



FS Agreement No. _____

Cooperator Agreement No. _____

**PARTICIPATING AGREEMENT
For Fuels or Noxious Weed Treatment
Between

And The
USDA, FOREST SERVICE**

This PARTICIPATING AGREEMENT is hereby entered into by and between _____, hereinafter referred to as “_____,” and the USDA, Forest Service, _____, hereinafter referred to as the “U.S. Forest Service,” under the Wyden Amendment authority, Section 323(a) of the Department of Interior and Related Agencies Appropriations Act, 1999, as included in Pub.L. 105-277, Div. A., Section 101 (e), as amended by Pub.L. 109-54, Sec. 434, and the Omnibus Public Land Management Act, Pub.L. 111-11, Sec. 3001.

Background:

Title:

I. PURPOSE:

The purpose of this agreement is to document the cooperation between the parties to _____ in accordance with the following provisions and the hereby incorporated select from drop-down and Financial Plan, attached as Exhibit(s) _____.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

Whereas, the U.S. Forest Service has primary responsibility for protection, management, restoration, and improvement of National Forest System lands; and

Whereas, _____ has/have primary responsibility for protection, management, restoration, and improvement of their lands; and

Whereas, it is agreed that the benefits of treating the entire area (inclusive of _____’s land) for _____ will have a direct benefit to the National Forest System lands and surrounding watershed.

In consideration of the above premises, the parties agree as follows:

III. THE U.S. FOREST SERVICE SHALL:



- A. Perform in accordance with the attached and hereby incorporated select from drop-down.
- B. Provide a minimum of 24 hours advance notice of intent to enter onto 's lands.
- C.

SHALL:

- 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. Allow U.S. Forest Service personnel access to private lands to be included in the prescribed burn project area
- C.

THE U.S. FOREST SERVICE AND SHALL:

- A. Mutually agree to the select from drop-down, and to any agreed upon revision thereof. If the revision to the Plan does not materially affect the purpose and/or terms of the agreement, but rather only revises the implementation of the treatment, then a modification to this agreement (as described in provision VII-) is not necessary. The most recent revision of the Plan will automatically be incorporated into this agreement and a copy will be provided to .
- B. Agree that if a conflict regarding treatment implementation should arise between the Plan and this agreement, the Plan prevails.
- C. Not transfer funds to the other party under this agreement.
- D.

IV. THE LEGAL DESCRIPTION OF THE LANDS INVOLVED IN THIS AGREEMENT ARE:

See attached Map of Prescribed Burn Project Area.



V. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

A. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

Principal Cooperator Contacts:

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

Principal U.S. Forest Service Contacts:

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

B. ASSURANCE REGARDING FELONY CONVICTION OR TAX DELINQUENCY STATUS FOR CORPORATE ENTITIES. This agreement is subject to the provisions contained in the Department of Interior, Environment, and Related Agencies Appropriations Act, 2012, P.L. No. 112-74, Division E, Section 433 and 434 as continued by Consolidated and Further Continuing Appropriations Act, 2013, P.L. No 113-6, Division F, Title I, Section 1101(a)(3) regarding corporate felony convictions and corporate federal tax delinquencies. Accordingly, by entering into this agreement _____ acknowledges that it: 1) does not have a tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal violation under any Federal law within 24 months preceding the agreement, unless a suspending and debarment official of the United States Department of Agriculture has considered suspension or debarment is not necessary to protect the interests of the Government. If _____ fails to comply with these provisions, the U.S. Forest Service will annul this agreement and may recover any funds _____ has expended in violation of sections 433 and 434.



C. PARTICIPATION IN SIMILAR ACTIVITIES. This agreement in no way restricts the U.S. Forest Service or _____ from participating in similar activities with other public or private agencies, organizations, and individuals.

D. ENDORSEMENT. Any of _____'s contributions made under this agreement do not by direct reference or implication convey U.S. Forest Service endorsement of _____'s products or activities.

E. NON-FEDERAL STATUS FOR COOPERATOR PARTICIPANT LIABILITY.

_____ agree(s) that any of their employees, volunteers, and program participants shall not be deemed to be Federal employees for any purposes including Chapter 171 of Title 28, United States Code (Federal Tort Claims Act) and Chapter 81 of Title 5, United States Code (OWCP), as _____ hereby willingly agree(s) to assume these responsibilities.

Further, _____ shall provide any necessary training to _____'s employees, volunteers, and program participants to ensure that such personnel are capable of performing tasks to be completed. _____ shall also supervise and direct the work of its employees, volunteers, and participants performing under this agreement.

F. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no member of, or delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.

G. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS. _____ shall retain all records pertinent to this agreement for a period of no less than 3 years from the expiration or termination date. As used in this provision, "records" includes books, documents, accounting procedures and practice, and other data, regardless of the type or format. _____ shall provide access and the right to examine all records related to this agreement to the U.S. Forest Service Inspector General, or Comptroller General or their authorized representative. The rights in this section must not be limited to the required retention period but must last as long as the records are kept.

If any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the 3-year period, the records must be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later.

Records for nonexpendable property acquired in whole or in part, with Federal funds must be retained for 3 years after its final disposition.

_____ shall provide access to any project site(s) to the U.S. Forest Service or any of their authorized representatives. The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are kept.

H. FREEDOM OF INFORMATION ACT (FOIA). Public access to grant or agreement records must 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). Requests for research data are subject to 2 CFR 215.36.

Public access to culturally sensitive data and information of Federally-recognized Tribes may also be explicitly limited by 110-234, Title VIII Subtitle B §8106 (2008 Farm Bill).

I. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, “Federal Leadership on Reducing Text Messaging While Driving,” any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All Cooperatives, their Employees, Volunteers, and Contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.

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

1. 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.
2. 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 agreement will not accomplish the purposes for which the agreement was made, the U.S. Forest Service may terminate the agreement in its entirety.

Upon termination of an agreement, _____ shall not incur any new obligations for the terminated portion of the agreement 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 U.S. Forest Service share of obligations that cannot be cancelled and were properly incurred by _____ up to the effective date of the termination. Excess funds must be refunded within 60 days after the effective date of termination.

K. ALTERNATE DISPUTE RESOLUTION – PARTNERSHIP AGREEMENT. In the event of any issue of controversy under this agreement, the parties may pursue Alternate Dispute Resolution procedures to voluntarily resolve those issues. These procedures may include, but are not limited to conciliation, facilitation, mediation, and fact finding.



L. 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.

M. MODIFICATIONS. Modifications within the scope of this agreement must 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 30 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.

COMMENCEMENT/EXPIRATION DATE. This agreement is executed as of the date of the last signature and is effective through at which time it will expire. The expiration date is the final date for completion of all work activities under this agreement.

N. 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 agreement. In witness whereof, the parties hereto have executed this agreement as of the last date written below.

, Date

, Date
U.S. Forest Service,

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

Date
U.S. Forest Service Grants Management Specialist

**Burden Statement**

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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