

FS Agreement No. 10-CS-11050450-021
Cooperator Agreement No. _____

**MASTER
CHALLENGE COST SHARE AGREEMENT
Between The
FRIENDS OF THE INYO
And The
USDA, FOREST SERVICE
INYO NATIONAL FOREST**

This MASTER CHALLENGE COST SHARE AGREEMENT is hereby made and entered into by and between the Friends of the Inyo, hereinafter referred to as "FOI," and the USDA, Forest Service, Inyo National Forest hereinafter referred to as the "U.S. Forest Service," under the authority: Department of Interior and Related Agencies Appropriation Act of 1992, Pub.L. 102-154.

Background: Friends of the Inyo, a non-profit, conservation organization based in Bishop, California has successfully performed resource management, recreational enhancement and other stewardship activities in partnership with the Inyo National Forest, as well as numerous other Federal land management agencies, since 2005.

Title: Master Challenge Cost Share Agreement on the Inyo National Forest

I. PURPOSE

The purpose of this agreement is to document the cooperation between the parties to develop, plan and implement projects that are mutually beneficial and that enhance Forest Service activities. FOI has developed a volunteer corps and committed stewardship program to assist the Inyo National Forest with meeting its resource management objectives, and which promotes public support and awareness of public land issues, in accordance with the following provisions and any incorporated project supplements.

II. STATEMENT OF MUTUAL BENEFITS AND INTERESTS:

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

Whereas it the mission of the Forest Service to care for the land and serve the American people, this mission is achieved through careful management of public forest resources. Both the Forest Service and FOI seek to mitigate user impacts and invest in projects that sustain ecosystems on national forest lands. It is the mission of FOI to support public lands management agencies and managers through leveraging the care and connection people have for their public lands through volunteerism. Public participation in stewardship projects on national forest lands is highly desired by the Forest Service, but requires time, energy, and



resources to recruit, train, and supervise the work performed by volunteers. Volunteer coordination provided by FOI reduces the time required by the Forest Service to use volunteers, allowing agency employees to spend time planning and coordinating additional projects.

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

III. FOI SHALL:

- A. LEGAL AUTHORITY. FOI 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. BUILDING AND COMPUTER ACCESS BY NON-FOREST SERVICE PERSONNEL. FOI may be granted access to 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 Forest Service facilities and computer systems must have background checks following the procedures established by USDA Directives 3800 series. Those granted computer access must fulfill all Forest Service requirements for mandatory security awareness and role-based advanced security training, and sign all applicable Forest Service statements of responsibilities.
- C. Coordinate with Forest Service staff to jointly identify, design, implement and report on a mutually agreed upon projects.
- D. Coordinate FOI volunteers and employ staff to carry out agreed upon projects on Forest land.
- E. Contribute resources to meet the goals of this agreement and the specific deliverables of each project, as documented in the Supplemental Project Agreements.
- F. Work with Forest Service staff to complete Supplemental Project Agreements for each individual project. Each project will be identified by a separate agreement number referencing the Master Challenge Cost Share Agreement. Any Supplemental Project Agreement executed under this agreement shall include a minimum 20% match from FOI for the overall project.
- G. Document the progress of each individual project with a narrative report illustrated with photos and demonstrating achievements, expenditure of funds, funds leveraged and any volunteer contributions. These reports will be due December 31st of each year.
- H. Promote a culture of safety, provide appropriate safety training to employees and volunteers, and ensure that all employs and volunteers document their safety training by conducting job hazard analyses and tailgate safety sessions.



- I. Bill the Forest Service for their proportionate share of actual expenses incurred, as agreed to in each Supplemental Project Agreement.

IV. THE U.S. FOREST SERVICE SHALL:

- A. Identify and design resource management priorities.
- B. Conduct proper planning for all projects.
- C. See that all legal and agency requirements associated with project design and implementation, e.g. NEPA, have been met.
- D. Arrange and attend quarterly coordination meetings with FOI to jointly identify, develop and design mutually agreed upon projects.
- E. Provide funding, when available, to assist in meeting the goals of this agreement, as documented in the Supplemental Project Agreements.
- F. Contribute resources to assist in meeting the goals of this agreement and specific deliverables of each project, as documented in the Supplemental Project Agreements.
- G. Identify a project manager for each individual project to work with FOI to complete a Supplemental Project Agreement and coordinate project implementation. Each project will be identified by a separate agreement number referencing the Master Challenge Cost Share Agreement. Any Supplemental Project Agreement executed under this agreement shall include a minimum 20% match from FOI for the overall project.
- H. Provide the necessary technical oversight for each work project to ensure work is completed safely and in accordance with Forest Service specifications. This oversight does not include supervision.
- I. Reimburse FOI for the Forest Service proportionate share of actual expenses incurred, as agreed to in each Supplemental Project Agreement.

V. IT IS MUTUALLY AGREED AND UNDERSTOOD 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 Program Contact	Cooperator Administrative Contact
Stacy Corless Friends of the Inyo 699 West Line St, Suite A Bishop, California 93514 Telephone: 760-873-6500 FAX: none Email: stacy@friendsoftheinyo.org	Brooke McKenna Friends of the Inyo 699 West Line St, Suite A Bishop, California 93517 Telephone: 760-873-6500 FAX: none Email: brooke@friendsoftheinyo.org

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Contact	U.S. Forest Service Administrative Contact
Jon Kazmierski Mammoth Ranger Station PO Box 148 Mammoth Lakes, CA 93546 Telephone: 760-914-0296 FAX: 760-924-5537 Email: jkazmierski@fs.fed.us	Karine Wagner Truckee Ranger District 10811 Stockrest Springs Road Truckee, CA 96161 Telephone: 530/587-3558 x262 FAX: 530/587-6914 Email: karinewagner@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.** The U.S. Forest Service does not assume liability for any third party claims for damages arising out of this instrument.
- E. **NOTICES.** Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or FOI 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 FOI, at FOI'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.

- F. PARTICIPATION IN SIMILAR ACTIVITIES. This agreement in no way restricts the U.S. Forest Service or FOI from participating in similar activities with other public or private agencies, organizations, and individuals.
- G. ENDORSEMENT. Any of FOI's contributions made under this agreement do not by direct reference or implication convey U.S. Forest Service endorsement of FOI's products or activities.
- H. USE OF U.S. FOREST SERVICE INSIGNIA. In order for FOI to use the U.S. Forest Service Insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications prior to use of the insignia.
- I. NON-FEDERAL STATUS FOR COOPERATOR PARTICIPANT LIABILITY. FOI 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 FOI hereby willingly agree(s) to assume these responsibilities.

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

- J. 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.
- K. DRUG-FREE WORKPLACE.
 - 1. FOI agree(s) that it will publish a drug-free workplace statement and provide a copy to each employee who is 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 FOI will take against employees for violating that prohibition; and



- c. Let each employee know that, as a condition of employment under any instrument, the employee
 - (1) Must abide by the terms of the statement, and
 - (2) Must notify FOI in writing if they are 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. FOI 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. The established policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation and employee assistance programs; and
 - d. The penalties that may be imposed upon the employee 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. FOI 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 10 calendar days after FOI learn(s) of the conviction.
5. Within 30 calendar days of learning about an employee's conviction, FOI 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.
- L. NONDISCRIMINATION. FOI shall comply with all Federal statutes relating to nondiscrimination and all applicable requirements of all other Federal laws, Executive orders, regulations, and policies. These include, but are not limited to Sections 119 and



504 of the Rehabilitations Act of 1973 as amended, which prohibits discrimination on the basis of race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, participation in any public assistance program, or disability.

M. **ELIGIBLE WORKERS.** FOI 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). FOI shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract or SPA awarded under this instrument.

N. **STANDARDS FOR FINANCIAL MANAGEMENT.**

1. Financial Reporting

FOI 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

FOI 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

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

4. Source Documentation

FOI 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.

O. **OVERPAYMENT.** Any funds paid to FOI 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 FOI 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 FOI.
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.

P. REFUNDS. Funds collected in advance by the U.S. Forest Service, which are not spent or obligated for the project(s) approved under this agreement, may be refunded to FOI, authorized for use for a new agreement by FOI, or waived by FOI. A DUNS number and registration in the Central Contractor Registry (CCR) by FOI may be necessary to process a refund. Due to processing costs, any balance less than \$25 shall not be refunded to FOI.

Q. INSTRUMENT CLOSEOUT. FOI shall close out the instrument within 90 days after expiration or notice of termination.

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

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

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.

R. PROGRAM PERFORMANCE REPORTS. FOI shall monitor the performance of the agreement activities to ensure that performance goals are being achieved.

Performance reports must contain information on the following:

- A comparison of actual accomplishments to the goals established for the period. 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.

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

S. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS. FOI 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. FOI 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.

FOI 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.

T. 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).

U. FUNDING EQUIPMENT. Federal funding under this instrument is not available for reimbursement of FOI's purchase of equipment. Equipment is defined as having a fair market value of over \$5,000 per unit and a useful life of over one year. Supplies are those items that are not equipment.

V. IMPROVEMENTS. Improvements placed on National Forest System land at the direction or with the approval of the Forest Service becomes property of the United States. These improvements are subject to the same regulations and administration of the U.S. Forest Service as would other National Forest improvements. No part of this instrument entitles FOI to any interest in the improvements, other than the right to use them under applicable Forest Service Regulations.

W. GOVERNMENT-FURNISHED PROPERTY. FOI may only use U.S. Forest Service property furnished under this agreement for performing tasks assigned in this



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

X. OFFSETS, CLAIMS and RIGHTS. Any and all activities entered into or approved by this agreement will create and support afforestation/ reforestation efforts within the National Forest System without generating carbon credits. The U.S. Forest Service does not make claims of permanence or any guarantees of carbon sequestration on lands reforested or afforested through partner assistance. The U.S. Forest Service will provide for long-term management of reforested and afforested lands, according to applicable Federal statute regulations and forest plans.



Y. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS,

AUDIOVISUALS AND ELECTRONIC MEDIA. FOI shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this instrument.

Z. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR

AUDIOVISUAL MATERIAL. FOI 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."

AA. REMEDIES FOR COMPLIANCE RELATED ISSUES. If FOI 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 FOI 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 FOI'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.

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

1. When the U.S. Forest Service and FOI 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 FOI 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 Services 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, FOI 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 FOI for the United States Federal share of the non-cancelable obligations properly incurred by FOI up to the effective date of the termination. Excess funds must be refunded within 60 days after the effective date of termination.

CC. 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.

DD. DEBARMENT AND SUSPENSION. FOI 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 FOI 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.

EE. 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 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.

FF. COMMENCEMENT/EXPIRATION DATE. This instrument is executed as of the date of the last signature and is effective through **June 30, 2015** at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.



GG. 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.

Acting For

STACY CORLESS, Executive Director Friends of the Inyo <i>Stacy Corless</i>	<i>6/10/2010</i>
JIM UPCHURCH, Forest Supervisor U.S. Forest Service, Inyo National Forest <i>Jim Upchurch</i>	Date <i>6/10/2010</i>

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

Karine Wagner
/s/ Karine Wagner

06/10/2010

KARINE WAGNER
U.S. Forest Service Grants & Agreements Specialist

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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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) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.