



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

C-10

For the meeting of: June 2, 2015

Date: May 5, 2015

To: Board of Supervisors

From: Michael T. Downey, Sheriff

Subject: Acceptance of Modification 11 of the Cooperative Law Enforcement, Annual Patrol, Operating Plan and Financial Plan with the United States Department of Agriculture, Forest Service, Six Rivers National Forest #11-LE-11051360-218 and Approve Supplemental Budget. (4/5 vote required)

RECOMMENDATION(S):

That the Board of Supervisors:

1. Authorize the Sheriff and Chair of the Board to sign four (4) originals of Modification 11 of the Cooperative Law Enforcement Annual Patrol Operating Plan and Financial Plan with the United States Department of Agriculture (USDA), Forest Service, Six Rivers National Forest #11-LE-11051360-218 (Attachment 1) for the period ending September 30, 2015; and
2. Approve a supplemental budget in Budget Unit 221 Sheriff's Operations to allow for implementation of Cooperative Agreement Modification 11 (4/5 vote required).

Revenue	1100-221-707003	USDA Forest Service	\$3,000
Expense	1100-221-2123	Special Department Expense	\$1,000
	1100-221-2317	Office Expense Equipment	\$1,000
	1100-221-2614	Staff Development	\$1,000

Prepared by Norma S. Lorenzo
Norma S. Lorenzo, Deputy Director/Sheriff Admin

CAO Approval Chef Dillingham

REVIEW: Auditor NO County Counsel NAD Human Resources _____ Other _____

TYPE OF ITEM:
 Consent
 Departmental
 Public Hearing
 Other _____

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor Lovelace
Seconded by Supervisor Sundberg

Ayes Sundberg, Lovelace, Fennell, Bohn
 Nays _____
 Abstain _____
 Absent Bass

And carried by those members present, the Board hereby approves the recommended action contained in this report.

Dated: June 2, 2015

By: Kathy Hayes
Kathy Hayes, Clerk of the Board

SOURCE OF FUNDING: USDA Forest Service

DISCUSSION:

The USDA Forest Service makes funds available through Six Rivers National Forest with an annual operating plan for added law enforcement patrols in Forest Service campgrounds and on roads maintained by the Forest Service. The current Cooperative Agreement was approved in 2005 and modifications have been signed each year since. Federal fiscal year 2015 Cooperative Law Enforcement, Annual Patrol, Operating Plan and Financial Plan Modification 11 of Agreement #11-LE-11051360-218 (Attachment 1) for the period ending September 30, 2015 obligates a maximum of \$8,000 in reimbursement to the Humboldt County Sheriff to assist in covering expenses for the added patrols.

FINANCIAL IMPACT:

There was a delay in bringing this contract to the Board due to uncertainties regarding funding appropriations at the Federal level. Modification 09 begins October 1, 2014 and expires September 30, 2015, and while timeliness is essential, the agreement was not received by the Sheriff's Office until May 5, 2015.

The USDA Forest Service, Six Rivers National Forest Cooperative Agreement Modification 11 will reimburse the County of Humboldt Sheriff for staff time, office expenses, training costs, and special department expenses up to a maximum of \$8,000 for the term of the agreement. Funds are allocated as follows for fiscal year 2014-15:

FY2014-15 Supplemental Budget	
Salary & Benefits	\$5,000
Special Department Expense	\$1,000
Office Expense Equipment	\$1,000
Staff Development	\$1,000
Total	<u>\$8,000</u>

Approval of the fiscal year 2014-15 modification to the Cooperative Plan for patrols on lands under the control of Six Rivers National Forest, meets the Board of Supervisors' Strategic Framework Plan by ensuring inter-jurisdictional and regional cooperation to provide community appropriate levels of service.

OTHER AGENCY INVOLVEMENT: USDA Forest Service

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could deny the authorization to accept Modification 11 of the Cooperative Law Enforcement, Annual Patrol, Operating Plan and Financial Plan with the United States Department of Agriculture (USDA), Forest Service, Six Rivers National Forest #11-LE-11051360-218 for the period ending September 30, 2015; however, this is not recommended as it would leave the County without reimbursement for services performed on Federal lands.

ATTACHMENTS:

Attachment 1 Exhibit A - Modification 11 of the Cooperative Law Enforcement, Annual Patrol, Operating Plan and Financial Plan with the United States Department of Agriculture (USDA), Forest Service, Six Rivers National Forest #11-LE-11051360-218 for the period ending September 30, 2015

Attachment 1

Exhibit A

Modification 11 of the Cooperative Law Enforcement, Annual Patrol, Operating Plan and Financial Plan with the United States Department of Agriculture Forest Service, Six Rivers National Forest #LE-11051360-218 for the period ending September 30, 2015



FS Agreement No. 11-LE-11051360-218
Modification No. 010
Cooperator Agreement No. _____

EXHIBIT A

**COOPERATIVE LAW ENFORCEMENT ANNUAL PATROL OPERATING PLAN &
FINANCIAL PLAN**

**Between The
HUMBOLDT COUNTY SHERIFF'S OFFICE
And the
USDA, FOREST SERVICE
SIX RIVERS NATIONAL FOREST**

FY2015 ANNUAL OPERATING AND FINANCIAL PLAN

This Annual Financial and Operating Plan (Annual Operating Plan), is hereby made and entered into by and between Humboldt County Sheriff's Office, hereinafter referred to as "Cooperator," and the USDA, Forest Service, Six Rivers National Forest, hereinafter referred to as the "U.S. Forest Service," under the provisions of Cooperative Law Enforcement Agreement #11-LE-11051360-218 executed on August 24, 2010. This Annual Operating Plan is made and agreed to as of the last date signed below and is for the estimated period beginning October 1, 2014 and ending September 30, 2015.

Previous Year Carry-over: \$0.00
Current FY2015 Year Obligation: \$8,000.00
FY2015 Total Annual Operating Plan: \$8,000.00

I. GENERAL:

A. The following individuals shall be the designated and alternate representative(s) of each party, so designated to make or receive requests for special enforcement activities.

Principal Cooperator Contacts:

Cooperator Program Contact	Cooperator Administrative Contact
Name: Michael Downey Address: 826 Fourth Street City, State, Zip: Eureka, CA 95501 Telephone: (707) 445-7251 Email: mdowney@co.humboldt.ca.us	Name: Norma Lorenzo Address: 826 Fourth Street City, State, Zip: Eureka CA 95501 Telephone: (707) 268-3605 Email: nlorenzo@co.humboldt.ca.us



Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Chad Krogstad, Patrol Captain 3644 Avtech Parkway Redding, CA 96002 (530) 226-2591 (530) 226-2472 (fax) ckrogstad@fs.fed.us	Jodi Marron, LE Program Support Asst. 3644 Avtech Parkway Redding, CA 96002 (530) 226-2593 (530) 226-2472 (fax) jrmarron@fs.fed.us

U.S. Forest Service Program Coordinator Contact	U.S. Forest Service Grants & Agreements Contact
Don Hoang, Patrol Commander 1323 Club Drive Vallejo, CA 94592-1110 (707) 562-8647 dhoang@fs.fed.us	Constance Zipperer, G&A Specialist 1323 Club Drive Vallejo, CA 94592-1110 (707) 562-9120 (707) 562-9144 czipperer@fs.fed.us

B. Reimbursement for all types of enforcement activities shall be at the following rates unless specifically stated otherwise:

\$0.50 mile patrolled
Per diem rate is \$44/M&IE + 86/Lodging/Day
Wages at the prevailing rate of \$40.00/hour or Base + 1/2

II. PATROL ACTIVITIES:

A. Time schedules for patrols will be flexible to allow for emergencies, other priorities, and day-to-day needs of both Cooperator and the U.S. Forest Service. Ample time will be spent in each area to make residents and visitors aware that law enforcement officers are in the vicinity.

1. Patrol on following U.S. Forest Service roads:

Roads designated and maintained by the Forest Service within the Cooperators jurisdiction.

2. Patrol in the following campgrounds, developed sites, or dispersed areas:

To make vehicle patrols within the Six Rivers National Forest to include, campgrounds, day use areas, public access areas, developed sites, boat ramps, dispersed use sites and other areas of concentrated use.

Additional patrols during the 3 major summer holiday weekends as needed or requested. Total reimbursement for this category shall not exceed the amount of: \$6,000.00.

**III. TRAINING:**

See Cooperative Law Enforcement Agreement Provision IV-K for additional information.

Total reimbursement for this category shall not exceed the amount of: \$1,000.00

IV. EQUIPMENT:

See Cooperative Law Enforcement Agreement Provisions IV-K, IV-L, and IV-M for additional information.

Total reimbursement for this category shall not exceed the amount of: \$1,000.00

V. SPECIAL ENFORCEMENT SITUATIONS:

A. Special Enforcement Situations include but are not limited to: Fire Emergencies, Drug Enforcement, and certain Group Gatherings.

B. Funds available for special enforcement situations vary greatly from year to year and must be specifically requested and approved prior to any reimbursement being authorized. Requests for funds should be made to the U.S. Forest Service designated representative listed in Item I-A of this Annual Operating Plan. The designated representative will then notify Cooperator whether funds will be authorized for reimbursement. If funds are authorized, the parties will then jointly prepare a revised Annual Operating Plan.

1. Drug Enforcement: This will be handled on a case by case basis. The request will normally come from the patrol Captain; however, it may come from the Special Agent in Charge or their designated representative. Reimbursement shall be made at the rates specified in Section I-B. Deputies assigned to the incident will coordinate all of their activities with the designated officer in charge of the incident.
2. Fire Emergency: During emergency fire suppression situations and upon request by the Forest Service pursuant to an incident resource order, the Cooperator agrees to provide special services beyond those provided under Section II-A, within the Cooperator's resource capabilities, for the enforcement of State and local laws related to the protection of persons and their property. The Cooperator will be compensated at the rate specified in Section I-B; the Forest Service will specify times and schedules. Upon concurrence of the local patrol Captain or their designated representative, an official from the Incident Management Team managing the incident, Cooperator personnel assigned to an incident where meals are provided will be entitled to such meals.
3. Group Gatherings: This includes but is not limited to situations which are normally unanticipated or which typically include very short notices, large group gatherings such as rock concerts, demonstrations, and organization rendezvous. Upon authorization by a Forest Service representative listed in Section I-A for



requested services of this nature, reimbursement shall be made at the rates specified in Section I-B. Deputies assigned to this type of incident will normally coordinate their activities with the designated officer in charge of the incident.

This includes but is not limited to situations which are normally unanticipated or which typically include very short notice, large group gatherings such as rock concerts, demonstrations, and organizational rendezvous.

VI. BILLING FREQUENCY:

See Cooperative Law Enforcement Agreement Provisions II-H and III-B for additional information.

A. Billing should be on a monthly basis.

Hard Copy or emailed version of billing/invoices should go to:
Jodi Marron, LE Program Support Asst.
3644 Avtech Parkway
Redding, CA 96002
jrmarron@fs.fed.us

AND

Hard Copy, faxed or emailed version of billing/invoices should go to:
US Forest Service
Albuquerque Service Center
Payments-Grants & Agreements
101 B Sun Ave NE
Albuquerque, NM 87109
(877) 687-4984 (fax)
Asc_ga@fs.fed.us

Final billings for reimbursement must be received by the Forest Service before November 13, 2015 in order to receive payment.

B. The following is a breakdown of the total estimated costs associated with this Annual Operating Plan.

Category	Estimated Costs	Not to Exceed by %
Patrol Activities	\$5,000.00	
Training	\$1,000.00	
Equipment	\$1,000.00	
Special Enforcement Situations	\$1,000.00	
Total	\$8,000.00	



C. Any remaining funding in this Annual Operating Plan may be carried forward to the next FY2015 year and will be available to spend through the term of the Cooperative Law Enforcement Agreement, or deobligated at the request of the U.S. Forest Service. *See Cooperative Law Enforcement Agreement Provision IV-D.*

In witness whereof, the parties hereto have executed this Annual Operating Plan as of the last date written below.

MICHAEL DOWNEY, Sheriff
Humboldt County Sheriff's Department

Date

MERV GEORGE JR., Forest Supervisor
U.S. Forest Service, Six Rivers National Forest

4-20-15
Date

County Commissioner

6/2/2015
Date

DON HOANG, Acting Special Agent in Charge
U.S. Forest Service, Pacific Southwest Region

Date

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

CONSTANCE ZIPPERER
U.S. Forest Service Grants Management Specialist

Date



C. Any remaining funding in this Annual Operating Plan may be carried forward to the next FY2014 year and will be available to spend through the term of the Cooperative Law Enforcement Agreement, or deobligated at the request of the U.S. Forest Service. See *Cooperative Law Enforcement Agreement Provision IV-D*.

In witness whereof, the parties hereto have executed this Annual Operating Plan as of the last date written below.

MICHAEL DOWNEY, Sheriff
Humboldt County Sheriff's Department

Date

4-20-15

MERV GEORGE, Forest Supervisor
U.S. Forest Service, Six Rivers National Forest

Date

6/2/2015

County Commissioner

Date

DON HOANG, Acting Special Agent in Charge
U.S. Forest Service, Pacific Southwest Region

Date

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

28 March 2015

CONSTANCE ZIPPERER
U.S. Forest Service Grants Management Specialist

Date



Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 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.



MODIFICATION OF GRANT OR AGREEMENT

PAGE	OF PAGES
1	7

1. U.S. FOREST SERVICE GRANT/AGREEMENT NUMBER: 11-LE-11051360-218	2. RECIPIENT/COOPERATOR GRANT or AGREEMENT NUMBER, IF ANY:	3. MODIFICATION NUMBER: 011
4. NAME/ADDRESS OF U.S. FOREST SERVICE UNIT ADMINISTERING GRANT/AGREEMENT (unit name, street, city, state, and zip + 4): Constance Zipperer, Grant Mangement Specialist Pacific Southwest Region, USDA, Forest Service 1323 Club Drive Vallejo, CA 94592	5. NAME/ADDRESS OF U.S. FOREST SERVICE UNIT ADMINISTERING PROJECT/ACTIVITY (unit name, street, city, state, and zip + 4): Law Enforcement Pacific Southwest Region, USDA, Forest Service, 1323 Club Drive Vallejo, CA 94592	7. RECIPIENT/COOPERATOR'S HHS SUB ACCOUNT NUMBER (For HHS payment use only):
6. NAME/ADDRESS OF RECIPIENT/COOPERATOR (street, city, state, and zip + 4, county): Humboldt County Sheriff Department 826 Fourth Street Eureka, CA 95501		

8. PURPOSE OF MODIFICATION

CHECK ALL THAT APPLY:	This modification is issued pursuant to the modification provision in the grant/agreement referenced in item no. 1, above.
<input type="checkbox"/>	CHANGE IN PERFORMANCE PERIOD:
<input type="checkbox"/>	CHANGE IN FUNDING:
<input type="checkbox"/>	ADMINISTRATIVE CHANGES:
<input checked="" type="checkbox"/>	OTHER (Specify type of modification): See Section 9.

Except as provided herein, all terms and conditions of the Grant/Agreement referenced in 1, above, remain unchanged and in full force and effect.

9. ADDITIONAL SPACE FOR DESCRIPTION OF MODIFICATION (add additional pages as needed):
The purpose of this modification is to add to the Master Cooperative Law Enforcement Agreement the newly required Minimum Wage Requirement provision (Attachment A)

10. ATTACHED DOCUMENTATION (Check all that apply):

<input type="checkbox"/>	Revised Scope of Work
<input type="checkbox"/>	Revised Financial Plan
<input checked="" type="checkbox"/>	Other: Minimum Wage Requirement (Attachment A)

11. SIGNATURES

AUTHORIZED REPRESENTATIVE: BY SIGNATURE BELOW, THE SIGNING PARTIES CERTIFY THAT THEY ARE THE OFFICIAL REPRESENTATIVES OF THEIR RESPECTIVE PARTIES AND AUTHORIZED TO ACT IN THEIR RESPECTIVE AREAS FOR MATTERS RELATED TO THE ABOVE-REFERENCED GRANT/AGREEMENT.

11.A. COUNTY SIGNATURE <i>Humboldt</i>	11.B. DATE SIGNED	11.C. U.S. FOREST SERVICE SIGNATURE (Signature of Signatory Official)	11.D. DATE SIGNED
11.E. NAME (type or print): MICHAEL T. DOWNEY		11.F. NAME (type or print): SCOTT HARRIS	
11.G. TITLE (type or print): Sheriff, Humboldt County		11.H. TITLE (type or print): Special Agent in Charge	

12. G&A REVIEW

12.A. The authority and format of this modification have been reviewed and approved for signature by: <i>Constance Zipperer</i> CONSTANCE ZIPPERER U.S. Forest Service Grants & Agreements Specialist	12.B. DATE SIGNED <i>23 February 2015</i>
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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 30 minutes 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.

MINIMUM WAGE REQUIREMENT.

(a) Executive Order 13658. This contract-like instrument (for purposes of this clause only, contract) is subject to Executive Order 13658, the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order, and the following provisions.

(b) Minimum Wages.

(1) Each worker (as defined in 29 CFR 10.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the contractor and worker, shall be paid not less than the applicable minimum wage under Executive Order 13658.

(2) The minimum wage required to be paid to each worker performing work on or in connection with this contract between January 1, 2015, and December 31, 2015, must be \$10.10 per hour. The minimum wage must be adjusted each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all workers subject to the Executive Order beginning January 1 of the following year. If appropriate, the Contracting Officer, or other Agency official overseeing this contract shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on www.wdol.gov (or any successor website). The applicable published minimum wage is incorporated by reference into this contract.

(3) The contractor shall pay unconditionally to each worker all wages due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 10.23), rebate, or kickback on any account. Such payments must be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Executive Order may not be of any duration longer than semi-monthly.

(4) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements. In the event of any violation of the minimum wage obligation of this clause, the contractor and any subcontractor(s) responsible, therefore, shall be liable for the unpaid wages.

(5) If the commensurate wage rate paid to a worker on a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C.

Attachment A

214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the contractor shall pay the Executive Order minimum wage rate to achieve compliance with the Order. If the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the contractor shall pay the 14(c) worker the greater commensurate wage.

(c) Withholding. The Agency head shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by Executive Order 13658.

(d) Contract Suspension/Contract Termination/Contractor Debarment. In the event of a failure to pay any worker all or part of the wages due under Executive Order 13658 or 29 CFR part 10, or a failure to comply with any other term or condition of Executive Order 13658 or 29 CFR part 10, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 10.52.

(e) The contractor may not discharge any part of its minimum wage obligation under Executive Order 13658 by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

(f) Nothing herein must relieve the contractor of any other obligation under Federal, State or local law, or under contract, for the payment of a higher wage to any worker, nor must a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than \$10.10 (or the minimum wage as established each January thereafter) to any worker.

(g) Payroll Records.

(1) The contractor shall make and maintain for 3 years the records containing the information specified in paragraphs (g)(1) (i) through (vi) of this section for each worker and shall make the records available for inspection and transcription by the authorized representatives of the Wage and Hour Division of the U.S.

Department of Labor:

- (i) Name, address, and social security number,
- (ii) The worker's occupation(s) or classification(s),
- (iii) The rate or rates of wages paid,

Attachment A

- (iv) The number of daily and weekly hours worked by each worker,
- (v) Any deductions made; and
- (vi) Total wages paid.

(2) The contractor shall also make available a copy of the contract, as applicable, for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of 29 CFR part 10 and this contract, and in the case of failure to produce such records, the Contracting Officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds until such time as the violations are discontinued.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct investigations, including interviewing workers at the worksite during normal working hours.

(5) Nothing in this clause limits or otherwise modifies the contractor's payroll and recordkeeping obligations, if any, under the Davis-Bacon Act, as amended, and its implementing regulations; the Service Contract Act, as amended, and its implementing regulations; the Fair Labor Standards Act, as amended, and its implementing regulations; or any other applicable law.

(h) The contractor (as defined in 29 CFR 10.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts. The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with this contract clause.

(i) Certification of Eligibility.

(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Attachment A

(j) Tipped employees. In paying wages to a tipped employee as defined in section 3(t) of the Fair Labor Standards Act, 29 U.S.C. 203(t), the contractor may take a partial credit against the wage payment obligation (tip credit) to the extent permitted under section 3(a) of Executive Order 13658. In order to take such a tip credit, the employee shall receive an amount of tips at least equal to the amount of the credit taken; where the tipped employee does not receive sufficient tips to equal the amount of the tip credit, the contractor shall increase the cash wage paid for the workweek so that the amount of cash wage paid and the tips received by the employee equal the applicable minimum wage under Executive Order 13658.

To utilize this proviso:

(1) The employer shall inform the tipped employee in advance of the use of the tip credit;

(2) The employer shall inform the tipped employee of the amount of cash wage that will be paid and the additional amount by which the employee's wages will be considered increased on account of the tip credit;

(3) The employees shall be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received); and

(4) The employer shall be able to show by records that the tipped employee receives at least the applicable Executive Order minimum wage through the combination of direct wages and tip credit.

(k) Antiretaliation. It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or 29 CFR part 10, or has testified or is about to testify in any such proceeding.

(l) Disputes concerning labor standards. Disputes related to the application of Executive Order 13658 to this contract must not be subject to the general disputes clause of the contract. Such disputes must be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Part 10. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

(m) Notice. The contractor shall notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a

Attachment A

covered contract whose wages are governed by the FLSA, the contractor shall post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers. Contractors that customarily post notices to workers electronically may post the notice electronically provided such electronic posting is displayed prominently on any website that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.