



FS Agreement No. \_\_\_\_\_

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

**NON FUNDED CHALLENGE COST SHARE AGREEMENT****Between The  
XXX  
And The  
USDA, FOREST SERVICE  
TAHOE NATIONAL FOREST**

This NON FUNDED CHALLENGE COST SHARE AGREEMENT is hereby entered into by and between the XXX, hereinafter referred to as “XXX,” and the United States Department of Agriculture (USDA), Forest Service, Tahoe National Forest, hereinafter referred to as the “U.S. Forest Service,” under the authority:

Background: Trail advocate groups and individuals, Nevada County and the Forest Service desire to create a trans-sierran non-motorized single-track trail that connects communities of Truckee (Pines) to Nevada City (Mines). Existing single-track trails exist at both ends of a proposed trans-sierran route. However, there is an approximately 18 to 22-mile gap that would need a new trail connection constructed in order to complete the connection between the two communities (see conceptual maps Exhibits B & C). All new trail construction needed for the connection would occur on National Forest System Lands. Connectivity of the trail through lands owned by Sierra Pacific Industries (SPI) would be provided via use of existing roads. The Pines to Mines Trail Alliance (Truckee Trails Foundation, Gold Country Trails Council, Bicyclists Of Nevada County, Bear Yuba Land Trust and Nevada County) has hired a contractor to ground truth a viable alignment for the proposed trail and the Forest Service has tentatively agreed with the proposed alignment in concept.

The analysis will also include a proposal to designate Class 1 eBike use on the network of trails that would comprise the Pines to Mines connection between Truckee and Nevada City (see map Exhibit D). Class 1 eBikes are peddle assist only electric bikes with a maximum of 750 watts and electric assistance stops at 20 mph. The Pines to Mines Trail System would include portions of the following non-motorized trails: Pioneer, Spaulding Lake, Grouse Ridge, the proposed new trail construction, Hole-In-The-Ground, and Donner Rim (see map Exhibit D).

XXX (Proponent for purposes of this agreement) has secured funds available through Nevada County to hire a third party NEPA contractor to conduct the necessary NEPA analysis and documentation that would be needed to consider construction of the proposed trail connection.

Title: Pines to Mines Trail Third Party NEPA Agreement

**I. PURPOSE:**



The purpose of this agreement is to document the cooperation between the parties to prepare an environmental analysis pursuant to the National Environmental Policy Act in accordance with the following provisions and the hereby incorporated and Financial Plan, attached as Exhibit A.

## II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The Forest Service has discretion to accept or reject the Proponent's proposal, and as part of its decision process, the Forest Service must comply with the NEPA, the National Forest Management Act of 1976, the Forest Service special-use permit regulations in 36 C.F.R. 251, and other applicable statutes, regulations, Executive Orders, and the Forest Service Manual and Handbook direction (collectively, "the applicable legal requirements").

Based upon the Project description and other information provided by the Proponent, and an initial assessment of the Project, the Forest Service has determined that ☒ an Environmental Assessment (EA) must be prepared to determine whether an Environmental Impact Statement (EIS) is required or a Finding of No Significant Impact is possible, or ☐ an Environmental Impact Statement must be prepared.

The NEPA documents will be prepared by a third-party contractor in a manner consistent with the applicable legal requirements and the requirements of this Agreement.

The Parties agree that the NEPA documents will be given a high priority, will be initiated and completed promptly, will utilize existing information and resource specialists to the greatest extent appropriate, will focus on key environmental issues, and will provide an opportunity for full participation by interested members of the public and governmental agencies consistent with the applicable legal requirements.

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

## III. PROPONENT SHALL:

- A. LEGAL AUTHORITY. XXX 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. BUILDING AND COMPUTER ACCESS BY NON-U.S. FOREST SERVICE PERSONNEL. XXX may be granted access to U.S. 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 U.S. 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 U.S. Forest Service requirements for mandatory security awareness and role-based advanced security training, and sign all applicable U.S. Forest Service statements of responsibilities.

- D. Establish a principal point of contact for the Proponent on all matters relating to the NEPA documents.
- E. Enter into a contract with the Prime Consultant that contains all of the following requirements and that is approved by the Forest Service:
  - 1. Selection by the Prime Consultant of its principal point of contact for all matters relating to the NEPA documents.
  - 2. Execution of a disclosure statement by the Prime Consultant, each of the Prime Consultant's professional personnel, and any of the Prime Consultant's subcontractors as well as the subcontractor's professional personnel stating that the Prime Consultant, the Prime Consultant's professional personnel and the Prime Consultant's subcontractors and the subcontractor's professional personnel have no financial interest in the outcome of the NEPA analysis. (40 C.F.R. 1506.5(c))
  - 3. A statement that the Prime Consultant's work product will be considered Forest Service work product owned by the Forest Service. All work will be prepared under Forest Service supervision and is intended to meet legal requirements that apply to the Forest Service. Subject to Forest Service approval, the Prime Consultant may obtain technical assistance or information from one or more independent, third-party subcontractors.
  - 4. Acknowledgment that the Proponent is solely responsible for all Primary Consultant and subcontractor fees, costs, and expenses, and the Primary Consultant and subcontractors shall make no claim against the Forest Service for such fees, costs, and expenses.
  - 5. A provision that states that neither the Prime Consultant nor any subcontractors may conduct public surveys or questionnaires without prior approval of the Forest Service.
  - 6. Acknowledgment that the Prime Consultant will be under the supervision of the Forest Service, and the Forest Service will make the final determination concerning the scope and contents of the Prime Consultant's work.
  - 7. A requirement that the Prime Consultant conduct its NEPA analysis in full



compliance with all applicable legal requirements.

8. A requirement that the Prime Consultant and its subcontractors (if any) document all of their work, including any sampling, testing, field observations, literature searches, analyses, recommendations, letters, e-mails and other work that supports the NEPA analysis. The Prime Consultant shall maintain a master index of all documents it receives or generates that are directly or indirectly considered in the decision making process or that demonstrate compliance with laws, regulations or policies. The index will show at a minimum the date, author, addressee, source document, document number and page number, and subject matter of the document. The Prime Consultant and any subcontractors shall also document all the Forest Service records in a similar and compatible manner. The index shall be an appendix to the NEPA documents and used to incorporate by reference the items listed in the index to the NEPA documents. The index shall be updated throughout the preparation of the NEPA documents. These documents and index will form the basis of the Administrative Record compiled and designated by the Forest Service. The term “document” as used in this paragraph includes data of any sort, including but not limited to electronic media; planning data; maps; files; reports; e-mails; computer, audio or video tapes and disks; and other records.
9. If required by the Forest Service, a statement that the Prime Consultant and any subcontractors comply with the Communications Protocol and an acknowledgment that all communications will be part of the Forest Service’s deliberative process regarding the Project.
10. A requirement that the Prime Consultant meet with and brief the Forest Service with pertinent information to facilitate Forest Service direction and guidance regarding the process on the following topics:
  - a. the issues that will be addressed in the NEPA documents.
  - b. the proposed action.
  - c. the alternatives to be analyzed in detail and the alternatives that will not be analyzed in detail.
  - d. the changes to documents required by the comments received from the public.
  - e. mitigation and monitoring measures if any and analyses and disclosures required by those measures.
11. A requirement that if the Proponent or the Forest Service terminates this agreement, the Prime Consultant will submit to the Forest Service a written report on the environmental work and analyses it or its subcontractors performed prior to the date of termination as well as copies of all work product gathered or created by the Consultant or its subcontractor prior to the date of termination.
12. A requirement that the Prime Consultant work closely with the Forest Service on the following tasks:
  - a. developing and implementing a public involvement plan for public



- scoping;
  - b. preparing draft responses to public comments if requested for Forest Service consideration prior to Forest Service finalization of its responses to public comments; and conducting and completing all necessary studies, inventories, and suitable reports for all resources that may be impacted by the Project and that will be disclosed during the scoping process. These may include but are not limited to cultural features; sensitive, threatened and endangered plant and animal species; wetlands; visual esthetics; fisheries; riparian zones and tundra environments.
  - c. analyzing the direct, indirect, and cumulative effects of the proposed action and alternatives. The final scope of this analysis will be determined through the public scoping process.
13. A requirement that if a litigation hold notice is issued by the United States Department of Justice or by the USDA Office of the General Counsel, the Prime Consultant and any subcontractors will comply with all the terms of that notice.
14. A requirement that if there is a legal challenge to the Forest Service's NEPA compliance for this Project, the Prime Consultant and any subcontractors, must make available to the Forest Service any information requested by the Forest Service. The contract must also require the Prime Consultant to respond to all Forest Service requests for information and testify at deposition and/or trial regarding any aspect of the Project about which the Prime Consultant possesses information.
- F. Provide to the Prime Consultant or the Forest Service any necessary or relevant technical or environmental information it may have and which the Forest Service's determines is needed for the NEPA documents.
- G. Respond to data requests and provide review comments (such as a description of the Project and changes thereto) within a reasonable time set by the Forest Service. If the Proponent fails to provide requested materials on schedule, the NEPA analysis schedule will be adjusted by the Forest Service to the extent necessary for timely completion of the NEPA documents.
- H. Provide information about the feasibility of proposed action and alternatives design features, mitigation measures as requested by the Forest Service.
- I. Be solely responsible for all Primary Consultant and subcontractor fees, costs, and expenses and make no claim against the Forest Service for such fees, costs, and expenses.
- J. Fund all reproduction, printing, and distribution of preliminary, Draft, and Final NEPA documents, unless otherwise agreed to by the Forest Service.



- K. Respond to Freedom of Information Act (FOIA), 5 U.S.C. 552 and Privacy Act, 5 U.S.C. 552a requests regarding the Project and NEPA documents within established timeframes provided by the Forest Service.

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

- A. Establish a Project Manager (“Project Manager”) as the principal point of contact for the Forest Service on all matters relating to compliance with NEPA. The duties of the Project Manager shall include oversight of all analyses; facilitation of communications between the Forest Service, the Proponent, the Prime Consultant, and subcontractors to assure a timely and thorough exchange of relevant information among them; oversight of the public involvement plan developed by the Forest Service, including, without limitation, all necessary scoping meetings and other public reviews; and other duties as required to complete the NEPA documents.
- B. Coordinate with the Proponent to select a qualified Prime Consultant based on past experience, technical competence, availability to perform work, and an absence of conflict of interest. A qualified Prime Consultant for this Project will have the following skills and experience: conducting environmental analyses in support of NEPA documentation; documenting NEPA analyses; conducting archaeological/cultural surveys and reporting findings in preparation for SHPO consultation; preparing biological assessments (botanical and wildlife) sufficient for Endangered Species Act consultation; facilitating controversial public open meetings; watershed impact assessments
- C. Furnish copies of the following information to the identified parties:
1. The Prime Consultant and/or the Proponent shall be provided with the agreed-upon schedule of work between the Forest Service and the Proponent.
  2. The Prime Consultant and/or the Proponent shall be provided with an outline of the format to be used for the NEPA documents as specified at 40 C.F.R. 1500-1508 and 36 C.F.R. 220.
  3. The Prime Consultant and/or the Proponent shall be provided access to the relevant Forest Plan, Forest Plan environmental analysis, and Record of Decision with all amendments to those documents.
  4. The Prime Consultant and/or the Proponent shall be provided access to the statutes, regulations, Executive Orders, Forest Service Manuals and Handbooks that control or guide the preparation of the NEPA documents.



5. The Prime Consultant shall be provided with relevant written comments or reports prepared by the Forest Service Interdisciplinary Team.
  6. The Prime Consultant shall be provided with access to relevant letters, comments or other materials received by the Forest Service from interested parties or agencies in the scoping session, comments on the document, or at other stages in the analysis process.
  7. The Prime Consultant and/or the Proponent may be provided additional information as specified in Appendix A.
- D. Meet with the Prime Consultant throughout the preparation of the NEPA analysis to provide direction and make ultimate decisions regarding, at a minimum, the following topics:
1. The issues that will be addressed in the NEPA documents.
  2. The design criteria for the proposed action and the alternatives to the proposed action.
  3. The alternatives to be analyzed in detail and the alternatives that will not be analyzed in detail.
  4. Any changes to the NEPA analysis required by the comments received from the public.
  5. Proposed mitigation measures and disclosures required by those measures.
- E. Evaluate the information submitted by the Prime Consultant, subcontractors, the Proponent, or others, and maintain responsibility for the accuracy of that information (40 CFR 1506.5). Make the final determination regarding inclusion or exclusion of material from the NEPA documents and take responsibility for the scope and content of the NEPA documents.
- F. Convene a Forest Service Interdisciplinary Team (“ID Team”) as required by 40 CFR 1500 to oversee the NEPA analysis. It is anticipated that the ID Team will function principally as a review team, providing technical guidance to the Project Manager, Prime Consultant, and any subcontractors regarding the issues and alternatives to be addressed in the NEPA documents. The ID Team will provide input and guidance on the adequacy of existing data and studies, and such additional matters as are useful to the prompt and efficient completion of the NEPA documents in compliance with the applicable legal requirements. Duplication of tasks between the Project Manager, Prime Consultant, any subcontractors, and ID Team members will be avoided.



- G. Respond to Freedom of Information Act (FOIA) requests in accordance with 5 U.S.C. 552 and Privacy Act, 5 U.S.C. 552a regarding the Project and NEPA analysis. If the Proponent, Prime Consultant or any subcontractors have provided the Forest Service with business information that would be responsive to a FOIA or Privacy Act request, the Forest Service will provide the Proponent, Prime Consultant or any subcontractors with prompt notification of any request for that information under FOIA. The Proponent, Prime Consultant or any subcontractors will be given reasonable time to assert privilege on information or records considered proprietary under FOIA. The Proponent, Prime Consultant, or any subcontractors will be notified of the Forest Service's determination regarding disclosure of such records prior to the disclosure date. The Forest Service retains the right and authority to determine what is releasable in accordance with FOIA. The Proponent, Prime Consultant or any subcontractors will be promptly notified of all instances in which FOIA requesters bring suit seeking to compel disclosure of submitted information. 7 CFR 1.12.
- H. Prepare the final decision document.
- I. Supervise the preparation of the NEPA documents in compliance with applicable legal requirements including, but not limited to, ensuring public review of the NEPA documents and review of public comments. In exercising this responsibility, the Forest Service will endeavor to foster cooperation among other relevant agencies and to integrate NEPA requirements with other environmental review and consultation requirements in order to avoid, to the fullest extent possible, duplication of efforts by such agencies. (40 CFR 1500.5(g)-(h), 1501.2(d)(2), 1506.2) However, the Forest Service will not delegate to any other agency its authority over the scope and content of the NEPA documents or Forest Service approval of the Project.
- J. Provide direction to the Prime Consultant for designing, organizing, indexing, preparing and maintaining documents regarding the NEPA analysis. Using documents provided in part by the Prime Consultant, and consistent with the applicable legal requirements, create and designate the official administrative record for the Project.
- K. Determine whether a communications protocol shall apply to the NEPA analysis. If required, comply with the communications protocol.
- L. Keep the Proponent informed of the status of the NEPA analysis, and discuss with the Proponent any additional data needs.
- M. Invite the Proponent to attend meetings with federal, state, regional, and local agencies and the public as appropriate (e.g., discussions on procedural matters; physical, biological, and social issues; the proposed action and alternative actions; impacts and their mitigation; and other compliance requirements).





- N. Meet with the Proponent as early as possible and as needed to discuss the Project description and components of the NEPA analysis to determine mitigation measures necessary to avoid or mitigate adverse impacts.
- O. Address Proponent-proposed alternatives and respond to procedural and substantive comments submitted by the Proponent during the NEPA analysis process.
- P. Maintain responsibility for public review of the NEPA documents, public hearings, analysis of public comments, and distribution of documents.
- Q. Receive all public comments on the Draft NEPA documents. Determine any necessary modification(s) to the NEPA documents as a result of public comments.
- R. To the fullest extent possible, utilize existing information, inventories, studies, and reports to support the NEPA documents, provided that such information can be verified by the Forest Service and is accurate as required by 40 CFR 1506.5(a) and (c).
- S. Retain the sole responsibility for making decisions regarding and approving the NEPA analysis. The Forest Service reserves the right to terminate the NEPA analysis in its sole discretion and for any reason, including lack of performance or poor work quality by the Prime Consultant and/or its subcontractors.

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

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

**Principal Cooperator Contacts:**

Cooperator Program Contact	Cooperator Administrative Contact
Name: XXX Address: XXX City, State, XXX Telephone: XXX FAX: Email: XXX	Name: XXX Address: XXX City, State, Zip: XXX Telephone: XXX FAX: Email: XXX

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

<b>U.S. Forest Service Program Manager Contact</b>	<b>U.S. Forest Service Administrative Contact</b>
Name: XXX Address: XXX City, State, Zip: XXX Telephone: XXX FAX: Email: XXX	Name: Address: City, State, Zip: Telephone: FAX: Email:

- B. **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 in the Consolidated Appropriations Act, 2016, P.L. No. 114-113, Division E, Title VII, General Provisions Section 745 and 746 respectively regarding corporate felony convictions and corporate federal tax delinquencies. Accordingly, by entering into this agreement XXX 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 XXX fails to comply with these provisions, the U.S. Forest Service will annul this agreement and may recover any funds XXX has expended in violation of sections 433 and 434.
- C. **USE OF U.S. FOREST SERVICE INSIGNIA.** In order for XXX to use the U.S. Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications (Washington Office). A written request will be submitted by the U.S. Forest Service to the Office of Communications Assistant Director, Visual Information, and Publishing Services prior to use of the insignia. The U.S. Forest Service will notify the XXX when permission is granted.
- D. **NON-FEDERAL STATUS FOR COOPERATOR PARTICIPANTS.** XXX agree(s) that any of XXX'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 XXX has hereby willingly agreed to assume these responsibilities.

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

- E. NON-FEDERAL STATUS FOR COOPERATOR LIABILITY. XXX agree(s) that any of XXX's employees and program participants shall not be deemed to be Federal employees for any purposes including Chapter 171 of Title 28, United States Code (Federal Tort Claims Act) and Chapter 81 of Title 5, United States Code (OWCP), and XXX hereby willingly agree(s) to assume these responsibilities.

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

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

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

- F. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or XXX 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 XXX, 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.

- G. PARTICIPATION IN SIMILAR ACTIVITIES. This agreement in no way restricts the U.S. Forest Service or XXX from participating in similar activities with other public or private agencies, organizations, and individuals.
- H. ENDORSEMENT. Any of XXX's contributions made under this agreement do not by direct reference or implication convey U.S. Forest Service endorsement of XXX's products or activities.
- I. MEMBERS OF U.S. 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.
- J. ELIGIBLE WORKERS. XXX 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). XXX shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract awarded under this agreement.
- K. SYSTEM FOR AWARD MANAGEMENT REGISTRATION REQUIREMENT (SAM). XXX shall maintain current information in the System for Award Management (SAM). This requires review and update to the information at least annually after the initial registration, and more frequently if required by changes in information or agreement term(s). 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](http://www.sam.gov).
- L. NONDISCRIMINATION. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, and so forth.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of



discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

- M. AGREEMENT CLOSEOUT. Within 120 days after expiration or notice of termination the parties shall close out the agreement.

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

- N. 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

XXX 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 no later than 120 days from the expiration date of the agreement.

- O. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS. XXX 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. XXX 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 of 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.

- P. 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 (2009 Farm Bill).

- Q. 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.
- R. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. XXX shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this agreement.
- S. TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO). The U.S. Forest Service recognizes and honors the applicability of the Tribal laws and ordinances developed under the authority of the Indian Self-Determination and Educational Assistance Act of 1975 (PL 93-638).
- T. FLY AMERICA ACT. The Fly America Act of 1974 (49 U.S.C. 40118) requires that all air travel and shipments under this award must be made on U.S. flag air carriers to the extent service by such carriers is available and when no Federal, statutory exceptions apply. The Administrator of General Services Administration (GSA) is authorized to issue regulations for purposes of implementation. Those regulations may be found at 41 CFR part 301, and are hereby incorporated by reference into this award.
- U. GOVERNMENT-FURNISHED PROPERTY. XXX may only use U.S. Forest Service property furnished under this agreement for performing tasks assigned in this agreement. XXX 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.



*XXX Liability for Government Property.*

1. Unless otherwise provided for in the agreement, XXX 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 XXX is 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 XXX's managerial personnel. XXX's managerial personnel, in this provision, means XXX's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of XXX's business; all or substantially all of XXX's operation at any one plant or separate location; or a separate and complete major industrial operation.
2. XXX shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft. XXX 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. XXX shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damage, destruction, or theft of Government property.
4. Upon the request of the Grants Management Specialist, XXX 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.

- V. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. XXX shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

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

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

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

***"This institution is an equal opportunity provider."***



- W. REMEDIES FOR COMPLIANCE RELATED ISSUES. If XXX 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 wholly or partly suspend or terminate the current agreement.
- X. TERMINATION BY MUTUAL AGREEMENT. This agreement may be terminated, in whole or part, as follows:
1. When the U.S. Forest Service and XXX 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 XXX 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 Service decides that the remaining portion of the agreement does not accomplish the purpose for which the award/agreement was made, the U.S. Forest Service may terminate the award upon 30 days written notice in its entirety.
- Y. 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.
- Z. DEBARMENT AND SUSPENSION. XXX 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 XXX 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.
- AA. COPYRIGHTING. XXX is/are granted sole and exclusive right to copyright any publications developed as a result of this agreement. This includes the right to publish and vend throughout the world in any language and in all media and forms, in whole or in part, for the full term of copyright and all renewals thereof in accordance with this agreement.

No original text or graphics produced and submitted by the U.S. Forest Service must be copyrighted. The U.S. Forest Service reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Federal Government purposes. This right must be transferred to any sub-agreements or subcontracts.





This provision includes:

1. The copyright in any work developed by XXX under this agreement.
2. Any right of copyright to which XXX purchase(s) ownership with any Federal contributions.

BB. 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.

CC. COMMENCEMENT/EXPIRATION DATE. This agreement is executed as of the date of the last signature and is effective through December 31, 2025 at which time it will expire. The expiration date is the final date for completion of all work activities under this agreement.

DD. 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.

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XXX , Executive Director  
XXX

Date

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ELI ILANO, Forest Supervisor  
U.S. Forest Service, TAHOE NATIONAL FOREST

Date

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

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U.S. Forest Service Grants Management Specialist

Date



According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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