



FS Agreement No. _____

Cooperator Agreement No. _____

**MASTER
PARTICIPATING AGREEMENT
Between The
NATIONAL SPELEOLOGICAL SOCIETY
And The
USDA, FOREST SERVICE
CAVE AND KARST MANAGEMENT**

This MASTER PARTICIPATING AGREEMENT is hereby made and entered into by and between the National Speleological Society, hereinafter referred to as “NSS,” and the United States Department of Agriculture (USDA), Forest Service, Lands, Minerals, and Geology hereinafter referred to as the “U.S. Forest Service,” under the authority: Cooperative Funds and Deposits Act of December 12, 1975, Pub.L. 94-148, 16 U.S.C. 565a1 – a3, as amended.

Background: The NSS is an important long-term U.S. Forest Service partner, with agreements dating back before the Federal Cave Resources Protection Act of 1988. The NSS is the largest organized caving group in the United States, with over 8,000 members. The NSS has worked in the field with U.S. Forest Service units across the country to accomplish geological resource survey and mapping work, biological inventory work, cave management, restoration, education and outreach.

Title: Collaboration in Managing Cave and Karst Resources with the National Speleological Society

I. PURPOSE

The purpose of this agreement is to document the cooperation between the parties to establish a national framework upon which the NSS and the U.S. Forest Service may cooperatively plan and accomplish mutually beneficial work projects or activities as they relate to the efficient management of cave and karst resources, including biological, geological, hydrological, paleontological, and cultural resources. The U.S. Forest Service relies on volunteer assistance from members of organizations interested in cave and karst resources, primarily members of the NSS, to provide manpower and expertise needed to protect and manage these resources, some of which are fragile. Continued or improved management of cave and karst resources on public lands relies on this type of assistance provided by NSS members throughout the nation.

The NSS is a non-profit membership organization dedicated to the scientific study of caves and karst; protection of caves and their natural contents through conservation, ownership, stewardship, and public education; and promoting responsible cave exploration and fellowship among those interested in caves.



In consideration of the above premises, the parties agree to a cooperative partnership in accordance with the following provisions and any incorporated Supplemental Project Agreement(s).

II. STATEMENT OF MUTUAL BENEFITS AND INTERESTS:

It is mutually beneficial to enter into this agreement to establish a framework for the development of individual Supplemental Project Agreements (SPAs) for the parties to work together on projects to accomplish their mutual goals.

Both parties believe that increased cooperation will promote better management of cave and karst resources and that these joint efforts will have long-term benefits. This national agreement establishes broad principles to assist the local units of the U.S. Forest Service in developing agreements, and most importantly, to recognize that such local cooperation represents one of the best ways the U.S. Forest Service has for carrying out its mission of “Caring for the Land and Serving People.” Cooperation and coordination may involve a wide range of activities including but not limited to education, resource inventory, research, monitoring, protection, restoration, recreation and other management actions, and cooperative partnerships. By working with partners, the U.S. Forest Service expands its capability to participate in conservation through stewardship, research, and education/outreach.

Through Federal laws and regulations, the U.S. Forest Service has major responsibility for conserving biodiversity through the management of fish and wildlife habitats, including caves, and by providing special protection for threatened, endangered, and sensitive species. The Federal Cave Resources Protection Act of 1988 authorizes the U.S. Forest Service to secure, protect, and preserve significant caves including their locations on Federal lands and to foster increased cooperation and exchange of information between governmental authorities and those who use caves for scientific, education, or recreational purposes.

This agreement furthers U.S. Forest Service policy, including the following cave policy from U.S. Forest Service Manual (FSM) 2356:

- “Protect threatened, endangered, proposed and sensitive, species in accordance with the Endangered Species Act (16 U.S.C. 1531) and FSM 2670”
- “Develop and foster communications, cooperation, and volunteerism with interested publics, Federal agencies, States, and local governments.”
- “Acquire and exchange inventory data needed to manage cave resources...”
- “Establish monitoring activities as needed to assess changes in the cave environment.”
- “Encourage volunteer involvement for projects such as cave mapping, inventorying, planning, monitoring use, guiding, and interpretation through development of adopt-a-cave programs, volunteer agreements, and memoranda of understanding.”
- “Provide cave-related recreational, cultural, educational, and scientific study opportunities that serve public needs. Balance surface resource management and cave use with the protection of cave values.”



In addition, this agreement furthers U.S. Forest Service policy, including the following cave policy from U.S. Forest Service Manual (FSM) 2880:

- “Field surveying caves; mapping karst, hydrologic features, and cave resources; dye tracing to determine ground-water flow patterns; determining air flow patterns.”
- “Secure, protect, and preserve significant caves for the perpetual use, enjoyment, and benefit of all people, and to foster increased cooperation and exchange of information with those who utilize caves for scientific, educational, or recreational purposes.”
- “Protect and maintain caves and cave ecosystems in accordance with Federal law and develop volunteer management agreements with the scientific community or recreational caving groups to assist with cave protection....”

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

III. THE NSS SHALL:

- A. LEGAL AUTHORITY. The NSS 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. Collaborate with the U.S. Forest Service to identify, evaluate, manage, and protect cave resources on NFS and other lands for the purpose of maintaining their unique, nonrenewable and fragile biological, geological, hydrological, cultural, paleontological, scientific, and recreational values for present and future generations.
- C. Consult on designation of significant caves as described in the Federal Cave Resources Protection Act of 1988. This includes submitting forms for designation, discussion of caves that need data to support designation, and collecting data to assist in the designation process.
- D. Maintain confidentiality of locations of caves nominated and designated as significant, in accordance with the Federal Caves Resources Protection Act of 1988 16 USC §4301 Sec 5(a) and Title 36, Code of Federal Regulations, part 290.4(a) (36 CFR 290.4).
- E. Collect and share data with the U.S. Forest Service, when an appropriate Supplemental Project Agreement is in place, to help manage caves and participate in conservation and restoration activities including, but not limited to:
 - a. Assist in the development of cave management plans.
 - b. Inventory of cave locations and cave resources.
 - c. Notifying the U.S. Forest Service of sensitive resources such as wildlife, geological, paleontological, and archaeological materials found in caves.
 - d. Installation and maintenance of cave gates and signs.
 - e. Assist with monitoring of visitor use and promoting responsible caving techniques.
 - f. Providing surveying and cartographic assistance.
 - g. Providing administrative support for cave resource programs.
 - h. Conducting cave cleanup and restoration projects.



- i. Conducting research on caves and cave resources.
 - j. Development of cave search and rescue plans.
 - k. Assist with the development of interpretative programs and displays.
- F. Promote awareness of and responsible attitudes toward cave and karst resources and their management needs to Cooperator members and the public.
- G. Support responsible research in caves on NFS and other lands and encourage the dissemination of scientific information.
- H. Bats are essential to the health and resilience of terrestrial forest and cave ecosystems – and our National Forests and Grasslands provide vitally important habitat for bats. Although the U.S. Forest Service interest in managing habitat for bats has been varied across the agency in the past, the appearance of White-Nose Syndrome (WNS) has focused current attention on the conservation of bats through targeted research, monitoring, and management actions specific to addressing population declines. WNS has devastated bat populations across the eastern United States, causing the most precipitous wildlife decline in the past century in North America, according to many biologists. To protect cave biota, specifically bats, and to prevent the spread of WNS participants must adhere to the following:
 - a. Practice Decontamination Protocols provided by the U.S. Fish and Wildlife Service. This information and other resources can be found at the White-Nose Syndrome web site (whitenosesyndrome.org).
 - b. No handling or physical disturbance of bats is allowed, unless authorized by federal/state agency permit issued for officially approved research activity.
 - c. Disturbance to bats should be minimized by moving through the cave relatively quickly, minimizing noise, and not remaining in the vicinity of or shining lights on bats longer than necessary to document them.
 - d. Locations of bats within the cave will be noted either in written descriptions or noted on a cave map, especially areas where there are large numbers of bats or clusters of bats.
 - e. Photographs will be taken to document species and to assist with identification of species if this can be done without disturbing the bats. Photos of bats will be made available to the U.S. Forest Service digitally.
 - f. Entry into known winter bat hibernacula or summer maternity roosts will be coordinated with the Forest and State and Federal Fish and Wildlife Resource Agencies (see contact info in Appendix B) at least 15 days prior to planned trip. This coordination is to ensure good communication between the parties.

IV. THE U.S. FOREST SERVICE SHALL:

- A. Recognize the NSS, its internal organizations, and knowledgeable cavers as natural partners in the collaboration necessary to manage cave and karst resources. Consultation with these groups and individuals is important because they are often the best sources of information about caves, members of the primary special interest groups, and major users of caves on National Forests.



- B. Integrate the identification and management of caves and their associated resource values into resource management planning and management efforts and to avoid or minimize conflicts between cave resource management and other surface and subsurface resource management activities.
- C. Provide user opportunities which are compatible and consistent with objectives set forth in Land and Resource Management Plans (Forest Plans). These might include recreation, education, research, or commercial activities, when those activities can be adequately managed.
- D. Recognize that members of the NSS and its local chapters have specialized skills in cave search and rescue techniques that should be included in planning and execution of responses to emergency incidents by the U.S. Forest Service. The NSS may possess specialized information and resources for cave rescue in the form of equipment caches and resource lists maintained by the National Cave Rescue Commission Regional Coordinators.
- E. Participate in ongoing meetings, as necessary, to discuss and identify opportunities for cooperative work on mutually beneficial projects or activities for the promotion of cave conservation, research, and education.
- F. The US Forest Service is responsible for ensuring cooperator compliance with Section 106 of the National Historic Preservation Act (NHPA) (54 USC 306108) and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800); the Archaeological Resources Protection Act (ARPA) (16 USC 470aa-mm) and its regulations, "Protection of Archaeological Resources" (36 CFR 296); the Native American Graves Protection and Repatriation Act (NAGPRA) (25 USC 3001 et. seq.) and its regulations, "Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony From Federal or Tribal Lands" (43 CFR 10, Subpart B); and other cultural resource laws such as Executive Orders 13007 and 13175. In the event human remains or other cultural resources are discovered or inadvertently revealed during field work or site visits, NSS Grotto members shall leave such items in place and as found, exit the site, and notify FS staff as soon as possible for FS to further evaluate. This will help prevent inadvertent adverse effects on these types of resources and ensure compliance with the Native American Graves Protection and Repatriation Act (NAGPRA), the National Historic Preservation Act (NHPA), and the Archaeological Resource Protection Act (ARPA), as applicable. Photography of human remains and/or other potentially sacred objects should not occur; if in doubt, do not photograph.

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

- A. The sharing of information by both parties is mutually beneficial; such information may include cave locations, inventories, etc. as compiled by the NSS and U.S. Forest Service to assist in determining additional useful information needed, with the understanding that significant cave locations shall be kept confidential by the parties in accordance with the Federal Cave Resources Protection Act and as may be stipulated



under Agreements executed between the NSS and individual Forests. The U.S. Forest Service Authorized Officer may share cave locations with non-Agency personnel for scientific, educational, or resources management purposes provided such sharing furthers the purposes of the Federal Cave Resources Protection Act, does not create risk of harm to, theft, or destruction of the cave or its contained resources, and is in accordance with other applicable laws. Such information sharing by the Authorized Officer in accordance with these provisions does not constitute a disclosure.

- ~~B. Identify in local sub-agreements, as funding and resources are available, how cave and karst resource information and locations will be handled. Local agreements will classify information ownership into two categories:

 - ~~a. Information belonging to the U.S. Forest Service, which is available as public information, unless specifically exempt under the Freedom of Information Act.~~
 - ~~b. Information belonging to cooperating organizations or volunteers which will be made available to the U.S. Forest Service to aid its management decision making. This information will be treated by the U.S. Forest Service as proprietary information under the Freedom of Information Act to the full extent the law allows.~~~~

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

Principal Cooperator Contacts:

| Cooperator Program Contact | Cooperator Administrative Contact |
|---|---|
| Name: Adam Weaver, Government Liaison Address: 6001 Pulaski Pike City, State, Zip: Huntsville, AL 35810 Telephone: 256-852-1300 Email: adam@caves.org | Name: Kristine Ebrey, President Address: 6001 Pulaski Pike City, State, Zip: Huntsville, AL 35810 Telephone: 256-852-1300 Email: kebrey@caves.org |

Principal U.S. Forest Service Contacts:

| U.S. Forest Service Program Manager Contact | U.S. Forest Service Administrative Contact |
|---|--|
| Name: Limaris Soto, Caves and Karst Program Lead Address: 1617 Cole Blvd. Building 17 City, State, Zip: Lakewood, CO 80401 Telephone: 303-275-5378 Email: limaris.soto@usda.gov | Name: Address: City, State, Zip: Telephone: FAX: Email: |



- D. ASSURANCE REGARDING FELONY CONVICTION OR TAX DELINQUENT 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 434as 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 NSS 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 debaring official of the United States Department of Agriculture has considered suspension or debarment is not necessary to protect the interests of the Government. If NSS fails to comply with these provisions, the U.S. Forest Service will annul this agreement and may recover any funds NSS has expended in violation of sections 433 and 434.
- E. AVAILABILITY FOR CONSULTATION. Both parties will make themselves available at mutually agreeable times for continuing consultation to discuss the conditions covered by this agreement and agree to actions essential to fulfill its purposes.
- F. SUPPLEMENTAL PROJECT AGREEMENTS (SPA). Nothing in this agreement obligates either party to offer or accept any project proposals under this agreement. Any projects added to this agreement must be by mutual consent of the parties through a specific SPA.
- G. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or NSS are 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 agreement.
- To NSS, at the address shown in the agreement or such other address designated within the agreement.
- Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.
- H. PARTICIPATION IN SIMILAR ACTIVITIES. This agreement in no way restricts the U.S. Forest Service or NSS from participating in similar activities with other public or private agencies, organizations, and individuals.



- I. ENDORSEMENT. Any NSS contributions made under this agreement do not by direct reference or implication convey U.S. Forest Service endorsement of NSS's products or activities.
- J. NON-FEDERAL STATUS FOR COOPERATOR LIABILITY. The NSS agree(s) that any of NSS's employees 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), and NSS hereby willingly agree(s) to assume these responsibilities.

The NSS agree(s) that, except as otherwise provided in this provision below, of NSS's volunteers shall not be deemed to be Federal employees and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits. When NSS's volunteers are performing approved tasks identified under this agreement, the following applies:

1. For the purpose of the tort claim provisions of Title 28 of the United States Code, any of NSS's volunteers shall be considered a federal employee.
2. For the purpose of subchapter I of Chapter 81 of Title 5 of the United States Code, relating to compensation to Federal employees for work injuries, NSS's volunteers shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply.
3. For the purposes of claims relating to damage to, or loss of, personal property of NSS's volunteer incident to volunteer service, a volunteer shall be considered a Federal employee, and the provisions of 31 U.S.C 3721 shall apply.

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

- K. MEMBERS OF 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.
- L. NONDISCRIMINATION. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with



disabilities who require alternative means for communication of program information (Braille, large print, audiotape, and so forth.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

- M. ELIGIBLE WORKERS. The NSS 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). The NSS shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract or SPA awarded under this agreement.
- N. STANDARDS FOR FINANCIAL MANAGEMENT.

1. Financial Reporting

The NSS shall provide complete, accurate, and current financial disclosures of the project or program in accordance with any financial reporting requirements, as set forth in the financial provisions.

2. Accounting Records

The NSS shall continuously maintain and update records identifying the source and use of funds. The records shall contain information pertaining to the agreement, authorizations, obligations, unobligated balances, assets, outlays, and income.

3. Internal Control

The NSS shall maintain effective control over and accountability for all U.S. Forest Service funds, real property, and personal property assets. The NSS shall keep effective internal controls to ensure that all United States Federal funds received are separately and properly allocated to the activities described in the agreement. The NSS shall adequately safeguard all such property and shall ensure that it is used solely for authorized purposes.

4. Source Documentation

The NSS shall support all accounting records with source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract documents. These documents must be made available to the U.S. Forest Service upon request.

- O. INDIRECT COST RATES- PARTNERSHIP. Indirect costs are approved for reimbursement or as a cost-share requirement and have an effective period applicable to the term of this agreement.



1. If the Cooperator has never received or does not currently have a negotiated indirect cost rate, they are eligible for a de minimis indirect cost rate up to 10 percent of modified total direct costs (MTDC). MTDC is defined as all salaries and wages, fringe benefits, materials and supplies, services, travel, and contracts up to the first \$25,000 of each contract.
2. For rates greater than 10 percent and less than 25 percent, the Cooperator shall maintain documentation to support the rate. Documentation may include, but is not limited to, accounting records, audit results, cost allocation plan, letter of indirect cost rate approval from an independent accounting firm, or other Federal agency approved rate notice applicable to agreements.
3. For a rate greater than 25 percent, the U.S. Forest Service may require that the Cooperator request a federally approved rate from the Cooperator's cognizant audit agency no later than 3 months after the effective date of the agreement. The Cooperator will be reimbursed for indirect costs or allowed to cost-share at the rate reflected in the agreement until the rate is formalized in the negotiated indirect cost rate (NICRA) at which time, reimbursements for prior indirect costs or cost-sharing may be subject to adjustment.
4. Failure to provide adequate documentation supporting the indirect cost rate, if requested, could result in disallowed costs and repayment to the U.S. Forest Service.

P. PROGRAM INCOME – PARTNERSHIP AGREEMENTS.

1. Please refer to each individual Supplemental Project Agreement for more information.
2. The NSS shall apply the standards set forth in this Provision to account for program income earned under the agreement.
3. If any program income is generated as a result of this agreement, the income must be applied using the deduction alternative. The deduction alternative means that program income must be deducted from total allowable costs to determine the net allowable costs, unless otherwise approved by the signatory official. Program income must be used for current costs unless the Federal agency authorizes otherwise. Program income which NSS did not anticipate at the time of the award must be used to reduce the Federal agency and NSS's contributions rather than to increase the funds committed to the project.
4. Unless the terms and conditions of the agreement provide otherwise, NSS shall have no obligation to the U.S. Government regarding program income earned after the end of the project period.



5. 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 Cost Principles, if applicable.
6. Unless the terms and conditions of the agreement provide otherwise, NSS 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 agreement. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research awards.

Q. OVERPAYMENT. Any funds paid to NSS in excess of the amount entitled under the terms and conditions of this agreement constitute a debt to the Federal Government. The following must also be considered as a debt or debts owed by NSS to the U.S. Forest Service:

- Any interest or other investment income earned on advances of agreement funds; or
- Any royalties or other special classes of program income which, under the provisions of the agreement, are required to be returned.

If this debt is not paid according to the terms of the bill for collection issued for the overpayment, the U.S. Forest Service may reduce the debt by:

1. Making an administrative offset against other requests for reimbursement.
2. Withholding advance payments otherwise due to NSS.
3. Taking other action permitted by statute (31 U.S.C. 3716 and 7 CFR, Part 3, Subpart B).

Except as otherwise provided by law, the U.S. Forest Service may charge interest on an overdue debt.

R. AGREEMENT CLOSE-OUT. Within 120 days after expiration or notice of termination the parties shall close out the agreement.

Any unobligated balance of cash advanced to NSS must be immediately refunded to the U.S. Forest Service, including any interest earned in accordance with 7 CFR 3016.21, 7 CFR 3019.22.

Within a maximum of 120 days following the date of expiration or termination of this agreement, all financial performance and related reports required by the terms of the agreement must be submitted to the U.S. Forest Service by NSS.

If this agreement 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.



- S. PROGRAM MONITORING AND PROGRAM PERFORMANCE REPORTS. The parties to this agreement shall monitor the performance of the agreement activities to ensure that performance goals are being achieved.

Performance reports must contain information on the following:

- A comparison of actual accomplishments to the goals established for the period. Wherever the output of the project can be readily expressed in numbers, a computation of the cost per unit of output, if applicable.
- Reason(s) for delay if established goals were not met.
- Additional pertinent information.

The NSS shall submit annual performance reports to the U.S. Forest Service Program Manager. These reports are due 30 days after the reporting period. The final performance report must be submitted either with NSS's final payment request, or separately, but not later than 120 days from the expiration date of the agreement.

- T. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS. The NSS 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. The NSS 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 if access 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.

- U. FREEDOM OF INFORMATION ACT (FOIA). Public access to 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 (2008 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 Cooperators, 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. PURCHASE OF EQUIPMENT. U.S. Forest Service funds may be used by NSS to purchase equipment necessary to accomplish activities described in this agreement. The available funding is displayed in the financial plan. Title to the equipment rests with the U.S. Forest Service, but may be transferred to NSS on completion of the project, if appropriate.
- X. PROPERTY IMPROVEMENTS. Improvements placed by NSS on National Forest System land at the direction or with the approval of the U.S. Forest Service becomes the property of the United States. These improvements are subject to the same regulations and administration of the U.S. Forest Service as other National Forest improvements of similar nature. No part of this agreement entitles NSS to any interest in the improvements, other than the right to use them under applicable U.S. Forest Service regulations.
- Y. CONTRACT REQUIREMENTS. Any contract under this agreement must be awarded following NSS's established procurement procedures, to ensure free and open competition, and avoid any conflict of interest (or appearance of a conflict). The NSS shall maintain cost and price analysis documentation for potential U.S. Forest Service review. The NSS is/are encouraged to utilize small businesses, minority-owned firms, and women's business enterprises.
- Z. GOVERNMENT-FURNISHED PROPERTY. The NSS may only use U.S. Forest Service property furnished under this agreement for performing tasks assigned in this agreement. The NSS shall not modify, cannibalize, or make alterations to U.S. Forest Service property. A separate document, Form AD-107, must be completed to document the loan of U.S. Forest Service property. The U.S. Forest Service shall retain title to all U.S. Forest Service-furnished property. Title to U.S. Forest Service property must not be affected by its incorporation into or attachment to any property not owned by the U.S. Forest Service, nor must the property become a fixture or lose its identity as personal property by being attached to any real property.

Cooperator Liability for Government Property.

1. Unless otherwise provided for in the agreement, NSS shall not be liable for loss, damage, destruction, or theft to the Government property furnished or acquired under this contract, except when any one of the following applies:



- a. The risk is covered by insurance or NSS is/are otherwise reimbursed (to the extent of such insurance or reimbursement).
 - b. The loss, damage, destruction, or theft is the result of willful misconduct or lack of good faith on the part of NSS's managerial personnel. The NSS's managerial personnel, in this clause, means NSS's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of NSS's business; all or substantially all of NSS's operation at any one plant or separate location; or a separate and complete major industrial operation.
2. The NSS shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft. The NSS shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs.
 3. The NSS shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damage, destruction, or theft of Government property.
 4. Upon the request of the Grants Management Specialist, NSS shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of agreements of assignment in favor of the Government in obtaining recovery.
- AA. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. The NSS shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this agreement.
- BB. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. The NSS 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 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."

CC. REMEDIES FOR COMPLIANCE RELATED ISSUES. If NSS materially fail(s) to comply with any term of the agreement, whether stated in a Federal statute or regulation, an assurance, or the agreement, the U.S. Forest Service may take one or more of the following actions:

1. Temporarily withhold cash payments pending correction of the deficiency by the NSS or more severe enforcement action by the U.S. Forest Service;
2. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
3. Wholly or partly suspend or terminate the current agreement for NSS's program;
4. Withhold further awards for the program, or
5. Take other remedies that may be legally available, including debarment procedures under 2 CFR Part 417.

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

1. When the U.S. Forest Service and NSS 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 NSS 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 the U.S. Forest Services decides 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, NSS 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 NSS for the U.S. Forest Service share that cannot be cancelled and were properly incurred by NSS up to the effective date of the termination. Excess funds must be refunded within 60 days after the effective date of termination.



- EE. 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.
- FF. DEBARMENT AND SUSPENSION. The NSS 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 NSS 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.
- GG. PROHIBITION AGAINST INTERNAL CONFIDENTIAL AGREEMENTS. All non federal government entities working on this agreement will adhere to the below provisions found in the Consolidated Appropriations Act, 2016, Pub. L. 114-113, relating to reporting fraud, waste and abuse to authorities:
- (a) The recipient may not require its employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
 - (b) The recipient must notify its employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (a) of this award provision are no longer in effect.
 - (c) The prohibition in paragraph (a) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information.
 - (d) If the Government determines that the recipient is not in compliance with this award provision, it:
 - (1) Will prohibit the recipient's use of funds under this award, in accordance with sections 743, 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law; and



(2) May pursue other remedies available for the recipient's material failure to comply with award terms and conditions.

HH. COPYRIGHTING. The NSS 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 agreement. However, the cooperator shall not sell, or grant copyrights to a third-party designee who intends to sell the document as a profit making venture.

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 must be transferred to any sub-agreements or subcontracts.

This provision includes:

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

II. PUBLICATION SALE. The NSS may sell any publication developed as a result of this agreement. The publication may be sold at fair market value, which is initially defined in this agreement to cover the costs of development, production, marketing, and distribution. After the costs of development and production have been recovered, fair market value is defined in this agreement to cover the costs of marketing, printing, and distribution only. Fair market value must exclude any in-kind or Federal Government contributions from the total costs of the project.

JJ. 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.

KK. 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.

LL. 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.



KRISTINE EBREY, PRESIDENT

Date

JEFFRY VAIL, DIRECTOR (Acting)
U.S. Forest Service, LANDS, MINERALS, and
GEOLOGY

Date

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

U.S. Forest Service Grants Management Specialist

Date

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.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.