

2013-0118-FD/MS

FS Agreement No. 12-PA-11031000-013  
 Cooperator Agreement No. \_\_\_\_\_

**PARTICIPATING AGREEMENT  
 Between The  
 SANTA FE COUNTY FIRE DEPARTMENT  
 And The  
 USDA, FOREST SERVICE  
 SANTA FE NATIONAL FOREST**

This PARTICIPATING AGREEMENT is hereby entered into by and between the Santa Fe County Fire Department, hereinafter referred to as "the County FD," and the USDA, Forest Service, Santa Fe National Forest, hereinafter referred to as the "U.S. Forest Service," under the authority: 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: Cooperative Fuel Mitigation

**I. PURPOSE:**

The purpose of this agreement is to document the cooperation between the parties to conduct joint prescribed fire activities and training in accordance with the following provisions.

**II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:**

The U.S. Forest Service has primary responsibility for protection, management, restoration, and improvement of National Forest System lands; the County FD has primary responsibility for protection, management, restoration, and improvement of their lands; and it is agreed that the benefits of treating the entire area (inclusive of the County's land) to guard against wildfires will have a direct benefit to the National Forest system lands and adjacent lands.

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

**III. SANTA FE FIRE SHALL:**

- A. LEGAL AUTHORITY. The County FD 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. Allow U.S. Forest Service personnel access to public lands managed by the County of Santa Fe to be included in the prescribed burn project areas.



- C. Provide expertise, personnel, equipment, and supplies as needed in conjunction with the U.S. Forest Service to successfully and safely complete all treatments. All personnel and equipment needs will be provided to safely function and operate all equipment.
- D. Retain all liabilities in management of Fire District personnel and their safety.
- E. Follow the recommended Job Hazard Analysis (JHA) requirements.
- F. Provide a liaison to coordinate all activities associated with completion of the treatments.
- G. Bill the U.S. Forest Service for overtime costs associated in the performance of projects initiated hereunder on a quarterly basis.
- H. Adhere to all National Wildland Coordination Group (NWCG) qualifications, experience, and training requirements for personnel and equipment participating in prescribed fire activities.

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

- A. PAYMENT/REIMBURSEMENT. The U.S. Forest Service shall reimburse the County FD for the U.S. Forest Service's share of overtime incurred, not to exceed \$10,000. The U.S. Forest Service shall make payment upon receipt of the County FD's quarterly invoice. The final invoice must be submitted no later than 90 days from the expiration date.

Each invoice must include, at a minimum:

1. The County FD's name, address, and telephone number
2. U.S. Forest Service agreement number
3. Invoice date
4. Performance dates of the work completed (start & end)
5. Total invoice amount for the billing period
6. Statement that the invoice is a request for payment by 'reimbursement'
7. If using SF-270, a signature is required.
8. Invoice Number, if applicable



The invoice must be sent by one of three methods (email is preferred):

EMAIL: [asc\\_ga@fs.fed.us](mailto:asc_ga@fs.fed.us)

FAX: 877-687-4894

POSTAL: USDA Forest Service  
Albuquerque Service Center  
Payments – Grants & Agreements  
101B Sun Ave NE  
Albuquerque, NM 87109

Send a copy to: William Armstrong  
USFS/Santa Fe National Forest  
11 Forest Lane  
Santa Fe, NM 87507

**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 instrument.

**Principal Cooperator Contacts:**

Cooperator Project Contact	Cooperator Financial Contact
Name: Walter Dasheno Address: 35 Camino Justica City, State, Zip: Santa Fe, NM 87508 Telephone: 505-995-6523 FAX: 505-992-3065 Email: <a href="mailto:wdasheno@santafecounty.org">wdasheno@santafecounty.org</a>	Name: David Sperling Address: 35 Camino Justica City, State, Zip: Santa Fe, NM 87508 Telephone: 505-992-3089 FAX: 505-992-3073 Email: <a href="mailto:dsperling@santafecounty.org">dsperling@santafecounty.org</a>

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

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Name: William Armstrong Address: 11 Forest Lane City, State, Zip: Santa Fe, NM 87507 Telephone: 505-438-5434 FAX: 505-438-5392 Email: <a href="mailto:warmstrong@fs.fed.us">warmstrong@fs.fed.us</a>	Name: Karen Dyckes y Montañño Address: 2113 Osuna Road NE City, State, Zip: Albuquerque, NM 87113 Telephone: 505-346-3807 FAX: 505-346-3909 Email: <a href="mailto:kdyckesymontano@fs.fed.us">kdyckesymontano@fs.fed.us</a>



- B. NON-LIABILITY. The U.S. Forest Service does not assume liability for any third party claims for damages arising out of this instrument.
- C. NOTICES. Any communications affecting the operations covered by this agreement given by The U.S. Forest Service or the County FD 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 County FD, at the County FD's 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.
- D. PARTICIPATION IN SIMILAR ACTIVITIES. This agreement in no way restricts the U.S. Forest Service or the County FD from participating in similar activities with other public or private agencies, organizations, and individuals.
- E. NON-FEDERAL STATUS FOR COOPERATOR PARTICIPANT LIABILITY. The County FD 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 (OWCP), as the County FD hereby willingly agree(s) to assume these responsibilities.
- Further, the County FD shall provide any necessary training to the County FD's employees, volunteers, and program participants to ensure that such personnel are capable of performing tasks to be completed. The County FD shall also supervise and direct the work of its employees, volunteers, and participants performing under this agreement.
- F. 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 instrument, or benefits that may arise therefrom, either directly or indirectly.
- G. NONDISCRIMINATION. The County FD shall comply with all applicable Federal statutes relating to nondiscrimination. This includes all applicable requirements of all other Federal laws, regulations, and policies. These include but are not limited to Title VI of the Civil Rights Act of 1964 as amended, which prohibits discrimination on the bases of race, color and national origin; Title IX of the Education Amendments of 1972 which prohibits discrimination based on sex in educational programs and activities; Age Discrimination Act of 1975, as amended,



prohibiting age discrimination; and 504 of the Rehabilitation Act of 1973 as amended, which prohibits discrimination on the basis of disability.

- H. **ELIGIBLE WORKERS.** The County FD 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). The County FD shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract awarded under this instrument.

**I. STANDARDS FOR FINANCIAL MANAGEMENT.**

**1. Financial Reporting**

The County FD 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**

The County FD 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**

The County FD shall maintain effective control over and accountability for all U.S. Forest Service funds, real property, and personal property assets. The County FD 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. The County FD shall adequately safeguard all such property and shall ensure that it is used solely for authorized purposes.

**4. Source Documentation**

The County FD shall support all accounting records with source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and subgrant/contract documents, and so forth.

- J. **AVAILABILITY OF FUNDS.** U.S. Forest Service funds in the amount of \$10,000 are currently available for performance of this instrument through September 30, 2016. The U.S. Forest Service's obligation for performance of this instrument beyond this date is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the U.S. Forest Service for any payment may arise for performance under this instrument beyond September 30, 2016, until funds are made available to the U.S. Forest Service for performance and



until the County FD receive(s) notice of availability to be confirmed in a written modification by the U.S. Forest Service.

K. OVERPAYMENT. Any funds paid to the County FD 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 the County FD 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 the County FD.
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.

L. INSTRUMENT CLOSEOUT. The County FD shall close out the instrument within 90 days after expiration or notice of termination.

Any unobligated balance of cash advanced to the County FD must be immediately refunded to the U.S. Forest Service, including any interest earned in accordance with 7 CFR 3016.21, 7 CFR 3019.22, or other relevant law or regulation.

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

If this instrument 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.

The County FD shall submit annual performance reports to the U.S. Forest Service Program Manager. These reports are due 30 days after the reporting period. The final performance report must be submitted either with the County FD's final payment request, or separately, but not later than 90 days from the expiration date of the agreement.



- M. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS. The County FD shall retain all records pertinent to this instrument 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. The County FD shall provide access and the right to examine all records related to this instrument 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.
- The County FD 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.
- N. FREEDOM OF INFORMATION ACT (FOIA). Public access to grant or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).
- O. FUNDING. Federal funding under this instrument is not available for reimbursement of the County FD's purchase of equipment or supplies. 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.
- P. REMEDIES FOR COMPLIANCE RELATED ISSUES. If the County FD materially fail(s) to comply with any term of the instrument, whether stated in a Federal statute or regulation, an assurance, the agreement, or elsewhere, 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 County FD 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 the County FD's program;
  4. Withhold further awards for the program, or



5. Take other remedies that may be legally available, including debarment procedures under 7 CFR part 3017.

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

1. When the U.S. Forest Service and the County FD 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 the County FD 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, in the case of a partial termination, the U.S. Forest Service determines that the remaining portion of the instrument will not accomplish the purposes for which the instrument was made, the U.S. Forest Service may terminate the instrument in its entirety.

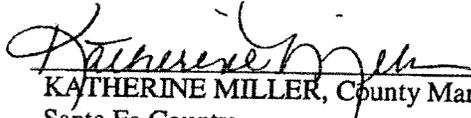
Upon termination of an instrument, the County FD shall not incur any new obligations for the terminated portion of the instrument after the effective date, and shall cancel as many outstanding obligations as possible. The U.S. Forest Service shall allow full credit to the County FD for the United States Federal share of the non-cancelable obligations properly incurred by the County FD up to the effective date of the termination. Excess funds must be refunded within 60 days after the effective date of termination.

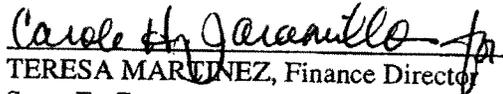
- R. ALTERNATE DISPUTE RESOLUTION – PARTNERSHIP AGREEMENT. In the event of any issue of controversy under this agreement, the parties may pursue Alternate Dispute Resolution procedures to voluntarily resolve those issues. These procedures may include, but are not limited to conciliation, facilitation, mediation, and fact finding.
- S. DEBARMENT AND SUSPENSION. The County FD shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should the County FD or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- T. MODIFICATIONS. Modifications within the scope of this instrument 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 60 days



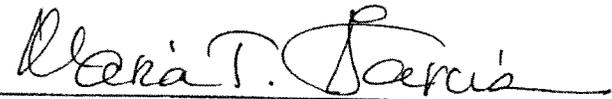
prior to implementation of the requested change. The U.S. Forest Service is not obligated to fund any changes not properly approved in advance.

- U. COMMENCEMENT/EXPIRATION DATE. This instrument is executed as of the date of the last signature and is effective through September 30, 2016, at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.
- V. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this instrument. In witness whereof, the parties hereto have executed this instrument as of the last date written below.

  
 \_\_\_\_\_  
 KATHERINE MILLER, County Manager  
 Santa Fe County  
 8.17.12  
 Date

  
 \_\_\_\_\_  
 TERESA MARTINEZ, Finance Director  
 Santa Fe County  
 8/10/12  
 Date

  
 \_\_\_\_\_  
 STEPHEN C. ROSS, County Attorney  
 8/8/12  
 Date

  
 \_\_\_\_\_  
 MARIA T. GARCIA, Forest Supervisor  
 U.S. Forest Service, Santa Fe National Forest  
 9/5/2012  
 Date

  
 \_\_\_\_\_  
 KAREN DYCKES Y MONTAÑO  
 U.S. Forest Service, Grant Management Officer  
 8/27/12  
 Date



Burden Statement

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