



## CITY of NOVI CITY COUNCIL

**Agenda Item D**  
**August 24, 2015**

**SUBJECT:** Approval of an Inter-agency Agreement between the Alliance of Rouge Communities and the City of Novi for participation in the federal grant referred to as the "Great Lakes Restoration Initiative: Restoring Tree Canopy in the Rouge River Area of Concern" with no matching costs required from the City of Novi.

**SUBMITTING DEPARTMENT:** Department of Public Services, Engineering Division *BTC* *RA*

**CITY MANAGER APPROVAL:** *[Signature]* *PA*

### **BACKGROUND INFORMATION:**

The City of Novi has recently been awarded reimbursement for 43 trees at the cost of \$125 per tree as part of the US Forestry Emerald Ash Borer (EAB) Restoring Community Trees in an Urban Watershed Grant Program administered through the Alliance of Rouge Communities (ARC). The US Forestry Service's 2014 grant was established as part of a continuing effort to repair damage associated with EAB infestations throughout urban areas. Trees planted through this program will increase the urban tree canopy and mitigate the effects of stormwater by reducing soil erosion, air pollution, and loss of habitat.

Reimbursement for up to 680 trees was made available to the ARC's 38 municipal members. Novi was one of 13 member communities that will be receiving reimbursement and was awarded 43 trees. As part of the grant award, the City will develop a planting plan, purchase, plant and maintain the trees, and submit occasional reports to the ARC with no requirement for matching funds. Once this documentation has been completed, the award will result in \$5,375 reimbursed to the City of Novi tree fund.

This is one of the benefits that the City continually receives through their membership with the Alliance of Rouge Communities. The Alliance of Rouge Communities (ARC) is a voluntary public watershed entity currently comprised of 35 municipal governments (i.e., cities, townships, and villages) and three counties (Oakland, Wayne, and Washtenaw). The purpose of the ARC is to provide an institutional mechanism to encourage watershed wide cooperation and mutual support to meet water quality permit requirements and to restore beneficial uses of the river to area residents.

The enclosed agreement has been favorably reviewed by City Staff and the City Attorney and is recommended for approval.

**RECOMMENDED ACTION:** Approval of an Inter-agency Agreement between the Alliance of Rouge Communities and the City of Novi for participation in the federal grant referred to as the "Great Lake Restoration Initiative: Restoring Tree Canopy in the Rouge River Area of Concern".

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Markham				

	1	2	Y	N
Council Member Mutch				
Council Member Poupard				
Council Member Wrobel				



JOHNSON ROSATI SCHULTZ JOPPICH PC

27555 Executive Drive Suite 250 ~ Farmington Hills, Michigan 48331  
Phone: 248.489.4100 | Fax: 248.489.1726

Elizabeth Kudla Saarela  
esaarela@jrsjlaw.com

www.johnsonrosati.com

August 4, 2015

Adam Wayne, Construction Engineer  
CITY OF NOVI  
Department of Public Services  
Field Services Complex  
26300 Lee BeGole Drive  
Novi, MI 48375

**Re: Restoring Community Trees Grant Agreement between the Alliance of  
Rouge Communities and the City of Novi**

Dear Mr. Wayne:

We have received and reviewed the Grant Agreement provided by the Alliance of Rouge Communities (ARC) for the City's participation in the Restoring Community Trees Project. The Agreement sets forth the City's rights and obligations with respect to the ARC's contribution of \$5,375.00 in grant money to the City for the City to acquire 43 trees in the amount of \$125 per tree. The Agreement provides that although the City has no obligation to match the grant funds awarded, the City is required to contribute to the project by providing the labor and materials necessary to plant the trees as set forth in "Attachment A" to the Agreement.

The Agreement is satisfactory for the purposes provided and may be placed on an upcoming City Council Agenda for approval. We note that although there is no obligation to indemnify the ARC for the City's activities under the Agreement, the City is required to add the ARC as an additional insured to the City's policy for the term of the Agreement in accordance with Article X of the Agreement. Article X should be forwarded to the City's risk manager to obtain the Certificate of Insurance necessary to meet this requirement.

Please feel free to contact me with any questions or concerns in regard to this matter.

Very truly yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

Elizabeth Kudla Saarela

Adam Wayne, Construction Engineer  
August 4, 2015  
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EKS

C: Maryanne Cornelius, Clerk  
Pete Auger, City Manager  
Charles Boulard, Community Development Director  
Rick Meader, Landscape Architect  
Thomas R. Schultz, Esquire

**RESTORING COMMUNITY TREES  
GRANT AGREEMENT  
BETWEEN THE ALLIANCE OF ROUGE COMMUNITIES AND  
THE CITY OF NOVI**

THIS AGREEMENT is entered into this 23rd day of July, 2015, between the Alliance of Rouge Communities, ("ARC") and the City of Novi ("*Entity*").

**RECITALS**

WHEREAS, the ARC is the recipient of, and is responsible for the administration of, a federal grant referred to as the "GLRI: Restoring Tree Canopy in the Rouge River AOC" ("Grant").

WHEREAS, the Department of Agriculture (USDA) –US Forest Service (USFS) has established certain Grant conditions and regulations that require the ARC to comply with contract administration provisions described within OMB guidance in subparts A through F of 2 CFR Part 200 as adopted and supplemented by USDA in 2 CFR part 400. Adoption of USDA of OMB guidance in 2 CFR 400 gives regulatory effect to OMB guidance in 2 CFR 200 where full text may be found.

WHEREAS, the USFS will supervise the Grant and Grant conditions in order that the Grant be used in accordance with the requirements of the law.

WHEREAS, the parties have agreed to follow certain administrative procedures and cooperate on the various tasks to be undertaken in order for the ARC to comply with the Grant's requirements and objectives.

WHEREAS, the ARC will receive funds to procure of approximately 680 new trees throughout the watershed.

WHEREAS, the ARC and the *Entity* have agreed to cooperate in the execution and funding of this project.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, the parties hereby agree as follows:

**ARTICLE I  
SCOPE OF PROJECT**

1.1 The *Entity* agrees cooperate with the ARC and with consultants/contractors retained by the ARC in the implementation of the project. Specific responsibilities of the parties are outlined in Attachment "A."

1.2 The work to be performed is described within Attachment “A.” The ARC will allocate a portion of the Grant for administrative purpose and will provide the *Entity* with funding to enable the *Entity* to perform the activities for which it is responsible as described in Attachment “A.”

## **ARTICLE II SCHEDULE OF WORK**

2.1 The time frame for completion of the project milestones is contained in Attachment “A.” However, all work shall be completed by June 30, 2016.

## **ARTICLE III FINANCIAL PROVISIONS**

3.1 The budget for execution of the work allocated to the *Entity* is contained in Attachment “A” and will be considered as full for the *Entity’s* obligated trees.

3.2 The ARC will utilize funds from the Grant to fund administrative oversight of the grant.

3.3 The total amount to be allocated by the ARC from the Grant for the *Entity* for this project shall not exceed \$5,375. The *Entity* is not required to provide a cash match for these funds. However the *Entity* is responsible for providing all labor and materials to complete the effort as described in Attachment “A.” All of the costs associated with the *Entity’s* labor and materials must be from non-federal sources.

## **ARTICLE IV CONTRACT ADMINISTRATION AND PAYMENT**

4.1 The *Entity* will be reimbursed 50% upon delivery of trees and remaining 50% upon ARC receipt of final documents and verification.

4.2 Any agreement the *Entity* may enter into for additional supplies or services are separate from this agreement and not subject to grant requirements or reimbursement.

4.3 All communications or work products required under this Agreement will be transmitted to the Alliance of Rouge Communities.

## **ARTICLE V AUDIT AND ACCESS TO RECORDS**

5.1 The *Entity* will maintain and retain financial records and supporting documentation in accordance with generally accepted accounting procedures and in accordance with the requirements of federal and state regulations.

5.2 The *Entity* will cooperate with and assist the ARC with respect to federal or state audit review related to the use of Grant funds. This cooperation shall include preservation of the necessary documentation and access to the records until federal and/or state audit resolution processes have been completed and notification of records disposal has been received by the ARC. The *Entity* will cooperate with the ARC with respect to evaluating audit findings of this Agreement.

5.3 The *Entity* will be responsible for the reimbursement of any funds required to be returned to the USEPA due to *Entity* actions or omissions, as determined by audit findings, and hold the ARC harmless from any repayment therefrom.

## **ARTICLE VI GENERAL PROVISIONS**

6.1 This Agreement is to be funded with funds from the US Department of Agriculture – Forest Service. The *Entity* will not enter into any agreements with either the United States or any of its departments, agencies, or employees, which are or will be a party to this Agreement or any lower tier sub-agreement for monies related to this specific project.

6.2 The *Entity* understands that the ARC has no funds other than the Grant funds to pay for the project costs. All costs other than the Grant funds associated with the activities which are the subject matter of this Agreement will be the responsibility of the *Entity*.

6.3 The *Entity* will cooperate with the ARC to ensure timely completion of the tasks undertaken as part of the project. Cooperation includes, but is not limited to sharing information and records, participation in applicable committees, and assisting in development and evaluation of water quality improvement alternatives.

6.4 The *Entity* warrants that it will comply with the provisions of the Grant. Grant Award documentation is incorporated into this agreement as Attachment “B.” The *Entity* is subject to all Grant Provisions. In the event there are any conflicts between the provisions of this Agreement and the terms of the Grant, the Grant terms will prevail.

6.5 The ARC will cooperate with the *Entity* in making application for and securing any necessary permits from regulatory agencies. The *Entity* is responsible for obtaining any professional services necessary to prepare permit applications.

6.6 If the *Entity* secures any interest in lands, including easements, these acquisitions will be in accordance with applicable federal law and regulations and state statutes related to the taking of interests in land and shall be at the *Entity*’s own expense.

6.7 Upon completion of the effort, the ARC is responsible for conducting post-project evaluation and certifying the work completed meets the *Entity*’s responsibilities as outlined in Attachment “A” and grant criteria. If the project does not meet the criteria, the *Entity* will be responsible for taking the necessary corrective measures.

6.8 The ownership of any facilities and/or infrastructure constructed and/or improved under this Agreement will remain with the *Entity*. The *Entity* agrees to operate and maintain the facility and/or infrastructure constructed and/or improved under this Agreement consistent with the Grant project goals and in accordance with the Grant conditions and requirements of applicable federal, state, and local ordinances, statutes and regulations.

6.9 Any amendment to this Agreement must be in writing, and signed and acknowledged by a duly authorized representative of each party.

## **ARTICLE VII WAIVER OF BREACH**

7.1 No failure by a party to insist upon the strict performance of any term of this Agreement or to exercise any term after a breach, constitutes a waiver of any breach of the term. No waiver of any breach affects or alters this Agreement, but every term of this Agreement remains effective with respect to any other existing or subsequent breach.

## **ARTICLE VIII TERMINATION**

8.1 This Agreement will terminate after the final audit and final resolution of any issues related thereto as described within the Grant.

8.2 This Agreement may be terminated in whole or in part in writing by the ARC for its convenience and/or if the *Entity* does not remain a Member in good standing of the Alliance of Rouge Communities (ARC), for any reason for the duration of this Agreement. The *Entity* must be given: (1) not less than thirty (30) calendar days written notice of intent to terminate; and (2) an opportunity for consultation with the ARC prior to termination.

8.3 This Agreement may be terminated in whole or in part in writing by the *Entity* for its convenience. The ARC must be given: (1) not less than thirty (30) calendar days written notice of intent to terminate; and (2) an opportunity for consultation with the *Entity* prior to termination.

8.4 If termination is effected by the ARC or the *Entity*, an equitable adjustment in the Agreement price will be made. The equitable adjustment for any termination will provide for payment to the *Entity* for services rendered and expenses incurred prior to termination. Equitable adjustment also will include termination settlement costs reasonably incurred by the *Entity* and approved by the ARC, relating to personnel hired specifically for activities related to this Agreement, provided such costs are eligible and allowable under the terms of the Grant.

8.5 Upon receipt of a termination notice pursuant paragraphs 8.2 or 8.3, above, the *Entity* will: (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the ARC all data, drawings, specifications, reports,



estimates, summaries, and such other information and materials as may be accumulated by the *Entity* in performing this Agreement, whether completed or in process.

8.6 Upon termination pursuant to paragraphs 8.2 or 8.3, above, the ARC may take over the work and prosecute the same to completion by Agreement with another party or otherwise.

8.7 All notices of termination will be sent certified mail, postage prepaid and return receipt requested as follows:

If to the ARC:

Attn: James W. Ridgway, Executive Director,  
Alliance of Rouge Communities,  
46036 Michigan Avenue, Suite 126  
Canton, MI 48188

If to the *Entity*:

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE IX  
LIABILITY**

9.1 All liability, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities of the *Entity* will be the sole responsibility of the *Entity* and not the responsibility of the ARC. Nothing herein will be construed as a waiver of any governmental immunity by the *Entity*, its agencies, or employees have as provided by statute or modified by court decisions.

9.2 All liability, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities of the ARC will be the sole responsibility of the ARC and not the responsibility of the *Entity*. Nothing herein will be construed as a waiver of any governmental immunity by the ARC, its members, agencies, or employees have as provided by statute or modified by court decisions.

9.3 The provisions of Article IX shall survive the expiration or any termination of this Agreement for a period of three (3) years.

**ARTICLE X  
INSURANCE**

10.1 The *Entity* or its contractors, at its expense, must maintain during the term of this Agreement the following insurance:

- A. Workers' Compensation Insurance which meets Michigan statutory requirements.

- B. Commercial General Liability Insurance with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$1,000,000.00) aggregate for bodily injury and property damage.
- C. Commercial Automobile Liability Insurance (including hired and non-owned vehicles) with minimum limits for bodily injury of One Million Dollars (\$1,000,000.00) per occurrence and with minimum limits for property damage of Five Hundred Thousand Dollars (\$500,000.00) per occurrence.

10.2 The insurance must be effected under valid and enforceable policies, issued by recognized, responsible Michigan insurers which are well-rated by national rating organizations. Commercial General Liability and Commercial Automobile Liability Insurance policies must name the ARC as an additional named insured. The additional insured coverage shall be primary, non-contributory coverage and must not be canceled or materially changed without at least thirty (30) days prior notice from the *Entity* to the ARC. The *Entity* must submit certificates evidencing the insurance to ARC prior to commencing project services, and at least thirty (30) days prior to the expiration dates of expiring policies.

## **ARTICLE XI NON-DISCRIMINATION**

11.1 In connection with the performance of project services under this Agreement, the *Entity* must comply with:

- A. Titles VI and VII of the Civil Rights Act (42 U.S.C. §§ 2000d et. seq.) and the United States Department of Justice Regulations (28 C.F.R. Part 42) issued pursuant to those Titles.
- B. The Age Discrimination Act of 1985 (42 U.S.C. §6101-07).
- C. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794).
- D. The Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et. seq.) and its associated regulations.
- E. The Michigan Civil Rights Act (P.A. 1976 No. 453) and the Persons With Disabilities Civil Rights Act (P.A. 1976 No. 220).

11.2 *Entity* must notify any contractor of the obligations relative to non-discrimination under this Agreement when soliciting the contractor. *Entity* will include the provisions of this Article in any subcontract agreement.

11.3 The *Entity* is responsible for complying with all federal and state laws and regulations regarding competitive bidding.

## **ARTICLE XII ASSIGNABILITY**

12.1 This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs and assigns.

12.2 Neither of the parties hereto may assign this Agreement without the prior written consent of the other.

**ARTICLE XIII  
VALIDITY**

13.1 If any provision of this Agreement or the application to any person or circumstance is, to any extent, judicially determined to be invalid or unenforceable, the remainder of the Agreement, or the application of the provision to persons or circumstances other than those as to which it is invalid or unenforceable, is not affected and is enforceable, provided the invalid provision does not substantially alter the Agreement or make execution impractical.

**ARTICLE XIV  
ENTIRE AGREEMENT**

14.1 This document, including Attachments A (Agreement between Entity and the ARC) and B (Agreement between the ARC and the USDA, Forest Service), contains the entire Agreement between the parties.

14.2 Neither party has made any representations except those expressly set forth herein.

14.3 No rights or remedies are, or will be acquired, by either party by implication or otherwise unless set forth herein.

**ARTICLE XV  
PATENTS, COPYRIGHTS, AND RIGHTS IN DATA**

15.1 The parties agree that any plans, drawings, specifications, computer programs, technical reports, operating manuals, and other work submitted, or which are specified to be delivered under this Agreement, or which are developed or produced and paid for under this Agreement are subject to the rights of both parties and both parties shall retain an irrevocable license to reproduce, publish and use in whole or in part and to authorize others to do so.

15.3 This Agreement is funded in part by the USDA, Forest Service and is therefore subject to the reporting and rights provisions included within the Grant (Attachment "B").

15.4 This clause shall be included in all subcontracts.

**ARTICLE XVI  
JURISDICTION AND GOVERNING LAW**

16.1 This Agreement, and all actions arising from it, must be governed by, subject to, and construed according to the law of the State of Michigan.

**ARTICLE XVII  
EFFECTIVE DATES**

17.1 This Agreement becomes effective on August 1, 2015. This Agreement, unless extended by mutual written agreement, expires on August 1, 2016.

17.2 This Agreement may be executed in counterparts, each of which will be deemed an Original but all of which together will constitute one Agreement.

**ARTICLE XVIII  
PARTY REPRESENTATIVES**

18.1 The ARC's representative for this Agreement is **John O'Meara**. The *Entity* representative for this Agreement is \_\_\_\_\_. Either party may assign alternate representatives upon written notification of the other party.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be signed on the date first above written.

ALLIANCE OF ROUGE COMMUNITIES

\_\_\_\_\_

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

JAMES W. RIDGWAY

Its: Executive Director

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

Its: \_\_\_\_\_

**Attachment A**  
**To**  
**GLRI: RESTORING TREE CANOPY IN THE ROUGE RIVER AOC**  
**GRANT AGREEMENT**  
**BETWEEN THE ALLIANCE OF ROUGE COMMUNITIES AND**  
**THE CITY OF NOVI**

**1. Scope of Project**

The purpose of this effort is to procure and plant trees within Rouge Watershed communities where to increase the tree canopy.

The City of Novi will select, order, plant, and care of the trees through use of community staff, their own contactor properly selected or contract for the services.

The City of Novi will also locate trees, provide a GIS map and table of tree locations, photos of a cross selection of trees installed and provide a short summary of their tree “project” to the ARC. The summary shall include the total number, type, and location of trees actually planted. The summary shall also include a description of the tree planting and maintenance process used by the community.

The City of Novi has been allocated 43 trees to be provided through this grant.

The City of Novi will be reimbursed for each tree at \$125 per tree.

The City of Novi can purchased and install trees on their own schedule, provided all work and the final reporting is completed by no later than June 30, 2016

The Alliance of Rouge Communities’ staff will spot check maps, provide grant coordination, and prepare the final report to the US Forestry Service.

The Alliance of Rouge Communities will provide the City of Novi a small temporary sign to be placed adjacent to trees promoting the grant funding agency.

The Tree requirements shall be:

- Selected trees shall be native to the Michigan region. A list of the communities’ selected tree types shall be submitted to ARC staff for approval prior to purchase
- Trees are to be 1.5-2.5” caliper for native deciduous trees and 6’-8’ B&B tall for Evergreens
- Trees must have at least a one year warranty.

## **2. Schedule of Work**

Work described above will begin no sooner than August 1, 2015.

Work shall be completed and the community report delivered to the ARC by June 30, 2016.

## **3. Financial Provisions**

Total funds available through the grant for completion of the work described above are \$5,375.

These total funds is based on the communities 43 trees x \$125 = \$5,375 reimbursed.

The City of Novi will be reimbursed by the ARC 50% upon proof of delivery of trees and the remaining amount upon the ARC's confirmation of the tree installations based on the map and summary report

**ATTACHMENT B**  
**FEDERAL FINANCIAL ASSISTANCE**  
**AWARD OF DOMESTIC GRANT 15-DG-11420004-002**  
**Between The**  
**ALLIANCE OF ROUGE COMMUNITIES**  
**And The**  
**USDA, FOREST SERVICE**  
**NORTHEASTERN AREA, STATE AND PRIVATE FORESTRY**

Project Title: GLRI: Restoring Tree Canopy in the Rouge River AOC

Upon execution of this document, an award to Alliance of Rouge Communities, hereinafter referred to as "The Recipient," in the amount of **\$100,000**, is made under the authority of Cooperative Forestry Assistance Act of 1978, Title 16, Part 2105, Section 9, Public Law 95-313, 92 Stat. 365. The Catalog of Federal Domestic Assistance (CFDA) number is 10.675. Alliance of Rouge Communities accepts this award for the purpose described in the application narrative. Your application for Federal financial assistance, dated October 13, 2014, and the attached Forest Service provisions, 'Forest Service Award Provisions,' are incorporated into this letter and made a part of this award.

This authority requires a match of 50/50; however, a waiver has been granted for this project. Your organization has agreed to meet a cost share of \$0, as reflected in your application, financial plan and narrative.

**Any project completed in the field will require signage to state that funds were received from the Great Lakes Restoration Initiative. Any project completed in the field that will be visible to the general public will require signage that gives project information and credit to the Great Lakes Restoration Initiative and the Forest Service.**

**All required reports and official correspondence must be sent to [nagrants@fs.fed.us](mailto:nagrants@fs.fed.us) for internal recordkeeping and processing.**

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:  
<http://www.gpoaccess.gov/cfr/index.html>. If you are unable to retrieve these regulations electronically, please contact your Grants and Agreements Office at (610) 557-4106.

The following administrative provisions apply to this award:

- A. **LEGAL AUTHORITY.** The Recipient 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: John O'Meara Telephone: (734) 769-3004 Email: jomeara@ectinc.com	Name: Chris O'Mear Telephone: (734) 272-0289 Email: comeara@ectinc.com

**Principal Forest Service Contacts:**

<b>Forest Service Program Manager Contact</b>	<b>Forest Service Administrative Contact</b>
Name: Ivich Fraser Telephone: cell (304) 376-8222; office (734) 761-8789 x110 Email: ifraser@fs.fed.us	Name: Lori Gordon Telephone: (610) 557-4106 Email: lgordon@fs.fed.us

- C. ASSURANCE REGARDING FELONY CONVICTION OR TAX DELINQUENT STATUS FOR CORPORATE APPLICANTS. This award is subject to the provisions contained in the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2012, P.L. No. 112-74, Division E, Section 433 and 434 as continued by Consolidated and Further Continuing Appropriations Act, 2013, P.L. No. 113-6, Division F, Title I, Section 1101(a)(3) regarding corporate felony convictions and corporate Federal tax delinquencies. Accordingly, by entering into this award The Recipient acknowledges that it: 1) does not have a tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an award with the authority responsible for collecting the tax liability, and (2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal violation under any Federal law within 24 months preceding the award, unless a suspending and debarring official of the U.S. Department of Agriculture has considered suspension or debarment is not necessary to protect the interests of the Government. If The Recipient fails to comply with these provisions, the Forest Service will annul this award and may recover any funds The Recipient has expended in violation of sections 433 and 434.



D. SYSTEM FOR AWARD MANAGEMENT REGISTRATION REQUIREMENT (SAM). The Recipient 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).

E. 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.

F. HEALTH & HUMAN SERVICES PAYMENT MANAGEMENT SYSTEM (HHS PMS). The Recipient identified for use of this payment system shall designate a financial institution or an authorized payment agent through which a direct deposit may be made in accordance with current HHS PMS system requirements. The Albuquerque Service Center is responsible for soliciting initial enrollment in the HHS PMS. **Any questions concerning payments should be addressed to the Albuquerque Service Center at (877) 372-7248.** Please ask for the Grants and Agreements Payments section. Any subsequent changes to banking information are made by The Recipient through the HHS PMS. The HHS sub-account number(s) for this award is/are:

PROGRAM	HHS SUB-ACCOUNT	AMOUNT
Urban & Community Forestry	G42593395001	\$100,000

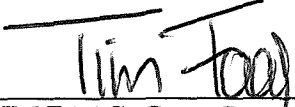
G. PRE-AWARD COSTS. Pursuant to 2 CFR 200.458 pre-award costs incurred as of October 1, 2014, are hereby authorized under this award.

H. PRIOR WRITTEN APPROVAL. The Recipient shall obtain prior written approval pursuant to conditions set forth in 2 CFR 200.407.

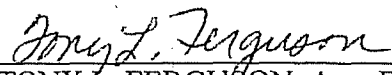
I. MODIFICATIONS. Modifications within the scope of this award must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change. The Forest Service is not obligated to fund any changes not properly approved in advance.

J. COMMENCEMENT/EXPIRATION DATE. This award is executed as of the date of the last signature and is effective through **September 30, 2016** at which time it will expire. The expiration date is the final date for completion of all work activities under this award.

K. 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.

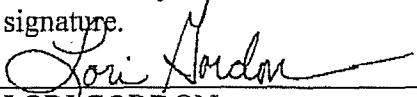
  
\_\_\_\_\_  
TIM FAAS, Grant Representative  
Alliance of Rouge Communities

4/8/15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
TONY L. FERGUSON, Area Director  
U.S. Forest Service, Northeastern Area, State &  
Private Forestry

4/2/15  
\_\_\_\_\_  
Date

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

  
\_\_\_\_\_  
LORI GORDON  
Forest Service Grants Management Specialist

4/2/15  
\_\_\_\_\_  
Date

## ATTACHMENT A: FOREST SERVICE AWARD PROVISIONS

- A. COLLABORATIVE ARRANGEMENTS. Where permitted by terms of the award and Federal law, The Recipient 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 The Recipient 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 The Recipient or any third party.
- C. NOTICES. Any notice given by the Forest Service or The Recipient will be sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

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

To The Recipient, 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. SUBAWARDS. The Recipient shall notify Subrecipients 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 The Recipient 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 The Recipient 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. The Recipient agree(s) that it will publish a drug-free workplace statement and provide a copy to each employee who will be engaged in the performance of any project/program that receives federal funding. The statement must
  - a. Tell the employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace;
  - b. Specify the actions The Recipient will take against employees for violating that prohibition; and
  - c. Let each employee know that, as a condition of employment under any award, the employee:
    - (1) Shall abide by the terms of the statement, and
    - (2) Shall notify The Recipient 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. The Recipient agree(s) that it will establish an ongoing drug-free awareness program to inform employees about
  - a. The dangers of drug abuse in the workplace;
  - b. 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. The Recipient 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 The Recipient learns of the conviction.
  5. Within 30 calendar days of learning about an employee's conviction, The Recipient must either
    - a. Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 USC 794), as amended, or
    - b. Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
- I. ELIGIBLE WORKERS. The Recipient shall ensure that all employees complete the I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). The Recipient shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract or supplemental instruments awarded under this award.
- J. 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 December 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).
- K. 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.

The Recipient shall submit semi-annual performance reports. These reports are due 30 days after the reporting period. The final performance report shall be submitted either with The Recipient's final payment request, or separately, but not later than 90 days from the expiration date of the award.

- Additional pertinent information: **Please submit reports to [nagrants@fs.fed.us](mailto:nagrants@fs.fed.us).**

L. NOTIFICATION. The Recipient 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.

M. 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).

N. 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.

O. PUBLIC NOTICES. It is Forest Service's policy to inform the public as fully as possible of its programs and activities. The Recipient is encouraged to give public notice of the receipt of this award and, from time to time, to announce progress and accomplishments.

The Recipient may call on Forest Service's Office of Communication for advice regarding public notices. The Recipient 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.

- P. USE OF GOVERNMENT OWNED VEHICLE. Forest Service vehicles may be used for official Forest Service business only in accordance with FSH 7109.19, ch. 60, the requirements established by the region in which performance of this award takes place, and the terms of this award.
- Q. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS, AND ELECTRONIC MEDIA. The Recipient 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.
- R. COPYRIGHTING. The Recipient 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 The Recipient under this award.
- Any right of copyright to which The Recipient purchase(s) ownership with any federal contributions.

- S. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. The Recipient shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

*In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)*

**To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.**

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:

***“This institution is an equal opportunity provider.”***



- T. 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 The Recipient 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.

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

V. DISPUTES.

1. Any dispute under this award shall be decided by the Area Director. The Area Director shall furnish The Recipient a written copy of the decision.
2. Decisions of the Area Director shall be final unless, within 30 days of receipt of the decision of the Area Director, The Recipient appeal(s) the decision to the 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 Area Director.
3. In order to facilitate review on the record by the Director, AQM, The Recipient shall be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.
4. A decision under this provision by the Director, AQM is final
5. The final decision by the Director, AQM does not preclude The Recipient from pursuing remedies available under the law.

- W. DEBARMENT AND SUSPENSION. The Recipient 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 The Recipient or any of their principals receive a transmittal letter or other official federal notice of debarment or suspension, then they shall notify the 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.

## ATTACHMENT B: 2 CFR PART 170

### Appendix A to Part 170—Award Term

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

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

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

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

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

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

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

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

i. To the recipient.

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

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

1. Subawards, and

2. The total compensation of the five most highly compensated executives of any subrecipient.

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

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

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

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

3. *Subaward:*

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

END OF ATTACHMENT B: 2 CFR PART 170