

PARTICIPATING AGREEMENT
between
USDA, FOREST SERVICE,
Francis Marion and Sumter National Forests,
Long Cane Ranger District
and
U. S. Army Corps of Engineers, Joe L. Custer

This PARTICIPATING AGREEMENT is hereby entered into by and between the USDA Forest Service, Francis Marion and Sumter National Forests, hereinafter referred to as the Forest Service and the U. S. Army Corps of Engineers, hereinafter referred to as the Corps, under the authority of the Cooperative Funds and Deposits Act of December 12, 1975 (PL 94-148), as further authorized by the Consolidated Appropriations Act 2008 (PL 110-161) and/or Wyden Amendment, Section 323(a) of the Department of Interior and Related Agencies Appropriations Act, 1999 as included in P.L. 105-277, Div. A., Section 101 (e) as amended by P.L. 107-63, Sec. 330; P.L. 102-580, Sec. 225.

A. PURPOSE: To conduct a prescribed burn to achieve restoring, protecting, or enhancing resources within a watershed. The treatment will take place on approximately 1,093 acres of National Forest System (NFS) lands and/or 1,734 acres of Corps land. Total prescribed burn acres will be 2,827 acres. Actions taken on all non-National Forest lands benefit Forest Service goals and objectives. Other purposes include: The US Forest Service is to prescribe burn the US Army Corps of Engineers land of approximately 1,734 acres on the J. Strom Thurmond Lake area. The Corps property joins FS across the southern half of the proposed burn area. The area in question is an abundant wildlife area that has never been burned before because we can not construct the enormous amount of dozer line needed because of steep gullies and terrain.

A. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The benefits of this burn and/or mechanical treatments will reduce the accumulated natural fuels that are building up on the NFS lands and/or other lands that are located within the same watershed as NFS lands; thereby reducing the fire hazard to surrounding property owners and to resources on NFS lands. Other benefits include: With the Corps cooperation we can eliminate the need for excessive line and use Strom Thurmond Reservoir as the holding line on the south end of the burn. The Corps is also willing to provide personnel on their lands and 12,000 ping pong balls to accomplish the to 2,827 total acre burn. The cost is an estimate of regular salary, overtime pay, and equipment expenses that may be incurred.

B. FOREST SERVICE SHALL:

1. Conduct pre-burn inventories. (Vegetation, cultural resources, structural improvements, fuel loadings, etc).
2. Take fuel moisture samples on fuels to be burned.
3. Determine control line feasibility and location.
4. Prepare a prescribed fire burn plan.
5. Provide personnel, equipment and funding to complete the entire prescribed burn. The duration of the patrol will be determined by the burn plan.
6. Monitor post burn vegetative response to determine if wildlife habitat and fuel reduction objectives have been met, as outlined in the PURPOSE (Part A, above), utilizing methods determined in monitoring plan.
7. Notify Corps prior to burning.
8. Assign a person to act as Burn Boss and to supervise the Corps personnel.

c. THE CORPS SHALL:

1. Provide review and approval for the prescribed burn plan in conjunction with the USDA Forest Service.
2. Provide for the salary of Corps personnel and necessary supplies assigned to the prescribed burn and 12,000 "Delayed Aerial Ignition Device (DAID)" similar to ping pong balls (approximately \$2,900.00) containing a combustible material used to ignite the prescribe burn area.. There will be no other financial obligation to the prescribed burn except in the case of an escaped fire; in which case the financial obligations will be settled in accordance with the State Level Action Plan: Wildfire Protection Reciprocal Agreement Between The South Carolina Forestry Commission and U.S. Army Corps of Engineers, Savannah District.

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

1. LIABILITY. The cooperator(s), which shall include but not necessarily be limited to, its employees, agents, assigns, transferees, and/or successors in interest, covenants and agrees to indemnify, hold harmless, and defend the United States of America, its agencies and officers, for and/or against any and all claims, injuries, and/or damages relating to, or resulting from, the cooperator's activities under this Participating Agreement.

The Parties to this Participating Agreement, which shall include but not necessarily be limited to, their employees, agents, assigns, transferees, and/or successors in interest, covenants and agrees that each Party, pursuant to applicable federal or state law, shall be responsible for any and all claims, injuries, and/or damages relating to, or resulting from, that Party's activities under this Participating Agreement.

2. FOREST SERVICE ACKNOWLEDGED IN PUBLICATION AND AUDIOVISUALS. Forest Service support shall be acknowledged in **any** publications and audiovisuals developed as a result of this instrument.

3. COLLECTION OF AMOUNTS DUE THE FEDERAL GOVERNMENT. Pursuant to 31 U.S.C. 3716 and 7 CFR, Part 3, Subpart B, any funds paid to a cooperator in excess of the amount to which the cooperator is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding may reduce the debt by:
- a. Making an administrative offset against other requests for reimbursements.
 - b. Withholding advance payments otherwise due to the cooperator.
 - c. Taking other action permitted by statute.

Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt.

4. ALTERNATE DISPUTE RESOLUTION. 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.
5. TAXPAYER IDENTIFICATION NUMBER. The cooperator shall furnish their tax identification number upon execution of this instrument.
6. FUNDING EQUIPMENT AND SUPPLIES. Federal funding under this instrument is not available for reimbursement of cooperator purchase of equipment.
7. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).
8. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS. The Forest Service, Inspector General, or Comptroller General, through any authorized representative, shall have access to and the right to examine all records related to this instrument. As used in this provision, "records" includes books, documents, accounting procedures and practices, and other data regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. All records pertinent to this agreement shall be retained for a period of 3 years.
9. MODIFICATION. Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed. The Forest Service is not obligated to fund any changes not properly approved in advance.

10. **NONDISCRIMINATION.** The cooperator shall comply with all Federal statutes relating to nondiscrimination and all applicable requirements of all other Federal laws, Executive orders, regulations, and policies. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, 2000e-16), which prohibits discrimination on the basis of race, color, disability, or national origin; (b) Title IX of the Education amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; and Section 504 of the Rehabilitation Act of 1973 as amended (29 USC 794) which prohibits discrimination on the basis of disabilities. The nondiscrimination statement which follows shall be posted in primary and secondary cooperator offices, at the public service delivery contact point and included, in full, on all materials regarding such cooperators' programs that are produced by the cooperators for public information, public education, or public distribution:

"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 will at minimum include the statement, in print size no smaller than the text that *"This institution is an equal opportunity provider."*

11. **LEGAL AUTHORITY.** The cooperator has the legal authority to enter into this instrument, and the institutional, managerial and financial capability (including funds sufficient to pay nonfederal share of project costs) to ensure proper planning, management, and completion of the project.
12. **PARTICIPATION IN SIMILAR ACTIVITIES.** This instrument in no way restricts the Forest Service or the Cooperator(s) from participating in similar activities with other public or private agencies, organizations, and individuals.
13. **EXTENSION OF PERFORMANCE PERIOD.** The Forest Service, by written modification may extend the performance period of this instrument for a total duration not to exceed 5 years from its original date of execution.

TERMINATION. Any of the parties, in writing, may terminate the instrument in whole, or in part, at any time before the date of expiration. Neither party shall incur any new obligations for the terminated portion of the instrument after the effective date and shall cancel as many obligations as possible. Full credit shall be allowed for each Party's expenses and all non-cancelable obligations properly incurred up to the effective date of termination.

14. **PRINCIPAL CONTACTS.** The principal contacts for this instrument are:

Forest Service Project Contact

William Hammond, AFMO
Sumter National Forest
Long Cane Ranger District
810 Buncombe Street
Edgefield, SC 29824
Phone: 803-637-5396
FAX: 803-637-5247
E-Mail: whammond@fs.fed.us

Cooperator Project Contact

Ean P. Jones
US Army Corps of Engineers
J. Strom Thurmond Project
510 Clarks Hill Highway
Clarks Hill, SC 29821-9703
Phone: 864-333-11114
FAX: 864-333-1150
E-Mail: ean.p.jones@usace.army.mil

Forest Service Administrative Contact

U.S. Forest Service
Donny Ray, Wildlife Technician
Long Cane Ranger District
810 Buncombe Street
Edgefield, SC 29824
Phone: 864-746-6120
FAX: 864-746-5355
E-Mail: dray02@fs.fed.us

Cooperator Administrative Contact

Joe L. Custer
US Army Corps of Engineers
J. Strom Thurmond Project
510 Clarks Hill Highway
Clarks Hill, SC 29821-9703
Phone: 864-333-11101
FAX: 864-333-1150
E-Mail: joe.custer@usace.army.mil

15. **AVAILABILITY OF FUNDS.** Funds in the amount of \$34,680 are currently available for performance of this instrument through September 30, 2012. The Forest Service's obligation for performance of this instrument beyond this date is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the Forest Service for any payment may arise for performance under this instrument beyond September 30, 2012, until funds are made available to the Forest Service for performance and until the cooperator receives notice of availability by written modification by the Forest Service.

16. **ELECTRONIC FUNDS TRANSFER.** The cooperator shall designate a financial institution or an authorized payment agent through which a Federal payment may be made in accordance with U.S. Treasury Regulations, Money and Finance at 31 CFR 208, which requires that Federal payments are to be made by electronic funds transfer (EFT) to the maximum extent possible. A waiver may be requested and payment received by check by certifying in writing that one of the following situations apply:

- a. The payment cooperator does not have an account at a financial institution.
- b. EFT creates a financial hardship because direct deposit will cost the payment recipient more than receiving a check.
- c. The payment recipient/cooperator has a physical or mental disability, or a geographic, language, or literacy barrier.

To initiate receiving your payment(s) by electronic transfer, contact the National Finance Center (NFC) on the worldwide web at www.nfc.usda.gov, or call the NFC at 1-800-421-0323, or (504) 255-4647. Upon enrollment in the program you may begin to receive payment by electronic funds transfer directly into your account.


17. ENDORSEMENT. Any cooperator contributions made under this instrument do not by direct reference or implication convey Forest Service endorsement of the cooperator's product or activities.
18. COMMENCEMENT/EXPIRATION DATE. This instrument is executed as of the date of last signature and is effective through September 30, 2012 at which time it will expire unless extended.

19. AUTHORIZED REPRESENTATIVES. By signature below, the cooperator certifies that the individuals listed in this document as representatives of the cooperator are authorized to act in their respective areas for matters related to this agreement.

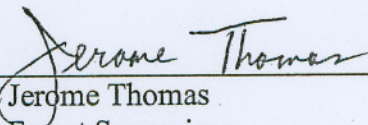
IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last written date below.

Cooperators
U.S. Army Corps of Engineers
J. Strom Thurmond Project

USDA FOREST SERVICE
Francis Marion and Sumter NF

 2/19/09

Joe. L. Custer DATE
Operations Manager

 2/24/09

Jerome Thomas DATE
Forest Supervisor

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

/s/ *Vinda W. Anderson* January 30, 2009

VINDA W. ANDERSON DATE
FS Grants and Agreements Specialist

Job Code - - \$

FOR FOREST SERVICE USE ONLY

Agreement #: 09-PA-11081209-002

Spending Limit for FY09:

Burden (overhead rate):

Job Code:

Billing Frequency (advance lump sum, monthly,
quarterly, semi-annual, annual):

Vendor ID (multiple partners?):

If Federal, Agency Location Code:

Program Manager and phone #: William Hammond (803) 637-5396

Termination Date: September 30, 2012