

FS Agreement No. 15-SU-11132425-006
Cooperator Agreement No. _____

MEMORANDUM OF UNDERSTANDING
Between The
SMITHSONIAN INSTITUTION
And The
USDA, FOREST SERVICE
WASHINGTON OFFICE

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the Smithsonian Institution, hereinafter referred to as "Smithsonian," and the USDA, Forest Service, Washington Office, hereinafter referred to as the "U.S. Forest Service."

Background:

Title: Service-Wide Memorandum of Understanding Between the Smithsonian and U.S. Forest Service Regarding the North American Orchid Conservation Center.

I. PURPOSE:

The purpose of this MOU is to provide a framework for cooperation and coordination between the SMITHSONIAN and the U. S. FOREST SERVICE in achievement of mutual goals regarding the North American Orchid Conservation Center (NAOCC). Cooperation and coordination may involve a wide range of activities, including, but not limited to, the following: conducting assessments, inventory, monitoring, data acquisition, data management, data exchange, development of data collection and delivery tools, development of strategies for *ex situ* conservation efforts consistent with the Convention on Biological Diversity such as seed and orchid mycorrhizal fungi banks, disseminating data, conservation planning services, and other scientific and management activities necessary to conserve, manage, and protect native orchids, their pollinators, requisite mycorrhizal fungi and the habitats they depend upon. A framework for cooperation and coordination is especially needed in the area native orchid conservation; in accordance with the following provisions.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The SMITHSONIAN and the U. S. FOREST SERVICE share an interest in the preservation, conservation, and management of native orchids, their pollinators, requisite mycorrhizal fungi and the habitats they depend upon. This MOU recognizes the mutual benefits derived by both organizations use and contributions of data to NAOCC.

The U. S. FOREST SERVICE is a natural resource agency dedicated to the sustained management of the Nation's natural resources, service to people, and through Federal law and regulations of the Secretary of Agriculture. The U. S. FOREST SERVICE is



responsible for managing habitat to maintain viable populations of plants and animals on the 193 million acres of national forests and national grasslands in 44 states, Puerto Rico, and Virgin Islands and in acquiring, developing, and disseminating up-to-date information on threatened, endangered, sensitive, and candidate species' status, distributions, population trends, ecology, conservation needs, and stewardship, which is essential to the U. S. FOREST SERVICE in order to accomplish needed management to conserve these natural resources.. The U. S. FOREST SERVICE strives to restore, maintain, and enhance populations and habitats for over 350 species of orchids on the National Forests and Grasslands. The U. S. FOREST SERVICE accomplishes these mandates in part by utilizing the vast and up-to-date national orchid species information and community data maintained by NAOCC. Management of these vulnerable components and links in the biodiversity chain is crucial to implementing the U. S. FOREST SERVICE mission for land and resource management. The U. S. FOREST SERVICE accomplishes much of this work by initiating and developing cooperative relationships and effective partnerships through its National Forest System, Research and Development, International Programs, and State and Private Forestry.

The SMITHSONIAN, through its NAOCC, leads a coalition of organizations dedicated to conserving the diverse orchid heritage of the U.S. and Canada. NAOCC currently is based at the Smithsonian Environmental Research Center and is supported by an internal consortium consisting of the National Zoological Park, the National Museum of Natural History, and Smithsonian Gardens. The U.S. Botanic Garden (USBG) has been a supporting partner of NAOCC since its founding, and is actively involved in NAOCC development, including providing funding in support of NAOCC objectives and projects. The initial groups of public and private organizations that support NAOCC have joined forces with a common goal: to ensure the survival of native orchids for future generations. To this end, the NAOCC's collaborators are working to preserve habitats, create and maintain national collections of seeds and orchid mycorrhizal fungi, and support research on orchid ecology, conservation and restoration. An important goal of the NAOCC is to provide the public with opportunities to join in the effort to conserve native orchids. NAOCC's website, <http://northamericanorchidcenter.org>, provides information about native orchid science, conservation, and NAOCC activities.

It is the desire of both parties to cooperate fully with each other, including collaborating on the sharing materials and other resources, in matters relating to the management of habitats and ecosystems and the conservation of native orchids, their pollinators, and requisite mycorrhizal fungi through cooperative efforts including, but not limited to:

1. Development and documentation of standard methods and protocols to support the assessment and implementation of conservation and resource management initiatives and the collection of orchid seeds, leaves, and mycorrhiza needed to support NAOCC goals and objectives;
2. Completion of inventories, assessments, surveys, and tools to support the mapping, monitoring, management, recovery and restoration of native orchids, their pollinators, and requisite mycorrhizal fungi;



3. Development and analysis of information regarding the status, locations, trends and threats for native orchids, their pollinators, and requisite mycorrhizal fungi, plant communities and ecological systems that occur or have the potential to occur on U. S. FOREST SERVICE lands;
4. Development and analysis of information regarding invasive species that occur or have the potential to occur on U. S. FOREST SERVICE lands that may adversely affect native orchids, their pollinators, and requisite mycorrhizal fungi;
5. Development and analysis of information regarding the effects of natural disturbances such as fire, flood, draught, etc. on native orchids, their pollinators, and requisite mycorrhizal fungi and the plant communities and ecological systems.
6. Development and analysis of information regarding the effects of climate change on native orchids, their pollinators, and requisite mycorrhizal fungi and the plant communities and ecological systems;
7. Development of technologies and tools that enhance the ability of governments, scientists, and NGOs to better understand, document, and manage native orchids, their pollinators, and requisite mycorrhizal fungi and the plant communities and ecological systems;
8. Identification of special conservation and management areas, (for example Research Natural Areas and Special Interest Areas) that can provide unique plant communities and ecological conditions for rare and unusual native orchids;
9. Development of *ex situ* conservation strategies, including the establishment of national and/or regional collections of native orchid seeds and native orchid mycorrhizal fungi;
10. Entering into grants, materials transfer agreements, and other agreements that support the goals of NAOCC and the USFS in implementing this MOU;
11. Production of reports, abstracts and other materials;
12. Providing input to natural resource planning including development, revision, and maintenance of National Forest Plans;
13. Assistance to and partnerships with foreign, state and tribal governments, private landowners, communities, and other non-governmental organizations;

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

III. THE SMITHSONIAN SHALL:

- A. Subject to availability enter into specific agreements or contracts to work with the U. S. FOREST SERVICE in carrying out projects and other collaborations and to accomplish agreed upon work projects.
- B. Meet annually or as necessary with representatives of the U. S. FOREST SERVICE to identify strategic areas for collaboration and develop project proposals to meet the purposes of this MOU.
- C. Upon request, as appropriate and feasible, coordinate the acquisition, management and distribution of data and/or participate on biological assessments with the U. S. FOREST SERVICE.



IV. THE U.S. FOREST SERVICE SHALL:

- A. Collaborating on making National Forest System lands, and appropriate seeds and specimen found on such land, available for the furtherance of this partnership, subject to applicable Federal law, regulations, Forest Plans, and approval by the appropriate U. S. FOREST SERVICE official.
- B. Cooperate with the SMITHSONIAN in carrying out programs and activities of the National Forest System, Research and Development, International Programs, and State and Private Forestry, including the development and implementation of forest plans, watershed and other ecological assessments, conservation projects related to Orchids and mycorrhizal fungi.
- C. Subject to availability enter into specific agreements with the SMITHSONIAN to accomplish agreed upon work projects, to establish collections of native orchid seeds and native orchid mycorrhizal fungi, and for other collaborations under this MOU.
- D. Consistent with Forest Plans and other U. S. FOREST SERVICE direction, provide leadership and share information across landownership boundaries for assessments and to support planning, decisions, implementation and monitoring of projects or administrative studies undertaken pursuant to this MOU.
- E. Meet annually or as needed with representatives of the SMITHSONIAN to develop collaborative strategic plans and discuss and reach agreement on project proposals to meet the purposes of this MOU.

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

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

Principal Cooperator Contacts:

Cooperator Program Contact	Cooperator Administrative Contact
Name: Dennis Whigham Address: SERC, Box 28 City, State, Zip: Edgewater, MD 21037 Telephone: 443-482-2226 FAX: 443-482-2380 Email: whighamd@si.edu	Name: Anson Hines, Director Address: SERC, Box 28 City, State, Zip: Edgewater, MD 21037 Telephone: 443-482-22208 FAX: 443-482-2380 Email: hines@si.edu

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact



<p>Name: Larry Stritch Address: 146 Edward Drive City, State, Zip: Martinsburg, WV 25404 Telephone: 304-274-6947 Email: lstritch@fs.fed.us</p>	<p>Name: Altonia Matthews Address: 201 14th Street, SW City, State, Zip: Washington, DC 20250 Telephone: 202-205-0892 Email: amatthews@fs.fed.us</p>
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B. ASSURANCE REGARDING FELONY CONVICTION OR TAX DELINQUENT STATUS FOR CORPORATE ENTITIES.

This agreement is subject to the provisions contained in the Department of Interior, Environment, and Related Agencies Appropriations Act, 2012, P.L. No. 112-74, Division E, Section 433 and 434 regarding corporate felony convictions and corporate federal tax delinquencies. Accordingly, by entering into this agreement the Smithsonian 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 agreement 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 agreement, unless a suspending and debaring official of the United States Department of Agriculture has considered suspension or debarment is not necessary to protect the interests of the Government. If the Smithsonian fails to comply with these provisions, the U.S. Forest Service will annul this agreement and may recover any funds the Smithsonian has expended in violation of sections 433 and 434.

C. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or the Smithsonian is 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 MOU.

To the Smithsonian, at the Smithsonian Program Contact's address shown in the MOU or such other address designated within the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

D. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the U.S. Forest Service or the Smithsonian from participating in similar activities with other public or private agencies, organizations, and individuals.

E. ENDORSEMENT. Any of the Smithsonian's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service



endorsement of the Smithsonian's products or activities nor do any of the activities under this MOA convey the SMITHSONIAN's endorsement of the U.S. Forest Service's products or services.

- F. **NONBINDING AGREEMENT.** This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective agreement, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable law

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

- G. **USE OF U.S. FOREST SERVICE INSIGNIA.** In order for the Smithsonian 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. **SMITHSONIAN TRADEMARKS.** The name and sunburst logo of the Smithsonian Institution are registered trademarks and the names of Smithsonian museums, programs, and exhibitions are common law trademarks. The U.S. Forest Service may use the names and logos, without alteration, solely for the purposes set forth in this Agreement. Any other use must be approved in advance by the Smithsonian. The U.S. Forest Service agrees to cause an appropriate statutory notice of trademark registration to be affixed to or imprinted on written materials wherever the federally registered trademarks, "Smithsonian," "Smithsonian Institution" and the Smithsonian Logo are first used.



- I. FREEDOM OF INFORMATION ACT (FOIA). Public access to MOU 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).
- J. 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.
- K. CREDIT TO BE GIVEN IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. Each party shall acknowledge the other's support as appropriate and feasible in any public facing publications, audiovisuals, and electronic media developed as a result of this MOU.
- L. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- M. MODIFICATIONS. Modifications within the scope of this MOU 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.
- N. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective for five years from the effective date. This MOU may be renewed for successive terms as mutually agreed between the parties in writing.
- O. 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 MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.



11/7/2014

ANSON H. HINES, Director
Smithsonian Environmental Research Center

Date

12/9/2014

THOMAS L. TIDWELL, Chief
U.S. Forest Service

Date

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

10/15/14

WILLIS S MITCHELL, JR
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.