

FS Agreement No. 13-CS-11050400-032
Cooperator Agreement No. _____

**MASTER
CHALLENGE COST SHARE AGREEMENT
Between The
TOWN OF MAMMOTH LAKES
And The
USDA, FOREST SERVICE
INYO NATIONAL FOREST**

This MASTER CHALLENGE COST SHARE AGREEMENT is hereby made and entered into by and between the TOWN OF MAMMOTH LAKES, hereinafter referred to as "TOML," and the USDA, Forest Service, INYO NATIONAL FOREST hereinafter referred to as the "U.S. Forest Service," under the authority of: Department of Interior and Related Agencies Appropriations Act of 1992, Pub. L. 102-154; Cooperative Funds Act of June 30, 1914 (16 U.S.C. 498 as amended by Pub. L. 104-127).

Background: TOML and the U.S. Forest Service have been working together since 2007 to establish and provide a working cooperative framework directed toward the establishment and maintenance of a system of public trails providing reasonable access to and enjoyment of public lands that are both within and surround the Town of Mammoth Lakes. TOML has prepared and adopted a "Trail System Master Plan" that outlines a program of trail developments, maintenance and promotion as a framework for implementation of the Mammoth Lakes Trail System (MLTS). TOML and the U.S. Forest Service have signed an MOU that outlines expectations on how the two organizations can work together to implement the vision of the Trail System Master Plan the MLTS.

Title: Mammoth Lakes Trail System Implementation Projects

I. PURPOSE

The purpose of this agreement is to document the cooperation between the parties to implement trail and facility construction, maintenance and promotion projects in accordance with the following provisions and any incorporated supplemental project agreements.

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.

It is in the interest of and benefit to both parties to provide the public with a comprehensive set of recreational trails and related programs. The facilities and programs developed under



the MLTS will provide high quality trails, a high level of information and interpretation; be enjoyable and safe; reduce user conflicts; inform the public on appropriate use of National Forest land for motorized and non-motorized recreation; provide effective system maintenance; and enhance the users' connections to the public lands, the local environment, and the community through stewardship and education. Coordination of efforts and resources will enable both agencies to achieve these mutual goals with the highest level of efficiency and effectiveness for the benefit of the users of the system and local and federal taxpayers.

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

III. TOML SHALL:

- A. LEGAL AUTHORITY. TOML shall have the legal authority to enter into this agreement, and the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project, which includes funds sufficient to pay the nonfederal share of project costs, when applicable.
- B. BUILDING AND COMPUTER ACCESS BY NON-U.S. FOREST SERVICE PERSONNEL. TOML 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-based advanced security training, and sign all applicable U.S. Forest Service statements of responsibilities.
- C. Perform in accordance with financial plan.
- D. Upon presentation of a Bill for Collection, Deposit with the U.S. Forest Service the amount agreed to in the Financial Plan.
- E. Submit proposals to the U.S. Forest Service for those MLTS related projects TOML desires to develop which fall within the management responsibilities of the U.S. Forest Service.
- F. Seek opportunities for efficiency including opportunities to jointly meet the requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).
- G. Cooperatively identify funding sources for the projects proposed to develop, support and enhance the MLTS.



- H. As resources will allow, contribute staff time, financial and other resources on a project specific basis in support of the development, enhancement and maintenance of the MLTS.

IV. THE U.S. FOREST SERVICE SHALL:

- A. **ADVANCE BILLING.** The U.S. Forest Service shall bill TOML prior to commencement of work for deposits sufficient to cover estimated costs for the specific payment period. Overhead shall not be assessed.

Billing Method: A single lump sum advance bill.

- B. Provide timely verbal acknowledgment and then written responses to TOML project proposals within 30 days.
- C. Identify the requisite project planning and processing steps, including environmental review, and advise and coordinate with TOML as appropriate.
- D. Explore funding opportunities to support and enhance the MLTS.
- E. As resources will allow, contribute staff time, financial and other resources on a project specific basis in support of the development, enhancement and maintenance of the MLTS.

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

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

Principal Cooperator Contacts:

Cooperator Program Contact	Cooperator Administrative Contact
Ray Jarvis, Public Works Director PO Box 1609 Mammoth Lakes, CA 93546 Telephone: 760-934-8989, ext. 257 FAX: 760-934-8608 Email: rjarvis@ci.mammoth-lakes.ca.us	Stuart Brown Recreation Manager Mammoth Lakes, CA 93546 Telephone: 760-934-8989, ext. 210 FAX: 760-934-8608 Email: sbrown@ci.mammoth-lakes.ca.us



Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Jon Kazmierski, District Recreation Officer PO Box 148 Mammoth Lakes, CA 93546 Telephone: 760-924-5503 FAX: 760-924-5537 Email: jkazmierski@fs.fed.us	Aaron Stout 631 Coyote St. Nevada City, CA 95959 Telephone: 530-478-6825 FAX: 530-478-6161 Email: asstout@fs.fed.us

- B. **AVAILABILITY FOR CONSULTATION.** Both parties will make themselves available at mutually agreeable times, for continuing consultation to discuss the conditions covered by this agreement and agree to actions essential to fulfill its purposes.
- C. **SUPPLEMENTAL PROJECT AGREEMENTS (SPA).** Nothing in this agreement obligates either party to offer or accept any project proposals under this agreement. Any projects added to this agreement must be by mutual consent of the parties through a specific SPA.
- D. **NOTICES.** Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or TOML 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 TOML, at TOML'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.
- E. **PARTICIPATION IN SIMILAR ACTIVITIES.** This agreement in no way restricts the U.S. Forest Service or TOML from participating in similar activities with other public or private agencies, organizations, and individuals.
- F. **ENDORSEMENT.** Any of TOML's contributions made under this agreement do not by direct reference or implication convey U.S. Forest Service endorsement of TOML's products or activities.



- G. **USE OF U.S. FOREST SERVICE INSIGNIA.** In order for TOML 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.
- H. **NON-FEDERAL STATUS FOR COOPERATOR PARTICIPANT LIABILITY.** TOML 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 TOML hereby willingly agree(s) to assume these responsibilities.
- Further, TOML shall provide any necessary training to TOML's employees, volunteers, and program participants to ensure that such personnel are capable of performing tasks to be completed. TOML shall also supervise and direct the work of its employees, volunteers, and participants performing under this agreement.
- I. **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 agreement, or benefits that may arise therefrom, either directly or indirectly.
- J. **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.
- K. **ELIGIBLE WORKERS.** TOML 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). TOML shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract or SPA awarded under this agreement.
- L. **STANDARDS FOR FINANCIAL MANAGEMENT.**



1. Financial Reporting

TOML 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

TOML 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

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

4. Source Documentation

TOML 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.

M. OVERPAYMENT. Any funds paid to TOML 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 TOML 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 TOML.
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.

- N. **REFUNDS.** Funds collected in advance by the U.S. Forest Service, which are not spent or obligated for the project(s) approved under this agreement, may be refunded to TOML, authorized for use for a new agreement by TOML, or waived by TOML. A DUNS number and registration in the Central Contractor Registry (CCR) by TOML may be necessary to process a refund. Due to processing costs, any balance less than \$25 shall not be refunded to TOML.
- O. **AGREEMENT CLOSEOUT.** TOML shall close out the agreement within 90 days after expiration or notice of termination.

Any unobligated balance of cash advanced to TOML 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 agreement, all financial performance and related reports required by the terms of the agreement must be submitted to the U.S. Forest Service by TOML.

If this agreement 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.

- P. **PROGRAM PERFORMANCE REPORTS.** TOML 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.

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



- Q. **RETENTION AND ACCESS REQUIREMENTS FOR RECORDS.** TOML shall retain all records pertinent to this agreement 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. TOML shall provide access and the right to examine all records related to this agreement 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.

TOML 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.

- R. **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).
- S. **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, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- T. **PUBLIC NOTICES.** It is the U.S. Forest Service's policy to inform the public as fully as possible of its programs and activities. TOML is/are encouraged to give public notice of the receipt of this agreement and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:

"The Mammoth Ranger District of the Inyo National Forest of the U.S. Forest Service, Department of Agriculture, in partnership with the Town of Mammoth Lakes and in support of the Mammoth Lakes Trail System"



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

- U. **FUNDING EQUIPMENT.** Federal funding under this agreement is not available for reimbursement of TOML's purchase of equipment and supplies. Equipment is defined as having a fair market value of over \$5,000 per unit and a useful life of over one year. Supplies are those items that are not equipment.
- V. **IMPROVEMENTS.** Improvements placed on National Forest System land at the direction or with the approval of the U.S. Forest Service becomes property of the United States. These improvements are subject to the same regulations and administration of the U.S. Forest Service as would other National Forest improvements. No part of this agreement entitles TOML to any interest in the improvements, other than the right to use them under applicable U.S. Forest Service Regulations.
- W. **CONTRACT REQUIREMENTS.** Any contract under this agreement must be awarded following TOML's established procurement procedures, to ensure free and open competition, and avoid any conflict of interest (or appearance of a conflict). TOML must maintain cost and price analysis documentation for potential U.S. Forest Service review. TOML is/are encouraged to utilize small businesses, minority-owned firms, and women's business enterprises.

Additionally, federal wage provisions (Davis-Bacon or Service Contract Act) are applicable to any contract developed and awarded under this agreement where all or part of the funding is provided with U.S. Forest Service funds. Davis-Bacon wage rates apply on all public works contracts in excess of \$2,000 and Service Contract Act wage provisions apply to service contracts in excess of \$2,500.

- X. **GOVERNMENT-FURNISHED PROPERTY.** TOML may only use U.S. Forest Service property furnished under this agreement for performing tasks assigned in this agreement. TOML 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, TOML 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 TOML 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 TOML's managerial personnel. TOML's managerial personnel, in this clause, means TOML's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of TOML's business; all or substantially all of TOML's operation at any one plant or separate location; or a separate and complete major industrial operation.
2. TOML shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft. TOML 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. TOML 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, TOML shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of agreements of assignment in favor of the Government in obtaining recovery.
- Y. **COLLABORATION**. The U.S. Forest Service and TOML may mutually agree to collaborate in the review of draft publications, interpretive signs, manuscripts, and other printed material and audiovisuals prior to completion. This agreement, in and of itself, does not authorize TOML's participation in the project.
- Z. **U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA**. TOML shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this agreement.
- AA. **NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL**. TOML 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."

BB. REMEDIES FOR COMPLIANCE RELATED ISSUES. If TOML materially fail(s) to comply with any term of the agreement, whether stated in a Federal statute or regulation, an assurance, or the agreement, 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 TOML 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 agreement for the TOML'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.

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

1. When the U.S. Forest Service and TOML 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 TOML 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 Service determines that the remaining portion of the agreement will not accomplish the purposes for which the agreement was made, the U.S. Forest Service may terminate the agreement in its entirety.

Upon termination of an agreement, TOML shall not incur any new obligations for the terminated portion of the agreement after the effective date, and shall cancel as many outstanding obligations as possible. The U.S. Forest Service shall allow full credit to TOML for the United States Federal share of the non-cancelable obligations properly



incurred by TOML up to the effective date of the termination. Excess funds must be refunded within 60 days after the effective date of termination.

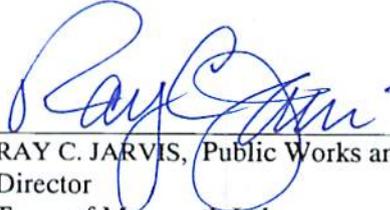
DD. ALTERNATE DISPUTE RESOLUTION – PARTNERSHIP AGREEMENT. In the event of any issue of controversy under this agreement, the parties may pursue Alternate Dispute Resolution procedures to voluntarily resolve those issues. These procedures may include, but are not limited to conciliation, facilitation, mediation, and fact finding.

EE. DEBARMENT AND SUSPENSION. TOML 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 TOML 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.

FF. MODIFICATIONS. Modifications within the scope of this agreement 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.

GG. COMMENCEMENT/EXPIRATION DATE. This agreement is executed as of the date of the last signature and is effective through May 10, 2018 at which time it will expire.

HH. 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 agreement. In witness whereof, the parties hereto have executed this agreement as of the last date written below.



RAY C. JARVIS, Public Works and Transportation
Director
Town of Mammoth Lakes

5/22/13

Date



EDWARD E. ARMENTA, Forest Supervisor
U.S. Forest Service, Inyo National Forest

5/23/13

Date



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

Kellie L. Hamilton

KELLY L. HAMILTON

U.S. Forest Service Grants Management Specialist

5/14/13

Date

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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 part of an individual's income is derived from any public assistance. (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 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.