



Memorandum of Agreement  
*Between*  
Kansas State University,  
Kansas Forest Service  
*And the:*

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**I. Purpose**

The purpose of this MOA is to provide for Kansas State University/Kansas Forest Service herein referred to as "KSU/KFS" support of the wildland fire suppression, fire prevention education, land management activities using prescribed fire on private and public owned or managed lands and the distribution of excess property. This purpose extends to any organized community with a population of less than 10,000, an organized community of over 10,000 that has a wildland fire or urban interface fire suppression and prevention mission to protect unincorporated lands beyond its boundaries and upon request, provide services that offer protection to life and property in the event of a man-made or natural disaster. This Agreement further extends to a working relationship with any organization, group, agency, unit or facility who wishes to collaborate with KSU/KFS for the purpose of providing fire suppression, education and support to communities as part of a fire and/or All-Risk management program. These entities herein referred to as the "Organization. Throughout this document, this Memorandum of Agreement will be referred to simply as the MOA.

**II. Authority**

The Federal Property and Administration Services Act of 1949, the Cooperative Forestry Assistance Act of 1978 authorizing use of property by Kansas Forest Service or its loan to Emergency Response Organizations and the Kansas Tort Claim Act (K.S.A. Article 61, 75-6104, (w and x) protecting the organization against liability from damages resulting from donated excess fire and emergency medical equipment. The distribution and receiving of grant funds as authorized by the granter and administered by Kansas Forest Service to those public entities identified in the Purpose statement.

**III. Scope**

**A. KSU/KFS Agrees to:**

1. Render guidance and assistance for the proper functioning of the cooperative fire protection system on rural lands and/or rural communities and communities having a wildland/urban interface mission to protect unincorporated private and public lands.
2. Provide technical assistance to the Organization in training firefighters and land managers in the safe and proper use of current and future Federal Excess Personal Property (FEPP) and/or Fire Fighter Property (FFP) that has been or may be converted to fire suppression or support equipment.
3. Provide technical assistance to the Organization on the design, conversion, maintenance and procurement of repair parts for excess property.

4. Provide the Organization with appropriate training to suppress wildland fires and to safely initiate and manage prescribed fire as part of a land management schedule, the general execution of a fire plan, Hazardous Fuel Mitigation and other programs that provide for life safety and the prevention of property loss as a result of man-made and natural disasters.
5. Assist in the acquisition of property to be used by the Organization for fire suppression, prescribed burning, emergency medical life support and the prevention of loss of life and property in the event of a man-made or natural disaster.
6. Assist and support the Organization in the pursuit of financial assistance in accordance with the Purpose of this Agreement.
7. Assist the Organization and its personnel in preparation for deployment and support of the National Response Framework as provided under HSPD-5 (2003).

**B. Organization Agrees to:**

1. Fire departments and land management organizations will develop and carry out an active educational program which will create awareness in the community of the need for preventing wildland fire and share with others acquired knowledge concerning wildland and prescribed fire through lessons learned. (For those organizations whose mission is primarily life safety, they will provide an educational program reflective of their mission.)
2. Abide by all requirements in the Appendix A, Excess Property
3. Keep on file, for the duration of this agreement, a copy of this MOA.
4. The Organization will be responsible for assuring that this document is current with each organizational change in status, not including the items under *Scope of work*.
5. Organizations whose personnel serve as first responders will successfully complete IS- 100 and IS-700 training in compliance with State of Kansas Executive Order #05-03, issued April 19, 2005 prior to using any FEPP/FFP, receiving grants, NWCG training or receiving Excess Donated Property. This will be completed within 180 days of joining the Organization. This requirement will only apply to personnel involved in fire suppression or those making an emergency response.
6. Organizations, if required by law, will submit a fire incident report to the Office of the State Fire Marshal on the Kansas Fire Reporting System (K-FIRS). Such reports shall be filed by the 20<sup>th</sup> of each month. Should no incidents occur during the reporting period, a "No Activity Report" will be submitted.

**C. It is mutually agreed and understood by and between the parties that:**

1. This agreement shall be effective upon execution by the parties and continue in force subject to any amendments which may be made by mutual agreement of the parties; and it is expressly understood that this agreement or any amendments may be terminated by either party upon 60 days written notice to the other.
2. The Organization shall hold harmless, indemnify, save and defend KSU/KFS, Department of Defense and the USFS or their agents from and against any and all losses, damages, cost, injuries and claims to persons or property including its employees, agents, servants or authorized personnel involving, arising out of or resulting from Organization use, possession, custody and control of the property provided or assistance furnished pursuant to

this agreement.

3. The Organization and KFS mutually agree to provide support and aid upon request to each other or to each other's partner agencies in preparing for, prepositioning for, responding to, suppressing, or managing wildfires or other natural or man-made disasters, as available and subject to any other agreements as may be in place between such entities.

#### IV. ASSURANCES

The Provisions found in Contractual Provisions Attachment (Form KSU-146a, Rev. 03-18), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

MOA is binding on the Organization, its successors, transferees and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the parties.

This MOA will remain in effect until superseded. **NOTE: *it should be revised as any change occurs or every 5 (five) years, whichever occurs first.***

## **Appendix A**

### **Excess Property**

This Section specifically addresses the Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) programs, which KFS administers on behalf of the USDA Forest Service (USFS).

#### **Eligibility**

The FEPP program is available to any fire department in Kansas that is recognized by the Office of the State Fire Marshall (OSFM), as evidenced by the issuance of a Fire Department Identification (FDID) number, if that fire department serves a population under 10,000 or has a wildland fire program recognized by KFS. The FFP program is additionally available to any Emergency Medical Service (EMS) agency, or non-profit, non-governmental organization with an established and recognized role in wildland fire management. For this document, all will be referred to simply as “departments”. FEPP equipment may be used for fire suppression, with up to 10% of its use for other emergencies that threaten life or property. FFP may be used for fire suppression or fire management or EMS/rescue uses.

- To be eligible, any fire department must be current on filing fire reports to the National Fire Incident Reporting System (NFIRS) as reported by OSFM.
- Any fire department or other organization must have a current Memorandum of Agreement on file with KFS to be eligible.
- All recipients of vehicles or heavy equipment agree to enter the equipment into the Kansas Comprehensive Resource Management and Credentialing System (CRMCS) and to make it available to assist KFS upon request during fire emergencies or periods of extreme fire danger or fire activity, provided doing so will not unduly compromise protection of their own jurisdiction.
- All departments agree to comply with design and construction requirements outlined on the issue sheet when they receive excess property through either program.

#### **Terms and Conditions**

- I. KFS will only obtain property with a Demil code of A (non-sensitive) or Q (sensitive). Other demil codes have multiple additional requirements and will not be requisitioned. Demil Q is further broken down into Q3 and Q6 property, which have separate requirements, below.
- II. Ownership of some, but not all items can be transferred to receiving departments.
  - A. FEPP property ownership remains with the Federal government throughout its use. It is owned by the USFS, on loan to KFS, and sub-loaned to the local fire department. Such property must be inventoried every two years, and returned to KFS for disposal when it is no longer in active service with the fire department. When returned, all components issued with the vehicle must be returned, including a complete set of tires, seats, bed (if present when issued), all body parts and vehicle components. Items the fire department has added may be removed and kept by the department, but removal is not required. No FEPP property, or portion thereof, may be sold, cannibalized, traded, or otherwise transferred except by the US Government (USG), or by KFS acting on USG’s behalf.
  - B. Demil A or Q6 property can transfer ownership. KFS owns such property for the first year. Once the fire department submits photographs showing that it has been painted and placed in service for firefighting (i.e. capable of bringing water and equipment to a fire, even if some work remains to be completed), KFS can transfer title to the receiving department one year later.
  - C. Demil Q3 remains property of the Department of Defense (DOD) in perpetuity. It may be used, but must be inventoried every two years, and must be returned to DOD when no longer in service as fire equipment.
- III. FFP Disposal. All FFP vehicles are subject to security requirements and may not be sold or transferred to any person or entity outside the United States. For specific requirements and procedures, see the KFS Excess Property Handbook, available at [www.kansasforests.org/fire\\_management/](http://www.kansasforests.org/fire_management/) or in hard copy from KFS.
  - A. Demil A property may be disposed of by the fire department after serving a minimum of one

additional year. The department should notify KFS that the property has been disposed of, but may otherwise dispose of according to their local jurisdiction's normal disposal process for public property.

- B. Demil Q6 property may be sold, but carries extra requirements. It may not be sold to any person or entity outside the continental United States, and requires approval of the buyer by the Trade Security Commission. It is the receiving department's responsibility to ensure that any sale or disposal is legal and approved. Further guidance can be found in the KFS Excess Property Handbook.
- C. Demil Q3 property cannot be sold or transferred, and must be returned to KFS, to return to the Defense Logistics Agency (DLA) when no longer needed. Any components removed from the vehicle must be retained by the department, and returned with it for disposal (example, pumps and pump housings from HEMTTs, or vehicle beds).
- D. DLA provides the additional specific requirements, which may be found in the KFS Excess Property Handbook.

IV. Cost. There is no cost to participate in the FEPP or FFP programs.

- A. KFS will receive vehicles and provide a general mechanical check, and repair items as needed to ensure, to the best of our ability, that the vehicle is roadworthy. There is no cost for labor, and no cost for parts obtained via salvage or other no-cost sources. Any cost for parts incurred by KFS will be invoiced to the fire department along with a 10% handling/stocking fee. Parts received through FEPP (government property) cannot be placed on FFP vehicles (state or local property).
- B. If KFS picks the vehicle up within Kansas, there is no cost for retrieving the vehicle. If a vehicle is obtained out of state, actual shipping costs will be invoiced to the receiving department.

V. In service

Receiving departments agree to have the equipment in service within six months of receipt.

- A. In service will be defined as painted to a non-military paint scheme, and equipped to be able to provide meaningful support on a fire or emergency scene, generally meaning at least having a water tank and means to move water.
- B. Once this is completed, departments will submit photographs from two opposite corners showing all 4 sides of the vehicle in service. This will be the step that starts the clock for eventual transfer of ownership, when applicable.
- C. The above does not require that every detail be completed, as it is recognized these vehicles may remain a work in progress throughout their life, but it is at least a non-military color and operational.

VI. Insurance, liability

Receiving departments are required to maintain liability insurance, to the extent required under state law, on all vehicles. Additionally, by receiving equipment under FEPP or FFP, they agree to hold KFS, Kansas State University, and all employees or agents of either institution harmless. Finally, they agree to indemnify the above in case of any legal action arising from failure to comply with program rules and regulations, including vehicle design and use.

VII. Guidance

There are numerous sources for information and guidance on the design of vehicles or equipment under FEPP and FFP programs. KFS Fire staff can assist in many cases, or can direct the department to multiple other sources of information.

VIII. State responsibilities. KFS will:

- Collect and maintain a list of equipment needed by fire departments
- Screen frequently via appropriate sources to locate and secure such equipment
- Retrieve equipment (unless specific arrangements are made otherwise), inventory, and track equipment as required
- Inventory FEPP, and Q3 FFP property every other year

- Provide initial mechanical inspection and repair prior to issue, though no warranty is expressed or implied
- Maintain an inventory of common parts, and the ability to order parts through DLA or similar ordering systems on behalf of fire departments when doing so is advantageous to the department (some items are better obtained through local parts stores).
- Vehicles will generally be processed in the order received, and issued to departments in the order requested. Departments may not select specific vehicles from available inventory. KFS does reserve the right to alter the order to facilitate more quickly filling requests (e.g. processing several good vehicles that can be issued quickly) or to alter the order of the request list based on operational needs and priorities, particularly on types of items for which demand exceeds supply.

IX. Department responsibilities. The receiving department is responsible to:

- Place requests with KFS for needed equipment
- Maintain current MOA with KFS, and current NFIRS fire reporting
- Maintain insurance on vehicles once received
- Pick up vehicles from KFS within 30 days of being notified their vehicle is ready
- Paint and install at least basic equipment on the vehicle within 180 days of issue, and provide photos when that is completed
- Not cannibalize, sell, dispose of or remove vehicle components unless specifically authorized to do so by KFS, and retain any parts removed from Q3 vehicles for eventual return at disposal time.
- Notify KFS of any destruction, theft, loss, or damage to vehicles
- Notify KFS prior to sale or disposal of any vehicle
- Do not structurally alter the vehicle (i.e. frame modifications), keep the vehicle within its Gross Vehicle Weight Rating (GVWR) when fully staffed, stocked, and full of water, and do not place any outside locations on the vehicle on which an individual may ride while the vehicle is in motion.
- Make any issued vehicle available to KFS and/or USFS staff for inspection or inventory as needed, and comply with any and all open records/FOIA requests related to the vehicle
- Ensure that vehicle is properly housed, which at a minimum means out of the weather, and secured against vandalism or unauthorized access
- Ensure that issued equipment is used only for official departmental business and not for private or for-profit use at any time
- Provide for annual safety inspections, and for any and all such maintenance as may be needed to keep the vehicle safe and operational
- Display a KFS decal visibly on each side of the vehicle, and keep all inventory tags intact until such time as the department receives title
- Keep vehicles entered into CRMCS, and make them available to assist KFS in times of major fire activity or preparedness for fire threats.

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to and specifically incorporated in all copies of any contractual agreement by adding the following statement to the main body of the contract: "The Provisions found in Contractual Provisions Attachment (Form KSU-146a, Rev. 3-18), which is attached hereto, are hereby incorporated in this contract and made a part hereof."

1. **Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in the contract (including, without limitation, all other attachments) in which this attachment is incorporated. Any terms that conflict with or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** All matters arising out of or related to this contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit arising out of or related to this contract shall reside only in courts located in the State of Kansas.
3. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require Kansas State University or any of its controlled corporations (collectively "University") to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The terms, conditions, and limitations of liability of the State of Kansas, the University, and their employees are exclusively defined under the Kansas Tort Claims Act (K.S.A. 75-6101, et seq.).
4. **Arbitration, Damages, Warranties:** No interpretation of this contract shall find that the University has agreed to binding arbitration, or the payment of damages or penalties. Further, the University does not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages or rights of action available to the University at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
5. **Responsibility For Taxes:** The University shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
6. **Insurance:** The University shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require the University to establish a "self-insurance" fund to protect against any such loss or damage.
7. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the required approvals and certifications have been given, including, but not limited to, the signature of an authorized representative of the University as defined in the University Contracts Policy: <https://www.k-state.edu/policies/ppm/3000/3070.html>.
8. **Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Export Control:** Prior to providing University with any items under this contract that are subject to export controls regulations, including items controlled under the International Traffic in Arms Regulations (ITAR), 22 C.F.R. §§ 120-130, or the Export Administration Regulations (EAR), 15 C.F.R. §§ 730-774, Contractor will notify University and identify the export controlled items at issue and the applicable categories and subcategories of the United States Munitions List and/or Export Control Classification Number(s). University reserves the right to decline to accept any items or information controlled under ITAR or EAR. Contractor will direct all notices under this section to the appropriate University contact as follows: [comply@k-state.edu](mailto:comply@k-state.edu).
10. **Privacy of Student Records:** Contractor understands that the University is subject to FERPA (Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g). To the extent Contractor possesses any education records of University's students under this contract, Contractor is deemed to be a school official with a legitimate educational interest in the records and Contractor agrees to comply with FERPA and its regulations. Contractor specifically agrees that it shall use personally identifiable education records only for purposes related to this contract, and shall not disclose such records to any third party without authorization from the University. Contractor shall promptly report to the University any request for, or improper disclosure of, University student educational records.
11. **Anti-Discrimination Clause:** Contractor agrees to comply with all applicable state and federal anti-discrimination laws. When requested by University, Contractor shall cooperate with University in meeting obligations under University's own policies and procedures, including University's anti-discrimination policy: <http://www.k-state.edu/policies/ppm/3000/3010.html>. Contractor specifically acknowledges that its employees on campus and/or participating in University programs or activities have reviewed, understand, and will comply with University's anti-discrimination policy. Contractor also agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or if it is determined that the contractor has violated applicable provisions of ADA, such violation(s) shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the University.
12. **Information/Confidentiality:** As a state agency, the University's contracts are generally public records, and therefore no provision of this contract shall restrict the University's ability to produce this contract in response to a lawful request or from otherwise complying with the Kansas Open Records Act (K.S.A. 45-215, et seq.). Moreover, no provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, et seq.
13. **The Eleventh Amendment:** The Eleventh Amendment is an inherent and incumbent protection of the State of Kansas and need not be reserved, but prudence requires the University to reiterate that nothing in or related to this contract shall be deemed a waiver of the Eleventh Amendment.
14. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of

Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

2019

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last day shown below:

**Organization (Official Name)** \_\_\_\_\_,

**FDID # (fire departments only)** \_\_\_\_\_, **County** \_\_\_\_\_

\_\_\_\_\_  
**Mailing Address** (public office if possible)

\_\_\_\_\_  
**City** \_\_\_\_\_ **ZIP** \_\_\_\_\_

\_\_\_\_\_  
**Primary Station Location** (Lat. /Long), St., Rd.

\_\_\_\_\_  
**City** \_\_\_\_\_

\_\_\_\_\_  
**Shipping Address** (if different)

\_\_\_\_\_  
**City** \_\_\_\_\_ **ZIP** \_\_\_\_\_

\_\_\_\_\_  
**Additional Station Location** (Lat. /Long), St., Rd.  
(Use Additional Sheet If Necessary)

\_\_\_\_\_  
**City** \_\_\_\_\_

\_\_\_\_\_  
**Chief (Print Name)**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Daytime Phone**

\_\_\_\_\_  
**Cell Phone**

\_\_\_\_\_  
**Email**

\_\_\_\_\_  
**Authorized Representative (Print Name)**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Daytime Phone**

\_\_\_\_\_  
**Email**

**KANSAS STATE UNIVERSITY  
KANSAS FOREST SERVICE**

\_\_\_\_\_  
**Kansas State Forester**  
**2610 Claflin Rd.**  
**Manhattan, KS 66502**

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