



**FEDERAL FINANCIAL ASSISTANCE
AWARD OF COOPERATIVE AGREEMENT
Between The
COOPERATOR
And The
USDA, FOREST SERVICE**

Title:

Upon execution of this document, an award to The Cooperator, hereinafter referred to as "Recipient" in the amount of _____, is made under the authority of _____. The Federal Assistance Listing (formerly Catalog of Federal Domestic Assistance - CFDA) number and name are _____. Recipient accepts this award for the purpose described in the application narrative. Your application for Federal financial assistance, dated _____, and the attached Forest Service provisions, 'Forest Service Award Provisions,' are incorporated into this letter and made a part of this award.

This authority requires a match of _____, which your organization has agreed to provide, as shown in the attached application, financial plan, and narrative.

This is an award of Federal financial assistance. Prime and sub-recipients to this award are subject to the OMB guidance in subparts A through F of 2 CFR Part 200 as adopted and supplemented by the USDA in 2 CFR Part 400. Adoption by USDA of the OMB guidance in 2 CFR 400 gives regulatory effect to the OMB guidance in 2 CFR 200 where full text may be found.

Electronic copies of the CFRs can be obtained at the following internet site: www.ecfr.gov. If you are unable to retrieve these regulations electronically, please contact your Grants and Agreements Office at _____.

The following administrative provisions apply to this award:

- A. **LEGAL AUTHORITY**. Recipient shall have the legal authority to enter into this award, and the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project, which includes funds sufficient to pay the non-Federal share of project costs, when applicable.
- B. **STATEMENT OF SUBSTANTIAL INVOLVEMENT**. The Forest Service anticipates involvement in this Cooperative Agreement and intends on being substantially involved in the following way(s):



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

Principal Cooperator Contacts:

Cooperator Program Contact

Name:
Address:
City, State, Zip:
Telephone:
Email:

Cooperator Administrative Contact

Name:
Address:
City, State, Zip:
Telephone:
Email:

Principal Forest Service Contacts:

Forest Service Program Manager Contact

Name:
Address:
City, State, Zip:
Telephone:
Email:

Forest Service Administrative Contact

Name:
Address:
City, State, Zip:
Telephone:
Email:

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



Unique Entity Identifier (UEI) provided for this agreement in the System for Award Management (SAM) until receipt of final payment. This requires annual review and updates, when needed, of organizational information after the initial registration. More frequent review and updates may be required for changes in organizational information or agreement term(s). Any change to the original UEI provided in this agreement will result in termination of this agreement and de-obligation of any remaining funds. For purposes of this agreement, System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a Cooperative. Additional information about registration procedures may be found at the SAM Internet site at www.sam.gov.

F. LIMITATION OF FUNDS. Forest Service funds in the amount of \$ _____ are currently available for performance of this award through _____. The Forest Service's ability to provide additional funding is contingent upon the availability of appropriated funds from which payment can be made. There is no legal liability on the part of the Forest Service for any payment above this amount until Recipient receives notice of availability confirmed in a written modification by the Forest Service.

G. PAYMENTS – FINANCIAL ASSISTANCE. _____ payments are approved under this award. Only costs for those project activities approved in (1) the initial award, or (2) modifications thereto, are allowable. Requests for payment must be submitted on Standard Form 270 (SF-270), Request for Advance or Reimbursement, and must be submitted no more than monthly. In order to approve a Request for Advance Payment or Reimbursement, the Forest Service shall review such requests to ensure advances or payments for reimbursement are in compliance and otherwise consistent with OMB, USDA, and Forest Service regulations.

Advance payments must not exceed the minimum amount needed or no more than is needed for a 30-day period, whichever is less. If the Recipient receives an advance payment and subsequently requests an advance or reimbursement payment, then the request must clearly demonstrate that the previously advanced funds have been fully expended before the Forest Service can approve the request for payment. Any funds advanced, but not spent, upon expiration of this award must be returned to the Forest Service.

The Program Manager reserves the right to request additional information prior to approving a payment.

The invoice must be sent by one of three methods:

EMAIL (preferred): SM.FS.asc_ga@usda.gov

FAX: 877-687-4894

POSTAL: USDA Forest Service

Budget & Finance - Grants and Agreements 4000

Masthead St, NE

Albuquerque, NM 87109

Send copy to:



- H. INDIRECT COST RATES. The approved indirect cost rate at the time of execution is **XX%** as shown in the NICRA provided by the Cooperator.

As new NICRAs are agreed to between recipient and their cognizant audit agency, the revised provisional or final rate(s) are automatically incorporated into this award, as appropriate, and must specify (1) the agreed upon rates, (2) the bases to which the rates apply, (3) the fiscal year for which the rates apply, and (4) the items treated as direct costs. The award obligation will not increase as a result of indirect cost rate increases. Updates to NICRAs will not affect the total funds available for this award unless documented in a formally executed modification.

If the NICRA is for a provisional rate, recipient shall be reimbursed at the established provisional rate(s), subject to appropriate adjustment when the final rate(s) for the fiscal year are established.

- I. ELECTION OF DE MINIMIS INDIRECT RATE. Recipient has elected to use the *de minimis* indirect cost rate of 10% of modified total direct costs (MTDC) as allowed under 2 CFR 200.414 (f). This rate must be used consistently for all Federal awards until such time as recipient chooses to negotiate for a rate, which they may apply to do at any time. If a new rate is negotiated and utilized the *de minimis* rate can no longer be utilized.
- J. PRIOR WRITTEN APPROVAL. Recipient shall obtain prior written approval pursuant to conditions set forth in 2 CFR 200.407.
- K. MODIFICATIONS. Modifications within the scope of this award must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least days prior to implementation of the requested change. The Forest Service is not obligated to fund any changes not properly approved in advance.
- L. PERIOD OF PERFORMANCE. This agreement is executed as of the date of the Forest Service signatory official signature. Pre-award costs are authorized as of **XX/XX/XXXX** pursuant to 2 CFR 200.458.

The end date, or expiration date is **XX/XX/20XX**. This instrument may be extended by a properly executed modification. *See Modification Provision above.*

- M. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this award. In witness whereof the parties hereto have executed this award.



Recipient Signatory Official Name, Title

Date

Forest Service Signatory Official Name, Title

Date

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

Forest Service Grants Management Specialist

Date



ATTACHMENT A: FOREST SERVICE AWARD PROVISIONS

- A. COLLABORATIVE ARRANGEMENTS. Where permitted by terms of the award and Federal law, recipient a may enter into collaborative arrangements with other organizations to jointly carry out activities with Forest Service funds available under this award.
- B. FOREST SERVICE LIABILITY TO THE RECIPIENT. The United States shall not be liable to Recipient for any costs, damages, claims, liabilities, and judgments that arise in connection with the performance of work under this award, including damage to any property owned by Recipient or any third party.
- C. NOTICES. Any notice given by the Forest Service or recipient will be sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the Forest Service Program Manager, at the address specified in the award.

To recipient, at the address shown in the award or such other address designated within the award.

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

- D. SUBAWARDS. Prior approval is required to issue subawards under this grant. The intent to subaward must be identified in the approved budget and scope of work and approved in the initial award or through subsequent modifications. Approval of each individual subaward is not required, however the cooperator must document that each sub-recipient does NOT have active exclusions in the System for Award Management (sam.gov).

The Cooperator must also ensure that they have evaluated each subrecipient's risk in accordance with 2 CFR 200.332 (b).

Any subrecipient under this award must be notified that they are subject to the OMB guidance in subparts A through F of 2 CFR Part 200, as adopted and supplemented by the USDA in 2 CFR Part 400. Any sub-award must follow the regulations found in 2 CFR 200.331 through .333.

All subawards \$30,000 or more must be reported at fsrs.gov in compliance with 2 CFR 170. See Attachment B for full text.

- E. FINANCIAL STATUS REPORTING. A Federal Financial Report, Standard Form SF-425 (and Federal Financial Report Attachment, SF-425A, if required for reporting multiple awards), must be submitted. These reports are due days after the reporting period ending . The final SF-425 (and SF-425A, if applicable) must be submitted either with the final payment request or no later than 120 days from the expiration date



of the award. These forms may be found at
<https://www.grants.gov/web/grants/forms.html>.

- F. PROGRAM PERFORMANCE REPORTS. The recipient shall perform all actions identified and funded in application/modification narratives within the performance period identified in award.

In accordance with 2 CFR 200.301, reports must relate financial data to performance accomplishments of the federal award.

Recipient shall submit performance reports. These reports are due days after the reporting period ending . The final performance report shall be submitted either with recipient's final payment request, or separately, but not later than 120 days from the expiration date of the award.

- Additional pertinent information:

- G. NOTIFICATION. Recipient shall immediately notify the Forest Service of developments that have a significant impact on the activities supported under this award. Also, notification must be given in case of problems, delays or adverse conditions that materially impair the ability to meet the objectives of the award. This notification must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.
- H. CHANGES IN KEY PERSONNEL. Any revision to key personnel identified in this award requires notification of the Forest Service Program Manager by email or letter.
- I. USE OF FOREST SERVICE INSIGNIA. In order for recipient to use the Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted by the Forest Service's Office of Communications (Washington Office). A written request will be submitted by Forest Service, Program Manager, to the Office of Communications Assistant Director, Visual Information and Publishing Services prior to use of the insignia. The Forest Service Program Manager will notify recipient when permission is granted.
- J. FUNDING EQUIPMENT. Federal funding under this award is not available for reimbursement of recipient's purchase of equipment. Equipment is defined as having a fair market value of \$5,000 or more per unit and a useful life of over one year. Supplies are those items that are not equipment.
- K. PURCHASE OF EQUIPMENT WITH RIGHT TO TRANSFER. Equipment approved for purchase under this award is available only for use as authorized. Title to the equipment rests with the Recipient as long as the equipment is used for its intended purpose. The Forest Service reserves the right to transfer title to the Federal Government or to an eligible third party of any equipment where the Forest Service's proportionate share of the per-unit value is \$5,000 or greater, and the equipment is no



longer needed for its intended purpose. Valuation is based on current fair-market value. The equipment may not be used as collateral, sold, or otherwise transferred to another party without the written permission of the Forest Service.

The Recipient shall inventory equipment acquired in part or in whole with Forest Service funds annually/biannually (select one) and shall submit a copy of the inventory to the Program Manager. A final inventory must be submitted for closeout. The Recipient may use Tangible Personal Property Report Standard Forms (SF) 428 and SF-428-S, Supplemental Sheet, or Recipient's equivalent inventory report. The annual/biannual (select one) report must be filed December 31, due within 90 days, but no later than March 31 of the following year. The final report must be due within 120 days from the expiration date of the award.

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

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

The Forest Service reserves an interest in any equipment where the Forest Service's proportionate share of the per-unit value is \$5,000 or greater. Valuation is based on current fair-market value. To ensure that the federal interest is properly recorded, the recipient shall file a UCC1 form with the applicable State government agency and provide evidence of the filing to the Forest Service Program Manager at the time payment is requested for the equipment purchase, or within 30 days of an advance of funds for the purchase. The recipient is expected to maintain the UCC filing until the equipment has a fair market value of less than \$5,000 or is otherwise disposed of following instructions from the Forest Service. The equipment may not be used as collateral, sold, or otherwise transferred to another party without the written permission of the Forest Service.

The Recipient shall inventory equipment acquired in part or in whole with Forest Service funds annually/biannually (select one) and shall submit a copy of the inventory to the Program Manager. A final inventory shall be submitted for closeout. The Recipient may use Tangible Personal Property Report Standard Forms (SF) 428 and SF-428-S, Supplemental Sheet, or Recipient's equivalent inventory report. The annual/biannual (select one) report must be filed December 31, due within 90 days, but no later than March 31 of the following year. The final report must be due within 120 days from the expiration date of the award.

The Recipient shall use the Tangible Personal Property Report Standard Forms (SF) 428 and SF-428-C, Disposition Request, should the Recipient determine any item of



equipment is no longer needed or has been lost, destroyed, or stolen. After receipt of the SF-428-C, the Forest Service shall issue disposition instructions within 120 days.

- M. FUNDING EQUIPMENT FOR STATE RECIPIENTS. Federal funding under this award is available for reimbursement of the State's purchase of equipment. Equipment is defined as having a fair market value of \$5,000 or more per unit and a useful life of over one year. States will adhere to State laws and procedures regarding purchase, use, and disposition of equipment.
- N. USE OF GOVERNMENT OWNED VEHICLE. Forest Service vehicles may be used for official Forest Service business only in accordance with FSH 7109.19, Ch. 60, the requirements established by the region in which performance of this award takes place, and the terms of this award
- O. BUILDING AND COMPUTER ACCESS BY NON-FOREST SERVICE PERSONNEL. Recipient 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 USDA Directives 3800 series. Those granted computer access must fulfill all Forest Service requirements for mandatory security awareness and role-based advance security training and sign all applicable Forest Service statements of responsibilities.
- P. INTERNATIONAL TRAVEL. When Forest Service funds are used, and no Federal, statutory exceptions apply, recipient shall ensure that any air transportation of passengers and property is provided by a carrier holding a United States government issued certificate in compliance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. 40118 (Fly American Act).
- Q. PUBLIC NOTICES. It is Forest Service's policy to inform the public as fully as possible of its programs and activities. Recipient is encouraged to give public notice of the receipt of this award and, from time to time, to announce progress and accomplishments.

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

- R. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS, AND ELECTRONIC MEDIA. Recipient shall acknowledge Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this award. Follow direction in USDA Supplemental 2 CFR 415.2.



- S. COPYRIGHTING. Recipient is/are granted sole and exclusive right to copyright any publications developed as a result of this award. 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 award.

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 shall be transferred to any sub-awards or subcontracts.

This provision includes:

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

- T. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. Recipient 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 (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, disability, and reprisal or retaliation for prior civil rights activity. (Not all prohibited bases apply to all programs.)

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, and American Sign Language) should contact the responsible State or local Agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form, which can be obtained online at <https://www.ocio.usda.gov/document/ad-3027>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:



- (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, D.C. 20250-9410; or
(2) Fax: (833) 256-1665 or (202) 690-7442; or
(3) Email: program.intake@usda.gov.

If the material is too small to permit the full Non-Discrimination Statement to be included, the material will, at a minimum, include the alternative statement:
“This institution is an equal opportunity provider.”

U. PROGRAM INCOME – FINANCIAL ASSISTANCE.

1. Recipient shall apply the standards set forth in this Provision to account for program income earned under the award.
2. If any program income is generated as a result of this award, the income shall be applied using the alternative as described in 2 CFR 200.307; the deductive alternative is the default if no other method is selected.
3. Unless the terms and conditions of the award/agreement provide otherwise, Recipients shall have no obligation to the U.S. Government regarding program income earned after the end of the project period.
4. Costs incident to the generation of program income may be deducted from gross income to determine net program income, provided these costs have not been charged to the award and they comply with 2 CFR 200.307.
5. Unless the terms and conditions of the award provide otherwise, Recipient 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.

V. DISPUTES. In the event of any issue of controversy under this agreement, the parties may pursue Alternate Dispute Resolution (ADR) procedures to voluntarily resolve those issues. These procedures may include, but are not limited to conciliation, facilitation, mediation, and fact finding.

Should the parties be unable to resolve the issue of controversy through ADR, then the Signatory Official will make the decision. A written copy of the decision will be provided to the Cooperator.

Decisions of the Signatory Official shall be final unless, within 30 days of receipt of the decision of the Signatory Official, the Cooperator appeals the decision to the Forest Service's Deputy Chief, State, Private, and Tribal Forestry (SPTF). Any appeal made under this provision shall be in writing and addressed to the Deputy Chief, SPTF, USDA, Forest Service, Washington, DC 20024. A copy of the appeal shall be



concurrently furnished to the Signatory Official.

A decision under this provision by the Deputy Chief, SPTF, is final. The final decision by the Deputy Chief, SPTF, does not preclude the Cooperator from pursuing remedies available under the law.

- W. AWARD CLOSEOUT. Recipient must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award.

Any unobligated balance of cash advanced to Recipient must be immediately refunded to the Forest Service, including any interest earned in accordance with 2 CFR 200.344(d).

If this award is closed 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.

- X. TERMINATION. This award may be terminated, in whole or part pursuant to 2 CFR 200.340.

- Y. DEBARMENT AND SUSPENSION. Recipient 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 Recipient 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. The Recipient shall adhere to 2 CFR Part 180 Subpart C in regard to review of sub-recipients or contracts for debarment and suspension.

All subrecipients and contractors must complete the form AD-1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Lower Tier Covered Transactions. Blank forms are available electronically. Completed forms must be kept on file with the primary recipient.

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

- AA. SCIENTIFIC INTEGRITY: USDA is committed to the highest levels of integrity in all of our scientific activities and decision making. This includes to performing, recording, and reporting the results of scientific activities with honesty, objectivity, and

transparency. All persons performing under this agreement shall adhere to the principles of scientific integrity described in [Departmental Regulation \(DR\) 1074-001](#).

- BB. GEOSPATIAL DATA. All data collected will meet the requirements of the Geospatial Data Act of 2018 where applicable. This will always include the documentation of all relevant metadata standards, use of standard data formats; description of quantitative measures of uncertainty and source of uncertainty and sources of uncertainty associated with the data. Additionally, the data must meet specific standards specified elsewhere to ensure the data is useful to support the USDA's mission. The recipient/cooperator agrees to comply with USDA's Department-wide enterprise geospatial data management policy implemented in [Departmental Regulation 3465-001](#) which establishes the USDA policy for defining the strategic direction necessary to optimize the management of the USDA geospatial data and geospatial infrastructure, including all geospatial data created for, by, and enhanced by USDA.
- CC. PUBLIC ACCESS TO SCHOLARLY PUBLICATIONS AND DIGITAL SCIENTIFIC RESEARCH DATA. The recipient agrees to comply with USDA's Department-wide [public access policy](#) implemented in [Departmental Regulation 1020-006](#) which establishes the USDA policy for public access to scholarly publications and digital scientific research data assets. The USDA will make all peer-reviewed, scholarly publications and digital scientific research data assets arising from unclassified scientific research supported wholly or in part by the USDA accessible to the public, to the extent practicable.
- DD. BUY AMERICA BUILD AMERICA. Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for an infrastructure project unless:

(1) All iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

(2) All manufactured products used in the project are produced in the United States— this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and

(3) All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The construction material standards are listed below.

Incorporation into an infrastructure project. The Buy America Preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Categorization of articles, materials, and supplies. An article, material, or supply should only be classified into one of the following categories: (i) Iron or steel products; (ii) Manufactured products; (iii) Construction materials; or (iv) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

Application of the Buy America Preference by category. An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

Determining the cost of components for manufactured products. In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

- (a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

Construction material standards. The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.” Except as specifically provided, only a single standard should be applied to a single construction material.

- (1) Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
- (2) Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
- (3) Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
- (4) Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
- (5) Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
- (6) Lumber. All manufacturing processes, from initial debarking through treatment and planning, occurred in the United States.
- (7) Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
- (8) Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

Waivers. When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the Buy America Preference in any case in which the agency determines that:

- (1) applying the Buy America Preference would be inconsistent with the public interest;
- (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the Buy America Preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [USDA Buy America Waivers for Federal Financial Assistance | USDA](#).

Definitions

“Buy America Preference” means the “domestic content procurement preference” set forth in section 70914 of the Build America, Buy America Act, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.

“Construction materials” means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

- (1) The listed items are:
 - (i) Non-ferrous metals;

- (ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- (iii) Glass (including optic glass);
- (iv) Fiber optic cable (including drop cable);
- (v) Optical fiber;
- (vi) Lumber;
- (vii) Engineered wood; and
- (viii) Drywall.

(2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

“Infrastructure” means public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

“Infrastructure project” means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. See also paragraphs (c) and (d) of 2 CFR 184.4.

“Iron or steel products” means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

“Manufactured products” means:

- (1) Articles, materials, or supplies that have been:
 - (i) Processed into a specific form and shape; or
 - (ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
- (2) If an item is classified as an iron or steel product, a construction material, or a Section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in 2 CFR 184.3, then it is not a manufactured product. However, an article, material, or



supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or Section 70917(c) materials.

“Predominantly of iron or steel or a combination of both” means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

“Section 70917(c) materials” means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. See Section 70917(c) of the Build America, Buy America Act.

EE. TRAFFICKING IN PERSONS.

1. Provisions applicable to a Recipient that is a private entity.
 - a. You as the Recipient, your employees, Subrecipients under this award, and Subrecipients’ employees may not:
 - (1) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (2) Procure a commercial sex act during the period of time that the award is in effect; or
 - (3) Use forced labor in the performance of the award or subawards under the award.
 - b. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a Subrecipient that is a private entity:
 - (1) Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either:
 - i. Associated with performance under this award; or
 - ii. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization

that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement),”.

2. Provision applicable to a Recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity:
 - a. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 - b. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - (1) Associated with performance under this award; or
 - (2) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),”
3. Provisions applicable to any recipient.
 - a. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 - b. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - (1) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - (2) Is in addition to all other remedies for noncompliance that are available to us under this award.
 - c. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
4. Definitions. For purposes of this award term:
 - a. “Employee” means either:
 - (1) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

- (2) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- b. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- c. “Private entity”:
 - (1) Means any entity other than a State, local government, Indian Tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - (2) Includes:
 - i. A nonprofit organization, including any nonprofit institution of higher education, hospital, or Tribal organization other than one included in the definition of Indian Tribe at 2 CFR 175.25(b).
 - ii. A for-profit organization.
- d. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

FF. DRUG-FREE WORKPLACE.

- 1. Recipient agree(s) that it will publish a drug-free workplace statement and provide a copy to each employee who will be engaged in the performance of any project/program that receives federal funding. The statement must:
 - a. Tell the employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace;
 - b. Specify the actions Recipient will take against employees for violating that prohibition; and
 - c. Let each employee know that, as a condition of employment under any award, the employee:
 - (1) Shall abide by the terms of the statement, and
 - (2) Shall notify Recipient in writing if they are convicted for a violation of a criminal drug statute occurring in the workplace and shall do so no more than 5 calendar days after the conviction.

2. Recipient agree(s) that it will establish an ongoing drug-free awareness program to inform employees about
 - a. The dangers of drug abuse in the workplace;
 - b. The established policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that you may impose upon them for drug abuse violations occurring in the workplace.
3. Without the 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 award, whichever occurs first.
4. Recipient agrees to immediately notify the Program Manager if an employee is convicted of a drug violation in the workplace. The notification must be in writing, identify the employee's position title, the award number of each award on which the employee worked. The notification must be sent to the Program Manager within 10 calendar days after Recipient learns of the conviction.
5. Within 30 calendar days of learning about an employee's conviction, Recipient must either:
 - a. Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 USC 794), as amended, or
 - b. Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

GG. PROHIBITION AGAINST USING FUNDS WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS.

1. The recipient may not require its employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

2. The recipient must notify its employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (1) of this award provision are no longer in effect.
3. The prohibition in paragraph (1) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information.
4. If the Government determines that the recipient is not in compliance with this award provision, it;
 - a. Will prohibit the recipient's use of funds under this award in accordance with sections 743, 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law; and
 - b. May pursue other remedies available for the recipient's material failure to comply with award terms and conditions.

HH. ELIGIBLE WORKERS. Recipient 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 U.S.C. 1324(a)). Recipient shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract or supplemental instruments awarded under this award.

II. FREEDOM OF INFORMATION ACT (FOIA). Public access to award or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552). Requests for research data are subject to 2 CFR 315(e).

Public access to culturally sensitive data and information of Federally recognized Tribes may also be explicitly limited by P.L. 110-234, Title VIII Subtitle B §8106 (2009 Farm Bill).

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

KK. PROMOTING FREE SPEECH AND RELIGIOUS FREEDOM. As a recipient of USDA financial assistance, you will comply with the following:



1. Do not discriminate against applicants for sub-grants on the basis of their religious character.
2. 7 Code of Federal Regulations (CFR) part 16.3(a), Rights of Religious Organizations.
3. Statutory and National policy requirements, including those prohibiting discrimination and those described in Executive Order 13798 promoting free speech and religious freedom, 2 CFR 200.300.

LL. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. The cooperator (including subrecipients) is responsible for compliance with the prohibition on certain telecommunications and video surveillance services or equipment identified in 2 CFR 200.216. See Public Law 115-232, Section 889 for additional information.

In accordance with 2 CFR 200.216, the grantee (including subrecipients) is prohibited from obligating or expending loan or grant funds for covered telecommunications equipment or services to:

- (1) Procure or obtain, extend, or renew a contract to procure or obtain;
- (2) Enter into a contract (or extend or renew a contract) to procure; or
- (3) Obtain the equipment, services, or systems.

MM. DAVIS BACON WAGES FOR CONSTRUCTION. Following the requirement in Section 41101 of the Bipartisan Infrastructure Law, P.L. 117-58, Davis-Bacon wage rates must be applied for all laborers and mechanics employed by contractors or subcontractors in the performance of construction, alteration, or repair work on a project assisted in whole or in part by funding made available under this Act. Laborers and mechanics shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly referred to as the “Davis-Bacon Act”).

NN. PATENT RIGHTS. Each award made to a small business firm, non-profit organization, or university which is to be performed in the United States, its possessions, or Puerto Rico and has as a purpose the performance of experimental, development, or research work, shall contain the Patents Rights Provision.

1. Definitions:

- a. Invention. Any invention or discovery which is or may be patentable, or otherwise protectable under Title 35 of the United States Code (U.S.C.), or any

novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

- b. Subject Invention. Any invention of Recipient conceived or first actually reduced to practice in the performance of work under this award, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of the award performance.
 - c. Practical Application. To manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations available to the public on reasonable terms.
 - d. Made. When used in relation to any invention, the conception or first actual reduction to practice of such invention.
 - e. Small Business Firm. A small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the administrator of the Small Business Administration. For the purpose of this provision, the size standard for small business concerns involved in Government procurement and subgranting as 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
 - f. Non-Profit Organization. A university or other institution of higher education or an organization of the type described in section 501 (c) (3) of the Internal Revenue Code of 1954 Internal Revenue Code (26 U.S.C. 501c) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.
2. Allocation of Principal Rights. Recipient may retain the entire right, title, and interest throughout the world to each subject invention, subject to this provision and 35 U.S.C. 203. With respect to any subject invention in which Recipient retain(s) title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world.
 3. Invention Disclosure, Election, of Title and Filing of Patent Applications by Recipient
 - a. Recipient shall disclose each subject invention to the Forest Service within two months after the inventor discloses it in writing to personnel responsible for patent matters. The disclosure to the Forest Service shall be in the form of a written report and shall identify the award under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the

nature, purpose, operation, and the physical, chemical, biological or electric characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention, and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Forest Service, Recipient shall promptly notify the Forest Service of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by Recipient.

- b. Recipient shall elect in writing whether or not to retain title to any such invention by notifying the Forest Service within 2 years of disclosure by Recipient; provided that in any case where publication, on sale or public use has initiated the 1 year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Forest Service to a date that is no more than 60 days prior to the end of the statutory period.
 - c. Recipient shall file its initial patent application on an elected invention within 1 year after election or, if earlier, prior to the end of any statutory period wherein valid protection can be obtained in the United States after publication, on sale, or public use. Recipient shall file patent applications in additional countries within either 10 months from the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
 - d. Requests for extension of the time for disclosure to the Forest Service, election, and filing may, at the discretion of the Forest Service, be granted.
4. Conditions when the Government May Obtain Title. Recipient shall convey to the Forest Service, upon written request, title to any subject invention:
- a. If Recipient fail(s) to disclose or elect the subject invention within the times specified in item c herein or elects not to retain title; provided that the Forest Service may only request title within 60 days after learning of the failure of Recipient to disclose or elect within the specified times.
 - b. In those countries in which Recipient fail(s) to file patent applications within the times specified in item 3C herein; provided, however, that if the Recipient has/have filed a patent application in a country after the times specified in item 3C but prior to its receipt of the written request of the Forest Service, Recipient shall continue to retain title in that country.
 - c. In any country in which Recipient decide(s) not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

5. Minimum Rights to Recipient and Protection of the Contractor Right to File.

- a. Recipient shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if Recipient fail(s) to disclose the subject invention within the times specified in item c herein. Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which Recipient is/are a party and includes the right to grant sublicenses of the same scope to the extent Recipient was/were legally obligated to do so at the time of the award. The license is transferable only with approval of the Forest Service, except when transferred to the successor of that party of Recipient's business to which the invention pertains.
- b. Recipient's domestic license may be revoked or modified by the Forest Service to the extent necessary to achieve expeditious practical application of the subject invention, pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404. This license will not be revoked in that field of use or the geographical areas in which Recipient has/have achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Forest Service to the extent Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- c. Before revocation or modification of the license the Forest Service shall furnish Recipient a written notice of its intention to revoke or modify the license, and Recipient shall be allowed 30 days (or such other time as may be authorized by the Forest Service for good cause shown by Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has/have the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 concerning the licensing Government-owned inventions, any decision concerning the revocation or modification of its license.

6. Cooperator Action to Protect the Government's Interest

- a. Recipient agree(s) to execute, or to have executed, and promptly deliver to the Forest Service all agreements necessary to (a) establish or confirm the rights the Government has throughout the world in those subject inventions to which Recipient elect(s) to retain title, and (b) convey title to the Forest Service when requested under paragraph (c) herein and to enable the Government to obtain patent protection throughout the world in that subject invention.
- b. Recipient agree(s) to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by Recipient each subject invention made under the disclosure provisions of paragraph c herein and to execute all papers necessary to

file patent applications on subject inventions and to establish the Government's rights in the subject invention. This disclosure format should require, as a minimum, the information required by paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1). Recipient shall instruct such employees' agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.

- c. Recipient shall notify the Forest Service of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
- d. Recipient agree(s) to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: This invention was made with the Government support under Recipient awarded by the Forest Service. The Government has certain rights in this invention.

7. Subcontracts

- a. Recipient shall include this provision, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor shall retain all rights provided for Recipient in this provision, and Recipient shall not, as part of the consideration for awarding the subgrant or subcontract under the award, obtain rights in the subrecipients' or subcontractor's subject inventions.
 - b. Recipient shall include in all other subcontracts the patent rights clause, regardless of tier, for experimental, developmental, or research work.
 - c. In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, Subcontractors, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the Subcontractor and the Federal agency with respect to those matters covered by this clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph 10 of this clause.
8. Reporting on Utilization of Subject Invention. Recipient agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a

subject invention or on efforts at obtaining such utilization that are being made by Recipient or its Licensees or Assignees. Such reports must include information regarding the status of development, date of first commercial sale or use, gross royalties received by Recipient, and such other data and information as the Forest Service may reasonably specify. Recipient also agrees to provide additional reports as may be requested by the Forest Service in connection with any march-in proceeding undertaken by the Forest Service in accordance with paragraph 10 of this clause. As required by 35 U.S.C. 202(c)(5), the Forest Service agrees it shall not disclose such information to persons outside the government without permission of the Recipient.

9. Preference for United States Industry. Notwithstanding any other provision of this clause, Recipient agrees that neither it nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention will be manufactured substantially in the United States. However, in individual cases the requirement for such an agreement may be waived by the Forest Service upon a showing by Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States, or that under the circumstances, domestic manufacture is not commercially feasible.
10. March-in-Rights. Recipient agrees that with respect to any subject invention in which it has acquired title, the Forest Service has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the Forest Service to require Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if Recipient Assignee, or exclusive Licensee refuses such a request, the Forest Service has the right to grant such a license itself if the Forest Service determines that:
 - a. Such action is necessary because Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
 - b. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Recipient, assignee, or their licensees;
 - c. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by Recipient, assignee, or licensees; or
 - d. Such action is necessary because the agreement required by paragraph i of this provision has not been obtained or waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

11. Special Provisions for Contracts with Non-profit Organizations. If the recipient/contractor is a non-profit organization, it agrees that:
 - a. Rights to a subject invention in the United States may not be assigned without the approval of the Forest Service, except where such assignment is made to an organization which has as one of its primary functions the management of inventions provided that such assignee shall be subject to the same provisions as Recipient.
 - b. Recipient shall share royalties collected on a subject invention with the Inventor, including Federal employee Co-Inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10.
 - c. The balance of any royalties or income earned by Recipient with respect to subject inventions, after payment of expense (including payments to inventor) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and
 - d. It shall make efforts that are reasonable under the circumstances to attract Licensees of subject invention that are small business firms, and that it shall give preference to a small business firm when licensing a subject invention if Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give preference in any specific case will be at the discretion of Recipient. However, Recipient agrees that the Secretary may review Recipient licensing program and decisions regarding small business applicants, and Recipient shall negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that Recipient could take reasonable steps to implement more effectively the requirements of this paragraph.

12. Communication

- a. Communications relating to the administration of this provision and disclosure statements should be directed to:

Patent Advisor
National Patent Program
USDA, Forest Service
One Gifford Pinchot Drive
Madison, WI 53705-2398

- b. Practice statements are also made to the Patent Advisor.

NOTE: Exceptions for Not Using the Patent Rights Provision:

- a. When the award is for the operation of a federally funded research and development center of a government-owned production facility;
- b. In exceptional circumstances when it is determined by the Forest Service that restriction or elimination of the right to retain title to any subject invention shall better promote the policy and objective of Title 35, Chapter 18 of the United States Code; or
- c. When it is determined by a Government authority which is authorized by statute or Executive order to conduct foreign intelligence or counterintelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities.

Any determination under this section shall be in writing and accompanied by a written statement of facts and shall contain such information as the Forest Service field office deems relevant and, at a minimum, must:

- a. Identify the small business firm or nonprofit organization involved.
- b. Describe the extent to which Forest Service action restricted or eliminated the right to retain title to a subject invention.
- c. State the facts and rationale supporting the Forest Service action.
- d. Provide supporting documentation for those facts and rationale.
- e. Indicate the nature of any objections to the Forest Service action and provide any documentation in which those objections appear. A copy of each such determination and written statement of facts must be sent to the Washington Office Director, Fiscal and Public Safety, for review and forwarded to the Comptroller General of the United States within 30 days after the award of the applicable grant or cooperative agreement. In some cases of determinations applicable to agreements with small business firms, copies must also be sent to the Chief Counsel for advocacy of the Small Business Administration.

ATTACHMENT B: 2 CFR PART 170

Appendix A to Part 170—Award Term

I. Reporting Subawards and Executive Compensation

a. *Reporting of first tier subawards.*

1. *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).
2. *Where and when to report.*
 - i. The non-Federal entity or Federal agency must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. *Reporting total compensation of recipient executives for non-Federal entities.*

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - i. The total Federal funding authorized to date under this Federal award equals or exceeds \$30,000 as defined in 2 CFR 170.320;
 - ii. in the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards), and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
2. *Where and when to report.* You must report executive total compensation described in paragraph b.1. of this award term:
 - i. As part of your registration profile at <https://www.sam.gov>.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.

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

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most

highly compensated executives for the subrecipient's preceding completed fiscal year, if—

- i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards) and,
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
 - i. To the recipient.
 - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.
- d. *Exemptions.* If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:
- i. Subawards, and
 - ii. The total compensation of the five most highly compensated executives of any subrecipient.
- e. *Definitions.* For purposes of this award term:
1. Federal Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).
 2. Non-Federal *entity* means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian Tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization; and,
 - iv. A domestic or foreign for-profit organization
 3. *Executive* means officers, managing partners, or any other employees in management positions.
 4. *Subaward:*
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331).
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.



5. *Subrecipient* means a non-Federal entity or Federal agency that:
 - i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
6. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)).

END OF ATTACHMENT B: 2 CFR PART 170

ATTACHMENT C: WHISTLEBLOWER NOTICE

Whistleblowers perform an important service to USDA and the public when they come forward with what they reasonably believe to be evidence of wrongdoing. They should never be subject to reprisal for doing so. Federal law protects federal employees as well as personal services contractors and employees of Federal contractors, subcontractors, grantees, and subgrantees against reprisal for whistleblowing. USDA bears the responsibility to ensure that nothing in a non-disclosure agreement which a contractor, subcontractor, grantee, or subgrantee requires their employees to sign should be interpreted as limiting their ability to provide information to the Office of Inspector General (OIG).

41 U.S.C. § 4712 requires the head of each executive agency to ensure that its contractors inform their workers in writing of the rights and remedies under the statute.

Accordingly, it is illegal for a personal services contractor or an employee of a Federal contractor, subcontractor, grantee, or subgrantee to be discharged, demoted, or otherwise discriminated against for making a protected whistleblower disclosure. In this context, these categories of individuals are whistleblowers who disclose information that the individual reasonably believes is evidence of one of the following:

- Gross mismanagement of a Federal contract or grant;
- A gross waste of Federal funds;
- An abuse of authority relating to a Federal contract or grant;
- A substantial and specific danger to public health or safety; or
- A violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

To be protected under 41 U.S.C. § 4712, the disclosure must be made to one of the following:

- A Member of Congress, or a representative of a committee of Congress;
- The OIG;
- The Government Accountability Office (GAO);
- A Federal employee responsible for contract or grant oversight or management at USDA;
- An otherwise authorized official at USDA or other law enforcement agency;
- A court or grand jury; or
- A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Under 41 U.S.C. § 4712, personal services contractors as well as employees of contractors, subcontractors, grantees, or subgrantees may file a complaint with OIG, who will investigate the matter unless they determine that the complaint is frivolous, fails to allege a violation of the prohibition against whistleblower reprisal, or has been addressed in another proceeding. OIG's investigation is then presented to the head of the executive agency who evaluates the facts of the investigation and can order the contractor, subcontractor, grantee, or subgrantee



to take remedial action, such as reinstatement or back pay.

Federal Acquisition Regulation (FAR) Subpart 3.903, *Whistleblower Protections for Contractor Employees, Policy*, prohibits government contractors from retaliating against a contract worker for making a protected disclosure related to the contract. FAR Subpart 3.909-1 prohibits the Government from using funds for a contract with an entity that requires its employees or subcontractors to sign internal confidentiality statements prohibiting or restricting disclosures of fraud, waste, or abuse to designated persons. This prohibition does not contravene agreements pertaining to classified information. The regulation also requires contracting officers to insert FAR clause 52.203-17, *Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights*, in all solicitations and contracts that exceed the Simplified Acquisition Threshold as defined in FAR Subpart 3.908. This clause requires notification to contractor employees that they are subject to the whistleblower rights and remedies referenced in 41 U.S.C. § 4712.

In order to make a complaint alleging any of the violations mentioned above, one should complete the OIG Hotline form located at: <https://www.usda.gov/oig/hotline>. For additional information, they may also visit the WPC's webpage at: <https://www.usda.gov/oig/wpc> or they may directly contact the WPC at OIGWPC@oig.usda.gov.