

**COOPERATIVE WILDLAND FIRE PROTECTION AND STAFFORD ACT  
RESPONSE AGREEMENT**

**Between**  
**THE STATE OF NORTH DAKOTA**  
**NORTH DAKOTA FOREST SERVICE**  
Agreement Number:

**And the**

**USDI**  
**BUREAU OF LAND MANAGEMENT**  
**MONTANA AND DAKOTAS**  
BLM Agreement Number:

**NATIONAL PARK SERVICE**  
**MIDWEST REGION**  
NPS Agreement Number: H6064070003

**BUREAU OF INDIAN AFFAIRS**  
**GREAT PLAINS REGION**  
BIA Agreement Number:

**US FISH AND WILDLIFE SERVICE**  
**MOUNTAIN-PRAIRIE REGION**  
FWS Agreement Number:

**And the**

**USDA**  
**FOREST SERVICE**  
**NORTHERN REGION**  
USFS Agreement Number: 07FI11015600038

This Cooperative Fire Protection Agreement (Agreement) is hereby made and entered into by and between the State of North Dakota, North Dakota Forest Service, hereinafter referred to as the **State**; the USDI, Bureau of Land Management, Montana and Dakotas State Office, hereinafter referred to as the **BLM**; the National Park Service, Midwest Region, hereinafter referred to as the **NPS**; the Bureau of Indian Affairs, Great Plains Region, hereinafter referred to as the **BIA**; the Fish and Wildlife Service, Mountain-Prairie Region, hereinafter referred to as the **FWS**; and the USDA, Forest Service, Northern Region hereinafter referred to as the **USFS**. This Agreement is entered into under the authorities described in Exhibit A.

The BLM, NPS, BIA, FWS and the USFS, may hereinafter be jointly referred to as the “**Federal Agencies**”. The Federal Agencies and the State may hereinafter be jointly referred to as the “**Agencies**”.

## I. PURPOSE:

The purpose of this Agreement is to document the commitment of the Agencies to improve wildland fire protection by facilitating the increased availability of resources including but not limited to: The exchange of personnel, equipment, supplies, services, and funds among the Agencies in accordance with this Agreement and the hereby incorporated Exhibits:

<u>Exhibit</u>	<u>Contents</u>
A	Statutory Authorities
B	Principal Contacts
C	Glossary of Terms
D	Reimbursable Billings and Payments
E	A sample Annual Operating Plan (AOP) Outline Guide
F	A sample Project and Financial Plan
G	A sample Cost Share Agreement

Exhibits to this Agreement may be revised upon request of the Agencies through execution of the Statewide AOP. The latest revision of any Exhibit will automatically be incorporated into this Agreement without necessitating a formal modification as defined in Agreement Provision #57.

A fully executed version of this Agreement, the Statewide AOP, frequently asked questions and completed samples of AOPs, Cost Share Agreements and Project and Financial Plans will be maintained by the Lead Principal Agency. The USFS will be the Lead Principle Agency.

Supplements to this Agreement (AOPs, Project and Financial Plans, and Cost Share Agreements) will further describe working relationships, financial arrangements, and joint activities not otherwise specified under the terms of this Agreement.

Any inconsistencies in this Agreement and attachments thereto shall be resolved by giving precedence in the following order:

1. This Agreement (less its Exhibits)
2. Statewide AOP
3. Exhibits to this Agreement
4. Zone or local AOP
5. Project and Financial Plan

In addition to improving efficiency dealing with wildland fire, this Agreement facilitates improved coordination regarding other incidents. The National Response Plan (NRP) applies to all Federal departments and agencies that may be requested to provide assistance or conduct operations during Presidential/Stafford Act declared disasters. This Agreement documents the commitment of the Agencies to provide cooperation, resources, and support to the Secretary of Homeland Security in the implementation of the NRP, as appropriate and consistent with their own authorities and responsibilities. **Only Presidentially declared emergencies and disasters are covered under this Agreement.**

## II. RECITALS:

1. State and private lands, for which local fire departments are responsible for wildland fire protection assistance in North Dakota with the support and assistance of the State, and the federal lands on which the respective Federal Agencies are responsible for wildland fire protection, are intermingled or adjacent to state and private lands in some areas, and wildland fires on these intermingled or adjacent lands may represent a threat to the lands of the other.
2. The Federal Agencies maintain wildland fire protection capability for the protection of federal lands. The State assists local fire departments in maintaining wildland fire protection resources for the protection of state and privately owned lands. The agencies wish to improve efficiency, effectiveness and limit duplication in wildland fire protection.
3. Local municipal, rural fire districts, and fee service area fire departments are responsible for structure fire suppression, dump fires, and vehicle fires. Agreements for these types of activities with local fire departments are not a part of this Agreement.
4. The Federal Agencies have entered into a National Interagency Agreement for Fire Management to cooperate in all aspects of fire management.
5. It is to the mutual advantage of the Agencies to coordinate efforts on all wildland fire and aviation protection activities including but not limited to: prevention, detection, response and recovery, suppression, training, exercising/scenarios, aviation, wildland fire use, and fuels management.
6. It is the intent of the Agencies to make State resources available to assist in wildland fire protection activities on federal lands, and other lands on which the Federal Agencies provide fire suppression support, including other States, Canada, and Mexico.
7. It is the intent of the Agencies to make Federal resources available to assist in wildland fire protection activities on state and private lands on which the State provides assistance or protection.

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## **INTERAGENCY COOPERATION:**

**1. Northern Rockies Coordinating Group (NRCG):** NRCG provides oversight and recommendations for all interagency wildland fire protection activities within the Northern Rockies, which includes North Dakota, as described in the NRCG Charter. NRCG is comprised of the Department of Interior Agencies: BLM, NPS, BIA, FWS; USFS; the States of Montana, North Dakota and Idaho; Montana Firewarden's Association; Montana Sheriffs and Peace Officers Association; and the Montana State Fire Chief's Association. It is intended that this Agreement be implemented under the auspices of NRCG, rather than through individual Agencies, to the maximum extent feasible.

**2. North Dakota Fire Council:** NDFC serves as an advisory group for coordination of interagency wildland fire cooperative initiatives within North Dakota. NDFC will oversee implementation of this Agreement through the development of Annual Operating Plans and project plans at local area levels.

**3. Compacts:** The Emergency Management Assistance Compact (EMAC) was established to allow interstate assistance between member states. The purpose of EMAC is to provide support to local jurisdictions in the event of a large-scale emergency or disaster when the resources needed exceed those available in state.

Prior to requesting assistance from EMAC member states, an emergency or disaster declaration must be issued by the Governor. The staff of the N.D. Department of Emergency Services', State Operations Center (SOC) coordinates the declaration process with the Governor's Office. SOC staff also coordinates assistance request with EMAC. The SOC will approve all EMAC resource orders and requests and coordinate requests with the EMAC A-Team. All EMAC resource requests will be processed using the official EMAC Resource Request Form in addition to NWCG Resource Forms. All private, local and state resources must be exhausted before requesting EMAC resources. Refer to the Emergency Management Assistance Compact Guidebook and Standard Operating Procedures included in the State Emergency Operations Plan.

**4. Fire Management Assistance Grant Program:** The Federal Emergency Management Agency (FEMA), under Section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, provides federal funding for firefighting efforts under approved Requests for Fire Management Assistance Declarations. These grants are typically issued when a community of 100 homes or more is in imminent danger. The SOC staff coordinates these requests with the Governor's Office and FEMA's Region VIII staff.

**5. Incident Command System:** The Agencies will operate under the concepts of the National Incident Management System (NIMS) and its Incident Command System (ICS), as appropriate for providing qualified resources and for the management of incidents encompassed under the terms of this Agreement. During initial attack, all Agencies accept each other's training and qualifications, and equipment standards. Once jurisdiction is clearly established, the standards of the Agency with jurisdiction will prevail.

**6. Multi-Agency Coordinating (MAC) Groups:** During periods when fire activity is significant enough to require prioritization of fires in order to allocate scarce resources, MAC groups will be established to accomplish that priority setting. Four levels of MAC groups may be assembled as appropriate: Northern Rockies Area, Zone, State, or Local Levels.

**7. Cooperation with Local Government Fire Forces:** Cooperation with local government fire forces is desirable. Local government fire forces are made available to the Federal Agencies through the State within the Northern Rockies geographic area. Local Cooperative Fire Agreements for wildland fire protection with local government fire forces will be through the State in order to provide for continuity and ensure the proper assignment of responsibilities in accordance with State law. Except to ensure compliance with State law and a general compliance with similar agreements that are in place elsewhere, it is not intended for the State to affect local agreements that are mutually beneficial to agreeing parties (usually a Federal Agency and a local fire department). To avoid duplication of negotiating separate agreements with several local fire departments, local fire departments may be included in AOPs provided the State is a signatory. *See related Provision #30 Structure Fire Suppression and Exhibit D item 2 Payment of Local Government Fire Forces.*

The State is only responsible for the cost of a county or local fire department fire in specific instances. Fires, or portions of fires, occurring on county or local fire department protection areas are generally the responsibility of that organization; and the organization is responsible for the costs unless the State has agreed to assume them.

Mobilization of Local Government Fire Forces will be done in accordance with the NRCC Mobilization of Local Firefighting Resources Guide.

**8. Sharing of Information:** The Agencies will furnish, or otherwise make available upon request, such maps, documents, instructions, records, GIS data, and reports, including but not limited to fire reports, employment records, and investigation and law enforcement reports as either party considers necessary in connection with this Agreement, in accordance with applicable State and Federal rules and regulations.

**9. Employment Policy:** It is agreed that employees of the Agencies shall at all times be subject only to the laws, regulations, and rules governing their employing Agency, and shall not be entitled to compensation or other benefits of any kind other than specifically provided by the terms of their employment.

**10. Shared Resources:** Interagency funding, staffing, and utilization of resources and facilities may be pursued when an interagency approach is appropriate and cost effective. Shared staffing and funding will be commensurate with each Agency's use of the resources and may be carried out if agreed to in a separate Project and Financial Plan or included in AOPs. *See related Provision #46 Supplements, A. - Annual Operating Plans and B. - Project and Financial Plans.*

**11. Prescribed Fire and Fuels Management:** The Agencies agree to cooperate in the development and implementation of prescribed fire and fuels management activities in which the primary interest is to reduce hazardous fuels or reduce the threat to communities at risk. Any Agency may provide assistance to another Agency as requested and agreed to for purposes of performing prescribed fire or other fuels management activities. Conditions of the assistance

and details of reimbursement, if separately agreed to will be documented in AOPs or the Project and Financial Plan. *See Exhibit F for a sample Project and Financial Plan.*

Wildfires resulting from escaped prescribed fires ignited by the Jurisdictional Agency will be the financial responsibility of that Jurisdictional Agency. The Protecting Agency will be responsible for the management of the fire. *See Exhibit D item #5 Billing Procedures for Other Fire and Aviation Protection Activities.*

**12. Interagency Dispatch Centers:** The Agencies agree to maintain, support, and participate in interagency dispatch centers and geographic coordination centers. Management, staffing, funding, and level of participation will be agreed to and documented in AOPs and appropriate mobilization guides. The Northern Rockies Mobilization Guide (NRMG) will be the primary document to identify approved policy and procedures for dispatching fire resources.

It is intended that interagency dispatch center managers may be from any of the participating Agencies, and as such, have the Agency specific authorities from each participating Agency, except where prohibited by law or regulation, necessary to conduct the Center's operation.

**13. Aviation Operations:** The Agencies agree to cooperate in the funding, staffing, and utilization of aviation resources to foster effective and efficient use of aircraft and personnel. All aviation activities shall be conducted in accordance with each Agency's aviation rules, policies, and directives; applicable Federal Aviation Regulations (FAR's), and Public Law 103-411, the Independent Safety Board Act Amendments of 1994, which amended 49 U.S.C. Sec. 101, 1118, 1131, 40102, and 40109 and Public Law 105-137 the Aviation Insurance Reauthorization Act of 1997, which amended 49 U.S.C. Sec. 40101, 40102, 44302, 44305, 44306, 44308, and 44310. *See Exhibit D item #5 Billing Procedures for Other Fire and Aviation Protection Activities.*

Federal Agencies will inspect and approve pilots and aircraft to be used on federal missions and/or used to transport federal employees.

**14. Communication Systems:** The Agencies may mutually agree to allow one another the use of communication systems such as radio frequencies, computer system access, data transmission lines, and communication sites when there is mutual benefit to the parties. Such agreement shall be approved only by authorized personnel for each Agency and will be documented in the AOPs.

**15. Fire Prevention Policies:** The Agencies will support fire prevention planning and cooperative activities at local and statewide levels. Joint fire prevention activities will be incorporated into the AOPs or Project and Financial Plans. Agencies may pool resources and share costs of wildland fire prevention activities. Prevention activities will be coordinated through the ND Fire Council Prevention Committee.

**16. Fire Restrictions and Closures:** Fire restrictions and closures will be coordinated through the North Dakota Fire Council Executive Committee, consistent with the laws applicable to each Agency. Local Agency Administrators are responsible for developing and implementing an Area Restrictions and Closure Plan.

**17. Smoke Management:** Within their authorities, the Agencies agree to cooperate in smoke management programs. Agencies will work together to minimize or prevent smoke impacts to

communities while using fire to accomplish land management objectives or reduce hazardous fuels. Agencies will abide by the policies of the ND Department of Health.

**18. Fire Weather:** The State will be permitted to use the Federal weather data processing system. Use of the system may be from state owned locations. The State may access the system using Federal account numbers.

The Agencies will cooperate in the gathering, processing, and use of fire weather data including the Rangeland Fire Danger Index (RFDI), the use of remote automatic weather stations (RAWS) and joint use of computer software. If deletions or additions to the system are necessary, the Agencies will jointly evaluate and agree in writing to those deletions or additions. Costs for the operation and maintenance of RAWS shall be set forth in AOPs.

**19. Training:** The Agencies will cooperate in all aspects of wildland fire, prescribed fire, and aviation training. This should include training scheduling, course development, course presentation, and selection of trainees. As applicable, training will meet National Wildfire Coordinating Group (NWCG) 310-1 standards in conjunction with the course coordinator and field manager course guides. Local agencies will be included in this cooperative approach whenever practical. *See Exhibit D item 5 Billing Procedures for Other Fire and Aviation Protection Activities.*

**20. Procurement:** The procurement laws of the Protecting Agency will apply in the procurement of resources. Procurement costs by one Agency in support of another that are reasonable and prudent may be charged to the Protecting Agency. Delegations of procurement authority for an incident shall be made in accordance with Agency policy (see Interagency Incident Business Management Handbook, NWCG Handbook 2, Chapter 20).

**21. Shared Equipment:** Equipment shared by one Agency with another Agency shall become the responsibility of the receiving Agency and shall be returned to the lending Agency in the same condition as when received normal wear and tear excepted. The receiving Agency will pay or reimburse for damages in excess of normal wear and tear, and will replace or reimburse items lost or destroyed, except for damages occurring as a result of negligence by the lending Agency.

Equipment transported or operated by Supporting Agency personnel in transit to or from an incident is considered under the control of the Supporting Agency. Equipment damaged while under the control of the Protecting Agency will be repaired at the expense of the Protecting Agency unless damage occurred because of negligence by the Supporting Agency.

**22. Licensing:** Drivers and equipment operators will hold appropriate operating licenses to meet their employing agency regulations and policies. Agency employees may operate each other's vehicles provided the operator meets the current operating guidelines and training requirements of their own Agency. Any Agency may impose more restrictive standards for their employees, but will recognize that other Agency standards are reasonable, prudent, and acceptable.

**23. Duration of Assignment:** Consideration must be given to the health and safety of personnel when assigned to fires. Incident Commanders will release suppression forces to the respective Agencies as soon as priorities allow. Incident Commanders shall adhere to rest and rotation policies described in the Northern Rockies Mobilization Guide (NRMG).

**24. Burning and Campfire Permits:** Burning procedures where applicable will be included in annual operating plans.

**25. Use of National Guard Resources:** The Department of Emergency Services maintains provisions for utilization of National Guard resources through its State Emergency Operations Plan. The SOC coordinates requests for North Dakota National Guard assistance. The Governor's Office, in cooperation with the National Guard and DES, issues a letter activating these resources. The Federal Agencies, where applicable, shall upon receipt of the State's billing, reimburse the State for the costs of assistance. *See Exhibit D item #3 Reimbursable Costs, part (i).*

**26. Notification of Federal Excess Personal Property:** Every effort will be made to notify the State of fire related personal property and equipment that is to become excess to the needs of the Federal Agencies, for use in the State cooperative fire program.

**27. Non-Wildland Fire and Medical Aid Responses:** This Agreement is limited to wildland fire management and does not include non-wildland fire management or medical aid responses. However, this Agreement does not preclude Agencies from supporting one another in emergency situations as provided by their respective policies, procedures, or other agreements. In the event of a Presidential Emergency or Disaster Declaration, the agencies may assist one another under the provisions of this Agreement as long as the requested resources are available and all other provisions are met.

## **PROTECTION PRIORITIES, METHODS and RESPONSIBILITIES**

**28. Protection Priorities:** The following are agreed to priorities for protection:

- A. Threat to human life.
- B. Threat to communities, other property and improvements, and natural and cultural resources will be based on human health and safety, and relative values to be protected, commensurate with fire management costs.

**29. Methods of Fire Protection and Suppression:** One agency may provide fire protection services on lands under the jurisdiction of another. The following are different methods to provide those services:

- A. Reciprocal (Mutual Aid) Fire Protection: As deemed appropriate, the Agencies may, by agreement in AOPs, establish reciprocal initial attack zones for lands of intermingled or adjoining protection responsibility. Within such zones, a Supporting Agency will, upon request or voluntarily, take initial attack action in support of the Protecting Agency.

The Protecting Agency will not be required to reimburse the Supporting Agency for costs incurred following the initial dispatch of any ground resources to the fire for the duration of the mutual aid period. The length of the mutual aid period should not exceed 24 hours and will be documented in the AOP. Aviation resources will be outlined separately for Mutual aid response in the annual operating plans as applicable.

B. Reimbursable (Cooperative) Fire Protection: The Protecting Agency may request suppression resources of other Agencies for its protection work. Such resources shall be paid for by the Protecting Agency. *See Exhibit D item #3 Reimbursable Costs.*

**30. Structure Fire Suppression:** Neither the Federal Agencies nor the State are responsible for engaging in structure fire suppression activities. Federal Agencies and the State can and will support structure fire protection on wildland fires on land administered or protected through agreements by those Agencies. Structural fire protection may also be provided across jurisdictional boundaries as prescribed in existing mutual aid agreements between respective Agencies.

**31. Reimbursable Assistance (Assistance by Hire):** Reimbursable Assistance must be requested by the Protecting Agency or supplied through preplanned (automatic) dispatching or mutual aid systems.

Reimbursable Assistance must be recorded by a resource order within the dispatching system or any official Agency document of the Protecting and Supporting Agencies, or documented by the Incident Commander in a fire report. Resources not documented in this manner are not reimbursable. The salary or wages of personnel shall be at the actual cost to the Supporting Agency for work time, from the time of departure until return to official station, including premium pay if and when it is earned, under the policies, laws or rules governing the employees of the Supporting Agency. *See Exhibit C Glossary of Terms and Exhibit D item #3 Reimbursable Costs.*

## **FIRE SUPPRESSION**

**32. Closest Forces Concept:** The primary guiding principle for dispatch of initial and extended suppression resources will be the use of the closest available and appropriate resources, regardless of the ownership of those resources, and regardless of which Agency has protection responsibility.

**33. Appropriate Management Response:** All fire suppression action conducted on lands of another Agency shall be consistent with that Agency's fire suppression policy and the terms of this Agreement.

A "Special Management Considerations", addressing resources and other management concerns, section in the AOP will be used by unit administrators of the jurisdictional agencies to identify areas of special management consideration and to communicate appropriate fire management actions and any restrictions in firefighting tactical techniques to an Incident Commander. All suppression costs with respect to application of special management considerations will be paid by the Protecting Agency.

Unless otherwise agreed, the Jurisdictional Agency will provide an Agency representative or appropriate environmental technical specialist to advise a Protecting Agency of any special management considerations that may influence suppression action. The cost of these individuals shall be paid by the Jurisdictional Agency. The Incident Commander will incorporate special management considerations into the incident planning process, subject to the delegation of authority.

**34. Independent Action on Lands Protected by Another Agency:** Nothing herein shall prohibit any Agency, on its own initiative and without reimbursement, from entering lands known to be protected by another Agency to engage in suppression of wildland fires, when such fires are a threat to lands within that Agency's protection responsibility. In such instances, the Agency taking action will promptly notify the Protecting Agency. Actions taken will be consistent with the Protecting Agency's suppression policies. *See related Provision #33 Appropriate Management Response.*

**35. Wildland Fire Situation Analysis (WFSa) and Delegation of Authority:** Federal Agency policy requires that a WFSa be completed for all fires, which escape initial suppression action. Responsibility for development of a WFSa shall be the joint responsibility of the Agency Line Officer from the Jurisdictional Agency and the Protecting Agency.

The Federal Agencies policies require that a Delegation of Authority be used to transfer authority and manage actions on an incident from the Agency Administrator to the Incident Commander. The Protecting Agency and the appropriate Agency Administrator from the Jurisdictional Agency will jointly develop the Delegation of Authority.

**36. Determination of Cause and Preservation of Evidence:** As initial attack is taken on a fire, the initial attack forces will immediately preserve information and evidence pertaining to the origin and cause of the fire, regardless of jurisdiction. To the extent permitted by Federal and State law, the Protecting Agency will provide investigation files relative to the fire to the Jurisdictional Agency.

**37. Fire Notifications:** Each Agency will promptly notify the appropriate Protecting Agency of fires burning on or threatening lands for which the Protecting Agency has protection responsibilities. Likewise, Protecting Agencies will promptly inform Jurisdictional Agencies whenever they take action on fires for which the Protecting Agency is responsible.

**38. Wildland Fire Use:** The Agencies agree to cooperate in the implementation of wildland fire use. Any Wildland Fire Use fire burning out of prescription is considered a wildfire and is the financial responsibility of the Jurisdictional Agency. The Protecting Agency will be responsible for the management of the fire. *See Exhibit D item #5 Billing Procedures for Other Fire and Aviation Protection Activities.*

**39. Boundary Fires:** A fire burning on, or adjacent to a protection boundary will be the responsibility of the Protecting Agencies on either side of the boundary. Neither party will assume the other party is aware of the fire or that the other party will take action. Each party will make every reasonable effort to communicate with the other concerning the fire. The initial attack responders of both Agencies shall mutually agree upon fire suppression objectives, command, strategy, and the commitment and funding of Agency suppression resources. When a fire burns on both sides of a protection boundary, except under the conditions of reciprocal fire protection or voluntary independent action (*See Provision #29 Methods of Fire Protection and Suppression*), a Cost Share Agreement shall be prepared and approved for all actions. *See Exhibit D item 4 (g) Procedures for Fire Suppression Billings –Boundary Fire Billings, provision #46 Supplements, C. – Cost Share Agreements and Exhibit G for a sample Cost Share Agreement.*

**40. Suppression Damage and Rehabilitation:** All damage to improvements, including, but not limited to fences, roads, water systems, camps, and helispots/bases; and to natural land features, that are caused by actions related to fire suppression, including, but not limited to, construction of fire line and safety zones, and dozer piles, will be paid for, where appropriate, by the Protecting Agency. The Jurisdictional Agency shall be involved early in this process to assure all concerns and issues are identified and mitigated in a timely manner.

Rehabilitation of land/natural resources damaged by wildland fire is the responsibility of the Jurisdictional Agency unless otherwise agreed to in writing. The Protecting Agency will include the participation of the Rehabilitation Team during on-going suppression operations to the extent such inclusion is safe and feasible. Rehabilitation Teams are ordered and paid for by the Jurisdictional Agency.

**41. Law Enforcement and Negligent Fires:** In criminal and civil actions, where applicable, each Agency shall render mutual assistance in law enforcement activities and the gathering of evidence, and in criminal or civil prosecutions, to the fullest extent practical. Each Agency shall be responsible for fire related law enforcement activities, litigation and court proceedings resulting from wildfires that originate on their respective lands.

Any Agency protecting lands for another may independently process and or prosecute civil claims to recover suppression costs for intentionally or negligently lit fires; however, Federal Officials should be aware that such actions must normally be taken in the name of the State for fires that occur solely on state or private land. *See Exhibit D item 4 (f) Procedures for Fire Suppression Billings - Negligent Fire Billings and Provision #51 Suppression and Damage Collection.*

**42. Cooperative Law Enforcement Agreements:** The USFS has entered into numerous Cooperative Law Enforcement Agreements with County Sheriff's Departments and other entities throughout the State of North Dakota. These agreements are authorized under the provisions of the Cooperative Law Enforcement Act of August 10, 1971, P.L. 92-82, 16 U.S.C. 551a. This authority is specific to the USDA USFS. The purpose of these agreements is to enhance State and local law enforcement in connection with activities on National Grasslands and provide for reimbursement to the law enforcement entity for the intensified portion of this effort. When the USFS is the Protecting Agency law enforcement Cooperative Law Enforcement Agreements may be utilized. Other agencies are not authorized to utilize these agreements.

**43. Accident Investigations:** Whenever an accident occurs involving the equipment or personnel of a Supporting Agency, the Protecting Agency shall notify the Jurisdictional and the Supporting Agency. As soon as practical, the Protecting Agency shall initiate an investigation of the accident. The investigation shall be conducted by a team made up of representatives from the affected Agencies and shall be sufficient to meet the legal needs of each Agency.

**44. Fire Reports:** On incidents where the Protecting Agency is not the Jurisdictional Agency, the Protecting Agency will furnish a copy of their fire report to the Jurisdictional Agency within thirty days after the fire is declared out.

**45. Post-Fire Analysis/Agency After Action Reviews:** To benefit from lessons learned on fire incidents falling under the terms of this Agreement, the Agencies may conduct Agency reviews or post-fire analysis. Such analysis/reviews will be conducted jointly by the Protecting and

Jurisdictional Agencies. These analysis/reviews may be requested by the Jurisdictional, Supporting or Protecting Agencies.

## **SUPPLEMENTS TO THIS AGREEMENT**

**46. Supplements:** The following Supplements are authorized under the terms of this agreement and thereby, subject to the terms and conditions of this Agreement.

### **A. Annual Operating Plans (AOPs):**

**Statewide AOPs:** An annual plan generated at the state level that identifies and establishes standard procedures and processes across all Agencies for implementing the terms of this Agreement. Statewide AOPs will be developed and executed by May 1. The fire directors of each Agency are authorized to develop and approve Statewide AOPs.

**Zone and or Local AOPs:** An annual plan generated at the zone or local level that identifies and establishes standard procedures and processes such as but not limited to: local dispatching procedures, initial attack, and communications. For implementing the terms of this agreement, Local Agency Administrators are responsible for the development and approval of AOPs. Zone and/or local AOPs will be developed and approved annually by May 1. *See Exhibit E for a sample AOP.*

**B. Project and Financial Plans:** The Agencies may jointly conduct mutual interest projects within their authority. These projects may include activities such as preparedness, fire rehabilitation, fuels management, prescribed fire, fire analysis/planning, training, prevention, public affairs, wildland urban interface coordination, and other beneficial efforts. Agency Administrators are responsible for the development and approval of Project and Financial Plans. *See Exhibit F for a sample Project and Financial Plan.*

**C. Cost Share Agreements:** A Cost Share Agreement will be prepared by the responsible unit administrator(s) or their authorized representatives, except under the conditions of reciprocal fire protection or independent action, when there is (1) a multi-jurisdictional incident or (2) an incident which threatens or burns across direct protection boundaries of the State and Federal Agencies. *See Exhibit G for a sample Cost Share Agreement.*

The Agencies agree that all reasonable and necessary costs incurred to meet the protection responsibilities within each Agency's Direct Protection Area will be the responsibility of that Agency. This approach can be superseded by an incident specific Cost Share Agreement based on some other mutually agreed to equitable basis. For temporary support level functions or facilities established during periods of extraordinary fire activity, similar cost sharing procedures may be used by the involved Agencies. *See related Provision #39 Boundary Fires and Exhibit D item #4 (g) Procedures for Fire Suppression Billings - Boundary Fire Billings.*

## LIABILITIES, CLAIMS and DAMAGE COLLECTIONS

**47. Waiver:** Subject to the provisions contained in Provision #21 “Shared Equipment”, the Agencies shall each be responsible for their own losses arising out of the performance of this Agreement and each Agency hereby waives any claim against any other Agency for any loss, damage, personal injury, or death of its employees or agents, occurring as a consequence of the performance of this Agreement; provided, this provision shall not relieve any Agency from responsibility for claims of third parties for losses for which the Agency is otherwise legally liable.

The federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the federal agency or an employee of the federal government in carrying out the provisions of the **Stafford Act**.

For the purposes of employment status and benefits, and in the context of a **Stafford Act response**, including compensation coverage, employees of the federal government assisting cooperating state agencies at the request of the State shall be treated as employees of the federal government.

**48. State Liability:** When State personnel are suppressing wildfires on lands for which a Federal Agency has protection responsibility, the State shall not be liable to the United States or any landowner for any damage in consequence of the performance of work under this section of this Agreement.

**49. Federal Liability:** When Federal Agencies’ personnel are suppressing wildfires on lands for which the State has the protection responsibility, the United States shall not be liable to the State or any landowner for any damage in consequence of the performance of work under this section of this Agreement.

**50. Third Party Claims:** Third party claims should be processed by the Protecting Agency.

**51. Suppression and Damage Collection:** Agencies can collect damages and suppression costs from third parties (civil actions for recovery will be taken independently) under the provisions of Federal and State statutes and common law in the manner provided by applicable law. When such collections have the effect of reducing the net expenditures of the billing Agency, the bill will be reduced proportionately to the amount collected. *See Exhibit D item 4 (f) Procedures for Fire Suppression Billings - Negligent Fire Billings.*

To the extent that the cost of fire suppression on state and private lands incurred by Federal Agencies will not be reimbursed by the State pursuant to any provision of this Agreement, the United States shall be subrogated to and be entitled to all rights and remedies which the State would have had to collect such suppression costs pursuant to State law, from the person or persons responsible for the existence or spread of a fire requiring suppression action. If requested by the United States, the State shall transfer to the United States all rights and remedies against any entity necessary in order to perfect this right of subrogation.

To the extent that the cost of fire suppression on Federal Agencies’ lands incurred by the State will not be reimbursed by the Federal Agencies pursuant to any provision of this Agreement, the

State shall be subrogated to and be entitled to all rights and remedies which the Federal Agencies would have had to collect such suppression costs pursuant to Federal law, including but not limited to the Code of Federal Regulations, from the person or persons responsible for the existence or spread of a fire requiring suppression action. If requested by the State, the Federal agencies shall transfer to the State all rights and remedies against any entity necessary in order to perfect this right of subrogation.

## GENERAL PROVISIONS

**52. Appropriated Fund Limitation:** Nothing in this Agreement shall be interpreted as involving the Agencies in any contract or other obligation for the future payment of funds in excess of that approved and made available for payment under this Agreement.

**53. Performance:** Any party shall have the right to enforce this Agreement by any available remedy under the laws of the United States or the State of North Dakota.

**54. Principal Contacts:** The principal contacts for this Agreement are listed in Exhibit B. The principal contacts will make themselves available at mutually agreeable times, for continuing consultation to discuss the conditions covered by this Agreement.

**55. Termination of Previous Arrangements:** Execution of this Agreement terminates and replaces Cooperative Fire Management Agreement # 00-FI-110115600-024 executed between the Agencies on October 5, 2000. Where local and or zone fire protection agreements conflict with this Agreement, this Agreement will take precedence. Such agreements will be reviewed, and modified or terminated, as appropriate.

**56. Modifications:** Modifications within the scope of this Agreement shall be made by mutual consent of the Agencies, by the issuance of a written modification, signed and dated by all Agencies, prior to any changes being performed. No Agency is obligated to fund any changes not properly approved in advance. Exhibits A through G to this Agreement will be modified in the manner described in the Purpose section of this Agreement. Statewide AOPs will be developed and modified in the manner described in Provision #43 Supplements, A. – AOP's.

In the interest of efficiency, modifications to this Agreement will be distributed electronically for hard copy signature. Signatory officials should initially respond with an electronic signature and date, followed by mailing their original hard copy signature to the lead principle agency contact listed in Exhibit B. Once all hard copy signatures have been obtained an electronic version of the modification will be emailed to the principal contacts listed in Exhibit B. Copies of the hard copy signatures will be made available to the Agencies upon their request.

**57. Termination:** Any Agency may, with one year advance notice in writing, terminate their participation in this Agreement in whole, or in part, at any time before the date of expiration, unless extended.

**58. Authorized Representatives:** By signature below, all signatories to this Agreement certify that the individuals (Agency or Party Representative, Agency or Party Administrator, Unit Administrator) listed in this Agreement are authorized to act in their respective areas for matters related to this Agreement.

**59. Commencement/Expiration Date:** This Agreement is executed as of the date of last signature and is effective through **December 31, 2011** at which time it will expire, unless extended.

The authority and format of this Agreement has been reviewed and approved for signature. In witness whereof, the Agencies hereto have executed this Agreement as of the last date written below.

/s/ Larry Kotchman 03/05/07  
 LARRY KOTCHMAN Date  
 State Forester  
 North Dakota  
 North Dakota Forest Service

/s/ Mary L. Clark 03/09/07  
 Mary L. Clark Date  
 Contracting Officer  
 USDI, Bureau of Land Management  
 Montana and Dakotas

/s/ Gene Terland 03/19/07  
 GENE TERLAND Date  
 State Director  
 USDI, Bureau of Land Management  
 Montana and Dakotas

/s/ Ronald Eilefson 03/19/07  
 Ronald Eilefson Date  
 Contracting Officer  
 USDI, National Park Service  
 Midwest Region

/s/ Ernest Quintana 03/28/07  
 ERNEST QUINTANA Date  
 Regional Director  
 USDI, National Park Service  
 Midwest Region

/s/ Richard Zephier 02/27/07  
 Richard Zephier Date  
 Contracting Officer  
 USDI, Bureau of Indian Affairs  
 Great Plains Region

/s/ William Benjarmin 03/09/07  
 WILLIAM BENJARMIN Date  
 Regional Director  
 USDI, Bureau of Indian Affairs  
 Great Plains Region

/s/ (signature on file) 06/29/07  
 Date  
 Contracting Officer  
 USDI, Fish and Wildlife Service  
 Mountain-Prairie Region

/s/ Sharon R.(signature on file) 06/29/07  
 MITCH KING Date  
 Regional Director  
 USDI, Fish and Wildlife Service  
 Mountain-Prairie Region

/s/ Elaine Hilliard for 02/16/07  
 Roger Henderson Date  
 Agreements Specialist  
 US Forest Service  
 Northern Region

/s/ Kathleen A. McAllister 02/16/07  
 KATHLEEN A. MCALLISTER Date  
 Acting Regional Forester  
 US Forest Service  
 Northern Region



## EXHIBIT A

### STATUTORY AUTHORITIES

The following is a brief overview of authorities available and most likely to be used in conjunction with this Agreement.

#### FEDERAL AGENCIES

1. The Reciprocal Fire Act of May 27, 1955 (42 U.S.C. 1856a, Public Law 84-46). This Act authorizes Federal Agencies to enter into cooperative agreements with state and local governments for mutual aid in fire protection.
2. Economy Act of June 30, 1932 (31 U.S.C. 1535, Public Law 97-258 and 98-216). Section 601 of this Act authorizes one Federal agency to requisition work, services, supplies, materials, or equipment from another Federal Agency.
3. Granger-Thye Act of April 24, 1950 (16 U.S.C. 572). This Act conditionally authorizes the USFS to perform certain work that directly benefits the depositor.
4. Cooperative Funds Act of June 30, 1914 (16 U.S.C. 498 as amended by Public Law 104-127). This Act authorizes the USFS to accept funds as contributions toward cooperative work in forest investigations or protection, management and improvement of the National Forest System.
5. Cooperative Funds and Deposits Act of December 12, 1975 (16 U.S.C. 565a1-a3, Public Law 94-148). This Act authorizes the USFS to cooperate with other parties to accomplish such things as forestry protection, fire protection and fuels management.
6. Cooperative Forestry Assistance Act of 1978, as amended (16 U.S.C. 2101-2114, Public Law 95-313). This Act authorizes the USFS to work through and in cooperation with State foresters or equivalent agencies, and other countries in implementing technical programs affecting non-Federal forest lands. Section 10 Rural Fire Prevention and Control of this Act authorizes cooperation including developing systems and methods for the prevention, control, suppression, and prescribed use of fires on non-Federal lands and to organize, train, and equip local firefighting forces.
7. Timber Protection Act of September 20, 1922; 42 Stat. 857, 16 USC 594. This Act authorizes the Secretary of Interior to protect timber owned by the U.S. Government from fire, disease, or insect diseases.
8. Taylor Grazing Act of June 28, 1934; 48 Stat. 1269, 43 USC 315. This Act authorizes the Secretary of Interior to establish grazing districts of vacant, unappropriated, and unreserved lands from any part of public domain.
9. National Indian Forest Resources Management Act; Public Law 101-630, Title 3. This Act requires Secretary of Interior approval for management plans.

10. National Park Service Organic Act (16 U.S.C.1). An Act to establish a National Park Service.
11. National Wildlife Refuge System Improvement Act of 1997; Public Law 105-57. This Act amends the National Wildlife Refuge System Administration Act of 1966 to improve the management of the National Wildlife Refuge system.
12. National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee, 80 Stat. 927, as amended). This Act provides guidelines and directives for administration and management of all areas in the system, including “wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management area, or waterfowl production area.”
13. Robert T. Stafford Disaster Relief and Emergency Assistance Act; Public Law 93-288 as amended. In the event of a presidential disaster declaration this Act authorizes Federal Agencies to provide an orderly and continuing means of assistance to state and local governments in carrying out their responsibilities to alleviate the suffering and damage which results from such disasters.
14. The Homeland Security Act of 2002 ( H.R. 5005-8): Established the Department of Homeland Security as an executive department to prevent terrorist attacks within the United States to: A) prevent terrorist attacks within the United States; (B) reduce the vulnerability of the United States to terrorism; and (C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States."
15. Homeland Security Presidential Directive – 5 (HSPD-5): Enhances the ability of the United States to manage domestic incidents by establishing a single, comprehensive national incident management system.

## **STATE**

1. North Dakota Century Code – Chapter 4-19. Authorizes the North Dakota State Forester to provide assistance to landowners, producers, and public bodies relating to forestry, reforestation, protection of forest resources, prevention and suppression of fires, planting of trees and shrubs, and the growing, harvesting, marketing and management of forest resources.
2. North Dakota Century Code – Chapter 18-02. Authorizes the North Dakota State Forester to cooperate and contract jointly or severally with departments and agencies of this and other states, with federal agencies, with counties, townships or other political subdivisions, including rural fire protection districts, rural fire departments, municipal and other corporations and associations, or with individuals, in the best interests of the people and the state in forest surveys, research in forestry, forest protection, including assisting fire departments in protection of forests and other resources and in assisting landowners to secure adoption of better forestry practices.
3. North Dakota Century Code – Chapter 18-10. Authorizes the establishments of rural fire protection districts to organize, equip, maintain and supervise a fire department or company,

determine a general fire protection policy, levy taxes for fire protection, cooperate or contract with any federal, state or local government agency for fire protection service, and to purchase or lease such firefighting equipment, ambulances or other emergency vehicles, supplies and other real or personal property as is necessary and proper to carry out a general fire protection program.

4. North Dakota Century Code – Chapter 37-17.1 – North Dakota Disaster Act of 1985. Authorizes and provides for coordination of emergency management activities by agencies and officers of the state, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate, and a statewide emergency management system embodying all aspects of mitigation, preparedness, response and recovery.

## EXHIBIT B

### PRINCIPAL CONTACTS

**The lead Principle Agency for Agreement Coordination is the USDA Forest Service\***

A fully executed version of this Agreement, the Statewide AOP, frequently asked questions and completed samples of AOPs, Cost Share Agreements and Project and Financial Plans will be maintained by the Lead Principal Agency and can be found at: <http://www.fs.fed.us/r1/fire/nrcc>

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Fire Management Coordinator  
North Dakota Forest Service

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701-328-9947 (fax)  
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Jim Kelton  
Regional Fire Management Coordinator  
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## EXHIBIT C

### GLOSSARY OF TERMS

Words and phrases used in this Agreement may have different meanings or interpretations for different readers. In order to reach a common understanding the words and phrases used in this Agreement are defined as follows:

**Administrative Charges:** Indirect administrative costs that cannot be readily identified with specifically financed programs and functions.

**Agency Administrator:** Agency officials who are signatory to this Agreement, as follows: North Dakota Forest Service, State Forester; Bureau of Land Management, State Director; USDA Forest Service, Regional Forester; Bureau of Indian Affairs, Regional Director; National Park Service, Regional Director; US Fish & Wildlife Service, Regional Director.

**Agency Representative:** An individual assigned to an incident with full authority to make decisions on all matters affecting that Agency's participation at the incident.

**Annual Operating Plan:** An annual plan generated at the statewide, zone, or local level, authorized by the appropriate officials, used for implementing the terms of the Cooperative Fire Protection Agreement for their respective areas of responsibilities.

**Appropriate Management Response:** Specific actions taken in response to a wildland fire to implement protection and fire use objectives.

**Boundary Fire:** This includes (i) a fire burning jointly on lands of more than one party and the boundary line is known, (ii) where the fire location is known, but the protection boundary on the ground is uncertain, or (iii) where the location of a reported fire is uncertain in relation to the protection boundary.

Once the exact location of the fire is determined in relation to the protection boundary, it ceases to be a boundary fire unless falling into category (i) above.

**Catastrophic Incident:** Any natural or human caused incident, including terrorism, which results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, national morale, and/or government functions. A catastrophic event could result in sustained national impacts over a prolonged period of time; almost immediately exceeds resources normally available to State, local, tribal, and private-sector authorities in the impacted area; and significantly interrupts governmental operations and emergency services to such an extent that national security could be threatened. All catastrophic events are Incidents of National Significance.

**Closest Forces Concept:** This is the philosophy of committing the closest available appropriate resources, regardless of the Agency, for initial attack or for extended attack.

**Contract (Fee Basis) Fire Protection:** Where one Agency assumes fire protection responsibilities on lands under the jurisdiction of another for an agreed upon fee.

**Cost Share Agreement:** A document prepared between Agencies to share costs on a multi-jurisdictional incident or an incident that burns across boundaries of direct protection areas of the Agencies.

**Direct Protection Area:** That area which, by law or identified/authorized pursuant to the terms of this Agreement, is provided wildland fire protection by an Agency. This may include land protected under exchange or payment for protection.

**Disaster:** See **Major Disaster**.

**Emergency:** As defined by the Stafford Act, an emergency is “any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.”

**Emergency Support Function (ESF):** A grouping of government and certain private-sector capabilities into an organizational structure to provide the support, resources, program implementation, and services that are most likely to be needed to save lives, protect property and the environment, restore essential services and critical infrastructure, and help victims and communities return to normal, when feasible, following domestic incidents. The ESFs serve as the primary operational-level mechanism to provide assistance to State, local, and tribal governments or to federal departments and agencies conducting missions of primary Federal responsibility.

**Equipment:** Equipment includes both accountable and durable property. Equipment does not include consumable goods and/or supplies. See the Interagency Incident Business Management Handbook, Chapter 30, for further definitions of accountable, durable, and consumable goods.

**Escaped Fire:** A fire that has exceeded, or is anticipated to exceed pre-planned initial attack capabilities or fire management direction.

**ESF Primary Agency:** A Federal Agency designated as an Emergency Support Function primary agency serves as a Federal executive agency under the Federal Coordinating Officer (FCO) to accomplish the ESF Mission.

**Exchange Fire Protection:** When two Agencies exchange fire protection responsibilities with one another on lands under their jurisdiction.

**Federal Excess Personal Property:** Federally owned personal property and equipment excess to a Federal Agency’s needs that can be loaned to the State or rural fire departments for use in fire management activities.

**Fire Protection Activities:** Any or all activities that relate to managing wildland fire or natural fuels on lands under the jurisdiction of any party to this Agreement. Activities include but are

not limited to: planning, prevention, detection, training, suppression of wildland fires, fire use, and planning and conducting fuels management activities.

**Hazardous Material:** For the purposes of ESF #1, hazardous material is a substance or material, including a hazardous substance, that has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated (see 49 CFR 171.8). For the purposes of ESF #10 and the Oil and Hazardous Materials Incident Annex, the term is intended to mean hazardous substances, pollutants, and contaminants as defined by the NCP.

**Incident of National Significance:** Based on criteria established in HSPD-5 (paragraph 4), an actual or potential high-impact event that requires a coordinated and effective response by and appropriate combination of Federal, State, local, tribal, nongovernmental, and/or private-sector entities in order to save lives and minimize damage, and provide the basis for long-term community recovery and mitigation activities.

**Initial Attack Zone:** An identified area in which predetermined resources would normally be the initial resource to respond to an incident in accordance with a pre-existing AOP or mobilization guide.

**Jurisdictional Agency:** The Agency that has overall land and resource management and/or protection responsibility as provided by Federal or State law.

**Local or Unit Agency Administrator:** Field unit Agency officials who have jurisdictional responsibilities for Agency lands. Agency officials who are signatory to zone and local AOPs such as: Montana Department of Natural Resources and Conservation, Area Manager; Bureau of Land Management, Field Manager; USDA Forest Service, Forest Supervisor; Bureau of Indian Affairs, Superintendent; National Park Service, Park Superintendent; US Fish and Wildlife Service, Refuge Manager.

**Local Government:** A local government is any county, municipality, city, town, township, public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; any Indian tribal government or authorized tribal organization; and any rural community, unincorporated town or village, or other public entity.

**Local Government Fire Forces:** Local Government Fire Forces include: (1) county or municipal (e.g. town or city) equipment and personnel, (2) volunteer and paid personnel, from fire service organization(s), and (3) county and fire service organization equipment and apparatus.

**Major Disaster:** As defined by the Stafford Act, any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought) or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this act to supplement the efforts and available resources of States, local governments, and

disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

**Mission Assignment:** The vehicle used by DHS/EPR/FEMA to support federal operations in a Stafford Act major disaster or emergency declaration. It orders immediate, short-term emergency response assistance when an applicable State or local government is overwhelmed by the event and lacks the capability to perform, or contract for, the necessary work.

**Mutual Aid:** Assistance provided by a Supporting Agency at no cost to the Protecting Agency. Mutual aid is limited to those initial attack resources that have been determined to be appropriate and which are preplanned and shown in AOPs or mobilization guides.

**Overlapping Protection:** Areas where local government fire protection overlaps federal or state protection areas.

**Prescribed Fire:** A fire ignited by management actions to meet specific objectives. A written approved prescribed fire burn plan must exist and all Agency requirements must be met, prior to ignition.

**Preparedness:** Activities in advance of fire occurrence to ensure effective suppression action. Includes training and placement of personnel, planning, procuring and maintaining equipment, development of fire defense improvements, and maintaining cooperative arrangements with other Agencies.

**Prevention:** Activities directed at reducing the number of person caused fires, including public education, law enforcement, engineering, dissemination of information, and reduction of hazards.

**Protecting Agency:** The Agency responsible for providing direct wildland fire protection to a given area, pursuant to this Agreement.

**Protection Area:** The area which, by law or identified or authorized pursuant to the terms of this Agreement, is provided wildland fire protection by local forces, the State, or by a Federal Agency. This may include lands protected under exchange or payment for protection.

**Protection Area Maps:** Official maps which identify areas of direct fire protection responsibility for each Agency.

**Protection Boundaries:** Mutually agreed upon boundaries delineated on maps, or otherwise described identifying areas of direct fire protection.

**Reciprocal Fire Protection:** The act of helping the Protecting Agency, at no cost for a negotiated period of time not to exceed 24 hours, to suppress wildland fires. Reciprocity is attained by agreeing between each other on the kind, locations and numbers of fire fighting resources that will automatically initial attack a wildland fire regardless of the Protecting Agency. The kind, locations, and numbers of resources, which constitute reciprocity, shall be defined in or through the AOPs. Reciprocity may be thought of as the implementing mechanism of the closest forces concept.

**Reimbursable Costs:** Costs resulting from fire protection activities, which will be paid for by the requesting Agency per the conditions of this Agreement and the approved AOP.

**Reimbursable Assistance (Assistance by Hire):** Those fire suppression resources supplied in support of the Protecting Agency and which are paid for by the Protecting Agency.

**Resources:** All personnel, items of equipment and aircraft available for assignment of tasks.

**Structure Fire Protection:** Protecting a structure from the threat of damage from an advancing wildland fire. This involves the use of standard wildland protection tactics, control methods, and equipment, including fire control lines and the extinguishments of spot fires near or on the structure.

**Structure Fire Suppression:** Interior or exterior actions taken to suppress and extinguish a burning structure or improvement associated with standard fire protection equipment and training.

**Supporting Agency:** An Agency that provides suppression or other support and resources to the Protecting Agency.

**Suppression:** All the work of confining and extinguishing a fire beginning with its discovery through the conclusion of the incident.

**Terrorism:** Any activity that (1) involves an act that (a) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and (b) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and (2) appears to be intended (a) to intimidate or coerce a civilian population; (b) to influence the policy of a government by intimidation or coercion; or (c) to affect the conduct of a government by mass destruction, assassination, or kidnapping.

**Threat:** An indication of possible violence, harm, or danger.

**Weapon of Mass Destruction (WMD):** As defined in Title 18, U.S.C. § 2332a: (1) any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than 4 ounces, or missile having an explosive or incendiary charge of more than one-quarter ounce, or mine or similar device; (2) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors; (3) any weapon involving a disease organism; or (4) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

**Wildfire:** An unplanned, unwanted wildland fire, including unauthorized human-caused fires, escaped wildland fire use events, escaped prescribed fire projects, and all other wildland fires where the objective is to put the fire out.

**Wildland Fire:** Any non-structure fire that occurs in the wildland. Three distinct types of wildland fire have been defined and include wildfire, wildland fire use, and prescribed fire.

**Wildland Fire Use:** The application of the appropriate management response to naturally ignited wildland fires to accomplish specific resource management objectives in predefined designated areas outlined in Fire Management Plans.

## EXHIBIT D

### REIMBURSABLE BILLINGS AND PAYMENTS

**1. Payments under Compacts:** Payment for resources ordered under Compacts will be the responsibility of the State. Federal Agencies will reimburse the State for any Compact resources used on fires which they have the protection responsibility. *See related Agreement Provision #3 Compacts and this Exhibit item #4 (c), Procedures for Fire Suppression Billings - State Billings.*

**2. Payment of Local Government Fire Forces:** Local Government Fire Forces are employees or contractors of the State. The State makes all payments to the Local Government Fire Forces through execution of payment vouchers and similar documents. In many cases, the State will complete the employment paperwork prior to dispatch.

The closest Agency office will complete the paperwork for submission to the designated payment office as identified in the AOP. *See related Agreement Provision #7 Cooperation with Local Government Fire Forces.*

- 3. Reimbursable Costs:** Such costs may include, but are not limited to the following:
- a. Costs incurred for fire protection activity resources.
  - b. Agency costs for transportation, salary, benefits, and per diem of individuals assigned to an incident or other fire protection activities.
  - c. Additional support dispatching, warehousing, or transportation services requested through a resource order or any official Agency document.
  - d. Cost of equipment in support of fire protection activities, contract equipment costs, and operating costs for Agency equipment.
  - e. Operating supplies for equipment assigned to the fire protection activity such as fuel, oil, and equipment repairs.
  - f. Aircraft, airport fees, and retardant costs.
  - g. Agency owned equipment and supplies lost, damaged, or expended by the Supporting Agency, unless damage occurred because of negligence by the Supporting Agency.
  - h. Cost of reasonable and prudent supplies expended in support of the fire protection activity.
  - i. Charges from the State for State-controlled resources such as local government fire forces, or National Guard resources. *See this Exhibit item 2 Payment of Local Government Fire Forces and Agreement Provisions #25 Use of National Guard Resources.*
  - j. Costs for emergency acquisitions will be per the procedures identified in Interagency Incident Business Management Handbook, NRCG Supplement to Chapter 20.

**4. Procedures for Fire Suppression Billings:**

- a. Billing Content: Bills will be identified by fire name, location, jurisdictional unit, and assigned accounting codes. Bills will be itemized and supported by adequate documentation such as copies of the appropriate incident cost share agreement, AOP or Project and Financial Plan. Billings for fire suppression assistance will not include administrative charges.

b. Federal Billings: Federal Agencies will not bill each other for fire suppression support. Federal Agencies will submit bills to the State whenever the State is the Protecting Agency.

c. State Billings: When the State provides support on a fire occurring on lands within the State of North Dakota billing will be in accordance with the Statewide AOP. Anytime the State responds to a fire outside of North Dakota, regardless of the Protecting Agency, the State will submit their billings to the USFS. The only exceptions are in the case of Emergency Management Assistance Compact (EMAC) orders, in which the State will bill the ordering Agency directly. *See this Exhibit item #1 Payments under Compacts.*

d. Billing Estimates/Time Frames: The billing Agency shall submit a bill for each individual fire reimbursement no later than December 1 for the previous fire season, including an itemized list of expenditures. If the total cost is not known at the time of this billing, an estimate or a partial bill, so identified, may be submitted. A final bill will be issued by February 28 of the following calendar year.

e. Billing Due Dates: All billings will have a payment due date of 60 days after they are issued. If payment cannot be made within the 60-day period, then a 30-day extension, with written justification, can be requested. Agencies will follow their respective laws and regulations for debt collection.

f. Negligent Fire Billings: Where a third party may be billed, Agencies will provide the Protecting Agency with an estimate of their costs within 30 days after the fire is declared out and follow-up with actual costs when they become available. *See related Provision #41 Law Enforcement and Negligent Fires and #51 Suppression and Damage Collection.*

g. Boundary Fire Billings: Suppression costs for boundary fires will be prorated on gross acreage burned within respective fire protection areas or by some other mutually agreed to equitable basis. The basis for cost allocation will be documented by the Agencies in a cost share agreement and included in financial settlement files. *See related Agreement Provision #39 Boundary Fires and Exhibit G for a Sample Cost Share Agreement.*

h. Disputed Billings: Minor discrepancies in the final bill involving less than \$1,000 will not be adjusted. For bills having discrepancies of more than \$1,000, written notice should be mailed to the billing Agency within 60 days of receipt fully explaining the area of dispute. The uncontested portion of the bill should be paid and a new bill issued for the contested amount. Contested items will be resolved no later than 60 days following receipt of the written notice, and may be adjusted in the following year's bill if necessary.

**5. Billing Procedures for Other Fire and Aviation Protection Activities:** Billings for preparedness, prevention, prescribed fire, wildland fire use and other fire and aviation protection activities will be addressed in AOPs or a project and financial plan. Agencies may bill one another for preparedness and other fire activities, and administrative charges may be applied. Other provisions described above pertaining to suppression billings also apply to billings for other fire activities. *See related Provisions #11 Prescribed Fire and Fuels Management, #13 Aviation Operations, #15 Fire Prevention Policies, and #38 Wildland Fire Use.*

**6. Payments:** Payments will refer to the bill number and will be sent to the appropriate billing address.

**7. Payment Under Stafford Act Declarations:**

Transfers performed for this Agreement are under the Disaster Relief Act, 42 U.S.C. § 5147. This Agreement is automatically incorporated by reference into any Resource Order that is issued under it, constituting a binding obligation. The billings, inclusive of copies of this Agreement, the Mission Assignment and subsequent Resource Order(s), and expenditure documentation, will define the specific services, supplied goods and costs (by sub-object class code) for each order, and subsequent obligation and payment. Reimbursement payments for all-hazard incident response activities will be accomplished by submission of billings, which are inclusive of copies of the Resource Orders that reflect the Mission Assignment- requested services and goods, and the expenditure back-up documentation, to the primary ESF agency (i.e. the agency to issue the mission assignment or sub-tasking). The primary ESF agency will review, approve the documentation, and return to the sub-tasked agency for forwarding to FEMA for reimbursement.

a. Federal Reimbursable Assistance: Federal Reimbursable Assistance resources must be requested by the primary ESF Federal agency or supplied through established dispatch systems and must be recorded by the Mission Assignment and subsequent Resource Order process. Resources not documented in this manner are not reimbursable. Funds to cover eligible expenses will be provided through and limited by reimbursement from FEMA. Expenditures eligible for reimbursement for Federal Agencies in accordance with 44 CFR 206, subpart A, section 206.8 paragraph c includes:

- a) Overtime, travel and per diem of permanent federal agency personnel.
- b) Wages, travel and per diem of temporary federal agency personnel assigned solely to performance of services directed by the (FEMA) Associate Director or the (FEMA) Regional Director in the major disaster.
- c) Cost of work, services, and materials procured under contract for the purposes of providing assistance directed by the (FEMA) Associate Director or the Regional Director.
- d) Cost of materials, equipment, and supplies (including transportation, repair and maintenance) from regular stocks used in providing directed assistance.
- e) All costs incurred which are paid from trust, revolving, or other funds and whose reimbursement is required by law.
- f) Other costs submitted by an agency with written justification or otherwise agreed to in writing by the (FEMA) Associate Director or the (FEMA) Regional Director and the agency.

b. State/Tribal Reimbursement Assistance: State/Tribal reimbursement refers to those resources that are to be reimbursed by the primary ESF Federal agency. State/Tribal reimbursement resources must be requested by the primary ESF federal agency or supplied through established dispatch systems and must be recorded by the Mission Assignment and subsequent Resource Order process. Resources not documented in this manner are not reimbursable. Funds to cover eligible expenses will be provided through and limited by reimbursement from FEMA. Expenditures eligible for reimbursement include:

- a) Wages, overtime, travel and per diem of State/Tribal personnel.
- b) Wages, travel and per diem of temporary State/Tribal personnel assigned solely to performance of services directed by the (FEMA) Associate Director or the (FEMA) Regional Director in the major disaster.
- c) Cost of work, services, and materials procured under contract for the purposes of providing assistance directed by the (FEMA) Associate Director or the Regional Director.
- d) Cost of materials, equipment, and supplies (including transportation, repair and maintenance) from regular stocks used in providing directed assistance.
- e) All costs incurred which are paid from trust, revolving, or other funds and whose reimbursement is required by law.
- f) Other costs submitted by an agency with written justification or otherwise agreed to in writing by the (FEMA) Associate Director or the (FEMA) Regional Director and the agency.

**8. Examination and Audit:** Agencies shall be subject to examination and audit for three years after final payment under the terms of this Agreement. Examination shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administration.

**EXHIBIT E**  
**A SAMPLE**  
**ANNUAL OPERATING PLAN**  
**OUTLINE GUIDE**

Annual Operating Plans (AOP) will be working documents developed annually at appropriate levels for implementing the Cooperative Fire Protection Agreement. Operating Plans shall become a part of the Cooperative Agreement (See Provision #43 Supplements, A. – AOP’s of the Agreement and Exhibit C Glossary of Terms). The Statewide AOP covers specific actions and relationships that are best coordinated on a State level for continuity across the State. Zone and/or local operating plans are those generated to cover actions less than statewide in nature.

Plans must address items called for in the agreement and document processes and protocols between parties pertinent to working relationships, responsibilities, exchange of funds, etc. for the current year. The following outline provides a checklist of items deserving consideration in the development of operating plans:

**Authority and Identification of Parties** – quote the Cooperative Fire Protection Agreement between State and Federal Agencies; and identify State Areas, BLM Field Offices, BIA Reservations, Fish and Wildlife Service Refuges, National Parks and Monuments, National Forests, etc. involved.

**Purpose of Plan - Narrative**

**Definitions** – specific to zone and/or local processes

**Protection Areas** – including mutual aid areas

- Description
- Maps

**Operating Procedures** – specific to zone and/or local processes and protocols

- Dispatch
- Billings and Reimbursements
- WFSA Policy and Procedures
- Delegation of Authority
- Special Management Considerations
- Severity

**Wildfire Suppression Procedures** – specific to zone and/or local processes and protocols

- Boundary Fires
- Investigations
- Fire Reports
- Fire Notification
- Suppression Rehab
- Agency Resource List

**Prevention** - specific to zone and/or local processes and protocols

- ❑ Restrictions and Closures Plan
- ❑ Burning Permits
- ❑ Inspections
- ❑ Joint Activities

**Training** - specific to zone and/or local processes and protocols

**Communications** - specific to zone and/or local processes and protocols

**Prescribed Fire and Wildland Fire Use** - specific to zone and/or local processes and protocols

**Administrative** - specific to zone and/or local processes and protocols

- ❑ Directory of Agency Contacts
- ❑ Plan Review
- ❑ Billing Addresses

**Detection** - specific to zone and/or local processes and protocols

**Aviation** - specific to zone and/or local processes and protocols

**EXHIBIT F**  
**A SAMPLE**  
**PROJECT AND FINANCIAL PLAN**  
**PROJECT AND FINANCIAL PLAN**  
**SUPPLEMENTAL NUMBER \_\_\_\_\_ TO**  
**COOPERATIVE FIRE PROTECTION AGREEMENT**  
**NUMBER \_\_\_\_\_**

**I. INTRODUCTION**

Brief description of project, where located, NEPA status (if required), design/specifications status, and the Federal authority under which the request is made, i.e., Cooperative Funds and Deposits Act, Granger-Thye Act, etc.\*

**II. SCOPE AND DURATION**

The objective of this project is to \_\_\_\_\_.

It is anticipated that this project will begin \_\_\_\_\_  
and will end \_\_\_\_\_.

**III. PRINCIPAL CONTACTS**

Principal contacts for each Agency for the administration of the project are:

Name  
Address  
Telephone  
Email  
FAX

Principal fiscal contacts for each Agency of the project are:

Name  
Address  
Telephone  
Email  
FAX

**IV. DETAILED PROJECT DESCRIPTION**

- A. Specific duties and tasks to be performed. Identify desired end results.
- B. Identify tools and equipment needed and who will supply them.
- C. Identify size of crew and who will be providing transportation.
- D. Other

**V. SUPERVISION AND TECHNICAL OVERSIGHT**

**VI. REIMBURSEMENT**

Describe reimbursement and billing procedures.

**VII. FINANCIAL PLAN**

List which Agency is reimbursing the other and detail items to be reimbursed. Include:

- Salaries
- Travel
- Supplies
- Equipment Use
- Administrative Charges
- Project Total

Management code to be charged \_\_\_\_\_. Reimbursement shall be made only for actual expenses incurred. Itemized documentation in support of all expenses is required.

**VIII. SIGNATURES**

\_\_\_\_\_  
**Agency Administrator**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Agency**

\_\_\_\_\_  
**Agency Administrator**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Agency**

\* Request made by non-Federal parties to the USFS under the authority of the Granger-Thye Act shall include the following provision:

The cooperator hereby agrees to defend and hold harmless the USDA Forest Service its representatives or employees, from any damage incident to the performance of the work resulting from, related to, or arising from this instrument.

**EXHIBIT G**  
**A SAMPLE**  
**COST SHARE AGREEMENT**

Following is a Cost Share Agreement between the Agencies identified below as negotiated for the following incident.

INCIDENT NAME: \_\_\_\_\_ INCIDENT NUMBER \_\_\_\_\_

START DATE AND TIME: \_\_\_\_\_ FIRECODE: \_\_\_\_\_

This Cost Share Agreement between \_\_\_\_\_ and  
\_\_\_\_\_, and with the cooperation of \_\_\_\_\_

\_\_\_\_\_ was prepared under the following authorities provide by

Cooperative Fire Protection Agreement Number \_\_\_\_\_

Dated \_\_\_\_\_

It is hereby agreed that the costs on this Incident will be shared as follows: using some mutually agreed to equitable basis as determined by the Agency administrators.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This Agreement and the apportionment described are our best judgments of fair and equitable Agency cost responsibilities.

Agency: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Agency: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**ITEMS TO CONSIDER  
WHEN  
NEGOTIATING A COST SHARE AGREEMENT**

Negotiating cost share agreements within the State of North Dakota has been delegated to the respective Local Agency Administrators who are party to the Cooperative Fire Protection Agreement. Cost share agreements are to be documented, including the basis or rationale used. The following GUIDELINES and METHODS should be considered when negotiating a cost share agreement. These guidelines and methods are intended to help field personnel in negotiating an equitable agreement and are not intended to be mandatory (See Provision #43 Supplements, C. – Cost Share Agreements, of the Agreement).

General Guidelines

1. All cost share negotiations should include consideration to each Agency's values at risk and resources assigned.
2. Cost share agreements should be reviewed through the duration of the incident. Any changes should be documented with review date and time and signed by the appropriate Agency officials.

Methods to Consider for Cost Sharing on Multi-Jurisdictional Fires

1. Initial Attack Agreement – During initial attack, resources are dispatched per pre-season agreements or an established operating plan, to a multi-jurisdictional fire. If the incident is controlled with initial attack resources, Agency Administrators may agree to cost share some or all suppression resource costs regardless of which Agency dispatched the resources, e.g. dozers or crews working on both areas of responsibility.
2. You Order You Pay (YOYP) – Under YOYP, each Agency is fiscally responsible for the resources they order, regardless of where they are used on the incident. YOYP procedures are as follows:
  - a. A unified ordering point is required and Agencies agree to who will order which resources.
  - b. On-incident support costs may be split by the percentage of Agency requested resources.
  - c. The ordering unit pays for off-incident support costs.
3. Acres Burned – Costs are shared based on the acreage percentage of the fire within an Agency's protection area. This method issued when Agencies' responsibilities, objectives, and suppression costs are similar.
4. Cost Apportionment – The cost apportionment process is a more complex system for identifying Agency cost share where Incident Agencies agree to share costs.
  - a. The apportionment method is used to share final incident costs based upon the usage of resources per operational period.
  - b. Costs are documented and approved by the IC(s) or other designated Incident Agency personnel on a daily basis.
  - c. Direct costs, (e.g. helicopters, crews, airtankers, retardant) are shared based upon assignment in the Incident Action Plan or actual use. Support costs (e.g. overhead team, caterer) are shared proportionally to the direct costs. Agency-specific costs are not shared.