

COOPERATIVE FIRE PROTECTION AGREEMENT

This Agreement is dated _____, 2011, and is between the Kenai Peninsula Borough on behalf of itself and _____ (service area), ("Cooperator") with an address of 144 N. Binkley St., Soldotna, AK 99669, and the State of Alaska, Department of Natural Resources, Division of Forestry ("State") with an address of 42499 Sterling Highway, Soldotna, Alaska 99669.

1. Recitals

It is the intent of AS 41.15.010 that the State provide protection from wildland fire and other destructive agents, commensurate with the values at risk, on land that is owned privately, by the state, or by a municipality. It is also recognized by the Cooperator that an obligation exists to provide protection to life and property from wildland fires within its area of responsibility, subject to available resources, funding, and personnel. Therefore, it is to the mutual advantage of the Cooperator and the State to coordinate efforts in the prevention, detection, and suppression of wildland fires. It is in the best interests of both the Cooperator and the State that wildland fires be suppressed quickly and efficiently to minimize the destruction of natural resources and the threat to life, property, and communities.

2. Definitions

Annual Operating Plan (AOP) – Negotiated annually between the Cooperator and the State to define operational details.

Fire Apparatus - Fire engine, pumper, tender, tanker, brush rig, fire command vehicle, maintenance truck or such other rolling stock as is typically used by fire departments for fire suppression purposes.

Fire Stores - Such items as needed to complete required minimum equipment inventory as specified in Section 12, b of the AK-DNR/DOF, Cooperator Conditions of Hire, Chapter 7 of the Alaska Incident Business Management Handbook (AIBMH).

Incident Command System - An emergency response management system defined by the National Interagency Incident Management System (NIMS), and endorsed by the Governor of Alaska via Administrative Order 170.

Response Area - An area which includes the Cooperator Service Area and areas of mutual aid response, within which the Cooperator agrees, within its ability, to promptly respond and act to suppress any wildland fire.

Discretionary Response – A response outside the Response Area within which the Cooperator may choose to respond, or assist the State, to suppress a wildland fire.

Unified Command - A method for all agencies or individuals who have jurisdictional responsibility and in some cases those who have functional responsibility at an incident, to contribute to:

- determining overall objectives for the incident

- selection of a strategy to achieve the objectives
- command of the incident

Wildland Fire - The uncontrolled burning of grass, brush, timber and other natural vegetative material.

3. Command of Incident

There is a presumption of Unified Command, by mutual consent pursuant to this Agreement, for the management of wildland fire incidents. The first responder on-scene shall assume functional command of the incident until the arrival of the other responder, after which a Unified Command will normally be established.

The Cooperator or State may, by mutual agreement, solely assume command of the incident, and shall be in command of personnel, fire apparatus and all other aspects of the fire suppression effort for the duration of the incident or until such resources are released.

4. Reimbursement and Status of Employees and Apparatus

The Cooperator may be reimbursed for performance under this Cooperative Fire Protection Agreement. The methods of reimbursement are: Cooperator Reimbursement, where actual costs of personnel and apparatus are reimbursed to the Cooperator; and Direct Payment, where Cooperator personnel, as mutually agreed to by both the Cooperator and the State, are hired as Emergency Firefighters (EFF) by the State and paid directly, and apparatus is rented and paid directly to the Cooperator. In order to use the Cooperator Reimbursement method the Cooperator must meet the eligibility requirements as defined in Chapter 7 of the Alaska Incident Business Management Handbook and define the pay scale of each of their employees in their AOP. Billing addresses and contacts will be provided in the AOP.

In the event an AOP has not been signed by the State, rates paid for apparatus will not exceed the latest version of the Cooperator Conditions of Hire for Wildland Fire Suppression Activities.

State employees remain employees of the State whether they work under Cooperator or State command. State employees are paid by the State without reimbursement from the Cooperator.

Cooperator employees may remain employees of the Cooperator, or may become employees of the State through the Emergency Firefighter program, with the attendant pay and benefits, depending on which payment method the Cooperator chooses.

A. Cooperator Reimbursement. In order to use the Cooperator Reimbursement method, the Cooperator must meet the eligibility requirements as defined in the Cooperator Conditions of Hire and define the pay scale of each of their employees in their AOP. The Cooperator shall be responsible for payment of salary to Cooperator's personnel, including all lawful deductions, taxes, and insurance. The incident will post all equipment time on Emergency Equipment Use Invoices and personnel time on OF-288s that will be used as backup for the Cooperator invoice presented to the State for reimbursement.

The Cooperator shall be responsible for payment of all expenses related to operation of the apparatus. Upon receipt of an itemized bill the State shall reimburse the Cooperator, within 30 days, for actual costs of personnel, apparatus, and other reasonable and necessary expenses as allowed that are directly related to wildland fire suppression. Rates of reimbursement for personnel shall be documented in the AOP. Cooperator apparatus reimbursement rates shall not exceed the rates listed in the most recent Cooperator Conditions of Hire. Forestry will not pay administrative fees in excess of 13.5%, nor pay for backfill positions unless required by municipal ordinance or union contract.

B. Direct Payment. The State shall be responsible for payment of salary directly to Cooperator's personnel hired as EFF, including all lawful deduction, taxes, and insurance. Rates of pay and levels of classification shall be documented in the AOP. The State shall be responsible for payment to the Cooperator for apparatus rental. Cooperator apparatus rental rates shall not exceed the rates listed in the most recent Cooperator Conditions of Hire.

Notice of employment as EFF, and hiring of apparatus, will be effected by completion of appropriate hiring documents, or, if the emergency situation demands, notification to the responsible State Dispatch office that Cooperator employment and/or hiring has occurred. In the latter case, official documentation will be completed as soon as practical.

The State's direct payment of Cooperator personnel or apparatus does not effect the presumption of Unified Command necessary under this Agreement.

C. Travel, Meals, and Lodging. Travel time between the duty station, or fire station, and the incident is also reimbursable. Meals and lodging will be provided by the State for employees on assignment away from their duty station. No other travel costs will be reimbursed.

5. Worker's Compensation

The Cooperator and the State are responsible for their own employee's Worker's Compensation. EFF are considered State employees.

6. Liability Insurance

The State is responsible for its own liability insurance and coverage.

The Cooperator is responsible for its own liability insurance and coverage, for work performed under this Agreement, and for work performed when no reimbursement or payment by the State under this Agreement is applicable.

State apparatus, including FEPP, loaned to a Contractor is covered by State liability insurance and coverage, regardless of whether or not the operator is a State employee, provided the apparatus is utilized in the scope of permissive use. Permissive use is described as response to and operation on a wildland fire.

Liability is not covered for non-wildland fire use.

7. Fire Equipment Use

Upon assignment outside the Response Area, the State will issue to the Cooperator fire stores as needed to complete the required minimum equipment inventory as specified in Section 12 of the Cooperator Conditions of Hire. The Cooperator will maintain the fire equipment issued under this Agreement in an operable condition. Issued equipment will be returned to the issuing Forestry Office upon completion of the assignment. The State will not hold the Cooperator accountable for consumable fire supplies.

If non-consumable fire stores become broken, or otherwise unusable, the Cooperator will return the damaged item, along with a statement of how the item was damaged, to the State for repair or replacement. If an item becomes lost or damaged as a result of negligence by the Cooperator, the Cooperator will be liable for replacement.

8. Training and Prevention

The intention of the State is all responders to wildfires are certified at a minimum of a National Wildfire Coordinating Group (NWCG) Wildland Firefighter 2. The State will make wildland fire training available to the Cooperator on an annual basis based on the priorities established in the AOP. The Cooperator may utilize any combination of the following for the training of their personnel:

- on-line (I-100, I-200, S-130, S-190, IS700, IS800)
- crosswalk (provided they have an accrediting training program through the Alaska Fire Standards Council)
- DOF sponsored wildland fire training courses
- Cooperator personnel who are operating apparatus are encouraged to complete the ENOP Task Book.

All Cooperator employees and members will be NWCG certified at a minimum of Wildland Firefighter 2, which includes an annual Fireline Refresher Training and Work Capacity Test, when responding outside the Response Area. All personnel hired as EFF by Forestry must meet established NWCG physical fitness and training standards for the position hired. The State will provide wildfire training and prevention material to the Cooperator upon request.

9. Investigation

All wildland fires are subject to investigation and reporting. Cooperators unable to meet or accomplish these standards are to advise the State as soon as possible. The State may assign or order fire investigators as necessary. Protection of the origin and incendiary evidence will be the responsibility of the first, on-scene responders.

10. Annual Operating Plan

As soon as practical after this Agreement is executed and annually thereafter prior to March 15 of each year, the Cooperator and the State Forester or his designee shall meet to negotiate an AOP. The subject matter of the AOP shall include:

- A. Cooperator Conditions of Hire (Chapter 7 of the AIBMH).
- B. Personnel pay rates and classifications.

C. Designation of Response Area on a 1:63,360 scale USGS topographic map, or equivalent.

D. A current inventory of each party's local fire fighting resources and provisions for one party to notify the other when significant changes occur.

E. Coordination of prevention, investigation and public education efforts.

F. Operational Procedures for Cooperator response within the Response Area covering as applicable:

(i). Fire Reporting.

(ii). Fire Response and Notification Procedures.

(iii). Fire Reports and other document exchange procedure.

(iv). Equipment Familiarization.

(v). Open burning closures or suspensions.

G. Provisions, conditions, and methods for Cooperator reimbursement.

H. Mobilization procedures for Cooperator discretionary responses.

I. Personnel qualification requirements.

J. Training.

K. Fire stores/equipment guidelines.

L. Radio frequencies.

11. Notification

The Cooperator shall immediately report all wildland fires to the State according to the procedures set forth in the AOP. The State shall immediately notify the Cooperator of any fires it responds to within the Cooperator's Service Area.

12. Parties Responsible for their own Acts

Each party agrees that it will be responsible for its own acts and the results thereof and each party shall not be responsible for the acts of the other party; and each party agrees it will assume to itself risk and liability resulting from their own acts under this Agreement.

13. Permits and Laws

The parties shall acquire and maintain in good standing all permits, licenses and other entitlement necessary to the performance under this Agreement. All actions taken by the parties under this Agreement shall comply with all applicable laws, statutes, ordinances, rules and regulations.

14. Non Waiver

The Failure of the Cooperator or the State at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provisions, nor in any way affect the validity of this Agreement or any part thereof to enforce each and every protection hereof.

15. Review and Modifications

The parties agree to review this Agreement every 5 years maximum. From time to time, the parties may agree to modifications in the scope of services to be performed under this Agreement. All modifications to the Agreement shall be incorporated by written amendments to this Agreement and approved by all signatories prior to effect.

16. Fair Intent

This Agreement has been jointly drafted by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, not for or against any party.

17. Agreement Effective Date and Termination

This Agreement supersedes all other versions of this document and is effective as of the date of last signature of the parties and remains in effect indefinitely unless terminated. Either party may terminate this Agreement at any time by giving written notice to the other party of such termination and specifying the effective date, thereof, at least thirty (30) days before the effective date of such termination.

For The State

For the Cooperator

Area Forester

Borough Mayor

Date

Date

State Forester

Service Area

Date

Date

DNR Procurement Officer

Attest, Borough Clerk

Date

Date