MEMORANDUM OF AGREEMENT BETWEEN
THE U.S. SMALL BUSINESS ADMINISTRATION,
THE U.S. GENERAL SERVICES ADMINISTRATION
AND
THE STATE AGENCY FOR SURPLUS PROPERTY
FOR THE STATE OF UTAH

I. PURPOSE:

This Memorandum of Agreement (MOA) is entered into between the U.S. Small Business Administration (SBA), the U.S. General Services Administration (GSA), and the State Agency for Surplus Property (SASP) for the State of Utah, to set forth the terms and conditions with respect to federal surplus property which is transferred to 8(a) Business Development (BD) Program Participants (Participants).

II. AUTHORITY

a. The Small Business Act provides that eligible 8(a) BD program Participants are qualified to receive federal surplus property in accordance with 15 U.S.C. § 636(j)(13)(F).

b. SASPs may enter into cooperative agreements with federal agencies designated by GSA in accordance with 40 U.S.C §549(f)(1)(D).

c. At any time there is a dispute within this MOA, the provisions of 40 U.S.C §549 and 41 CFR Chapter 102 shall prevail.

III. CONDITIONS:

a. USE: Eligible Participants may obtain Federal surplus property from the SASP in the State where the Participant is located and operates, provided the Participant represents and agrees in writing:

(1) That the intended use of the property is consistent with the objectives of the Participant's 8(a) business plan;

(2) That it will use the property to be acquired in the normal conduct of its business activities;

(3) That it will not sell or transfer the property to any party during its term of participation in the 8(a) BD program and for one year after it leaves the 8(a) BD program, unless it has received express written authorization from the donating SASP and SBA;

(4) That it will use the property as intended within one year of receipt;

(5) That it will give SBA, GSA and/or the SASP access to inspect the property and all records pertaining to it; and

(6) That should the Participant violate any of the paragraphs above, the Participant will return the property to the donating SASP at the Participant's expense, or if the Participant has sold, transferred, or otherwise disposed of the acquired surplus property in violation of the agreement covering sale and disposal, the Participant will be liable to the Federal Government for the fair market value (as determined by GSA or the SASP) or the sale price of the property, whichever is greater.

(7) Terms and conditions of donations of aircraft and vessels, specified at 41 CFR 102-37.460 apply to donations of such items to 8a participants as well.

b. CONDITIONAL TITLE: The title to surplus property other than an aircraft or vessel, as defined in 41 CFR 102, acquired from a SASP will pass to the Participant when the Participant executes the applicable SASP distribution documents and takes possession of the property. The title for an aircraft (other than combat configured aircraft) or vessel will not pass until five years after the property has been entered into "USE". The aircraft or vessel must be placed in "USE" for the purpose which acquired no later than one year after acquisition. In all cases, regardless of title passage, the conditions of use in section III and compliance requirements in section IVc still apply. (Title for combat configured aircraft never passes; therefore SBA, GSA, and the SASP will not approve any request for combat configured aircraft.)

c. FOREIGN GIFTS: SBA, GSA, and the SASP will not approve any request for Foreign Gifts.

d. FAIR MARKET VALUE: This value is based on the GSA/SASP Fair Market Value.

IV. THE SBA SHALL:

a. EDUCATION: Assist in educating Participants on the availability of surplus property, and the terms, conditions and limitations of use.

b. VERIFICATION OF ELIGIBILITY: Upon receipt of a request from a Participant to participate in the surplus property program, the servicing SBA District Office will verify in writing to the SASP that the Participant is an eligible 8(a) Participant. SBA will respond in writing to each subsequent request from the SASP for an eligibility determination concerning particular property.

c. COMPLIANCE:

(1) SBA will periodically review whether Participants have used and maintained the property as agreed. This review may include site visits to visually inspect the property to ensure that it is being used in a manner consistent with the terms of its transfer.

(2) Where SBA receives credible information that transferred surplus property may have been disposed of or otherwise used in a manner that is not consistent with the terms of the transfer, SBA may investigate such claim to determine its validity.

(3) SBA may take any action to correct any noncompliance involving the use of transferred property still in possession of the Participant or to enforce any terms, conditions, reservations, or restrictions imposed on the property by the distribution document. Actions to enforce compliance, or which may be taken as a result of noncompliance, include the following:

(i) Requiring that the property be placed in proper use within a specified time;
(ii) Requiring that the property be returned to the donating SASP;
(iii) Recovery of the fair market value of the property or sale price; or
(iv) Initiation of proceedings to terminate the Participant from the 8(a) BD program.

V. THE SASP SHALL:

a. ALLOCATION: Be responsible for allocating property to Participants.

b. VERIFICATION OF ELIGILITY: Prior to allocating any property, the SASP shall have in its possession a determination from SBA that the Participant seeking to acquire the surplus property is eligible, and that the identified use of the property is consistent with the Participant's business plan objectives. A SASP may not release property to a Participant without this verification.

c. FEES: Charge Participants fees in the same manner that they are assessed for other donees under the surplus property program.

d. RECORDS: Maintain accurate records on all property transferred to Participants, including the acquisition value, fees, and the number of 8(a) contractors registered with the SASPs, and provide such information to SBA's Office of Program Review quarterly, Attn: Randy Greene at randy.greene@sba.gov.

VI. POINTS OF CONTACT

a. SBA:

Darryl K. Hairston
Associate Administrator
Office of Business Development

Sharon A. Gurley
Director, Office of Program Review
Office of Business Development

b. GSA

William Kemp
Director
Utilization and Donation Program Division
Office of Personal Property Management

c. The SBA POCs addressed above will be the POCs for any compliance issues identified by GSA and SASPs where there is no response or indication of action by the SBA District Office.

VII. TERM:

This MOA will take effect as soon as SBA, GSA, and the SASP for the State of Utah have signed it. It will remain in effect until September 1, 2017.

VIII. AMENDMENT AND TERMINATION:

The parties may modify this MOA by written mutual consent. An administrative change, such as change in the named Points of Contact may be made by notification to all parties without a formal amendment. Any party may terminate this MOA by providing the other parties with thirty (30) calendar days written notice, or as otherwise stipulated by law. This MOA shall not be interpreted as creating any binding legal obligations between the parties.

IN WITNESS THEREOF, the parties hereto have executed this MOA as of the last date written below.

William F Kemp 14 Nov 13
for David M. Robbins Date
Director
U.S. General Services Administration
Office of Personal Property Management
GSA, Federal Acquisition Service

11/7/13
Dan R. Martinez Date
Manager
State Agency for Surplus Property
State of Utah

11/14/13
A. John Shoraka Date
Associate Administrator for
Government Contracting and
Business Development
U. S. Small Business Administration

11-18-13
Mina A. Wales Date
Deputy Assistant Administrator for
Communications and Public Liaison
U. S. Small Business Administration