



FS Agreement No. 17-PA-11132543-013

Cooperator Agreement No. \_\_\_\_\_

**MASTER  
PARTICIPATING AGREEMENT  
Between  
THE NATURE CONSERVANCY  
And The  
USDA, FOREST SERVICE  
STATE & PRIVATE FORESTRY, FIRE & AVIATION MANAGEMENT**

This MASTER PARTICIPATING AGREEMENT is hereby made and entered into by and between The Nature Conservancy, hereinafter referred to as “TNC,” and the USDA, Forest Service, Fire & Aviation Management hereinafter referred to as the “U.S. Forest Service,” under the authority: Cooperative Funds and Deposits Act of December 12, 1975, Public Law 94-148 as amended, 16 U.S.C. 565 a1-a3; and Wyden Amendment, Section 323(a) of the Department of Interior and Related Agencies Appropriation Act of 1999 as amended.

Background: The U.S. Forest Service and TNC have a long standing relationship, particularly in the area of prescribed fire. A national Cooperative Agreement, “Promoting Ecosystem Resilience and Fire Adapted Communities Together” (PERFACT), #14-CA-11132543-094 has been executed between the parties. Supplemental project agreements under this master participating agreement will round out the field element of the project described in the PERFACT Cooperative Agreement.

Title: Cooperative Prescribed Fire Management and Fuels Management

**I. PURPOSE**

The purpose of this agreement is to document the cooperation between the parties to perform prescribed burning on or affecting National Forest System lands, with a focus on training of personnel from both parties.

Both the U.S. Forest Service and TNC have recognized that excluding wildland fire from fire adapted ecosystems, once thought to protect valuable natural resources as well as people and communities, has instead often had detrimental effects. The lack of fire as a natural disturbance has often contributed to uncharacteristic fuel loadings and fuel profiles. These conditions, coupled with management activities, changing climatic conditions and drought, as well as the ever increasing wildland urban interface, likely contribute to higher complexity fires and more extreme fire behavior. As a result, many fires are having devastating effects.



With more than four decades of experience in fire management, TNC is unique among conservation organizations in being a respected member of U.S. and international fire management communities, with experience safely conducting ecological burns on approximately 100,000 acres each year. TNC's staff and volunteers follow National Wildfire Coordinating Group standards; and it is the only non-governmental organization that complies with the U.S. Incident Qualifications and Certification System (IQCS).

The purpose of this Agreement is for the parties to cooperate and exchange resources in various aspects of prescribed fire management and fuels management, including but not limited to: training and development, planning, and implementation of prescribed fire and/or mechanical fuel treatments. Both TNC and the U.S. Forest Service have long range goals to reintroduce fire into U.S. ecosystems at ecologically-relevant scales. This Agreement will help enhance training and educational opportunities, increase overall fire management capacity, facilitate restoration of fire adapted ecosystems, improve community safety, enhance training and education opportunities, facilitate sharing of science and traditional ecological knowledge related to fire in a contemporary context and expertise, and increase overall fire management capacity. The projects performed under this Agreement will work to restore, protect, or enhance natural resources and make communities safer.

Both parties will work in accordance with the following provisions and any incorporated Supplemental Project Agreement(s).

## **II. STATEMENT OF MUTUAL BENEFITS AND INTERESTS:**

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

The U.S. Forest Service is a Federal natural resource agency, providing leadership in the management, protection, use, research, and stewardship of natural and cultural resources on our country's vast forests and grasslands. The organization functions within the U.S. Department of Agriculture (USDA), propelled by a dedicated workforce of permanent and temporary seasonal employees that exceeds 40,000 employees during the peak summer work season. The U.S. Forest Service was established in 1905 to sustainably manage our national forests and promote conservation across the land. Managing for multiple uses and conservation of a broad suite of ecosystem services (e.g., forest productivity, watersheds, biodiversity, fish, wildlife, and plant habitats, including special protection for sensitive/rare plant and animal species) is core to the agency's mission. The U.S. Forest Service is the largest forest research organization in the world. It has significant scientific and management expertise, supplementing these resources to accomplish much of its work by initiating and developing cooperative relationships and effective partnerships in the U.S. and internationally. The U.S. Forest Service is committed to retaining forests and grasslands for present and future generations.



TNC's mission is to conserve the lands and waters on which all life depends. The U.S. Forest Service's mission is to sustain the health, diversity and productivity of the Nation's forest and grasslands to meet the needs of present and future generations. A central component of both organizations' is the promotion of resilient ecosystems that provide myriad benefits to both natural and human communities. The U.S. Forest Service and TNC recognize the mutual benefit of working together to maintain, enhance, and restore forest ecosystem process and function. Collaboration between these organizations on planning, design, and implementation of training activities that expand skills, strategies, capacity and local networks to restore and steward fire-adapted forests is central to our shared interest in forest health, resilience, biodiversity, and productivity. As stated in the *National Cohesive Wildland Fire Management Strategy*, 'Working together, we can do more to achieve our goals- to restore and maintain resilient landscapes across all jurisdictions; prepare communities so they can live with and withstand a wildfire without loss of life and property; and safely, efficiently, and effectively respond to wildfires when they happen.' Together, the U.S. Forest Service and TNC will execute local strategies to implement the PERFACT Agreement #14-11132543-094. Those local strategies will be implemented in the following ways;

#### Fire-Adapted Human Communities

Leverage local training events to enhance fire practitioner's ability to communicate effectively to raise awareness with internal and external audiences about wildland fire, fuels and ecosystem restoration issues as it relates to promoting communities to become more fire adapted, and resilient landscapes.

#### Restoring and Maintaining Resilient Landscapes

Cultivate strategic, learning networks to facilitate learning among practitioners like the expanded use of local Fire Training Exchange (TREX) to build social and operational capacity to complete fire management objectives and support planning and implementation for prescribed fire and planned ignitions.

#### Social and Operational Capacity for Planning and Implementing Prescribed Fire

Host collaborative restoration-related training events in an interagency/ inter-organizational environment to facilitate shared learning on important topics such as fire ecology, prescribed fire, smoke, and fire restoration-related community outreach and communications to build skills and advance key strategies. By working and training together, both the U.S. Forest Service and TNC will benefit from the increased skills, strategies, capacity and professional networks to work more effectively across organizations and jurisdictional boundaries. Shared work and training opportunities will better prepare the organizations, their local partners, and local communities for future success implementing prescribed fire and living in a fire-adapted ecosystem.

This agreement furthers the collaborative effort between the Forest Service and TNC to achieve national and agency goals and objectives related to prescribed fire management and restoration of fire adapted ecosystems. It will enhance effective and efficient operation across administrative boundaries and improve participant's abilities to meet challenges and opportunities related to prescribe fire and fuel management activities. Furthermore, it



strongly supports TNC's commitment to conservation and restoration at local, national, international levels.

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

### III. TNC SHALL:

- A. LEGAL AUTHORITY. TNC shall have the legal authority to enter into this agreement, and the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project, which includes funds sufficient to pay the nonfederal share of project costs, when applicable.
- B. USE OF GOVERNMENT OWNED VEHICLES. U.S. Forest Service vehicles may be used for official U.S. Forest Service business only in accordance with FSH 7109.19, chapter 60, the requirements established by the region in which performance of this agreement takes place, and the terms of this agreement.
- C. Maintain during the life of this agreement liability insurance as now or hereafter amended.
- D. Meet annually with the U.S. Forest Service for the purpose of identifying and agreeing to specific projects that will be jointly performed and/or funded under this Agreement during that year.
- E. Execute a written SPA and Grants and Agreements Financial Plan Worksheet ("Financial Plan") prior to work commencing for each project as agreed to with the U.S. Forest Service.
- F. As agreed to in individual SPA's signed by the parties, complete access and permission agreements as authorized with third parties for cooperative projects on non-federal lands.
- G. Provide contributions as agreed upon under specific SPA's executed under this Agreement.
- H. As agreed to in individual SPA's, perform the following activities related to prescribed fire and fuels management, including but not limited to: training and development, planning, and implementation of prescribed fire and/or mechanical fuel treatments. Among other things, TNC may be called upon to:
  - 1) Complete all applicable TNC planning requirements prior to project implementation, including burn plan preparations, and other implementation documents.
  - 2) Provide expertise, resources, and assistance for the purposes of prescribed fire management and fuels management as agreed to in individual SPA's entered into by the parties under this Agreement.



- 3) Follow standard operating procedures outlined in National, Regional and local dispatch center mobilization guides for dispatching of resources and equipment.
- 4) Follow standard planning and implementation procedures as described in the Interagency Prescribed Fire Planning and Implementation Procedures Guide, PMS 484, <http://www.nwcg.gov/sites/default/files/products/pms484.pdf>
- 5) Prepare and/or update prescribed fire plans.
- 6) Prepare monitoring plans to include pre and post treatment monitoring and evaluation activities, as agreed to in individual task orders entered into by the Parties under this Agreement.
- 7) Identify training and development needs/opportunities.
- 8) Provide instructors and educational materials, as agreed to in individual SPA's executed under this Agreement.
- 9) Encourage professional development and training to advance knowledge, skills and abilities relative to prescribed fire management and restoration of fire adapted ecosystems.

#### I. SUPERVISION AND TECHNICAL OVERSIGHT.

- 1) A Burn Boss shall be specified for each burn.
- 2) A Chief-of-Party shall be designated for the assisting party's employees and equipment. The Chief-of-Party shall work closely with the Burn Boss. If the Chief-of-Party determines that the proposed burn is unsafe, or otherwise has serious concerns about the advisability of burning or engaging in a specific burn tactic, and is unable to reach satisfactory agreement with the Burn Boss to rectify the situation, the Chief-of Party retains the option of withdrawing the assisting party's resources.
- 3) The Burn Boss shall arrange for immediate medical treatment of any injuries that may be incurred at the scene. The Principal Contacts for each party will communicate promptly in response to an injury and provide documentation as requested. Accident investigations will be undertaken in accordance with the policies of each party, and in consultation with the Lead Party; the assisting party will cooperate in any such investigation.

#### IV. THE U.S. FOREST SERVICE SHALL:

- A. Meet annually with TNC for the purpose of identifying and agreeing to specific projects that will be jointly performed and/or funded under this Agreement during that year.
- B. Execute a written SPA and Financial Plan prior to work commencing for each project as agreed to with TNC.
- C. As agreed to in individual SPA's signed by the parties, complete access and permission agreements as authorized with third parties for cooperative projects on non-federal lands.



- D. Reimburse TNC for agreed upon costs incurred by TNC pursuant to individual SPA's entered into by the parties under this Agreement.
- E. As agreed to in individual SPA's signed by the parties, perform the following activities related to prescribed fire management and fuels management, including but not limited to: training and development, planning, and implementation of prescribed fire and/or mechanical fuel treatment. Among other things, the U.S. Forest Service may be called upon to:
  - 1) Complete all applicable agency planning requirements prior to project implementation, including NEPA requirements, prescribed fire plan preparations, and other implementation documents.
  - 2) Provide expertise, resources, and assistance for the purposes of prescribed fire and fuels management as agreed to in SPAs entered into by the parties under this Agreement.
  - 3) Follow standard operating procedures outlined in National, Regional, and local dispatch center mobilization guides for dispatching of resources and equipment.
  - 4) Prepare and/or update prescribed fire plans.
  - 5) Prepare monitoring plans to include pre and post treatment monitoring and evaluation activities, as agreed to in individual SPA's entered into by the parties under this Agreement.
  - 6) Identify training and development needs/opportunities.
  - 7) Provide instructors and educational materials, as agreed to in individual SPA's entered into by the parties under this Agreement.
  - 8) Encourage professional development and training to advance knowledge, skills and abilities relative to prescribed fire management and restoration of fire adapted ecosystems.

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

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

**Principal Cooperator Contacts:**

| <b>Cooperator Program Contact</b>   | <b>Cooperator Administrative Contact</b>  |
|---|---|
| Lynn Decker<br>4245 N Fairfax Dr, Suite 100<br>Arlington, VA 22203-1606<br>Telephone: 801-320-0524<br>Email: <a href="mailto:ldecker@tnc.org">ldecker@tnc.org</a> | Jennifer Kern<br>1917 First Ave<br>Seattle, WA 98101-1010<br>Telephone: 206-436-6247<br>Email: <a href="mailto:jkern@tnc.org">jkern@tnc.org</a> |



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

| <b>U.S. Forest Service Program Manager Contact</b>  | <b>U.S. Forest Service Administrative Contact</b>   |
|---|---|
| Tim Melchert<br>3833 S Development Ave<br>Boise, ID 83705<br>Telephone: 208-387-5887<br>Email: <a href="mailto:tmelchert@fs.fed.us">tmelchert@fs.fed.us</a> | Lynne Sholty<br>5765 W Broadway<br>Missoula, MT 59808<br>Telephone: 406-329-3843<br>Email: <a href="mailto:lsholty@fs.fed.us">lsholty@fs.fed.us</a> |

- G. **LIABILITY.** On behalf of itself, its officers, directors, members, employees, volunteers, agents, and representatives, each party agrees that it shall be responsible for its own acts and omissions and the results thereof and that it shall not be responsible for the acts or omissions of the other party, nor the results thereof. Each party therefore agrees that it will assume the risk and liability to itself, its agents, employees, and volunteers for any injury to or death of persons or loss or destruction of property resulting in any manner from the conduct of the party’s own operations and/or the operations of its agents, employees, and/or volunteers under this Agreement. Each party further releases and waives all claims against the other party for compensation for any loss, cost, damage, expense, personal injury, death, claim, or other liability arising out of the performance of this Agreement, including without limitation any loss, cost, damage, expense, personal injury, death, claim, or other liability arising out of the other party’s negligence provided, however, that either party may agree to voluntarily compensate the other for damage to equipment. Notwithstanding the foregoing, liability of the U.S. Forest Service shall be determined under the Federal Tort Claims Act, and TNC shall be entitled to any and all applicable protections afforded under local, state, and/or federal law relating to the fire management activities conducted hereunder, either directly or indirectly through its assistance of the U. S. Forest Service, or any government agency.
  
- H. **AVAILABILITY FOR CONSULTATION.** Both parties will make themselves available at mutually agreeable times for continuing consultation to discuss the conditions covered by this agreement and agree to actions essential to fulfill its purposes.
  
- I. **SUPPLEMENTAL PROJECT AGREEMENTS (SPA).** Nothing in this agreement obligates either party to offer or accept any project proposals under this agreement. Any projects added to this agreement must be by mutual consent of the parties through a specific SPA.
  
- J. **ASSURANCE REGARDING FELONY CONVICTION OR TAX DELINQUENT STATUS FOR CORPORATE ENTITIES.** This agreement is subject to the provisions contained in the Department of Interior, Environment, and Related Agencies Appropriations Act, 2012, P.L. No. 112-74, Division E, Section 433 and



434 as continued by Consolidated and Further Continuing Appropriations Act, 2013, P.L. No. 113-6, Division F, Title I, Section 1101(a)(3) regarding corporate felony convictions and corporate federal tax delinquencies. Accordingly, by entering into this agreement TNC acknowledges that it: 1) does not have a tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal violation under any Federal law within 24 months preceding the agreement, unless a suspending and debarring official of the United States Department of Agriculture has considered suspension or debarment is not necessary to protect the interests of the Government. If TNC fails to comply with these provisions, the U.S. Forest Service will annul this agreement and may recover any funds TNC has expended in violation of sections 433 and 434.

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

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

To TNC, at the address shown in the agreement or such other address designated within the agreement.

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

- L. PARTICIPATION IN SIMILAR ACTIVITIES. This agreement in no way restricts the U.S. Forest Service or TNC from participating in similar activities with other public or private agencies, organizations, and individuals.
- M. ENDORSEMENT. Any TNC contributions made under this agreement do not by direct reference or implication convey U.S. Forest Service endorsement of TNC's products or activities.
- N. NON-FEDERAL STATUS FOR COOPERATOR PARTICIPANTS. TNC agree(s) that any of TNC's employees, volunteers, and program participants shall not be deemed to be Federal employees for any purposes including Chapter 171 of Title 28, United States Code (Federal Tort Claims Act) and Chapter 81 of Title 5, United States Code (OWCP), as TNC has hereby willingly agree(s) to assume these responsibilities.





- Further, TNC shall provide any necessary training to TNC employees, volunteers, and program participants to ensure that such personnel are capable of performing tasks to be completed. TNC shall also supervise and direct the work of its employees, volunteers, and participants performing under this agreement.
- O. MEMBERS OF CONGRESS. Pursuant to 41 U.S.C. 22, no member of, or delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.
- P. NONDISCRIMINATION. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, and so forth.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.
- Q. ELIGIBLE WORKERS. TNC shall ensure that all employees complete the I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). TNC shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract or SPA awarded under this agreement.
- R. STANDARDS FOR FINANCIAL MANAGEMENT.

### **1. Financial Reporting**

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

### **2. Accounting Records**

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

### **3. Internal Control**

TNC shall maintain effective control over and accountability for all U.S. Forest Service funds, real property, and personal property assets. TNC shall keep effective



internal controls to ensure that all United States Federal funds received are separately and properly allocated to the activities described in the agreement. TNC shall adequately safeguard all such property and shall ensure that it is used solely for authorized purposes.

#### **4. Source Documentation**

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

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

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

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

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

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

- T. AGREEMENT CLOSE-OUT.

Within 90 days after expiration or notice of termination the parties shall close out the agreement.

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

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



If this agreement is closed out without audit, the U.S. Forest Service reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

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

Performance reports must contain information on the following:

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

TNC shall submit annual performance reports to the U.S. Forest Service Program Manager. These reports are due 90 days after the reporting period. The final performance report must be submitted either with TNC's final payment request, or separately, but not later than 90 days from the expiration date of the agreement.

- V. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS. TNC shall retain all records pertinent to this Agreement for a period of no less than 3 years from the expiration or termination date. As used in this provision, records includes books, documents, accounting procedures and practice, and other data, regardless of the type or format. TNC shall provide access and the right to examine all records related to this agreement to the U.S. Forest Service Inspector General, or Comptroller General or their authorized representative. The rights if access in this section must not be limited to the required retention period but must last as long as the records are kept.

If any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the 3-year period, the records must be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later.

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

- W. FREEDOM OF INFORMATION ACT (FOIA). Public access to agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552). Requests for research data are subject to 2 CFR 215.36.



Public access to culturally sensitive data and information of Federally-recognized Tribes may also be explicitly limited by P.L. 110-234, Title VIII Subtitle B §8106 (2008 Farm Bill).

- X. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, “Federal Leadership on Reducing Text Messaging While Driving,” any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All Cooperatives, their Employees, Volunteers, and Contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- Y. FUNDING EQUIPMENT. Federal funding under this agreement is not available for reimbursement of TNC’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.
- Z. PROPERTY IMPROVEMENTS. Improvements placed by TNC on National Forest System land at the direction or with the approval of the U.S. Forest Service becomes the property of the United States. These improvements are subject to the same regulations and administration of the U.S. Forest Service as other National Forest improvements of similar nature. No part of this agreement entitles TNC to any interest in the improvements, other than the right to use them under applicable U.S. Forest Service regulations.
- AA. CONTRACT REQUIREMENTS. Any contract under this agreement must be awarded following TNC’s established procurement procedures, to ensure free and open competition, and avoid any conflict of interest (or appearance of a conflict). TNC shall maintain cost and price analysis documentation for potential U.S Forest Service review. TNC is/are encouraged to utilize small businesses, minority-owned firms, and women’s business enterprises.
- BB. GOVERNMENT-FURNISHED PROPERTY. TNC may only use U.S. Forest Service property furnished under this agreement for performing tasks assigned in this agreement. TNC shall not modify, cannibalize, or make alterations to U.S. Forest Service property. A separate document, Form AD-107, must be completed to document the loan of U.S. Forest Service property. The U.S. Forest Service shall retain title to all U.S. Forest Service-furnished property. Title to U.S. Forest Service property must not be affected by its incorporation into or attachment to any property not owned by the U.S. Forest Service, nor must the property become a fixture or lose its identity as personal property by being attached to any real property.

*Cooperator Liability for Government Property.*

1. Unless otherwise provided for in the agreement, TNC shall not be liable for loss, damage, destruction, or theft to the Government property furnished or acquired under this contract, except when any one of the following applies:
  - a. The risk is covered by insurance or TNC is/are otherwise reimbursed (to the extent of such insurance or reimbursement).
  - b. The loss, damage, destruction, or theft is the result of willful misconduct or lack of good faith on the part of TNC's managerial personnel. TNC's managerial personnel, in this clause, means TNC's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of TNC's business; all or substantially all of TNC's operation at any one plant or separate location; or a separate and complete major industrial operation.
2. TNC shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft. TNC shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs.
3. TNC shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damage, destruction, or theft of Government property.
4. Upon the request of the Grants & Agreements Specialist, TNC shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of agreements of assignment in favor of the Government in obtaining recovery.

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

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



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

1. When the U.S. Forest Service and TNC agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.
2. By 30 days written notification by TNC to the U.S. Forest Service setting forth the reasons for termination, effective date, and in the case of partial termination, the portion to be terminated. If the U.S. Forest Services decides that the remaining portion of the agreement will not accomplish the purposes for which the agreement was made, the U.S. Forest Service may terminate the agreement in its entirety.

Upon termination of an agreement, TNC shall not incur any new obligations for the terminated portion of the agreement after the effective date, and shall cancel as many outstanding obligations as possible. The U.S. Forest Service shall allow full credit to TNC for the U.S. Forest Service share that cannot be cancelled and were properly incurred by TNC up to the effective date of the termination. Excess funds must be refunded within 60 days after the effective date of termination.

EE. ALTERNATE DISPUTE RESOLUTION – PARTNERSHIP AGREEMENT. In the event of any issue of controversy under this agreement, the parties may pursue Alternate Dispute Resolution procedures to voluntarily resolve those issues. These procedures may include, but are not limited to conciliation, facilitation, mediation, and fact finding.

FF. DEBARMENT AND SUSPENSION. TNC 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 TNC or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

GG. MODIFICATIONS. Modifications within the scope of this agreement must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change. The U.S. Forest Service is not obligated to fund any changes not properly approved in advance.

HH. COMMENCEMENT/EXPIRATION DATE. This agreement is executed as of the date of the last signature and is effective through **September 30, 2020** at which time it will expire. The expiration date is the final date for completion of all work activities under this agreement.



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

*Lynn M. Decker*

LYNN DECKER, North America Fire Initiative Director  
The Nature Conservancy

February 23, 2017

Date

*Shawna A. Legarza*

SHAWNA A. LEGARZA, Director Fire & Aviation  
Management  
U.S. Forest Service, State & Private Forestry

3/28/17

Date

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

*Lynne W. Sholty*

LYNNE SHOLTY  
U.S. Forest Service Grants & Agreements Specialist

Feb 17, 2017

Date

Burden Statement

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