

**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 \_\_\_\_\_ Uniform Administrative Requirements, \_\_\_\_\_ Cost Principles, 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 and Code of Federal Regulations.

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>. If you are unable to retrieve these regulations electronically, please contact your Grants and Agreements Office at \_\_\_\_\_.

**Effective October 1, 2010, recipients are required to report information on subaward and executive total compensation, as required by the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of Public Law 110-252, hereinafter referred to as “the Transparency Act.” See the award terms in Attachment B: 2 CFR Part 170.**

The following administrative provisions apply to this award:

- A. **LEGAL AUTHORITY.** \_\_\_\_\_ shall have the legal authority to enter into this award, 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:**

<b>Cooperator Program Contact</b>	<b>Cooperator Administrative Contact</b>
Name: Address: City, State, Zip: Telephone: FAX: Email:	Name: Address: City, State, Zip: Telephone: FAX: Email:

**Principal U.S. Forest Service Contacts:**

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

D. ASSURANCE REGARDING FELONY CONVICTION OR TAX DELINQUENT STATUS FOR CORPORATE APPLICANTS. This agreement is subject to the provisions contained in the Department of the 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 U.S. 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 Forest Service will annul this agreement and may recover any funds \_\_\_\_\_ has expended in violation of sections 433 and 434.

E. SYSTEM FOR AWARD MANAGEMENT REGISTRATION REQUIREMENT (SAM). \_\_\_\_\_ shall maintain current information in the System for Award Management

(SAM) until receipt of final payment. This requires review and update to the information at least annually after the initial registration, and more frequently if required by changes in information or agreement term(s). For purposes of this agreement, System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a Cooperative. Additional information about registration procedures may be found at the SAM Internet site at [www.sam.gov](http://www.sam.gov).

- F. LIMITATION OF FUNDS. U.S. Forest Service funds in the amount of \$ \_\_\_\_\_ are currently available for performance of this award through \_\_\_\_\_. The U.S. Forest Service's ability to provide additional funding is contingent upon the availability of appropriated funds from which payment can be made. There is no legal liability on the part of the U.S. Forest Service for any payment above this amount until receives notice of availability confirmed in a written modification by the U.S. Forest Service.
- G. select from drop-down PAYMENTS – FINANCIAL ASSISTANCE. See provision in the attachment, 'U.S. Forest Service Award Provisions.'
- H. 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.
- I. 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.
- J. INDIRECT COST RATES. Indirect cost rates must be formalized in a written agreement between the cognizant agency and \_\_\_\_\_ and have an effective period applicable to the term of this award.
- (1) If \_\_\_\_\_ does not have a previously established indirect cost rate with a Federal agency, the Recipient shall submit its initial indirect cost proposal to its cognizant audit agency no later than 3 months after the effective date of the award. \_\_\_\_\_ will be reimbursed for indirect costs at the tentative rate reflected in the budget until the rate is formalized in a negotiated indirect cost rate agreement (NICRA) at which time, reimbursements for prior indirect costs may be subject to adjustment.
- (2) As new NICRAs are agreed to between \_\_\_\_\_ and their cognizant audit agency, the revised provisional or final rate(s) are automatically incorporated into this award, as appropriate, and must specify (1) the agreed upon 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 award obligation will not increase as a result of indirect cost rate increases. Updates to NICRAs will not affect the total funds available for this award unless documented in a formally executed modification.

- (3) If the NICRA is for a provisional rate, \_\_\_\_\_ shall be reimbursed at the established provisional rate(s), subject to appropriate adjustment when the final rate(s) for the fiscal year are established.
- (4) Failure to provide a revised provisional or final NICRA could result in disallowed costs and repayment to the U.S. Forest Service.
- K. **PROGRAMMATIC CHANGES.** \_\_\_\_\_ shall obtain prior approval for any change to the scope or objectives of the approved project, key personnel, or transfer of substantive programmatic work to another party.
- L. **MODIFICATIONS.** Modifications within the scope of this award/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 \_\_\_\_\_ 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 award 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.

- M. **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

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U.S. Forest Service Grants Management Specialist

## ATTACHMENT A: 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. FOREST SERVICE LIABILITY TO THE RECIPIENT. The United States shall not be liable to \_\_\_\_\_ for any costs, damages, claims, liabilities, and judgments that arise in connection with the performance of work under this award, including damage to any property owned by \_\_\_\_\_ or any third party.
- 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 Forest Service Program Manager, at the address specified in the agreement.

To \_\_\_\_\_, at the address shown in the grant/agreement or such other address designated within the grant/agreement.

Notices are 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 shall 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	2 CFR 230
Local and Tribal governments (when Recipient is a State)	State & Federal laws, regulations	2 CFR 225
Local and Tribal governments (when Recipient is a non-State)	7 CFR 3016	2 CFR 225
State agencies	State & Federal laws, regulations	2 CFR 225

Universities	2 CFR 215	2 CFR 220
Profit-makers	2 CFR 215	48 CFR 31.2

- E. USE OF U.S. FOREST SERVICE INSIGNIA. In order for \_\_\_\_\_ to use the Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted by the Forest Service’s Office of Communications (Washington Office). A written request will be submitted by Forest Service \_\_\_\_\_ to the Office of Communications Assistant Director, Visual Information and Publishing Services prior to use of the insignia. The Forest Service will notify \_\_\_\_\_ when permission is granted.
- F. METRIC SYSTEM OF MEASUREMENT. Wherever measurements are required or authorized, they must be made, computed, and recorded in metric system units of measurement, unless otherwise authorized by the Forest Service Program Manager in writing when it has found that such usage is impractical or is likely to cause United States 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 Forest Service facilities and computer systems shall have background checks following the procedures established by USDA Directives 3800 series. Those granted computer access must fulfill all Forest Service requirements for mandatory security awareness and role-based advance security training, and sign all applicable Forest Service statements of responsibilities.
- H. 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.
- I. TRAFFICKING IN PERSONS.
1. Provisions applicable to a Recipient that is a private entity.
    - a. You as \_\_\_\_\_, 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).
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 Government-wide Debarment and Suspension (Nonprocurement).
3. Provisions applicable to any recipient.
  - a. You shall 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 shall 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 non-profit organization, including any non-profit 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.           agrees that it will publish a drug-free workplace statement and provide a copy to each employee who is 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 award, the employee:
    - i. Shall abide by the terms of the statement, and
    - ii. Shall notify           in writing if they are convicted for a violation of a criminal drug statute occurring in the workplace, and shall do so no more than 5 calendar days after the conviction.
2.           agrees 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.           agrees to immediately notify the Program Manager 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 award number of each award on which the employee worked. The notification must be sent to the Program Manager within 10 calendar days after \_\_\_\_\_ learns 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 agreement awarded under this agreement.

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 (18), under this agreement. Indirect costs and tuition remission, however, may be used by a State cooperative institution as part of their matching or cost-sharing requirements.

M. PROGRAM INCOME – FINANCIAL ASSISTANCE.

1. The Recipient shall apply the standards set forth in this Provision to account for program income earned under the award.
2. If any program income is generated as a result of this award, the income must be applied using the (choose one: addition, deduction, or cost sharing/matching) alternative as described in 7 CFR 3016.25 and 3019.24; the deductive alternative is the preferred method, unless specifically authorized by the Signatory Official.
3. Unless the terms and conditions of the award/agreement 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 agreement and they comply with the applicable Cost Principles.
5. Unless the terms and conditions of the award/agreement 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.

- N. HEALTH & HUMAN SERVICES PAYMENT MANAGEMENT SYSTEM (HHS PMS). Recipients/Cooperators 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 the Recipient/Cooperator through the HHS PMS.

The HHS sub-account number(s) for this Award is/are:

PROGRAM	HHS SUB-ACCOUNT	AMOUNT
	<b>G</b>	\$
	<b>G</b>	\$

- O. FINANCIAL STATUS REPORTING. A Federal Financial Report, form SF-425 (and Federal Financial Report Attachment, SF-425A, if required for reporting multiple awards), must be submitted Select from dropdown. These reports are due 30 days after the reporting period ending March 31, June 30, September 30, December 31 (select all that apply). 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 award. These forms may be found at [www.whitehouse.gov/omb/grants\\_forms](http://www.whitehouse.gov/omb/grants_forms).

- P. PAYMENTS – FINANCIAL ASSISTANCE: Select from dropdown 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 must be submitted on Standard Form 270 (SF-270), Request for Advance or Reimbursement or 271 (SF-271), Request for Reimbursement Construction, and must be submitted no more than monthly. In order to approve a Request for Advance Payment or Reimbursement, the Forest Service shall review such requests to ensure advances or payments for reimbursement are in compliance and otherwise consistent with OMB, USDA, and Forest Service regulations.

Advance payments must not exceed the minimum amount needed or no more than is needed for a 30-day period, whichever is less. If receives 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 Forest Service can approve the request for payment. Any funds advanced, but not spent, upon expiration of this award must be returned to the Forest Service.

To avoid delays in payment approval, supporting documentation describing expenditures that correspond to the Object Class Categories identified in Section B of the SF 424A Budget, and a brief status update must accompany each payment request or be provided directly to the Program Manager. The Program Manager reserves the right to request additional information prior to approving a payment:

The invoice must be sent by one of three methods (email is preferred):	Send a copy to:
EMAIL: <a href="mailto:asc_ga@fs.fed.us">asc_ga@fs.fed.us</a> FAX: 877-687-4894 POSTAL: Albuquerque Service Center Payments – Grants & Agreements 101B Sun Ave NE Albuquerque, NM 87109	

Q. AWARD CLOSEOUT Within 90 days after expiration or notice of termination shall close out the award/agreement.

Any unobligated balance of cash advanced to \_\_\_\_\_ must be immediately refunded to the Forest Service, including any interest earned in accordance with 7CFR3016.21/2CFR 215.22.

Within a maximum of 90 days following the date of expiration or termination of this grant, all financial performance and related reports required by the terms of the agreement must be submitted to the Forest Service by \_\_\_\_\_.

If this agreement is closed out without audit, the 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.

R. 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 dropdown performance reports to the Forest Service Program Manager. These reports are due 30 days after the reporting period. The final performance report must be submitted either with 's final payment request, or separately, but not later than 90 days from the expiration date of the grant/agreement.

- S. NOTIFICATION. shall immediately notify the Forest Service of developments that have a significant impact on the activities supported under this award. Also, notification must be given in case of problems, delays or adverse conditions that materially impair the ability to meet the objectives of the award. This notification must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.
- T. 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 Forest Service Program Manager. All technical positions are considered Key Personnel by the Forest Service. Failure on the part of to obtain prior, written approval when required may result in the disallowance of costs.
- U. FREEDOM OF INFORMATION ACT (FOIA). Public access to award 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 P.L. 110-234, Title VIII Subtitle B §8106 (2009 Farm Bill).
- V. 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.
- W. PUBLIC NOTICES. It is Forest Service's policy to inform the public as fully as possible of its programs and activities. is encouraged to give public notice of the receipt of this agreement and, from time to time, to announce progress and accomplishments. Press releases or other public notices should reference the Agency as follows:

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

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

X. FUNDING EQUIPMENT \_\_\_\_\_. Federal funding under this award/agreement is not available for reimbursement of \_\_\_\_\_ purchase of equipment and supplies. Equipment is defined as having a fair market value of \$5,000 or more per unit and a useful life of over 1 year.

Y. PURCHASE OF EQUIPMENT WITH RIGHT TO TRANSFER. Equipment approved for purchase under this award is available only for use as authorized. Title to the equipment rests with the Recipient as long as the equipment is used for its intended purpose. The Forest Service reserves the right to transfer title to the Federal Government or to an eligible third party of any equipment where the Forest Service's proportionate share of the per-unit value is \$5,000 or greater, and the equipment is no longer needed for its intended purpose. Valuation is based on current fair-market value. The equipment may not be used as collateral, sold, or otherwise transferred to another party without the written permission of the Forest Service.

The Recipient shall inventory equipment acquired in part or in whole with Forest Service funds annually/biannually (select one) and shall submit a copy of the inventory to the Program Manager. A final inventory must be submitted for closeout. The Recipient may use Tangible Personal Property Report Standard Forms (SF) 428 and SF-428-S, Supplemental Sheet, or Recipient's equivalent inventory report. The annual/biannual (select one) report must be filed December 31, due within 90 days, but no later than March 31 of the following year. The final report must be due within 90 days from the expiration date of the award.

The Recipient shall use the Tangible Personal Property Report Standard Forms (SF) 428 and SF-428-C, Disposition Request, should the Recipient determine any item of equipment is no longer needed or has been lost, destroyed or stolen. After receipt of the SF-428-C, the Forest Service shall issue disposition instructions within 120 days.

Z. PURCHASE OF EQUIPMENT. Equipment approved for purchase under this award is available only for use as authorized. Title to the equipment rests with the Recipient as long as the equipment is used for its intended purpose.

The Forest Service reserves an interest in any equipment where the Forest Service's proportionate share of the per-unit value is \$5,000 or greater. Valuation is based on current fair-market value. To ensure that the federal interest is properly recorded, the recipient shall file a UCC1 form with the applicable State government agency and provide evidence of the filing to the Forest Service Program Manager at the time payment is requested for the equipment purchase, or within 30 days of an advance of

funds for the purchase. The recipient is expected to maintain the UCC filing until the equipment has a fair market value of less than \$5,000 or is otherwise disposed of following instructions from the Forest Service. The equipment may not be used as collateral, sold, or otherwise transferred to another party without the written permission of the Forest Service.

The Recipient shall inventory equipment acquired in part or in whole with Forest Service funds annually/biannually (select one) and shall submit a copy of the inventory to the Program Manager. A final inventory shall be submitted for closeout. The Recipient may use Tangible Personal Property Report Standard Forms (SF) 428 and SF-428-S, Supplemental Sheet, or Recipient's equivalent inventory report. The annual/biannual (select one) report must be filed December 31, due within 90 days, but no later than March 31 of the following year. The final report must be due within 90 days from the expiration date of the award.

The Recipient shall use the Tangible Personal Property Report Standard Forms (SF) 428 and SF-428-C, Disposition Request, should the Recipient determine any item of equipment is no longer needed or has been lost, destroyed, or stolen. After receipt of the SF-428-C, the Forest Service shall issue disposition instructions within 120 days.

- AA. FUNDING EQUIPMENT FOR STATE RECIPIENTS. Federal funding under this award is available for reimbursement of the State's purchase of equipment. Equipment is defined as having a fair market value of \$5,000 or more per unit and a useful life of over 1 year. States will adhere to State laws and procedures regarding purchase, use, and disposition of equipment.
- BB. USE OF GOVERNMENT OWNED VEHICLE. Forest Service vehicles may be used for official Forest Service business only in accordance with FSH 7109.19, chapter 60, the requirements established by the region in which performance of this agreement takes place, and the terms of this agreement.
- CC. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS, AND ELECTRONIC MEDIA. shall acknowledge Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this award/agreement.
- DD. 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 alleging discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington DC 20250-9410 or call toll free voice (866) 632-9992, TDD (800)877-8339, or voice relay (866) 377-8642. 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.***

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

- a. When the Forest Service and \_\_\_\_\_ agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.
- b. By 30 days written notification by \_\_\_\_\_ to the Forest Service setting forth the reasons for termination, effective date, and in the case of partial termination, the portion to be terminated. If the Forest Service decides that the remaining portion of the award/agreement does not accomplish the purpose for which the award/agreement was made, the Forest Service may terminate the award upon 30 days written notice in its entirety.

Upon termination of an award/agreement, \_\_\_\_\_ shall not incur any new obligations for the terminated portion of the award/agreement after the effective date, and shall cancel as many outstanding obligations as possible. The Forest Service shall allow full credit to \_\_\_\_\_ for the 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.

FF. DISPUTES.

1. Any dispute under this award must be decided by the Forest Service Program Manager. The Program Manager shall furnish \_\_\_\_\_ a written copy of the decision.
2. Decisions of the Forest Service Program Manager shall be final unless, within 30 days of receipt of the decision of the Program Manager, the Recipient appeals the decision to Forest Service's
3. In order to facilitate review on the record by the Director, AQM, the Recipient shall be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.
4. A decision under this provision by the Director, AQM is final.
5. The final decision by the Director, AQM does not preclude the Cooperator from

pursuing remedies available under the law.

GG. DEBARMENT AND SUSPENSION. shall immediately inform the 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, they shall notify the Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

HH. 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).

II. PATENT RIGHTS. Each award made 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 award, 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 award 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 clause, 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 non-profit scientific or educational organization qualified under a State non-profit organization statute.
2. Allocation of Principal Rights.                      may retain the entire right, title, and interest throughout the world to each subject invention, subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which retains 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 Forest Service within 2 months after the inventor discloses it in writing to personnel responsible for patent matters. The disclosure to the Forest Service shall be in the form of a written report and must identify the award under which the invention was made and the inventor(s). It must 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 must 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 Forest Service,                      shall promptly notify the 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 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 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 Forest Service, election, and filing may, at the discretion of the 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 of the award. 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 agreements 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 agreement, 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 disclosure 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 award, 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 award 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. In some cases of determinations applicable to awards with small business firms, copies shall also be sent to the Chief Counsel for advocacy of the Small Business Administration.

JJ. COPYRIGHTING. is 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 agreement.

No original text or graphics produced and submitted by the Forest Service must be copyrighted. The 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 must 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 purchases ownership with any Federal contributions.

KK. SYSTEM FOR AWARD MANAGEMENT REGISTRATION AND UNIVERSAL IDENTIFIER REQUIREMENTS

1. *Requirement for System for Award Management Registration (SAM – formerly Central Contractor Registration or CCR):* shall maintain the currency of information in the SAM until submission of the final financial report required under this award or receipt of the final payment, whichever is later. This requires that a review and update of the information at least annually after the initial registration, and more frequently if required by changes in information or another award term.

2. *Requirement for Data Universal Numbering System (DUNS) Numbers:* If authorized to make subawards under this award:

- a. must notify potential Subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward unless the entity has provided its DUNS number to you.
- b. may not make a subaward to an entity unless the entity has provided its DUNS number.

3. *Definitions:*

For purposes of this award term:

- a. *System for Award Management Registration (SAM)* means the Federal repository into which an entity must provide information required for the conduct of business as a Recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <https://www.sam.gov>).
- b. *Data Universal Numbering System (DUNS) number* means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
- c. *Entity*, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
  - i. A Governmental organization, which is a State, local government, or Indian Tribe;
  - ii. A foreign public entity;
  - iii. A domestic or foreign nonprofit organization;
  - iv. A domestic or foreign for-profit organization; and
  - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

**4. Subaward:**

- a. This term means a legal agreement to provide support for the performance of any portion of the substantive project or program covered by this award and that are subsequently awarded to an eligible Subrecipient.
- b. The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see Sec. II.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- c. A subaward may be provided through any legal agreement, including an agreement that may be considered a contract.

**5. Subrecipient:**

- a. Receives a subaward under this award;
- b. Is accountable to the recipient for the use of the Federal funds provided by the subaward.

[END OF PROVISIONS]

## ATTACHMENT B: 2 CFR PART 170

### Appendix A to Part 170—Award Term

#### I. Reporting Subawards and Executive Compensation.

##### a. Reporting of first-tier subawards.

1. *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
2. *Where and when to report.*
  - i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.
  - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

##### b. Reporting Total Compensation of Recipient Executives.

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
  - i. the total Federal funding authorized to date under this award is \$25,000 or more;
  - ii. in the preceding fiscal year, you received—
    - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
  - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
2. *Where and when to report.* You must report executive total compensation described in paragraph b.1. of this award term:
  - i. As part of your registration profile at <http://www.sam.gov>.
  - ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. *Reporting of Total Compensation of Subrecipient Executives.*

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

- i. in the subrecipient's preceding fiscal year, the subrecipient received—
  - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
  - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
- ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions* If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

1. Subawards, and
2. The total compensation of the five most highly compensated executives of any subrecipient.

e. *Definitions.* For purposes of this award term:

1. *Entity* means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. *Executive* means officers, managing partners, or any other employees in management positions.

3. *Subaward:*

- i. This term means a legal agreement to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
  - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. II .210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).
  - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
4. *Subrecipient* means an entity that:
- i. Receives a subaward from you (the recipient) under this award; and
  - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient’s or subrecipient’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
- i. *Salary and bonus.*
  - ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
  - v. *Above-market earnings on deferred compensation which is not tax-qualified.* vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

END OF ATTACHMENT B: 2 CFR PART 170