

FIRE MANAGEMENT AGREEMENT
Between
THE NATURE CONSERVANCY
And
THE CITY OF FLAGSTAFF - FLAGSTAFF FIRE DEPARTMENT

This is a Fire Management Agreement AGREEMENT between The Nature Conservancy, hereinafter referred to as the “Conservancy,” and the City of Flagstaff hereinafter referred to as the “City” ” This agreement is to facilitate cooperation of the two parties in wildland fire management through the use of prescribed fire (to include associated wildfire suppression efforts), and forest stewardship activities. The agreement provides for the limited interchange of personnel, equipment, and information to obtain this goal. The City and the Conservancy shall be referred to individually hereinafter as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, The Conservancy’s mission is to conserve the lands and waters on which all life depends. Specifically, the Conservancy owns and manages conservation lands in the State of Arizona.

WHEREAS, The City manages public and/or private lands throughout the City of Flagstaff that promote, create and maintain a sustainable healthy forest ecosystem and a FireWise community, and engages with others outside the City to do the same, thereby protecting and enhancing public safety and community well-being.

WHEREAS, The management of many Conservancy and City lands requires proper use of fire management including prescribed burning and wildfire suppression, in a manner that considers natural resource needs.

WHEREAS, The Conservancy and the City have expertise in fire management, including prescribed burning and wildfire suppression, and currently employ or have under contract personnel and equipment capable of performing wildland fire management activities.

WHEREAS, The City and the Conservancy benefit from experiences and training gained during wildland fire management activities.

NOW, THEREFORE, in consideration of the above premises, the parties hereto agree as follows:

1. The following terms shall have the following meanings as used in this AGREEMENT:
 - a. Assisting Party: Party that provides employees or volunteers to assist the Jurisdictional Party with fire activities.
 - b. Jurisdictional Party: The Party that possesses ownership of and/or management authority over the land involved in the fire activities.
 - c. Burn Boss: Person responsible for supervising a prescribed fire from ignition through mop-up, on behalf of and at the request of the Jurisdictional Party.

- d. Chief-of-Party: Designated leader of Assisting Party for a particular fire activity.
 - e. Project Officer: Individual for each Party that is responsible for implementation of this AGREEMENT.
 - f. Incident Commander: Person determined by local jurisdiction to be responsible for overall management under this AGREEMENT of a particular suppression incident. The Burn Boss shall be responsible for oversight of the suppression action until the Incident Commander arrives on site. The Incident Commander may assign one or more deputies from the Jurisdictional Party and/or from an Assisting Party to assist in suppression action.
 - g. Conservancy Fire Manager: Conservancy employee who provides overall fire management supervision and coordination on behalf of the Conservancy for a particular geographic area.
 - h. Prescribed Fire: Any fire ignited by management actions to meet specific objectives.
 - i. Wildfire: For this Agreement, “wildfire” is defined as an unwanted fire resulted from an escaped prescribed fire, where the the objective is to put the fire out.
2. Upon request, personnel and equipment may be provided by the City to the Conservancy, or the Conservancy to the City pursuant to the terms and conditions outlined in this AGREEMENT. Provision of personnel and equipment shall be at the discretion of each individual Party, depending on workloads, priorities, fire danger or other factors which affect availability at any given time. Staff and equipment provided under this AGREEMENT may be used for, but are not limited to, the following purposes:
- a. Technical assistance including preparation or review of site or landscape-level fire management plans and prescribed burn unit plans, forest and other management plans, inventories and analysis.
 - b. Preburn preparations including vegetation and fuel load sampling, control line construction and maintenance, environmental monitoring, and fuels manipulation.
 - c. Burn implementation including project supervision, ignition, holding, fire behavior and weather monitoring, logistical support and mop-up, to include suppression actions required as a direct result of any prescribed fire operations where one party was assisting the other.
 - d. Post-burn monitoring and evaluation.
 - e. Fire management training, annual refresher, and annual physical fitness testing.

3. The Jurisdictional Party will identify and designate a Burn Boss for any given prescribed fire. The Burn Boss may, if agreeable to both parties, be from the other/non-jurisdictional party. The Burn Plan will be developed by the Jurisdictional Party prior to burn implementation. In addition, the Burn Boss must be provided an opportunity to review the Burn Plan prior to burn implementation. For burns in which the Conservancy is the Jurisdictional Party, the Burn Plan must be approved by the designated Conservancy Fire Manager. Any Burn Plan must address at a minimum the information listed in Appendix A or follow the National Wildland Fire Coordination Group (NWCG) burn plan template. In addition, when the Conservancy is the Jurisdictional Party and/or when the Conservancy prepares the Burn Plan, the Conservancy will complete an internal consequence analysis for the proposed burn, in accordance with Conservancy policies and procedures.
4. Each Burn Plan shall contain sufficient specificity with regard to objectives, responsibilities for various activities, projected total costs, any reimbursement of costs to be made to the other party upon completion, and each Party's role in particular tasks. The Burn Plan must be prepared with a high regard for safety and shall require implementation by an experienced Burn Boss. The Burn Plans shall identify the qualifications of burn personnel needed to implement the burn. Contingency planning in the event of an escaped fire will be an essential element of each Burn Plan. The Jurisdictional Party will only implement the Burn Plan they developed and will not use any other parties Burn Plan.
5. In the event of an escaped fire, the Burn Boss shall declare the escape and notify local suppression authorities. The Conservancy will support local fire suppression agencies as requested based on skills and qualifications of available personnel. Conservancy properties have a Wildfire Response Plan (WRP) that considers the ecologically sensitive areas that are important to biodiversity and provides guidance for wildfire suppression. The Parties will request that the Incident Commander, of the local fire suppression authorities, follow these plans to the extent practicable when suppressing wildfires involving Conservancy properties. A Conservancy representative may fill the role of resource advisor and provide guidance identified in the WRP as requested by the suppression organization, however, the Incident Commander has the ultimate authority on how the fire will be suppressed.
6. The Burn Boss will be an employee, volunteer or contractor of either of the Parties with approval of the Jurisdictional Party. A Chief-of-Party shall be designated for the purpose of overseeing the Assisting Party's employees and equipment. The Chief-of-Party shall work closely with the Burn Boss and the Jurisdictional Party. Members of the Assisting Party shall follow instructions of the Burn Boss when implementing this AGREEMENT, provided, however, that if the Chief-of-Party determines that the proposed burn or wildfire suppression is unsafe or has serious concerns about the advisability of burning or engaging in specific wildfire suppression tactics, and is unable to reach a satisfactory agreement with the Burn Boss or Incident Commander to rectify the situation, he or she retains the option of refusing the assignment. Individual crew members of the Assisting Party shall have the right to refuse assignments or directives during a burn that they deem to be unsafe. Such individuals shall report their safety concerns to the Chief-of-Party.

7. The Jurisdictional Party for the burn shall be responsible for consulting with local fire districts, air quality departments, and sheriff offices, for getting necessary permits, licenses, and authorizations (including but not limited to obtaining any necessary governmental burn permits, air quality permits, and other required authorizations) at its own expense, for obtaining access, and for serving as the principal point of contact with third parties.
8. Unless expressly agreed to in a written addendum to this AGREEMENT, and identified in the Burn Plan (see Item 4 above), each Party shall pay all salaries and benefits to its own employees and shall cover the costs of operation and maintenance of its own equipment, and there shall be no exchange of funds for the obligations described herein.
9. Each Party will adhere to qualification standards of the National Interagency Incident Management System Wildland Fire Qualification System Guide, PMS 310-1 (June 2009 or later version) for the positions that they will occupy; in addition, City employees will also adhere standards established by the State of AZ Dept of Forestry & Fire Management (DFFM) SOG-804 (latest version).

Each Party shall cooperate regarding fire management training opportunities. The Agency and the Conservancy agree to encourage interagency participation in sponsoring and coordinating training activities. This may include sharing instructors, providing slots in each other's training sessions, and, for NWCG qualified personnel, initialing successful completion of tasks in Position Task Books.

10. Each PARTY to this Agreement shall indemnify, defend and hold harmless the other PARTIES, their members, directors, officers, employees, agents, attorneys and assigns from and against any and all claims, losses, liability, costs or expenses resulting from the negligence or willful misconduct of the indemnifying PARTY or PARTIES, provided however, nothing herein shall be construed to expand the liability of any PARTY or its employees beyond the gross negligence/intentional misconduct standard applicable to emergency medical technicians or paramedics providing emergency medical aid as provided for in A.R.S. §48-818. This indemnification shall survive termination of this Agreement or the termination of the participation of any of its PARTIES.
11. Unless otherwise expressly provided by law, personnel or volunteers of one Party shall not be considered to be agents or employees of the other Party for any purpose, and no joint venture or principal-agent relationship shall be deemed to exist. Each Party shall carry appropriate workers compensation coverage for its employees participating in fire management activities under this AGREEMENT.
12. The Parties to this AGREEMENT appoint the following Project Officers for implementation of this AGREEMENT:

Jeremy Bailey
Director of Prescribed Fire Training
The Nature Conservancy
801-599-1394
jeremy_bailey@tnc.org

Paul Oltrogge
Fire Management Officer
Flagstaff Fire - Summit Fire & Medical Dept
928.213.2509
poltrodge@flagstaffaz.gov

13. In the event of injury to personnel or volunteers of any participating Party, the Burn Boss or Incident Commander, as appropriate, shall provide or arrange for immediate medical treatment of any injuries incurred at the scene. Serious accident investigations (including but not limited to escaped prescribed fire, and accidents involving hospitalization or fatalities) will be undertaken jointly by the Parties. All Parties will cooperate in any such investigation. In the event that the Assisting Party's equipment is excessively damaged (i.e., in excess of \$1000.00) or destroyed, a joint investigation shall be conducted in accordance with the Jurisdictional Party's policy and procedures. The investigation will produce a recommendation for reimbursement, replacement or repair. The Project Officers shall communicate promptly regarding any injury to personnel or damage to equipment and documentation shall be provided as requested.
14. Each PARTY warrants that it complies with any state and federal laws, rules and regulations which mandate that all persons, regardless of race, color, pregnancy, religion, sex, sexual orientation, gender identify, genetic information, age, national origin, disability, veterans status, care-giving responsibilities, or familial status shall have equal access to employment opportunities. Each PARTY shall take affirmative action to ensure that it will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Pregnancy Discrimination Act of 1978, Americans with Disabilities Act of 2008 as amended, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, Age Discrimination and Employment Act of 1967 as amended, Genetic Information Nondiscrimination Act of 2008.
15. Each PARTY shall bear the risk of its own actions and shall determine for itself an appropriate level of liability insurance coverage and maintain such coverage. Nothing in this Agreement shall be construed as a waiver of any limitation on liability that may apply to a PARTY.
16. This AGREEMENT shall be effective from signature date by both Parties and, unless terminated earlier shall continue in effect until November 1st, 2024. This AGREEMENT supersedes all prior or contemporaneous communications and negotiations, both oral and written and constitutes the entire agreement between the Parties relating to the work set out above. No amendment shall be effective except in writing signed by all Parties. Any party may withdraw from this AGREEMENT thirty days following written notification to all the other Parties.
17. This AGREEMENT shall be interpreted, construed and governed by the laws of the State of Arizona and such laws of the United States as may be applicable. In the event of any litigation over the interpretation or application of any of the terms or provisions of this AGREEMENT, the Parties agree that litigation shall be conducted in the State of Arizona. Each PARTY shall comply with all federal, state, and local laws, rules and regulations.
18. The PARTIES acknowledge and agree that the terms, provisions, conditions, and obligations of this Agreement are for the sole benefit of, and may be enforceable solely by, the PARTIES, and none of the terms, provisions, conditions, and obligations of this Agreement are for the benefit of, or may be enforced by, any person or entity not a PARTY to this Agreement.

19. The PARTIES to this Agreement are not precluded from participating in additional or supplemental IGA's or contracts as deemed appropriate by the PARTIES. Nothing in this Agreement shall limit the ability of a PARTY to provide or collaborate with another jurisdiction, which is not a participant in this Agreement.
20. The City is required to comply with A.R.S. §41-4401, and hereby warrants that they will, at all times during the term of this Agreement, comply with all federal immigration laws applicable to the employment of their respective employees, the requirements of A.R.S. §41-4401, and with the e-verification requirements of A.R.S. §23-214(A) (together the "state and federal immigration laws"). Parties further agree to ensure that each subcontractor that performs any work under this Agreement likewise complies with the state and federal immigration laws. A breach of a warranty regarding compliance with the state and federal immigration laws shall be deemed a material breach of the Agreement and the Party who breaches may be subject to penalties up to and including termination of the Agreement. Each Party retains the legal right to inspect the papers of any contractor or subcontract employee working under the terms of the Agreement to ensure that the other Party is complying with the warranties regarding compliance with the state and federal immigration laws.
21. This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511
22. If any provision of this AGREEMENT is held invalid by a court of competent jurisdiction, the other provisions shall not be deemed invalid as a result, and the Parties shall revise this AGREEMENT as necessary consistent with the intent of the Parties. Any recital or preliminary statement in this AGREEMENT and all Exhibits referred to in this AGREEMENT are an integral part of this AGREEMENT and are incorporated by reference into this AGREEMENT.
23. This AGREEMENT may be executed in counterparts, each of which when executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this AGREEMENT, effective as of the last date written below.

CITY OF FLAGSTAFF

THE NATURE CONSERVANCY

By: _____

By: _____

Coral Evans
Mayor

Name: _____
Title: _____

Date: _____

Date: _____

APPENDIX A:
MINIMUM PRESCRIBED BURN PLAN COMPONENTS:

- Signature Page
- Description of burn area (geographic location, vegetation and fuels, narrative description of area to be burned)
- Goals and objectives
- Prescription (fuels, weather, timing or seasonality, narrative description of desired fire behavior)
- Smoke Management
- Personnel and Equipment (number and types, crew organization and PPE)
- Pre-burn preparations (site prep, permits, notifications, weather forecasts)
- Communications (on-site, sources of emergency assistance, public relations)
- Safety and Medical
- Ignition
- Holding (procedures, mop-up standards, backup source of water supply)
- Contingency (location and response time of emergency resources, secondary control lines, triggers for declaring escapes and associated crew assignments)
- Monitoring (on-site weather, fire behavior and smoke)
- Post-burn activities (ensure monitoring until burn area is out)
- Attachment: Go/No Go Checklist (including: Go/No-Go, briefing, test fire and post-burn checks)
- Attachment: Complexity Analysis
- Attachment: TNC Documentation (Consequence Analysis, Review of Laws, TNC Fire Management Guideline exemptions and justifications, Conflict of Interest and Private Benefits screenings, landowners permissions and waivers)
- Attachment: Maps
- Attachment: Technical Reviewer Checklist (*when required*)

Appendix B

BURN BOSS TYPE 3 (RXB3)

The Conservancy RXB3 position directs prescribed fire operations on some low complexity burns. This position differs significantly from the RXB3 of some US government agencies in that the Conservancy requires additional training and experience. A person qualified by an agency as an RXB3 is not necessarily qualified for use as a Conservancy RXB3 because of additional qualifications requirements, found in the TNC Fire Management Manual [here](#).

Criteria for RXB3 use:

- Complexity Analysis final ranking of "low" using either *NWCG complexity analysis*, or *TNC complexity analysis*.
- Conservancy *Consequence Analysis* ranking of "not high"
- No aerial ignition
- Prescribed Burn Plan limits prescription parameters to those that provide for wide safety margins. E.g. plans consider: conservative yet effective fire behavior prescriptions; wide fire breaks; and more personnel than minimally adequate.
- Prescribed Burn Unit Plan must explicitly list RXB3 as acceptable

Responsibility and Authority:

- Directs prescribed fire operations on some low complexity burns
- Directs Non-broadcast burns
- Coordinates necessary fire suppression activities, e.g. prescribed fire contingency response
- Confirms crew member training, qualifications and position currency
- Prepares Prescribed Burn Plans and assists with other planning
- Serves as instructor for entry to mid-level wildland fire courses
- Responsible for safe and effective fire operations
- Instructs the science and practice of ecological burning

PRESCRIBED FIRE CREW MEMBER (RXCM)

The Conservancy RXCM position participates in prescribed fire operations, including: ignition, holding, mop-up, monitoring, etc. All Conservancy staff and volunteers actively participating on a prescribed burn must be qualified as either a Firefighter Type 2 (FFT2) or RXCM. The principal difference between FFT2 and RXCM is the lower minimum fitness requirement for RXCM. Qualifications requirements are found in the TNC Fire Management Manual [here](#).