



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



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 partner 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. Maintain and have the responsibility for the proper functioning of acquired equipment for the purpose of wildland fire suppression, planning and conducting prescribed burning and assisting in events involving life safety.
2. Departments and organizations will make assurances that all deployable assets will be entered into the state Comprehensive Resource Management and Credentialing System (CRMCS) and based on local need, the department or organization agrees to assist KFS in times of emergency or in preparing for emergency operations, subject to availability. Such equipment may be requested for state-wide mutual support during times of extreme fire danger, if requested by the State Forester or his/her delegate.
3. 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.)
4. Assume responsibility and accountability for all Excess Property loaned or issued to the Organization as well as meeting the insurance requirements of the State of Kansas and all liabilities connected with the use of the property. Insure safe operation of program equipment. Report all accidents involving personal injury, death or damage to Excess Property to KSU/KFS within 6 working days.
5. Assure Excess Property be used for fire protection and suppression, training, fire management or for those emergencies which may threaten the loss of life or property on public and privately owned or managed property. All Excess Property will be available for emergency service to KSU/KFS upon request, based on need and availability. Temporary relocation of Excess Property will be determined by mutual agreement of KSU/KFS and the Organization to establish the duration, use during relocation, maintenance and financial compensation.
6. For original equipment, convert Excess Property vehicles into fire apparatus or support units and paint a non-military color scheme within 180 days. Serial numbers, NFCID numbers and KSU/KFS decals shall remain intact and legible on all equipment. Vehicles shall be identified with the Organization emblem. Equipment painted a non-military color upon receipt will not require repainting.
7. Organizations that acquire Excess Property will perform or have performed annual mechanical maintenance to ensure safe operation and to prevent undue wear and deterioration of the equipment. The Organization will keep records of this maintenance and make those records available to KSU/KFS personnel upon request.

8. Prohibit the personal use of Excess Property which violates the law and this MOA, making loaned equipment subject to recall from the Organization and violators subject to penalties.
9. Make all loaned Excess Property available for periodic inventory and inspection by KSU/KFS and USDA Forest Service (USFS) personnel.
10. Prohibit selling, cannibalizing, trading, transferring, exchanging, donating or otherwise disposing of, in whole or in part, any Excess Property without the written consent of the KSU/KFS.
11. Furnish adequate security and housing for all Excess Property loaned or issued to the Organization. The Organization will protect equipment from weather deterioration when not in use.
12. Keep on file, for the duration of this agreement, a copy of this MOA.
13. 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*.
14. 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.
15. Organizations, if required by law, will submit a fire incident report to the Office of the State Fire Marshal on the Kansas Uniform Fire Reporting System (K-FIRS). Such reports shall be filed by the 20th 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.

IV. CONTRACTUAL PROVISIONS ATTACHMENT

State of Kansas
Department of Administration
DA-146a (Rev. 06-12)

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. Terms Herein 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 any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. Termination Due To Lack Of Funding Appropriation: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

3. Disclaimer of Liability: No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.)

4. Anti-Discrimination Clause: The contractor 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, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

5. Acceptance of Contract: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. Arbitration, Damages, Warranties: Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do 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 available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

7. Representative's 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.

8. Responsibility For Taxes: The State of Kansas and its agencies 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.

9. Insurance: The State of Kansas and its agencies 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 them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

10. **Information:** 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.

11. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

12. **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

IV. ASSURANCES

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

This 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 is first.

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

Organization (Official Name) _____,

(Official address) _____, City, _____ zip _____

FDID # (fire departments only) _____, County _____

Mailing Address (public office if possible)

Shipping Address (if different)

City

ZIP

City

ZIP

Station location (Lat. /Long), St., Rd.

Print Name (Chief)

Print Name (Authorized Representative)

Signature (Chief)

Signature (Authorized Representative)

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Daytime Phone

Title

Email

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Daytime Phone

Primary contact (if different)

KANSAS STATE UNIVERSITY
KANSAS FOREST SERVICE

Email

Kansas State Forester
2610 Claflin Rd.
Manhattan, KS 66502

Date

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Daytime phone