

**FEDERAL FINANCIAL ASSISTANCE  
AWARD OF DOMESTIC GRANT 11-DG-11420004-001  
Between The  
SMOKEY BEAR, INC.  
And The  
USDA, FOREST SERVICE  
NORTHEASTERN AREA, STATE & PRIVATE FORESTRY**

Project Title: Don't Play With Matches

Upon execution of this document, an award to Smokey Bear, Inc., hereinafter referred to as "The Recipient," in the amount of \$100,000, is made under Cooperative Forestry Assistance Act of 1978, Public Law 95-313, as amended, 16 U.S.C. 2101-2114, Sec. 10b3. Smokey Bear, Inc. accepts this award for the purpose described in the application narrative. Your application for Federal financial assistance, dated March 31, 2011, and the attached U.S. Forest Service provisions, 'U.S. Forest Service Award Provisions,' are incorporated into this letter and made a part of this award.

This is an award of Federal financial assistance and is subject to the Office of Management and Budget (OMB) Circulars A-110, as implemented by USDA regulations 7 CFR 3019, 7 CFR 3015, OMB Circular A-122, and OMB Circular A-133 as implemented by USDA regulation 7 CFR 3052. All Federal and Recipient matching/cost-share contributions are subject to all relevant OMB Circulars.

The OMB Circulars are available on the internet at [http://www.whitehouse.gov/omb/grants\\_default/](http://www.whitehouse.gov/omb/grants_default/). Electronic copies of the CFRs can be obtained at the following internet site: <http://www.gpoaccess.gov/cfr/index.html>. If you are unable to retrieve these regulations electronically, please contact your Grants and Agreements Office at (610) 557-4105, Zaneta Hammond.

**Effective October 1, 2010, recipients are required to report information on subaward and executive total compensation, as required by the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of Public Law 110-252, hereinafter referred to as "the Transparency Act." See the award terms in Attachment B: 2 CFR Part 170.**

The following administrative provisions apply to this award:

- A. **LEGAL AUTHORITY**. The Recipient 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. **PRINCIPAL CONTACTS**. Individuals listed below are authorized to act in their respective areas for matters related to this instrument.



**Principal Cooperator Contacts:**

<b>Cooperator Program Contact</b>	<b>Cooperator Administrative Contact</b>
Name: Telephone: Email:	Name: Telephone: Email:

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

<b>U.S. Forest Service Program Manager Contact</b>	<b>U.S. Forest Service Administrative Contact</b>
Name: Telephone: Email:	Name: Telephone: Email:

- C. **AVAILABILITY OF FUNDS.** U.S. Forest Service funds in the amount of \$100,000 are currently available for performance of this instrument through September 30, 2012. 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, 2012 until funds are made available to the U.S. Forest Service for performance and until The Recipient receive(s) notice of availability to be confirmed in a written modification by the U.S. Forest Service.
- D. **REIMBURSABLE PAYMENTS – FINANCIAL ASSISTANCE.** See provision M in the attachment, 'U.S. Forest Service Award Provisions.'
- E. **PROGRAMMATIC CHANGES.** The Recipient shall obtain prior approval for any change to the scope of objectives of the approved project, key personnel, or transfer of substantive programmatic work to another party.
- F. **MODIFICATIONS.** Modifications within the scope of this award shall 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.
- G. **COMMENCEMENT/EXPIRATION DATE.** This award is executed as of the date of the last signature and is effective through September 30, 2012 at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.

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

NAME OF AUTHORIZED REPRESENTATIVE	Date
TITLE	
ORGANIZATION	

JAMES S. BARRESI, Acting Area Director	Date
U.S. Forest Service	
Northeastern Area, State & Private Forestry	

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

ZANETA Y. HAMMOND	Date
U.S. Forest Service	
Grants & Agreements Specialist	



## ATTACHMENT A: U.S. FOREST SERVICE AWARD PROVISIONS

- A. COLLABORATIVE ARRANGEMENTS. Where permitted by terms of the award, The Recipient may enter into collaborative arrangements with other organizations to jointly carry out activities with grant funds.
- B. NON-LIABILITY. The U.S. Forest Service does not assume liability for any third party claims for damages arising out of this award.
- C. NOTICES. Any notice given by the U.S. Forest Service or The Recipient will be sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

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

To The Recipient, at The Recipient's address shown in the grant or such other address designated within the grant.

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

- D. SUBRECIPIENT NOTIFICATION The Recipient shall notify subrecipients under this award that they are subject to the terms and conditions herein, except with respect to the recipient's OMB Uniform Administrative Requirements and Cost Principles. In the case of subrecipient Uniform Administrative Requirements and Cost Principles, subrecipients must be notified that they are subject to the following:

SUBRECIPIENT TYPE	APPLICABLE ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES	
	Administrative Requirements	Cost Principles
Non-profits	2 CFR 215	A-122
Local and Tribal governments (when recipient is a State)	State & Federal laws, regulations	A-87
Local and Tribal governments (when recipient is a non-State)	A-102	A-87
State agencies	State & Federal laws, regulations	A-87
Universities	2 CFR 215	A-21
Profit-makers	2 CFR 215	FAR 31.2

- E. USE OF U.S. FOREST SERVICE INSIGNIA. In order for The Recipient to use the U.S. Forest Service insignia on any published media, such as a webpage, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.
- F. BUILDING AND COMPUTER ACCESS BY NON-FOREST SERVICE PERSONNEL. The Recipient 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 3505 and Departmental Manual 4620-02. Those granted computer access must fulfill all U.S. Forest Service requirements for mandatory security awareness and role-based advance security training, and sign all applicable U.S. Forest Service statements of responsibilities.
- G. 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 award, or benefits that may arise therefrom, either directly or indirectly.
- H. TRAFFICKING IN PERSONS.
1. Provisions applicable to a Recipient that is a private entity.
    - a. You as the Recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
      - (1) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
      - (2) Procure a commercial sex act during the period of time that the award is in effect; or
      - (3) Use forced labor in the performance of the award or subawards under the award.
    - b. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
      - (1) Is determined to have violated a prohibition in paragraph a.1 of this award term; or
      - (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this

award term through conduct that is either—

- i. Associated with performance under this award; or
  - ii. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 7 CFR 3017.
2. Provision applicable to a Recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
  - a. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
  - b. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
    - (1) Associated with performance under this award; or
    - (2) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 7 CFR 3017.
3. Provisions applicable to any recipient.
  - a. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
  - b. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
    - (1) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
    - (2) Is in addition to all other remedies for noncompliance that are available to us under this award.
  - c. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

4. Definitions. For purposes of this award term:

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

I. DRUG-FREE WORKPLACE.

- 1. The Recipient agree(s) that it will publish a drug-free workplace statement and provide a copy to each employee who will be engaged in the performance of any project/program that receives federal funding. The statement must
  - a. Tell the employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace;
  - b. Specify the actions The Recipient will take against employees for violating that prohibition; and

- c. Let each employee know that, as a condition of employment under any instrument, he or she
  - (1) Must abide by the terms of the statement, and
  - (2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace, and must do so no more than five calendar days after the conviction.
2. The Recipient agree(s) that it will establish an ongoing drug-free awareness program to inform employees about
  - a. The dangers of drug abuse in the workplace;
  - b. Your policy of maintaining a drug-free workplace;
  - c. Any available drug counseling, rehabilitation and employee assistance programs; and
  - d. The penalties that you may impose upon them for drug abuse violations occurring in the workplace.
3. Without the U.S. Forest Service's expressed written approval, the policy statement and program must be in place as soon as possible, no later than the 30 days after the effective date of this instrument, or the completion date of this instrument, whichever occurs first.
4. The Recipient agree(s) to immediately notify the U.S. Forest Service if an employee is convicted of a drug violation in the workplace. The notification must be in writing, identify the employee's position title, the agreement number of each instrument on which the employee worked. The notification must be sent to the U.S. Forest Service within ten calendar days after The Recipient learn(s) of the conviction.
5. Within 30 calendar days of learning about an employee's conviction, The Recipient must either
  - a. Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 USC 794), as amended, or
  - b. Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.



- J. ELIGIBLE WORKERS. The Recipient shall ensure that all employees complete the I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). The Recipient shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract or supplemental instruments awarded under this award.
- K. HEALTH & HUMAN SERVICES PAYMENT MANAGEMENT SYSTEM (HHS PMS). The Recipient identified for use of this payment system shall designate a financial institution or an authorized payment agent through which a direct deposit may be made in accordance with current HHS PMS system requirements. The Albuquerque Service Center is responsible for soliciting initial enrollment in the HHS PMS. **Any questions concerning payments should be addressed to the Albuquerque Service Center at (877) 372-7248.** Please ask for the Grants and Agreements Payments section. Any subsequent changes to banking information are made by The Recipient through the HHS PMS. The HHS sub-account number(s) for this Agreement is/are:

HHS SUB-ACCOUNT	AMOUNT
G 420911122233001	\$ 100,000

- L. FINANCIAL STATUS REPORTING. A Federal Financial Report, form SF-425 (and Federal Financial Report Attachment SF-425A, if required for reporting multiple grants), must be submitted annually. The final SF-425 (and SF-425A, if applicable) must be submitted either with the final payment request or no later than 90 days from the expiration date of the instrument. These forms may be found at [www.whitehouse.gov/omb/grants\\_forms](http://www.whitehouse.gov/omb/grants_forms).
- M. REIMBURSABLE PAYMENTS – FINANCIAL ASSISTANCE. Reimbursable payments are approved under this award. Only costs for those project activities approved in (1) the initial award, or (2) modifications thereto, are allowable.
- N. AWARD CLOSEOUT. The Recipient shall close out the grant within 90 days after expiration or notice of termination.

Any unobligated balance of cash advanced to The Recipient shall 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 grant, all financial performance and related reports required by the terms of the award shall be submitted to the U.S. Forest Service by The Recipient.

If this award 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. PROGRAM PERFORMANCE REPORTS. The Recipient shall monitor the performance of the grant activities to ensure that performance goals are being achieved.

Performance reports shall contain information on the following:

- A comparison of actual accomplishments to the goals established for the period. Where the output of the project can be readily expressed in numbers, a computation of the cost per unit of output may be required if that information is useful.
- Reason(s) for delay if established goals were not met.
- Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

The Recipient shall submit annual performance reports. These reports are due 90 days after the reporting period. The final performance report shall be submitted either with The Recipient's final payment request, or separately, but not later than 90 days from the expiration date of the grant.

- P. NOTIFICATION. The Recipient shall immediately notify the U.S. Forest Service of developments that have a significant impact on the activities supported under this grant. Also, notification shall be given in case of problems, delays or adverse conditions that materially impair the ability to meet the objectives of the agreement. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.
- Q. CHANGES IN KEY POSITIONS AND PERSONNEL. Any revision to key positions and personnel identified in the application for this award require prior, written approval from the U.S. Forest Service. All technical positions are considered Key Personnel by the U.S. Forest Service. Failure on the part of The Recipient to obtain prior, written approval when required may result in the disallowance of costs.
- R. FREEDOM OF INFORMATION ACT (FOIA). Public access to grant or agreement records shall 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).
- S. 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 recipients and subrecipients are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles or GOVs when driving while on official

Government business or when performing any work for or on behalf of the Government.

- T. RIGHT TO TRANSFER EQUIPMENT. Equipment approved for purchase under this award is available only for use as authorized. The U.S. Forest Service reserves the right to transfer title to the federal government of any equipment with a current per-unit fair market value of \$5,000 or more purchased with U.S. Forest Service funding. Upon expiration of this award, The Recipient shall forward an equipment inventory to the U.S. Forest Service, listing all equipment purchased with U.S. Forest Service funding throughout the life of the project. Disposition instructions shall be issued by the U.S. Forest Service within 120 calendar days from termination date of this award.
- U. USE OF GOVERNMENT OWNED VEHICLE. U.S. Forest Service vehicles may be used for official U.S. Forest Service business only in accordance with FSH 7109.19, ch. 60, the requirements established by the region in which performance of this agreement takes place, and the terms of this agreement.
- V. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS, AND ELECTRONIC MEDIA. The Recipient shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this award.
- W. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. The Recipient shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

*In accordance with Federal law and U.S. Department of Agriculture 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 of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD).  
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.”*

- X. TERMINATION BY MUTUAL AGREEMENT. This award may be terminated, in whole or part, as follows:
- When the U.S. Forest Service and The Recipient agree upon the termination

conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

- By 30 days written notification by The Recipient 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 award will not accomplish the purposes for which the award was made, the U.S. Forest Service may terminate the award in its entirety.

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

Y. DISPUTES.

1. Any dispute under this award shall be decided by the Area Director. The Area Director shall furnish The Recipient a written copy of the decision.
2. Decisions of the Area Director shall be final unless, within 30 days of receipt of the decision of the Area Director, The Recipient appeal(s) the decision to the U.S. Forest Service's Director, Acquisition Management (AQM). Any appeal made under this provision shall be in writing and addressed to the Director, AQM, USDA, Forest Service, Washington, DC 20024. A copy of the appeal shall be concurrently furnished to the Director, AQM.
3. In order to facilitate review on the record by the Director, AQM, The Recipient shall be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.

Z. DEBARMENT AND SUSPENSION. The Recipient 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 Recipient 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. PATENT RIGHTS. Each instrument awarded to a small business firm, non-profit organization, or university which is to be performed in the United States, its possessions, or Puerto Rico and has as a purpose the performance of experimental, development, or research work, shall contain the Patents Rights Provision.

1. Definitions:

- a. Invention. Any invention or discovery which is or may be patentable, or otherwise protectable under Title 35 of the United States Code (U.S.C.), or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).
- b. Subject Invention. Any invention of The Recipient conceived or first actually reduced to practice in the performance of work under this instrument, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of the instrument performance.
- c. Practical Application. To manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations available to the public on reasonable terms.
- d. Made. When used in relation to any invention, the conception or first actual reduction to practice of such invention.
- e. Small Business Firm. A small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the administrator of the Small Business Administration. For the purpose of this provision, the size standard for small business concerns involved in Government procurement and subgranting as 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
- f. Non-Profit Organization. A university or other institution of higher education or an organization of the type described in section 501 (c) (3) of the Internal Revenue Code of 1954 Internal Revenue Code (26 U.S.C. 501c) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

2. Allocation of Principal Rights. The Recipient may retain the entire right, title, and interest throughout the world to each subject invention, subject to this provision and 35 U.S.C. 203. With respect to any subject invention in which The Recipient retain(s) title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world.

3. Invention Disclosure, Election, of Title and Filing of Patent Applications by The Recipient.

- a. The Recipient shall disclose each subject invention to the U.S. Forest Service within two months after the inventor discloses it in writing to personnel

responsible for patent matters. The disclosure to the U.S. Forest Service shall be in the form of a written report and shall identify the instrument under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electric characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention, and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the U.S. Forest Service, The Recipient shall promptly notify the U.S. Forest Service of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by The Recipient.

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

- c. In any country in which The Recipient decide(s) not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.
5. Minimum Rights to The Recipient and Protection of the Contractor Right to File.
  - a. The Recipient shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if The Recipient fail(s) to disclose the subject invention within the times specified in item c herein. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which The Recipient is/are a party and includes the right to grant sublicenses of the same scope to the extent The Recipient was/were legally obligated to do so at the time the instrument was awarded. The license is transferable only with approval of the U.S. Forest Service, except when transferred to the successor of that party of The Recipient's business to which the invention pertains.
  - b. The Recipient's domestic license may be revoked or modified by the U.S. Forest Service to the extent necessary to achieve expeditious practical application of the subject invention, pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404. This license will not be revoked in that field of use or the geographical areas in which The Recipient has/have achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the U.S. Forest Service to the extent The Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
  - c. Before revocation or modification of the license the U.S. Forest Service shall furnish The Recipient a written notice of its intention to revoke or modify the license, and The Recipient shall be allowed 30 days (or such other time as may be authorized by the U.S. Forest Service for good cause shown by The Recipient) after the notice to show cause why the license should not be revoked or modified. The The Recipient has/have the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 concerning the licensing Government-owned inventions, any decision concerning the revocation or modification of its license.
6. Cooperator Action to Protect the Government's Interest
  - a. The Recipient agree(s) to execute, or to have executed, and promptly deliver to the U.S. Forest Service all instruments necessary to (a) establish or confirm the rights the Government has throughout the world in those subject inventions to which The Recipient elect(s) to retain title, and (b) convey title to the U.S. Forest Service when requested under paragraph (c) herein and to enable the

Government to obtain patent protection throughout the world in that subject invention.

- b. The Recipient agree(s) to require, by written instrument, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by The Recipient each subject invention made under the provisions of paragraph c herein and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject invention. This disclosure format should require, as a minimum, the information required by paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1). The Recipient shall instruct such employees' agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.
- c. The Recipient shall notify the U.S. Forest Service of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
- d. The Recipient agree(s) to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: This invention was made with the Government support under 11-DG-11420004-001 awarded by the U.S. Forest Service. The Government has certain rights in this invention.

## 7. Subcontracts

- a. The Recipient shall include this provision, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor shall retain all rights provided for The Recipient in this provision, and The Recipient shall not, as part of the consideration for awarding the subgrant or subcontract under the instrument, obtain rights in the subgrantee's or subcontractor's subject inventions.
- b. The Recipient shall include in all other subcontracts the patent rights provision, regardless of tier, for experimental, developmental, or research work.
- c. In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractors, and the contractor agree that the mutual obligations of the



parties created by this provision constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this provision; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this provision.

8. Reporting on Utilization of Subject Invention. The Recipient agree(s) to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by The Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by The Recipient, and such other data and information as the U.S. Forest Service may reasonably specify. The Recipient also agree(s) to provide additional reports as may be requested by the U.S. Forest Service in connection with any march-in proceeding undertaken by the U.S. Forest Service in accordance with paragraph (j) of this provision. As required by 35 U.S.C. 202(c)(5), the U.S. Forest Service agrees it shall not disclose such information to persons outside the government without permission of The Recipient.
9. Preference for United States Industry. Notwithstanding any other provision of this provision, The Recipient agree(s) that neither it nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention will be manufactured substantially in the United States. However, in individual cases the requirement for such an agreement may be waived by the U.S. Forest Service upon a showing by The Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States, or that under the circumstances, domestic manufacture is not commercially feasible.
10. March-in-Rights. The Recipient agree(s) that with respect to any subject invention in which it has acquired title, the U.S. Forest Service has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the U.S. Forest Service to require The Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if The Recipient's assignee, or exclusive licensee refuses such a request, the U.S. Forest Service has the right to grant such a license itself if the U.S. Forest Service determines that:
  - a. Such action is necessary because The Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
  - b. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by The Recipient, assignee, or their licensees;

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

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

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

NOTE: Exceptions for Not Using the Patent Rights Provision:

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

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

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

BB. COPYRIGHTING. The Recipient 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 award.

No original text or graphics produced and submitted by the U.S. Forest Service shall 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 shall be transferred to any sub-agreements or subcontracts.

This provision includes:

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

CC. CENTRAL CONTRACTOR REGISTRATION AND UNIVERSAL IDENTIFIER REQUIREMENTS.

1. *Requirement for Central Contractor Registration (CCR)*

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

2. *Requirement for Data Universal Numbering System (DUNS) Numbers*

If you are authorized to make subawards under this award, you:

- a. Must notify potential subrecipients that no entity (*see* definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
- b. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

3. *Definitions*

For purposes of this award term:

- a. *Central Contractor Registration (CCR)* means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).
- b. *Data Universal Numbering System (DUNS) number* means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
- c. *Entity*, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
  - i. A Governmental organization, which is a State, local government, or Indian Tribe;

- ii. A foreign public entity;
  - iii. A domestic or foreign nonprofit organization;
  - iv. A domestic or foreign for-profit organization; and
  - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
4. *Subaward*:
- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
  - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, *see* Sec. II.210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).
  - iii. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
5. *Subrecipient* means an entity that:
- a. Receives a subaward from you under this award; and
  - b. Is accountable to you for the use of the Federal funds provided by the subaward.

[END OF PROVISION]

## ATTACHMENT B: 2 CFR PART 170

### Appendix A to Part 170—Award Term

#### I. Reporting Subawards and Executive Compensation.

##### a. *Reporting of first-tier subawards.*

1. *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5) for a subaward to an entity (see definitions in paragraph e. of this award term).
2. *Where and when to report.*
  - i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.
  - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

##### b. *Reporting Total Compensation of Recipient Executives.*

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

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

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

- i. in the subrecipient's preceding fiscal year, the subrecipient received—
  - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
  - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
- ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions* If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

1. Subawards, and
2. The total compensation of the five most highly compensated executives of any subrecipient.

e. *Definitions.* For purposes of this award term:

1. *Entity* means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. *Executive* means officers, managing partners, or any other employees in management positions.

3. *Subaward:*

- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
  - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. II .210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).
  - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
4. *Subrecipient* means an entity that:
- i. Receives a subaward from you (the recipient) under this award; and
  - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient’s or subrecipient’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
- i. *Salary and bonus.*
  - ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
  - v. *Above-market earnings on deferred compensation which is not tax-qualified.* vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

END OF ATTACHMENTB: 2 CFR PART 170