AGREEMENT
between
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
and
USDA FOREST SERVICE PACIFIC SOUTHWEST REGION

THIS AGREEMENT is made and entered into this ___day of ______, 2004 by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation, acting on behalf of its Library, Berkeley and The University of California Regional Oral History Office, University of California, Berkeley (hereinafter called "University"), and United States Department of Agriculture Forest Service Pacific Southwest Region, having a principal place of business at 1323 Club Drive, Vallejo, CA 94592 (hereinafter called "Requestor").

RECITALS:

WHEREAS, University under certain circumstances provides oral history services in support of its pursuit of its constitutional objectives of instruction, research, and public service; and

WHEREAS, University's services may be extended to non-University users only when, in the judgment of the University, such action will serve purposes consistent with the University's objectives and will not adversely affect the conduct of University activities; and

WHEREAS, the services requested by Requestor have been determined to serve purposes consistent with University objectives and their provision to Requestor not to adversely affect the conduct of University activities; and

WHEREAS, Requestor has determined that the services in question cannot be adequately performed by other agencies or commercial firms;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms hereinafter set forth, and for other good and valuable consideration, the parties hereto mutually agree as follows:

1.00 DEFINITION OF SERVICE. University will furnish to Requestor a book (hereinafter “ The Book”) as described in Schedule A attached hereto.

2.00 PRIORITY OF UNIVERSITY WORK. University work always has priority over work to be performed for non-University users.
3.00 **TERM.** The term of this Agreement shall be from 01 September 2004 through 30 September 2005 (“Term”).

4.00 **TERMINATION.** This Agreement shall be subject to termination by either party at any time, upon ten (10) days' written notice to the other party.

5.00 **ALTERATION, AMENDMENT.** No alteration of the terms of this Agreement shall be valid or binding upon either party unless made in writing and signed by both parties. This Agreement may be amended at any time by mutual agreement of the parties, expressed in writing and signed by both parties.

6.00 **PAYMENT OF CHARGES.** Requestor shall pay for services rendered under this Agreement in accordance with the attached one page Schedule B “Budget” within thirty (30) days following receipt of University's invoices.

   a. University shall have the right to terminate this Agreement without notice if Requestor fails to pay charges for services rendered hereunder within sixty (60) days following Requestor's receipt of University's invoice.

   b. Requestor shall pay University for all services rendered up to the date of termination of this Agreement, regardless of the reason for termination, except that if paragraph 7a, below is completed with a dollar amount, Requestor's obligation to pay charges shall be limited to the amount stipulated in that paragraph.

7.00 **LIMITATION OF CHARGES.** Requestor understands and agrees that the estimated cost, if any, does not constitute a firm cost proposal and shall not be binding upon the University. Depending upon the University's cost-monitoring capabilities and Requestor's preference, the parties agree with respect to limitation of costs under this Agreement:

   a. University and Requestor agree that costs of services rendered under this Agreement shall not exceed $35,000 (thirty five thousand dollars) and that University shall furnish no services that would result in charges to Requestor exceeding that amount until such time as Requestor agrees, in writing, to pay such additional charge as may be associated with completion of work requested by Requestor.

   b. Charges made under this Agreement are based on those provided in the University’s then-current campus recharge rates for outside activities, which are republished from time to time.

8.00 **DISCLAIMER OF WARRANTY.** UNIVERSITY MAKES NO WARRANTY AS TO RESULTS TO BE OBTAINED BY REQUESTOR FROM THE USE OF ANY SERVICES AND/OR FACILITIES PROVIDED BY UNIVERSITY UNDER THIS AGREEMENT, AND THERE ARE NO EXPRESS OR IMPLIED WARRANTIES,
INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9.00 NON-LIABILITY OF UNIVERSITY.

a. University shall not be liable, by reason of its performance under this Agreement, for any loss of profits, claims against Requestor by any third party, or consequential damages even if University is advised of the possibility of such loss, claims, or damages. Requestor agrees that University's liability hereunder for damages, regardless of the form of action, shall not exceed the total of all charges paid by Requestor for the particular services rendered.

b. The foregoing to the contrary notwithstanding, Requestor agrees that University shall incur no liability to Requestor or to any third party for any loss, cost, claim or damage, either direct or consequential, arising from University's delay in performance or failure to perform services pursuant to this Agreement.

c. University shall incur no liability to Requestor or any third party for loss or destruction of or damage to any data, equipment, or other property brought upon University premises by Requestor or delivered to University by Requestor in connection with this Agreement. Requestor accepts all liability for risk of loss to any and all such property.

10.00 INDEMNIFICATION AND INSURANCE OF REQUESTOR. To the extent allowed by Federal Tort Claim Law, Requestor shall defend, indemnify and hold University, its officers, employees, and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Requestor, its officers, agents, or employees.

a. Requestor agrees that its employees and agents, while on University premises, shall comply with all applicable laws and regulations of governmental entities having jurisdiction and shall abide by all applicable University rules and requirements, particularly those governing matters of health, safety and fire protection.

11. INSURANCE. Requestor agrees to keep in full force and effect during the Term of this Agreement, the Federal Government's program of self-insurance

12.0 CONFIDENTIALITY OF INFORMATION. University shall use reasonable efforts, consistent with its established policies and procedures, to protect the confidentiality of any information furnished to it by Requestor in connection with the Agreement and designated by Requestor, in writing, as confidential. Upon advance written approval by both parties, Requestor agrees to reimburse University in full for any
costs it may incur in order to protect information, in accordance with Requestor's request, by means not normally employed by the University for that purpose.

13.00 **UNIVERSITY'S RIGHT TO USE DATA.** Requestor owns The Book, all materials supplied to the University and all reports generated in connection with this Agreement. University shall be granted by the Requestor a royalty free license to use The Book or portions of The Book, without accounting, in perpetuity.

14.00 **USE OF UNIVERSITY'S NAME, TRADEMARKS AND LOGOS.** “University Trademarks” means the name “University of California,” any abbreviation thereof or other tradename, trademark, or logos, which represents the University, its products or services. The University Trademarks are protected by federal trademark and California State laws. Requestor shall not use the name of the University of California, or any abbreviation thereof, or any name of which "University of California" is a part, or any trademarks of the University, in any commercial context, such as may appear on products, in media (including web sites) and print advertisements in cases when such use may imply an endorsement or sponsorship of Requestor, its products or services. All uses of the University’s name and trademarks, therefore, must first receive prior written consent of The Regents of the University of California through the Office of Marketing & Management of Trademarks. This policy is in compliance with the State of California Education Code Section 92000.

15.00 **RELATIONSHIP OF THE PARTIES.** The parties to this Agreement shall be and remain at all times independent contractors, neither being the employee, agent, representative, or sponsor of the other in their relationship under this Agreement.

16.00 **TIME LIMIT FOR ACTION.** No action, regardless of form, arising from transactions under this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.

17.00 **NOTICE/PRINCIPAL CONTACT** Any notice, request, or inquiry regarding the provisions of this Agreement, its termination, or similar matters shall be directed by Requestor to University at the following address:

University of California, Berkeley  
Brian C. Donohue  
Business Contract Administrator  
Business Contracts Office  
670l San Pablo Avenue # 5600  
Berkeley, CA 94720-5600  
510-642-8604 fax  
donohue@berkeley.edu

Any communication to Requestor by University may be directed to:

USDA Forest Service  
Steven Dunsky
18.00 ENTIRE AGREEMENT. This Agreement constitutes the entire understanding of the parties respecting the subject matter hereof and supersedes any prior understanding or agreement between them, written or oral, regarding the same subject matter.

19.00 GOVERNING LAW. This Agreement shall be construed and governed in all respects by the laws of the State of California AND the United States.

20.00 ADDITIONAL CLAUSES. (Mandated by US government and agreed to by University)


COLLECTION OF AMOUNTS DUE THE FEDERAL GOVERNMENT. Any funds paid to a University in excess of the amount to which the University is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government.

1. TAXPAYER IDENTIFICATION NUMBER. The University shall furnish their tax identification number upon execution of this agreement.

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

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

If the material is too small to permit the full statement to be included, the material will at minimum include the statement, in print size no smaller than the text, that “This institution is an equal opportunity provider.”

3. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).

4. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS. The Forest Service, Inspector General, or Comptroller General, through any authorized representative, shall have access to and the right to examine all records related to this instrument. As used in the provision, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. All records pertinent to the award shall be retained for a period of 3 years.

5. LEGAL AUTHORITY. The University has the legal authority to enter into this instrument, and the institutional, managerial and financial capability (including funds sufficient to pay nonfederal share of project costs) to ensure proper planning, management, and completion of the project.

6. PARTICIPATION IN SIMILAR ACTIVITIES. This instrument in no way restricts the Forest Service or the University(s) from participating in similar activities with other public or private agencies, organizations, and individuals.

7. AVAILABILITY OF FUNDS. Funds in the amount of $35,000 are currently available for performance of this instrument through December 31, 2005. The Forest Service’s obligation for performance of this instrument beyond this date is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the Forest Service for any payment may arise for performance under this instrument beyond December 31, 2005, until funds are made available to the Forest Service for performance and until the University receives notice of availability by written modification by the Forest Service.
A. ELECTRONIC FUNDS TRANSFER. The recipient/University shall designate a financial institution or an authorized payment agent through which a Federal payment may be made in accordance with U.S. Treasury Regulations, Money and Finance at 31 CFR 208, which requires that Federal payments are to be made by electronic funds transfer (EFT) to the maximum extent possible. EFT creates a financial hardship because direct deposit will cost the payment recipient more than receiving check.

8. PAYMENT (1). Pay the University on a reimbursable basis, upon submission of proper invoices, for costs stipulated for supplies delivered and accepted or services rendered and accepted, less any deductions, as provided in this instrument. Each invoice shall display the University’s actual expenditures to date of the invoice, displayed by separate cost elements, as documented in the Financial Plan. For the purpose of this instrument, reimbursement for indirect costs is limited to 10% of total, allowable direct costs and tuition remission shall not be reimbursed. The invoice should be submitted as follows:

a. Send an original invoice to:

USDA Forest Service
ATTN: Steve Dunsky
1323 Club Drive
Vallejo, CA 94592

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the date first above written.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

USDA U.S. FOREST SERVICE PACIFIC SOUTHWEST REGION

By___________________________   By___________________________
Brian C. Donohue                Ron DeHart
Title: Business Contract Administrator  Title: Director, Public Affair
Date___________________________  Date___________________________

University of California, Berkeley
Business Contracts Office