

FS Agreement No. 12-PA-11052009-019
Cooperator Agreement No. _____

**MASTER
PARTICIPATING AGREEMENT
Between The
CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION
And The
USDA, FOREST SERVICE
PACIFIC SOUTHWEST REGION**

This Master Participating Agreement (Agreement) is hereby made and entered into by and between the California Department of Forestry and Fire Protection, hereinafter referred to as "CAL FIRE" and the USDA, Forest Service, Pacific Southwest Region hereinafter referred to as the "U.S. Forest Service," under the authority of the Cooperative Funds and Deposits Act of December 12, 1975, Pub. L. 94-148, 16 U.S.C. 565a1-a3, as amended by the Consolidated Appropriations Act of 2008, Pub. L. 110-161, and the Omnibus Public Land Management Act, Pub. L. 111-11, Sec. 3001.

Title: CAL FIRE Inmate Crews - Job Training and Personnel Development

I. PURPOSE

The purpose of this agreement is to provide a framework for the cooperation between the parties in utilizing CAL FIRE's conservation camp crews (Crews). The CAL FIRE Conservation Camp Program is a job training and personnel development program that provides work and training for inmates on various conservation projects. Training activities for Crews may include protection of National Forest System (NFS) lands which are located in California and preservation of natural resources. The Parties anticipate that Crews will perform activities such as timber stand maintenance, wildlife habitat and rangeland improvement and rehabilitation; hazardous tree removal; fire defense improvement (e.g. fire- and fuel break construction); campground and picnic area rehabilitation; exotic plant removal; painting, building or repairing structures; dismantling structures; trail construction and rehabilitation; emergency clean-up; and snow removal within the State of California in accordance with the following provisions and any incorporated Supplemental Project Agreement (SPA). Tasks delineated within SPAs are referred to as Projects.

II. STATEMENT OF MUTUAL BENEFITS AND INTERESTS:

This Agreement will support a means of providing helpful and educational outdoor activity, valuable job training, and the development of programs for Crews, as well as contribute to projects for the public welfare.

The agreement provides an opportunity for CAL FIRE to assist in conserving the natural resources of the United States and support the protection, development, and improvement of the National Forests within the State of California.



This agreement provides an opportunity for CAL FIRE and the Forest Service to cooperate in a program of managing natural resources on NFS lands and performing necessary improvement work in such a manner as to provide training to and develop job skills for Crews.

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

III. CAL FIRE RESPONSIBILITIES:

- A. LEGAL AUTHORITY. CAL FIRE 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. From proposed work projects submitted by the Forest Service on a CAL FIRE Conservation Camp Program – Project Request and Record form (FC-32), select those that can be satisfactorily accomplished by CAL FIRE Crews.
- C. Furnish Crews, as available, from CAL FIRE Conservation Camps, adequately equipped and clothed to do normal forest improvement and conservation work.
- D. Be responsible for transportation of the Crews.
- E. At all times, in conjunction with the California Department of Corrections and Rehabilitation, have full jurisdiction over and be responsible for supervision, discipline, custody and control of inmates assigned to Projects under this Agreement.
- F. Bill the Forest Service at least quarterly, in arrears, for the costs agreed upon in SPAs. Cost determination will be based on information appearing on the FC-32 and/or an FC 80.
- G. Orient Forest Service employees involved in Projects on the requirements of Title 15, California Code of Regulations, and/or the appropriate sections of the California Welfare and Institutions Code.
- H. Take all reasonable precautions to avoid damage to property of the Forest Service that is made available for use on Projects. Repairs to or replacement of any property damaged as a result of the use of Forest Service facilities (other than normal wear and tear) will be paid for by CAL FIRE, limited to the extent authorized by the laws of the State of California.

IV. THE U.S. FOREST SERVICE RESPONSIBILITIES:

- A. Submit project requests to CAL FIRE on form FC-32, as training and development opportunities occur in forest improvement and conservation work. Project requests shall include a detailed description of the work to be done, specifications, project location and Forest Service contributions to the cost of the project. Only Line Officers and Regional Program Directors are authorized to approve FC-32 submissions to CAL FIRE.



- B. Reimburse CAL FIRE for the direct costs related to the project as shown on the FC-32. CAL FIRE administrative fees may be included at the rate agreed to on the FC-32.

Invoices must include, at a minimum:

1. CAL FIRE Conservation Camp name, address, and telephone number
 2. US Forest Service agreement number
 3. CAL FIRE agreement number
 4. Invoice date
 5. Performance dates of the work completed (start & end)
 6. Total invoice amount for the billing period
 7. Invoice number, if applicable
 8. CAL FIRE's match as calculated by the average value of Crews per day.
- C. Provide all special tools, equipment, materials, and supplies to Crews, as well as, any technical supervision and labor specifically required for project work to be performed that CAL FIRE has not already provided and as detailed on the FC-32. Ownership of non-expendable items provided the Forest Service for project work remains with the Forest Service.
- D. Assign qualified and experienced Forest Officers to provide the technical direction for CAL FIRE crew supervisors on all Projects. These Forest Officers shall provide technical direction for project work. In the event that the Crews do not produce the required amount of work, do not perform to the Forest Service standards, or do not work in a safe manner, the Forest Officer shall advise the Camp Division Chief.
- E. Forest Service personnel shall not mail or deliver letters for inmates or wards, or barter, gamble with or furnish money, alcohol, drugs, tobacco, cellular phones or tangible goods to an inmate or ward, nor furnish any other items or substances prohibited by the California Code of Regulations, Penal Code, or other Statute, Law or Policy. While in the vicinity of inmate crews, Forest Service peace officers shall remove their weapons unless on official law enforcement business. Specific requirements for working around inmate/work crews may be found in a pamphlet available through CAL FIRE entitled "Working With California Inmate Fire Crews."
- F. As may be agreed to in the individual project request, provide spike camp locations with facilities to house and feed the work crews.



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.

CAL FIRE

Program Contact

Joshua White
PO Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 651-9180
Email: josh.white@fire.ca.gov

Administrative Contact

Leslie Cary
PO Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 323-3827
Email: leslie.cary@fire.ca.gov

USFS

Program Contact

Kathy Mick
1323 Club Drive
Vallejo, CA 94592
Telephone: (707) 562-8859
Email: kmick@fs.fed.us

Administrative Contact

Lynne Sholty
1323 Club Drive
Vallejo, CA 94592
Telephone: (406) 329-3843
FAX: (406) 329-3876
Email: lsholty@fs.fed.us

- B. **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.
- C. **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.
- D. **NON-LIABILITY.** Neither Party assumes liability for any third party claims for damages arising out of this Agreement.
- E. **NOTICES.** Any communications affecting the operations covered by this Master Agreement given by the U.S. Forest Service or CAL FIRE 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 the CAL FIRE Cooperator Program Contact, 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.



- F. **PARTICIPATION IN SIMILAR ACTIVITIES.** This agreement in no way restricts the U.S. Forest Service or CAL FIRE from participating in similar activities with other public or private agencies, organizations, and individuals.
- G. **ENDORSEMENT.** Any CAL FIRE contributions made under this Agreement do not by direct reference or implication convey U.S. Forest Service endorsement of CAL FIRE's products or activities and does not by direct reference or implication convey CAL FIRE's endorsement of the Forest Service's products or activities.
- H. **NON-FEDERAL STATUS FOR COOPERATOR PARTICIPANT LIABILITY.** CAL FIRE agree(s) that any of their 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 (Workers' Compensation Programs), as CAL FIRE hereby willingly agree(s) to assume these responsibilities.
- Further, CAL FIRE shall provide any necessary training to CAL FIRE's employees, volunteers, and program participants to ensure that such personnel are capable of performing tasks to be completed. CAL FIRE shall also supervise and direct the work of its employees, volunteers, and participants performing under this agreement.
- I. **MEMBERS OF U.S. CONGRESS.** Pursuant to 41 U.S.C. 22, no United States member of, or United States delegate to, Congress shall be admitted to any share or part of this Agreement, or benefits that may arise therefrom, either directly or indirectly except insofar as the benefits may inure to the general public.
- J. **NONDISCRIMINATION.** The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program 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, etc.) 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 Ave, SW, Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382. USDA is an equal opportunity provider and employer.
- K. **ELIGIBLE WORKERS.** Both Parties shall ensure that all employees have completed the I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). Both Parties shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any SPA awarded under this Agreement.



L. STANDARDS FOR FINANCIAL MANAGEMENT.

1. **Financial Reporting.** CAL FIRE 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.** CAL FIRE 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.** CAL FIRE shall maintain effective control over and accountability for all U.S. Forest Service funds. CAL FIRE shall keep effective internal controls to ensure that all Federal funds received are separately and properly allocated to the activities described in the agreement and used solely for authorized purposes.
4. **Source Documentation.** CAL FIRE shall support all accounting records with source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and contract documents, and so forth.

M. OVERPAYMENT. Any funds paid to CAL FIRE in excess of the amount entitled under the terms and conditions of this agreement constitute a debt to the Federal Government. The following must also be considered as a debt or debts owed by CAL FIRE 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 CAL FIRE.
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.

N. AGREEMENT CLOSEOUT. CAL FIRE shall close out this Agreement within 90 days after expiration or notice of termination.

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 CAL FIRE.

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.

- O. **RETENTION AND ACCESS REQUIREMENTS FOR RECORDS.** Both Parties 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. CAL FIRE 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.

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.

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

- P. **FREEDOM OF INFORMATION ACT (FOIA).** Public access to 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).
- Q. **FUNDING EQUIPMENT.** Federal funding under this Agreement is not available for reimbursement of CAL FIRE'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.
- R. **PROPERTY IMPROVEMENTS.** Improvements made by CAL FIRE on NFS 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. No part of this Agreement entitles CAL FIRE to any interest in the improvements, other than the right to use them under applicable U.S. Forest Service regulations.
- S. **GOVERNMENT-FURNISHED PROPERTY.** CAL FIRE may only use U.S. Forest Service property furnished under this Agreement for performing tasks assigned pursuant to this Agreement. CAL FIRE 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, CAL FIRE shall not be liable for loss, damage, destruction, or theft of Forest Service property furnished or acquired under this contract, except when any one of the following applies—
 - a. CAL FIRE is otherwise reimbursed, and then only to the extent of such reimbursement.
 - b. The loss, damage, destruction, or theft is the result of willful misconduct on the part of CAL FIRE's managerial personnel. Managerial personnel, in this clause, means CAL FIRE's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of CAL FIRE, or all or substantially all of CAL FIRE's operation at any one facility or separate location.
2. CAL FIRE shall take all reasonable actions necessary to protect Forest Service property from further loss, damage, destruction, or theft. CAL FIRE shall separate the damaged and undamaged Forest Service property, place all the affected Forest Service property in the best possible order, and take such other action as the Forest Service Program Manager directs.
3. CAL FIRE shall do nothing to prejudice Forest Service rights to recover against third parties for any loss, damage, destruction, or theft of Forest Service property.
4. Upon the request of the Grants & Agreements Specialist, identified in Provision V-A, CAL FIRE shall, at Forest Service expense, furnish to the Forest Service all reasonable assistance and cooperation.

T. REMEDIES FOR COMPLIANCE RELATED ISSUES. If CAL FIRE 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 CAL FIRE 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 instrument for CAL FIRE's program;
4. Withhold further funding for the program, or
5. Take other remedies that may be legally available, including debarment procedures under 7 CFR part 3017.



- U. TERMINATION BY MUTUAL AGREEMENT. This Agreement may be terminated by either Party by giving 30 days notice to the non-terminating Party.

Upon termination of this Agreement, CAL FIRE shall not incur any new obligations under this Agreement or any SPAs after the effective date, and shall cancel as many outstanding obligations as possible. The U.S. Forest Service shall pay CAL FIRE for the Forest Service's share of the non-cancelable obligations properly incurred by CAL FIRE up to the effective date of the termination.

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

- W. DEBARMENT AND SUSPENSION. CAL FIRE shall immediately inform the U.S. Forest Service if it is 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 CAL FIRE receive a transmittal letter or other official Federal notice of debarment or suspension, it shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

- X. MODIFICATIONS. Modifications within the scope of this 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. Neither Party is obligated to fund any changes not properly approved in advance.

- Y. COMMENCEMENT/EXPIRATION DATE. This Agreement is executed as of the date of the last signature and is effective through December 31, 2015, at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.



Z. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this Agreement 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:



ANDY McMURRY, Deputy Director
California Department of Forestry & Fire Protection
Date 12/13/11



RAMIRO VILLALVAZO, Director Public Services
U.S. Forest Service, Pacific Southwest Region
Date 12-14-11

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



LYNNE SHOLTY, Grants & Agreements Specialist
U.S. Forest Service, Pacific Southwest Region
Date 12/8/11

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-8992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8336 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.