

ARIZONA DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT
COOPERATIVE AGREEMENT

This Cooperative Agreement is made by and between Cochise County and the Department of Forestry and Fire Management (State Forester).

This Agreement supersedes all previous Cooperative Intergovernmental Agreements and will be effective for a period of (10) ten-years from the date of final signature. Further, this Agreement may be canceled by either Party at any time upon (30) thirty-day written notice to the other party. At the termination of this Agreement, each party shall return to the other party any equipment belonging to that party.

RECITALS:

WHEREAS the County and

WHEREAS the State Forester and the County have a duty and responsibility to respond to wildland fire and other non-fire national, state and county emergencies;

WHEREAS the State Forester is authorized to enter this Cooperative Agreement under A.R.S. §§ 37-1302 (A) (13), 37-1303(D) and 37-1305(H),

WHEREAS the County is authorized to enter this Cooperative Agreement under A.R.S. §§ 11-251 *et seq.* and 26-308, and

NOW THEREFORE, the parties to this agreement do hereby agree as follows:

1. THE STATE AGREES:

- A. To pay and reimburse the County for County resources used for incident support, and other incident related activities within the State's jurisdiction pursuant to the current Annual Operating Plan for Cooperative Fire Rate Agreements. Equipment will be reimbursed at rates established by the Federal Emergency Management Agency (FEMA) for emergency equipment use;
- B. To provide DFFM resources and resources under DFFM agreement to the County for wildland fire suppression, pre-suppression, and for unplanned all-risk emergencies, for incidents that originate on county owned property, when requested by the County and deemed available by the State Forester. Per A.R.S. §37-1305 (H), the State Forester may require reimbursement for costs incurred for these requested resources. Payment for the State's resources will be negotiated as soon as practical after each request and will be based upon one or more of the following factors: the type of request, resources furnished, jurisdiction, land ownership, threat to State jurisdiction, state or federal emergency declaration status, and the actual cost of those resources to the State;
- C. To make available organization and training technical assistance and other expertise to the County as staffing may allow;
- D. To reimburse the County under an approved Federal Emergency Management Agency Fire Management Assistance Grant (FMAG) for eligible costs relating to Essential Assistance as described under Subpart C, 204.42, CFR 44 and Section 403 Robert T. Stafford Disaster Relief and Emergency Assistance Act 42 U.S.C. 5121. These costs are commonly known as Category B expenses and must be incurred during the declared emergency period as defined in the grant declaration. Under an approved FMAG, the State shall reimburse the county 75% (75% Federal share) of its eligible costs. The remaining 25% cost share is borne by the County;
- E. That resource orders originating from the County and ordered through the County Emergency Operation Center will be considered potential Category B expenses;

- F. That resource orders originating from the Incident and ordered through the DFFM Dispatch Center will be considered potential Category H (direct firefighting) expenses. These expenses will be reimbursed at 100% by the incident.
- G. To make available such equipment as can be obtained and is suitable for the use of the County in fire management and emergency work;
- H. The County may purchase wildland firefighting equipment and supplies through the State Forester's procurement system.

2. THE COUNTY AGREES:

- A. The County Emergency Manager shall be the coordinator for all County Departments for the implementation of this agreement.
- B. Reimbursement for emergency assistance and cooperation provided by the County at the request of the State for emergency services shall be pursuant to the current Annual Operating Plan for Cooperative Fire Rate Agreements.
- C. That no reimbursement for loss of County equipment due to ordinary wear and tear will be made. Condition of equipment to be determined by inspection conducted at check-in to and demobilization from an incident.
- D. To submit claims for reimbursement to the State within sixty (60) days after release of its personnel and/or equipment in the manner and form prescribed by the State; procedures for invoicing can be found at <https://dffm.az.gov/fire/cooperator-and-fire-business>.
- E. To participate to the extent possible in fire prevention activities as requested by the State;
- F. That County resources assigned to an incident will accept direction and supervision by the State Forester or his duly authorized representatives while engaged in fire suppression and emergency related activities at the State's request;
- G. To maintain emergency incident training qualifications as set forth by the State; Qualifications are defined in the National Wildfire Coordinating Group (NWCG) publication Wildland Fire Qualifications Subsystem Guide Handbook 310-1, and as defined by the Federal Emergency Management Agency (FEMA) and documented as part of the National Incident Management System (NIMS);
- H. To accept and use equipment obtained from the State pursuant to this agreement ("Assigned Equipment"); to maintain the Assigned Equipment in operable condition and state of readiness, and promptly report any loss or damage of such equipment to the State; to obtain prior approval for any planned alterations of the Assigned Equipment from the State; to provide adequate shelter from the weather elements for the Assigned Equipment; upon request, the Cooperator will promptly provide the State Forester with a report of the condition of Assigned Equipment; that the Assigned Equipment may not be sold, transferred, loaned or otherwise disposed of, or traded, but must be returned to the State Forester; the assigned equipment will be painted and identified and marked in a manner that will indicate the cooperation between the County and the State; and if the equipment is not used as provided by this agreement, the State Forester may remove said equipment upon written notification.

3. JOINT PROJECTS:

The County and the State may jointly conduct appropriate mutual interest projects from time to time to maintain and improve the parties' emergency services and fire protection capability. Such projects will be documented and will set forth the objective of each undertaking and the role each agency will play in accomplishing that objective. The documentation shall show the anticipated cost, the amount of each agency's share of the cost, and the anticipated duration of the undertaking. Project specific work agreements may be developed to exchange funds between the County and State.

4. MUTUAL AGREEMENTS:

- A. That every obligation of the State Forester or the County under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation; if funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by either Party at the end of the period for which funds are available. No liability shall accrue to either Party in the event this provision is exercised, and neither Party shall be obligated or liable for any future payments for any damages as a result of termination under this paragraph.
- B. Amendments: This agreement may be modified only by a written amendment signed by both parties. However, if mutually agreed, the parties may enter into specific supplemental, written agreements, subject to appropriate approvals, to accomplish the goals of this agreement and to carry out its terms and conditions.
- C. Dispute Resolution: In the event of a dispute, the parties agree to arbitrate the dispute to the extent required by A.R.S. Section 12-1518.
- D. Inspection and Audit of Records: Pursuant to A.R.S. Sections 35-214 and -215, the County shall retain all books, accounts, reports, files and other records ("Records") relating to this agreement for a period of five years after completion of the contract. All records shall be subject to inspection and audit by the State Forester or State Auditor General at all reasonable times. Upon request, the County shall produce the original of any and all such records at the offices of the State Forester.
- E. Cancellation for Conflict of Interest: Pursuant to A.R.S. Section 38-511, the State may, within three years after its execution, cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to this contract in any capacity, or a consultant to any other party to this contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from the Governor is received by all other parties to the contract of the cancellation, unless the notice specifies a later time.
- F. Non-discrimination. The Parties shall comply with State Executive Order (EO) 2009-09, and EO 2023-01, as applicable, the pertinent provisions of which are incorporated into this Agreement by reference, and which mandate, in part, that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules and regulations, including the Americans with Disabilities Act. The Parties shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.
- G. Third-Party Antitrust Violations: The Cooperator assigns to the State any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the Cooperator toward fulfillment of this Agreement.
- H. Notices: All notices required by this agreement shall be in writing delivered to the person and addresses specified below or to such other persons or addresses as either party may designate to the other party by written notice.

State Forester:
Office of the State Forester
Arizona Department of Forestry
and Fire Management
1110 West Washington, Suite 500
Phoenix, AZ85007
602-771-1400
602-771-1421 fax

County:
Cochise County
1415 Melody Lane
Bisbee, Arizona
85603
(520) 432-9200

I. Indemnification:

Each party (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. The State of Arizona, Arizona Department of Forestry and Fire Management is self-insured per A.R.S. 41-621.

In addition, should Cochise County utilize a contractor(s) and subcontractor(s) the indemnification clause between Cochise County and its contractor(s) and subcontractor(s) shall include the following:

Contractor shall defend, indemnify, and hold harmless the County of Cochise and the State of Arizona, and any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and its departments, agencies, boards, commissions, universities, , officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Additionally on all applicable insurance policies, contractor and its subcontractors shall name the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as an additional insured and also include a waiver of subrogation in favor of the State.

J. Workers' Compensation (Mutual Aid). For purposes of workers' compensation, an employee of a Party to this Agreement, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of another Party pursuant to this Agreement, is deemed to be an employee of both the Party who is his primary employer and the Party under whose jurisdiction or control or within whose jurisdiction he is then working, as provided by A.R.S. § 23-1022(D). The primary employer Party of such employee shall be solely liable for payment of workers' compensation benefits for the purposes of this section. The Parties herein shall comply with the provisions of A.R.S. § 23-1022(E) by posting the public notice required.

1.1 **Insurance Requirements for Governmental Parties to a Cooperative Agreement**

-None

1.2 **Insurance Requirements for Any Contractors Used by a Party to the Cooperative Agreement**

(Note: this applies only to Contractors used by a governmental entity, not to the governmental entity itself.) The *insurance requirements* herein are minimum requirements and in no way limit the indemnity covenants contained in the Intergovernmental Agreement. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the governmental entity or Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees or subcontractors, and Contractor and the governmental entity are free to purchase additional insurance.

1.3 **Minimum Scope And Limits Of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

1.3.1 Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate
 - Products – Completed Operations Aggregate
 - Personal and Advertising Injury
 - Damage to Rented Premises
 - Each Occurrence
- \$2,000,000
\$1,000,000
\$1,000,000
\$ 50,000
\$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

(Note that the other governmental entity(ies) is/are also required to be additional insured(s) and they should supply the Contractor with their own list of persons to be insured.)

1.4 **Business Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL)
- \$1,000,000

- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

(Note that the other governmental entity(ies) is/are also required to be additional insured(s) and they should supply the Contractor with their own list of persons to be insured.)

1.4.1 **Workers' Compensation and Employers' Liability**

- Workers' Compensation
Statutory Employers' Liability
- Each Accident

\$1,000,000

- Disease – Each Employee \$1,000,000
 - Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
 - b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

1.5 **Additional Insurance Requirements**

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 1.5.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 1.5.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

1.6 **Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered.

1.7 **Acceptability of Insurers**

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

1.8 **Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) as required by this Contract. An authorized representative of the insurer shall sign the certificates.

- 1.8.1 All certificates and endorsements, as required by this written agreement, are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 1.8.2 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

1.9 **Subcontractors**

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

1.10 **Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment, but may be made by administrative action.

1.11 **Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

In WITNESS WHEREOF the parties by and through their duly qualified acting officials have hereunto set their hands.

State of Arizona Department of Forestry and Fire Management By _____ Thomas A. Torres State Forester Date: _____	Cochise County By _____ Date: _____
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