

FS Agreement No. 11-PA-11083150-029  
Cooperator Agreement No. \_\_\_\_\_

**MASTER  
PARTICIPATING AGREEMENT  
Between The  
ALABAMA-COUSHATTA TRIBE OF TEXAS  
And The  
USDA, FOREST SERVICE  
SOUTHERN REGION**

This MASTER PARTICIPATING AGREEMENT is hereby made and entered into by and between the Alabama-Coushatta Tribe of Texas, hereinafter referred to as "Tribe," and the USDA, Forest Service, Southern Region hereinafter referred to as the "U.S. Forest Service," under the authority: the Cooperative Funds and Deposits Act of December 12, 1975, Pub. L. 94-148, U.S.C. 565al-a3, as further authorized by Division F, Title IV, Sec. 417 of the Consolidated Appropriations Act 2008 (PL 110-161)

Background: The Forest Service Region recognizes the trust responsibility of the Federal Government to Indian Tribes and status of the Alabama-Coushatta Tribe of Texas as a sovereign domestic dependent nation and a Federally Recognized American Indian Tribe with historical interests in the conservation and management of the natural and cultural resources of lands administered by the Southern Region of the Forest Service.

By implementation of this Participating Agreement, all parties agree that a formal Government-To-Government relationship exists between them, based on the unique status between the Federal Government and Federally Recognized American Indian Tribes as established by the United States Constitution, Treaties, Statutes, Regulations, Court Decisions, Executive Orders, and Policies.

Once trained, Tribal members/firefighters will become available for work (prescribed fire, heritage surveys, trail construction, wildlife habitat improvement, forest restoration work, etc.) on any Forest in Region 8, coordinated through the National Forests and Grasslands in Texas.

Title: ALABAMA-COUSHATTA TRIBE OF TEXAS RESOURCE MANAGEMENT PROGRAM

## **I. PURPOSE**

The purpose of this agreement is to document the cooperation between the parties to provide Tribal members wildland firefighters prescribed fire work and other resource management work experience while providing a source of firefighters and resource specialists for the Forest Service in accordance with the following provisions and any incorporated Supplemental Project Agreement(s).



## 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.

The FOREST SERVICE has the responsibility for natural resource management on National Forest and National Grassland lands; and has an interest in providing opportunities for expanding Tribal member knowledge of natural resource management; and occasionally needs assistance to carry out wildfire suppression, prescribed fire, and other resource management activities.

The TRIBE is interested in cooperating with the FOREST SERVICE to provide its members with these developmental opportunities, and to develop its members in resource areas to cooperate in the management of natural resources on any forest in the Southern Region;

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

## III. THE TRIBE SHALL:

- A. LEGAL AUTHORITY. The Tribe 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. USE OF GOVERNMENT OWNED VEHICLES. U.S. Forest Service vehicles may be used for official U.S. Forest Service business only accordance with FSH 7109.19, ch. 60, the requirements established by the region in which performance of this agreement takes place, and the terms of this agreement.
- C. BUILDING AND COMPUTER ACCESS BY NON-U.S. FOREST SERVICE PERSONNEL. The Tribe may be granted access to U.S. Forest Service facilities and/or computer systems to accomplish work described in the Operating Plan or Statement of Work. All non-government employees with unescorted access to U.S. Forest Service facilities and computer systems must have background checks following the procedures established by USDA Directives 3505 and Departmental Manual 4620-02. Those granted computer access must fulfill all U.S. Forest Service requirements for mandatory security awareness and role-base advanced security training, and sign all applicable U.S. Forest Service statements of responsibilities.
- D. Utilize the TRIBE's Employment Office to recruit, interview, employ and refer to appropriate job location, personnel for employment under this program.



- E. Designate an individual employed by the TRIBE to serve as contact person for the FOREST SERVICE.
- F. Quarterly (December 31, March 31, June 30, and September 30) submit an invoice to the FOREST SERVICE for hours worked as supported by time slips.
- G. If the Coordinator does not satisfactorily comply with FOREST SERVICE regulations and policies, the TRIBE agrees to replace said coordinator, if possible, with another or make other mutually satisfactory arrangements.
- H. Provide transportation for participants attending training or any assignment approved by the FOREST SERVICE Project Contact.
- I. Maintain an active firefighter and R8 certified Heritage Resource Technician, timber marker and resource specialists contact list of current qualified persons list that will be updated annually and provided to the FOREST SERVICE Project Contact.
- J. Be responsible for any telephone calls, faxes, etc.
- K. Provide qualified personnel upon request by the FOREST SERVICE for Prescribed Burning, Wildland Fire Suppression, Training, Heritage Resource management activities, and other resource management work.

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

- A. Recognize and honor the Tribal laws and ordinances developed under the authority of the Self-Determination and Educational Assistance Act of 1975 (P.L. 93-638).
- B. Provide an orientation to all Tribal employees on the expectations of the FOREST SERVICE.
- C. Hours worked will be reimbursed to the extent shown on OF-288's signed by the Tribal employee and the FOREST SERVICE Project Contact.
- D. Reimburse the TRIBE for transportation costs not to exceed the Federal Travel Regulation rate for any authorized travel by the FOREST SERVICE Project Contact.
- E. Reimburse the TRIBE for employees hired by the FOREST SERVICE Project Contact to perform duties such as: prescribed burn crewmembers, chainsaw operators, heritage resource technicians, timber markers, etc. to be paid at an agreed upon rate.
- F. Provide technical assistance, on-the-job- training, supervision or guidance to Tribal employees while working on projects under this agreement.
- G. If another Forest in Region 8 requests Tribal members/firefighters, the respective Forest Supervisor will request through FOREST SERVICE Project Contact with Supplemental



Project Agreement (if required) and using the Project and Financial Plan (Attachment 1) that itemizes the planned work budget, job code, and appropriate override code.

**V. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:**

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

**Principal Cooperator Contacts:**

<b>Cooperator Program Contact</b>	<b>Cooperator Administrative Contact</b>
Name: Donna Dickens Address: 571 State Park Road City, State, Zip: Livingston, TX 77351 Telephone: 936-563-1131 FAX: 936-563-4924 Email: <a href="mailto:donna@actribe.org">donna@actribe.org</a>	Name: Robert Stacy Bowerman Address: 571 State Park Road City, State, Zip: Livingston, TX 77351 Telephone: 936-563-1101 FAX: 936-563-1143 Email: <a href="mailto:bowerman.stacy@actribe.org">bowerman.stacy@actribe.org</a>

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

<b>U.S. Forest Service Program Manager Contact</b>	<b>U.S. Forest Service Administrative Contact</b>
Name: Alan Dorian Address: 2500 Shreveport Hwy City, State, Zip: Pineville, LA, 71360 Telephone: 318-473-7177 FAX: 318-473-7180 Email: <a href="mailto:adorian@fs.fed.us">adorian@fs.fed.us</a>	Name: Plez West Address: 1720 Peachtree Road, NW City, State, Zip: Atlanta, GA 30309 Telephone: 404-347-2688 FAX: 404-347-4821 Email: <a href="mailto:plezwest@fs.fed.us">plezwest@fs.fed.us</a>

- 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. U.S. FOREST SERVICE LIABILITY. The U.S. Forest Service shall not be liable to Tribe or third parties for any damages incident to the performance of this agreement.



- F. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or Tribe 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 Tribe, at Tribe'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.

- G. PARTICIPATION IN SIMILAR ACTIVITIES. This agreement in no way restricts the U.S. Forest Service or Tribe from participating in similar activities with other public or private agencies, organizations, and individuals.
- H. ENDORSEMENT. Any of Tribe's contributions made under this agreement do not by direct reference or implication convey U.S. Forest Service endorsement of Tribe's products or activities.
- I. USE OF U.S. FOREST SERVICE INSIGNIA. In order for Tribe 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 (Washington Office) prior to use of the insignia.
- J. NON-FEDERAL STATUS FOR COOPERATOR PARTICIPANT LIABILITY. The Tribe 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 Tribe hereby willingly agree(s) to assume these responsibilities.
- Further, Tribe shall provide any necessary training to Tribe's employees, volunteers, and program participants to ensure that such personnel are capable of performing tasks to be completed. The Tribe shall also supervise and direct the work of its employees, volunteers, and participants performing under this agreement.
- K. 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.



- L. **NONDISCRIMINATION**. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.
- M. **ELIGIBLE WORKERS**. The Tribe shall ensure that all employees complete the I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). The Tribe 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**

The Tribe shall provide complete, accurate, and current financial disclosures of the project or program in accordance with any financial reporting requirements, as set forth in the financial provisions.

### **2. Accounting Records**

The Tribe shall continuously maintain and update records identifying the source and use of funds. The records shall contain information pertaining to the agreement, authorizations, obligations, unobligated balances, assets, outlays, and income.

### **3. Internal Control**

The Tribe shall maintain effective control over and accountability for all U.S. Forest Service funds, real property, and personal property assets. The Tribe shall keep effective internal controls to ensure that all United States Federal funds received are separately and properly allocated to the activities described in the agreement. The Tribe shall adequately safeguard all such property and shall ensure that it is used solely for authorized purposes.

### **4. Source Documentation**



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

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

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

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.

- Q. PROGRAM PERFORMANCE REPORTS. The Tribe 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.

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

- R. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS. The Tribe shall retain all records pertinent to this instrument for a period of no less than 3 years from the expiration or termination date. As used in this provision, "records" includes books, documents, accounting procedures and practice, and other data, regardless of the type or format. The Tribe shall provide access and the right to examine all records related to this instrument to the U.S. Forest Service Inspector General, or Comptroller General or their authorized representative.

If any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the 3-year period, the records must be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later.

Records for nonexpendable property acquired in whole or in part, with Federal funds must be retained for 3 years after its final disposition.

The Tribe 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.

- S. 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).
- T. 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 cooperators, their employees, volunteers, and contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles or GOVs when



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

- U. **FUNDING EQUIPMENT.** Federal funding under this instrument is not available for reimbursement of Tribe'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.
- V. **PROPERTY IMPROVEMENTS.** Improvements placed by Tribe on National Forest System land at the direction or with the approval of the U.S. Forest Service becomes the property of the United States. These improvements are subject to the same regulations and administration of the U.S. Forest Service as other National Forest improvements. No part of this instrument entitles Tribe to any interest in the improvements, other than the right to use them under applicable U.S. Forest Service regulations.
- W. **GOVERNMENT-FURNISHED PROPERTY.** The Tribe may only use U.S. Forest Service property furnished under this agreement for performing tasks assigned in this agreement. The Tribe 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, Tribe 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 Tribe 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 Tribe's managerial personnel. The Tribe's managerial personnel, in this clause, means Tribe's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of Tribe's business; all or substantially all of Tribe's operation at any one plant or separate location; or a separate and complete major industrial operation.
2. The Tribe shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft. The Tribe 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. The Tribe 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, Tribe 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. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. The Tribe shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this instrument.

Y. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. The Tribe 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."***

Z. REMEDIES FOR COMPLIANCE RELATED ISSUES. If Tribe materially fail(s) to comply with any term of the instrument, whether stated in a Federal statute or regulation, an assurance, the agreement, or elsewhere, the U.S. Forest Service may take one or more of the following actions:

1. Temporarily withhold cash payments pending correction of the deficiency by the Tribe 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 Tribe'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.

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

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

BB. 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.

CC. DEBARMENT AND SUSPENSION. The Tribe 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 Tribe 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.



- DD. 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.
  
- EE. COMMENCEMENT/EXPIRATION DATE. This instrument is executed as of the date of the last signature and is effective through April 1, 2016 at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.
  
- FF. 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.

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CARLOS BULLOCK, Chairman  
Alabama-Coushatta Tribe of Texas

Date

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LIZ AGAPOA, Regional Forester  
U.S. Forest Service, Southern Region

Date

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

*Plz West*

*3-29-11*

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PLEZ WEST  
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



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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.