

**FEDERAL FINANCIAL ASSISTANCE
AWARD OF DOMESTIC COOPERATIVE AGREEMENT
Between The**

**And The
USDA, FOREST SERVICE**

select from drop-down Title:

Upon execution of this document, an award to _____, hereinafter referred to as “_____,” in the amount of _____, is made under _____. _____ accepts this award for the purpose described in the application narrative. Your application for Federal financial assistance, dated _____, and the attached U.S. Forest Service provisions, ‘U.S. Forest Service Award Provisions,’ are incorporated into this letter and made a part of this award.

This is an award of Federal financial assistance and is subject to the Office of Management and Budget (OMB) Circulars _____, as implemented by USDA regulations 7 CFR _____, 7 CFR 3015, OMB Circular _____, and OMB Circular A-133 as implemented by USDA regulation 7 CFR 3052. All Federal and Recipient matching/cost-share contributions are subject to all relevant OMB Circulars.

The OMB Circulars are available on the internet at [HTTP://WWW.WHITEHOUSE.GOV/OMB/GRANTS_DEFAULT/](http://www.whitehouse.gov/omb/grants_default/). Electronic copies of the CFRs can be obtained at the following internet site: [HTTP://WWW.GPOACCESS.GOV/CFR/INDEX.HTML](http://www.gpoaccess.gov/cfr/index.html). If you are unable to retrieve these regulations electronically, please contact your Grants and Agreements Office at _____.

The following administrative provisions apply to this award:

- A. LEGAL AUTHORITY. _____ shall have the legal authority to enter into this agreement, and the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project, which includes funds sufficient to pay the nonfederal share of project costs, when applicable.

- B. STATEMENT OF SUBSTANTIAL INVOLVEMENT. The U.S. Forest Service anticipates involvement in this Cooperative Agreement and intends on being substantially involved in the following way(s):
 - 1.

- C. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this instrument.

Principal Cooperator Contacts:

Cooperator Program Contact	Cooperator Administrative Contact
Name: Address: City, State, Zip: Telephone: FAX: Email:	Name: Address: City, State, Zip: Telephone: FAX: Email:

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Name: Address: City, State, Zip: Telephone: FAX: Email:	Name: Address: City, State, Zip: Telephone: FAX: Email:

- D. AVAILABILITY OF FUNDS. U.S. Forest Service funds in the amount of \$ _____ are currently available for performance of this instrument through _____. The U.S. Forest Service's obligation for performance of this instrument beyond this date is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the U.S. Forest Service for any payment may arise for performance under this instrument beyond _____ until funds are made available to the U.S. Forest Service for performance and until _____ receive(s) notice of availability to be confirmed in a written modification by the U.S. Forest Service.
- E. select from drop-down PAYMENTS – FINANCIAL ASSISTANCE. See provision _____ in the attachment, 'U.S. Forest Service Award Provisions.'
- F. PRE-AWARD COSTS FOR INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS. Pursuant to 2 CFR 215.25(e)1, pre-award costs incurred as of _____ are hereby authorized under this award.
- G. PRE-AWARD COSTS FOR STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS. Pursuant to OMB Circular A-87, Attachment B, No. 31, pre-award costs incurred as of _____, are hereby authorized under this instrument.
- H. INDIRECT COST RATES – PROVISIONAL. See provision _____ in the attachment, 'U.S. Forest Service Award Provisions.'

- I. PROGRAMMATIC CHANGES. shall obtain prior approval for any change to the scope of objectives of the approved project, key personnel, or transfer of substantive programmatic work to another party.
- J. MODIFICATIONS. Modifications within the scope of this award shall be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least _____ days prior to implementation of the requested change. The U.S. Forest Service is not obligated to fund any changes not properly approved in advance.
- K. COMMENCEMENT/EXPIRATION DATE. This award is executed as of the date of the last signature and is effective through _____ at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.
- L. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this award. In witness whereof, the parties hereto have executed this award as of the last date written below.

, Date

, Date
U.S. Forest Service,

The authority and format of this instrument have been reviewed and approved for signature.

Date
U.S. Forest Service
Grants & Agreements Specialist

ATTACHMENT: U.S. FOREST SERVICE AWARD PROVISIONS

- A. COLLABORATIVE ARRANGEMENTS. Where permitted by terms of the award, _____ may enter into collaborative arrangements with other organizations to jointly carry out activities with grant funds.
- B. NON-LIABILITY. The U.S. Forest Service does not assume liability for any third party claims for damages arising out of this award.
- C. NOTICES. Any notice given by the U.S. Forest Service or _____ will be sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the award.

To _____, at _____'s address shown in the award or such other address designated within the award.

Notices will be effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

- D. SUBRECIPIENT NOTIFICATION. _____ shall notify subrecipients under this award that they are subject to the terms and conditions herein, except with respect to the recipient's OMB Uniform Administrative Requirements and Cost Principles. In the case of subrecipient Uniform Administrative Requirements and Cost Principles, subrecipients must be notified that they are subject to the following:

SUBRECIPIENT TYPE	APPLICABLE ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES	
	Administrative Requirements	Cost Principles
Non-profits	2 CFR 215	A-122
Local and Tribal governments (when recipient is a State)	State & Federal laws, regulations	A-87
Local and Tribal governments (when recipient is a non-State)	A-102	A-87
State agencies	State & Federal laws, regulations	A-87
Universities	2 CFR 215	A-21
Profit-makers	2 CFR 215	FAR 31.2

- E. USE OF U.S. FOREST SERVICE INSIGNIA. In order for _____ to use the U.S. Forest Service insignia on any published media, such as a webpage, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.
- F. METRIC SYSTEM OF MEASUREMENT. Wherever measurements are required or authorized, they shall be made, computed, and recorded in metric system units of measurement, unless otherwise authorized by the U.S. Forest Service Program Manager in writing when it has found that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets. Where the metric system is not the predominant standard for a particular application, measurements may be expressed in both the metric and the traditional equivalent units, provided the metric units are listed first.
- G. BUILDING AND COMPUTER ACCESS BY NON-FOREST SERVICE PERSONNEL. _____ may be granted access to U.S. Forest Service facilities and/or computer systems to accomplish work described in the Operating Plan or Statement of Work. All non-government employees with unescorted access to U.S. Forest Service facilities and computer systems must have background checks following the procedures established by USDA Directives 3505 and Departmental Manual 4620-02. Those granted computer access must fulfill all Forest Service requirements for mandatory security awareness and role-based advance security training, and sign all applicable U. Forest Service statements of responsibilities.
- H. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no United States member of, or United States delegate to, Congress shall be admitted to any share or part of this award, or benefits that may arise therefrom, either directly or indirectly.
- I. TRAFFICKING IN PERSONS.
1. Provisions applicable to a Recipient that is a private entity.
 - a. You as the Recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - (1) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (2) Procure a commercial sex act during the period of time that the award is in effect; or
 - (3) Use forced labor in the performance of the award or subawards under the

award.

- b. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - (1) Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 7 CFR 3017.
2. Provision applicable to a Recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
 - a. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 - b. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - (1) Associated with performance under this award; or
 - (2) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 7 CFR 3017.
3. Provisions applicable to any recipient.
 - a. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 - b. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

(1) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

(2) Is in addition to all other remedies for noncompliance that are available to us under this award.

c. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

4. Definitions. For purposes of this award term:

a. “Employee” means either:

(1) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

(2) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

b. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

c. “Private entity”:

(1) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

(2) Includes:

i. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

ii. A for-profit organization.

d. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

J. DRUG-FREE WORKPLACE.

1. _____ agree(s) that it will publish a drug-free workplace statement and provide a copy to each employee who will be engaged in the performance of any project/program that receives federal funding. The statement must
 - a. Tell the employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace;
 - b. Specify the actions _____ will take against employees for violating that prohibition; and
 - c. Let each employee know that, as a condition of employment under any instrument, he or she
 - (1) Must abide by the terms of the statement, and
 - (2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace, and must do so no more than five calendar days after the conviction.
2. _____ agree(s) that it will establish an ongoing drug-free awareness program to inform employees about
 - a. The dangers of drug abuse in the workplace;
 - b. Your policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation and employee assistance programs; and
 - d. The penalties that you may impose upon them for drug abuse violations occurring in the workplace.
3. Without the U.S. Forest Service's expressed written approval, the policy statement and program must be in place as soon as possible, no later than the 30 days after the effective date of this instrument, or the completion date of this instrument, whichever occurs first.
4. _____ agree(s) to immediately notify the U.S. Forest Service if an employee is convicted of a drug violation in the workplace. The notification must be in writing, identify the employee's position title, the agreement number of each instrument on which the employee worked. The notification must be sent to the U.S. Forest Service within ten calendar days after _____ learn(s) of the conviction.
5. Within 30 calendar days of learning about an employee's conviction, _____ must either

- a. Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 USC 794), as amended, or
- b. Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

K. ELIGIBLE WORKERS. shall ensure that all employees complete the I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract or supplemental instruments awarded under this award.

L. INDIRECT COSTS AND TUITION REMISSION. In accordance with 7 U.S.C. 3319, indirect costs and tuition remission are not reimbursable to a State Cooperative Institution, as defined in 7 U.S.C. 3103 (17), under this award. Indirect costs, however, may be used by a State Cooperative Institution to satisfy matching or cost-sharing requirements.

M. INDIRECT COST RATES – PROVISIONAL.

1. Provisional indirect cost rates shall be established for 's accounting periods during the term of this award. Pending establishment of revised provisional or final rates, allowable indirect costs shall be reimbursed at the rates, on the bases, and for the periods shown in the Award/agreement.
2. , not later than nine months after the close of each of its accounting periods during the term of this award, shall submit to the Program Manager proposed final indirect cost rates with supporting cost data. The proposed rates shall be based on 's actual cost experience during that fiscal year. Negotiations of final indirect cost rates shall begin soon after receipt of 's proposal.
3. Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the applicable cost principles.
4. The results of each negotiation shall be set forth in an indirect cost rate agreement signed by both parties. Such agreement is automatically incorporated into this award and shall specify (1) the agreed upon final rates, (2) the bases to which the rates apply, (3) the fiscal year for which the rates apply and (4) the items treated as direct costs. The agreement shall not change any monetary ceiling, award obligation, or specific cost allowance or disallowance provided for in this award.
5. Pending establishment of final indirect cost rates for any fiscal year, shall be reimbursed either at negotiated provisional rates or at billing rates acceptable to the Program Manager, subject to appropriate adjustment when the final rates for the

fiscal year are established. To prevent substantial overpayment or underpayment, the provisional or billing rates may be prospectively or retroactively revised by mutual agreement.

6. Any failure by the parties to agree on any final rate(s) under this provision shall be considered a dispute within the meaning of the standard provision of the award, entitled "Disputes".

N. PROGRAM INCOME – FINANCIAL ASSISTANCE.

1. shall apply the standards set forth in this Provision to account for program income earned under the award/agreement.
2. If any program income is generated as a result of this award, the income shall be applied using the alternative as described in 7 CFR 3016.25 and 3019.24.
3. Unless the terms and conditions of the award provide otherwise, shall have no obligation to the U.S. Government regarding program income earned after the end of the project period.
4. Costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award/agreement and they comply with the applicable Cost Principles.
5. Unless the terms and conditions of the award provide otherwise, shall have no obligation to the U.S. Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research awards.

O. HEALTH & HUMAN SERVICES PAYMENT MANAGEMENT SYSTEM (HHS PMS).

identified for use of this payment system shall designate a financial institution or an authorized payment agent through which a direct deposit may be made in accordance with current HHS PMS system requirements. The Albuquerque Service Center is responsible for soliciting initial enrollment in the HHS PMS. **Any questions concerning payments should be addressed to the Albuquerque Service Center at (877) 372-7248.** Please ask for the Grants and Agreements Payments section. Any subsequent changes to banking information are made by through the HHS PMS. The HHS sub-account number(s) for this Agreement is/are:

HHS SUB-ACCOUNT	AMOUNT
G	\$
G	\$

- P. FINANCIAL STATUS REPORTING. A Federal Financial Report, form SF-425 (and Federal Financial Report Attachment SF-425A, if required for reporting multiple grants), must be submitted select from the drop-down. The final SF-425 (and SF-425A, if applicable) must be submitted either with the final payment request or no later than 90 days from the expiration date of the instrument. These forms may be found at www.whitehouse.gov/omb/grants_forms.
- Q. REPORT OF FEDERAL CASH TRANSACTIONS. Using SF-425, Federal Financial Report, shall submit a report of federal cash transaction within 15 calendar days following the end of each quarter, unless otherwise agreed upon in writing. A final financial status report is required within 90 days from the expiration date of this instrument.
- R. select from drop-down PAYMENTS – FINANCIAL ASSISTANCE. select from drop-down payments are approved under this award. Only costs for those project activities approved in (1) the initial award, or (2) modifications thereto, are allowable. Requests for payment shall be submitted on Standard Form (SF) select from drop-down, and shall be submitted no more than monthly. In order to approve a Request for Advance Payment or Reimbursement, the U.S. Forest Service shall review such requests to ensure advances or payments for reimbursement are in compliance and otherwise consistent with OMB, USDA, and U.S. Forest Service regulations. Advance payments shall not exceed the minimum amount needed or no more than is needed for a 30-day period, whichever is less. If receive(s) an advance payment and subsequently requests an advance or reimbursement payment, then the request must clearly demonstrate that the previously advanced funds have been fully expended before the U.S. Forest Service can approve the request for payment. Any funds advanced, but not spent, upon expiration of this award shall be returned to the U.S. Forest Service.

The invoice must be sent by one of three methods (email is preferred):

EMAIL: asc_ga@fs.fed.us

FAX: 877-687-4894

POSTAL: Albuquerque Service Center
Payments – Grants & Agreements
101B Sun Ave NE
Albuquerque, NM 87109

Send a copy to:

- S. AWARD CLOSEOUT. shall close out the award within 90 days after expiration or notice of termination.

Any unobligated balance of cash advanced to shall be immediately refunded to the U.S. Forest Service, including any interest earned in accordance with 7 CFR 3016.21, 7 CFR 3019.22, or other relevant law or regulation.

Within a maximum of 90 days following the date of expiration or termination of this award, all financial performance and related reports required by the terms of the award shall be submitted to the U.S. Forest Service by _____ .

If this award is closed out without audit, the U.S. Forest Service reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

- T. PROGRAM PERFORMANCE REPORTS. _____ shall monitor the performance of the award activities to ensure that performance goals are being achieved.

Performance reports shall contain information on the following:

- A comparison of actual accomplishments to the goals established for the period. Where the output of the project can be readily expressed in numbers, a computation of the cost per unit of output may be required if that information is useful.
- Reason(s) for delay if established goals were not met.
- Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

_____ shall submit select from drop-down performance reports. These reports are due select from drop-down days after the reporting period. The final performance report shall be submitted either with _____ 's final payment request, or separately, but not later than 90 days from the expiration date of the award.

- U. NOTIFICATION. _____ shall immediately notify the U.S. Forest Service of developments that have a significant impact on the activities supported under this award. Also, notification shall be given in case of problems, delays or adverse conditions that materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

- V. CHANGES IN KEY POSITIONS AND PERSONNEL. Any revision to key positions and personnel identified in the application for this award require prior, written approval from the U.S. Forest Service. All technical positions are considered Key Personnel by the U.S. Forest Service. Failure on the part of _____ to obtain prior, written approval when required may result in the disallowance of costs.

- W. FREEDOM OF INFORMATION ACT (FOIA). Public access to award records shall not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to "Freedom of Information" regulations (5 U.S.C. 552).

X. PUBLIC NOTICES. It is the U.S. Forest Service's policy to inform the public as fully as possible of its programs and activities. is/are encouraged to give public notice of the receipt of this instrument and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:

" of the U.S. Forest Service, Department of Agriculture, ."

may call on the U.S. Forest Service's Office of Communication for advice regarding public notices. is/are requested to provide copies of notices or announcements to the U.S. Forest Service Program Manager and to the U.S. Forest Service's Office of Communications as far in advance of release as possible.

Y. RIGHT TO TRANSFER EQUIPMENT. Equipment approved for purchase under this award is available only for use as authorized. The U.S. Forest Service reserves the right to transfer title to the federal government of any equipment with a current per-unit fair market value of \$5,000 or more purchased with U.S. Forest Service funding. Upon expiration of this award, shall forward an equipment inventory to the U.S. Forest Service, listing all equipment purchased with U.S. Forest Service funding throughout the life of the project. Disposition instructions shall be issued by the U.S. Forest Service within 120 calendar days from termination date of this award.

Z. FUNDING. Federal funding under this instrument is not available for reimbursement of 's purchase of . Equipment is defined as having a fair market value of \$5,000 or more per unit and a useful life of over one year. Supplies are those items that are not equipment.

A. USE OF GOVERNMENT OWNED VEHICLE. U.S. Forest Service vehicles may be used for official U.S. Forest Service business only in accordance with FSH 7109.19, ch. 60, the requirements established by the region in which performance of this agreement takes place, and the terms of this agreement.

B. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS, AND ELECTRONIC MEDIA. shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this award.

C. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)

**To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD).
USDA is an equal opportunity provider and employer.**

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:

"This institution is an equal opportunity provider."

AA. TERMINATION BY MUTUAL AGREEMENT. This award may be terminated, in whole or part, as follows:

- When the U.S. Forest Service and _____ agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.
- By 30 days written notification by _____ to the U.S. Forest Service setting forth the reasons for termination, effective date, and in the case of partial termination, the portion to be terminated.

If, in the case of a partial termination, the U.S. Forest Service determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the U.S. Forest Service may terminate the award in its entirety.

Upon termination of an award, _____ shall not incur any new obligations for the terminated portion of the award after the effective date, and shall cancel as many outstanding obligations as possible. The U.S. Forest Service shall allow full credit to _____ for the United States Federal share of the non-cancelable obligations properly incurred by _____ up to the effective date of the termination. Excess funds shall be refunded within 60 days after the effective date of termination.

BB. DISPUTES.

1. Any dispute under this award shall be decided by the _____. The _____ shall furnish a written copy of the decision.
2. Decisions of the _____ shall be final unless, within 30 days of receipt of the decision of the _____, _____ appeal(s) the decision to the U.S. Forest Service's Director, Acquisition Management (AQM). Any appeal made under this provision shall be in writing and addressed to the Director, AQM, USDA, Forest Service, Washington, DC 20024. A copy of the appeal shall be concurrently furnished to the _____.
3. In order to facilitate review on the record by the Director, AQM, _____ shall be

given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.

CC. DEBARMENT AND SUSPENSION. shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should or any of their principals receive a transmittal letter or other official federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

DD. INTERNATIONAL TRAVEL. When Forest Service funds are used, and no Federal, statutory exceptions apply, shall ensure that any air transportation of passengers and property is provided by a carrier holding a United States government issued certificate in compliance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. 40118 (Fly American Act).

EE. PATENT RIGHTS. Each instrument awarded to a small business firm, non-profit organization, or university which is to be performed in the United States, its possessions, or Puerto Rico and has as a purpose the performance of experimental, development, or research work, shall contain the Patents Rights Provision.

1. Definitions:

- a. Invention. Any invention or discovery which is or may be patentable, or otherwise protectable under Title 35 of the United States Code (U.S.C.), or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).
- b. Subject Invention. Any invention of conceived or first actually reduced to practice in the performance of work under this instrument, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of the instrument performance.
- c. Practical Application. To manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations available to the public on reasonable terms.
- d. Made. When used in relation to any invention, the conception or first actual reduction to practice of such invention.
- e. Small Business Firm. A small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the administrator of the Small Business Administration. For the purpose of this provision, the size

standard for small business concerns involved in Government procurement and subgranting as 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

- f. Non-Profit Organization. A university or other institution of higher education or an organization of the type described in section 501 (c) (3) of the Internal Revenue Code of 1954 Internal Revenue Code (26 U.S.C. 501c) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.
2. Allocation of Principal Rights. may retain the entire right, title, and interest throughout the world to each subject invention, subject to this provision and 35 U.S.C. 203. With respect to any subject invention in which retain(s) title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world.
 3. Invention Disclosure, Election, of Title and Filing of Patent Applications by
.
 - a. shall disclose each subject invention to the U.S. Forest Service within two months after the inventor discloses it in writing to personnel responsible for patent matters. The disclosure to the U.S. Forest Service shall be in the form of a written report and shall identify the instrument under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electric characteristics of the invention. The disclosure shall also identify any publication, on sale of public use of the invention, and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the U.S. Forest Service, shall promptly notify the U.S. Forest Service of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by .
 - b. shall elect in writing whether or not to retain title to any such invention by notifying the U.S. Forest Service within 2 years of disclosure by ; provided that in any case where publication, on sale or public use has initiated the 1 year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the U.S. Forest Service to a date that is no more than 60 days prior to the end of the statutory period.
 - c. shall file its initial patent application on an elected invention within 1 year after election or, if earlier, prior to the end of any statutory period wherein valid protection can be obtained in the United States after publication, on sale, or public use. shall file patent applications in additional countries within

either 10 months from the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

- d. Requests for extension of the time for disclosure to the U.S. Forest Service, election, and filing may, at the discretion of the U.S. Forest Service, be granted.
4. Conditions when the Government May Obtain Title. shall convey to the U.S. Forest Service, upon written request, title to any subject invention:
- a. If fail(s) to disclose or elect the subject invention within the times specified in item c herein or elects not to retain title; provided that the U.S. Forest Service may only request title within 60 days after learning of the failure of to disclose or elect within the specified times.
 - b. In those countries in which fail(s) to file patent applications within the times specified in item c(3) herein; provided, however, that if has/have filed a patent application in a country after the times specified in item c(3), but prior to its receipt of the written request of the U.S. Forest Service, shall continue to retain title in that country.
 - c. In any country in which decide(s) not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.
5. Minimum Rights to and Protection of the Contractor Right to File.
- a. shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if fail(s) to disclose the subject invention within the times specified in item c herein. 's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which is/are a party and includes the right to grant sublicenses of the same scope to the extent was/were legally obligated to do so at the time the instrument was awarded. The license is transferable only with approval of the U.S. Forest Service, except when transferred to the successor of that party of 's business to which the invention pertains.
 - b. 's domestic license may be revoked or modified by the U.S. Forest Service to the extent necessary to achieve expeditious practical application of the subject invention, pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404. This license will not be revoked in that field of use or the geographical areas in which has/have achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the U.S. Forest Service to the

extent , its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

- c. Before revocation or modification of the license the U.S. Forest Service shall furnish a written notice of its intention to revoke or modify the license, and shall be allowed 30 days (or such other time as may be authorized by the U.S. Forest Service for good cause shown by) after the notice to show cause why the license should not be revoked or modified. has/have the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 concerning the licensing Government-owned inventions, any decision concerning the revocation or modification of its license.

6. Action to Protect the Government's Interest

- a. agree(s) to execute, or to have executed, and promptly deliver to the U.S. Forest Service all instruments necessary to (a) establish or confirm the rights the Government has throughout the world in those subject inventions to which elect(s) to retain title, and (b) convey title to the U.S. Forest Service when requested under paragraph (c) herein and to enable the Government to obtain patent protection throughout the world in that subject invention.
- b. agree(s) to require, by written instrument, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by each subject invention made under the provisions of paragraph c herein and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject invention. This disclosure format should require, as a minimum, the information required by paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1). shall instruct such employees' agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.
- c. shall notify the U.S. Forest Service of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
- d. agree(s) to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: This invention was made with the Government support

under _____ awarded by the U.S. Forest Service. The Government has certain rights in this invention.

7. Subcontracts

- a. _____ shall include this provision, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor shall retain all rights provided for _____ in this provision, and _____ shall not, as part of the consideration for awarding the subgrant or subcontract under the instrument, obtain rights in the subrecipient's or subcontractor's subject inventions.
- b. _____ shall include in all other subcontracts the patent rights provision, regardless of tier, for experimental, developmental, or research work.
- c. In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractors, and the contractor agree that the mutual obligations of the parties created by this provision constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this provision; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this provision.

8. Reporting on Utilization of Subject Invention. _____ agree(s) to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by _____ or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by _____, and such other data and information as the U.S. Forest Service may reasonably specify. _____ also agree(s) to provide additional reports as may be requested by the U.S. Forest Service in connection with any march-in proceeding undertaken by the U.S. Forest Service in accordance with paragraph (j) of this provision. As required by 35 U.S.C. 202(c)(5), the U.S. Forest Service agrees it shall not disclose such information to persons outside the government without permission of _____.

9. Preference for United States Industry. Notwithstanding any other provision of this provision, _____ agree(s) that neither it nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention will be manufactured substantially in the United States. However, in individual cases the requirement for such an agreement may be waived by the U.S. Forest Service upon a showing by _____ or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be

likely to manufacture substantially in the United States, or that under the circumstances, domestic manufacture is not commercially feasible.

10. March-in-Rights. agree(s) that with respect to any subject invention in which it has acquired title, the U.S. Forest Service has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the U.S. Forest Service to require , an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if assignee, or exclusive licensee refuses such a request, the U.S. Forest Service has the right to grant such a license itself if the U.S. Forest Service determines that:
 - a. Such action is necessary because or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
 - b. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by , assignee, or their licensees;
 - c. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by , assignee, or licensees; or
 - d. Such action is necessary because the agreement required by paragraph i of this provision has not been obtained or waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

11. Special Provisions for Contracts with Non-profit Organizations. If is/are a non-profit organization, it agrees that:
 - a. Rights to a subject invention in the United States may not be assigned without the approval of the U.S. Forest Service, except where such assignment is made to an organization which has as one of its primary functions the management of inventions provided that such assignee shall be subject to the same provisions as .
 - b. shall share royalties collected on a subject invention with the inventor, including Federal employee coinventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10.
 - c. The balance of any royalties or income earned by with respect to subject inventions, after payment of expense (including payments to inventor) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

- d. It shall make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it shall give preference to a small business firm when licensing a subject invention if determine(s) that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that is/are also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give preference in any specific case will be at the discretion of . However, agree(s) that the Secretary may review 's licensing program and decisions regarding small business applicants, and shall negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that could take reasonable steps to implement more effectively the requirements of this paragraph.

12. Communication

- a. Communications relating to the administration of this provision and disclosure statements should be directed to:

Patent Advisor
National Patent Program
USDA, Forest Service
One Gifford Pinchot Drive
Madison, WI 53705-2398

- b. Practice statements are also made to the Patent Advisor.

NOTE: Exceptions for Not Using the Patent Rights Provision:

- a. When the instrument is for the operation of a federally funded research and development center of a government-owned production facility;
- b. In exceptional circumstances when it is determined by the U.S. Forest Service that restriction or elimination of the right to retain title to any subject invention shall better promote the policy and objective of Title 35, Chapter 18 of the United States Code; or
- c. When it is determined by a Government authority which is authorized by statute or Executive Order to conduct foreign intelligence or counter intelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities.

Any determination under this section shall be in writing and accompanied by a written statement of facts and shall contain such information as the U.S. Forest Service field office deems relevant and, at a minimum, shall:

- a. Identify the small business firm or nonprofit organization involved.
- b. Describe the extent to which U.S. Forest Service action restricted or eliminated the right to retain title to a subject invention.
- c. State the facts and rationale supporting the U.S. Forest Service action.
- d. Provide supporting documentation for those facts and rationale.
- e. Indicate the nature of any objections to the U.S. Forest Service action and provide any documentation in which those objections appear. A copy of each such determination and written statement of facts shall be sent to the Director, Fiscal and Public Safety, Washington Office, for review and forwarded to the Comptroller General of the United States within 30 days after the award of the applicable agreement. In some cases of determinations applicable to instruments with small business firms, copies shall also be sent to the Chief Counsel for advocacy of the Small Business Administration.

FF. COPYRIGHTING. is/are granted sole and exclusive right to copyright any publications developed as a result of this agreement. This includes the right to publish and vend throughout the world in any language and in all media and forms, in whole or in part, for the full term of copyright and all renewals thereof in accordance with this award.

No original text or graphics produced and submitted by the U.S. Forest Service shall be copyrighted. The U.S. Forest Service reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for federal government purposes. This right shall be transferred to any sub-agreements or subcontracts.

This provision includes:

- The copyright in any work developed by under this agreement.
- Any right of copyright to which purchase(s) ownership with any federal contributions.

[END OF PROVISIONS]