghost writers. “Stones into Schools” published in December 2009. CAI used it, too, as a tool for raising awareness in the U.S. about its mission in Pakistan and Afghanistan. Again, CAI was not a party to the publishing agreements, and had no royalty interest in the book.

With the books’ successes and CAI’s increasing profile, Mortenson achieved personal acclaim. After winning Pakistan’s highest civilian honor in 2009, the Star of Pakistan, Mortenson was one of six finalists for the Nobel Peace Prize. Fueled by widespread demand nationally, Mortenson, the Penguin Speaker’s Bureau and CAI intensified the speaking tour. With a demanding schedule that included hundreds of cities in 2010 alone, Mortenson began using charter plane service and travelling with aides and bodyguards, due to threats against him.

The books continued to sell at a rapid pace. Mortenson’s personal financial fortunes also multiplied significantly during this time as a result of book royalties and speaking fees. And, donations to CAI increased consistently and significantly.

Unfortunately, while CAI was achieving significant successes in promoting its mission and increasing its profile, there were serious and ongoing problems with the charity’s financial and operational affairs. At the recommendation of the operations manager and the board, and with the assistance of an attorney, several policies and procedures were adopted in 2008, which were intended to address the deficiencies with the organization’s financial controls and operations. In addition, a written employment agreement with Mortenson was signed. Despite these actions, the situation did not meaningfully change.

Concerns were raised about Central Asia Institute in 2010, primarily focused on the financial benefits to Mortenson and the organization’s lack of accountability. The American Institute of Philanthropy, an independent charity watchdog, was the first entity to question CAI’s relationship with Mortenson. In an article titled “Nobel Prize Nominee’s Charity Wins No Award for Accountability” published in its April/May 2010 Charity Rating Guide and Watchdog Report, AIP chastised CAI for not making its financial reports available to the public.

On April 17, 2011, the CBS news program, “60 Minutes” aired a story alleging Mortenson mismanaged funds and fabricated some of the stories in his books. A day later, Jon Krakauer published an online short book that was highly critical of Mortenson. The allegations made by Krakauer and “60 Minutes” were published in news outlets across the world and have been challenged by both Mortenson and CAI.

During this time, Mortenson was experiencing increasingly serious health problems, which necessitated heart surgery in the summer of 2011. Anne Beyersdorfer, a consultant and longtime family friend of Mortenson, came to Montana to assist in managing the crisis and assumed the position of interim executive director.

IV. THE MONTANA ATTORNEY GENERAL'S INVESTIGATION

On April 19, 2011, the Montana Attorney General's Office began investigating the matters raised in the media by contacting representatives of CAI and Mortenson to request a meeting and some preliminary factual information. The investigation included a thorough review of matters relating to the financial and operational issues involving Mortenson and CAI to determine whether the law governing nonprofit corporations had been violated.

From the outset, CAI and Mortenson cooperated fully with the Attorney General's investigation. They and their attorneys responded to all requests in a timely and professional manner. The problems that are the subject of the investigation are serious and cannot be minimized. The manner in which CAI, Mortenson, and their counsel responded demonstrated their recognition of the seriousness of the issues, and a willingness to take meaningful actions to address those issues.

Our investigation was extensive. In addition to researching information in the public domain, we reviewed thousands of pages of documents produced by both CAI and Mortenson. We took the sworn statements of Greg Mortenson, Jennifer Sipes, Julia Bergman, Karen McCown, and Abdul Jabbar. We considered information from confidential witnesses. We retained forensic accountants from the public accounting firm, Junkermier, Clark, Campanella & Stevens, to assist with analyzing financial information and data. We consulted with a nationally recognized expert on the law governing charitable organizations.

The documents and sworn statements were obtained pursuant to the Attorney General's investigative authority, which provides for confidentiality. In addition, to facilitate the investigative process and avoid delays, we entered into confidentiality agreements with Mortenson and CAI concerning documents and information obtained in the investigation. Thus, the statute and confidentiality agreements limit the detail that can be publicly disclosed concerning information subject to their provisions. We are not constrained, however, in our ability to arrive at the necessary factual findings and legal conclusions based on our review and analysis of the confidentially obtained information.

It is important to note that the Attorney General's investigation was *not* focused on:

1. Allegations of fabrications or inaccuracies in the narratives in Mortenson's books; or
2. Issues that are within the domain of taxing authorities.

Those issues are not within the province of the Attorney General's oversight responsibility regarding nonprofit charities.

Finally, the investigation did not reveal evidence of conduct that would sufficiently constitute the basis for any criminal investigation or prosecution. Had such evidence been identified, it would have been referred to the authorities with primary prosecution authority, which in Montana are county attorneys. No such referral has been made.

V. THE MONTANA ATTORNEY GENERAL'S FACTUAL FINDINGS

A. INTRODUCTION

The focus of this investigation was defined by the legal issues relating to the Attorney General's enforcement authority, particularly focusing on protecting charitable assets in Montana and the fiduciary duties of officers and directors of nonprofit organizations, including the duty of care and the duty of loyalty. The duty of care requires the director or officer to act in a reasonable, diligent, and informed manner that is in the best interests of the organization. The duty of loyalty encompasses conflict of interest transactions, which are transactions in which an officer or director has a direct or an indirect interest.

Based on these legal principles, the Attorney General's investigation focused on two primary issues:

1. Did CAI's officers and directors satisfy their duties of care and loyalty with respect to the arrangements with Mortenson concerning the books and speaking engagements?
2. Did CAI's officers and directors satisfy their duties of care and loyalty in addressing the financial and operational affairs of the organization?

The factual findings of our investigation are summarized below. The Attorney General's conclusions, based on those factual findings, are summarized in Section VI.

B. THE BOOKS

The first notion for Mortenson to write a book actually came from his wife, Tara Bishop, who told him if he wrote a book to help spread CAI's message that he wouldn't have to travel as much and could be home more with his young family. Board meeting minutes in 2001 note the first reference to a book, which was conceived as a fundraising tool and a way to tell CAI's story. Meeting minutes also contain the first explicit reference to "Three Cups of Tea." There is also a reference to Mortenson's "ideal work scenario," and a specific reference under "Elements of His Job Description" to book writing and interfacing with the public.

Mortenson's initial attempts to interest a publisher in the book idea did not succeed. The idea was resurrected, however, after Kevin Fedarko's 2003 cover story in *Parade* profiling Mortenson and CAI's work. The article spurred increased public exposure of CAI, and the exponential increase in donations. Later, the CAI board (Mortenson, Bergman, McCown and Jabbar) reprioritized the book and decided to underwrite the costs to produce it.

In November 2003, Mortenson and co-author David Oliver Relin entered into a collaboration agreement.² Though CAI was not a party to the agreement, it included a provision

² Mortenson is the sole shareholder of a subchapter S corporation, MC Consulting, Inc. Many of the financial transactions described in this investigation involved MC Consulting. MC Consulting existed solely to maintain a bank account; it had no staff and undertook no activities other than maintaining the account. Accordingly, for purposes of this report, no distinction is made between Mortenson and MC Consulting, Inc.

binding CAI to pay the expenses incurred in preparing the book proposal, and travel associated with it.

Mortenson and Relin signed a publishing agreement with Viking Penguin on March 2, 2004. The arrangements provided the authors with a monetary advance over the course of the two-year writing process. Mortenson remained on salary as the full-time executive director of CAI throughout the writing process for “Three Cups of Tea.” He testified that much of the time he spent on the book was outside of normal business hours.

The hard copy version of “Three Cups of Tea” was released March 20, 2006. For that version, Mortenson and Relin split royalty payments based on the number of copies sold for each edition of the book. The co-authors retained Elizabeth Kaplan, Relin’s New York literary agent, who took a percentage of the commission received by the two authors. For the paperback versions, which came out in 2007, Mortenson and Relin split royalties as well. Kaplan’s share applied to all royalties received by the authors.

Mortenson did not provide the CAI board with copies of any of the contracts relating to the writing and publication of “Three Cups of Tea.” Based on our investigation, the other members of the board have never received or requested copies of any of those contracts. As of the time they gave sworn statements, the other board members still did not know, and had an inaccurate understanding of, the financial details between Mortenson, Relin, the publisher, and agent. The board members focused instead on the benefits CAI received from “Three Cups of Tea” and the later books.

For the second book, “Stones into Schools,” Mortenson received a substantial cash advance from the publisher. He hired a ghost writer, for a set fee, in July 2008. Instead of splitting half the royalties like he did with Relin, the ghost writer was entitled to a fraction of them, earning on all copies over 100,000 sold 2 percent for the hard copy and 1 percent for paperback. Mortenson alone signed the deal with Viking Penguin, which provided royalties of varying percentages between hard copy and paperback editions. In the latter stages of the book’s development, Mortenson also hired a second ghost writer to write the final chapter of “Stones into Schools.” This author received a set fee and the same royalty payments as the first ghost writer. The hard copy was published in early December 2009 and the paperback was released in late October 2010. Unlike the arrangement with “Three Cups of Tea,” and other than the salary Mortenson was receiving, CAI did not underwrite the costs of writing or producing “Stones into Schools.”

In addition to the production costs of approximately \$367,000 for “Three Cups of Tea,” since 2006 CAI has spent approximately \$3.96 million buying copies of the books, which were distributed to libraries, schools, universities, the military, and other recipients to promote CAI and its mission. Those purchases were made primarily through online book companies. Mortenson was entitled to purchase books at a discount from the publisher, which would not have generated royalties. He and the operations manager determined, however, that it was more efficient and cost effective to purchase from the online sellers because those sellers would ship directly to intended recipients or speaking engagement locations (unlike the publisher), shipping

costs were lower, promotional sales prices were competitive, and the online sellers were able to respond much more quickly to orders than the publisher.

Because they were made from retail sellers, CAI's purchases generated royalties for Mortenson and his co-authors. In 2008, the CAI board addressed this issue in the process of entering into an employment agreement with Mortenson. A board resolution included the following:

Whereas, Greg Mortenson has agreed to provide a contribution to CAI equal to the amount of royalty income he has received specifically related to books purchased by CAI.

As of early April 2011, Mortenson had not made any payments to CAI to compensate it for these royalties, and CAI's board had not taken steps to demand such payments.

In addition to the costs of purchasing books, CAI spent approximately \$4.93 million since 2006 advertising the books, out of a total advertising expenditure of approximately \$6.11 million. Like the book purchases, CAI relied upon the benefits it received from the books to justify those expenses.

Mortenson received his salary and benefits as executive director of CAI during the entire time period. In addition, he earned substantial royalty income from the books.

C. THE SPEAKING ENGAGEMENTS

In the years before "Three Cups of Tea" published in 2006, Mortenson delivered dozens of slide shows, lectures, and other presentations each year to educate the American public about the need to promote peace through expanding educational opportunities in central Asia. Minutes from early board meetings show that the board viewed Mortenson's public appearances as critical to CAI's domestic outreach and education program, and its ability to attract charitable donations to the organization. The board recognized, therefore, that Mortenson's public appearances were an integral and important part of his work as executive director of CAI.

Following the publication of "Three Cups of Tea," Mortenson made hundreds of public appearances in the United States and other countries to educate the public about CAI's charitable mission and to promote the books. Some of these appearances were organized by Penguin Speakers Bureau (PSB), an affiliate of the publisher of "Three Cups of Tea," pursuant to a separate contract with Mortenson. Others were organized by CAI.

In 2007, Mortenson made appearances in 98 locations, from Hawaii to Vermont, in Tanzania and the United Arab Emirates. In 2008, Mortenson made 120 speaking appearances. 2009 became even more hectic, with 160 engagements, sometimes two in one day in different states. The following year was nearly identical, with 142 engagements in 2010 and instances with four public speeches in one day. These trips were in addition to several trips to central Asia during these years.

To accommodate such a schedule, which often made it impractical to travel commercially, as well as in consideration of Mortenson's health and concerns for his physical safety, Mortenson began travelling extensively on charter jets. The charter flights were paid for through CAI's credit cards or wire transfer of CAI funds. Over time, these charter costs totaled almost \$2 million. The CAI board was aware of, and approved the use of, charter flights.

Mortenson received speaker's fees for many of these appearances. He also made many appearances for no fees. As demand for Mortenson's speeches increased, so did the honorariums he received. In 2008, for example, the standard speaking fee was \$15,000. Of that amount, \$3,750 went back to the PSB and Mortenson kept \$11,250. In subsequent years the total engagement fee increased to between \$25,000 and \$30,000 – all but \$7,500 of which went to Mortenson.

CAI paid the travel and promotional costs associated with Mortenson's public appearances. The board determined that the public appearances furthered the mission of the organization, through public outreach, and generated substantial mission and name recognition, resulting in significant amounts of contributions to CAI.

At the same time CAI was paying the travel costs, however, many of the event sponsors were paying a separate, additional fee for travel costs. For most speaking engagements arranged by PSB in 2010 and 2011, and for some speaking engagements arranged by PSB in 2009, the event sponsor paid a specified amount for travel costs, in addition to the speaker's fee.

In January 2011, before the media stories broke in April, Mortenson began paying his own travel. From January 18 through April 11, his final speaking event of the year, Mortenson paid \$252,042.11 for travel to 26 speaking engagements.

Prior to the initiation of this investigation, Mortenson had not reimbursed CAI for the travel expenses he received from event sponsors. Thus, Mortenson was "double dipping." His travel expenses were, in many cases, paid twice: by both CAI and event sponsors.

D. FINANCIAL IMPACT ON CAI FROM THE BOOKS AND SPEAKING ENGAGEMENTS

Meeting minutes of the CAI board from 2001 on reflect the board's belief that Mortenson's outreach could generate significant and needed financial support to CAI. Later minutes specifically acknowledged the very substantial benefit that "Three Cups of Tea" provided to CAI in the form of widespread public education regarding the charity's mission and programs and increased monetary donations.

CAI received substantially more in donations than it expended for advertising, promotion (including book purchases), and travel associated with the books and Mortenson's public appearances. CAI's financial records separately identify the amounts spent for advertising and book purchases. They do not, however, separately identify travel costs associated with the books or speaking engagements, so they are not as easily accounted for.

The following is a summary of CAI's expenditures for books and advertising, exclusive of travel, compared to its contributions from 2003 through August of 2011:

Year	Book Costs	Book Purchases	Advertising-Books	Total Exclusive of Travel	Total Donations
2003					\$ 907,977.00
2004	\$3,218			\$3,218	\$ 896,922.00
2005	\$18,770			\$18,770	\$ 867,148.00
2006	\$200,592	\$50,423	\$27,659	\$278,674	\$ 1,541,711.00
2007	\$127,767	\$345,089	\$328,973	\$801,829	\$ 3,660,538.00
2008	\$12,041	\$415,335	\$125,361	\$552,737	\$12,434,479.00
2009	\$4,632	\$702,409	\$1,022,320	\$1,729,361	\$13,554,885.00
2010	\$86	\$1,678,967	\$2,326,884	\$4,005,937	\$22,880,943.00
Aug. 2011	0	\$746,889	\$1,098,843	\$1,845,732	\$15,358,744.00
Total	\$367,106	\$3,957,112	\$4,930,000	\$9,254,218	\$72,103,347.00

From 2003 to August 2011, CAI's total revenues and expenses were:

Year	Domestic Expenses	International Expenses	Total Expenses	Total Revenues
2003	\$349,481	\$178,249	\$527,730	\$919,944
2004	\$492,120	\$416,859	\$908,979	\$1,026,951
2005	\$497,144	\$391,087	\$888,231	\$998,588
2006	\$824,295	\$619,464	\$1,443,759	\$1,617,094
2007	\$1,656,803	\$937,113	\$2,593,916	\$3,796,072
2008	\$5,825,103	\$2,174,189	\$7,999,292	\$13,093,271
2009	\$5,924,667	\$3,795,162	\$9,719,829	\$13,998,442
2010	\$9,583,877	\$4,999,209	\$14,583,086	\$23,242,301
Aug. 2011	\$6,469,091	\$6,014,580	\$12,483,681	\$15,711,034
Total	\$31,622,581	\$19,525,922	\$51,148,503	\$74,403,703

The difference between the total expenses and total revenues (\$23,255,200) was held in reserve. Board members testified the organization intentionally built its reserves in order to provide assets for ongoing support of its programs in central Asia.

From the perspective of CAI's board and its attorneys, the costs spent promoting Mortenson's books and speaking appearances were a worthy and prudent investment that supported its mission and created awareness of CAI and its accomplishments, resulting in significant donations to the organization. While there are likely multiple contributing factors to CAI's increased donations, the substantial increase in the years following initial publication of "Three Cups of Tea" is consistent with CAI's position.

Even granting credibility to the board's position, however, its own actions confirm that there were issues to be addressed with respect to the organization's arrangements with Mortenson. Though early board minutes do not reflect any discussion of the financial arrangement between CAI and its executive director, and there was no formal employment agreement in place with Mortenson prior to 2008, the board took formal steps that year to document and ratify the relationship and financial arrangements that had developed between CAI and Mortenson over the previous several years. In 2008, prior to "Stones into Schools," CAI and Mortenson entered into a written employment agreement. Section 2 of that agreement provides:

(b) ... While CAI was not, and is not, a direct beneficiary of any of the personal contracts between Mortenson and publishers related to 3CT or regarding any profits or revenue generated by 3CT, CAI acknowledges that it has received and continues to receive benefits from the 3CT in the form of public education regarding CAI's mission and programs and heightened awareness of the need for support, resulting in substantial contributions to CAI. CAI recognizes that during Mortenson's employment with CAI he will also be engaged in speaking arrangements and/or working on additional publications or projects regarding his activities in Pakistan and Afghanistan. CAI acknowledges that it will not be the direct beneficiary of such activities, but believes it will receive substantial indirect benefit subject to these activities similar to past experience. CAI, therefore, acknowledges and consents to Mortenson engaging in such activities independent of CAI, including working on, writing, publishing and/or promoting another book or books or a film project, except as discussed in paragraph (c) below, does not claim any right, title or interest in such other publications or projects.

(c) With respect to speaking activities, Mortenson may receive honorariums or speaking fees. CAI recognizes that many of these engagements also further its educational and fundraising programs. Payments and expenses associated with these activities shall be documented and split between Mortenson (or his designee) and CAI based upon a determination of the amount of benefit and topic of the speaking engagement. Any payments from CAI to Mortenson (or his designee) associated with such activities shall be documented by CAI and presented to the Board for ratification on at least a semi-annual basis.

The board also adopted a resolution echoing the employment agreement. Essentially, it said that Mortenson is the pivotal character in CAI's mission, and that the "vast benefit" his book provided to the corporation in the form of increased financial support is "in excess of the personal benefit received by Mortenson from his private authorship and speaking activities." The resolution also memorialized an arrangement for sharing book royalties.

Thus, the CAI board, including Mortenson, recognized and agreed that Mortenson should pay some of the travel and promotional costs associated with his speaking engagements and books, and that he should pay CAI for royalties he received from books purchased by CAI. Neither the board nor Mortenson, however, took steps to implement those agreements.

As the media stories were unfolding in April 2011, Mortenson made two payments to CAI totaling \$420,000. As of the date of this report, Mortenson has not made any further payments pursuant to the employment agreement or royalty agreement. However, through the settlement with the Attorney General, he has committed to making additional payments to CAI, which will bring the total amount of Mortenson's reimbursement to CAI to just over \$1 million.

E. FINANCIAL AND INTERNAL CONTROLS

1. Deficiencies with Expense Documentation and Financial Controls

Between 2001 and 2011, CAI had three independent audits of its financials. The audits performed for the 2003, 2009 and 2010 fiscal years revealed material weaknesses in CAI's financial and internal controls. Rather than address the deficiencies found in the 2003 audit, the board discontinued auditing its finances. The same material weaknesses appeared in the later audits. The CAI board also was expressly told of financial deficiencies and problems with internal controls by its former chief financial officer during the CFO's employment with the charity. Those problems were further detailed and reiterated in a memorandum supplied to the board when the CFO resigned in 2004.

The financial records supplied to the Attorney General by CAI reflect a significant volume of expenditures as "program service expenditures" or "management and general expenses." A material amount of these expenditures is reflected in credit card statements, but does not have sufficient or independent supporting documentation to confirm this characterization. This is so despite the organization's internal policies and procedures and board resolutions mandating that documentation. The large volume of individual undocumented expenditures without sufficient supporting documentation was identified as a material weakness by CAI's independent auditors. Our review of CAI's financial records revealed that this recurring weakness was not adequately addressed. CAI's financial records revealed similar material weaknesses with respect to supporting documentation for credit card purchases.

Based on the recommendation of CAI's operations manager, the board retained an attorney in approximately 2008 to assist with developing comprehensive policies and procedures including:

- A comprehensive Board Policy Manual
- Personnel Policy Manual, which outlines and requires the following:
 - Detailed reporting of work hours by project;
 - Reporting and documenting business expenses as they are accrued: “you must report these expenses or you may be personally liable for the amount spent ...”;
 - Procedures governing use of CAI property and credit cards, “costs that are deemed non-CAI related will require immediate reimbursement from the employee. Subsequent disciplinary action or termination may ensue.” And;
 - Conflicts of interest.
- Code of Ethics Policy
- Conflict of Interest Policy
- Employee Travel Reimbursement Policy, which:
 - Requires documentation of expenses, including receipts and “information sufficient to establish the business purpose of the travel, entertainment, or other expenditure”;
 - Requires that expenses be kept at a minimum;
 - Prohibits reimbursement for personal expenses;
 - Prohibits expenses reimbursable from any other source, and;
 - Generally prohibits reimbursement for travel expenses of spouses.

CAI’s Personnel Policy Manual, adopted in June 2008, describes in detail the expectations of employees with regard to business expense reporting and the use of company credit cards. The policy reads, in pertinent part:

4.b. Business Expense Reporting

Employees are required to report each business expense to the Operations Director as the expense is accrued. You must report these expenses or you may be personally liable for the amount spent or obligated. We encourage use of charge accounts and cards whenever possible, pre-approved by the Operations Director.

Employees who are required to use their automobile for CAI business and for trips will be reimbursed at a mileage rate determined annually, plus expenses for

tolls and parking. Reimbursement will not be made for travel between home and office.

The financial reporting, budgeting, controls and business expenses are done with the assistance of a CPA accounting firm.

4.c. Other Reimbursable Expenses

CAI encourages employees to obtain overnight accommodations with friends, family and CAI members, supporters, or contacts. It is acceptable to purchase an inexpensive gift or meal for the host. If an employee needs commercial lodging, s/he will seek to obtain reasonable accommodations. Similarly, meal expenses will also be reasonable.

Additional meal expenses are not covered in cases where conference fees include cost of meals, with exception for meals that are business related. Tips will not exceed what is reasonable and customary.

CAI will reimburse employees for any fees involved with required or approved attendance at conferences. Employees will also be reimbursed for expenses incurred for CAI-related telephone calls, supplies, postage, copying, and other items authorized by the Operations Director. Receipts related to a specific event or trip will be submitted on an Expense Voucher (same as Travel Voucher). Miscellaneous individual receipts can be accepted at the discretion of the Operations Director without a Voucher if legible and the employee clearly indicates the purpose of the expense, the CAI program, "please reimburse," and his/her signature. Any reimbursement request received without receipt(s) will be considered on an individual basis.

4.d. Use of CAI Property and Charge Cards

Employees are expected to use CAI equipment carefully and its supplies prudently. In cases of obvious misuse, an employee may be expected to pay all or part of the repair and/or replacement cost.

Certain employees are issued phone and debit/credit cards plus allowed use of CAI's cell-phone. Employees are responsible for each expense incurred on these accounts. Any costs that are deemed non-CAI related will require immediate reimbursement from the employee. Subsequent disciplinary action or termination may ensue.

These policies were not effectively implemented and enforced based on evidence of misuse of company accounts by Mortenson, other employees and even some nonemployees, including family members of employees. We examined CAI credit card statements spanning 10 years. Of those 10 years, supporting receipts for eight sample months were requested: December 2007; August, October and December 2008; November 2009; January, March and July 2010. CAI provided receipts for just 38 percent of the total charges during those eight

sample months. And, many of the receipts did not satisfy the requirements of the policy manual because there was no voucher or other written indication of the purpose of the charge.

Mortenson, in particular, consistently failed to comply with either commonly accepted business practices or CAI's policy manual with respect to documenting expenses charged on CAI's accounts. The issue was repeatedly raised through the years. Board members testified that despite requests, cajoling, demands and admonitions, they were unsuccessful in getting Mortenson to submit proper documentation to support the charges he was making to the charity. The board went so far as to provide Mortenson with a personal assistant while traveling. This, however, also failed, as the personal assistant, himself, did not adequately comply with expense reimbursement requirements, nor did he cure the problems relating to Mortenson's expenses.

The more significant issue was not simply compliance with expense reimbursement and documentation policies, but the nature and magnitude of charges for which inadequate documentation exists. Through the years, Mortenson charged substantial personal expenses to CAI. These include expenses for such things as LL Bean clothing, iTunes, luggage, luxurious accommodations, and even vacations. Note 9 to CAI's fiscal year 2009-10 audit states:

During the fiscal year ended September 30, 2010, the Organization paid expenses on behalf of its Executive Director which was recorded as a receivable to be reimbursed to the Organization.

The receivable in question was for \$75,276.10 – the amount of company funds that CAI auditors determined Mortenson used for personal reasons. Records show that in four personal checks in August and September of 2011, Mortenson repaid the entire receivable. Based on our investigation, it appears likely that there are personal charges for Mortenson and his family from other years, which properly should be paid back to CAI.

Mortenson was not the only person who made unsupported charges to CAI's accounts. The credit card statements reflect questionable charges by other employees at restaurants, bars and spas, and on health club dues and gifts. It is possible that some of these charges can be supported and justified as appropriate expenses of the charity. It appears probable, however, that some of them cannot be.

CAI has instituted tighter controls on the use of CAI accounts, and has agreed to retain a public accounting firm to check the validity of questionable charges from previous years. For those determined to be improper, CAI's policy regarding improper charges to CAI's accounts should be enforced. (*“Any costs that are deemed non-CAI related will require immediate reimbursement from the employee. Subsequent disciplinary action or termination may ensue.”*).

2. Overseas Expenditures

It is not feasible for the Attorney General to independently conduct an on-the-ground assessment of the work that CAI is performing in Afghanistan and Pakistan. It should be noted, however, that even CAI's harshest critics recognize that the organization has built schools and accomplished positive achievements in a very challenging region of the world.

Each of CAI's three financial audits, as well as the organization's own records, identify deficiencies in documenting its overseas projects and accounting for wire transfers abroad and overseas expenses. For example, large sums of CAI funds were often wired to central Asia where CAI staff members, including Mortenson, would use the funds to carry out its mission. The audit deficiencies spotlighted the lack of documentation to prove how the money was spent or if it was spent as intended. Our primary focus, therefore, was to determine whether the organization has taken meaningful and effective action to address the deficiencies in accounting for overseas expenditures.

In the summer of 2011, CAI sent an attorney and members of its staff to central Asia to conduct an assessment of the organization's projects. They also evaluated possible ways of improving documentation and accountability for expenditures, considering the challenges of working in a region with a significantly different economic and cultural system than that of the United States. The Attorney General's Office has reviewed the findings from this assessment, and finds them credible. The assessment acknowledged that there were discrepancies and duplications in CAI's prior project lists.

In August 2011, CAI developed and posted on its website, and has subsequently updated, a detailed Master Project List of its overseas activities and accomplishments. CAI will update this Project List on a periodic basis, and take other steps to ensure that its program service accomplishments are accurately portrayed to the public.

CAI has implemented methods of tracking projects and expenses with its overseas staff, including documenting each of its projects with the assistance of an attorney and American staff, and improved methods and accountability for overseas staff to document expenses. Further, CAI has retained accounting firms in Pakistan and Afghanistan to work closely with its accountants and auditors in the United States to address deficiencies in accounting for overseas expenses.

F. GOVERNANCE ISSUES

1. CAI's Board

CAI's board presently comprises three individuals, one of whom is Mortenson. All three directors have served on the board continuously since 2003 (along with Bergman until 2009) and have personally visited Afghanistan and/or Pakistan. The altruistic motives and sincere commitment to CAI's mission by each person who has served on CAI's board cannot be doubted. It was evident when they were interviewed that they each believe deeply in the charity's mission, and want it to succeed. It was equally evident that each of the board members greatly admires Mortenson and the work he has done – both on the ground in central Asia, and in carrying CAI's message of education and peace to people throughout the United States and beyond.

The board's history and testimony from certain members, however, supports a conclusion that there was a deliberate effort to put people who are loyal to Mortenson on the board. The three board members who resigned in 2002 were effectively ousted, based on tensions and conflict that had developed with Mortenson. Meeting minutes show Hornbein, the board chair, and Wiltsie, the board treasurer, repeatedly asked for documentation to prove that CAI was

getting a positive return on the money Mortenson was spending. Hornbein in particular requested itemized lists of Mortenson's travel expenses, of the money coming in, and of contacts being made. He also advocated for phasing out Mortenson's role in overseeing daily operations. In short, the board members who resigned were essentially trying to perform the kinds of oversight functions expected of boards of directors for organizations such as CAI.

Despite being made aware of ongoing problems relating to accountability for expenditures and other financial issues, the CAI board never adequately addressed those problems. Specifically, the board did not exercise sufficient control and direction over Mortenson. Any efforts to do so were complicated by his dual role as executive director and a voting member of the board.

Section 2.1 of the board's 2008 policy manual states:

2.1 Structure: The Board shall regularly reevaluate the size of the Board to ensure that it has enough members for full and diverse deliberation, in a scale appropriate to the Institute's size, with the appropriate level of skill and expertise. The Board should include members with diverse backgrounds, experience, and skills. In considering the Board's size and composition, independent Board members should comprise at least two-thirds of the Board, meaning that they receive no remuneration from the Institute, and are not closely related to anyone who does.

This policy, like other policies adopted at the time, was not effectively implemented or adhered to.

From their testimony, it is clear that in addition to their admiration for him, the CAI board members believed that CAI's viability was entirely dependent upon Mortenson. One testified that the organization and board had become too "Greg-centric." Another testified that Mortenson is so valuable and indispensable that the organization is nothing without him. These kinds of feelings and beliefs interfered with the board members' abilities to exercise independent oversight and management of CAI.

The small size of the board also contributed to a lack of effective oversight. The structure and size of CAI's board complies with the corporate law requirements of Delaware (CAI's state of incorporation) and Montana (CAI's principal place of business). However, the board, as constituted for the past several years, lacked sufficient independence and size to manage the affairs of a charity with financial resources and programs as large as CAI's.

2. Management

Mortenson served as CAI's executive director from 1996 until he took a leave of absence for medical reasons in April 2011. He resigned his position as executive director effective as of November 2011. He currently serves on the CAI staff in a position that does not include financial oversight of the organization.

As the executive director of CAI, Mortenson was ultimately responsible for the management of the charity and overseeing execution of the organization's internal policies and

procedures adopted by the board. In addition, he was the key member of the charity's program staff, leading the execution of its overseas projects and conducting its domestic education and outreach programs. He was primarily responsible for CAI's fundraising.

Based on the information obtained in this investigation, it is clear that Mortenson was not an effective manager of CAI. He, by his own admission, is not well-versed or comfortable in financial and personnel management issues. He did not communicate well with staff in the charity's office in Bozeman. He maintained a prodigious travel schedule. He testified, and there is no reason to doubt, that he worked virtually nonstop. It is doubtful that even a skilled manager could maintain the kind of travel and outreach schedule Mortenson maintained and still effectively manage an organization that has grown to the size of CAI.

Yet, Mortenson consistently insisted on maintaining substantial control over the charity's affairs. When employees challenged him by attempting to get him to provide documentation to substantiate expenditures, or otherwise to comply with sound management practices, he resisted and/or ignored them. Some of them ended up leaving.

Anne Beyersdorfer currently serves as the interim executive director of CAI. She is a consultant who also has a long-standing personal relationship with Mortenson and his wife. She was brought into CAI following the *Parade* article to help manage the deluge of mail and contributions. The board determined that under the circumstances that developed in 2011, it was beneficial to have a person whom Mortenson knows and trusts, and who had prior experience with CAI, to serve as interim executive director. This may have been a legitimate approach, and there have been positive changes implemented with Beyersdorfer serving as interim executive director. It is, however, one more example of an organization that is controlled by people with personal affinity for, and loyalty to, Mortenson. As Beyersdorfer and the board recognize, it is essential that a qualified and independent executive director be hired to manage CAI as it moves forward.

VI. THE ATTORNEY GENERAL'S CONCLUSIONS

A. SUMMARY OF APPLICABLE LEGAL PRINCIPLES

CAI is a nonprofit, charitable corporation incorporated under the laws of Delaware. Its home office and principal place of business is in Bozeman, Montana. Greg Mortenson is a resident of Montana. The Montana Attorney General is charged with overseeing the management and stewardship of charitable assets in Montana.

If a legal enforcement action were filed in this matter, the court would determine whether to apply the laws of Montana or Delaware. With respect to the controlling legal principles, however, the Attorney General believes there would be no substantive difference in the legal analyses or conclusions regardless of which state's law were to be applied. That is, since there is no conflict in the laws of the two states with respect to the applicable principles, applying either state's laws would result in the same conclusion. Additionally, this office consulted with the Delaware Attorney General.

It is well established that officers and directors of a nonprofit corporation such as CAI are fiduciaries. As such, they owe two overriding duties to the organization, including its donors and beneficiaries: (1) The Duty of Care and Good Faith; and (2) The Duty of Loyalty. Both duties have been codified by the legislatures of Montana and Delaware.

1. The Duty of Care

The duty of care requires the director or officer to act in a reasonable, diligent, and informed manner. They must discharge their duties in good faith, with the care an ordinarily prudent person in a similar position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the organization.

Corporate actions, as determined by the board of directors, may be carried out by officers, employees, and agents and no individual director acting solely as a director carries out the day-to-day activities of the corporation. Thus, directors properly may designate officers and employees to be responsible for the day-to-day operations of the organization. The directors, however, are still responsible for the supervision of the officers and the overall management of the organization's affairs. Thus, they must supervise corporate expenditures, keep themselves informed of the organization's affairs, attend board meetings, and reasonably supervise the officers.

Directors are expected to make informed decisions, which requires the director to take reasonable steps to obtain the information relevant to the matters that come before the board. They may rely on information and recommendations provided by others, including officers and employees of the organization, as well as consultants and advisors. The director must reasonably believe that the people providing the information are competent and reliable. A director does not act in good faith if the director knows information that makes reliance unreasonable.

Under the "business judgment rule," courts will generally not question directors' judgment when they make bad decisions, so long as they acted reasonably, in an informed manner, and in good faith. Further, directors of a nonprofit corporation are generally shielded from personal liability for monetary damages pursuant to the business judgment rule. Directors lose this liability shield, however, if they do not act in good faith or if their actions involved intentional misconduct or a knowing violation of the law.

Despite the protections of the business judgment rule, when officers or directors of nonprofit organizations fail to comply with their duty of care, a court properly may order appropriate equitable relief, including removal of officers or directors. Thus, in reviewing the conduct of officers and directors of nonprofit organizations, the Attorney General does not focus exclusively on whether there is a basis for seeking monetary relief.

2. The Duty of Loyalty

The duty of loyalty obligates officers and directors to act in the best interests of the corporation and not in their own self-interest. The courts have identified at least five sub-duties included in the duty of loyalty:

1. The duty to not unduly profit individually or through a related party from a transaction with the organization.
2. The duty to avoid causing the corporation to pay yourself, as an officer or director, excess compensation or benefits.
3. The duty to use the organization's property and assets only for the benefit of the organization. This includes the duty to not use corporate funds for personal expenses.
4. The duty to avoid usurping corporate business opportunities.
5. The duty to refrain from competing with the corporation.

A conflict of interest transaction is one in which a director or officer has a direct or indirect personal interest in a transaction. However, a transaction in which a director of a nonprofit corporation has a conflict of interest may be approved in advance by the vote of the disinterested members of the board of directors if (i) the material facts of the transaction and the director's interest are disclosed or known to the board and (ii) the directors approving the transaction in good faith reasonably believe that the transaction is fair to the corporation.

The duty of loyalty is a higher standard than the duty of care. A director cannot rely on the business judgment rule if the director violates the duty of loyalty.

Based on these legal principles, and the facts developed through this investigation, it is the Attorney General's opinion that:

B. THE DUTY OF CARE

The members of CAI's board of directors have, since at least 2004, failed to meet their duties of care with respect to at least the following matters:

1. CAI's board failed to address inadequacies in the financial operation of the organization brought to their attention through reports from staff and financial audits.
2. The board failed to obtain all of the relevant and material information in making its determinations with respect to the financial arrangements involving the books and speaking engagements, regardless of whether there was a reasonable basis for concluding at the time that those arrangements were in CAI's best interest.
3. CAI's board failed to implement provisions in Mortenson's employment contract requiring payments and expenses associated with speaking activities to be documented and split between Mortenson and CAI based on a determination of the amount of benefit and topic of the speaking engagement.
4. CAI's board failed to enforce its resolution, reflecting an agreement with Mortenson to make payments to CAI commensurate with the amount of royalty income he received from CAI's book purchases.

5. CAI's board appropriately adopted policies and procedures for reimbursement of legitimate business expenses. However, CAI's board failed to effectively implement those policies, resulting in Mortenson and other employees and nonemployees charging questionable personal expenses, entertainment, travel and gifts to the charity, necessitating further audits of CAI's accounts.

With respect to Mortenson in particular, he also failed to meet his duties of care with respect to the following matters:

1. As an officer and director, as well as executive director and employee of the organization, Mortenson failed to implement policies of the board.
2. Mortenson failed to address problems with the financial management of the organization after such problems were identified in audits and statements from other employees.
3. Mortenson consistently failed to comply with policies adopted by the board regarding proper documentation and reimbursement of expenses.
4. As executive director, Mortenson failed to hold other employees accountable for policies adopted by the board, particularly in regard to documenting and reimbursing expenses. As a result, others, including nonemployees, may have improperly charged personal expenses, gifts or entertainment expenses to CAI.

C. THE DUTY OF LOYALTY

In addition to failing to meet his duties of care, Mortenson failed to satisfy his duty of loyalty as an officer and director, with respect to at least the following matters:

1. Mortenson failed to fully disclose to other board members material facts regarding his financial interests in the books he authored, his speaking engagements arranged by the Penguin Speaker's Bureau, and travel reimbursements from other parties.
2. Having failed to fully disclose material facts of the transaction and his own financial interests, Mortenson also failed to recuse himself from votes of the board regarding significant matters that involved conflicts of interest and potential conflicts of interest.
3. Mortenson improperly caused CAI to pay personal expenses.
4. Mortenson failed to abide by the terms of his employment agreement to split expenses and payments for his speaking engagements.
5. Prior to 2011, Mortenson failed to make payments to CAI for the amount of royalties he received from CAI's book purchases.

D. CAI'S POSITION

In arriving at the conclusions outlined above, the Attorney General has considered explanations and legal positions advanced by CAI and Mortenson. There has been a general agreement on several issues, but not all of the items discussed in this report. Significantly, they have acknowledged that there have been serious problems that must be addressed. At the end of this report is a summary statement provided by counsel for CAI and Mortenson, which briefly sets forth their positions with respect to some of the Attorney General's conclusions.

VI. CORRECTIVE ACTIONS AND RESOLUTION

As explained at the outset of this report, the Attorney General has determined that despite CAI's problems and deficiencies, its mission is valuable and its achievements are important. With appropriate corrective action, and restitution for some of the financial improprieties, the Attorney General believes CAI can move forward on a positive track in the pursuit of its mission, and its donors can have confidence in it. The organization has substantial assets, which if properly managed can be used to accomplish much good.

In approaching a resolution to the issues addressed in this investigation, the Attorney General had two overriding objectives: (1) to put in place operational changes to assure the charity operates in accordance with the law and in a way that instills donor confidence that the charity's mission will more effectively be pursued; and (2) to obtain restitution for certain past financial transgressions.

The terms of the agreed-upon resolution with CAI and Greg Mortenson are set forth in the Settlement Agreement and Assurance of Voluntary Compliance. Below is a brief summary of the operational changes and reforms to ensure that CAI operates under good governance principles going forward, some of which have already been implemented. Following the governance provisions is an explanation of the financial restitution terms.

A. OPERATIONAL CHANGES AND REFORMS

1. CAI will expand its board to a minimum of seven directors.
2. Current board members, Karen McCown and Abdul Jabbar, will remain on the board for no more than one year to facilitate the transition to new board members.
3. Mortenson may not serve as a voting board member while he is employed by CAI, though he may serve on the board in a nonvoting, ex officio capacity.
4. As an employee of CAI, Mortenson may not hold positions requiring financial oversight and he must strictly adhere to all board policies governing the conduct of employees.
5. CAI will retain an independent professional consultant to assist in finding a new executive director.

6. CAI has established audit and finance committees and established an independent audit requirement in its bylaws.
7. CAI has retained a new independent auditor to review its financial statements and to produce an audit report, which will be provided to the Attorney General.
8. CAI has reformed its policies governing the use of corporate credit cards, travel reimbursements, and overseas expenditures to improve compliance with reporting and receipting requirements.
9. CAI has improved its tracking of projects and expenses with overseas staff, including hiring an accounting firm in Pakistan and Afghanistan and documenting its overseas programs on a Master Project List, published on its website.
10. CAI will perform an annual analysis of executive and staff compensation.

B. REIMBURSEMENT BY MORTENSON

1. Royalty Contribution Based on Past CAI Book Purchases

The Settlement Agreement and Assurance of Voluntary Compliance states:

Mortenson will pay CAI a total of \$270,000 to reimburse CAI for the royalties Mortenson or MC Consulting [a corporation he owns] received in connection with CAI's purchases to date of 3CT and the Additional Books.

Determining an exact amount of royalties Mortenson earned on books purchased by CAI is impossible because CAI did not document which books were purchased, how many, or at what cost. The Attorney General calculated the percentage, per title and type of book, of Mortenson's overall royalties and applied that percentage to the total of CAI's book purchases. An average of the royalties Mortenson received per book was then applied to calculate the amount Mortenson must contribute to the organization for royalties on the books CAI purchased.

We recognize that potentially all of the royalties earned on the books rightfully belong to the charity. Generally, under the Work Made for Hire Doctrine, an employer owns the work prepared by an employee within the scope of his employment. However, it is not uncommon for employers in the nonprofit industry to create well-researched policies vesting ownership rights to publications in their employee-authors, notably Universities with respect to the scholarly works of their faculty. We acknowledge counter arguments that the book was a joint effort between CAI and Mortenson that generated substantial donations for the charity at a much smaller cost than many of its peer organizations spend on fundraising endeavors. Ultimately, we found it a fair and practical approach to require the parties to simply perform the agreements they had made, requiring an equitable split of book-related expenses and a contribution from Mortenson in the amount of all royalties earned on CAI's purchase of the books.

2. Past Travel Expenses

The Settlement Agreement and Assurance of Voluntary Compliance states:

Mortenson will pay CAI a total of \$350,000 for travel costs that were paid by CAI to date for speaking engagements.

The Attorney General reviewed records for more than 500 speaking engagements by Mortenson. Many depicted an actual travel fee paid in addition to the honorarium he received and in addition to the travel costs borne by CAI. Many other engagements depicted an implied travel fee as part of the honorarium. To determine a fair reimbursement amount for travel fees paid to Mortenson, the Attorney General totaled the designated travel fees as well as those included in honorariums and then subtracted the amount that records showed Mortenson had already paid between 2006-2011.

3. Past Advertising and Promotional Costs of the Books

The Settlement Agreement and Assurance of Voluntary Compliance states:

Mortenson will pay an additional amount of \$360,000 to CAI for an equitable split of past costs to advertise and promote the books as contemplated by Mortenson's employment agreement with CAI.

Mortenson's 2008 employment agreement required that payments associated with speaking engagements be documented and split between Mortenson and CAI "based upon a determination of the amount of benefit" to the organization. CAI and Mortenson never discussed or agreed upon an appropriate split. Therefore, to determine a reasonable amount of what Mortenson must repay the organization for the costs it incurred to advertise and promote his books and speaking engagements, the Attorney General created a pro rata formula based on the amount CAI spent and earned from 2006-2011 and applied that formula to the pre-tax amount of speaking honorariums and book royalties Mortenson earned during the same period (minus the royalty earnings on books CAI purchased).

4. Reimbursement of Personal Charges

Mortenson fully repaid the \$75,276.10 of CAI assets that auditors discovered he inappropriately spent in Fiscal Year 2010. In addition, pursuant to the Settlement Agreement and Assurance of Voluntary Compliance, Mortenson has agreed to pay additional amounts that will be identified through an audit process of CAI accounts for FY 2004 through FY 2011.

5. Credit for Previous Payments

In total, the Attorney General will require Mortenson to pay restitution of \$980,000 plus reimburse the charity an unknown amount for any improper personal charges discovered through an independent audit, likely bringing the total reimbursement amount in excess of \$1 million. Mortenson recently made payments totaling \$420,000 to the charity for which he will receive credit toward the amount he promised to contribute to CAI and the amount he must reimburse CAI.

The Settlement Agreement and Assurance of Voluntary Compliance states:

The total amount Mortenson must pay or contribute to CAI for past royalties, travel expenses, and advertising and promotional costs totals \$980,000. He has previously made payments to CAI of \$420,000, of which \$270,000 has been allocated to the amount he pledged to contribute with respect to royalties on past CAI book purchases and \$150,000 has been allocated toward his balance owing for past travel expenses.

Three days before the media storm broke in April 2011, Mortenson wrote the two checks totaling \$420,000. There was no express agreement between Mortenson and CAI about the specific purpose of these payments. Mortenson testified that he considered them to be payments for amounts he owed CAI. Regardless of public statements made by CAI at the time referring to the same payment as “hundreds of thousands of dollars” of donations from Mortenson, from a legal standpoint, he is entitled to credit for those payments against the amounts he owes CAI.

Therefore, Mortenson’s outstanding obligation to CAI for book royalties on those purchased by CAI and a fair split of past travel, advertising and promotional costs totals \$560,000. Because Mortenson has insufficient financial resources to pay this sum to CAI immediately, the amount is payable no later than three years from now. In addition to that amount, he must repay personal charges discovered through the audit process.

C. RESTITUTION FOR IMPROPER PERSONAL CHARGES

Additionally, the Settlement Agreement and Assurance of Voluntary Compliance requires the CAI Board to take action to recover CAI funds expended for inappropriate personal charges by other CAI employees and nonemployees if such expenses are discovered through the independent audit of CAI’s records for fiscal years 2006 through 2011.

VII. CONCLUSION

The story of Greg Mortenson and the Central Asia Institute evokes notions of the best of our aspirations to do good and the generosity of the American public. The story also involves the work of a complicated person who has worked tirelessly on behalf of a noble pursuit, even while acting in a way that jeopardized that pursuit. The story also demonstrates how things can go wrong when officers and directors of a charitable organization fail to abide by fundamental principles of management and oversight.

Positive results will come from this investigation and its expedient resolution.

CAI can make the changes that are necessary in its management and operations, and move forward positively in pursuit of its mission. If successful, the lives of many people in central Asia will be improved, and awareness of issues in that region can be increased among the American public.

In addition, charitable organizations throughout Montana and the rest of the United States can consider this a case study and learn from the mistakes of CAI and Mortenson. CAI grew from a small organization to one with a high profile and substantial assets in a relatively short period of time. Even organizations that do not experience such profile or growth, however, face

issues that require vigilance and care. Hopefully, this report can help them, and the advisors who work with them, to continually assess whether they are acting in a manner that satisfies their duties of care and loyalty. And, for organizations that experience similar growth, it can serve as warning that it is important to manage that growth.

Through the Settlement Agreement, the Attorney General believes CAI will implement necessary and positive changes. Mortenson, and perhaps other employees, will provide restitution to the charity. And, the Attorney General will monitor CAI for three years to assure that it is operating in compliance with the law governing charitable organizations.

Central Asia Institute (CAI)
and Greg Mortenson
Joint Statement In Connection with
Montana Attorney General
Narrative Report

CAI and Greg Mortenson (collectively, the “Parties”) appreciate the cooperative effort and thoroughness of the Montana Attorney General’s Office (OAG) in reviewing the matters before them and we are pleased that the OAG has come to a resolution of their investigations. We, however, respectfully disagree with some of the analysis, as well as the legal conclusions in the report. It is also important to us to provide greater context to the perceived deficiencies that are the subject of the report.

Montana law sets forth specifically that the "duty of care" requires directors and officers to discharge their duties in good faith; with the care an ordinarily prudent person would exercise under similar circumstances; and in a manner the director or officer reasonably believes to be in the best interests of the corporation. Through this language, Montana has specifically codified the legal standard commonly known as the “business judgment rule.” Under the business judgment rule, the judgment of directors of corporations enjoys the benefit of a presumption of good faith and promotion of the best interests of the corporation they serve.

The Parties believe that the Board is entitled to exercise – and, in fact, did exercise – its best business judgment. That business judgment is a subjective determination and, as just noted, it enjoys the benefit of a presumption of good faith that will not be disturbed if any rational business purpose can be attributed to its decision. Historically, the Board of CAI has had both an independent makeup and has been comprised of an appropriate number of members for an organization of its size and resources. Only in the last year has the board been comprised of fewer than four persons, although a number of possible candidates have been reviewed and appointments are awaiting the resolution of this matter. A majority of the Board members are independent – they have no financial interest in any CAI transaction with any outside entity, including Greg Mortenson and/or MC Consulting. The Board minutes consistently discussed fluctuations in its size and makeup, as well as needs for additional board members. CAI agrees that best practices dictates closer attention to board size and independence and is pledged to maintain attention to those areas.

The Board met formally and in person, at a minimum, two to three times each year, and held telephonic meetings, as well, in between those regular meetings. The minutes reflect that the Board was consistently provided detailed financial information about CAI and its domestic and overseas operations, including its expenditures for such operations. CAI’s Board meetings reflect discussions on addressing supporting documentation for credit card charges. The financial statements the Board was supplied at each meeting and the interim reports consistently made by staff persons stood as the primary support for most of the Board’s decisions. Nothing exists to indicate that the Board could not and should not have relied upon—or made business decisions based upon—this information.

The Board faced a “Hobson’s choice”: How far could they press the resolution of these problems on behalf of CAI to achieve compliance on receipt documentation and procedural compliance? That is the crucial real world context within which the Board exercised its business judgment on these matters and it did so at a time when the mission of the charity was experiencing worldwide acclaim, robust donations, and stunning successes in Central Asia. Greg Mortenson maintained a near non-stop travel schedule, which clearly redounded to the benefit of the charity. As co-founder, he is the face of CAI's mission and he was the key person responsible for the overwhelming success of both the charity’s

domestic education and outreach mission and its mission to bring education to remote parts of Central Asia—a level of success that the Board knew far exceeded anyone's hopes or expectations.

CAI's Board believes that the exercise of its business judgment is validated by the number of completed schools and other projects built and operating in Central Asia to date, by the numbers of individuals worldwide who have been educated about the importance of promoting peace through education, and by achieving the financial stability to continue executing that mission for years and years to come. It also speaks to the importance of its domestic expenditures which were primarily in the area of public education and outreach, activities that have always been integral and component parts of CAI's mission to promote peace through education and convey the importance of its activities globally.

CAI's history reflects a small organization with limited staff that experienced unprecedented growth during a very short time. As its overseas school placement and global public outreach missions expanded exponentially, the staff and the Board were consistently working to improve the overall management and operations of the organization, including consistent additional oversight by an outside accountant and continued diligence in preparing staff/personnel and board policy manuals.

Over the past eighteen months, the Board has undertaken persistent, focused efforts to address the problems identified by the OAG. In doing so, CAI has demonstrated its commitment to operating transparently and within all practical best practices, as well as continuing to operate within the strictures of Montana law. This record of improvement is incontrovertible. Under the terms of the Settlement Agreement, experienced management will be in place to secure compliance in concert with an expanded board. CAI believes that the steps it has initiated, as well as the additional voluntary compliance undertakings it has agreed to with the Attorney General justify confidence in the charity by public officials and the public.

* * * *

STATE OF MONTANA
OFFICE OF THE ATTORNEY GENERAL

IN RE:)	Nos. 11-0011 and 10-0234
)	
)	
CENTRAL ASIA INSTITUTE, GREG MORTENSON, and MC CONSULTING, INC.)	SETTLEMENT AGREEMENT AND ASSURANCE OF VOLUNTARY COMPLIANCE

This Settlement Agreement and Assurance of Voluntary Compliance (this Agreement) is made as of April 5, 2012, by and among:

- The State of Montana, through its Office of the Attorney General (Attorney General), which has its address at 215 North Sanders, Helena, Montana 59620;
- Central Asia Institute, Inc. (CAI), which has its principal office located at 1050 East Main Street, Suite 2, Bozeman, MT 59715;
- Greg Mortenson (Mortenson), a resident of the State of Montana; and
- MC Consulting, Inc. (MC Consulting) a Montana corporation that is wholly-owned by Mortenson.

As is more fully described below, the Attorney General initiated an investigation of CAI, Mortenson, and MC Consulting in April 2011, following media allegations of mismanagement of CAI's charitable assets. The parties wish to resolve the issues that are the subject of the Attorney General's investigation and enter into this Agreement for that purpose.

All parties to this Agreement expressly acknowledge and agree that this Agreement is a compromise of disputed claims and that the presentation of this Agreement for signature is an offer of compromise. Neither the presentation of this Agreement for signature, nor any of the terms or provisions of this Agreement, or of the Attorney General's narrative report of its investigation (discussed below), is intended to be, and shall not be deemed, construed, or treated in any respect, as a formal finding after hearing or as an admission of liability or wrongdoing as to any matter by Central Asia Institute or by MC Consulting, or by any of their officers, directors, employees, or by their agents or contractors, including Mortenson, for any purpose whatsoever.

I. BACKGROUND

A. The Relationship Between CAI and Mortenson

1. CAI is a nonprofit corporation, organized under the laws of the State of Delaware, with its principal place of business in Bozeman, Montana. It has been recognized as exempt from federal income tax under section 501(c)(3) of the Internal

Revenue Code and classified as a public charity. CAI's charitable mission is to empower communities of Central Asia through literacy and education, especially for girls, and to educate the American public about the need to promote peace through expanding educational opportunities in this region.

2. Mortenson is a co-founder of CAI and member of its Board of Directors ("Board"). Mortenson served as CAI's Executive Director from 1996 until he took a leave of absence for health reasons in May 2011. Mortenson resigned his position as Executive Director in November 2011. Mortenson is the co-author of the book *Three Cups of Tea*, published in 2006 ("3CT"), and the author or co-author of *Stones into Schools*, *Listen to the Wind*, and the Young Reader's Edition of 3CT, all published in 2009 (collectively, the "Additional Books").

3. MC Consulting is a corporation, organized under the laws of the State of Montana, with its principal place of business in Bozeman, Montana. Mortenson is the sole shareholder of MC Consulting.

4. Between 2006 and 2011, CAI purchased thousands of copies of Mortenson's books for use as an education and outreach tool. Mortenson agreed to make a donation to CAI equal to the amount of royalty income he earned with respect to the books purchased by CAI.

5. Following the publication of 3CT, Mortenson made hundreds of public appearances throughout the country to educate the American public about CAI's charitable mission and to promote his books. Some of these appearances were organized by the publisher of 3CT. Others were organized by CAI. Mortenson (through MC Consulting) received speaker's fees for many of these appearances, and he also made many appearances for no fees.

6. CAI paid the travel and promotion costs associated with Mortenson's public appearances, based on its determination that the public appearances furthered the organization's charitable and educational purposes and generated substantial mission and name recognition, resulting in significant contributions to CAI. CAI paid these expenses in their entirety despite a provision in Mortenson's October 1, 2008 employment agreement requiring him and CAI to equitably share in these expenses. Some of the travel expenses were also paid by event sponsors directly to Mortenson, but not reimbursed to CAI.

7. CAI received substantially more in donations indirectly from the sale and promotion of the books and Mortenson's public appearances than it expended for advertising, promotion, and travel.

B. The Attorney General's Investigation

1. The Attorney General is responsible for oversight of charitable organizations located or operating within the State of Montana and enforcing compliance with the jurisdiction's statutory and common law governing the management and conduct of charitable organizations and the use of charitable assets.

2. Following media stories concerning CAI's operations, management of charitable assets, and its relationship with Mortenson, the Attorney General initiated parallel investigations into (a) CAI and (b) Mortenson/MC Consulting. Specifically, an investigation into CAI's activities and operations was initiated in April 2011 and an investigation into the activities and finances of Mortenson and MC Consulting was initiated in May 2011.

3. CAI has cooperated fully with the Attorney General throughout the investigation, providing comprehensive responses to the Attorney General's requests for documents and information concerning the charity's programs, governance, finances, and relationship with Mortenson. CAI's document production was extensive and totaled thousands of pages. It included, but was not limited to, most of CAI's governance documents from its inception in 1996 through 2011, as well as internal Board and personnel policies, corporate documents and Board meeting minutes, third party contracts, the 2008 Employment Agreement by and between CAI and Mortenson, internal financial records and expense-related documents, and independent auditor opinions and related communications to management from approximately 2003 through 2011. CAI also provided interrogatory responses and made past and present Board members and staff, as requested, available for interviews by the Attorney General.

4. Mortenson, too, has cooperated fully with the Attorney General throughout this investigation, providing comprehensive responses to the Attorney General's requests for documents and information concerning his relationships with CAI and MC Consulting, and participating in an interview with the Attorney General, which occurred in the final week of November 2011. Mortenson provided more than one thousand pages of documents, including documents relating to MC Consulting.

5. Having scrutinized the information, documents, and testimony provided by CAI and Mortenson under the State's Civil Investigative Demands, the Attorney General believes that it has substantial and sufficient information on the basis of that record to make findings and conclusions relative to this investigation. These findings and conclusions are more fully set forth and explained in the accompanying Attorney General's Investigative Report. The Attorney General's report is not part of the terms and conditions of this Agreement, but rather is a report to the public regarding the Attorney General's investigation. In this connection, neither CAI, nor Mortenson, nor MC Consulting made any presentation to the Attorney General relative to the substance of its investigation, or as to matters not included in the Attorney General's requests for document production, or as to the findings and conclusions of the Attorney General based thereon as set forth in the narrative report. The parties expressly acknowledge and agree that CAI, CAI's officers, directors, employees, agents, and contractors, Mortenson and MC Consulting neither concede nor agree with the findings and conclusions of the Attorney General's investigation or the Attorney General's Investigative Report for any purpose whatsoever.

6. CAI's mission is valuable, and its accomplishments are demonstrable. However, a qualified manager with substantial experience leading a public charity engaged in overseas operations is needed to serve as its President and Executive Director.

CAI has already taken initial steps to do so. In addition, the charity must implement changes in its governance, management, and financial controls, as detailed below.

7. Payment must be provided to CAI for royalties that Mortenson pledged to contribute to CAI, and expenses that Mortenson and CAI agreed to share under the provisions of Mortenson's employment agreement with CAI, which have not been paid to date. Additional reimbursements by CAI employees, including Mortenson, may be necessary for other transactions, as detailed below.

II. ASSURANCES BY CAI AND MORTENSON

A. The Books and Speaking Engagements

1. Future Book Purchases By CAI: CAI has ceased purchasing Mortenson's books. In the event CAI purchases any of Mortenson's books in the future, CAI shall keep itemized receipts of each book purchase to accurately account for the cost and title of each book it purchases sufficient to calculate the exact amount of royalties that Mortenson earns on each purchase. Mortenson shall provide copies of any relevant contract to the CAI Board in order to determine the amount of royalties he receives for each book. Mortenson shall make a contribution to CAI equal to the amount of royalty income he has received specifically related to books purchased by CAI.

2. Future Travel Expenses for Speaking Engagements: Beginning in early 2011, Mortenson began to pay the expenses related to travel and public appearances to promote the books, for which Mortenson or MC Consulting received an honorarium. Mortenson agrees to continue paying these expenses going forward in all situations in which he is receiving an honorarium or speaker's fee for appearances. If no honorarium or speaker's fee is involved, and the expenses are not otherwise paid by a third party, the CAI Board shall determine whether to share the costs of travel with Mortenson or MC Consulting and, if so, on what basis.

3. Payments by Mortenson

a. Royalties on Past CAI Book Purchases: In fulfillment of his pledge to donate to CAI any royalties he or MC Consulting received in connection with CAI's purchases to date of 3CT and the Additional Books, Mortenson must make a contribution of \$270,000 to CAI.

b. Past Travel Expenses: Mortenson must reimburse CAI a total of \$350,000 for an equitable split of past travel costs associated with his speaking engagements.

c. Past Advertising and Promotional Costs of the Books: Mortenson will pay an additional amount of \$360,000 to CAI for an equitable split of past costs to advertise and promote the books.

d. Balance; Credit for Past Payments: The total amount Mortenson must pay or contribute to CAI for past royalties, travel expenses, and advertising

and promotional costs totals \$980,000. He has previously made payments to CAI of \$420,000, of which \$270,000 has been allocated to the amount he pledged to contribute with respect to royalties on past CAI book purchases and \$150,000 has been allocated toward his balance owing for past travel expenses.

e. Payment: At this time, Mortenson has insufficient financial resources to address the \$560,000 balance due to CAI. Accordingly, he shall have thirty-six months from the date of execution of this agreement to transfer this sum, in full, to CAI, as provided below:

(i) On or before April 16, 2012, Mortenson shall liquidate MC Consulting's bank account and transfer the funds to CAI, in partial satisfaction of the debt. Interest, calculated at a reasonable annual rate, will accrue on the outstanding balance of the debt.

(ii) Mortenson shall execute a promissory note and a document creating a security interest in his property to secure the balance of his obligation to pay CAI. CAI's security interest may only be subordinated to a lender to secure funds to satisfy Mortenson's obligation to CAI. The State of Montana shall be an intended third-party beneficiary of the obligation of Mortenson to CAI. Mortenson agrees to waive and subordinate any claim to a homestead exemption for his real property through bankruptcy to CAI as secured creditor holding the security interest.

(iii) CAI shall supply a copy of all documents creating and securing Mortenson's obligation to CAI to the Attorney General by September 30, 2012. In the event of nonperformance, the Attorney General or CAI may seek remedies in court against Mortenson to enforce the obligation to pay CAI.

B. Financial and Internal Controls and Restitution

1. CAI has amended and fully restated its bylaws to establish audit and finance committees, to clarify officer roles and positions, and to establish an annual independent audit requirement.

2. CAI, in an effort to improve auditor independence, has retained the services of a new independent auditor to review its financial statements and to produce an audit report for CAI. CAI agrees to supply the audit opinion letters and letter(s) to management to the Attorney General over the course of the next three fiscal years (its fiscal years ending September 30, 2011, 2012, and 2013). Thereafter, CAI shall supply these documents to the Attorney General upon request.

3. CAI has reformed its policies governing the use of corporate credit cards by its officers, directors employees, and agents, and will follow these reforms going forward, which include strictly limiting access to corporate credit cards, providing limits on how corporate cards are used in the future, and requiring proper substantiating

documentation supporting all credit card expenditures within thirty (30) days of the expense being incurred.

4. CAI agrees to undergo a review by an independent certified public accountant of credit card and travel expenses for the fiscal years 2006 through 2011 to identify any improper personal charges paid by CAI. This financial survey is to be performed by an independent public accounting firm selected by CAI's board after July 1, 2012 and must be completed by no later than December 31, 2012. An audit was performed for Mortenson's expenses for fiscal year 2010, and has been resolved.

5. If the independent review concludes that inappropriate personal expenses were paid by CAI for Mortenson, then Mortenson agrees to timely and fully reimburse CAI for those inappropriate personal expenses for years other than fiscal year 2010, which has already been resolved.

6. If the independent review concludes that inappropriate personal expenses were paid by CAI for current employees or nonemployees, then the CAI Board, in the exercise of its business judgment, shall make appropriate arrangements with those persons or entities to timely and fully reimburse CAI for improper personal expenses paid by the charity.

7. If an independent review concludes that personal expenses were paid by CAI for former employees or nonemployees, CAI's Board, with advice of legal counsel, and in the exercise of its business judgment, shall determine an appropriate course to make reasonable efforts to recoup improper payments made for former employees or nonemployees.

8. To improve its overall financial accountability, CAI has developed and adopted a revised Travel Reimbursement Policy and corresponding revised Overseas Expenditure Policy Manual to guide all CAI employee personnel and to improve compliance with the reporting and receipting requirements which already existed within CAI.

9. CAI has implemented methods of tracking projects and expenses with its overseas personnel, including documenting each of its projects with the assistance of an attorney and CAI's American personnel, the development of a Master Projects list, and improved methods and accountability for overseas personnel to document project expenditures. Further, CAI has retained accounting firms in Pakistan and Afghanistan to work closely with its accountants and auditors in the United States to validate and substantiate its overseas expenses.

10. In August, 2011, CAI developed and posted, and has subsequently updated, a detailed Master Project List detailing its overseas activities and accomplishments. CAI agrees to update this Project List on a periodic basis, supply copies to the Attorney General, and post updates on its website, to ensure that its program service accomplishments are accurately portrayed to the public.

11. CAI has agreed to continue to perform and document an annual analysis of all executive and staff compensation to adequately establish the fairness, and the reasonableness, of any and all compensation. The current 2012 analysis shall be completed no later than June 30, 2012.

C. Governance of CAI

1. CAI agrees to expand its Board to a minimum of seven (7) voting members in order to strengthen independence and public representation to manage the affairs of a charity of CAI's size and financial resources. CAI will install directors who have demonstrated experience, independence, and financial expertise. Unless agreed otherwise through an addendum to this Agreement, the new Board members shall assume their positions by no later than July 1, 2012.

2. Current board members Karen McCown and Abdul Jabbar agree to remain on the CAI Board for no more than twelve (12) months from the date of this Agreement to maintain stability and facilitate the transition with new board members. The parties mutually recognize and agree that Ms. McCown and Dr. Jabbar have served lengthy terms as directors. Accordingly, the parties agree that they no longer need to serve as directors and therefore Ms. McCown and Dr. Jabbar agree not to serve as directors of CAI in the future once the new board members have transitioned into their roles as directors. However, they may, at their discretion and with the invitation of the then-existing Board, continue to be involved in a non-voting, advisory capacity.

3. So long as he has any employment relationship with CAI, Mortenson may not serve as a voting member of the Board of Directors. He may serve as an ex officio member of the Board, without voting rights. If Mortenson no longer serves as an employee, contractor, or co-venturer of CAI in the future, he is eligible to serve as a voting member of the Board, subject to nomination and election by the then-existing Board.

4. Mortenson tendered his resignation as Executive Director of CAI, effective November 2011, and CAI accepted his resignation. In future employment arrangements with CAI, Mortenson agrees not to hold positions requiring financial oversight and he must strictly adhere to all policies adopted by the CAI Board for its employees.

5. CAI agrees to retain, by no later than September 30, 2012, an independent professional consultant to assist with its search for a new Executive Director based upon an assessment of the strategic needs of the organization, as well as to continue to seek and secure additional Board members.

D. No Indemnification By CAI

Neither Mortenson nor any other current or former employee of CAI shall be directly or indirectly indemnified or reimbursed by CAI for any monetary payment they make pursuant to any of the terms of this Agreement.

E. Reimbursement of Investigation Costs

The State of Montana incurred costs associated with the investigation of CAI and Mortenson. Should CAI's insurer refuse to pay the costs, the parties will jointly consider an appropriate course of action concerning partial payment of the costs of investigation.

F. Monitoring and Compliance

1. By June 15, 2012, CAI shall report in writing to the Attorney General detailing the steps that have been taken as of that date to implement the terms of this Agreement, with specific reference to each of the matters set forth in the Assurances section above. CAI shall submit follow up reports on or before August 15, 2012, October 15, 2012, December 15, 2012, and February 15, 2013.

2. CAI agrees to work with the Attorney General in devising and implementing an annual reporting mechanism whereby CAI supplies the Attorney General with detailed information about its finances and material changes to its governance or operations, as well as responses to any specific questions posed by the Attorney General. This "registration-type" reporting will utilize the current Uniform Registration Form, promulgated by the Uniform Registration Project, and which has been adopted by a number of states that regulate fundraising activities by charitable organizations. The report will be made annually on a date to be determined by the Attorney General, taking into consideration timeframes for supplying the most recently completed fiscal year end information.

3. CAI agrees to allow a representative designated by the Attorney General to act as an independent observer of the organization. CAI agrees to allow the Attorney General's designee to attend CAI Board meetings over a period of three (3) years, at the discretion of the Attorney General. Expenses for the designee to attend the Board meetings shall be paid by CAI.

4. CAI shall provide the Attorney General with copies of all Board of Directors meeting minutes for a period of three (3) years from the date of execution of this Agreement.

III. AGREEMENT

A. In consideration of the assurances and undertakings set forth in this Agreement, the parties agree to be bound by the terms of this Agreement. CAI, Mortenson, and MC Consulting enter into this Agreement with full knowledge and understanding of the nature of the obligations and duties imposed upon each of them by this Agreement. CAI, Mortenson, and MC Consulting represent that the Attorney General did not make any offers, agreements, or inducements to any of them, other than as expressly included within this Agreement.

B. The Attorney General has investigated CAI and Mortenson for possible violations of Montana laws applicable to charitable organizations located and operating within its borders. This AVC is entered into for purposes of completing the Attorney General's investigation and review of both parties' compliance with applicable Montana law and is not to be construed in or

admissible in any other legal proceeding as any finding or admission of wrongdoing by CAI, Mortenson, or MC Consulting.

C. This Agreement shall be a public document, but documents, transcripts, and information supplied in connection herewith remain protected from public disclosure under the restrictions existing for documents supplied in response to a Civil Investigative Demand, and specifically Civil Investigative Demand Nos. 10-0234 and 11-1011.

D. CAI, MC Consulting, and Mortenson understand and accept that if any of them fails to comply with their respective undertakings set forth in this Agreement, the Attorney General may commence formal proceedings in the First Judicial District Court, Lewis and Clark County, against that party to enforce compliance with the Agreement and/or with applicable provisions of Montana law.

E. CAI, MC Consulting, and Mortenson understand that nothing in this Agreement shall be construed as relieving CAI, MC Consulting, or Mortenson of their obligations to comply with all state and federal laws and regulations.

IV. ADMINISTRATIVE PROVISIONS

A. This Agreement contains all of the terms agreed upon by the parties with respect to its subject matter and supersedes all prior agreements, arrangements, and communications between the parties, whether oral or written, concerning its subject matter.

B. No amendment, modification, or supplement, including those by custom, usage of trade, or course of dealing, of any provisions of this Agreement shall be binding on any party unless it is in a subsequent writing and signed by all parties at the time of the amendment, modification, or supplement and which specifically references this Agreement and the provisions that are amended, modified, or supplemented. No oral order, objection, claim, or notice by any party to any other party shall affect or modify any of the terms or obligations contained in this Agreement.

C. The validity, construction, and performance of this Agreement shall at all times be governed by and construed in accordance with the laws of the State of Montana, excluding any conflicts-of-laws rule or principle that might refer the validity, governance, or construction of this Agreement to the laws of another jurisdiction.

D. All of the provisions of this Agreement shall be severable. If any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional, unlawful, or unenforceable the remaining provisions of this Agreement shall be valid unless the court finds the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s) or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

E. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall be deemed to be an original, and both of which

taken together shall be deemed to constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the parties of at least one set of counterparts. The parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement. The parties may deliver this Agreement via electronic transmission. Each party agrees that the delivery of the Agreement via electronic transmission shall have the same force and effect as delivery of original signatures and that each party may use such electronic signatures as evidence of the execution and delivery of the Agreement by both parties to the same extent that original signatures could be used.

{Signatures on next page.}

For the Montana Office of the Attorney General

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JAMES P. MOLLOY, Assistant Attorney General
KELLEY L. HUBBARD, Assistant Attorney General
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Helena, MT 59620-1401

By: _____

For Central Asia Institute, Inc.

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GREG MORTENSON

A 4/4/12

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