

## STATE OF MINNESOTA ENCUMBRANCE WORKSHEET

<b>Mark this box if this is a <i>RUSH</i>.</b>	<b>Date contract is needed for vendor's signature</b>	
<i>Note: Please, allow 5 - 7 business days for F&amp;B processing. For RUSH requests, complete boxes above. You will be notified of any unusual delay if unavoidable circumstances arise. Thank you.</i>		

ORG: 112	SWIFT CONTRACT NO: 164543
TYPE: JP	PO NUMBER: 3000033503
MDA PREPARER/CONTACT & PHONE NUMBER (INITIAL BY NAME):	Angie Ambourn <span style="float: right;">[Signature]</span>
Date Funding String & contract template were reviewed and approved by Division's Senior Accounting Officer <span style="float: right;">8/8/2019</span>	651-201-6073
AGENCY: Agriculture	SWIFT VENDOR NUMBER: 197681
TOTAL AMOUNT: \$65,000	SWIFT VENDOR LOCATION: 001
CATEGORY CODE: 7214154	SWIFT VENDOR ADDRESS:
ACCOUNT CODE: 430001	
LAWS OF: MS 471.59, subd 10	

ACCOUNTING DISTRIBUTION	ACCOUNTING DISTRIBUTION	ACCOUNTING DISTRIBUTION
FISCAL YEAR: 2020	FISCAL YEAR: 2021	FISCAL YEAR:
FUND: 3000	FUND: 3000	FUND:
DEPT ID: B04312TJ	DEPT ID: B04312TJ	DEPT ID:
APPROP ID: B042F57	APPROP ID: B042F57	APPROP ID:
PC BUS UNIT: B0401	PC BUS UNIT: B0401	PC BUS UNIT:
PROJECT ID: B0420F5712TJ	PROJECT ID: B0420F5712TJ	PROJECT ID:
ACTIVITY: 12TJ	ACTIVITY: 12TJ	ACTIVITY:
SOURCE: REIMB	SOURCE: REIMB	SOURCE:
AMOUNT: \$32,500	AMOUNT: \$32,500	AMOUNT:

NEEDED FOR FEDERAL GRANTS

CONTRACT START DATE 1/1/2019 ADMIN #62456  
 CONTRACT END DATE 12/31/2020

CONTRACT NAME & ADDRESS City of Duluth  
1104 2nd Ave W 411 W 1st St, 120 City Hall  
Duluth MN 55807

**F&B ONLY BELOW THIS LINE**

CHECKLIST: BUDGET CHECKED	FAIL: _____ PASS: _____	P/T OVER \$25,000 EVALUATION
RECORDED ON BUYER'S SS: _____	DOCUSIGN: _____	PRINTED FOR FILE
OK TO DISPATCH	NO: _____ YES: _____	DATE: _____ INITIAL: _____

NOTES:

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OK TO CLOSE: DATE: \_\_\_\_\_ INITIAL: \_\_\_\_\_ DATE: \_\_\_\_\_ INITIAL: \_\_\_\_\_

SWIFT Contract No. 164543

PO No. 3000033503

ADMIN# 62456

## STATE OF MINNESOTA JOINT POWERS AGREEMENT

This agreement is between the State of Minnesota, acting through its Commissioner of Agriculture hereinafter referred to as “The Recipient” and City of Duluth, DUN number 077627883, hereinafter referred to as “The Subrecipient”. Project Title: Emerald Ash Borer Treatments in the City of Duluth.

### Recitals

Under Minnesota Statute § 471.59, subdivision 10, the State is empowered to engage such assistance as deemed necessary. The State is in need of implementing activities to suppress EAB populations in the City of Duluth in order to slow the spread of EAB from the city into surrounding areas. The USDA Forest Service Northeastern Area State and Private Forestry has awarded a domestic grant and FAIN with federal award date signed July 24, 2019 to the Minnesota Department of Agriculture in the amount of \$70,000 made under the authority of Cooperative Forestry Assistance Act of 1978, Public Law 95-313: Food Agriculture, Conservation and Trade Act of 1990, as amended, Public Law 101-624; current year appropriations act with funding to reimburse the subrecipient up to \$65,000 with cost matching of up to \$65,000. The Catalog of Federal Domestic Assistance (CDFA) number and name are 10.680 (Forest Health Protection). Activities will consist of removal of emerald ash borer infested trees as well as treatment in infested areas. The authority requires a match of 50/50.

### Agreement

#### 1 Term of Agreement

- 1.1 **Effective date:** January 1, 2019, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
- 1.2 **Expiration date:** December 31, 2020, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

#### 2 Agreement between the Parties

This is an award of Federal financial assistance. The sub-recipient to this agreement is subject to the OMB guidance in subparts A through F of 2 CFR Part 200 as adopted and supplemented by the USDA in 2 CFR Part 400. Adoption by USDA of the OMB guidance in 2 CFR 400 gives regulatory effect to the OMB guidance in 2 CFR 200 where full text may be found.

The subrecipient agrees to provide documentation of expenses paid for all matching funds up to \$65,000 and expenses additionally incurred to be reimbursed up to \$65,000 for a total of \$130,000. Only expenses incurred after the date of this agreement will be valid for the reimbursement portion of this agreement. Expenditures prior to the signature date of this agreement and after the start date of the grant January 1, 2019, can be used for the matching portion of the agreement.

The subrecipient agrees to provide certification and all relevant documentation of expenses as proof of matching and expenses to be reimbursed which may include, paid invoices, payroll records and processed/cancelled checks which must reflect services actually performed and the State’s Authorized Representative must accept those services.

The recipient acknowledges the subrecipient will not charge indirect costs as it relates to this agreement.

The subrecipient agrees to furnish and transport all labor, equipment and materials necessary to complete the treatments and removals of infested ash trees. The subrecipient will also obtain all necessary insurance, licenses, and permits, payments of fees, taxes and administration associated with the performance of this work.

The subrecipient will perform all removals and disposal of debris before the active time of emerald ash borer and transport all material and debris to closest disposal site during the inactive period of emerald ash borer and be destroyed

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before the active period begins. Emerald ash borer active period runs from May 1- September 30.

The subrecipient will apply treatments in accordance with the pesticide label.

The subrecipient will not use this grant for the preemptive removal of ash trees that are not infested or show sign of emerald ash borer infestation.

The subrecipient agrees to provide size, condition and location of both removed and treated trees as well as dates of removals and treatments. These should be provided quarterly along with invoices to the recipient.

The subrecipient will be responsible for notifying the public utility companies (i.e. telephone, electric, gas, and cable) when needed to ensure the safe removal of the tree to avoid causing fires, shocks or sparks damage to wires, cables, poles, boxes or other equipment owned or operated by the public utility companies. The subrecipient will also be responsible for notifying the utility companies as to when service can be restored and to cooperate with the utility companies to ensure service is restored prior to nightfall each day.

The subrecipient agrees that equipment, ladders, saws, chippers and tools will not be left unattended. On a nightly basis all equipment and tools will be stored in such manner to ensure that residents and the public do not have access to them.

The subrecipient agrees to perform the work with due care taking precautions against injury to persons, damage to property and interference with vehicular or pedestrian traffic. The subrecipient agrees to take necessary precautions to ensure the safety of all person engaged in the work of this contract. The subrecipient agrees to protect against damage to all existing trees, plants, grass vegetation or other fixtures.

The subrecipient certifies that it is not presently debarred, proposed for debarment, suspended, or declared ineligible for covered transactions by any federal agency or department. The subrecipient also certifies that within the past three years it has not been convicted of or had civil judgment rendered against it for a fraudulent contract or transaction, violation of federal or state antitrust laws, or the commission of embezzlement, theft, forgery, bribery, falsifying, or destroying records, receiving stolen property or making false statements.

### **3 Payment**

The State will promptly pay the subrecipient after the subrecipient presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services.

The subrecipient must submit an invoice for reimbursement with supporting documentation no later than 15 days after the end of each quarter as follows:

- Quarter end March 31, 2019 due April 15, 2019
- Quarter end June 30, 2019 due July 15, 2019
- Quarter end September 30, 2019 due October 15, 2019
- Quarter end December 31, 2019 due January 31, 2020
- Quarter end March 31, 2020 due April 15, 2020
- Quarter end June 30, 2020 due July 15, 2020
- Quarter end September 30, 2020 due October 15, 2020
- Quarter end December 31, 2020 due January 31, 2021

The subrecipient must also submit proof of all expenses paid and supporting documentation for the cost matching share of the agreement.

Payments under this agreement will be made from federal funds obtained by the State through USDA Forest Service,

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CFDA Number 10.680. The subrecipient is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the subrecipient's failure to comply with federal requirements.

All services provided by the subrecipient under this agreement must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, and rules. The subrecipient will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

All work will be completed by the grant ending date of December 31, 2020 and the final invoice is submitted. Invoices will reference this Agreement by the contract number and the name of the State's Authorized Representative and will be submitted to:

Minnesota Department of Agriculture  
Accounts Payable  
625 Robert Street North  
St. Paul, MN 55115

Final payment to the subrecipient will be paid when the State's Authorized Representative determines that the subrecipient has satisfactorily fulfilled all the terms of this agreement.

The total obligation of the recipient under this agreement will not exceed \$65,000.

#### **4 Authorized Representatives**

The State's Authorized Representative is Angie Ambourn, Minnesota Department of Agriculture, 625 Robert Street North, St. Paul, MN 55115, 651-201-6073, Angie.Ambourn@state.mn.us, or her successor.

The State's Authorized Financial Representative is Julie Sis, Minnesota Department of Agriculture, 625 Robert Street North, St. Paul, MN 55115, 651-201-6073, Julie.Sis@state.mn.us, or her successor.

The subrecipient's Authorized Representative is Dale Sellner, Park and Grounds Supervisor, City of Duluth 411 West 1<sup>st</sup> Street, Duluth, MN 55802, 218-730-4303, dsellner@DuluthMN.gov, or his successor.

The subrecipient's Authorized Financial Representative is Cheryl Skafte, Provisional Assistant Manager | Parks and Recreation, City of Duluth 411 West 1<sup>st</sup> Street, Duluth, MN 55802, 218-730-4334, cskafte@DuluthMN.gov, or her successor.

#### **5 Assignment, Amendments, Waiver, and Contract Complete**

**5.1 Assignment.** The Governmental Unit may neither assign nor transfer any rights or obligations under this agreement without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this agreement, or their successors in office.

**5.2 Amendments.** Any amendment to this agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.

**5.3 Waiver.** If the State fails to enforce any provision of this agreement, that failure does not waive the provision or its right to enforce it.

**5.4 Contract Complete.** This agreement contains all negotiations and agreements between the State and the Governmental Unit. No other understanding regarding this agreement, whether written or oral, may be used to bind either party.

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## 6 Indemnification

In the performance of this contract by the Governmental Unit, or Governmental Unit's agents or employees, the Governmental Unit must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the state, to the extent caused by Governmental Unit's:

- 1) Intentional, willful, or negligent acts or omissions; or
- 2) Actions that give rise to strict liability; or
- 3) Breach of contract or warranty.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Governmental Unit may have for the State's failure to fulfill its obligation under this contract.

## 7 State Audits

Under Minnesota Statute § 16C.05, subdivision 5, the Governmental Unit's books, records, documents, and accounting procedures and practices relevant to this agreement are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this agreement.

## 8 Government Data Practices

The Governmental Unit and State must comply with the Minnesota Government Data Practices Act, Minnesota Statute Ch. 13, as it applies to all data provided by the State under this agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Governmental Unit under this agreement. The civil remedies of Minnesota Statute § 13.08 apply to the release of the data referred to in this clause by either the Governmental Unit or the State.

If the Governmental Unit receives a request to release the data referred to in this Clause, the Governmental Unit must immediately notify the State. The State will give the Governmental Unit instructions concerning the release of the data to the requesting party before the data is released.

## 9 Venue

Venue for all legal proceedings out of this agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

## 10 Termination

**10.1 Termination.** The State or the Governmental Unit may terminate this agreement at any time, with or without cause, upon 30 days' written notice to the other party.

**10.2 Termination for Insufficient Funding.** The State may immediately terminate this agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Governmental Unit. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Governmental Unit will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Governmental Unit notice of the lack of funding within a reasonable time of the State's receiving that notice.

## 11 E-Verify Certification (In accordance with Minn. Stat. §16C.075)

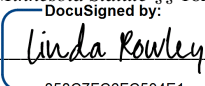
For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/VerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

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**1. STATE ENCUMBRANCE VERIFICATION**

*Individual certifies that funds have been encumbered as required by Minnesota Statute §§ 16A.15 and 16C.05.*

Signed:   
Date: 8/9/2019

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**2. GOVERNMENTAL UNIT**

By: \_\_\_\_\_

Title: Mayor

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: City Clerk

Date: \_\_\_\_\_

Countersigned:

By: \_\_\_\_\_

Title: City Auditor

Date: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Title: City Attorney

Date: \_\_\_\_\_

**3. STATE AGENCY**

By: \_\_\_\_\_  
(with delegated authority)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**4. COMMISSIONER OF ADMINISTRATION**

As delegated to the Office of State Procurement

By: \_\_\_\_\_

Date: \_\_\_\_\_

**ADMIN #62456**

Distribution:

Agency

Governmental Unit

State's Authorized Representative - Photo Copy

## PROFESSIONAL/TECHNICAL CONTRACT CERTIFICATION FORM

### SECTION 1 – INSTRUCTIONS

- Complete form for:**
- Professional/Technical Service Contracts and Joint Powers Agreements
    - In excess of \$25,000 (Minn. Stat. 16C.08)
  - Single Source Contracts

- Checklist if not using SWIFT:**
- 2 copies of this Certification Form
  - 1 copy of your final RFP
  - If contracts are estimated to be over \$50,000, submit a copy of the State Register ad
  - For solicitations under \$50,000, a posting on the OSP webpage will be done
  - Submit all to Department of Administration, Materials Management Division, Professional and Technical Service Contracts, 112 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155
  - If applicable, provide documentation for non-standard terms and conditions

- Checklist if using SWIFT:**
- Upload completed Certification Form to SWIFT
  - Attach the final RFP and any document for non-standard terms and conditions

### SECTION 2 –BACKGROUND

<b>Department</b> Agriculture		<b>Division</b> Plant Protection
<b>Estimated Contract Value (original contract period):</b> \$65,000	<b>Estimated Contract Value (including extension options):</b> \$65,000	<b>Source of Funds</b> (indicate whether State or Federal) <b>Federal USFS Suppression</b>

**\*Original Contract Period: From: January 1, 2019 To: Dec 31, 2020 With option to extend \_\_\_ add'l \_\_1\_\_ yr. periods**

**\*Note:** The combined contract and amendment cannot exceed five years, unless otherwise provided for by law (Minn. Stat. 16C.06 Subd. 3b(b)). Also, the term of the original contract must not exceed two years unless the commissioner determines that a longer duration is in the best interest of the state. If you are requesting that the original contract length be longer than two years, please write a justification below:

**Agency certifies that Minn. Stat. §15.061 and/or \_\_\_\_\_ [list additional authority if applicable] allows agency to enter into this professional/technical service contract. (Please check with agency attorney general staff if you have questions.)**

**Nature of Contract:** The State is in need of implementing activities to suppress EAB populations in the City of Duluth in order to slow the spread of EAB from the city into surrounding areas. Activities will consist of removal of emerald ash borer infested trees as well as treatment in infested areas. The Department of Agriculture received a grant from the United States Forest Service Cooperative Forest Health Grant Program with funding to reimburse the City of Duluth to perform this needed service.

**Product or Result:** Products and results will include number of tree treated and removed to suppress population in and around the emerald ash borer infested city of Duluth



**In accordance with Minn. Stat. §16C.08, subd. 3, provide the following:** (attach additional pages if necessary)

1) Describe how the proposed contract is necessary to achieve the agency’s statutory responsibilities; The Minnesota Department of Agriculture is the lead agency for emerald ash borer, this action is being taken in cooperation with the city of Duluth to suppress EAB population with the intent of slowing the spread of this insect in and around the city of Duluth

2) Describe your plan to notify firms or individuals who may be available to perform the services called for in the solicitation other than advertising in the *State Register*, on the OSP website, or in SWIFT; and  
Phone call/email

3) Describe the performance measures or other tools that will be used to monitor and evaluate contract performance and how the results of the work will be used. The city will provide records, location and dates of treat and removed trees and MDA staff will verify that work has been completed.

**SECTION 3 – VENDOR SELECTION METHOD**

**Complete ONE of the following boxes to indicate how the vendor will be selected for the proposed contract:**

**A. Public Solicitation**

Executive Order 05-07 requires that “all vendor selection evaluations conducted under Minnesota’s “best value” statutes must consider price to be of significant importance...”

Indicate weight of price \_\_\_\_% (at least 30% of the evaluation points)

- EXCEPTION: I am requesting an exception to the State’s guideline. A memo justifying the request is attached.

**COMPLETE SECTION 4, IF APPLICABLE.**

**B. Single Source Request**

Name of Contractor\_City of Duluth \_\_\_\_\_

- Attach a justification form.  
A sample can be found at: <http://www.mmd.admin.state.mn.us/doc/singlesourcerequestform.doc>.

If the contract is for IT-related services (or incidental goods) in excess of \$25,000, select an option below:

- Services and products will meet the Minnesota IT Accessibility Standards
- Services/products provided by the contractor will NOT meet the Minnesota IT Accessibility Standards. (If so, you must complete “STEP TWO” below.)

**SKIP SECTION 4. IF ACCESSIBILITY APPLICABLE, PLEASE INCLUDE IN CONTRACT.**



**C. Joint Powers Agreement (Minn. Stat. §471.59, subd. 1 for Professional/Technical Services)**

Name of Governmental Unit \_\_\_\_\_ City of Duluth \_\_\_\_\_

1) Explain how/why this governmental unit was selected. The City of Duluth has the authority to remove and treat public trees within the city boundaries

2) Can this work be performed by any other governmental unit? No

**SKIP SECTION 4. IF ACCESSIBILITY APPLICABLE, PLEASE INCLUDE IN CONTRACT.**

**SECTION 4 – ACCESSIBILITY**

(Complete for all solicitations involving IT services (and incidental goods) in excess of \$25,000)

Information on the Minnesota IT Accessibility Standards can be found at:

[http://www.mmd.admin.state.mn.us/pdf/accessibility\\_standard.pdf](http://www.mmd.admin.state.mn.us/pdf/accessibility_standard.pdf).

**STEP ONE: Accessibility Standards Verification:**

Check one or both. If not applicable, proceed to Step Two.

- Applicable WCAG 2.0 Level AA requirements ([WCAG 2.0](#)) are included in the solicitation document and will be evaluated utilizing the procurement process checked below in Step Three.
- Applicable 508 (B) Technical Standards, (C) Functional Performance Criteria, and (D) Information, Documentation, and Support Requirements ([Section 508](#)) are included in the solicitation document and will be evaluated utilizing the procurement process checked below in Step Three.

**STEP TWO: Accessibility Exception Request:**

If Step One is not applicable, check one or both below and indicate the appropriate exception category. **Attach a memo** detailing the rationale supporting the exception request. (A full description of all exceptions can be found at <http://www.mmd.admin.state.mn.us/pdf/AccExceptions.pdf>)

- Applicable WCAG 2.0 Level AA requirements are NOT included; and/or
- Applicable 508 (B) Technical Standards, (C) Functional Performance Criteria, and (D) Information, Documentation, and Support Requirements are NOT included because:

**Exception category:**

Check all that apply:

- National/State Security       Service Personnel Space
- Infrastructure Hardware       Fundamental Alteration
- Undue Burden (must be accompanied by the form at: <http://www.mmd.admin.state.mn.us/doc/AccDetermination.doc>)

**STEP THREE: Process for Evaluating Accessibility**

Indicate how your RFP will be structured and which process you will use to evaluate accessibility.

(For more information, including the Accessibility Matrix, go to <http://www.mmd.admin.state.mn.us/pdf/AccMatrix.pdf> and <http://www.mmd.admin.state.mn.us/pdf/AccSupplement.pdf>.)

- Full Accessibility is a pass/fail requirement
- Partial Accessibility is a pass/fail requirement
- Full or Partial Accessibility is a pass/fail requirement, but Dual Responses are considered
- Full or Partial Accessibility is a pass/fail requirement and is further scored as a % of points
- Accessibility is scored as a % of points
- Proposals are short-listed prior to scoring accessibility as a % of points
- Accessibility is not considered due to an exception indicated above

**SECTION 5 – AGENCY CERTIFICATIONS**

Pursuant to Minn. Stat. 16C.08, I certify:

May 2016

OSP Cert # 62456

1. No state **agency** employee is (a) able and (b) available to perform the services called for by the contract
  - A. **How did you reach this conclusion:** Authority to remove and treat public trees is within the City of Duluth Authorities
  - B. **List other methods considered for accomplishing the work.** [Example: In-house, other divisions or offices, other state agencies.] none
2. Unless otherwise authorized by law, a competitive proposal process shall be used to acquire professional or technical services. A competitive bidding process shall not be utilized to acquire professional or technical services.
3. The following person(s) has/have been assigned to manage the contract as well as monitor and act as liaison for the contract Angie Ambourn at 651-201-6073 (telephone number).
4. The agency shall not allow a contractor to begin work before the contract is fully executed unless an exception under Minn. Stat. §16C.05, subd. 2a has been granted by the commissioner and funds are fully encumbered.
5. A contract shall not establish an employment relationship between the state or the agency and any persons performing under the contract.
6. In the event the results of the contract work will be carried out or continued by state employees upon completion of the contract, the contractor is required to include state employees in development and training, to the extent necessary to ensure that after completion of the contract, state employees can perform any ongoing work related to the same function.
7. The contractor and agents must not be employees of the state.
8. The terms of the contract must permit the commissioner to unilaterally terminate the contract prior to completion, upon payment of just compensation, if the commissioner determines that further performance under the contract would not serve agency purposes.
9. The agency shall not contract out its previously eliminated jobs for four years without first considering the same former employees who are on the seniority unit layoff list who meet the minimum qualifications determined by the agency.
  - The seniority unit layoff list was reviewed on 5/20/2019 (date, within past three months);
  - OR**
  - Not applicable. The agency does not have an active seniority unit layoff list.
10. The terms of a contract must provide that no more than 90 percent of the amount due under the contract may be paid until the final product has been reviewed by the head of the agency entering into the contract and the head of the agency has certified that the contractor has satisfactorily fulfilled the terms of the contract, unless specifically excluded or modified in writing by the commissioner. This clause does not apply to contracts for professional services as defined in sections 326.02 to 326.15.

Reasonable efforts will be made to avoid conflicts of interest throughout the selection and performance of this contract. All potential or actual conflicts of interest will be reported to OSP.

The following three Internal Approval signatures are for agency use; they are not required by OSP.

<b>Activity Manager:</b>	<b>Date:</b>
<b>Division Director:</b>	<b>Date:</b>
<b>Assistant Commissioner (program):</b>	<b>Date:</b>

Agency signature (required)

Authorized Certification/Officer authorized to sign contracts: <i>Whitney Place</i>	<b>Date:</b> 6/18/2019
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MN.IT signature (required for IT-related services)

<b>MN.IT/BUY.IT Approval:</b>	<b>Date:</b>
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Department of Administration signature (required)

Office of State Procurement/Professional Technical Approval: <i>Haylie Heil</i>	<b>Date:</b> 6/24/2019
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**16A.15-16C.05 Form**

(Based on Minnesota Statutes Sections 16A.15 and 16C.05)

Department of Agriculture Division of Plant Protection  
SWIFT Contract # 164543 Vendor Name City of Duluth

Submit two copies when processing the contract.

**I. NO OBLIGATION INCURRED PRIOR TO ENCUMBRANCE OR CONTRACT EXECUTION**  
(Minn. Stat. §§ 16A.15, subd. 3 and 16C.05, subd. 2)\*

I certify that work has not started as of \_\_\_\_\_ and **will not begin until this contract is fully executed.**

Person Responsible: \_\_\_\_\_ Date: \_\_\_\_\_

**II. OBLIGATION INCURRED PRIOR TO ENCUMBRANCE** (Minn. Stat. § 16A.15, subd. 3)\*

Total Contract Amount \$ \_\_\_\_\_ Obligation Date \_\_\_\_\_ (when work started)

Reason why obligation was incurred before contract was encumbered:

What corrective action will be taken to prevent the problem from happening in the future?

\_\_\_\_\_  
Person Responsible Date: \_\_\_\_\_ Agency Head or Delegate Date: \_\_\_\_\_

\_\_\_\_\_  
Agency Accounting Director Date: \_\_\_\_\_

**III. OBLIGATION INCURRED PRIOR TO CONTRACT EXECUTION** (Minn. Stat. § 16C.05, subd. 2)\*

Work on this contract started as of January 1, 2019.

Reason why contract was not fully executed prior to begin date:  
**This contract is being funded by the USDA Forest Service. The contract vendor, subrecipient of this award, must match this funding 1 to 1. I have attached the award documents for your information. The award agreement was executed on 7/24/19 with a start date of 1/1/19. The contract document start date is 1/1/19 to allow for expenses incurred from that date to qualify as matching funds.**

What corrective action will be taken to prevent the problem from happening in the future?

DocuSigned by:  
Angie Ambourn Date: 8/7/2019  
Person Responsible

\_\_\_\_\_  
Agency Head or Delegate Date: \_\_\_\_\_



## 16A.15-16C Memo, page 2

Minnesota Statutes Section 16A.15, subdivision 3 (emphasis added)

### Allotment and encumbrance

(a) A payment may not be made without prior obligation. An obligation may not be incurred against any fund, allotment, or appropriation unless the commissioner [of finance] has certified a sufficient unencumbered balance or the accounting system shows sufficient allotment or encumbrance balance in the fund, allotment, or appropriation to meet it. . . . An expenditure or obligation authorized or incurred in violation of this chapter is invalid and ineligible for payment until made valid. A payment made in violation of this chapter is illegal. An employee authorizing or making the payment, or taking part in it, and a person receiving any part of the payment, are jointly and severally liable to the state for the amount paid or received. If an employee knowingly incurs an obligation or authorizes or makes an expenditure in violation of this chapter or takes part in the violation, the violation is just cause for the employee's removal by the appointing authority or by the governor if an appointing authority other than the governor fails to do so. A claim presented against an appropriation without prior allotment or encumbrance may be made valid on investment, review, and approval by the commissioner [of finance], if the services, materials, or supplies to be paid for were actually furnished in good faith without collusion and without intent to defraud.

Minnesota Statutes Section 16C.05, subdivision 2 (emphasis added)

### Creation and validity of contracts

(a) **A contract is not valid and the state is not bound by it and no agency, without the prior written approval of the commissioner granted pursuant to subdivision 2a, may authorize work to begin on it unless:**

- (1) it has first been executed by the head of the agency or a delegate who is a party to the contract;
- (2) it has been approved by the commissioner [of administration]; and
- (3) the accounting system shows an encumbrance for the amount of the contract liability.

(b) the combined contract and amendments must not exceed five years, unless otherwise provided by law. The term of the original contract must not exceed two years unless the commissioner determines that a longer duration is in the best interest of the state.

**FEDERAL FINANCIAL ASSISTANCE  
AWARD OF DOMESTIC GRANT 19-DG-11420000-084  
Between  
AGRICULTURE, MINNESOTA DEPARTMENT OF  
And The  
USDA, FOREST SERVICE  
EASTERN REGION STATE AND PRIVATE FORESTRY**

Project Title: Emerald Ash Borer Suppression for the City of Duluth

Upon execution of this document, an award to Agriculture, Minnesota Department of, hereinafter referred to as "MNDA," in the amount of **\$70,000.00**, is made under the authority of P.L. 95-313 Cooperative Forestry Assistance Act of 1978. The Catalog of Federal Domestic Assistance (CFDA) number and name are 10.680 Forest Health Protection. MNDA accepts this award for the purpose described in the application narrative. Your application for Federal financial assistance, dated 11-07-2018, and the attached Forest Service provisions, 'Forest Service Award Provisions,' are incorporated into this letter and made a part of this award.

Note the following:

- This program requires a match of 50%, which your organization has agreed to meet, as shown in the attached application, financial plan and narrative.
- All required reports and official correspondence shall be sent to the [SM.FS.R9SPFgrants@usda.gov](mailto:SM.FS.R9SPFgrants@usda.gov) email in-box for processing and record keeping.

This is an award of Federal financial assistance. Prime and sub-recipients to this award are subject to the OMB guidance in subparts A through F of 2 CFR Part 200 as adopted and supplemented by the USDA in 2 CFR Part 400. Adoption by USDA of the OMB guidance in 2 CFR 400 gives regulatory effect to the OMB guidance in 2 CFR 200 where full text may be found.

Electronic copies of the CFRs can be obtained at the following internet site: [www.ecfr.gov](http://www.ecfr.gov). If you are unable to retrieve these regulations electronically, please contact your Grants and Agreements Office at 414-297-3645.

The following administrative provisions apply to this award:

- A. **LEGAL AUTHORITY**. MNDA shall have the legal authority to enter into this award, and the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project, which includes funds sufficient to pay the non-Federal 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 award.

**Principal Cooperator Contacts:**

<b>Cooperator Program Contact</b>	<b>Cooperator Administrative Contact</b>
Name: Angie Ambourn Address: 625 Robert St. North City, State, Zip: Saint Paul, MN 55155 Telephone: 651-201-6073 Email: angie.ambourn@state.mn.us	Name: Thom Petersen Address: 625 Robert St. North City, State, Zip: Saint Paul, MN 55155 Telephone: 651-201-6219 Email: thom.petersen@state.mn.us

**Principal Forest Service Contacts:**

<b>Forest Service Program Manager Contact</b>	<b>Forest Service Administrative Contact</b>
Name: John Kyhl Address: 1992 Folwell Ave. City, State, Zip: Saint Paul, MN 55108 Telephone: 651-649-5265 Email: john.f.kyhl@usda.gov	Name: John LaBounty Address: 626 E. Wisconsin Ave. City, State, Zip: Milwaukee, WI 53202 Telephone: 414-297-3645 Email: john.labounty@usda.gov

- C. SYSTEM FOR AWARD MANAGEMENT REGISTRATION REQUIREMENT (SAM). MNDAs shall maintain current information in the System for Award Management (SAM) until receipt of final payment. This requires review and update to the information at least annually after the initial registration, and more frequently if required by changes in information or award term(s). For purposes of this award, System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a Cooperative. Additional information about registration procedures may be found at the SAM Internet site at [www.sam.gov](http://www.sam.gov).

- D. 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. Requests for payment must be submitted on Standard Form 270 (SF-270), Request for Advance or Reimbursement, and must be submitted no more than monthly. In order to approve a Request for Advance Payment or Reimbursement, the Forest Service shall review such requests to ensure advances or payments for reimbursement are in compliance and otherwise consistent with OMB, USDA, and Forest Service regulations.

Advance payments must not exceed the minimum amount needed or no more than is

needed for a 30-day period, whichever is less. If the Recipient receives an advance payment and subsequently requests an advance or reimbursement payment, then the request must clearly demonstrate that the previously advanced funds have been fully expended before the Forest Service can approve the request for payment. Any funds advanced, but not spent, upon expiration of this award must be returned to the Forest Service.

The Program Manager reserves the right to request additional information prior to approving a payment.

The invoice must be sent by one of three methods:
EMAIL (preferred): <a href="mailto:asc_ga@fs.fed.us">asc_ga@fs.fed.us</a>
FAX: 877-687-4894
POSTAL: Albuquerque Service Center Payments – Grants & Agreements 101B Sun Ave NE Albuquerque, NM 87109

- E. INDIRECT COST RATES. The approved indirect cost rate at the time of execution is **24.06%** as shown in the NICRA provided by the Cooperator.

Indirect cost rates must be formalized in a written agreement between the cognizant agency and Recipient. Requirements are set forth in appendices to 2 CFR 200.

(1) If MNDA does not have a previously established indirect cost rate with a Federal agency, MNDA shall follow the requirements and timeframes unique to their organization found in the appendices to 2 CFR 200. MNDA will be reimbursed for indirect costs at the tentative rate reflected in the budget until the rate is formalized in a negotiated indirect cost rate agreement (NICRA) at which time, reimbursements for prior indirect costs may be subject to adjustment.

(2) As new NICRAs are agreed to between MNDA and their cognizant audit agency, the revised provisional or final rate(s) are automatically incorporated into this award, as appropriate, and must specify (1) the agreed upon rates, (2) the bases to which the rates apply, (3) the fiscal year for which the rates apply, and (4) the items treated as direct costs. The award obligation will not increase as a result of indirect cost rate increases. Updates to NICRAs will not affect the total funds available for this award unless documented in a formally executed modification.

(3) If the NICRA is for a provisional rate, MNDA shall be reimbursed at the established provisional rate(s), subject to appropriate adjustment when the final rate(s) for the fiscal year are established.

(4) Failure to provide a revised provisional or final NICRA could result in disallowed costs and repayment to the Forest Service.

- F. PRIOR WRITTEN APPROVAL. MNDA shall obtain prior written approval pursuant to conditions set forth in 2 CFR 200.407.
- G. MODIFICATIONS. Modifications within the scope of this award 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 90 days prior to implementation of the requested change. The Forest Service is not obligated to fund any changes not properly approved in advance.
- H. PERIOD OF PERFORMANCE. This agreement is executed as of the date of the Forest Service signatory official signature.  
The start date of this award is 01/01/2019, pre-award costs are authorized pursuant to 2 CFR 200.458.  
The end date, or expiration date is **12/31/2020**. This instrument may be extended by a properly executed modification. *See Modification Provision above.*



Award Number: 19-DG-11420000-084

OMB 0596-0217  
Expiration Date: 11/30/2017  
Rev. (12-13)

I. 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.

*Whitney Place*  
\_\_\_\_\_  
Minnesota Department of Agriculture

*7/23/19*  
\_\_\_\_\_  
Date

*Robert Lueckel*  
\_\_\_\_\_  
ROBERT LUECKEL  
Acting Regional Forester  
Eastern Region State and Private Forestry

*7/24/2019*  
\_\_\_\_\_  
Date

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

*M. C. Raymore*

Digitally signed by  
MIDORI RAYMORE  
Reason: I have  
reviewed this  
document  
Date: 2019.07.17  
15:06:00 -05'00'

7/17/19

\_\_\_\_\_  
MIDORI RAYMORE  
Forest Service Grants Management Specialist

\_\_\_\_\_  
Date

## **ATTACHMENT A: FOREST SERVICE AWARD PROVISIONS**

- A. COLLABORATIVE ARRANGEMENTS. Where permitted by terms of the award and Federal law, MNDA may enter into collaborative arrangements with other organizations to jointly carry out activities with Forest Service funds available under this award.
- B. FOREST SERVICE LIABILITY TO THE RECIPIENT. The United States shall not be liable to MNDA for any costs, damages, claims, liabilities, and judgments that arise in connection with the performance of work under this award, including damage to any property owned by MNDA or any third party.
- C. NOTICES. Any notice given by the Forest Service or MNDA will be sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the Forest Service Program Manager, at the address specified in the award.

To MNDA, at the address shown in the award or such other address designated within the award.

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

- D. SUB-AWARDS. MNDA shall notify Sub-recipients under this award that they are subject to the OMB guidance in subparts A through F of 2 CFR Part 200, as adopted and supplemented by the USDA in 2 CFR Part 400. Any sub-award must follow the regulations found in 2 CFR 200.330 through .332.
- E. USE OF FOREST SERVICE INSIGNIA. In order for MNDA to use the Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted by the Forest Service's Office of Communications (Washington Office). A written request will be submitted by Forest Service, Program Manager, to the Office of Communications Assistant Director, Visual Information and Publishing Services prior to use of the insignia. The Forest Service Program Manager will notify MNDA when permission is granted.
- F. MEMBERS OF CONGRESS. Pursuant to 41 U.S.C. 22, no member of, or delegate to, Congress shall be admitted to any share or part of this award, or benefits that may arise therefrom, either directly or indirectly.
- G. 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),”.
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),”
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).

H. DRUG-FREE WORKPLACE.

- 1. MNDA 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 MNDA will take against employees for violating that prohibition; and
  - c. Let each employee know that, as a condition of employment under any award, the employee:
    - (1) Shall abide by the terms of the statement, and
    - (2) Shall notify MNDA in writing if they are convicted for a violation of a criminal drug statute occurring in the workplace, and shall do so no more than 5 calendar days after the conviction.
- 2. MNDA 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 you may impose upon them for drug abuse violations occurring in the workplace.
3. Without the Program Manager'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 award, whichever occurs first.
  4. MNDA agrees to immediately notify the Program Manager 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 award number of each award on which the employee worked. The notification must be sent to the Program Manager within 10 calendar days after MNDA learns of the conviction.
  5. Within 30 calendar days of learning about an employee's conviction, MNDA 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.

I. PROHIBITION AGAINST USING FUNDS WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS.

1. The recipient may not require its employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
2. The recipient must notify its employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (1) of this award provision are no longer in effect.
3. The prohibition in paragraph (1) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information.
4. If the Government determines that the recipient is not in compliance with this award provision, it;
  - a. Will prohibit the recipient's use of funds under this award in accordance with sections 743, 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law; and

- b. May pursue other remedies available for the recipient's material failure to comply with award terms and conditions.
- J. ELIGIBLE WORKERS. MNDA 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). MNDA 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. PROGRAM INCOME – FINANCIAL ASSISTANCE.
1. MNDA shall apply the standards set forth in this Provision to account for program income earned under the award.
  2. If any program income is generated as a result of this award, the income shall be applied using the deductive alternative as described in 2 CFR 200.307; the deductive alternative is the default if no other method is selected.
  3. Unless the terms and conditions of the award/agreement provide otherwise, Recipients shall have no obligation to the U.S. Government regarding program income earned after the end of the project period.
  4. Costs incident to the generation of program income may be deducted from gross income to determine net program income, provided these costs have not been charged to the award and they comply with 2 CFR 200.307.
  5. Unless the terms and conditions of the award provide otherwise, MNDA shall have no obligation to the U.S. Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research awards.
- L. FINANCIAL STATUS REPORTING. A Federal Financial Report, Standard Form SF-425 (and Federal Financial Report Attachment, SF-425A, if required for reporting multiple awards), must be submitted annually. These reports are due 90 days after the reporting period ending 12/31. 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 award. These forms may be found at [www.whitehouse.gov/omb/grants\\_forms](http://www.whitehouse.gov/omb/grants_forms).
- M. PROGRAM PERFORMANCE REPORTS. The recipient shall perform all actions identified and funded in application/modification narratives within the performance period identified in award.

In accordance with 2 CFR 200 301, reports must relate financial data to performance

accomplishments of the federal award.

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

- N. NOTIFICATION. MNDA shall immediately notify the Forest Service of developments that have a significant impact on the activities supported under this award. Also, notification must be given in case of problems, delays or adverse conditions that materially impair the ability to meet the objectives of the award. This notification must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.
- O. 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 Forest Service Program Manager. All technical positions are considered Key Personnel by the Forest Service. Failure on the part of MNDA to obtain prior, written approval when required may result in the disallowance of costs.
- P. FREEDOM OF INFORMATION ACT (FOIA). Public access to award 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). Requests for research data are subject to 2 CFR 315(e).

Public access to culturally sensitive data and information of Federally-recognized Tribes may also be explicitly limited by P.L. 110-234, Title VIII Subtitle B §8106 (2009 Farm Bill).

- Q. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All Cooperatives, their Employees, Volunteers, and Contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- R. PUBLIC NOTICES. It is Forest Service's policy to inform the public as fully as possible of its programs and activities. MNDA is encouraged to give public notice of the receipt of this award and, from time to time, to announce progress and accomplishments.

MNDA may call on Forest Service's Office of Communication for advice regarding public notices. MNDA is requested to provide copies of notices or announcements to the Forest Service Program Manager and to Forest Service's Office Communications as far in advance of release as possible.

- S. FUNDING EQUIPMENT. Federal funding under this award is not available for reimbursement of MNDA's purchase of equipment. Equipment is defined as having a fair market value of \$5,000 or more per unit and a useful life of over one year. Supplies are those items that are not equipment.
- T. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS, AND ELECTRONIC MEDIA. MNDA shall acknowledge Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this award. Follow direction in USDA Supplemental 2 CFR 415.2.
- U. COPYRIGHTING. MNDA is/are granted sole and exclusive right to copyright any publications developed as a result of this award. 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 Forest Service shall be copyrighted. The 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-awards, sub-awards or subcontracts.

This provision includes:

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

- V. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. MNDA 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.”***

- W. AWARD CLOSEOUT. The Recipient must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award.

Any unobligated balance of cash advanced to MNDA must be immediately refunded to the Forest Service, including any interest earned in accordance with 2 CFR 200.343(d).

If this award is closed without audit, the 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.

- X. TERMINATION. This award may be terminated, in whole or part pursuant to 2 CFR 200.339.

- Y. DISPUTES.

1. Any dispute under this award shall be decided by the Regional Forester or their acting. The Regional Forester or their acting shall furnish MNDA a written copy of the decision.

2. Decisions of the Regional Forester or their acting shall be final unless, within 30 days of receipt of the decision of the Regional Forester or their acting, MNDA appeal(s) the decision to the 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 Regional Forester or their acting.

3. In order to facilitate review on the record by the Director, AQM, MNDA shall be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.

4. A decision under this provision by the Director, AQM is final.

5. The final decision by the Director, AQM does not preclude MNDA from pursuing remedies available under the law.

- Z. DEBARMENT AND SUSPENSION. MNDA shall immediately inform the 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 MNDA or any of their principals

receive a transmittal letter or other official federal notice of debarment or suspension, then they shall notify the Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary. The Recipient shall adhere to 2 CFR Part 180 Subpart C in regards to review of sub-recipients or contracts for debarment and suspension.

All subrecipients and contractors must complete the form AD-1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Lower Tier Covered Transactions. Blank forms are available electronically. Completed forms must be kept on file with the primary recipient.

## ATTACHMENT B: 2 CFR PART 170

### Appendix A to Part 170—Award Term

#### I. Reporting Sub-awards and Executive Compensation.

##### a. *Reporting of first-tier sub-awards.*

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 sub-award 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 sub-award 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 sub-awards); 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 sub-awards); 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.sam.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 Sub-recipient Executives.*

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

- i. in the sub-recipient's preceding fiscal year, the sub-recipient 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 sub-awards); 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 sub-awards); 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 sub-recipient 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 sub-award. For example, if a sub-award 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 sub-recipient 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. Sub-awards, and
2. The total compensation of the five most highly compensated executives of any sub-recipient.

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 sub-recipient under an award or sub-award to a non-Federal entity.
2. *Executive* means officers, managing partners, or any other employees in management positions.
3. *Sub-award*:

- i. This term means a legal agreement 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 sub-recipient.
  - 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 sub-award may be provided through any legal agreement, including an agreement that you or a sub-recipient considers a contract.
4. *Sub-recipient* means an entity that:
- i. Receives a sub-award from you (the recipient) under this award; and
  - ii. Is accountable to you for the use of the Federal funds provided by the sub-award.
5. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient’s or sub-recipient’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 ATTACHMENT B: 2 CFR PART 170