

FSH 1509.11 – GRANTS, COOPERATIVE AGREEMENTS, AND OTHER AGREEMENTS HANDBOOK
CHAPTER 70 – PARTNERSHIP AGREEMENTS

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This chapter prescribes uniform administrative requirements applicable to all of the following type of agreements:

1. Participating Agreements (PA),
2. Challenge Cost-Share Agreements (CS),
3. Joint Venture Agreements (JV),
4. International Joint Venture Agreements (IJ),
5. Cost -Reimbursable Agreement (CR),
6. Cooperative Research and Development Agreements (RD),
7. Material Transfer Agreements (RD), and
8. Non Disclosure Agreements (RD).

See FSM 1580.35 for direction on deviations from these requirements.

While there are a number of specific Forest Service agreement relationships (for example, volunteer agreements, interagency agreements, and so forth) that are sometimes informally termed ‘partnership’ agreements, this chapter specifically uses the term of partnership agreements to denote PAs, CSs, and JVs, within the framework of mutual interest and mutual benefit, as permitted under the authorities described in this chapter.

How This Chapter is Organized — This chapter is complex and comprehensive, includes sections 70-79. The authorities governing partnership agreements are presented in three sections (70 to 72) going from general to more specific and detailed discussions. First they are listed in section 70, *Authority*, with brief descriptions. Secondly, the authorities are presented in section 71, *Authority by Agreement Type*, which lists the agreement types and the authorities used with them. Then, in section 72, *Authorities and Their General Requirements*, are covered detailing the form of agreement, general requirements, and the type of work it allows. Finally, sections 73-78 provide direction on procedures and section 79 includes a sample of each agreement type.

70.1 – Authorities

The Forest Service is authorized to enter into several types of instruments that are not considered procurement or Federal financial assistance relationships subject to the Federal Grants and Cooperative Agreements Act of 1978 (31 U.S.C. 6301-6308). The following Federal statutory authorities are available for entering into partnership agreements under specific authorities that have been assigned specific agreement titles (FSM 1580). Deviations from these titles must be approved in advance by the Washington Office, Director of Acquisition Management (FSM 1580.35).

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1. Cooperative Funds and Deposits Act of December 12, 1975, Pub. L. 94-148, 16 U.S.C. 565a1 – a3, as further authorized by Division F, Title IV, Sec. 417 of the Consolidated Appropriations Act 2008 (P.L. 110-161). (FSM 1580.12). (Participating Agreements). This Act authorizes the Forest Service and cooperator(s) to perform work from which they would accrue mutual non-monetary benefit in the areas of cooperative pollution abatement; cooperative manpower, job training and development programs; development and publication of cooperative environmental education and forest history materials; and forestry protection.

2. Interior and Related Appropriations Act of 1992. (Pub. L. 102-154). (FSM 1580.12). (Challenge Cost-share). This Act authorizes the Forest Service to cooperate with others in developing, planning, and implementing mutually beneficial projects that enhance Forest Service activities, where the cooperators provide matching funds or in-kind contributions. Cooperators may be public and private agencies, organizations, institutions, and individuals.

3. National Agricultural Research, Extension, and Teaching Policy Act of 1977 (Pub. L. 95-113), as amended by the Food Security Act of 1985 (7 U.S.C. 3318, and 3319, Pub. L. 99-198) and further amended by Public Law 105-198. (FSM 1580.12). (Joint Venture Agreements, International Joint Venture Agreements, and Cost-Reimbursable Agreements). This Act authorizes the Forest Service to:

- a. Enter into Joint Venture Agreements with any entity or individual to serve the mutual interest of the parties in agricultural research, and teaching activities, whereby all parties contribute resources to accomplish those objectives (7 U.S.C. 3318(b)).
- b. Enter into International Joint Ventures with any foreign entity or individual, provided the objectives of the agreement serve the “mutual interest” of the parties in agricultural research, and teaching activities of the Forest Service and all parties to the agreement contribute resources to the accomplishment of those objectives (7 U.S.C. 3318(b)). NOTE: The National Agricultural Research, Extension, and Teaching Policy Act of 1977 specifically includes extension services; however, the Forest Service does not provide extension services. Therefore, “extension” has been omitted from these directives, except from the Act’s title.
- c. Enter into Cost Reimbursable Agreements with State cooperative institutions, or other colleges and universities, without regard to any requirement for competition, for the acquisition of goods or services, including personal services, to carry out agricultural research or teaching activities of mutual interest (7 U.S.C. 3319(a)).

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4. Federal Technology Transfer Act of 1986 (15 U.S.C. 3710a, Pub. L. 96-480). (FSM 1580.11). (Cooperative Research and Development Agreements, Material Transfer Agreements, and Non Disclosure Agreements). This Act authorizes the Forest Service to enter into Cooperative Research and Development Agreements for technological transfer for commercial purposes.

5. Wyden Amendment (Public Law 105-277, Section 323 as amended by Public Law 109-54, Section 434) (Participating Agreements). (FSM 1580.12). This law provides that the Forest Service may enter into cooperative agreements with willing Federal, tribal, State and local governments, private and nonprofit entities, and landowners for:

- a. The protection, restoration, and enhancement of fish and wildlife habitat, and other natural or cultural resources on public or private land;
- b. The reduction of risk for natural disaster where public safety is threatened; or
- c. A combination of both.

The agreements must provide a benefit to the natural or cultural resources on National Forests System (NFS) lands within the watershed.

Benefits include improving, maintaining, or protecting ecosystem conditions through collaborative administration and/or implementation of projects; improving collaborative efforts across all ownerships, not just limited solely to adjacent NFS lands; and increase operational effectiveness and efficiency through coordination of efforts, services, and products. Agreements, as used herein, may include the types of instruments contemplated under this chapter.

6. Emergency Economic Stabilization Act of 2008, Energy Improvement and Extension Act of 2008, and Tax Extenders and Alternative Minimum Tax relief Act of 2008, Section 601(a) in division C of P.L. 110-343 reauthorizes and amends the Secure Rural Schools and Community Self-Determination Act of 2000, as originally enacted in P.L. 106-393 (Participating Agreement or Challenge Cost-share Agreement). This Act, as amended, is the same as, or similar to, P.L. 106-393. It authorizes the Forest Service to:

- a. Stabilize and transition payments to counties to provide funding for schools and roads that supplements other available funding (Title I);
- b. Make additional investments, and create additional employment opportunities through projects that improve maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, and restore and improve land health and water quality (Titles II and III); and

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c. Improve cooperative relationships among people that use and care for Federal land and the agencies that manage Federal land (Title II).

7. Stewardship End Result Contracting Projects. Section 323 of Public Law 108-7 (16 U.S.C. 2104 Note, as revised February 28, 2003 to reflect sec. 323 of J.J. Res. 2 as enrolled), the Consolidated Appropriations Resolution, 2003, amending Public Law 105-277, sec. 323 (Stewardship Agreement). (FSM 1580.12). The statute grants the Forest Service authority, until September 30, 2013, to enter into stewardship contracts or stewardship agreements for up to 10 years with private persons or public or private entities, by contract or by agreement, to perform services to achieve land management goals for the national forests or public lands that meet local and rural community needs. Section 323 supersedes the original authority granted to the Forest Service in section 347.

The Timber Management Manual, FSM 2404.2, authorizes the disposal of timber and forest products. Under the stewardship authorities, the Forest Service may dispose of timber and forest products under an Integrated Resource Timber Contract (IRTC), an Integrated Resource Service Contract (IRSC), or a Stewardship Agreement. Products that may be removed under stewardship agreement authority include timber and other forest products, such as, but not limited to, biomass, seed, forage, fungi, and Christmas trees.

70.3 – Policy

Use these types of instruments when they are authorized by specific authority and the project involves a joint accomplishment of work directly benefiting both the cooperator and the Forest Service, and no other instruments are prescribed by law, regulations, or subsequent sections of this chapter.

1. Participating Agreements (PA),
2. Challenge Cost-share Agreements (CS),
3. Joint Venture Agreements (JV),
4. International Joint Venture Agreements (IJ),
5. Cost-Reimbursable Agreement (CR),
6. Cooperative Research and Development Agreements (RD),
7. Material Transfer Agreements (RD),
8. Non Disclosure Agreements (RD), and
9. Stewardship Agreement (SA).

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See FSM 1580.35 for direction on deviations from these requirements.

1. Partnership Agreements. The Forest Service, by respective statutes, may execute several types of instruments that are not considered procurement or Federal financial assistance relationships subject to the Federal Grants and Cooperative Agreements Act of 1978 (31 U.S.C. 6301-6308), with non-Federal entities. These instruments commonly define partnership activities. They have been assigned specific agreement titles in this section. Execution of these instruments must not circumvent procurement, printing, property, or personnel procedures where their use is appropriate or required.

2. Mutual Interest. In Cooperative Research and Development Agreements (RD) and Cost-Reimbursable Agreements (CR), the Forest Service and cooperators shall share mutual interests; although, they may not benefit in the same qualitative way. For instance, mutual interest under a Cost Reimbursable Agreement exists when the Forest Service has an interest to conduct research on the health, productivity, and sustainability of forest ecosystems and resources. The cooperator's mutual interest is to gain knowledge on forest ecosystems and provide public outreach and policy to land managers regarding the science of forest health and sustainability. The Forest Service receives a product and the cooperator gains the knowledge and experience by providing these services.

3. Mutual Interest and Mutual Benefit. In all cost-sharing arrangements, that is, Participating Agreements (PA), Challenge Cost-share Agreements (CS), Joint Venture (JV), International Joint Venture (IJ), and Stewardship (SA) Agreements, the Forest Service and the cooperator(s) shall share mutual interests and benefit in the same qualitative way from the objective of the agreement. For example, a cost-sharing agreement exists when the Forest Service and the cooperator(s) share a mandate for wildlife habitat improvement, and both parties contribute significant resources to accomplish a wildlife habitat enhancement project on land under Forest Service jurisdiction. Both the Forest Service and the cooperator leverage their resources to complete a project to accomplish their missions.

In some situations, it may appear that the Forest Service and cooperator share mutual interests and benefits. However, the cooperator's contribution should be analyzed carefully. For example, when the cooperator offers to perform services, some of which are contributed in-kind and some of which are reimbursed by the Forest Service, the cost of reimbursing the cooperator may be the same as the rate for completion of the total project that could be obtained through competitive procurement procedures (making the cooperator's contribution meaningless). This type of project should be accomplished using Government procurement procedures.

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The Forest Service may not enter into cost-sharing arrangements for goods or services where the cooperator's primary motive is to obtain paid employment, even if the cooperator contributes or appears to contribute to the project. An example would be where a local contractor proposes to provide reimbursable backhoe services to dredge a pond at a discounted price, offering what appears to be a contribution. In this situation, while the Forest Service and the cooperator share mutual interests, they do not mutually benefit since dredging the pond is of no additional benefit to the cooperator than providing a source of paid employment. In addition, the discounted price offered by the cooperator may be nothing more than the competitive rate for backhoe services. This type of work should be performed pursuant to Government procurement procedures.

4. Product Sales. With the exception of RDs and PAs with Interpretative Associations, it is not appropriate for the Forest Service to enter into agreements that contemplate development and sale of a product for profit, either directly or indirectly by the cooperator. The Forest Service may only entertain profit interests under contracts, permits, licenses, leases, and RDs. This section does not cover contracts, permits, licenses, and leases.

5. Reimbursement. Where reimbursement is appropriate, the Forest Service is permitted to reimburse only those actual costs (direct and indirect) incurred by the cooperator in performing the project. Reimbursement to the cooperators is prohibited under RDs. In-kind contributions, for example, those contributions for which the cooperator incurs no expense (such as volunteer labor), are not reimbursable by the Forest Service.

6. Indemnification/Liabilities. Each party shall be responsible, to the extent required by law, only for the acts, omissions or negligence of its own officers, employees, or agents. The Forest Service may not include or permit language in an instrument that agrees to indemnify, defend, or hold harmless the cooperator, its agent, or its employees from and against any or all losses, damages, liabilities, claims, or judgments resulting from, related to, or arising from the instrument, unless there is specific authority from Congress. This is because the Anti-deficiency Act provides that an officer or employee of the U. S. Government may not involve the Government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law. Indemnifications are a promise to pay out an unknown amount of funds at some time in the future, and are, therefore, a violation of the Anti-deficiency Act.

7. Stewardship. The intent of Stewardship Agreements (SAs) is to accomplish resource management with a focus on restoration. Unless otherwise stated herein, all requirements for Stewardship Contracting contained in the Stewardship Contracting Handbook, FSH 2409.19, chapter 60, also apply to agreements, including bonding, financial accountability, and administration requirements.

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SA activities are carried out on National Forest System (NFS) lands and must be administered in accordance with the laws and regulations applicable to NFS lands, except where specifically exempted as authorized by law. Stewardship projects are approved to achieve land management goals identified in the applicable land and resource management plan while meeting local and rural community needs. Additionally, the projects must be designed to incorporate environmental documentation and decisions developed in accordance with National Environmental Policy Act (NEPA) requirements (FSM 1950 and FSH 1909.15).

Since there is a mutual benefit to the parties, cooperators should not make a profit on an SA. The cooperator shall document the sale of any products and if a profit is realized, the funds are either used for additional service work or paid back to the Forest Service as excess receipts. The proper use and management of stewardship agreement receipts must be assessed as a normal part of regional and forest renewable resource programs and activity reviews. When residual receipts are generated by one project, they may be used for additional services on the same project or retained for other stewardship projects.

70.5 – Definitions

In addition to the definitions found in the FSM 1580, the following definitions specifically relate to this chapter, where appropriate:

Allocable cost. A cost, as recorded on the Agreements Financial Plan (Long, Medium, and Short) forms, associated with an agreement, which in accordance with the relative benefit received by either party for the award, is treated consistently with other costs incurred for the same purpose and in like circumstances, and if it:

1. Is incurred specifically for the award;
2. Benefits both the award and other ancillary work, and the cost may be distributed in reasonable proportion to the benefits received (an example of this type of cost is a piece of equipment that is used for multiple projects); or
3. Necessary to the overall operation of the organization, although a direct relationship to any particular cost objective may not be shown.

Allowable cost. A cost, as recorded on the Agreements Financial Plan (Long, Medium, and Short) forms, associated with an agreement, which meets the criteria for authorized expenditures specific in a cost principle methodology. Generally, it meets the cost principle methodology, and is a cost the parties to an agreement intend to charge, and must be:

1. Reasonable for the performance of the award;

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2. Necessary and reasonable for proper and efficient performance and administration of the agreement;
3. Consistently treated as either a direct or indirect cost;
4. Generally, determined in accordance with generally accepted accounting principles (GAAP);
5. Net of all applicable credits (that is, less any future rebates from the purchase of goods or services);
6. Separate from a cost or from a cost-sharing/matching requirement of another Federal award or agreement, unless otherwise permitted by Federal law or regulation;
7. Adequately documented;
8. Authorized or not prohibited by Federal, State, or local laws and regulations;
9. Compliant with limits or exclusions on types or amounts of costs, as set forth in relevant Federal laws, agreement terms and conditions, or other governing regulations (examples of such costs include: entertainment, alcohol, and taxes); and,
10. Consistent with the agency's and cooperator's internal policies, regulations, and procedures that apply to both Federal awards or agreements and other cooperator activities.

Direct costs. A direct cost is any item of expense incurred by either party specifically for completion of the project and may be attributed to the specific project. Examples include labor (salary and fringe benefits), equipment, travel, supplies, and contracts.

Food and agricultural sciences. Under 7 U.S.C. 3103(8), means basic, applied, and developmental research and extension activities in the food, agricultural, renewable natural resources, forestry, and physical and social sciences, including, but not limited to activities relating to

1. Animal health, production, and well being;
2. Plant health and production;
3. Forestry, horticulture, and range management; and
4. Soil and water conservation and improvement.

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Excess receipts. Retained Receipts determined to be excess as part of the annual trust fund balance review of Stewardship Contracting receipts (SSCC). These are receipts that have not been identified to fund a specific project or transferred to another stewardship contracting or stewardship agreements project.

Indirect costs. Indirect costs are those items of expense incurred for a common objective that benefits more than the specific project under discussion and are distributed among many benefiting activities. Usually they are proposed as a percentage of direct project costs. Examples include building occupancy, equipment usage, procurement, personnel, accounting, and utilities.

In-Kind contributions. In-kind contributions are non-cash contributions that do not represent a cost to the cooperator, are not reimbursable by the Forest Service, and may only be used to satisfy cooperator matching requirements. Examples of in-kind contributions are volunteer labor and donated equipment, and materials. In-kind contributions must be valued at current market rates for the goods or services.

Mutual benefit. Reflects a relationship between the Forest Service and the cooperator when the parties have a shared interest in, contribute resources to the accomplishment of, and mutually benefit from (other than from monetary consideration), the objective of the agreement; and the agreement between the parties has aspects of both a procurement contract and cooperative agreement, as those instruments are described in Title 31, United States Code, Subtitle V, chapter 63; and meets the objective of being in the public interest.

Mutual interest. Reflects a relationship between the Forest Service and the cooperator when:

1. Each party has a need for, and an interest in, the jointly agreed upon project goals and deliverables that are expected as a direct result of an agreement;
2. The parties pool their resources to carry out the project goals and to obtain the deliverables under an agreement; and
3. With respect to interest, the parties may have diverse objectives for carrying out the project goals and for the ultimate uses of the deliverables.

Reasonable cost. A cost, as recorded on the Agreements Financial Plan (Long, Medium, and Short) forms, associated with an agreement, that, in its nature and amount, does not exceed an amount that a prudent person, under the circumstances prevailing at the time the decision was made, would incur. Other factors to consider are:

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1. Whether the cost is of a type generally recognized as ordinary and necessary for the entity's operation or agreement performance;
2. The restraints or requirements imposed by factors such as generally accepted, sound, business practices; arms-length bargaining; Federal and State laws and regulations; and the terms and conditions of the agreement;
3. Market prices or industry standard costs for similar goods and services (that is, is the cooperator offering goods or services for an amount that exceeds what is readily available in the marketplace);
4. Whether individuals concerned acted with prudence under the circumstances, considering their responsibilities to the entity; its members, employees, and clients; the public; and the government; and
5. Significant deviations from established practices of the governmental entity that might unjustifiably increase costs charged to the agreement.

Residual receipts. The receipts generated by a stewardship contract or stewardship agreement when the receipts from goods exceed the cost of services rendered. See also, FSH 2409.19, chapter 60 or FSH 6509.11k, section 54.35.

Retained receipts. The portion of residual receipts that is deposited in the Forest Service account for Stewardship Contracting (SSCC) and retained for transfer to other stewardship contracts or stewardship agreements. The transfer must be approved in advance by the regional forester. See also FSH 2409.19, sections 67.1 and 67.3, and FSH 6509.11k, section 54.35.

Stewardship credits. Credits that are earned and established when work listed in the schedule of items has been performed and accepted.

Stewardship project proposal. A written request submitted by forest and grassland supervisors to the regional forester for review and approval for proposed stewardship projects. The request for approval must include appropriate information about the proposed project, such as land management goals of the project, the total value of the project, products to be removed, the value of services to be received, the value of goods to be exchanged for services, contributed funds or work to be received, and expected residual receipts from the project.

The regional forester shall approve or disapprove the project through a formal written reply in correspondence to the forest or grassland supervisor. Only the projects and associated work activities approved by the regional forester with completed NEPA analysis are to be included in the stewardship agreement.

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Subject invention. Any invention or other intellectual property conceived or first reduced to practice under a Cooperative Research and Development agreement (CRADA) that is patentable or otherwise protectable under Title 35 of the United States Code; under 7 U.S.C. 2321, et seq.; or under the patent laws of a foreign country. Specifically not included in the definition of Subject Inventions are inventions made outside the scope of the CRADA or prior to the execution of the CRADA.

Teaching and Education. (7 U.S.C. 3103(14)) Formal classroom instruction, laboratory instruction, and practicum experience in the “food and agricultural sciences” and matters relating thereto (such as faculty development, instructional materials and equipment, and innovative teaching methodologies) conducted by colleges and universities offering baccalaureate or higher degrees.

Technical Proposal. A proposal submitted by the cooperator that addresses all land management activities within the Stewardship Project Area.

71 - AUTHORITIES BY AGREEMENT TYPE

1. Participating Agreements.

a. Cooperative Funds and Deposits Act of 1975. This authority is used when the Forest Service enters into cooperatively performed, mutually beneficial national forest projects with non-Federal parties in four specific areas:

- (1) Cooperative pollution abatement;
- (2) Cooperative manpower, job training, and development programs;
- (3) Development of publications of cooperative environmental education and forest history materials; and
- (4) Forestry protection.

b. Wyden Amendment (Watershed Restoration and Enhancement authority). Wyden based Participating Agreements are the instruments used when the Forest Service enters into cooperatively performed work related to:

- (1) The protection, restoration, and enhancement of fish and wildlife habitat, and other natural or cultural resources on public or private lands;
- (2) The reduction of risk for natural disaster where public safety is threatened; or
- (3) A combination of both.

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The agreements must provide a benefit to natural or cultural resources on national forests lands within the watershed. These agreements are referred to commonly as Wyden agreements.

c. Secure Rural School and Community Self-Determination Act of 2000. The Act allows the Forest Service to enter into contracts, grants, cooperative agreements, and partnership agreements with local governmental entities, tribal nations, individuals, non-profit and for-profits, organizations, and so forth for eligible projects that have been recommended by the Resource Advisory Committee (RAC) and approved by the Forest Service. It encourages the use of local residents to accomplish the work.

2. Challenge Cost-Share Agreements.

a. Interior and Related Appropriations Act of 1992 (Interior Appropriation). Interior Appropriation based Challenge Cost-Share Agreements are used when the Forest Service cooperatively develops, plans, and implements projects with other parties that are mutually beneficial to both parties and that enhance Forest Service activities.

b. Secure Rural School and Community Self-Determination Act of 2000. The Act allows the Forest Service to enter into contracts, grants, cooperative agreements and partnership agreements with local governmental entities, tribal nations, individuals, non-profit and for-profits, organizations, and so forth for eligible projects that have been recommended by the Resource Advisory Committee (RAC) and approved by the Forest Service. It encourages the use of local residents to accomplish the work.

3. Joint Venture Agreements. National Agricultural Research, Extension, and Teaching Policy Act of 1977. This law allows Forest Service research units to cooperatively perform projects of mutual interest with other parties in agricultural research and teaching activities.

4. International Joint Ventures. National Agricultural Research, Extension, and Teaching Policy Act of 1977. This law allows Forest Service research units to cooperatively perform projects of mutual interest with foreign parties in agricultural research and teaching activities.

5. Cost-Reimbursable Agreements. National Agricultural Research, Extension, and Teaching Policy Act of 1977. Cost-Reimbursable Agreements are used when Forest Service research units acquire goods or services, including personal services, from State cooperative institutions, or other colleges and universities, without seeking competition, to conduct agricultural research or teaching activities of mutual interest.

6. Cooperative Research and Development Agreements. Federal Technology Transfer Act of 1986. Cooperative Research and Development Agreements (CRADA) are the instruments used when the Forest Service:

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- (a) Performs research with non-Federal partners, allowing for the potential transfer or commercialization of federally-owned or originated technology;
- (b) Agrees to a nondisclosure of a cooperator's proprietary information (Non Disclosure Agreements, NDA); or,
- (c) Agrees to formally transfer research material through Material Transfer Agreements (MTAs).

7. Stewardship Agreements. Section 323 of Public Law 108-7 (16 U.S.C. 2104 Note, as revised February 28, 2003, to reflect sec. 323 of J.J. Res. 2 as enrolled), the Consolidated Appropriations Resolution, 2003, amending Public Law 105-277, sec. 323. Stewardship Agreements are the instruments used to work with a cooperator to perform services to achieve land management goals on National Forest System (NFS) lands that meet local and rural community needs. Activities under a Stewardship Agreement may include the exchange of goods (forest products) for services.

72 - AUTHORITIES AND THEIR GENERAL REQUIREMENTS

72.1 - Cooperative Funds and Deposits Act of December 12, 1975, Pub. L. 94-148, As Amended By Appropriation Language

72.11 - General Requirements

1. Purpose. This authority is used when the Forest Service enters into cooperatively performed, mutually beneficial Forest Service projects with non-Federal parties in four specific areas: cooperative pollution abatement; cooperative manpower, job training, and development programs; development of publications of cooperative environmental education and forest history materials; and forestry protection.

a. Cooperative pollution abatement.

This section of the Act authorizes the Forest Service and the cooperator to cooperatively construct, operate, and maintain certain facilities relating to pollution abatement such as sanitary landfills, garbage burn plants, recycling facilities, and water and sewer systems. Cooperator facilities may be constructed on National Forest System lands under a special use permit or easement, or on the cooperator's land. In either case, specify in the agreement that title to the facility vests in the cooperator and that the Forest Service has the right to use the facility. The agreement may also include pre-construction work such as engineering studies and design.

Under this authority, the Forest Service must ensure that all agreements include requirements that facilities must be constructed and operated in compliance with applicable environmental laws, regulations, and orders.

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b. Cooperative Manpower, Job training, and Development programs.

This section of the Act authorizes the Forest Service to cooperate with other parties to do projects benefiting Forest Service programs where the primary purpose is to provide a work environment, that is, to host another entity's trainees in order to accomplish the goals of their existing manpower and job training programs. The use of this section is appropriate only where the other party has a specific job training program currently in place and the parties to the agreement share in costs. Ensure that the cooperator contributes all or a portion of their administrative expenses, and trainee and supervisor salary and benefits. The other party should provide direct supervision to the trainees with the Forest Service retaining oversight of the project. In addition to sharing the costs of salary and benefits, the parties may contribute other costs such as materials, equipment, lodging, and so forth.

This section of the Act further requires that there be a mutual interest and that the Forest Service hosts the other party's program, in other words, the Forest Service may not use the Act to solely enhance Forest Service employment or recruitment programs.

(1) Forest Service Mutual Interest. Ensure that the mutual interest criterion is met for the Forest Service by getting work accomplished that benefits the public lands and supporting an existing job training/development program.

(2) Cooperator Mutual Interest. The mutual interest criterion is met for the cooperator by obtaining meaningful on-the-job work experience for the trainees.

If another entity, such as an institute of higher learning, a public or private employment agency, tribal organization, State, county, or other local job training/development department has an existing manpower and/or job training/development program for which the Forest Service may provide appropriate projects and oversight, the groundwork for a proper agreement is present.

c. Development of publications of cooperative environmental education and forest history materials.

This section of the Act authorizes the Forest Service to cooperate with outside entities, including interpretative associations (see FSM 2390 for more information on interpretative associations), in the development, distribution, and publication of environmental education and forest history materials, including books, pamphlets, brochures, computer programs, interpretative signs, audiovisual productions, and maps. Maps must specifically promote environmental education or forest history. See FSM 7140 for more information on map sales.

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d. Forestry protection.

This section of the Act authorizes the Forest Service to cooperate with other parties to accomplish forestry protection activities.

2. Cooperators. The agreement may be with any non-Federal cooperator.
3. Mutual Interest/Mutual Benefit. The Forest Service and cooperator shall share mutual interests and mutual benefits. Both elements must be present.
4. Funding/Contributions. The Forest Service may provide its share of the costs from any funds that are otherwise available for carrying out the purposes of the agreement. In all instances, the Forest Service and the cooperator(s) shall contribute resources to perform the work. The cooperator's contributions may include cash, real or personal property, services, and/or in-kind contributions, such as volunteer labor. The cooperator may not use funds from other Federal agencies for its contribution to the Forest Service unless specifically provided by the Federal statute authorizing these funds. The cooperator should itemize funding from other Federal agencies in the financial plan.
5. Matching Contributions. There is no set formula for determining the amount each party contributes, though cooperator contributions should always be calculated and commensurate with benefits gained. The less the cooperator's direct contribution, the more likely the activity should be accomplished through procurement or personnel procedures. Contributions should be negotiated for each agreement on its own merits; attempt to negotiate a dollar-for-dollar match from the cooperator. The cooperator's contribution should not be less than 20 percent. The cooperator may satisfy the matching requirement by providing cash, real or personal property, services, and/or in-kind contributions, such as volunteer labor. As a general rule, if the cooperator's only contribution is indirect costs, then the contribution is extremely weak and should not qualify for a Participating Agreement (PA).

Any subsequent modification(s) should maintain the cooperator's previously negotiated match.
6. Advance and Reimbursable Payments. The Forest Service may provide reimbursable or advance payments to its cooperators. Cooperator cash advances are limited to the minimum amount needed to perform anticipated activities or no more than is needed for a 30-day period, whichever is less. The timing and amount of cash advances should be kept as close as is administratively feasible to the actual disbursements by the cooperator for direct program costs and proportionate share of any allowable indirect costs.

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7. Applicability of Contracting. Under this Act, those regulations governing Federal assistance and the Federal Acquisition Regulations (FAR) do not apply when the cooperator performs work with its own resources. Note: This authority must not be used to acquire equipment. When a cooperator contributes funds for a portion of the contract, then the resulting contract must be based on a competitive process, and:

- a. Applicability of FAR. If the cooperator's contribution is cash and the Forest Service procures the services or supplies using those funds, the FAR applies.
- b. Cooperator Contracts. When the work is not jointly performed and the cooperator contemplates contracting all or part of the work, the cooperator must provide a substantial cash contribution toward the cost of the contract.
- c. Applicability of Federal Wage Requirements. When the cooperator awards the contract and Federal funding is contributed, Federal wage provisions may apply. If Federal funding is used on a construction contract that exceeds \$2,000, then Davis-Bacon wage rates apply. If Federal funding is used for a service contract over \$2,500, then Service Contract Act applies.

8. Employee Status. Cooperators and their employees may be considered Federal employees for the purposes of tort and worker's compensation, only when the Forest Service supervises their work.

9. Equipment. When the Forest Service intends to provide equipment for the cooperator's use, it is preferable to use Government furnished property. The loan of equipment is documented on the appropriate Property form and returned to the Forest Service upon completion of the project. The Forest Service shall retain title to any equipment purchased under an agreement using Federal funds, but may choose to transfer the equipment to the cooperator on completion of the project. The transfer must be accomplished through the Property system. The appropriate provisions from chapter 90 must be included in the agreement to document any equipment loan or purchase.

10. Conferences. The Forest Service is authorized to enter into agreements to develop conferences jointly where (all of the following elements are required):

- a. The theme of the conference relates to environmental education, forest history, or other natural resource activities;
- b. An objective of the conference is to disseminate and share information to the public, for example through a publication of the meeting proceeding for professional papers; and

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- c. The Forest Service pays for only allowable actual expenditures, reduced by cooperator program income (such as, from conference registration fees), if any.

11. Publications, Audiovisual, and Electronic Media Productions.

- a. Publications. The Forest Service is authorized under the Act to cooperatively develop publications, audiovisual productions, and electronic media relating to environmental education and forest history.

In any agreement for a publication, determine ownership of the work first. Where the Forest Service and/or other Federal agencies contribute at least 50 percent of the total costs, including in-kind contributions, to develop a publication to camera-ready copy, the work is owned by the Forest Service (Federal Government).

- b. Audiovisual Productions. Audiovisual productions require specific approval and contracting procedures depending upon the determination of ownership of the production. Determination of ownership is based on the partys' contributions to the production.

(1) Productions Owned by the Federal Government. Where the Forest Service and/or other Federal agencies contribute at least 50 percent of the total costs, including in-kind contributions, to develop an audiovisual production, it is owned by the Forest Service (Federal Government).

Audiovisual productions that are determined to be owned by the Forest Service are subject to U.S. Department of Agriculture (USDA) approvals. Forest Service audiovisual productions concerning issues that are strictly regional in nature are permitted without USDA approval. (USDA Departmental Regulation 1490-001)

(2) Productions Owned by Cooperators. Audiovisual productions that are determined to be owned by the cooperator are not subject to USDA approvals and the governmentwide audiovisual contracting system. Obtain a copy of the cooperator's video production and retain the right to duplicate the video for Government purposes. Follow Government procurement procedures for duplicating videos used for Government purposes.

- c. Electronic Media. Use of electronic media is permissible. See FSH 1600, Information Services for requirements.

12. Printing. The Cooperative Funds and Deposits Act does not provide an exemption from the requirements of Title 44, United States Code, section 501, government printing, binding, and blank-book work to be done at the Government Printing Office (GPO), or Office of Management and Budget (OMB) governmentwide audiovisual contracting

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procedures. While some flexibility is permissible as specified in paragraphs a-c, in no case shall the Forest Service authorize the development and publication of documents or the production of videos that could be sold and distributed for profit by the cooperator or its designee.

a. Forest Service Publications. Ensure that publications determined to be owned by the Forest Service are printed by the GPO. The use of an agreement does not preclude the need for GPO, USDA, and/or Office of Communications printing and format approvals, or the use of GPO formats when the document should be printed at the GPO. It is inappropriate for Forest Service employees to assume full responsibility for development of publications and transfer only the printing and distribution to a cooperator.

b. Cooperator Publications. Where the publication is determined to be owned by the cooperator (that is, the cooperator contributes more than 50 percent of the total costs of development), there are three possibilities for printing the document:

(1) If the total cost of printing the publication is paid with Forest Service funds and/or other Federal funds, the publication must be printed through GPO.

(2) If the total cost of printing the publication is paid with cooperator funds, apart from any other Federal contributions the cooperator may have solicited, and the cooperator wants to obtain printing services, it may do so. However, encourage the cooperator to select a printer through competitive procedures. Domestic commercial printers selected must not subcontract the work to foreign entities.

(3) When joint funding is used for the printing of a publication, the following parameters apply:

(a) If the cooperator funds 50 percent or more of the total printing costs, it may use in-house printing capability (using its own employees, and not a printing/publishing company on retainer) or a commercial printer selected through competitive procedures. Domestic commercial printers shall not subcontract the work to foreign entities.

(b) If the cooperator funds less than 50 percent of the total printing costs, the publication must be printed through the GPO, unless the Forest Service makes alternative arrangements with GPO.

13. Copyrights. Agreements involving publications and audiovisual productions may permit the cooperator to copyright material they created. However, materials produced by Federal employees as part of their official duties are in the public domain and may not be copyrighted. Cooperators should be made aware of this legal requirement ahead of time.

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14. Forest Service Insignia. The Forest Service insignia may appear on cooperator publications and videos. However, its use is only permissible when the publication/video acknowledges the Forest Service's cooperation in the effort and such acknowledgement is included in a non-conspicuous place so that the product is clearly depicted as cooperator owned; for example, on the inside cover. Additionally, the use of the Forest Service insignia must be coordinated with the Office of Communications. Cooperator acknowledgement is permissible in Government publications and videos. However, ensure that Government publications and videos clearly appear to have Forest Service ownership.

72.12 - Type of Work

The Cooperative Funds and Deposits Act of December 12, 1975 authorizes the Forest Service to enter into agreements for projects that accomplish the following:

1. Cooperative pollution abatement. As an example, the Forest Service may cooperate with a local government and make a contribution to the construction, operation, and maintenance of the facility based upon the quantity of service furnished directly to the Forest Service.
2. Cooperative Manpower, Job training, and Development programs. For example, the Forest Service may work jointly with a minimum-security State controlled prison, where the Forest Service (using NFS funds) and the prison inmates create wildlife openings. The Forest Service provides technical direction to prison supervisors, tools, and equipment. The prison provides supervisors and trainees to perform brushing labor. Both parties benefit from this partnership as the trainees are receiving work experience, and the Forest Service is managing the ecosystem.
3. Development of publications of cooperative environmental education and forest history materials. For example, the Forest Service may work jointly with a local watershed organization, where the Forest Service (using NFS funds) and the organization plan and produce a conference. Both parties significantly contribute to an agenda, provide speakers, and so forth, that leads to the development of educational materials, expanding the understanding of watershed issues.
4. Forestry protection.
 - a. Permitted Activities. Forestry protection work includes:
 - (1) Fire prevention.

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(2) Fuels management defined as understory reduction (thinning and pruning), debris removal (snags, logs, and down timber and brush), treatment of fuels (to reduce flammability), rearrangement of fuels (on-site), and conversion of fuels (less flammable replacement).

(3) Insect and disease control, endangered species protection, noxious weed control, and animal control to protect endangered areas.

(4) Tree planting and seeding.

(5) Erosion control.

(6) Reclamation of abandoned mines.

(7) Land restoration (abandoned facilities, dams, roads, and permit sites).

(8) Hazardous material identification (pre-CERCLA assessment with States to determine if hazardous materials exist on Forest Service lands).

(9) Water testing and protection.

(10) Air pollution abatement.

b. Prohibited Activities. This section of the Act must not be used to accomplish operation and maintenance projects, such as:

(1) Road and trail construction/reconstruction, operation, and maintenance.

(2) Recreation site and facility operation and maintenance.

(3) Fishery and wildlife operation, maintenance, and improvement.

(4) Range operation, maintenance, and improvement.

(5) Work in a non-forest environment (warehouses, shops, and offices).

72.13 - Form of Agreement

See section 79 for sample Participating Agreements.

Follow the direction described in section 14.3 and use FS-1500-16, Participating Agreement, for this authority.

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72.2 - Wyden Amendment

72.21 - General Requirements

1. Purpose. Wyden based Participating Agreements are the instruments used when the Forest Service enters into cooperatively performed work related to:

- a. The protection, restoration, and enhancement of fish and wildlife habitat, and other natural or cultural resources on public or private lands;
- b. The reduction of risk for natural disaster where public safety is threatened; or
- c. A combination of both.

All agreements citing this authority must provide a benefit to natural or cultural resources on national forests lands within the watershed.

2. Cooperators. Agreements for watershed restoration and enhancement may be awarded either:

- a. Directly with a willing landowner, or
- b. Indirectly through an agreement with a State, local, or tribal government or other public entity, educational institution, or private nonprofit organization.

3. Mutual Benefit. Mutual benefit is required.

4. Funding/Contributions. The Forest Service may provide its share of the costs from any funds that are otherwise available for carrying out the purposes of the agreement. For example, a unit must have wildlife funds to complete a wildlife project, fire funds for a fire project, and so forth.

In all instances, the Forest Service and the cooperator(s) shall contribute resources to perform the work, share mutual interests, and benefit in the same qualitative way. The cooperator's contributions may include cash, real or personal property, services, and/or in-kind contributions, such as volunteer labor. The cooperator may not use funds from other Federal agencies for its contribution to the Forest Service unless specifically provided by the Federal statute authorizing those funds. The cooperator should itemize funding from other Federal agencies in the financial plan.

5. Matching Contributions. There is no set formula for determining the amount each party contributes, though cooperator contributions should always be calculated and commensurate with benefits gained. There is no minimum matching requirement.

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The cooperator may provide cash, real or personal property, services, and/or in-kind contributions, such as volunteer labor as a match.

6. Advance and Reimbursable Payments. The Forest Service may provide reimbursable or advance payments for watershed restoration or enhancement. Cooperator cash advances are limited to the minimum amount needed to perform anticipated activities or no more than is needed for a 30-day period, whichever is less. The timing and amount of cash advances should be kept as close as is administratively feasible to the actual disbursements by the cooperator for direct program costs and proportionate share of any allowable indirect costs.

7. Applicability of Contracting. The Forest Service may procure goods and services on behalf of the cooperator. Any contract awarded is subject to Federal Acquisition Regulations. For example, there may be situations where the cooperator is an absentee landowner and prefers that the Forest Service procure the needed services for restoration work. For procurements, contact a Forest Service contracting officer for guidance.

8. Employee Status. This authority does not provide conveyance of Federal employee status towards cooperator's employees and, therefore, does not provide tort and worker's compensation coverage under such circumstances.

9. Equipment. When the Forest Service intends to provide equipment for the cooperator's use, it is preferable to use Government furnished property. The loan of equipment is documented on the appropriate Property form and returned to the Forest Service upon completion of the project. The Forest Service shall retain title to any equipment purchased under an agreement using Federal funds, but may choose to transfer the equipment to the cooperator on completion of the project. The transfer must be accomplished through the Property system. The appropriate provisions from chapter 90 must be included in the agreement to document any equipment loan or purchase.

10. Publications, Audiovisual, and Electronic Media Productions. If these activities are contemplated, then both Wyden and the Cooperative Funds and Deposits Act should be cited, meeting the requirements for both authorities.

11. Printing. If these activities are contemplated, then both Wyden and the Cooperative Funds and Deposits Act should be cited, meeting the requirements for both authorities.

12. Copyright. If these activities are contemplated, then both Wyden and the Cooperative Funds and Deposits Act should be cited, meeting the requirements for both authorities.

13. Additional requirements:

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- a. Projects must comply with all applicable Federal, State, and local laws and regulations, policies, and requirements; for example, NEPA, Clean Water Act, Endangered Species Act, and so forth.
- b. Ensure that any expenditure pursuant to the agreement is determined to be in the public interest.
- c. Property improvements to cooperator lands may become the property of the cooperator. Maintenance should be addressed in the agreement. Typically, maintenance is the responsibility of the landowner.

72.22 - Type of Work

The Wyden Amendment authorizes the Forest Service to enter into agreements for projects that accomplish the following:

1. Protect, restore, and enhance fish and wildlife habitat, and other resources on public or private land that benefits these resources within the respective watershed. “Other resources” means natural and cultural resources, not economic or social resources;
2. Improve the viability of and otherwise benefit the fish, wildlife, and other natural or cultural resources on national forests lands within the watershed; and/or
3. Authorize the provision of technical assistance in the planning of management activities that further the purposes of the agreement.

Examples of permissible work include (but are not limited to):

1. Working with a non-profit organization to repair or replace road culverts on private lands that have been identified as negatively affecting watershed on National Forest System (NFS) lands.
2. Working with a private landowner for stream bank stabilization in areas that are negatively affecting fish habitat on NFS lands.
3. Cooperating with a local non-profit to complete a watershed-wide assessment.
4. Coordinating efforts with a State, county, or local government to treat an entire area for fuel reduction and/or noxious weeds, thereby benefiting the watershed.

72.23 - Form of Agreement

See section 79 for sample Participating Agreements.

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Follow the direction described in section 14.3 and use FS-1500-16, Participating Agreement, for this authority.

Additionally, each agreement must provide the following:

1. Such terms and conditions that are mutually agreed to by the Forest Service and the landowner, State or local government, tribal government, or private or nonprofit entity, as well as the terms and conditions required by the agreement type used;
2. Other terms and conditions that are necessary to protect the public investment on non-Federal lands, provided such terms and conditions are mutually agreed to by the Forest Service and other landowners, and tribal, State, and local governments.

72.3 - Interior and Related Appropriations Act of 1992 (Challenge Cost-share)

72.31 - General Requirements

1. Purpose. Challenge Cost-share Agreements (CS) are the instruments used when the Forest Service cooperatively develops, plans, and implements projects with other parties that are mutually beneficial to the parties and that enhance Forest Service activities.
2. Cooperators. The Forest Service may enter into agreements with public and private agencies, organizations, institutions, and individuals.
3. Mutual Interest/Mutual Benefit. The Forest Service and the cooperator(s) shall share mutual interests and benefit in the same qualitative way from the objective of the agreement.
4. Funding/Contributions. The Forest Service and cooperators shall contribute resources to perform the work, share a mutual interest, and benefit in the same qualitative way. All appropriations available to accomplish Forest Service activities may be used. The cooperator's contributions may include cash, real or personal property, services, and/or in-kind contributions, such as volunteer labor. The cooperator may not use funds from other Federal agencies for its contribution to the Forest Service unless specifically provided by the Federal statute authorizing these funds.

The cooperator should itemize funding from other Federal agencies in the financial plan. Appropriated funds may not be used for permanent improvements to private property unless specifically authorized by law (FSM 6511.18c).

5. Matching Contributions. There is no set formula for determining the amount each party contributes, though cooperator contributions should always be calculated and commensurate with benefits gained. The less the cooperator's direct contribution, the more likely the activity should be accomplished through procurement or personnel

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procedures. Contributions should be negotiated for each agreement on its own merits, attempt to negotiate a dollar-for-dollar match from the cooperator. The cooperator's contribution should not be less than 20 percent. The cooperator may satisfy the matching requirement by providing cash, real or personal property, services, and/or in-kind contributions, such as volunteer labor. As a general rule, if the cooperator's only contribution is indirect costs, then the contribution is extremely weak and should not qualify for a Challenge Cost-share (CS).

Any subsequent modification(s) should maintain the cooperator's previously negotiated match.

6. Advance and Reimbursable Payments. Only reimbursable payments are allowed. Advance payments are not permitted.

7. Applicability of Contracting. Under Challenge Cost-share authority, regulations governing Federal financial assistance, that is, grants and cooperative agreements, and the Federal Acquisition Regulations (FAR) do not apply when the cooperator performs work with its own resources. This authority must not be used to acquire equipment. When a cooperator's contributes funds for a portion of a contract, then the resulting contract must be let on a competitive basis, and:

- a. Applicability of FAR. If the cooperator's contribution is cash and the Forest Service procures the services or supplies using those funds, then the FAR applies.
- b. Cooperator Contracts. When the work is not jointly performed and the cooperator contemplates contracting all or part of the work, the cooperator shall provide a substantial cash contribution toward the cost of the contract.
- c. Applicability of Federal Wage Requirements. When the cooperator awards the contract and Federal funding is contributed, Federal wage provisions may apply. If Federal funding is used on a construction contract that exceeds \$2,000, then Davis-Bacon wage rates apply. If Federal funding is used for a service contract over \$2,500, then Service Contract Act applies.

8. Employee Status. Challenge Cost-share authority does not authorize conveyance of Federal employee status on the cooperator's employees for the purpose of tort and worker's compensation coverage. Volunteer agreements must not be used in conjunction with a CS for the sole purpose of obtaining liability coverage.

9. Equipment. When the Forest Service intends to provide equipment for the cooperator's use, it is preferable to use Government furnished property. The loan of equipment is documented on the appropriate Property form and returned to the Forest Service upon completion of the project. The Forest Service shall retain title to any

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equipment purchased under an agreement using Federal funds, but may choose to transfer the equipment to the cooperator on completion of the project. The transfer must be accomplished through the Property system. The appropriate provisions from chapter 90 of this handbook must be included in the agreement to document any equipment loan or purchase.

10. Conferences. The Forest Service is authorized to enter into CS agreements to develop conferences where (all of the following elements are required):

- a. The Forest Service takes the lead on the conference;
- b. The cooperator has an interest in the objective of the conference, assists in jointly developing the conference, and cost-shares expenses; and
- c. The objective of the conference is to benefit Forest Service activities with an identified benefit to the cooperator.

While there may be an end product, such as a publication, it is not the primary intent.

11. Publications, Audiovisual, and Electronic Media Productions.

a. Publications. Challenge Cost-share authority does not preclude the applicability of Government Printing Office regulations when Federal dollars are used for printing, regardless of whether the printing is accomplished by the cooperator by contract or in-house. The Forest Service may not authorize the development and publication of documents that intend to be sold and distributed for profit by the cooperator or its designee.

b. Audiovisual Productions. Audiovisual productions require specific approval and contracting procedures depending upon determination of ownership of the audiovisual production. Product ownership must be based on the parties' contributions to the production. Where the Forest Service and/or other Federal agencies contribute 50 percent or more of the total costs, including in-kind contributions to develop an audiovisual production, it is owned by the Federal government.

(1) Productions Owned by the Federal Government. Audiovisual productions that are owned by the Forest Service are subject to USDA approvals (see, USDA Departmental Regulation 1490-001). Forest Service audiovisual productions concerning issues that are strictly regional in nature are permitted without USDA approval.

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(2) Productions Owned by Cooperators. Cooperator audiovisual productions are not subject to USDA approvals and the Governmentwide audiovisual contracting system. However, obtain a copy of the cooperator's video production and retain the right to duplicate the video for Government purposes. Duplication of the video for Forest Service purposes shall be accomplished using Government procurement procedures.

c. Electronic Media. Use of electronic media is permissible. See FSH 1600, Information Services for requirements.

12. Printing. Challenge Cost-share authority does not preclude the applicability of Government Printing Office (GPO) regulations when Federal dollars are used for printing, regardless of whether the printing is accomplished by the cooperator, by contract, or in-house.

13. Copyrights. Agreements involving publications and audiovisual productions may permit the cooperator to copyright material they created. However, materials produced by Federal employees as part of their official duties are in the public domain and may not be copyrighted. Cooperators should be made aware of this legal requirement ahead of time.

14. Forest Service Insignia. The Forest Service insignia may appear on cooperator publications and videos, but consistent only with an acknowledgement of Forest Service cooperation in the effort and in a non-conspicuous place so product is clearly depicted as cooperator-owned; for example, on the inside cover. Use of the Forest Service insignia must be coordinated with the Office of Communications. Cooperator acknowledgement is permissible in Government publications and videos. However, ensure that Government publications and videos clearly appear to have Forest Service ownership.

72.32 - Type of Work

Examples of work permissible under Challenge Cost-share are:

1. A wildlife enhancement project completed by a non-profit organization and the Forest Service on a Forest Service site. The non-profit organization is chartered to enhance wildlife habitat for increasing wildlife populations. The non-profit organization has obtained non-Federal cash donations and agrees to use them for the purchase of materials and reimbursement of a portion of the organizations direct labor costs. The employees of each party to the agreement are meeting at the forest site to plant willows and install nesting boxes. No funding is being exchanged between the Forest Service and the non-profit organization.

2. An accessibility project jointly funded by a non-profit organization and the Forest Service at a Forest Service campground. The non-profit organization is chartered to assist physically disadvantaged persons. The Forest Service has a need to broaden

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accessibility of the site. The total cost of the project is estimated to be \$100,000, including the design work by Forest Service personnel valued at \$10,000, the fabrication by an independent contractor valued at \$80,000, and installation by the parties valued at \$10,000. The non-profit organization contributes \$47,000 of the total project costs (\$40,000 in cash to the Forest Service for contract costs and \$7,000 in labor value for installation). A collection authority is cited on the Challenge Cost-share (CS) agreement to collect the \$40,000 contribution from the non-profit organization. The remaining is contributed by the Forest Service (\$10,000 in labor for design work, \$40,000 in cash for contract costs, and \$3,000 in labor for installation). The Forest Service contracts on a competitive basis for the fabrication of the project using Government procurement procedures. After receipt of the fabricated materials, both parties meet at the site to install. (Note: under this example, when citing a collection authority in a CS, the CS must contain the appropriate Collection Agreement provisions. See chapter 90 of this handbook).

3. The Forest Service wildlife biologists in a region are planning a conference on grizzly bears. In discussions with State wildlife biologists, an interest was expressed to jointly hold the conference to facilitate information sharing and avoid duplication of efforts. The State is willing to provide conference facilities, but needs assistance to pay for some travel and out of agency speakers. The Forest Service is willing to reimburse the State for a portion of the travel and speakers, and will provide additional speakers at their expense.

72.33 - Form of Agreement

See section 79 for sample Challenge Cost-share Agreements.

Follow the direction described in section 14.3 and use FS-1500-10, Challenge Cost-share Agreement, for this authority.

72.4 - National Agricultural Research, Extension, and Teaching Policy Act of 1977

This Act authorizes the Forest Service to use:

1. Joint Venture (JV) Agreements. JVs may be entered into with any entity or individual for agricultural research activities, provided the objectives of the agreement serve the “mutual interest” of the parties. Additionally, JVs may be used with universities and colleges offering baccalaureate or higher degrees (4 year) for agricultural teaching activities, when the parties benefit in the same qualitative way from the objective of the agreement, and all parties to the agreement contribute resources to the accomplishment of those objectives (7 U.S.C. 3318(b)). Competition for these awards is discretionary.

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2. International Joint Venture Agreements. International JVs may be entered into with any foreign entity or individual (upon clearance from Washington Office International Programs) for agricultural research activities, provided the objectives of the agreement serve the “mutual interest” of the parties. International JVs may also be used with universities and colleges offering baccalaureate or higher degrees (4 year) for agricultural teaching activities, when the parties benefit in the same qualitative way from the objective of the agreement, and all parties to the agreement contribute resources to the accomplishment of those objectives (7 U.S.C. 3318(b)). Competition for these awards is discretionary.

3. Cost Reimbursable Agreements. Title 7, United States Code, section 3319a of the Act authorizes the Forest Service to procure certain goods or services through a cost reimbursable agreement with State cooperative institutions, colleges and/or universities, to conduct agricultural research, or teaching activities of mutual interest.

The National Agricultural Research, Extension, and Teaching Policy Act of 1977 specifically includes extension services; however, because the Forest Service does not provide extension services the term “extension” has been omitted from these directives, except from the Act’s title.

72.41 - General Requirements for Joint Venture Agreements

1. Purpose. Use of this authority is limited to agricultural research and teaching activities (FSM 1580.12). Teaching activities include formal classroom instruction, laboratory instruction, and matters related thereto (for example, faculty and curriculum development, instructional materials and equipment, and innovative teaching methodologies). Such awards may be used to assist in the development of renewable natural resources and forestry curriculum at universities and colleges for the benefit of attending students as well as for training for Government employees. The Forest Service shall not enter into JVs solely for the purpose of a Forest Service employee continuing education.

2. Cooperators. The Forest Service may enter into these agreements with any entity or individual performing research activities. However, the Forest Service may only partner with universities and colleges offering baccalaureate or higher degrees (4 year) for teaching activities.

3. Mutual Interest/Mutual Benefit. The Forest Service and its cooperator(s) shall share mutual interests and benefit in the same qualitative way from the objective of the agreement.

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4. Funding/Contributions. The JV may be used to further teaching activities using any appropriated funds (including State and Private Forestry, Research and Development, and National Forest System) available. Research related activities require funds specifically appropriated for Research and Development.

5. Matching Contributions. Under the statute, all parties to the JV shall contribute at least 20 percent of the estimated total cost of the research, or teaching activity to be performed under the agreement. Cost-sharing may vary from project to project based on the benefits each party expects to receive from the research or teaching activity.

The Forest Service should make every attempt during negotiations to ensure that the cooperator's contribution exceeds the 20 percent minimum. Cooperator's indirect costs may be used to satisfy cost sharing requirements. However, if the cooperator's only contribution is indirect, a determination must be made to ensure that a JV is the best instrument rather than a cost-reimbursable agreement or a procurement action by a contracting officer.

Each JV must be negotiated on its own merits. The key is that the cooperator's contribution must be commensurate with benefits gained. The less the cooperator's contribution, the more likely the activity will have to be accomplished through procurement or personnel procedures. The cooperator may not use funds from other Federal agencies for its contribution to the Forest Service unless specifically provided by the Federal statute authorizing these funds. The most beneficial arrangement is for each party to provide materials, equipment, or labor at their own expense without reimbursement by another party.

6. Advance and Reimbursable Payments. Reimbursable payments are encouraged; however, no indirect costs must be reimbursed in JVs with State cooperative institutions (FSM 6511.18a). Advance payments are permitted; however, the cooperator shall justify the need for advance payments. Advances should be limited to the minimum amount needed or no more than is needed for a 30-day period, whichever is less.

7. Applicability of Contracting. If the cooperator performs work with its own resources, then the Federal Acquisition Regulations (FAR) does not apply. However, the Forest Service should ensure that cooperator contracts are awarded on a competitive basis. The cooperator shall follow their written procurement procedures. In the absence of written procurement procedures, the cooperator shall obtain a minimum of three price quotations.

8. Applicability of FAR. The FAR applies only when the cooperator's contribution is in cash and the Forest Service procures services or supplies using such funds.

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9. Cooperator Contracts. When the work is not jointly performed and the cooperator contemplates contracting all or part of the work, the cooperator shall provide a substantial cash contribution toward the cost of the contract.

10. Applicability of Federal Wage Requirements. When the cooperator awards the contract and Federal funding is contributed, Federal wage provisions may apply. If Federal funding is used on a construction contract that exceeds \$2,000, then Davis-Bacon wage rates apply. If Federal funding is used for a service contract over \$2,500, then Service Contract Act applies.

11. Employee Status. Federal employee status may not be granted to the cooperator's employees for the purpose of tort and workmen's compensation coverage. Volunteer agreements may not be used to provide liability coverage for the cooperator.

12. Equipment. When the Forest Service intends to provide equipment for the cooperator's use, it is preferable to use Government furnished property. The loan of equipment is documented on the appropriate Property form and returned to the Forest Service upon completion of the project. The Forest Service shall retain title to any equipment purchased under an agreement using Federal funds, but may choose to transfer the equipment to the cooperator on completion of the project. The transfer must be accomplished through the Property system. The appropriate provisions from chapter 90 of this handbook must be included in the agreement to document any equipment loan or purchase.

13. Conferences. The Forest Service is authorized to enter into JVs to develop conferences jointly where (all of the following elements are required):

- a. The theme of the conference relates to agricultural research or teaching activities, and
- b. The Forest Service pays for only allowable actual expenditures, reduced by cooperator program income.

14. Publications, Audiovisual, and Electronic Media Productions.

- a. Publications. The development and publication of documents that could be sold and distributed for profit by the cooperator or its designee must not be authorized.
- b. Audiovisual Productions. Determine ownership based on the party's contributions to the production. Where the Forest Service and/or other Federal agencies contribute at least 50 percent of the total costs, including in-kind contributions, to develop an audiovisual production, it is owned by the Forest Service (Federal Government).

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Forest Service audiovisual productions topics that are strictly regional in nature are permitted without USDA approval. Audiovisual productions that are determined to be owned by the cooperator are not subject to USDA approvals and the governmentwide audiovisual contracting system. Obtain a copy of the cooperator's video production and retain the right to duplicate the video for Government purposes. Use Government procurement procedures to duplicate the video for Forest Service purposes. See FSM 1640 for more information.

c. Electronic Media. Use of electronic media is permissible. See FSM 1600, Information Services for requirements.

15. Printing. Title 7, United States Code, section 3318b does not preclude the applicability of Government Printing Office regulations when Federal dollars are used for printing, regardless of whether the printing is accomplished by the cooperator, by contract, or in-house.

16. Copyrights. Agreements involving publications or audiovisual productions may permit the cooperator to copyright material they created, but not text, photographs, or materials created by Forest Service employees on Government time and/or composed on Government equipment. In all cases, reserve the right to reproduce the work and authorize others to use it for Government purposes.

17. Forest Service Insignia. The Forest Service insignia may appear on cooperator publications and videos, but consistent only with an acknowledgement of the Forest Service's cooperation in the effort and in a non-conspicuous place, for example, on the inside cover. Cooperator acknowledgement is permissible in Government publications and videos. However, Government publications and videos must clearly appear to have Forest Service ownership.

18. Other Requirements. Joint ventures may be initiated by either party.

72.42 - Type of Work for Joint Ventures

The following are examples of work permissible in a Joint Venture under the National Agricultural Research, Extension, and Teaching Policy Act of 1977:

1. A State cooperative institution and the Forest Service work together to determine the combustion rates of tree-sized pieces of wood. Employees from both parties are performing the research. The total cost of the project is estimated to be \$100,000. The Forest Service work, performed by in-house employees, is valued at \$20,000. The State cooperative institution work is valued at \$80,000: \$20,000 for indirect costs (which are not reimbursable by the Forest Service); \$30,000 for direct costs (which are reimbursable by the Forest Service); and a \$30,000 contribution for materials and labor.

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2. A non-profit research organization and the Forest Service cooperate to determine the commercial feasibility of wastepaper and plastic composites as they relate to office products. Employees of both parties are developing the research techniques to be used. The non-profit organization implements the study and composes a final report. The total cost of the project is estimated to be \$100,000. The Forest Service work in jointly developing the research techniques, valued at \$5,000, is performed by Forest Service employees. The work of the non-profit organization in implementing the study and composing the report, valued at \$15,000 in indirect costs and \$80,000 in direct costs is performed by in-house employees. The Forest Service reimburses the non-profit \$50,000. The non-profit's contribution is \$45,000 of the remaining direct and indirect costs.

72.43 - Form of Agreement for Joint Ventures

See section 79 for a sample Joint Venture Agreement.

Follow the direction described in section 14.3 and use FS-1500-14, Joint Venture Agreement, for this authority.

72.44 - General Requirements for International Joint Venture Agreements

Follow the general requirements under section 72.41 of this handbook for Joint Venture Agreements and procedures under this chapter and section.14.3 of this handbook except that the cooperator must be a foreign entity.

72.45 - Type of Work for International Joint Ventures

See section 79.62 for a sample International Joint Venture Agreement.

72.46 - Form of Agreement for International Joint Ventures

Use FS-1500-14A, International Joint Venture Agreement, for this authority. Ensure that all required international provisions are included in the agreement. See chapter 90 of this handbook for provisions.

72.47 - General Requirements for Cost Reimbursable Agreements

1. Purpose. Cost Reimbursable Agreements (CRs) are used by the Forest Service when the primary purpose of the agreement is to procure goods and/or services to carry out research and teaching activities from authorized cooperators without the requirement to follow the FAR.

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For example, CRs may be used to assist in the development of renewable natural resources and forestry curriculum, or the coordinating and/or conducting of a conference, workshop, or training session, if such services are otherwise provided by the State cooperative institution, or colleges or other universities, by its skilled university professionals. The benefit may be for both attending students and Government employees. However, CRs may not be used to provide for Forest Service employee continuing education. Since the services are acquired for direct Forest Service benefit and acquired from the cooperator, it is inappropriate for the cooperator to charge a fee for attendance or subcontract out the services.

The Forest Service may procure such goods and services as necessary in order to support the primary project, such as: facility maintenance services, including janitorial and landscaping; security services; telephone services; utility usage, as required in support of the project; computer time/usage; statistical reporting; liability insurance expenses; manuscript drafting services; and personnel services.

When the Forest Service procures personnel services, which have a primary project purpose of carrying out research and teaching activities, then either State cooperative institution or other college and university employees shall perform those services, that is, they must use in-house services. In-house services mean that the cooperator shall have the personnel on their payroll or contracted through professional services contracts (for example, professors). Contracted services, other than professional service contracts for professors are not considered in-house services. NOTE: State cooperative institution or other college and university may hire graduate and undergraduate students who are currently enrolled at that State cooperative institution or other college and university. The Forest Service considers these students “in-house” for the purposes outlined in this section.

Additionally, the Forest Service may not provide Government furnished property to complete projects. The Forest Service may provide work assignments, technical assistance, or scientific direction to cooperator personnel; however, supervisory and administrative responsibilities remain with the cooperator. Also, the Forest Service shall not intervene in cooperator personnel matters, such as leave, vacation benefits, holiday pay, inclement weather dismissals, or salary increases.

Examples of the services that may be procured include, but are not limited to, the following: laboratory technicians and aides; wage-grade support help; support professionals, who do not perform original research; professors; graduate and undergraduate students, paid an hourly wage (inclusive or exclusive of fringe benefits); data entry or clerk typists; and seasonal and intermittent workers.

The Forest Service may not procure the following goods: real property, equipment, capital improvements.

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The Forest Service may not procure the following services: architectural and engineering; construction; printing and binding; alteration of property; acquisition; use or disposition of real property; visiting or foreign scientists; the temporary hire of acquisition, budget/finance, or property personnel; or temporary hire of administrative officers, and clerical, secretarial, or receptionist providing direct support to Forest Service personnel.

2. Cooperators. The Forest Service may enter into CRs with State cooperative institutions or other colleges and universities. However, the Forest Service may only cooperate with universities and colleges offering baccalaureate or higher degrees (4 year) for teaching activities.

3. Mutual Interest/Mutual Benefit. Forest Service and cooperators shall share mutual interests; although, they may not benefit in the same qualitative way. If there is no mutual interest, then the transaction is likely a procurement under the Federal Acquisition Regulations (Note: circumventing the FAR is not permitted).

4. Funding/Contributions. Research activities require Research and Development appropriated funds. However, teaching activities may be funded by any appropriated funds, as long as the teaching activities benefit the program area. Teaching activities may include formal classroom instruction, laboratory instruction, and matters related thereto, such as faculty and curriculum development, instructional materials and equipment, and innovative teaching methodologies.

5. Matching Contributions. Matching funds are not required.

6. Advance and Reimbursable Payments. Advance payments are prohibited. Only reimbursable payments are permitted in CRs.

7. Employee Status. The Forest Service may not authorize conveyance of Federal employee status as part of a CR for the specific purpose of providing liability insurance coverage. Further, volunteer agreements (along with the CR) must not be used specifically to convey Federal employee status on the cooperator's employees for the purpose of liability insurance coverage.

8. Publications, Audiovisual, and Electronic Media Productions.

a. Publications. The Forest Service may acquire the development of publications as part of a CR.

b. Audiovisual. Audiovisual productions must be obtained using the Office of Management and Budget Governmentwide audiovisual contracting procedures. See FSM 1640 for more information.

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- c. Electronic Media Productions. Use of electronic media is permissible. See FSM 1600, Information Services for requirements.
9. Printing. No exemption is authorized from the requirements of Title 44, United States Code, section 501; therefore, Government printing, binding, and blank-bookwork must be done at the Government Printing Office.
10. Copyrights. Forest Service copyrights may not be conveyed to the cooperator under a CR.
11. Other Requirements.
- a. When mutual interests exist, then the Federal Acquisition Regulations do not apply.
 - b. Cooperator indirect costs must not exceed 10 percent of direct costs.
 - c. Acceptance of gifts is not authorized under the Act.

72.48 - Type of Work for Cost Reimbursable

The following is an example of work permissible under the Act:

The Forest Service has a need to determine the effect of fiber fractionation on the ability to recycle pulp from wastepaper. A university currently employs three college professors with a wide variety of experience in this type of research. The total cost of the project is estimated to be \$140,000; \$100,000 in direct costs (which is reimbursed by the Forest Service) and \$40,000 in indirect costs (\$10,000 of which is reimbursed by the Forest Service). The Forest Service receives an original and four copies of the final report, plus copies of all back-up research data gathered.

72.49 - Form of Agreement for Cost Reimbursable

See section 79.7 for a sample Cost Reimbursable Agreement.

Follow the direction described in section 14.3 and use FS-1500-12, Cost Reimbursable Agreement, for this authority.

72.5 - Federal Technology Transfer Act of 1986

72.51 - General Requirements

1. Purpose. The purpose of Cooperative Research and Development Agreement (RD or CRADA) is to pool private and public resources in support of scientific research and development of mutual interests that are transformed into commercially viable products

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and services. In pooling resources, the Forest Service may provide personnel, services, facilities, equipment, or other resources with or without reimbursement from the cooperator.

In addition, there are other two types of CRADA relationships:

- a. For nondisclosure of proprietary information (through a non-traditional type of CRADA), or
- b. Material Transfer Agreements (MTA) (for incoming or outgoing materials). This nondisclosure agreement may be used as a precursor to a traditional CRADA; whereby, the parties document research projects that involve the use of confidential information. The MTA allows for the formal transfer of materials, usually for further research, testing, and analysis; determines which cooperator takes possession of the material; describes the type of testing/research/analysis to be accomplished; and provides a date for when the materials are to be returned.

Also, the MTA should require the cooperator to:

- (1) Share any testing results with the Forest Service,
- (2) Abide by confidentiality, if applicable,
- (3) Seek approval before transferring the material to another party,
- (4) Seek approval before publicizing any information derived from this material,
- (5) Meet with USDA patent representatives, if an invention should arise, based on the testing and research done, and
- (6) Acknowledge the Forest Service's contribution.

2. Cooperators. The agreement may be between one or more Federal laboratories and one or more non-Federal parties, such as State and local governments, an educational institution, or the private sector. Special attention must be given to small, domestic businesses when entering into any arrangements under this Act.

3. Mutual Interest/Mutual Benefit. The Forest Service and its cooperators shall share mutual interests; although, they may not benefit in the same qualitative way.

4. Funding/Contributions. This Act does not authorize transfer of funding by the Forest Service to non-Federal parties. The non-Federal parties may provide funds, personnel, services, facilities, equipment, or other resources toward the conduct of specified research and development projects that are consistent with the mission of the Forest Service.

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Additionally, the Forest Service may not accept gifts under this Act. Many CRADAs involve no transfer of funds to the Forest Service.

5. Matching Contributions. There is no matching requirement under this Act.
6. Advance and Reimbursable Payments. Forest Service payments are not permitted.
7. Employee Status. Federal employee status may not be conveyed on the cooperators employees for the purpose of liability insurance coverage. It is inappropriate to issue volunteer agreements specifically to convey Federal employee status on the cooperator's employees for the purpose of liability insurance coverage.
8. Equipment. When the Forest Service provides or purchases equipment to provide to the cooperator, such equipment and its title should be retained as Government furnished property. Further, such equipment should be returned to the Forest Service upon completion of the project.
9. Publications. Subject to the requirements of confidentiality and preservation of rights in Subject Inventions, either party may publish research results provided that the manuscript is reviewed by the other party prior to publishing, and the publication acknowledges the agreement and the contributions of each party's personnel. However, the final decision on content rests with the party that authors the publication. Publication and/or other disclosure of the research results must be delayed as necessary to preserve both United States of America and foreign patent rights in a Subject Invention; however, such a delay will only be granted if requested in writing; and the requesting party demonstrates promptness and diligence in seeking patent protection on the Subject Invention. Specifically, the agreement should state that the Forest Service reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, any cooperator's published work resulting from this cooperative project for Government purposes.
10. Other Requirements.
 - a. The Forest Service, where appropriate, may transfer federally-owned or originated technology to cooperators.
 - b. The Act gives commercial cooperators a right of first refusal to commercialize or use Government technology on an exclusive or nonexclusive basis; however, a license is only issued once the cooperator may substantiate that it will be able to transfer that technology to the marketplace by submitting a plan for development or marketing (that is, a business plan).

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- c. The cooperator must obtain a nonexclusive, irrevocable, royalty-free right to use any invention or to have the invention used on behalf of the Federal Government and on behalf of any foreign government or international organization pursuant to any existing or future treaty or international agreement with the United States.
- d. The Act allows both inventor(s) and their laboratories to receive patent income payments under any license for a patented invention. U.S. Department of Agriculture (USDA) Agricultural Research Service (ARS) is the designated lead agency within USDA for patents and licensing, but to date, ARS has allowed the Forest Service to manage their own patent portfolio and to negotiate and prepare patent licenses for execution.
- e. The Forest Service inventor(s) shall receive a minimum of 25 percent of patent income paid to the Forest Service in a calendar year.
- f. Competition is discretionary. However, advertisement in the Federal Register or in trade journals is preferred prior to negotiation of any arrangement in order to preclude conflicts of interest and to obtain the maximum disclosure of commercialization opportunities. Notice of these opportunities may not be advertised in the Commerce Business Daily, as they are not procurement transactions.
- g. The cooperative project must have public benefit.

72.52 - Type of Work

See the following examples of work permissible under the Act:

1. A cooperator is interested in determining whether enzymatic ink removal methods are viable for removing non-contact inks. The research is performed in a Forest Service research laboratory in conjunction with a non-Federal entity. The non-Federal entity is reimbursing the Forest Service for 70 percent of the Forest Service's expenses. The goal is for the non-Federal entity to commercially market the product. A patent license is granted to the non-Federal entity providing a 20 percent royalty to the Forest Service based on product sales. A minimum of 25 percent of the total royalty, up to \$100,000 per year, must be granted to the Forest Service inventor. The Forest Service retains a non-exclusive, irrevocable, royalty-free right to use the invention.
2. A State agency, non-Federal entity, and the Forest Products Laboratory are interested in developing a wood treatment process to enhance the physical performance of wood flooring. The research is performed in a non-Federal entity's laboratory. State and Forest Products Laboratory personnel are detailed to the non-Federal entity's facility and

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reimbursed by the non-Federal entity. The product is sold commercially. A patent license is granted to the non-Federal entity providing a 15 percent royalty to the Forest Products Laboratory and a 15 percent royalty to the State agency based on product sales. The Forest Service retains the non-exclusive, irrevocable, royalty-free right to use the invention.

72.53 - Form of Agreement

See section 79.8 for sample agreements.

Follow the direction described in section 14.3 and use FS-1500-13, Cooperative Research and Development Agreement, FS-1500-13a, Material Transfer Agreement, or FS-1500-13b, Non-Disclosure Agreement for this authority.

72.6 - Stewardship End-Results Contracting (Stewardship Agreement).

Section 323 of Public Law 108-7 (16 U.S.C. 2104 Note, as revised February 28, 2003, to reflect sec. 323 of J.J. Res. 2 as enrolled), the Consolidated Appropriations Resolution, 2003, amending Public Law 105-277.

72.61 - General Requirements

1. Purpose. The general purpose of Stewardship Agreements (SA) is to achieve land management goals for National Forest System (NFS) lands while meeting local and rural community needs. Stewardship agreements are tools that can be used to accomplish landscape restoration objectives. The development of Stewardship Agreements must be a collaborative effort between the G&A specialist, program manager, timber staff, the regional stewardship coordinator and the anticipated partner to achieve a successfully negotiated agreement and a successfully implemented program. Appropriate uses for stewardship contracts and stewardship agreements include those listed in the Stewardship Contracting Handbook, FSH 2409.19, Section 61.2, exhibit 02.
2. Cooperators. The Forest Service may enter into stewardship agreements with any entity that has the ability to either perform the work or contract it out, including Tribes and non-profit organizations.
3. Mutual Interest/Mutual Benefit. The Forest Service and the cooperator shall share mutual interests and benefit in the same qualitative way from the objective of the agreement.
4. Funding/Contributions. Stewardship related activities require funds appropriated for work on National Forest System lands. In all instances, the Forest Service and the cooperator(s) shall contribute resources to perform the work, share mutual interests, and

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benefit in the same qualitative way. The cooperator's contributions may include cash, real or personal property, services, and/or in-kind contributions, such as volunteer labor. The cooperator may not use funds from other Federal agencies for its contribution to the Forest Service unless specifically provided by the Federal statute authorizing those funds. The cooperator should itemize funding from other Federal agencies in the financial plan.

5. Matching Contributions. Under the statute, all parties to the SA must contribute to the project. Cost-sharing may vary from project to project based on the benefits each party expects to receive from the stewardship activity.

Each agreement must be negotiated on its own merits. The key is that the cooperator's contribution must be commensurate with benefits gained. The less the cooperator's contribution, the more likely the activity will have to be accomplished through procurement.

The stewardship authority in itself does not require a matching contribution; however, for the project to be defined as an agreement, the cooperator should contribute at least 20 percent of total project costs, to each SPA. Cooperator indirect costs may be counted as part of their contribution as long as there are other substantial contributions to the on-the-ground project. The regional forester must approve any SPA that does not meet the 20 percent matching contribution requirement. Without a matching contribution, the award must be made through a contract vehicle. The less the partner's contribution, the more likely the activity will have to be accomplished through procurement.

The cooperator may not use funds from other Federal agencies for its contribution unless specifically provided by the Federal statute authorizing these funds. The cooperator contribution may consist of in-kind, non-cash, or cash, or a combination thereof. Partner non-cash, third party, and in-kind contributions are not required by the first day of project implementation but must be shown as a contribution prior to project completion. The Forest Service will not reimburse the cooperator for project development costs; these costs will be reflected in the Cooperator Non-Cash column on the SA financial plan and will only count towards meeting the matching contribution requirement.

When the stewardship project proposal is approved by the regional forester and the cooperator is identified of that approval in writing (for example, correspondence, e-mail, or fax) the cooperator may begin accumulating costs to be used as their match. These costs are shown on the financial plan. Costs accrued prior to written notification, may not be used by the cooperator as a match.

When a stewardship project proposal is approved by the Forest Service and the cooperator is not identified, then the cooperator may begin accumulating costs for financial plan purposes at the time the cooperator is selected and notified in writing.

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6. Advance and Reimbursable Payments. Reimbursable payments are encouraged for Forest Service appropriated funds. Advance payments are permitted on a case-by-case basis; however, the cooperator must justify the need for advance payments. Advances should be limited to the minimum amount needed or no more than is needed for a 30-day period, whichever is less and must be liquidated before further payment may be made. Keep the timing and amount of cash advances as close as is administratively feasible to the actual disbursements by the cooperator for direct program costs and proportionate share of any allowable indirect costs.

7. Applicability of Contracting. The SPA shall document which party shall award and administer contracts under this agreement.

a. Applicability of FAR. If the cooperator's contribution is cash and the Forest Service procures the services or supplies using those funds, the FAR applies. If the cooperator performs work with their resources, then the FAR does not apply.

b. Cooperator Contracts. The Forest Service should ensure that the cooperator's contracts are awarded on a competitive basis. The cooperator must follow their written procurement procedures. In the absence of written procurement procedures, the cooperator must obtain a minimum of three price quotations.

c. Applicability of Federal Wage Requirements. When the cooperator awards the contract and Federal funding is contributed, Federal wage provisions may apply. If federal funding is used on a construction contract that exceeds \$2,000 then Davis-Bacon wage rates apply. If Federal funding is used for a service contract over \$2,500 then Service Contract Act applies.

8. Employee Status. Federal employee status may not be granted to the cooperator's employees for the purpose of tort and workmen's compensation coverage.

9. Equipment. When the Forest Service intends to provide equipment for the cooperator's use, it is preferable to use Government furnished property. The loan of equipment is documented on the appropriate Property form and returned to the Forest Service upon completion of the project. The Forest Service shall retain title to any equipment purchased under an agreement using Federal funds, but may choose to transfer the equipment to the cooperator on completion of the project. The transfer must be accomplished through the Property system. The appropriate provisions from chapter 90 of this handbook must be included in the agreement to document any equipment loan or purchase.

10. Additional requirements:

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- a. Projects must comply with all applicable Federal, State, and local laws and regulations, policies, and requirements; for example, NEPA, Clean Water Act, Endangered Species Act, and so forth; and,
- b. Ensure that any expenditure pursuant to the agreement is determined to be in the public interest.
- c. Title Passage: Scaled: All right, title, and interest in and to any included timber must remain with the Forest Service until it has been cut, scaled, and removed from the Stewardship Project Area or other authorized cutting area, and paid for, at which time title then vests with the cooperator. Timber cut under cash deposit or acceptable payment guarantee must be considered paid for. Title to any included timber that has been cut, scaled and paid for, but not removed from the project area or other authorized cutting area by the cooperator on or prior to the termination date, remains with the Forest Service.
- d. Tree Measurement. All right, title, and interest in and to any included timber must remain with the Forest Service until it has been measured, removed from the Stewardship Project Area or other authorized cutting area, and paid for, at which time title vests with the cooperator. Timber cut under cash deposit or acceptable payment guarantee must be considered paid for. Title to any included timber that has been measured and paid for, but not removed from the Stewardship Project Area or other authorized cutting area by the cooperator on or prior to the termination date, remains with the Forest Service.
- e. Advance Deposits: The cooperator agrees to make advanced deposits in advance of cutting. These deposits may be in the form of cash, acceptable payment bond, earned stewardship credit or any combination thereof. Advanced deposits must be in such amounts as to maintain an unobligated balance sufficient enough to cover the value of timber to be cut. The Forest Service and the cooperator shall agree on a systematic approach to provide sufficient advanced deposits.

72.62 – Type of Work

Stewardship End-Results Contracting (Stewardship Agreement) authorizes the Forest Service to enter into agreements for projects that accomplish the following land management goals that may include, among other things:

1. Road and trail maintenance or obliteration to restore or maintain water quality;
2. Soil productivity, habitat for wildlife and fisheries, or other resource values;
3. Setting of prescribed fires to improve the composition, structure, condition, and health of timber stands or to improve wildlife habitat;

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4. Removing vegetation or other activities to promote healthy forest stands, reduce fire hazards, or achieve other land management objectives;
5. Watershed restoration and maintenance;
6. Restoration and maintenance of wildlife and fish habitat; and
7. Control of noxious and exotic weeds and reestablishing native plant species.

72.63 - Form of Agreement

Follow the direction described in section 14.3 and use the Stewardship Agreement template available on the Washington Office G&A intranet Web site.

73 - PROCEDURES FOR INITIATING, NEGOTIATING, AND EXECUTING PARTNERSHIP AGREEMENTS

73.1 - Initiating Partnership Agreements

1. Cost-sharing agreements (Participating Agreements, Challenge Cost-shares, and Joint Venture Agreements). When approaching potential cooperators, regardless of desired agreement, it is important to discuss the goals, benefits, and need for a given project, separate and apart from funding. More than one cooperator may be approached. In these early discussions, it is important to ascertain how many cooperators may have a mutual interest in the project and who may be interested and committed towards its joint completion. If more than one interested cooperator is identified, the possibility of a competitive award process should be considered, if feasible.

Additionally, a cooperator may submit an unsolicited proposal.

Once a cooperator is identified, a discussion of contributions should follow to help build the parameters of the agreement. Contributions may include cash, services, in-kind contributions, donation of equipment, and so forth. The focus should always be on the discussion of contributions necessary for joint completion of the project, not soliciting money on behalf of the agency, which is prohibited.

2. Cooperative Research and Development Agreements and Cost-Reimbursable Agreements.

- a. Cost-Reimbursable Agreements. Generally, the Forest Service initiates discussions with State cooperative institutions or other colleges and universities, but either party may initiate it. The initial discussions should focus on whether the State cooperative institution, college, or university is capable of and interested in performing the work. The Forest Service does not violate any laws against solicitation when it initiates discussions.

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b. Cooperative Research and Development Agreements. The Forest Service often initiates contact with a potential cooperator; however, either party may initiate it. Restrictions on the solicitation of contributions from interested parties do not apply.

The Forest Service shall avoid the appearance of conflict of interest or preferential treatment to interested parties when entering into CRADAs. Additionally, the Forest Service shall exercise caution when entering into separate CRADAs with different cooperators for similar research.

3. Stewardship Agreements. Stewardship Agreements are not typically entered into through a competitive process, but rather are based on negotiations with a potential cooperator to meet mutual objectives and land management goals. When considering the use of a Stewardship Agreement, the program manager should consult with their G&A specialist and stewardship contracting staff during initial project development.

73.2 - Negotiating Partnership Agreements

1. General.

a. Pre-Negotiation Considerations. Special consideration must be given to the following items prior to negotiations with a potential cooperator:

- (1) An arrangement must not be entered into when a potential conflict of interest or the appearance of a conflict of interest exists.
- (2) A cooperator shall not be used to accomplish something indirectly that the agency is prohibited from doing directly (that is, use a Strawman).
- (3) Consider the cooperator's capability to meet its obligations, (that is, financial standing, organizational capacity, and time/product management).
- (4) Ensure the project's purpose is consistent with Forest Service mission.
- (5) Consider future Forest Service and cooperator follow-through on all aspects of the contemplated work, when applicable; including administration, long-term maintenance, and subsequent funding.
- (6) Consider and discuss project timelines and project scope of work.
- (7) Allow sufficient time for the program, budget, and G&A approval processes to be initiated and completed prior to the anticipated project start date.

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(8) Agreements must not be entered into where the Forest Service would directly endorse a cooperator's product or service or directly market a cooperator's product or service by mail or other means. Even the appearance of an endorsement places the agency in a questionable, ethical position and must be avoided. Any questions concerning this issue should be directed to the USDA Ethics Office.

(9) Consider that each party shares the costs of a project commensurate with the benefits received.

(10) Cash or other resources must not be solicited. Forest Service employees may discuss proposals or projects with potential cooperators where mutual benefits are likely to be shared.

(11) If funds are to be exchanged between the parties, then ensure that the cooperator is registered and active in Central Contractor Registration (CCR) (www.ccr.gov). The CCR registration must be renewed annually by the cooperator. The cooperator must also provide a valid Data Universal Numbering System (DUNS) number and Tax Identification Number (TIN) number with their proposal.

(12) Discuss the financial plan and the requirements to break-down costs into cost elements, and the need for cost analyses.

(13) Ensure the cooperator understands that all costs must be categorized as direct, indirect, or in-kind.

b. Negotiation Points. When negotiating partnership agreements, the discussions must, at a minimum, cover:

(1) A description of the project, including methodology and technical specifications;

(2) Full cost of the project (including Forest Service and non-Forest Service contributions);

(3) Who should perform the work or specific parts of the work;

(4) Deliverables to be received;

(5) Project timeline; and,

(6) The period of performance.

Regardless of who initiates discussions, all elements of a project are subject to negotiation. Discussions may be terminated by any party at any time.

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2. Negotiating Cost-sharing Agreements (Participating Agreements, Challenge Cost-shares, and Joint Venture Agreements). Only work documented within the scope of the agreement must be accomplished. Annual work and financial plans must be established and incorporated into the agreement prior to execution. Changes discovered during the performance of work should be negotiated and incorporated by executing a written modification to the agreement.

a. Contributions. All parties should agree on who will contribute, the form of such contributions, projected accomplishments under the Agreement (broken out by party), when the project should be completed, and so forth. Cooperators should always be cautioned not to perform work under discussion prior to the execution of an agreement. The discussion of contributions is one of the most important steps in negotiating partnership agreements. The results determine the viability of the cooperative effort and whether an agreement, contract, or personnel action is appropriate. The Forest Service may provide its share of the costs from any funds that are otherwise available for carrying out the purposes of the agreement. In all instances, the Forest Service and the cooperator(s) shall contribute resources to perform the work, and share a mutual interest and benefit. Contributions may include non-cash, cash, real or personal property, services, indirect costs, and/or in-kind contributions, such as volunteer labor. The Forest Service shall ensure that the matching requirement identified for each authority is met.

b. Financial Planning. In order to ensure the proper use of Government funds, to assist in monitoring projects, and to better understand the totality of a cost-sharing agreement, the Forest Service policy requires cost-share agreements to contain a scope of work and financial plan. The financial plan and scope of work must complement one another. With proper financial planning and cost analysis, the parties to the agreement can better understand the expectations of each other and what deliverables will result from the agreement.

For example, if an agreement contains a statement of work that suggests the Forest Service will provide funding to reimburse the cooperator's cost associated with trail work, then a financial plan is required to explain, in detail, the parties' contributions to the project. If the agreement merely states that the parties are contributing \$45,000 for work to be performed, then neither party clearly understands the scope of work to be performed (for example how many trails to work on, how many miles of trails, and so forth), how much is to be spent on specific cost elements of a project (for example, labor, travel, and so forth), and how much of each cost element the parties are going to fund (that is, is the Forest Service or cooperator paying for a specific cost element, or are they cost-sharing?).

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Only by knowing who does what activity and who pays for specific costs, can the parties accurately understand what is required of each party as they work towards accomplishing the goals of the agreement.

Therefore, the program manager and the cooperator shall negotiate all contributions to the proposed agreement in accordance with the statement of work. Prior to recording financial information on a financial plan, the program manager shall identify the source and amount of contributions to cover the cost of the agreement, break the costs down into cost elements, perform a preliminary cost analysis, record the resulting financial information on the financial plan, and obtain G&A specialist review. None of these steps preclude the program managers from contacting the G&A specialist for advice at any time during the financial planning. In fact, for complex projects, this is encouraged. Negotiation of costs between the cooperator and the program manager should include the following:

(1) Identify the Source and Amount of Contributions to Cover the Cost of the Agreement. During negotiations with the cooperator, the program manager shall discuss the financial cost of the proposed project with the cooperator and determine the resources each party plans on contributing to the agreement, including identified: direct costs, indirect costs, and in-kind contributions, see section 70.5 of this handbook for definitions. The sum of these three contributions equals the total (gross) project value.

When discussing contributions, the parties should consider all activities under the proposed agreement and determine what resources are required to complete the activities. These activities have costs to implement and, therefore, have value (for example, travel, labor, contracts, equipment purchases/maintenance, supplies, and so forth).

For example, if the parties want to enter into an agreement to perform mutually beneficial trail work, the parties will need to decide what resources (that is, funding, equipment, and so forth) they may contribute, and what activity(ies) may be accomplished with those resources. The contributed resources (that is, funds or non-cash contributions) must be sufficient to accomplish the scope of work.

Additionally, the program manager should ensure that the cooperator's matching contribution does not include other Federal funds unless specifically authorized by statute. In the trail work example, the cooperator may not use funds from BLM to meet the negotiated 50 percent match. The cooperator would need contributions from non-Federal resources to meet the matching requirement in this instance.

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In addition, it is recommended that the program manager identify funds contributed by other Federal entities and non-Federal entities and include them in the financial plan. This aids in tracking outside contributions to the Forest Service. Any Federal funds expended on the project must be used in a manner consistent with authorizing Federal statute.

Finally, there are times when the cooperator earns or anticipates earning program income under the agreement or proposed agreement. Program income is revenue generated under the project between the effective date of award and completion of the project. Examples include, conference or workshop fees received, rental fees earned from renting real property, equipment use of equipment acquired with agreement funds, or the sale of commodities or items developed under the project. Apply the estimated program income as a deduction to the Forest Service/cooperator contributions to maintain the original matching percentages. For example, in a jointly sponsored conference, if the cooperator collects more fees than estimated, then the parties to the agreement should share equally in the savings. Fees collected by the cooperator in excess of expenses make the true cost to complete the project zero, and would constitute inappropriate support to the cooperator. For this reason, deduct the estimated program income from the total (gross) project value to reflect the net project value. Specify anticipated program income in the agreement. Ensure that deviations from deducting program income are approved in accordance with FSM 1580.35.

(2) Break the Costs Down into Cost Elements. The program manager shall break the costs down into identified cost elements during negotiations with the cooperator. Identified cost elements are: Salaries/Labor, Travel, Equipment, Supplies/Materials, Printing, Other, and Indirect Costs. The cost element “Other” should be used when costs may not be listed under any other cost element.

Volunteers working on trail maintenance and transporting the volunteers from town to the forest provides an example. Instead of grouping the costs for both elements under “Travel,” for instance, the program manager shall use the category that most clearly identifies the costs. In the example, the volunteer work is categorized as “Salaries/Labor,” and transporting costs are shown under “Travel.”

Normally, costs to perform an activity will fit into the cost categories identified above and in the financial plan form. These categories are listed on the Financial Plan – the end product of cost-related negotiations between the Forest Service and cooperator. The Financial Plan is more fully discussed in paragraph (4), below.

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(3) Perform a Preliminary Cost Analysis. After breaking down contributions into cost elements, the program manager shall perform a preliminary cost analysis. The cost analysis must be performed in order to review and evaluate the separate cost elements in the proposal. If there are multiple unit costs under a cost element, those unit costs should be shown as part of a budget justification. For example, multiple trips under the travel cost element would show per diem, mileage, and lodging costs for each. The cost analysis ensures that costs are reasonable and necessary for completion of the project. It also helps to determine how well the proposed costs reflect the proposed work to be performed under the agreement.

For example, using the trail work illustration again, if the Forest Service and cooperator each contribute \$4,400 cash for “Salaries/Labor,” then a breakdown of the \$8,800 must be shown. So, the program manager and cooperator need to determine approximately how the \$8,800 will be used. To do this, they need to decide how they plan to use the funds to accomplish the work described in the statement of work. In this example, they should consider how many workers will participate, how many days they will work, how many hours per day they will work, and how much they will be paid (10 workers x 11 days x 8 hours/day x \$10/hours = \$8,800).

All factors and their estimated costs that are used in the cost analysis (for example, number of workers, number of days they will work, and so forth) must be analyzed to determine whether they are reasonable. For example, is \$10/hour for trail maintenance reasonable in the area in which work will be performed? Is 11 days reasonable, or 50 days? In some places, during certain times of the year, the answers may be “yes”; in others, it may be “no.”

To determine if costs are reasonable and necessary, the program manager may compare them to historical contract prices, Department of Labor wage statistics (see <http://www.bls.gov/bls/blswage.htm>), Government rates for similar work (may be obtained from other program personnel such as procurement, financial management, human capital management), or the latest audit performed by the cognizant audit agency or independent accounting firm for the cooperator, or other reasonable methodology. Always use the reasonable prudent person standard; that is, would an outside, reasonable person, who knew the relevant facts consider your estimates to be a fair approximation of the expected costs and necessary activities? What is reasonable in a larger, urban area may not be considered a reasonable wage rate in a more rural setting.

The program manager and the cooperator(s) should negotiate, resolve, and document differences in writing.

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(4) Record the Resulting Financial Information on the Agreements Financial Plan (Long, Medium, and Short) forms (financial plan), Form FS-1500-17. Once contributions have been identified, negotiated, and broken down into cost elements, and a preliminary cost analysis prepared, then the program manager shall record this information on the Washington Office approved financial plan. The financial plan requires the following information:

(a) Breakdown by cost elements, that is, salaries/labor, travel, other.

(b) Forest Service non-cash contributions per cost element (that is, the items proposed for the project for which the Forest Service incurs costs, such as equipment or tools), value of in-kind contributions (that is, the items proposed for the project for which the Forest Service does not incur costs, such as volunteers the Forest Service brings to the project), and reimbursed cooperator expenses (that is, the Forest Service cash contribution or obligation to the cooperator.

(c) Cooperator contributions to the Forest Service per cost element based on non-cash and value of in-kind contributions. Additionally, cooperator cash contributions, including the cooperator's direct cash contribution as well as contributions from third parties, such as non-Federal and Federal entities.

(d) Contributors and Types of Contributions. After costs have been identified by cost element (from both party's contributions), the program manager shall specify the type of contribution to each cost element. Specific types of contributions include:

Forest Service Noncash Contribution. Forest Service noncash contributions may consist of employee salaries, overhead (indirect), travel provided, and/or equipment and supplies purchased and provided to the cooperator for use in the project. These costs are an expense to the Forest Service, but do not include funding for reimbursement of cooperator expenses.

Forest Service Volunteer Labor (In-Kind) Contributions. This is the value of volunteer labor donated for completion of the project by the Forest Service for which the Forest Service has incurred no expense. Forest Service volunteer agreements (either sponsored or individual) should be used to document the donated services. The value of volunteer labor should be commensurate with local labor rates for similar work.

Forest Service Cash to the Cooperator. This is the maximum amount of funding that will be reimbursed or advanced by the Forest Service to the cooperator. This is an expense to the Forest Service.

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Cooperator Noncash Contribution. These are expenses the cooperator incurs that are contributed to the project in lieu of cash, but for which costs are incurred, such as employee salaries, overhead (indirect costs), travel, equipment, supplies, and so forth. These do not include in-kind contributions from third parties, such as cash donations from other entities or volunteer labor.

Cooperator Cash Contribution to Forest Service. These are cooperator cash contributions actually transferred to the Forest Service for use in completing the project. This is an expense to the cooperator and does not include in-kind contributions made to the cooperator from other organizations. If this column is used, a collection authority must be cited and the appropriate collection provisions must be included.

Cooperator Federal Cash Contribution. This includes cash contributions provided to the cooperator from another Federal agency for use in the project.

Cooperator Non-Federal Cash Contribution. This includes cash contributions provided to the cooperator from another non-Federal organization for use in the project.

Cooperator Third Party Noncash Contribution, Non-Federal. Noncash contribution provided to the cooperator from a non-Federal organization(s) for use in the project for which the cooperator has incurred no expense.

Cooperator Third Party Noncash Contribution, Federal. Noncash contribution provided to the cooperator from a Federal agency for use in the project for which the cooperator has incurred no expense.

Cooperator, Third Party In-Kind Contribution, Non-Federal. In-kind contributions provided to the cooperator from non-Federal organization(s) or individuals for use in the project, for which the cooperator incurred no expense. Value assessed for volunteer labor and donated materials, equipment, and supplies should be valued base on local rates. These values are not reimbursable and can only be used to satisfy the cooperator's matching requirement.

Cooperator, Third Party In-Kind Contribution, Federal. In-kind contributions provided to the cooperator from a Federal agency for use in the project, for which the cooperator incurred no expense. Value assessed for volunteer labor and donated materials, equipment, and supplies should be valued base on local rates. These values are not reimbursable and can only be used to satisfy the cooperator's matching requirement.

Program Income (deductive method only), see b (1), above.

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(5) Grants and Agreements Review of the Financial Plan. Prior to approving the instrument, the G&A specialist shall ensure that the financial plan includes all contributions, broken down into approved cost elements, separated by contributor, supported by the program manager's preliminary cost analysis on each cost element, and properly recorded on the financial plan. If the program manager has not recorded all the required information on the financial plan, then the G&A specialist shall obtain the needed information from the program manager and/or the cooperator.

(a) As part of the financial plan review, the G&A specialist shall review the program manager's cost analysis to ensure that all proposed costs are allowable, allocable, and reasonable. (See sec. 70.5, for definitions.)

(b) Furthermore, all proposed costs shall comply with Federal laws, regulations, and agency directives, terms and conditions of the agreement, including Federal appropriations law, and appropriate cost principle methodologies. G&A specialists may utilize, as an acceptable cost principle methodology, the basic concept of an OMB Circular, such as: A-122 (2 CFR 230), Cost Principles for Non-Profit Organizations; A-87, Cost Principles for State, Local, and Indian Tribal Governments; or, A-21, Cost Principals for Educational Institutions.

See sections 79.1 exhibit 02; 79.4 exhibit 02; and 79.32 exhibit 02 for samples of financial plans.

(c) Payment Provisions. Where applicable, ensure that all in-kind contributions are displayed on invoices submitted to the Forest Service. Also, ensure that the cooperator is aware that in-kind contributions must be verifiable in their accounting records for audit purposes. The cooperator's contributions may include their direct costs, indirect costs, in-kind contributions, or other non-Federal funds or services donated to them by other parties. Require that program income be deducted from the cost of the project; for example; revenue as a result of fees collected from conference attendees. Specify the use of program income in the agreement.

(1) Advance Payment. The intent of an advance is to cover immediate cash requirements, not for paying costs over extended periods of time. Limit cash advances to a cooperator for the minimum amount needed or an amount needed to cover costs for a performance period not exceeding 30 days, whichever is less. Advance payment timing and amounts should be kept as close as is administratively feasible to what is customarily disbursed to that particular cooperator, including the actual disbursements by the cooperator for direct program costs and proportionate share of any allowable indirect costs.

(2) Advance Liquidation. In order to liquidate an advance payment, various supporting documentation must be provided by the cooperator in the form of either a SF-270, SF-272, SF-425, or an invoice detailing the information contained within

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those prescribed forms. This documentation must be submitted within 30 days of receipt of the advance (cooperator disbursement.) If the full amount of the disbursement is not liquidated, any of the previously noted documentation may be submitted to complete a partial liquidation. If the advance payment has not been spent within 30 days, the cooperator shall return the funds. Until an advance is fully liquidated, no further advances or reimbursements are allowable.

(3) Summary. Advance payments are not the preferred payment method. If warranted, advances should not be for more than a 30-day period. The cooperator shall submit an advance liquidation request 30 days after receipt of the funds. If the requested performance period is for more than 30 days, the cooperator's invoice is returned.

When the Forest Service uses the reimbursement payment method, reimburse only actual costs incurred by the cooperator. A requirement for an invoice which includes a cost element breakdown for the net project costs (Forest Service reimbursable percent and cooperator share), should be negotiated and incorporated into the written agreement. For projects of short duration or those that involve potential program income or other revenue, consider negotiating submission of only one invoice at project completion, or annually, whichever is earlier. Multiple invoicing is not practical for projects of short duration, and becomes very complex for projects involving program income or other revenue.

3. Negotiating Stewardship Agreements. Collaboration must be a part of stewardship project planning and continue throughout the life of the project. Collaboration between the G&A specialist, the program manager, regional stewardship coordinator, and any affected resource staffs and the potential partner is necessary to the success of an SA.

a. Method for evaluating stewardship project proposals. The regional forester determines the best approach to achieve the proposed stewardship activities, which may be accomplished through competition utilizing a contract or by using an agreement in a non-competitive environment.

- (1) The extent of mutual interest and benefit.
- (2) The advantages and effectiveness of mutual participation.
- (3) Joint expertise.
- (4) Benefits to the local community.

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b. Technical Proposal. The cooperator will prepare and submit for review and approval, a technical proposal which shall address all land management activities within the project area. The proposal shall abide by all laws and regulations pertaining to the management and protection of NFS lands and adhere to the decision document and all mitigation identified therein. At a minimum the technical proposal will include:

A plan of operations for both timber harvest and stewardship project work. Include a timeline and the rationale for the work activities identified to ensure activities will be completed by the expiration date of the SPA.

Quality control plan for both the harvesting and stewardship projects.

c. Method for evaluating stewardship technical proposals. Best approach determination is the evaluation used by the Forest Service to approve stewardship agreement technical proposals. Such consideration shall primarily consider criteria other than cost. These non-price criteria include, but are not limited to, and, such as:

- (1) The extent of mutual interest and benefit.
- (2) The advantages and effectiveness of mutual participation.
- (3) Joint expertise.
- (4) Experience.
- (5) Past performance.
- (6) Technical approach.
- (7) Factors relevant to cost such as volunteer participation, contribution from other parties, cost sharing, and so forth.
- (8) Ability to utilize, educate, and/or train a local workforce.
- (9) Benefits to the local community.
- (10) Ability to complete work in a timely manner.
- (11) Experience in performing similar work.
- (12) Ability to conduct work in an environmentally sound manner.
- (13) Multiparty monitoring.

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73.3 - Negotiating Cost-Reimbursable Agreements and Cooperative Research and Development Agreements

1. Cost-Reimbursable Agreements. When negotiating Cost-Reimbursable Agreements, discuss, at a minimum, a description of the project, including methodology and technical specifications, cost of the project, deliverables to be received by the Forest Service, and the period of performance. Regardless of who initiates discussions related to a potential project, all elements of that project are subject to negotiation. Discussions may be terminated by either party at any time. Cooperators should always be cautioned not to perform work under discussion prior to the execution of an agreement.

2. Cooperative Research and Development Agreements (CRADA). When negotiating Cooperative Research and Development Agreements, either competitively, or non-competitively, discuss, at a minimum, a description of the project (including methodology and technical specifications), research objectives, sharing of facilities, equipment and labor, data rights, periods of confidentiality; both for confidential information brought to the agreement, as well as information developed in performance of the agreement; discussions regarding the general terms and conditions for patents and licensing, and the period of performance. Regardless of who initiates discussions related to a potential project, all elements of that project are subject to negotiation. Discussions may be terminated by either at any time. Cooperators should always be cautioned not to perform work under discussion prior to the execution of an agreement.

There is no set formula for determining the sharing of resources. Technology refers to data, hardware, and expertise. The cooperator provides the know-how needed for development and commercialization of a new product, process, or service.

The Forest Service and the cooperator may provide and share personnel, facilities, equipment, and other resources. The Forest Service may share the knowledge of its invention and may collaborate on development of new inventions as they relate to the Forest Service mission, but may not provide funding to the cooperator.

In a competitive situation, evaluate proposals fairly based upon predetermined criteria. The majority of CRADAs are awarded non-competitively. A prospective cooperator contacts the Forest Service to ascertain the level of interest in conducting research, development and testing of a product, process, or service. If the Forest Service determines that this potential partnership is of mutual interest, and has potential benefits, such as technology transfer, increased knowledge base, generation of licensing fees and royalties, then the Forest Service may request that the cooperator submit a proposal. If the Forest Service intends on seeking prospective cooperator(s) for a potential research and development project, then proposals should be solicited competitively. Criteria may include, but is not limited to, cooperator capabilities, cooperator resources proposed to be

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allocated to the project, cooperator funding to the Forest Service for reimbursement for in-house activities, cooperator approach to the completion of the project, patent income payments for potential inventions, key personnel, and preference for domestic source. The most advantageous situation for the Forest Service would be where the majority of work is performed in the cooperator's facility, there is minimal use of Forest Service personnel, there is a high level of cost reimbursement for use of Forest Service personnel, and there are potentially high patent income payments for inventions.

CRADAs may involve licensing government-developed technology to a cooperator through a patent license. Permit the transfer of rights for future anticipated patentable inventions developed through the cooperative efforts covered under the agreement. In this way, patents are the basis for technology transfer under the agreement. The Forest Service should, at a minimum, obtain a non-exclusive, irrevocable, paid-up license to practice any invention or to have the invention practiced throughout the world by or on behalf of the U. S. Government. Formal negotiations regarding royalty amount or licensing fee for any Forest Service patented invention or intellectual property are conducted by USDA/ARS. Refer specific questions regarding licensing to the Patent Attorney located at the Forest Products Laboratory.

Incoming funding for CRADA research should not be passed through for extramural research with a third party, such as a university or a visiting scientist, unless that third party waives all rights other than those enjoyed by the general public. Only Forest Service employees whose rights are assigned to USDA, are allowed to work on externally-funded (that is, soft money financed) activities. The only way to use soft money to “sub” to a third party would be to initiate an agreement with all parties involved being signatories to the CRADA. In that way, the third party is assigning their rights voluntarily. A word of warning: Many universities cannot or will not assign their rights. The Forest Service may have to negotiate a license with the university and have them or their agent sublicense our interests.

73.4 - Executing Partnership Agreements

Follow the process described in section 14.4 of this handbook.

74 - PROCEDURES FOR ADMINISTERING PARTNERSHIP AGREEMENTS

74.1 - Official File

Follow the process described in section 15.1 of this handbook.

74.2 - Post-Award Meeting

Follow the process described in section 15.2 of this handbook.

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74.3 - Approvals

Check the agreement to determine if prior approval is required for contracts or subcontracts, travel, or other cost elements and implement a procedure for both parties to follow. If the Forest Service requires prior approval of a cooperator's contract before award, require the cooperator to submit documentation supporting the use of competitive procedures, and their basis for selection of a contractor.

74.4 - Payment Procedures

1. Payment Procedures for Participating Agreements, Challenge Cost-Shares, Joint Venture Agreements, and Cost-Reimbursable Agreements. Cooperators are encouraged to use the Standard Form 270 as their billing invoice. However, they may use their own invoice provided that all of the required elements indicated below, and in the payment provision, are included. The cooperator shall complete and submit an invoice to the Albuquerque Service Center at the address identified in the agreement. The invoice must reference the Forest Service agreement number.

a. The payment approver (that is, program manager) for the agreement listed in I-Web shall review the agreement to ascertain the type of payment allowed (advance or reimbursement, partial, or lump sum billing). The program manager shall not approve any requests for payments not authorized in the agreement. Advance payment is not allowed for CR and CS agreements. In these cases, or in any case where it is necessary to reject an invoice payment, the cooperator should be notified immediately of their improper request, and asked to submit a corrected invoice.

When it is necessary to disapprove a payment, the invoice should be rejected by the payment approver in I-Web, if not approved. Timely approval and/or rejection is considered 5 business days from receipt of the I-Web notification that an invoice is pending payment approver review.

b. Referring to the corresponding financial plan, the cooperator should display the total actual expenditures for the period covered by the invoice (meaning, the Forest Service share of actual expenditures, the cooperator's incurred costs and in-kind contributions, and third party contributions) displayed by separate cost elements as documented in the financial plan. This includes direct, indirect, and program income. Cumulative expenditures by line item, by funding source may also be included on the invoice. Invoices displaying only one amount are not adequate and should be returned. Except for Cost-Reimbursable Agreements, if the costs identified match up to the amount the Forest Service obligated under the agreement, it likely does not reflect the true total program outlays and should be questioned.

If the agreement requires additional cost data or receipts to support the invoiced costs, the data should be attached at the time the invoice is submitted for payment.

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Incomplete invoices must not be paid. In these cases, the program manager should reject the invoice in I-Web and notify the cooperator immediately that their invoice has been rejected and request that a properly completed invoice be submitted. The incomplete invoice should be returned to the cooperator.

The cooperator's invoices should display the following:

- (1) The cooperator's total actual direct costs incurred during the period of performance covered by the invoice, displayed by separate cost elements as documented in the financial plan (ex. 01, A).
- (2) The cooperator's total in-kind contributions incurred during the period of performance covered by the invoice displayed by separate cost elements as documented in the financial plan (ex. 01, B). Any in-kind contributions are those contributions which have value where the cooperator incurs no expense, such as volunteer labor or third party donated equipment or materials. In-kind contributions are only displayed to reflect the total project value for reporting and matching purposes, and may not be reimbursed or included in the calculations for payment.
- (3) The cooperator's total actual indirect costs incurred during the period of performance covered by the invoice (ex. 01, C).
- (4) The cooperator's subtotal of costs incurred during the period of performance (ex. 01, D), which includes the direct costs (ex. 01, A) plus the indirect costs (ex. 01, C) (indirect costs are normally calculated as a percentage of direct cost).
- (5) The program income (ex. 01, E) received or generated as a part of or related to the project (sometimes referred to as revenue by cooperators) during the period of performance covered by the invoice, if any.
- (6) The cooperator's net total costs during the period of performance covered by the invoice (ex. 01, F), which is the determined by subtracting the program income (ex. 01, E) from the subtotal costs during the period of performance covered in the invoice (ex. 01, D).
- (7) The Forest Service (ex. 01, G) and cooperator (ex. 01, H) shares for payment, which is determined by applying the matching/cost-sharing percentages found in the financial plan against the net actual total costs during the period of performance covered by the invoice to determine.
- (8) The cumulative invoiced Forest Service share (ex. 01, I).
- (9) The payment due to the cooperator (ex. 01, J), which reflects the Forest Service share amount (ex. 01, G).

The following exhibit is an example of the appropriate steps to determine payment:

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74.4 – Exhibit 01

Steps to Determine Payment

(A) DIRECT COSTS (incurred during invoice period of performance): \$_____

(Line Items as Reflected on Financial Plan)

Labor
Travel
Equipment
Supplies
Contracts
Printing
Other

(B) VALUE OF IN-KIND CONTRIBUTIONS (incurred during invoice period of performance): \$_____

(Line Items as Reflected on Financial Plan)

Labor
Travel
Equipment
Supplies
Contracts
Printing
Other

(C) INDIRECT COSTS (incurred during invoice period of performance): \$_____

(D) SUBTOTAL COSTS (incurred during invoice period of performance): (A + C)
\$_____

(E) PROGRAM INCOME (incurred during invoice period of performance): \$_____

(F) NET TOTAL COSTS (incurred during invoice period of performance): (D – E)
\$_____

(G) FOREST SERVICE SHARE: \$_____

(H) COOPERATOR SHARE: \$_____

(I) CUMULATIVE INVOICED FOREST SERVICE SHARE : \$_____

(J) CUMULATIVE PAYMENTS TO THE COOPERATOR: \$_____

(K) PAYMENT DUE FOR THIS INVOICE: (I-J) \$_____

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- c. The Forest Service shall not pay incomplete or improperly submitted invoices. In such cases, the cooperator should be notified immediately that their invoice has been rejected and asked to submit a corrected invoice. Rejected invoices should be returned to the cooperator.
2. Payment Procedures for Cooperative Research and Development Agreements. Cooperators shall not be reimbursed under Cooperative Research and Development Agreements. There are no payment procedures because reimbursement is prohibited.
3. Billing Procedures for Cooperative Research and Development Agreements. A copy of the executed agreement must be provided to the Reimbursable and Advance Collections Agreement (RACA) staff by the G&A specialist. The RACA staff then assigns and provides a specific job code and funding limitation for charging Forest Service costs. If the agreement authorizes a reimbursable payment(s) by the cooperator, the Forest Service may proceed on that project, once the job code is received. If the agreement calls for an advance payment(s), the RACA staff generates and sends a bill for collection to the cooperator. Once advance payment is received from the cooperator, the RACA staff then provides the job code and fund limitation information to the unit. In either case, performance on the agreement must not proceed until a job code and fund information is received.
4. Other Payment Considerations. Payments must not be approved for any costs over the amount of funding obligated under the executed agreement I-Web.
5. Payment Approval. For all agreements with outgoing Forest Service funds, if all of the invoice information is correct, the responsible payment approver shall approve the invoice for payment in I-Web, and sign and date a copy of the invoice in any available open space. A statement such as, "Approved for Payment" should be placed above the payment approver's signature and date. The approved, signed invoice must be retained in the official file.
6. Overpayments. Follow the process described in section 76.3 of this chapter.
7. Payment Management System of the Department of Health and Human Services (HHS). The Chief Financial Officer has approved specific region, station, and Area units to utilize the HHS payment system for grants, cooperative agreements, and partnership and/or research agreements. Under the HHS system, cooperators draw-down funding electronically rather than submitting invoices for approval and payment. Program officials do not approve invoices in I-Web, instead they monitor the cooperator draw-downs in I-Web.

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The HHS Payment Management System arrangement accomplishes all payment related activities for grants, cooperative agreements, and partnership and/or research agreements from time of award through close out of the instrument. The system may also be used to check the available fund balances at any time.

Advance Payments. Advance payments, based on estimated costs, are limited to the minimum amount needed to carry out the approved purpose of the agreement and must be timed as close as is administratively feasible to the actual disbursement. Since funds are available the next business day after a request is made, only those funds needed for immediate cash disbursement should be requested.

Cost Reimbursable Payments. Cost reimbursable payments are also approved under grants, cooperative agreements, and partnership and/or research agreements in approved region, station, and Area units. Only costs for those project activities approved in the award document or subsequent modifications thereto are allowable. Cooperator draw-down of funds should normally occur at least quarterly and more frequently if needed, to stay current with actual expenses. Timely payments (draw-downs) are necessary to provide a current audit trail.

Cooperator Enrollment. Upon execution of the agreement, the cooperator shall enroll in the HHS Payment Management System where they are provided a PIN number which allows access to the system to request payment for their agreements. The HHS Payment Management System Web site is: <http://www.dpm.psc.gov>. Questions concerning payments for grants and agreements with cooperators should be addressed to the Albuquerque Service Center, G&A Payments Branch.

Monitoring. The Forest Service program official for the agreement shall perform quarterly monitoring (at a minimum) of cooperator draw-downs as reflected in I-Web to ensure timely and appropriate draw-down activity is occurring within the terms of the instrument. Payment monitoring actions must be summarized in the I-Web “Notes” tab by the program official.

Prior Approval. Cooperators shall obtain prior approval of expenditures not included in the agreement financial plan and are required to report deviations from budget and program plans in accordance with the applicable Code of Federal Regulations.

75 - MODIFICATIONS TO PARTNERSHIP AGREEMENTS

Follow the process described in section 15.7 of this handbook.

75.1 - Components of Executed Modification Document

Follow the process described in section 15.71 of this handbook.

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75.2 - Steps for Finalizing Modifications

Follow the process described in section 15.72 of this handbook.

76 - PROCEDURES FOR DE-OBLIGATION AND/OR CLOSE-OUT OF PARTNERSHIP AGREEMENTS

76.1 - Reporting Requirements

Follow the process described in section 15 of this handbook for reporting requirements.

76.2 - Refund/De-obligation of Fund

Follow the process described in section 16 of this handbook for refund/de-obligation of funds.

76.3 - Overpayments

Follow the process described in section 16.33 of this handbook for overpayments.

76.4 - Equipment Disposition

Equipment approved for purchase under a Partnership Agreement is available only for use as mutually agreed to under the terms of the agreement. The Forest Service reserves the right to transfer title to the Federal Government or cooperator of any equipment with a current per-unit fair market value in excess of \$5,000 purchased with Forest Service funding. Upon expiration of the agreement, the cooperator shall forward an equipment inventory to the Forest Service, listing all equipment purchased with Forest Service funding throughout the life of the project. Disposition instructions must be issued by the Forest Service within 120 calendar days from termination date of the agreement.

76.5 - Official Files

Follow the process described in section 15.1 of this handbook.

77 - AUDITS, PERFORMANCE REPORTS, AND MONITORING

77.1 - Audits

Follow the process described in section. 15.64 of this handbook.

77.2 - Performance Reports

Follow the process described in section 15.5 of this handbook.

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77.3 - Project Monitoring

Follow the process described in section 15.6 of this handbook.

78 - TERMINATIONS, SUSPENSIONS AND DEBARMENTS, OR OTHER CONSIDERATIONS

Refer to 7 CFR 3016.43 and 7 CFR 3019.30 for procedures; also, see chapter 80 of this handbook.

78.1 - Terminations

See chapter 80 of this handbook.

78.2 - Suspensions and Debarments

See chapter 80 of this handbook.

79 – SAMPLES

The following exhibits are samples of the different agreement types referenced throughout this chapter. These include: FS-1500-16 Participating Agreement (sec. 79.1); FS-1500-16c Participating Agreement with an Interpretive Association (sec. 79.2); FS-1500-16a Master Participating Agreement (sec. 79.31); FS-1500-16b Participating Agreement Supplemental Project Agreement (sec 79.32); FS-1500-10 Challenge Cost-share Agreement (sec. 79.4); FS-1500-10a Master Challenge Cost-share Agreement (sec. 79.51); FS-1500-10b Challenge Cost-share Supplemental Project Agreement (sec. 79.52); FS-1500-14 Joint Venture Agreement (sec. 79.61); FS-1500-14a International Joint Venture Agreement (sec. 79.62); FS-1500-12 Cost Reimbursable Agreement (sec. 79.7); FS-1500-13 Cooperative Research and Development Agreement (sec. 79.81); FS-1500-13a Material Transfer Agreement (sec. 79.82); and FS-1500-13b Nondisclosure Agreement (sec. 79.83).

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79.1 – FS-1500-16 Participating Agreement Sample

79.1 - Exhibit 01

FS-1500-16 - Participating Agreement Sample



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FS-1500-16

FS Agreement No.
Cooperator Agreement No.

08-PA-11011400-025
2008-FS-22

**PARTICIPATING AGREEMENT
Between The
YAAK VALLEY FOREST COUNCIL
And The
U.S. FOREST SERVICE, KOOTENAI NATIONAL FOREST**

This PARTICIPATING AGREEMENT is hereby entered into by and between the Yaak Valley Forest Council, hereinafter referred to as the YVFC, and the U.S. Forest Service, Kootenai National Forest, hereinafter referred to as the Forest Service, under the authority of the Cooperative Funds and Deposits Act of December 12, 1975, Pub. L. 94-148, 16 U.S.C. 565a1 – a3, as further authorized by Division F, Title IV, Sec. 417 of the Consolidated Appropriations Act 2008 (Pub. L. 110-161).

Background: The YVFC and the Forest Service are participants in the Yaak Headwaters Restoration Partnership (Partnership). Other members of the Partnership include other federal and state agencies and non-profit groups. Through the Partnership, the group has performed sediment surveys in the Yaak River watershed for the last six years, replaced undersized culverts and implemented Best Management Practices (BMP's), decommissioned unneeded roads, and removed fish barriers. This project represents the major plan of work for this Partnership group for the 2008 field season. In addition to the planned work, in 2008 the Lincoln County RAC approved funding for the Keeler Creek sediment source surveys.

Title: **YVFC Blacktail Keeler Creek Project**

I. PURPOSE:

The purpose of this agreement is to document the cooperation between the YVFC and the Forest Service to complete restoration projects in the Blacktail Creek watershed, perform sediment source surveys in the upper Keeler Creek watershed, and monitor previously decommissioned roads, as specified in the hereby incorporated Financial and Operating Plan, attached as Exhibit A.

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II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The Forest Service is responsible for maintaining and improving critical fish habitat and managing a transportation system that provides public access and aquatic resource protection. The YVFC is a partnership dedicated to restoring watersheds and improving native fish habitat in northwestern Montana. It is mutually beneficial for the parties to work together in accomplishing this goal on National Forest System (NFS) lands. Completion of the project will protect a viable population of native species and lessen the adverse impacts of roads on streams.

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

III. YVFC SHALL:

- A. LEGAL AUTHORITY. The Cooperator 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. Perform in accordance with the Operating and Financial Plan, Exhibit A.
- C. Bill the Forest Service for their proportionate share of expenses as specified in the Operating and Financial Plan, Exhibit A.

IV. THE FOREST SERVICE SHALL:

- A. PAYMENT/REIMBURSEMENT. The Forest Service shall reimburse the Cooperator for the Forest Service's share of actual expenses incurred, not to exceed \$14,000, as shown in the Financial Plan. The Forest Service shall make payment upon receipt of the Cooperator's monthly invoice. Each invoice from the Cooperator shall display the total project costs for the billing period, separated by Forest Service and Cooperator share. In-kind contributions must be displayed as a separate line item and must not be included in the total project costs available for reimbursement. The final invoice must display the Cooperator's full match towards the project, as shown in the financial plan, and be submitted no later than 90 days from the expiration date.

Each invoice must include, at a minimum:

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- 1) Cooperator name, address, and telephone number
- 2) Forest Service agreement number
- 3) Invoice date
- 4) Performance dates of the work completed (start & end)
- 5) Total invoice amount for the billing period
- 6) Statement that the invoice is a request for payment by 'reimbursement'
- 7) If using SF-270, a signature is required.
- 8) Invoice Number, if applicable

The invoice must be forwarded to:

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

FAX: 877-687-4894

Send a copy to:

Kris Newgard
12858 Highway 2
Troy, MT 59835

B. Perform in accordance with the Operating and Financial Plan, Exhibit A.

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

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

Principal Cooperator Contacts:

Cooperator Project Contact	Cooperator Financial Contact
Name: Robyn King Address: 155 River Rd City, State, Zip: Troy, MT 59935 Telephone: 406-299-9465 FAX: 406-299-9408 Email: yvfc@yahoo.com	Name: Robyn King Address: 155 River Rd City, State, Zip: Troy, MT 59935 Telephone: 406-299-9465 FAX: 406-299-9408 Email: yvfc@yahoo.com

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Principal Forest Service Contacts:

Forest Service Program Contact	Forest Service Administrative Contact
Name: Kris Newgard Address: 12858 Highway 2 City, State, Zip: Troy, MT 59935 Telephone: 406-299-6588 FAX: 406-299-6587 Email: knewgard@fs.fed.us	Name: Lynne Sholty Address: Building 24, Fort Missoula City, State, Zip: Missoula, MT 59804 Telephone: 406-329-3814 FAX: 406-329-3876 Email: lsholty@fs.fed.us

- B. **NON-LIABILITY**. The Forest Service does not assume liability for any third party claims for damages arising out of this instrument.
- C. **NOTICES**. Any communications affecting the operations covered by this agreement given by the Forest Service or the Cooperator is 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 Cooperator, at the Cooperator's 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.

- D. **PARTICIPATION IN SIMILAR ACTIVITIES**. This agreement in no way restricts the Forest Service or the Cooperator(s) from participating in similar activities with other public or private agencies, organizations, and individuals.
- E. **ENDORSEMENT**. Any Cooperator contributions made under this agreement do not by direct reference or implication convey Forest Service endorsement of the Cooperator's products or activities.

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- F. NON-FEDERAL STATUS FOR COOPERATOR PARTICIPANT LIABILITY. The Cooperator agrees that any Cooperator employees, volunteers, and program participants shall not be deemed to be Federal employees for any purposes including Chapter 171 of Title 28, United States Code (Federal Tort Claims Act) and Chapter 81 of Title 5, United States Code (OWCP), as the Cooperator has hereby willingly agreed to assume these responsibilities.

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

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

H. DRUG-FREE WORKPLACE.

a. The Cooperator 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:

- (1) Tell the employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace;
- (2) Specify the actions the Cooperator will take against employees for violating that prohibition; and
- (3) Let each employee know that, as a condition of employment under any instrument, the employee;
 - (i) Must abide by the terms of the statement, and
 - (ii) Must notify the Cooperator in writing if they are convicted for a violation of a criminal drug statute occurring in the workplace, and must do so no more than 5 calendar days after the conviction.

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b. The Cooperator agrees that it will establish an ongoing drug-free awareness program to inform employees about

- (1) The dangers of drug abuse in the workplace;
- (2) The established policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation and employee assistance programs; and
- (4) The penalties that may be imposed upon the employee for drug abuse violations occurring in the workplace.

c. Without the Program Manager'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.

d. The Cooperator 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 agreement number of each instrument on which the employee worked. The notification must be sent to the Program Manager within 10 calendar days after the Cooperator learns of the conviction.

e. Within 30 calendar days of learning about an employee's conviction, the Cooperator must either

- (1) 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
- (2) 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.

I. **NONDISCRIMINATION**. The cooperator shall comply with all Federal statutes relating to nondiscrimination and all applicable requirements of all other Federal laws, Executive orders, regulations, and policies. These include, but are not limited to

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Section 119 and 504 of the Rehabilitation Act of 1973 as amended, which prohibits discrimination on the basis of race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, participation in any public assistance program, or disability.

- J. ELIGIBLE WORKERS. The Cooperator 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 Cooperator shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract awarded under this instrument.
- K. STANDARDS FOR FINANCIAL MANAGEMENT.

1. Financial Reporting

The Cooperator 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 Cooperator 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 Cooperator shall maintain effective control over and accountability for all Forest Service funds, real property, and personal property assets. The Cooperator 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 Cooperator shall adequately safeguard all such property and shall ensure that it is used solely for authorized purposes.

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4. Source Documentation

The Cooperator shall support all accounting records with source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and subgrant/contract documents, and so forth.

- L. OVERPAYMENT. Any funds paid to the Cooperator 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 the Cooperator to the 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 Forest Service may reduce the debt by:

1. Making an administrative offset against other requests for reimbursement.
2. Withholding advance payments otherwise due to the Cooperator.
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 Forest Service may charge interest on an overdue debt.

- M. INSTRUMENT CLOSE-OUT. The Cooperator shall close out the instrument within 90 days after expiration or notice of termination.

Any unobligated balance of cash advanced to the Cooperator must be immediately refunded to the Forest Service, including any interest earned.

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

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If this instrument 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.

- N. PROGRAM PERFORMANCE REPORTS. The Cooperator 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. 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.

The Cooperator shall submit annual 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 the Cooperator's final payment request, or separately, but not later than 90 days from the expiration date of the agreement.

- O. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS. The Cooperator shall retain all records pertinent to this instrument 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 Cooperator shall provide access and the right to examine all records related to this instrument to the Forest Service Inspector General, or Comptroller General or their authorized representative.

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.

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

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

- P. FREEDOM OF INFORMATION ACT (FOIA). Public access to grant or agreement records must not be limited, except when such records must be kept confidential and would have been excepted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).
- Q. FUNDING EQUIPMENT. Federal funding under this instrument is not available for reimbursement of the Cooperator's purchase of equipment. Equipment is defined as having a fair market value of over \$5,000 per unit and a useful life of over one year. Supplies are those items that are not equipment.
- R. IMPROVEMENTS. Improvements placed on National Forest System land at the direction or with the approval of the Forest Service become property of the United States. These improvements are subject to the same regulations and administration of the Forest Service as would other National Forest improvements. No part of this instrument entitles the Cooperator to any interest in the improvements, other than the right to use them under applicable Forest Service Regulations.
- S. CONTRACT REQUIREMENTS. Any contract under this agreement must be awarded following established Cooperator procurement procedures, to ensure free and open competition, and avoid any conflict of interest (or appearance of conflict). The Cooperator must maintain cost and price analysis documentation for potential Forest Service review. The Cooperator is encouraged to utilize small businesses, minority-owned firms, and women's business enterprises.

Additionally, federal wage provisions (Davis-Bacon or Service Contract Act) are applicable to any contract developed and awarded under this instrument where all or part of the funding is provided with Forest Service funds. Davis-Bacon wage rates apply on all public works contracts in excess of \$2,000 and Service Contract Act wage provisions apply to service contracts in excess of \$2,500.

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T. REMEDIES FOR COMPLIANCE RELATED ISSUES. If the Cooperator materially fails to comply with any term of the instrument, whether stated in a Federal statute or regulation, an assurance, the agreement, or elsewhere, the Forest Service may take one or more of the following actions:

- (1) Temporarily withhold cash payments pending correction of the deficiency by the Cooperator or more severe enforcement action by the 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 instrument for the Cooperator's program;
- (4) Withhold further awards for the program, or
- (5) Take other remedies that may be legally available, including debarment procedures under 7 CFR part 3017.

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

1. When the Forest Service and Cooperator agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

1. By 30 days written notification by the Cooperator 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, in the case of a partial termination, the Forest Service determines that the remaining portion of the instrument will not accomplish the purposes for which the instrument was made, the Forest Service may terminate the instrument in its entirety.

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

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the Cooperator for the United States Federal share of the non-cancelable obligations properly incurred by the Cooperator up to the effective date of the termination. Excess funds must be refunded within 60 days after the effective date of termination.

- V. 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.
- W. DEBARMENT AND SUSPENSION. The Cooperator 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 the Cooperator or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- X. MODIFICATIONS. Modifications within the scope of this instrument 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 Forest Service is not obligated to fund any changes not properly approved in advance.
- Y. COMMENCEMENT/EXPIRATION DATE. This instrument is executed as of the date of the last signature and is effective through **December 31, 2012** at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.

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

ROBYN KING, Executive Director Yaak Valley Forest Council	Date
PAUL BRADFORD, Forest Supervisor U.S. Forest Service, Kootenai National Forest	Date

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

LYNNE W. SHOLTY
U.S. Forest Service Grants & Agreements 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-New. The time required to complete this information collection is estimated to average XX minutes/hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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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.

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**EXHIBIT A
FINANCIAL AND OPERATING PLAN**

Operating Plan

Watershed Restoration: This proposal includes five parts:

Watershed Restoration in Blacktail Creek – Phase I. Four miles of road will be decommissioned or put into long term storage. The Forest Service will do the design, award and administer the contract.

Watershed Restoration in Blacktail Creek – Phase II. A revegetation and rehabilitation plan will be developed for a section of road next to Blacktail Creek by a contractor hired by the Yaak Headwaters. The Forest Service will review the design.

Road decommissioning and stream monitoring. Crews hired by the YVFC will monitor decommissioned roads and assist with stream monitoring. The Forest Service will provide the technical oversight and the Yaak Valley Forest Council will contract the personnel.

Keeler Creek Sediment Source Survey – Crews hired by the YVFC will survey roads in Keeler Creek. The Forest Service will provide technical oversight. The Forest Service will reimburse the YVFC for crew expenses.

Yaak Watershed Strategic Planning – The YVFC will hire a contractor to develop a database and GIS maps from previously collected data. The Forest Service will provide technical guidance to the contractor.

I. THE YVFC SHALL:

- A. Hire a contractor to develop a revegetation plan for a section of road adjacent to Blacktail Creek.
- B. Hire and supervise crews to perform stream and decommissioned road monitoring.
- C. Hire and supervise crews to perform sediment source surveys.

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- D. Hire a contractor to develop a GIS layer of existing data for the Yaak Basin for strategic planning in the Yaak Basin.
- E. Coordinate project work with the Forest Service to ensure the most efficient use of available funds and people.

II. THE FOREST SERVICE SHALL:

- A. Design and supervise the decommissioning or long term storage of four miles of road in the Blacktail Creek drainage.
- B. Review the revegetation plan designed by YVFC's contractor.
- C. Provide technical oversight for YVFC's crews monitoring streams and decommissioned roads.
- D. Provide technical oversight for YVFC's crews performing sediment source survey work.
- E. Provide guidance to the YVFC's contractor developing GIS maps for strategic watershed planning in the Yaak Basin.
- F. Coordinate project work with the YVFC to ensure the most efficient use of available funds and people.

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79.1 - Exhibit 02

FS-1500-17b - Agreements Financial Plan Short Form Sample

FS-1500-17b Agreements Financial Plan (Short Form)

1. Financial Plan Matrix:

Note: All columns may not be used. Use depends on source and type of contribution(s).

		FOREST SERVICE CONTRIBUTIONS		COOPERATOR CONTRIBUTIONS	
		(a)	(b)	(c)	(d)
COST ELEMENTS		Noncash	Cash to Cooperator	Noncash	Third Party In-Kind
					(e) Total
Direct Costs					
Salaries/Labor		\$22,500.00	\$13,500.00	\$25,000.00	\$61,000.00
Travel		\$200.00	\$500.00	\$1,000.00	\$1,700.00
Equipment					\$0.00
Supplies/Materials		\$300.00			\$300.00
Printing					\$0.00
Equipment Contract		\$40,000.00		\$10,000.00	\$50,000.00
Other					\$0.00
Subtotal		\$63,000.00	\$14,000.00	\$36,000.00	\$0.00
Coop Indirect Costs				\$4,000.00	\$4,000.00
FS Overhead Costs		\$5,040.00			\$5,040.00
Total		\$68,040.00	\$14,000.00	\$40,000.00	\$0.00
Total Project Value:					\$122,040.00
Matching Costs Determination					
Total Forest Service Share =			(f)	Note: This Financial Plan may be used when: (1) No program income is expected and (2) The Cooperator is not giving cash to the FS & (3) There is no other Federal funding	
(a+b) ÷ (e) = (f)			67.22%		

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Total Cooperator Share	(g)	
(c+d) ÷ (e) = (g)		32.78%
Total (f+g) = (h)	(h)	
		100.00%

Reimbursement Calculation	
Forest Service reimbursement percent (as % of expenses directly incurred by the Cooperator-- i.e., Cooperator's non-cash contributions only that are subject to Forest Service reimbursement)	
(b) ÷ (b+c) = (i)	(i) 25.93%
Cooperator non-cash contributions <u>not</u> reimbursed by Forest Service	(j)
(c) ÷ (b+c) = (j)	74.07%
Reimbursable Amount = Total actual cost incurred to date (sum of cost elements from the Cooperator's invoice as prescribed in agreement provision	and multiplied by 25.93%
(i) minus any previous Forest Service payments, not to exceed the subtotal amount listed in column (b).)	

2. Cost Analysis: Use the following section to show additional information that supports the lump sum figures provided above. The following Cost Analysis boxes, (a)-(d), should provide a cost analysis of the corresponding matrix columns, (a)-(d), above, e.g. matrix column (a) *FS Non-Cash Contribution* should be analyzed under block (a), below, and matrix column (b) *In-Kind Contribution* should be analyzed under block (b), below, etc. Furthermore, each cost analysis box, below, should have clear labels indicating which cost element, above, is being analyzed, e.g. Salary/Labor = hrs or days x rate; Travel = miles x rate, or months x FOR rate (that is, days x per diem rate); Equipment Use = hrs or days x rate; Supplies & Materials--list of items and estimated cost; Printing = estimated cost per item; Indirect Cost = Direct cost x current indirect rate.
If necessary, add additional sheets for cost analysis. To compress any unwanted portion(s) of this section, highlight the section to be hidden, then select "Format", "Row", and "Hide" from the toolbar.

Column (a)	
Forest Service Noncash Contribution	Forest Service salary 90 days @ \$250/day, with misc supplies and travel to and from worksites. Equipment contract will be awarded by the Forest Service through the hourly equipment rental contract
Column (b)	
Forest Service Cash to Cooperator	90 crew days \$150/day and travel to and from worksite
Column (c)	
Cooperator Noncash Contribution	Cooperator salary at \$250/day for 100 days for project coordination, crew supervision and contract coordination. Cooperator will award contract for hourly equipment operation.

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**79.2 – FS-1500-16c Participating Agreement With an Interpretive Association
Sample**

79.2 - Exhibit 01

FS-1500-16c - Participating Agreement With an Interpretive Association Sample



USDA Forest Service

OMB 0596-0217
FS-1500-16c

FS Agreement No. 09-PA-11052050-042
Cooperator Agreement No. _____

**PARTICIPATING AGREEMENT
With An INTERPRETIVE ASSOCIATION
Between The
TAHOE HERITAGE FOUNDATION
And The
U.S. FOREST SERVICE
LAKE TAHOE BASIN MANAGEMENT UNIT**

This PARTICIPATING AGREEMENT, is hereby made and entered into by and between the Tahoe Heritage Foundation, hereinafter referred to as the Foundation, and the U.S. Forest Service, Lake Tahoe Basin Management Unit hereinafter referred to as the Forest Service, under the provisions of the Cooperative Funds and Deposits Act of December 12, 1975 (Pub. L. 94-148), as further authorized by the Consolidated Appropriations Act of 2008 (Pub. L. 110-161).

Background:

The cooperative relationship established between the Foundation and the Forest Service will assist the Forest Service in making available to Forest visitors interpretive, educational and informational materials, and services that will add to the visitors' enjoyment and understanding of the natural, cultural, historic, and recreational resources of the National Forests.

Such a relationship allows the Forest Service to provide high quality customer service by allowing Forest Service staff and volunteers to sell items, such as guide books, visitor maps, conservation and forestry related books, textiles, handicrafts, interpretive and educational materials, and other theme-related products to the public at Forest Service facilities or those co-managed by the Forest Service (for example, centers shared with the Bureau of Land Management and National Park Service).

Title: Interpretive services on the Lake Tahoe Basin Management Unit

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I. PURPOSE:

The purpose of this agreement is to establish a formal arrangement with the Foundation to assist the Forest Service in furthering customer service, interpretation, and conservation of public lands on the Lake Tahoe Basin Management Unit. This can be accomplished by producing appropriate interpretive or educational materials and by providing visitors with these, and other related materials and services through sales or free distribution in accordance with the following provisions, the hereby incorporated Operating Plan, attached as Exhibit A, and Financial Plan, attached as Exhibit B.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The Forest Service is responsible for developing the National Forest resources for sustained yields of products and services in the best combination for the use, enjoyment and education of the America people. The Forest Service, within this mandated responsibility is conducting a program to provide facilities within National Forests for outdoor recreational and educational activities for the public. Both the Forest Service and Tahoe Heritage Foundation deem it desirable to provide educational and interpretive information about the forest resources, natural phenomena, local history, and similar matters; and have as a purpose the promotion of the educational, historical, scientific and other values of the National Forests and of assisting educational and interpretive activities of the Forest Service.

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

III. THE FOUNDATION SHALL:

- A. LEGAL AUTHORITY. The Foundation 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. BUILDING AND COMPUTER ACCESS BY NON-FOREST SERVICE PERSONNEL. The Foundation may be granted access to 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 must have background checks following the procedures established by

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C. 79.2 - Exhibit 01--Continued



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USDA Directives 3800 series. Those granted computer access must fulfill all Forest Service requirements for mandatory security awareness and role-base advanced security training, and sign all applicable Forest Service statements of responsibilities.

- D. Use Forest Service facilities designated in the Operating Plan, attached as Exhibit A, only for activities described in the Operating Plan.

IV. THE FOREST SERVICE SHALL:

- A. Allow the Foundation to use those facilities that are designated in the Operating Plan, attached as Exhibit A, for the sale of educational and interpretive items for the benefit of the visiting public.

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

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

Principal Foundation Contacts:

Foundation Program Contact	Foundation Administrative Contact
Name: Mike Weber Address: PO Box 8586 City, State, Zip: S Lake Tahoe, CA 96158 Telephone: 531-544-7384 FAX: 531-544-7779 Email: thf@tahoeheritage.org	Name: Phylise Walker Address: PO Box 8586 City, State, Zip: S Lake Tahoe, CA 96158 Telephone: 531-544-7384 FAX: 531-544-7779 Email: thf@tahoeheritage.org

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Principal Forest Service Contacts:

Forest Service Program Contact	Forest Service Administrative Contact
Name: Jackie Faike Address: 35 College Dr City, State, Zip: S Lake Tahoe, CA 96150 Telephone: 531-543-2619 FAX: 531-543-2697 Email: jfaike@fs.fed.us	Name: Karen Housak Address: 9646 Donner Pass Road City, State, Zip: Truckee, CA 96161 Telephone: 531-588-3559 FAX: 531-588-6915 Email: khousak@fs.fed.us

- B. NON-LIABILITY. Forest Service does not assume liability for any third party claims for damages arising out of this instrument.
- C. OPERATING PLAN. The parties will make themselves available annually by May 1, to discuss the conditions covered by this agreement, and to coordinate any activities pursuant to this agreement including, but not limited to, any modifications to the Operating Plan. If no changes are needed, the current Operating Plan will remain in effect for the following year.
- D. NOTICES. Any communications affecting the operations covered by this agreement given by the Forest Service or the Foundation are 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 Foundation, at the Foundation's 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.

- E. PARTICIPATION IN SIMILAR ACTIVITIES. This agreement in no way restricts the Forest Service or the Foundation(s) from participating in similar activities with other public or private agencies, organizations, and individuals.

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- F. ENDORSEMENT. Any Foundation contributions made under this agreement do not by direct reference or implication convey Forest Service endorsement of the Foundation's products or activities.
- G. USE OF FOREST SERVICE INSIGNIA. In order for the Foundation to use the Forest Service Insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications prior to use of the insignia.
- H. 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.
- I. NON-FEDERAL STATUS FOR COOPERATOR PARTICIPANT LIABILITY. The Foundation agrees that any Foundation employees, volunteers, and program participants shall not be deemed to be Federal employees for any purposes including Chapter 171 of Title 28, United States Code (Federal Tort Claims Act) and Chapter 81 of Title 5, United States Code (OWCP), as the Foundation has hereby willingly agreed to assume these responsibilities.
- Further, the Foundation shall provide any necessary training to Foundation employees, volunteers, and program participants to ensure that such personnel are capable of performing tasks to be completed. The Foundation shall also supervise and direct the work of its employees, volunteers, and participants performing under this agreement.
- J. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no United States member of, or United States delegate to, Congress shall be admitted to any share or part of this instrument, or benefits that may arise therefrom, either directly or indirectly.
- K. DRUG-FREE WORKPLACE.
- a. The Foundation 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:

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- (1) Tell the employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace;
 - (2) Specify the actions the Foundation will take against employees for violating that prohibition; and
 - (3) Let each employee know that, as a condition of employment under any instrument, the employee;
 - (i) Must abide by the terms of the statement, and
 - (ii) Must notify the Foundation in writing if they are convicted for a violation of a criminal drug statute occurring in the workplace, and must do so no more than 5 calendar days after the conviction.
- b. The Foundation agrees that it will establish an ongoing drug-free awareness program to inform employees about;
- (1) The dangers of drug abuse in the workplace;
 - (2) The established policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation and employee assistance programs; and
 - (4) The penalties that may be imposed upon the employee for drug abuse violations occurring in the workplace.
- c. Without the Program Manager'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.
- d. The Foundation 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 agreement number of each instrument on which the employee worked. The notification must be sent to the Program Manager within 10 calendar days after the Foundation learns of the conviction.

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e. Within 30 calendar days of learning about an employee's conviction, the Foundation must either

(1) 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

(2) 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.

L. **NONDISCRIMINATION.** The Foundation shall comply with all Federal statutes relating to nondiscrimination and all applicable requirements of all other Federal laws, Executive orders, regulations, and policies. These include, but are not limited to Section 119 and 504 of the Rehabilitation Act of 1973 as amended, which prohibits discrimination on the basis of race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, participation in any public assistance program, or disability.

M. **ELIGIBLE WORKERS.** The Foundation 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 Foundation shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract awarded under this instrument.

N. **STANDARDS FOR FINANCIAL MANAGEMENT.**

1. Financial Reporting

The Foundation 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.

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2. Accounting Records

The Foundation 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 Foundation shall maintain effective control over and accountability for all Forest Service funds, real property, and personal property assets. The Foundation 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 Foundation shall adequately safeguard all such property and shall ensure that it is used solely for authorized purposes.

4. Source Documentation

The Foundation shall support all accounting records with source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and subgrant/contract documents, and so forth.

O. PROGRAM INCOME – PARTNERSHIP AGREEMENTS.

a. The Foundation shall apply the standards set forth in this Provision to account for program income earned under the agreement.

b. 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 the Foundation did not anticipate at the time of the award must be used to reduce the Federal agency and Foundation contributions rather than to increase the funds committed to the project.

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c. Unless the terms and conditions of the agreement provide otherwise, the Foundation shall have no obligation to the U.S. Government regarding program income earned after the end of the project period.

d. 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.

e. Unless the terms and conditions of the agreement provide otherwise, Foundations 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.

- P. INSTRUMENT CLOSE-OUT. The Foundation shall close out the instrument within 90 days after expiration or notice of termination.

Any unobligated balance of cash advanced to the Foundation shall be immediately refunded to the Forest Service, including any interest earned.

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

If this instrument 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.

- Q. PROGRAM PERFORMANCE REPORTS. The Foundation shall monitor the performance of the agreement activities to ensure that performance goals are being achieved.

Performance reports must contain information on the following:

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- 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.

The Foundation shall submit annual performance reports. These reports are due 30 days after the reporting period. The final performance report must be submitted either with the Foundation's final payment request, or separately, but not later than 90 days from the expiration date of the agreement.

- R. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS. The Foundation shall retain all records pertinent to this instrument 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 Foundation shall provide access and the right to examine all records related to this instrument to the Forest Service Inspector General, or Comptroller General or their authorized representative.

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 United States Federal funds must be retained for 3 years after its final disposition.

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

- S. 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 excepted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).

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- T. **FUNDING EQUIPMENT.** Federal funding under this instrument is not available for reimbursement of the Foundation's purchase of equipment. Equipment is defined as having a fair market value of over \$5,000 per unit and a useful life of over one year. Supplies are those items that are not equipment.
- U. **IMPROVEMENTS.** Improvements placed on National Forest System land at the direction or with the approval of the Forest Service become property of the United States. These improvements are subject to the same regulations and administration of the Forest Service as would other National Forest improvements. No part of this instrument entitles the Foundation to any interest in the improvements, other than the right to use them under applicable Forest Service Regulations.
- V. **GOVERNMENT-FURNISHED PROPERTY.** The Foundation may only use Forest Service property furnished under this agreement for performing tasks assigned in this agreement. The Foundation shall not modify, cannibalize, or make alterations to Forest Service property. A separate document, Form AD-107, must be completed to document the loan of Forest Service property. The Forest Service shall retain title to all Forest Service-furnished property. Title to Forest Service property must not be affected by its incorporation into or attachment to any property not owned by the Forest Service, nor must the property become a fixture or lose its identity as personal property by being attached to any real property.

Foundation Liability for Government Property.

- (1) Unless otherwise provided for in the agreement, the Foundation 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—
- (i) The risk is covered by insurance or the Foundation is otherwise reimbursed (to the extent of such insurance or reimbursement).
 - (ii) The loss, damage, destruction, or theft is the result of willful misconduct or lack of good faith on the part of the Foundation's managerial personnel. Foundation's managerial personnel, in this clause, means the Foundation's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Foundation's business; all or substantially all of the Foundation's operation at any one plant or separate location; or a separate and complete major industrial operation.

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(2) The Foundation shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft. The Foundation 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 Foundation 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 & Agreements Specialist, the Foundation shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

W. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. The Foundation shall acknowledge Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this instrument.

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

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

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

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

"This institution is an equal opportunity provider."

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Y. REMEDIES FOR COMPLIANCE RELATED ISSUES. If the Foundation materially fails to comply with any term of the instrument, whether stated in a Federal statute or regulation, an assurance, the agreement, or elsewhere, the Forest Service may take one or more of the following actions:

- (1) Temporarily withhold cash payments pending correction of the deficiency by the Foundation or more severe enforcement action by the 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 instrument for the Foundation's program;
- (4) Withhold further awards for the program, or
- (5) Take other remedies that may be legally available, including debarment procedures under 7 CFR part 3017.

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

1. When the Forest Service and Foundation 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 the Foundation 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, in the case of a partial termination, the Forest Services determines that the remaining portion of the instrument will not accomplish the purposes for which the instrument was made, the Forest Service may terminate the instrument in its entirety.

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

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the Foundation for the United States Federal share of the non-cancelable obligations properly incurred by the Foundation up to the effective date of the termination. Excess funds must be refunded within 60 days after the effective date of termination.

- AA. 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.
- BB. DEBARMENT AND SUSPENSION. The Foundation 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 the Foundation or any of their principals receive a transmittal letter or other official federal notice of debarment or suspension, then they shall notify the Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- CC. COPYRIGHTING. The Foundation 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 instrument.

No original text or graphics produced and submitted by the Forest Service shall 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 the Foundation under this agreement.
- Any right of copyright to which the Foundation purchases ownership with any federal contributions.

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DD. PUBLICATION SALE. The Foundation 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.

EE. MODIFICATIONS. Modifications within the scope of this instrument 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 Forest Service is not obligated to fund any changes not properly approved in advance.

FF. COMMENCEMENT/EXPIRATION DATE. This instrument is executed as of the date of the last signature and is effective through **December 31, 2011** at which time it will expire.

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

MIKE WEBER, President Tahoe Heritage Foundation	Date
MARY DURGALO, Forest Supervisor U.S. Forest Service, Lake Tahoe Basin Management Unit	Date

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

KAREN HOUSAK
U.S. Forest Service Grants & Agreements Specialist

Date

EXHIBIT A

OPERATING PLAN

I. PURPOSE:

The purpose of this Operating Plan (OP) is to identify procedures of managing interpretive material sales on the Lake Tahoe Basin Management Unit.

II. INTERPRETIVE SALES OPERATING GUIDELINE:

A. The Foundation may conduct business on the Forest Service sites described below:

Supervisor's Office
Visitor Center
Tallac Historic Site

B. Hours and Season of Operation:

The Foundation sales area will be open during normal office hours at each location listed in Section II-A. Each sales location will operate with a full inventory of materials supplied by the Foundation.

C. Facilities

1. The Forest Service shall provide the Foundation with such sales areas and other facilities as may hereafter be deemed necessary or desirable by the Forest Service, provided that the Forest Service reserves the right to relocate or withdraw any such facilities in order to meet needs of the Forest Service upon reasonable notice. The Forest Service shall have emergency access to all facilities, and may make such surveys and inspections as the Forest Service deems necessary.

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2. The Foundation shall keep the sales facilities clean and presentable throughout the workday.
3. The Foundation may remodel or renovate existing Forest Service owned sales facilities (Visitor Center, Ranger Station, and so forth) at its own expense, as necessary, including renovation of display structures, furnishings, equipment, signing, display lighting, and lighting in the immediate area of the facility, provided that all plans are approved in advance by the Forest Service. Any redesigned and renovated property will remain in Forest Service ownership upon termination of this Agreement.
4. The Forest Service reserves the right to design and construct any new facilities, and shall allow the Foundation to review and comment on any plans therefore.
5. The Forest Service shall provide the Foundation with incidental utility services at each assigned facility, including water, electricity, heat, air conditioning (if available), to the extent these utilities are required for the operation of the building for Governmental purposes.
6. The Forest Service shall provide all general maintenance and repair services for the Government-owned buildings.
7. The Forest Service shall provide the Foundation with computer profile(s), access, and software to allow rapid exchange of data between the Foundation and the Forest Service. This software shall be provided for electronic mail only on computer equipment located in Forest Service facilities. No licenses shall be provided for software not used as part of the Forest Service corporate software image. This access will be used for communicating between Foundation sites located on Forest Service facilities and Forest Service employees, other Foundation employees and other partner agencies of the Foundation. All security and use guidelines, which apply to Forest Service employees, shall apply to Foundation member using these profiles. The Forest Service reserves the right to remove any profile, access or software license at any time, with two weeks notice to the Foundation.

D. Merchandise and Prices:

1. Sales items will be subject to the approval of the Forest Supervisor or their designee and the Foundation President or their designee.

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2. All sales items will be educational and interpretive in nature and fit into the theme(s) of the Foundation and the Forest Service.
3. The Foundation and the Forest Service will develop a price list of the merchandise being sold at each sales location.
4. The Foundation shall display the sale items in good taste and in keeping with the general design and décor of the Forest Service facilities at that location. The Foundation may provide furnishings necessary to support, store, or display sale items, as approved by the Forest Service.
5. No artifacts protected by the Antiquities Act of 1906 (Pub. L. 59-209), the Archeological Resources Protection Act of 1979 (Pub. L. 96-95), and the Alaska Historic Preservation Act of 1971, as amended, will be sold.

E. Inventory Maintenance and Responsibilities:

The Foundation will coordinate with a publishing company(s) (for example, Globe Pequot, Falcon, or others) to provide inventory and stocking services. The Foundation may special order specific titles and other products that will further the goals of the Forest Service promoting educational, interpretive, cultural, and scientific program needs. Foundation personnel will take inventory of sales stock when necessary throughout the year. Forest Service personnel should allow Foundation personnel access to the inventory upon request.

F. Personnel

1. The Foundation shall provide such personnel as are reasonably necessary to operate the sales facility as indicated by the level of gross sales. These personnel may include, as necessary, a central business office staff, local facility managers, and sales clerks. Otherwise, Forest Service personnel may offer sales items to the public as a supplement to their regular duties.
2. The Foundation employees involved in visitor contacts shall be oriented in the Forest Service administrative unit's Interpretive Services programs and shall be certified by a Forest Service designee before assuming such responsibilities.

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3. A distinct separation, evident to the public, shall be maintained between the activities and management of the Foundation and those of the Forest Service.
 4. Foundation personnel are not Government employees and are not authorized to undertake any Governmental function or activity on behalf of the Forest Service beyond routine visitor information services and participation in museums, living history, or like programs. Foundation employees shall not engage in activities that would reasonable lead the visiting public to conclude that they are Government employees. No foundation employee shall wear a Forest Service or other Government uniform. All Foundation employees shall wear some easily observable and readily identifiable indication of Foundation affiliation while in the National Forests on Foundation business. At each sales outlet there will be posted a sign that gives the background of the Foundation and how the funds are used.
 5. The Forest Service shall designate an employee as Foundation Coordinator. This person will serve as a liaison to the Foundation. The role of the Foundation Coordinator (Liaison) is to represent the interests of the Forest Service and to provide assistance to the Foundation; hence, he or she shall not be an officer, board member or trustee of the Foundation. His or her scope of Foundation responsibility shall be limited to ensuring that the spirit and intent of this Agreement are fulfilled and to provide expertise on Interpretive Associations.
 6. Forest Service employees may be members of the Foundation, but shall not be officers, Foundation employees, or members of the Board of Directors.
 7. Forest Service employees shall not represent the Foundation in any matter between the Foundation and the Forest Service. A Forest Service employee shall not participate in any Foundation decision concerning the relationship of the Foundation to the Forest Service, including, but not limited to, executing or negotiating contracts, signing checks, or hiring or firing Foundation employees.
- G. Financial Reporting:
1. The Foundation will be solely responsible for the financial arrangements for work under this Agreement, including costs of obtaining stocks of Foundation materials and for the receipt and disposition of monies from sales, and will hold harmless the Forest Service or its officers responsible for loss of Foundation materials or money from sales, or for any other financial loss incurred as the result of this Agreement.

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2. The Foundation will keep appropriate financial books, records, and accounts pertaining to this Agreement to standards acceptable to the Forest Service or generally acceptable accounting practices.
3. The Foundation shall provide an annual narrative, calendar year, accomplishment report and financial statement by April 15 each year to the Regional Forester with a copy to the Forest Supervisor.

H. Interpretive Activities

1. Interpretive activities engaged in by the Foundation must meet Forest Service standards and be approved by the Forest Supervisor.
2. Foundation activities may be conducted by Forest Service personnel, such as sale of Foundation materials, if they are incidental to regular work. The Foundation personnel shall be available only for the purposes of the Foundation's interpretive activities.

I. Contributions:

1. All proceeds from the sales authorized by this agreement shall be retained by the Foundation and used for mutually agreed upon interpretive projects under separate agreements.
2. Annually, by November 1, the Foundation will notify the Forest Service of the sales income from the Forest Service outlets for the fiscal year ending September 30, and the amount anticipated for use in the next fiscal year's mutually agreed upon project(s). The contribution process will be determined at this time.

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-New. The time required to complete this information collection is estimated to average XX minutes/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.