

**MONTANA
COOPERATIVE FIRE MANAGEMENT and STAFFORD ACT RESPONSE
AGREEMENT**

Between
THE STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
State of Montana Agreement Number:

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

NATIONAL PARK SERVICE
INTERMOUNTAIN REGION
NPS Agreement Number: F1249100007

BUREAU OF INDIAN AFFAIRS
NORTHWEST AND ROCKY MOUNTAIN
REGIONS
BIA Agreement Numbers:

US FISH AND WILDLIFE SERVICE
MOUNTAIN-PRAIRIE REGION
FWS Agreement Number: 14-48-60130-11-K001

And the
USDA
FOREST SERVICE
NORTHERN REGION
USFS Agreement Number: 11-FI-110156000-006

This Cooperative Fire Management and Stafford Act Response Agreement (Agreement) is hereby made and entered into by and between the State of Montana, Department of Natural Resources and Conservation, 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, Intermountain Region, hereinafter referred to as the NPS; the Bureau of Indian Affairs, Northwest and Rocky Mountain Regions, hereinafter referred to as the BIA; and the Fish and Wildlife Service, Mountain-Prairie Region, hereinafter referred to as the FWS, the USDA, Forest Service, Northern Region hereinafter referred to as the USFS. This Agreement is entered into under the authorities described in Appendix 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 management 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 attached and incorporated Appendices:

<u>Appendix</u>	<u>Contents</u>
A	Statutory Authorities
B	Principal Contacts
C	Glossary of Terms
D	Reimbursable Billings and Payments
E	A Sample Operating Plan (OP) Outline Guide
F	A Sample Project and Financial Plan
G	Cost Share Agreements

The Supplements to this Agreement (OPs, 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.

Appendices to this Agreement may be revised upon request of the Agencies through execution of the Statewide OP. The latest mutually agreed to revision of any Appendix will automatically be incorporated into this Agreement without necessitating a formal modification as defined in Agreement Provision #62.

A fully executed version of this Agreement, the Statewide OP, frequently asked questions and completed samples of OPs, Cost Share Agreements and Project and Financial Plans will be maintained by the Lead Principal Agency. *See Appendix B Principal Contacts.*

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

1. This Agreement (less its Appendices)
2. Statewide OP
3. Appendices to this Agreement
4. Zone or local OP/Local Agreements
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 Framework (NRF) applies to all Federal Departments and Agencies that may be requested to provide assistance or conduct operations during Presidential/Stafford Act declared disasters or emergencies. This Agreement documents the commitment of the Agencies to provide cooperation, resources, and support to the Secretary of Homeland Security and the Administrator of the Federal Emergency Management Agency (FEMA) in the implementation of the NRF, as appropriate and consistent with their own authorities and responsibilities. Only Presidential declared emergencies and disasters are covered under this authority and through this Agreement.

II. RECITALS:

1. State and private lands, for which the State is responsible for wildland fire protection in Montana, 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 Agencies each maintain wildland fire management organizations and wish to improve efficiency, effectiveness and limit duplication in wildland fire management.
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 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 management activities including but not limited to: prevention, detection, suppression, training, aviation, unplanned and prescribed fire, 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 in other States and internationally.
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 management activities within the Northern Rockies, which includes Montana, 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.

2. Compacts: The **Northwest Compact** is an agreement between the territorial and provincial wildfire agencies in western Canada (Yukon, British Columbia, Northwest Territories, Saskatchewan and Alberta) and the State wildfire agencies in the northwestern United States (Alaska, Washington, Oregon, Idaho and Montana). The Compact is an operational agreement to provide greater flexibility in the exchange of firefighting resources and information, between the member agencies, outside established mobilization agreements. The State will be the lead Agency for ordering resources under the Northwest Compact. All resources will be documented on a resource order through the Northern Rockies Coordination Center (NRCC). *See Appendix D item #1 Payment Under Compacts.*

The **Emergency Management Assistance Compact (EMAC)** was established to allow interstate assistance between member states prior to the need for resources unavailable in state. 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, there must be an active Governor's approval that will be initiated by the State Emergency Coordination Center (SECC) and will be sent to the Governor's Chief of Staff. Upon approval by the Governor, requests will then be forwarded to another EMAC state(s). The SECC will approve all EMAC resource orders and requests. All EMAC resource requests will be processed using the official EMAC Resource Request Form in addition to the National Wildfire Coordinating Group (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.

3. National Incident Management System: The Agencies to this Agreement will operate under the concepts defined in the Department of Homeland Security's (DHS) *National Incident Management System (NIMS)*. In implementing these concepts, Agencies who are party to this Agreement will be expected to follow the NWCG National Interagency Incident Management System (NIIMS) minimum standards as defined in the *Wildland Fire Qualifications Systems Guide (PMS-310)*. These NWCG minimum standards are DHS NIMS compliant.

During initial attack, all Agencies accept each other's training and qualifications, and equipment standards. Once jurisdiction is established during extended attack, NWCG 310-1 Standards and NRCG Equipment standards will prevail.

4. Cooperation with Local Government Fire Forces: Local government fire forces are made available to the Federal Agencies through the State within the Northern Rockies geographic area. Cooperation with local government fire forces at the city or county government level is desirable. Local Cooperative Fire Agreements for wildland fire protection involving local government fire forces should be coordinated with 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 initiate the local agreements or serve as a primary entity in addition to the agreeing parties. To avoid duplication of negotiating separate agreements with several local fire departments, local fire departments may be included in OPs provided the State is a signatory. *See related Provision #33 Structure Fire Suppression and Appendix 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 provide assistance.

5. Sharing of Information: In accordance with applicable State and Federal laws, rules and regulations, and applicable agreements, 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 reports as either party considers necessary in connection with this Agreement.

6. Employment Policy: 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.

Recognizing that personnel issues may cross agency boundaries under this Agreement, the signatory Agencies agree to assist each other in resolution of personnel issues which involve employees of different signatories engaged in cooperative efforts under this Agreement. The Agency whose employee initiates a personnel issue shall take the lead in resolving the issue and other signatory Agencies whose personnel may be involved in the issue shall cooperate in the resolution at the request of the lead agency.

7. Interagency 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, if carried out, be agreed to in a separate Project and Financial Plan or included in OPs. *See related Provision #52 Supplements, A. - Operating Plans and B. - Project and Financial Plans.*

8. 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 interest is to reduce hazardous fuels.

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 OPs or the Project and Financial Plan. *See Appendix F for a sample Project and Financial Plan.*

Wildfires resulting from an escaped prescribed fire that are 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. If the Agencies agree to conduct a multi-jurisdictional prescribed fire the responsibility for suppression costs, should it escape, shall be agreed upon and

documented in the Project and Financial Plan. *See Appendix D item #5 Billing Procedures for Other Fire and Aviation Management Activities.*

The Agencies will not hold each other responsible under this clause for escaped prescribed fire originating on private, state or federal lands not covered by this Agreement.

9. Interagency Dispatch and Coordination Centers: The Agencies agree to maintain, support, and participate in interagency dispatch and geographic coordination centers. Staffing, funding, and level of participation will be agreed to and documented in OPs and/or 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 employed 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.

10. Aviation Operations: The Agencies agree to cooperate in the use 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. Staffing, funding, and level of participation will be agreed to and documented in the Statewide OP and/or Northern Rockies Mobilization Guide. *See Appendix D item #5 Billing Procedures for Other Fire and Aviation Management Activities.*

11. 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 OPs.

12. 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 OPs or Project and Financial Plans. Agencies are encouraged to pool resources and share costs of wildland fire prevention activities.

13. Fire Restrictions and Closures: Fire restrictions and closures will be coordinated through NRCG, consistent with the laws applicable to each Agency. Interagency guidelines for implementing restrictions and closures are established by NRCG. For implementation purposes, NRCG has developed restrictions and closure areas. Local Agency Administrators are responsible for developing and implementing an Area Restrictions and Closure Plan. This plan will be reviewed annually.

14. 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 in Montana are members of the Montana/Idaho State Airshed Group. As such, they are to

abide by the policies, procedures and financial obligations outlined in the Airshed Group's Operating Guide and Annual Financial Plan.

15. 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 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 the proposed deletions or additions, and must, in order for the deletions or additions to become effective, agree in writing to those deletions or additions. Costs for the operation and maintenance of RAWS and Montana Department of Transportation weather stations shall be set forth in OPs.

The Agencies to this Agreement agree to cooperate and coordinate the utilization of Incident Meteorologist services to support responses to wildfires, as described within the Interagency Agreement for Incident Meteorological (IMET) Services in Response to State-Requested Assistance of Wildland Fire Management (IMET Agreement) between the NWS and Forest Service. The Agencies will follow the provisions described in the IMET Agreement, along with any procedures detailed within the standard OP for this Agreement.

16. Training: The Agencies will cooperate in all aspects of wildland fire and aviation training. This should include training scheduling, course development, course presentation, and selection of trainees. As applicable, training will meet NWCG 310-1 standards. Local government fire forces will be included in this cooperative approach whenever practical. *See Appendix D item 5 Billing Procedures for Other Fire and Aviation Management Activities.*

17. 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).

All property procured under a Mission Assignment during a Stafford Act Response becomes the property of FEMA.

18. 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 Protecting 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.

When arrangements are made with a transportation service provider to deliver equipment, the Agency making arrangements for the transportation should ensure that the transportation service

provider will be responsible for all loss and damage to equipment consigned on the bill of lading until received by the consignee.

19. Licensing: Drivers and equipment operators must 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.

20. Duration of Assignment: Consideration must be given to the health and safety of personnel when assigned to fires. Incident Commanders will release resources to the respective Agencies as soon as priorities allow. Incident Commanders shall adhere to rest and rotation guidelines described in the Interagency Incident Business Management Handbook and any Northern Rockies Supplements.

21. Fire Wardens: Annually, Federal Agencies will furnish the State with names of individuals recommended for appointment as Fire wardens to assist in enforcement of State of Montana forestry and fire protection laws, rules and regulations. The State will appoint Fire wardens as appropriate and as authorized by state law.

22. Burning and Campfire Permits: Permit procedures, when applicable, will be included in zone and or local OPs, per the Montana Fire Rules and Regulations found at Administrative Rules of Montana (ARM) 36.10.101, and 36.10.119 through 36.10.204, as amended.

23. Use of National Guard Resources: The State will make every effort to maintain an agreement for the utilization of National Guard Resources. All orders for Montana National Guard resources for use on wildland fires shall go through the NRCC, who shall order through the Montana Department of Military Affairs, Division of Disaster and Emergency Services. The Federal Agencies shall upon receipt of the State's billing, reimburse the State for the costs of assistance. *See Appendix D item #3 Reimbursable Costs, part (i).*

24. Montana Department of Corrections Resources: In order to be reimbursed for the cost of work performed by any person serving a term of imprisonment, the State must have a written agreement with the Montana Department of Corrections that addresses the provision of assistance by persons serving terms of imprisonment and the cost for the assistance. The Federal Agencies shall upon receipt of the States billing, reimburse the State for the costs of assistance. *See Appendix D item #3 Reimbursable Costs, part (i).*

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

26. 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.

27. Stafford Act Responses: In the event of a presidential disaster declaration, the Agencies may assist one another under the provisions of this Agreement as long as the requested resources are available.

For Stafford Act responses, procedures and requirements established in the National Response Framework (NRF) shall be utilized by Agencies that are party to this Agreement to authorize and accomplish any required response or support tasks. Any Agency requesting support will issue written instructions and funding limitations to any agency providing cooperation, resources or support. Mobilization will be per the National Interagency Mobilization Guide. *See Appendix D item #6 Billing Procedures for Stafford Act Responses.*

28. Tribal Resources: Tribal resources may be available for use under this Agreement through the use of existing Bureau of Indian Affairs/Tribal cooperative arrangements. In such instances, the cooperative arrangement will be incorporated in to the local OP or Project and Financial Plan by reference.

29. General Services Administration (GSA): The State and its qualifying partners may order wildfire protection equipment and supplies from GSA's Federal Supply Service. The State will serve as the coordinator for non-federal agencies and be responsible for all costs. The Forest Service will serve as the primary contact for GSA.

PROTECTION PRIORITIES, METHODS and RESPONSIBILITIES

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

- A. Threat to human life.
- B. Threat to property and natural resources, based on relative values to be protected, commensurate with fire suppression costs.

31. 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 OPs, 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 local OP.

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 Appendix D item #3 Reimbursable Costs.*

C. Exchange (Offset) Fire Protection: Agencies may exchange responsibility for fire protection for lands under their jurisdiction. Equitability of the exchanges will be monitored and determined at the statewide level. Exchange zones will be documented in OPs.

When a Protecting Agency takes suppression action on lands it protects for the Jurisdictional Agency, and the Jurisdictional Agency is requested to assist, the Protecting Agency will reimburse the Jurisdictional Agency for its assistance. The exception is if the parties involved are Federal Agencies. The National Agreement between the Department of Interior Agencies and the USDA Forest Service states that the Federal Agencies agree not to bill each other for suppression services.

D. Contract (Fee Basis) Fire Protection: For an agreed upon fee, one Agency may assume fire protection responsibilities on lands under the jurisdiction of another Agency. The terms and conditions of such arrangements must be included in local agreements and/or OPs.

32. Protection Areas and Boundaries: Annually, the Agencies will agree upon wildland fire protection responsibilities for lands within their respective jurisdictions. Protection areas and boundaries will be established, mapped, and made part of OPs. The State will incorporate areas defined as county protection.

The Agencies, as applicable, will provide to each other annually by March 1 a listing of areas that are to be protected by another Agency for the current year.

33. Structure Fire Suppression: While the State is not responsible for engaging in structure fire suppression activities, the NPS is responsible for all structures within Yellowstone and Glacier National Parks. All other NPS areas in Montana have local agreements in place for structure fire suppression. 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 support may also be provided across jurisdictional boundaries as prescribed in existing mutual aid agreements between respective Agencies.

The Federal Agencies will not assume the primary structure fire suppression role on private lands with the exception of the NPS as noted above.

34. Structure Fire Protection: Local units should meet with their cooperators and identify areas that may warrant structure fire protection. The roles, responsibilities, capabilities and mutual expectations must be discussed and documented in local OPs.

35. 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 Appendix C Glossary of Terms and Appendix D item #3 Reimbursable Costs.*

RESPONSE TO WILDLAND FIRE

36. Response to Wildland Fire: All actions taken on the fire will be consistent with the Jurisdictional Agency's pre-planned objectives for the area in which the fire occurs and the terms of this Agreement. The State's only legal response to wildland fire is fire suppression. Federal wildfires that are not human-caused may be managed for multiple objectives as established in land and resource management plans. These areas and the process for managing the fire will be documented in local operating plans. This may require the Jurisdictional Agency to fulfill certain fire management responsibilities. Adjacent fire protection entities, including state and local government, should be consulted regarding fire management strategies utilized in these areas, and share in the decision making process whenever possible.

All fire agencies have primary responsibility for fire suppression within their respective protection areas. The Agencies intent is to keep a wildfire from burning from one protection area to another. When a wildfire or that portion of a wildfire being managed to maintain and/or enhance natural or cultural resources, spreads to a protection area where it is not wanted, costs for that portion only will be assumed by the jurisdictional agency(s) who established the objective. All Agencies, as appropriate, should be involved in developing the strategy, tactics, and mitigation actions to be used if the fire has the potential to impact another protection area. When the fire spread to another protection area is imminent or appears likely, the Agencies will identify financial responsibilities and as appropriate, cost share methodologies, and document the decisions and rationale. If agreement cannot be reached regarding financial responsibilities, discussion will be elevated to the next level agency administrators for the respective agencies.

37. Special Management Considerations: Special management considerations are tactics required for land and resource management and/or environmental constraints.

Local OPs will document procedures and criteria for Unit Administrators of the Agencies to communicate special land management considerations to Incident Commanders. The Incident Commander will incorporate special management considerations into the incident planning process, subject to the delegation of authority. 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.

38. 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.

39. 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 pre-planned objectives and special management considerations for the area in which the fire occurs. *See related Provision #36 Response to Wildland Fire.*

40. Wildland Fire Decision Documentation: Agency policy requires that a decision document be completed for all fires. Responsibility for development of the decision document shall be the joint responsibility of the Agency Administrators from the Jurisdictional Agency and the Protecting Agency of all affected Agencies. The decision documentation process will be described in local OPs.

41. Delegation of Authority: 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. These processes will be documented in local OPs.

42. Determination of Cause and Preservation of Evidence: As initial attack is taken on a fire, the initial attack forces will immediately protect and 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 investigating and/or Protecting Agency will provide investigation files relative to the fire to the Jurisdictional Agency.

43. 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.

44. 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 Agency will assume the other Agency is aware of the fire or that the other Agency will take action. Each Agency will make every reasonable effort to communicate with the other concerning the fire. The initial attack responders of both Agencies must 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 #31 Methods of Fire Protection and Suppression*), a Cost Share Agreement must be prepared and approved for all actions. *See Appendix D item 4 (g) Procedures for Fire Suppression Billings –Boundary Fire Billings, provision #52 Supplements, C. – Cost Share Agreements and Appendix G for Cost Share Agreements.*

45. Contractor or Permittee Fires: The Protecting Agency will notify the Jurisdictional Agency of any fire suspected to have been caused by a contractor or permittee of the Jurisdictional Agency as soon as it becomes aware of the situation.

46. 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 must be involved early in this process to assure all concerns and issues are identified and mitigated in a timely manner.

In the case where an agency assumes command of a wildfire on NPS lands based on a local operating plan, and is not considered the Protecting or Jurisdictional agency the NPS will provide incident strategic objectives and management constraints or requirements. Damages to park resources beyond those reasonably expected must be approved whenever possible, by the Jurisdictional Agency, prior to or during suppression activities. If the damages were not the result of approved actions or were deemed to be outside the scope of normal suppression activities the Jurisdictional Agency retains the right to seek payment from the other agency.

If rehabilitation of land/natural resources damaged by wildland fire is deemed necessary by the Jurisdictional Agency, it 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.

47. Law Enforcement and Negligent Fires: In criminal actions and investigations, Federal Agencies shall render mutual assistance in law enforcement activities and the gathering of evidence. In criminal or civil prosecutions, the Agencies shall cooperate to the fullest extent practical. The State does not have law enforcement jurisdiction. In civil actions, each Agency shall render mutual assistance. The Jurisdictional and/or Protecting Agency will enforce applicable state and/or federal civil and criminal laws. The Jurisdictional and/or Protecting Agency will also prosecute, where appropriate, litigation that results from wildland fires that originate on its and/or their lands, and/or that involves the expenditure of funds legislatively appropriated to it and/or them.

The State local Agency Administrator will notify the appropriate Federal local Agency Administrator of any information that shows that any person or business entity (which would include a person or entity doing business under an assumed business name) has violated any provision of Montana Forestry Law, and or fire rules and regulations on Federal lands within State protection areas, and will assist the Federal Agencies with prosecution under applicable Montana law, rule or regulation if so requested by the Federal Agencies. In like manner, the Federal local Agency Administrator will notify the State local Agency Administrator of any information related to violations by any person or business entity (which would include a person or entity doing business under an assumed business name) on state and private lands on which the Federal Agencies provide wildland fire protection. The Federal Agencies may initiate civil prosecution under State law unless notified by the State that such violation will be prosecuted by the State. Nothing in this provision shall be construed to prevent arrest or prosecution by a Federal Law Enforcement Officer under Federal law or a State Law Enforcement Officer under State law.

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 Appendix D item 4 (f) Procedures for Fire Suppression Billings - Negligent Fire Billings and Provision #57 Suppression and Damage Collection.*

48. 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 Montana. 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 NFS lands 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.

The NPS and FWS maintain cooperative agreements with local law enforcement agencies for the purposes of mutual assistance and enhancement dealing with emergency events, including wildland fire.

49. 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 will be conducted by a team made up of representatives from the affected Agencies and must be sufficient to meet the policy and legal needs of each Agency.

50. 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 an agreed upon time, which will be documented in local OPs, after the fire is declared out.

51. Post-Fire Analysis/Agency 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

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

A. Operating Plans (OPs):

Statewide OPs: A 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 OPs will be developed and/or reviewed by March 1 of each year this Agreement remains in effect. The fire directors of each Agency are authorized to develop and approve Statewide OPs.

Zone and or Local OPs: A 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 OPs. Zone and/or local OPs will be developed and/or reviewed annually. *See Appendix E for a sample OP.*

The State will incorporate county fire protection chapters into each zone and or local OP as appropriate. This will define relationships between Federal, State and County protection entities. Mobilization of Local Government Fire Forces will be done in accordance with the NRCG Mobilization of Local Firefighting Resources Guide.

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 Appendix F for a sample Project and Financial Plan.*

C. Cost Share Agreements: A Cost Share Agreement will be prepared and approved 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 Appendix 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 #44 Boundary Fires and Appendix D item #4 (g) Procedures for Fire Suppression Billings - Boundary Fire Billings.*

LIABILITIES, CLAIMS and DAMAGE COLLECTIONS

53. Waiver: Subject to the provisions contained in Provision #18 "Shared Equipment", the Agencies will 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 for losses for which the Agency is otherwise legally liable.

54. 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 for any damage in consequence of the performance of work under this section of this Agreement, if those resource damages were approved prior to or during fire suppression activities, by the Federal Agency.

55. 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 for any damage in consequence of the performance of work under this section of this Agreement.

56. Third Party Claims: Claims requesting compensation for property loss or damage, personal injury, or death resulting from the alleged negligence or other alleged wrongful acts of employees performing under this Agreement will be received by the Protecting Agency and forwarded to the hiring, or home agency of the allegedly negligent employee for processing.

Claims from vendors for property loss or damage arising under, or related to, contracts must be submitted to a contracting officer at the incident or issuing office. Only contracting officers are

authorized to settle these claims. The Protecting Agency will coordinate and forward as appropriate if no contracting officer is available.

Employee claims for loss of or damage to personal property must be submitted to the Protecting Agency and then forwarded to the hiring, or home agency of the employee for processing in accordance with the hiring agency's procedures.

57. 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 Appendix 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 and to the extent the State has not incurred fire suppression costs on state and private lands, 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 and to the extent the Federal Agencies have not incurred fire suppression costs on their respective lands, 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

58. 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. In addition, any commitment of funds pursuant to this agreement is subject to each Agencies appropriation laws, policies, regulations and limitations.

59. Nondiscrimination: The Agencies shall, to the extent legally permitted and/or required to, comply with all Federal and State statutes relating to nondiscrimination and all applicable requirements of all other Federal laws, Executive orders, regulations, and policies. These include, but are not limited to Sections 119 and 504 of the Rehabilitation Act of 1973 as amended, which prohibits discrimination on the basis of race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, participation in any public assistance program, or disability.

60. Performance: Any Agency shall have the right to enforce this Agreement by any available remedy under the laws of the United States or the State of Montana.

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

62. Termination of Previous Arrangements: Execution of this Agreement terminates and replaces Cooperative Fire Management Agreement # 05-FI-11015600-014 executed between the Agencies on March 31, 2005. Project and Financial Plans and/or Agreements between Federal Agencies authorized under the previous Agreement are hereby incorporated and made a part of this Agreement and will continue under the terms and conditions of this Agreement.

All block fire protection exchange agreements have been terminated and are replaced by this Agreement. 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.

63. 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. Appendix A through G to this Agreement will be modified in the manner described in the Purpose section of this Agreement. Statewide OPs will be developed and modified in the manner described in Provision #52 Supplements, A. – Operating Plans.

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 Appendix B. Once all hard copy signatures have been obtained an electronic version of the modification will be emailed to the principal contacts listed in Appendix B. Copies of the hard copy signatures will be made available to the Agencies upon their request.

64. 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.

65. 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.

66. Commencement/Expiration Date: This Agreement is executed as of the date of last signature and is effective through **December 31, 2015** at which time it will expire, unless extended.

The authority and format of this Agreement has been reviewed and approved for signature.

<u>/s/ Teresa Asleson</u> Teresa Asleson Forest Service Grants and Agreements Specialist	<u>12/08/10</u> Date
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<u>/s/ Lori Anderson</u> Lori Anderson Bureau of Land Management Grants Management Officer	<u>01/28/11</u> Date
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<u>/s/ Trish Fresquez-Hernandez</u> Trish Fresquez-Hernandez National Park Service Contracting Officer	<u>02/11/11</u> Date
--	-------------------------

<u>/s/ Kathleen Schultz</u> Kathleen Schultz Bureau of Indian Affairs – Northwest Region Contracting Officer	<u>12/13/10</u> Date
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In witness whereof, the parties hereto have executed this Agreement as of the last date written below.

/s/ Robert Harrington
ROBERT HARRINGTON, State Forester
State of Montana, Department of Natural Resources and
Conservation

12/20/10
Date

/s/ Jamie E. Connell
JAMIE CONNELL, State Director
USDI, Bureau of Land Management,
Montana and Dakotas

02/02/11
Date

/s/ John Wessels
JOHN WESSELS, Regional Director
USDI, National Park Service, Intermountain Region

02/17/11
Date

/s/ Stanley Speaks
STANLEY SPEAKS, Regional Director
USDI, Bureau of Indian Affairs, Northwest Region

12/13/10
Date

/s/ Edward Parisian
EDWARD PARISIAN, Regional Director
USDI, Bureau of Indian Affairs, Rocky Mountain Region

12/30/10
Date

/s/ Richard A. Coleman for
STEPHEN GUERTIN Regional Director
USDI, Fish and Wildlife Service, Mountain-Prairie
Region

12/15/10
Date

/s/ Jane L. Cottrell for
LESLIE A.C. WELDON, Regional Forester
US, Forest Service, Northern Region

12/09/10
Date

APPENDIX 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 government 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.

STATE

1. Mont. Code Ann. § 76-13-104. Requires the State to ensure the protection of land under state and private ownership and to suppress wildland fires on land under state and private ownership. Authorizes the State to, during declared emergencies, employ personnel and incur costs as necessary. Requires the State to establish and maintain fire control training programs. Requires that the State appoint firewardens. Provides for the adoption of administrative rules by the State.
2. Mont. Code Ann. § 76-13-105. Authorizes the State to provide for forest fire protection of any non-forest lands and improvements. Requires forest fire protection of all land classified as forest land.
3. Mont. Code Ann. § 76-13-136. Authorizes the State to cooperate with owners or lessees of farm, range, forest, watershed, or other uncultivated lands in private and public ownership for the protection from fire of the cultivated agricultural crops or natural resources existing or growing on the land.
4. Mont. Code Ann. § 76-13-202. Authorizes the State to provide for wildfire protection of any wildlands either by it, by contract or by any other feasible means, in cooperation with any federal, state, or other recognized agency.
5. Mont. Code Ann. § 76-13-212. Authorizes the State to provide wildland fire protection on lands that are not classified as forest land and are not within a wildland fire protection district.
6. Mont. Code Ann. § 77-5-103. Requires the State to take any action authorized by law to prevent and extinguish wildland fires on state-owned timberland.
7. Admin. R. Mont. 36.10.119 through 36.10.204. The administrative rules that implement Mont. Code Ann. §§ 76-13-104, 76-13-105, 76-13-136, 76-13-202, and 76-13-212.

APPENDIX B

PRINCIPAL CONTACTS

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

A fully executed version of this Agreement, the Statewide OP, frequently asked questions and completed samples of OPs, 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>

Ted Mead
Bureau Chief, Fire and Aviation Mgmt.
MT Department of Natural Resources and
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Phil Gill
Fire Management Officer
BLM- Montana and Dakotas State Office

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Vacant
Regional Fire Management Officer
NPS – Intermountain Region

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303-969-2037 (fax)

Cory Winnie
Protection Forester
BIA - Northwest Region

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APPENDIX 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: Montana Department of Natural Resources and Conservation, 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.

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.

Closest Forces Concept: Dispatch of 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.

Cooperator: Local agency or person who has agreed in advance to perform specified fire control services and has been properly instructed to give such service.

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): Used by the Federal Government and many State governments as the primary mechanism at the operational level to organize and provide assistance. ESFs align categories of resources and provide strategic objectives for their use. ESFs utilize standardized resource management concepts such as typing, inventorying, and tracking to facilitate the dispatch, deployment, and recovery of resources before, during, and after an incident.

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.

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 Management Activities: Any or all activities that relate to managing wildland fire or natural fuels on lands under the jurisdiction of any Agency to this Agreement. Activities include but are not limited to: planning, prevention, detection, training, suppression of wildland fires, 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.

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 OP 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. Under no circumstances will a jurisdictional Agency abdicate legal responsibilities 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 OPs 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: Any county, municipality, city, town, township, public authority, special 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: Any entity described in Title 7, Chapter 33 of the MCA.

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 mechanism used 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 OPs or mobilization guides.

Objective: Specific, achievable, measurable, time-limited results to be achieved through land management practices, either through a description of a desired condition or the degree of desired change in an attribute.

Operating Plan: A plan generated at the statewide, zone, or local level, authorized by the appropriate officials, used for implementing the terms of the Cooperative Fire Management and Stafford Act Response Agreement for their respective areas of responsibilities.

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

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.

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

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. The Protecting Agency may or may not be the Jurisdictional Agency. For National Park System Units, based on this definition, NPS is both the Protecting and Jurisdictional Agency.

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 conduct initial attack on a wildland fire regardless of which Agency is the Protecting Agency. The kind, locations, and numbers of resources, which constitute reciprocity, shall be defined in or through the OPs. 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 OP. *See Appendix D.*

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: Personnel, equipment, aircraft, services and supplies available for assignment to incidents. Personnel and equipment are described by kind and type, (e.g., ground, water, air, etc.), and may be used in tactical, support or overhead capacities for an incident.

Response to Wildland Fire: Decisions and actions implemented to manage a wildland fire based on ecological, social, and legal consequences, the circumstances under which a fire occurs, and the likely consequences on firefighter and public safety and welfare, natural and cultural resources, and values to be protected.

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: Management action to extinguish a fire or confining fire spread.

Wildfire: An unplanned ignition caused by lightning, volcanoes, unauthorized, and accidental human caused actions and an escaped prescribed fire.

Wildland Fire: Any non-structure fire that occurs in the vegetation and/or natural fuels.

APPENDIX 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 for which the Federal Agencies have the protection responsibility. *See related Agreement Provision #2 Compacts and this Appendix item #4 (c), Procedures for Fire Suppression Billings - State Billings.*

2. Payment of Local Government Fire Forces: Local Government Fire Forces are either employees or cooperators of the State. Unless a Federal Agency has a direct agreement with local government, the State will make payments to the Local Government Fire Forces through execution of payment vouchers and similar documents. In many cases, the State will complete the employment and/or paperwork prior to dispatch.

The closest State Agency office will complete the paperwork for submission to the designated payment office as identified in the OP. *See related Agreement Provision #4 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 management activity resources.
 - b. Agency costs for transportation, salary, benefits, and per diem of individuals assigned to an incident or other fire management 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 management activities, contract equipment costs, and operating costs for Agency equipment.
 - e. Operating supplies for equipment assigned to the fire management 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 management activity.
 - i. Charges from the State for State mobilized resources such as local government fire forces, National Guard resources or persons undergoing imprisonment. *See this Appendix item 2 Payment of Local Government Fire Forces and Agreement Provisions #23 Use of National Guard Resources and #24 MT Department of Correction Resources.*
 - j. Costs for emergency acquisitions will be per the procedures identified in Interagency Incident Business Management Handbook, and NRCG Supplements to Chapter 20 and Chapter 50.

4. Procedures for Fire Suppression Billings:

Each fire will be billed individually. Bills will be identified and meet documentation standards and requirements as outlined in the Statewide OP. Billings for fire suppression assistance will not include administrative charges.

5. Billing Procedures for Other Fire and Aviation Management Activities: Billings for preparedness, prevention, prescribed fire, wildland fire use and other fire and aviation protection activities will be addressed in OPs 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 #8 Prescribed fire and Fuels Management, #10 Aviation Operations, and #12 Fire Prevention Policies.*

6. Billing Procedures for Stafford Act Responses: 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.

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 Emergency Support Function (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 include:

- 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 Administrator or the (FEMA) Regional Administrator in the emergency or major disaster.
- c) Cost of work, services, and materials procured under contract for the purposes of providing assistance directed by the (FEMA) Associate Administrator or the Regional Administrator.
- 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 Administrator or the (FEMA) Regional Administrator and the agency.

b. State/Tribe Reimbursement Process: State/Tribe Reimbursement refers to those resources that are to be reimbursed by the primary ESF Federal Agency. State/Tribe 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 Administrator or the (FEMA) Regional Administrator 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 Administrator or the Regional Administrator.
- 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 Administrator or the (FEMA) Regional Administrator and the Agency.

Bills will be identified by incident name, date, mission assignment (MA) location, jurisdictional unit, and supported by documentation to include but not limited to: separate invoice by MA; list of personnel expenses including base, overtime, and travel; and supplies/services procured by vendor name and dollar amount, and administrative charges may be applied.

7. Payments: Payments will refer to the invoice number and will be sent to the appropriate billing address.

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

APPENDIX E

SAMPLE OPERATING PLAN

Operating Plans (OP) will be working documents developed and/or reviewed annually at appropriate levels for implementing the Cooperative Fire Management Agreement. OPs shall become a part of the Agreement (See Provision #52 Supplements, A. – Operating Plans of the Agreement and Appendix C Glossary of Terms). The Statewide OP covers specific actions and relationships that are best coordinated on a State level for continuity across the State. Zone and/or local OPs are those generated to cover actions less than statewide in nature.

OPs must address items called for in the Agreement and document processes and protocols between Agencies pertinent to working relationships, responsibilities, exchange of funds, etc. The following outline provides a checklist of items deserving consideration in the development of OPs. **Items that are asterisked (*) are those that are identified in the Agreement and are required in all zone/local OPs, unless they do not apply e.g. Fee Basis Fire Protection.**

OUTLINE

Authority and Identification of Parties – quote the Cooperative Fire Management 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 *
- Fee Basis Fire Protection*

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

- Utilization of Interagency and Tribal Resources and Facilities *
- Dispatch *
- Billings and Reimbursements *
- Decision Documentation Process and Procedures *
- Delegation of Authority *
- Special Management Considerations *
- Structure Fire Protection *
- Severity
- Fire Weather *

Response to Wildland Fire Procedures – specific to zone and/or local processes and protocols

- Mutual Aid Period *
- Boundary Fires
- Response to Wildland 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

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

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

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

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

Prescribed fire and Fuels Management * - 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

APPENDIX F

**SAMPLE
PROJECT AND FINANCIAL PLAN**

PROJECT AND FINANCIAL PLAN

**SUPPLEMENTAL NUMBER _____ TO
COOPERATIVE FIRE MANAGEMENT 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. (* *see notations at the end of the document*)

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. The XXX agency shall: **describe** the specific duties/tasks to be performed, identify desired end results, the supplies/equipment to be provided, the supervision/oversight to be provided, who will and how is transportation being provided, etc.

B. The XXX agency shall: **describe** the specific duties/tasks to be performed, identify desired end results, the supplies/equipment to be provided, the supervision/oversight to be provided, who will and how is transportation being provided, etc.

V. REIMBURSEMENT

Describe reimbursement and billing procedures. Include addresses to process payments.

VI. FINANCIAL PLAN

List which Agency is reimbursing the other and detail items to be reimbursed. Include cost elements such as: salaries, travel, supplies, equipment use, administrative/indirect charges, project total, and the Agency financial codes(s) to be charged_____.

Reimbursement shall be made only for actual expenses incurred. Itemized documentation in support of all expenses is required.

VII. MODIFICATION

Modifications within the scope of this Project and Financial Plan shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by both parties, prior to any changes being performed. The Agencies are not obligated to fund any changes not properly approved in advance.

VIII. COMMENCEMENT/EXPIRATION DATE

This Project and Financial Plan is executed as of the date of the last signature and is effective through _____ at which time it will expire unless extended.

IX. AUTHORIZED REPRESENTATIVE

By signature below, each party certifies that the individuals listed in this document as representatives of the party are authorized to act in their respective areas for matters related to this agreement.

Approval: This authority and format of this Project and Financial Plan have been reviewed and is approved for signature.

Xxx Name of FS Agreements Specialist

Date

IN WITNESS WHEREOF, the parties hereto have executed this Project and Financial Plan as of the last written date below.

Agency Administrator
Agency

Date

Agency Administrator
Agency

Date

*** Requests made by non-Federal Agencies to the USFS under the authority of the Granger-Thye Act must 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.

Requests made by Federal Agencies to the State must include the following provisions:

To the extent of its liability for negligent acts covered by the Montana Tort Claims Act (Section 2-9-101, MCA, et seq.), the State of Montana will indemnify and hold harmless the USA and its representatives against demands, claims, or liabilities arising from the use authorized under this Agreement.

To the extent of its liability for negligent acts covered by the Federal Tort Claims Act (28 U.S.C. Section 2671, et seq.), the USA will indemnify and hold harmless the STATE and its representatives against demands, claims, or liabilities arising from the use authorized under this Agreement.

APPENDIX G

COST SHARE AGREEMENTS

Negotiating cost share agreements within the State of Montana has been delegated to the respective Local Agency Administrators representing the Agencies who are party to the Cooperative Fire Management Agreement. Cost share agreements are to be documented, including the basis or rationale used.

Cost share negotiations should include consideration to each Agency's values at risk and resources assigned. 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 Administrators.

Guidelines, templates, and methodologies specific to the Northern Rockies for developing cost share agreements will be contained in the Statewide OP. These guidelines and methods are intended to help field personnel in negotiating an equitable agreement and are not intended to be mandatory (See Provision #47 Supplements, C. – Cost Share Agreements).