

FS Agreement No. 11 - MU - 11031000 - 006
Cooperator Agreement No. _____

MEMORANDUM OF UNDERSTANDING
Between The
PUEBLO OF JEMEZ
And The
USDA, FOREST SERVICE
SANTA FE NATIONAL FOREST

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the Pueblo of Jemez, hereinafter referred to as "Pueblo," and the USDA, Forest Service, Santa Fe National Forest, hereinafter referred to as the "U.S. Forest Service."

Background: The Pueblo is a sovereign government and federally-recognized Native American Tribe, as stated in the Department of the Interior, Bureau of Indian Affairs, Federal Register Notice - Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, and is dedicated to the preservation and protection of its cultural heritage within ancestral lands. The Pueblo's ancestral lands have been recognized by the Indian Claims Commission and other guiding documents.

The U.S. Forest Service manages National Forest System (NFS) lands within the described ancestral area. The United States government and associated agencies have a unique legal relationship with Native American Tribal governments, as set forth in the Constitution of the United States, statutes, executive orders, and case law. The November 5, 2009, Executive Memorandum on Tribal Consultation, reaffirmed the governmental relationship to Native American Tribes as sovereign nations and committed to regular and meaningful consultation and collaboration with Tribal officials in policy decisions that have Tribal implications. Executive Order 13175 to Federal agencies reaffirmed the United States governments' recognition of Native American Tribes as sovereign nations and its commitment to work with Native American Tribes on a government-to-government basis.

It is the policy of each National Forest to implement their programs and activities within the context of fulfilling trust responsibilities, respecting traditional Native religious beliefs, and providing research, technology transfer, and technical assistance to Tribes (FSM 1563.03). The U.S. Forest Service has legal commitments and Federal trust responsibilities to protect and preserve cultural sites, traditional cultural properties, human remains, religious freedoms, and sacred objects of the Pueblo.

Title: Jemez Pueblo Collaboration and Consultation

- I. **PURPOSE:** The purpose of this MOU is to document the cooperation between the parties to establish and document a procedure to formalize a process for government-to-government relations that is consistent between the U.S. Forest



Service and the Pueblo, to promote the increased cooperation and understanding of natural and cultural resource management between the U.S. Forest Service and the Pueblo, to facilitate better communication and understanding of resource management on the National Forest, and promote increased respect for the traditions of the people of the Pueblo.

By implementation of this MOU, all parties agree that a structure for a formal government-to-government relationship exists between them, based on the unique status between the Federal government and federally-recognized Native American Tribes as established by the United States Constitution, statutes, regulations, case law, executive orders, and policies.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The U.S. Forest Service is mandated to carry out multiple-use management on NFS lands and is interested in providing the American public with a wide variety of goods and services. The U.S. Forest Service is a land management agency dedicated to the wise use and management of resources including natural, cultural, and archaeological resources of the Nation.

The Pueblo is a sovereign domestic dependent nation and a federally-recognized Native American Tribe with aboriginal territories and historical interests in the conservation and management of the natural and cultural resources of NFS lands administered by the U.S. Forest Service.

It is therefore of mutual interest and benefits both the U.S. Forest Service and the Pueblo to promote the furtherance of dialogue and coordination on natural and cultural resource issues by Native American Tribes.

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

III. THE PUEBLO SHALL:

- A. Attend quarterly meetings with the U.S. Forest Service. Tribal representatives attending meetings may include the Governor of the Pueblo and any staff the Governor deems appropriate.
- B. Designate the Tribal Administrator as the staff level liaison with the U.S. Forest Service, to establish a day-to-day working relationship with the U.S. Forest Service's District Ranger or her/his designee, and to share information provided by the U.S. Forest Service with the Tribal Council.
- C. Identify programmatic U.S. Forest Service activities that the Tribe agrees do not need reoccurring consultation (e.g., trail maintenance, road maintenance, administrative site maintenance) when no extenuating conditions exist.



- D. Assign the Cultural Resources Specialist to work with appropriate cultural representatives, and other knowledgeable Tribal members, to identify issues, locations, and areas of special importance to the Pueblo that may be located on the Forest, and work with the District Ranger or her/his designee to locate these areas on the ground.
- E. Make every attempt to provide timely input to U.S. Forest Service project proposals so that information may be incorporated into the analysis and decision making process.
- F. Provide the District Ranger or her/his designee and District liaison information regarding changes to the Tribal Council, cultural representatives, and Tribal staff. Notification shall include information regarding names, position titles, mailing addresses, and phone numbers.
- G. Provide the U.S. Forest Service with maps identifying the Pueblo's area of interest, to be attached to this MOU as an appendix via modification hereto, with title for areas of mutual interest.
- H. Assist the U.S. Forest Service in developing and presenting orientation, educational, and interpretive material as it relates to the Pueblo.

IV. THE U.S. FOREST SERVICE SHALL:

- A. Consult with the Pueblo at all stages of project development.
- B. Attend quarterly meetings with the Tribal Administrator or other designated Tribal authority(ies) as identified in III(A) above. The purpose of these meetings shall be to prioritize issues, concerns, and opportunities of mutual interest and discuss the Forest's program of work. U.S. Forest Service representatives attending meetings shall include the Forest Supervisor or designated Line Officer, District Rangers or her/his designee, and appropriate staff.
- C. Designate the Jemez District Ranger or her/his designee to serve as contacts to work with Tribal staff on day-to-day Tribal and Forest operations with the Pueblo.
- D. Provide the Governor, Tribal Administrator, and the Pueblo's Director, Department of Resource Protection, a draft agenda one week prior to the scheduled meeting.
- E. Send meeting notes to the Tribal Chairperson and Tribal Administrator within one (1) month after the meeting.
- F. Provide opportunities for field visits to proposed projects with U.S. Forest Service personnel when conditions allow.



- G. Incorporate the Pueblo's issues and concerns in project specific environmental analysis to ensure that a full range of Jemez Indian people's needs and desires are considered.
 - H. Integrate cultural resource considerations and traditional ecological knowledge into land and resource management decisions to promote sustainable ecosystems.
 - I. Maintain, to the extent authorized by law, confidentiality of records, maps, photographs, or other information about activities and locations significant to the Pueblo.
 - J. Maintain a policy of prohibiting the purposeful excavation of human remains for educational purposes, such as research or field schools (including Passport In Time), without project concurrence from the Pueblo.
 - K. Provide technical assistance to the Pueblo in natural and cultural resource management activities which may include, but are not limited to, timber, soils, wildlife, fire, geospatial applications, or heritage, as time, funding, and interests permit.
 - L. Work with the Pueblo Leadership in appropriately managing public access to areas where cultural and/or religious activities are taking place during the times when such activities are occurring.
- V. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:**
- A. The parties may, from time to time, reach other agreements regarding other issues and concerns; nothing in this MOU is to be construed as resolving any issue other than the herein agreed upon protocol for communications.
 - B. Meetings will be held within thirty (30) days following the end of each quarter at a time and place mutually acceptable to the parties.
 - C. The Forest Supervisor or designated Line Officer will attend the meetings.
 - D. Meeting locations may be adjusted to facilitate field visits as agreed upon by both parties.
 - E. Adjustments may be made to meeting agendas at the beginning of each meeting.
 - F. In the event that either party must cancel a meeting, that party will notify the other party's project and administrative contacts as early as possible.



- G. Meeting schedules may also be adjusted for special circumstances, such as active fire suppression.
- H. Additional meetings that may include field visits will be scheduled in addition to regularly scheduled meetings, if necessary. These meetings/field visits may only involve U.S. Forest Service staff and representatives of the Pueblo designated by the Governor and/or Tribal authority(ies).
- I. Documents and letters signed by the Governor and/or Tribal authority(ies) of the Tribal Council, regarding a proposed project or policy, will be considered the Tribe's official position by the U.S. Forest Service.
- J. Forestry Title VIII, Subtitle B, Section 8106, Prohibition on Disclosure; Number 3, Freedom of Information Act; Archeological Resources Protection Act, Chapter 36, Code of Federal Regulations, Section 296.18; and, Section 304, 1992 Amendments to the National Historic Preservation Act, hereby incorporated by reference, protect confidentiality.

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

Principal Cooperator Contacts:

| Cooperator Program Contact | Cooperator Administrative Contact |
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| Name: Greg Kaufman, Director Department of Resource Protection Address: 4471 Highway 4, Box 100 City, State, Zip: Jemez Pueblo, NM 87024 Telephone: 575-834-3210 FAX: 575-834-7697 Email: gkaufman@jemezpuablo-drp.org | Name: Vincent Toya, Tribal Administrator Address: P.O. Box 100 City, State, Zip: Jemez Pueblo, NM 87024 Telephone: 575-834-7359 FAX: 575-834-7331 Email: vtoya@jemezpuablo.org |

Principal U.S. Forest Service Contacts:

| U.S. Forest Service Program Manager Contact | U.S. Forest Service Administrative Contact |
|--|---|
| Name: Linda Riddle Address: P.O. Box 150 City, State, Zip: Jemez Springs, NM87025 Telephone: 575-829-3535 FAX: 575-829-3223 Email: lriddle@fs.fed.us | Name: Karen Dyckes y Montano Address: 2113 Osuna Road NE City, State, Zip: Albuquerque, NM 87113 Telephone: 505-346-3807 FAX: 505-346-3909 Email: kdyckesymontano@fs.fed.us |

- K. **NON-LIABILITY.** The U.S. Forest Service does not assume liability for any third party claims for damages arising out of this instrument.



- L. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or Pueblo is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

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

To the Pueblo, at Pueblo's address shown in the MOU or such other address designated within the MOU.

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

- M. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the U.S. Forest Service or Pueblo from participating in similar activities with other public or private agencies, organizations, and individuals.
- N. ENDORSEMENT. Any of Pueblo's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of Pueblo's products or activities.
- O. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate instruments and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation instrument that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective instrument, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective instruments must comply with all applicable law

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.



- P. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this instrument, or benefits that may arise therefrom, either directly or indirectly.
- Q. FREEDOM OF INFORMATION ACT (FOIA). Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).
- R. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- S. DEBARMENT AND SUSPENSION. The Pueblo shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should the Pueblo or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- T. MODIFICATIONS. Modifications within the scope of this MOU 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.
- U. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through September 30, 2016, at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.
- V. 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 MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.



Joshua Madalena
JOSHUA MADALENA

Pueblo of Jemez

12/20/2010
Date

Erin Connelly
ERIN CONNELLY, Acting Forest Supervisor

U.S. Forest Service, Santa Fe National Forest

12/20/2010
Date

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

Karen Dyckes y Montano
KAREN DYCKES Y MONTAÑO

U.S. Forest Service Grants & Agreements Specialist

11/3/2011
Date

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 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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