

**COOPERATIVE AGREEMENT
BETWEEN THE
UTAH DIVISION OF FORESTRY, FIRE AND STATE LANDS
AND**

Tooele County

This agreement shall become effective on the date of the last authorized signature and will remain in effect until December 31, 2024. This agreement may only be amended by mutual written agreement of the parties. In the event of disagreement between this agreement and any statute or regulation, the statute or regulation shall control. No waiver of any terms of this agreement will be valid unless in writing in accordance with R652-122-200 (2017).

SECTION I: RECITALS AND GLOSSARY OF TERMS

A. Pursuant to Utah Code § 65A-8-203 (2021), this Cooperative Agreement is required for a county, municipality, or certain other eligible entity (“Participating Entity”) and the State of Utah, Division of Forestry, Fire and State Lands (“FFSL”)(collectively “parties”) to cooperatively discharge their joint responsibilities for protecting non-federal land from wildland fire.

B. Glossary of Terms

- a. Annual Participation Commitment Report – a report prepared by the Participating Entity detailing the expenditures and activities conducted in compliance with the Participation Commitment during the past fiscal year.
- b. Cooperative Agreement – an agreement between FFSL and an Eligible Entity wherein the Eligible Entity agrees to meet a Participation Commitment and provide Initial Attack for wildland fire in the entity’s jurisdiction, and FFSL agrees to pay for wildland fire suppression costs following a Delegation of Fire Management Authority as found in Utah Code § 65A-8-203.1 (2017), as well as all aviation asset costs charged to the incident.
- c. Eligible Entity – as defined in Utah Code § 65A-8-203 (2021) means:
 - i. a county, a municipality, or a special service district, local district, or service area with wildland fire suppression responsibility as described in Utah Code § 11-7-1(2017); and wildland fire suppression cost responsibility and taxing authority for a specific geographic jurisdiction; or
 - ii. upon approval by the FFSL director, a political subdivision established by a county, municipality, special service district, local district, or service area that is responsible for providing wildland fire suppression services; and paying for the cost of wildland fire suppression services
- d. Extended Attack – actions taken in response to wildland fire after Initial Attack.
- e. Initial Attack – actions taken by the first resources to arrive at any wildland fire incident. Initial actions may be size-up, patrolling, monitoring, holding action, or aggressive suppression action. All wildland fires that are controlled by suppression forces undergo initial attack. The kind and number of resources

responding to initial attack varies depending on fire danger, fuel type, values to be protected and other factors. Generally, initial attack involves a small number of resources and the incident size is small. Regardless of fire type, location, or property/resources being threatened, firefighter and public safety is always the highest priority. (NWCG Wildland Fire Incident Management Field Guide, 2013)

- f. Participation Commitment – prevention, preparedness, and mitigation actions and expenditures undertaken by a Participating Entity to reduce the risk of wildland fire and meet the intent of Utah Code § 65A-8-202 (2017) and Utah Code § 65A-8-202.5(2017).
- g. Annual Participation Commitment Statement – a statement prepared by FFSL and sent to the Participating Entity detailing the Participation Commitment for the upcoming fiscal year.
- h. Participating Entity – an Eligible Entity with a valid Cooperative Agreement.
- i. Fiscal Year - a consecutive 12-month period for financial reporting, as determined by the Participating Entity's budget cycle.

SECTION II: CERTIFICATION OF QUALIFICATIONS

FFSL and the Participating Entity certify that the following qualifications have been met:

- A. The Participating Entity is a qualifying eligible entity.
- B. The Participating Entity agrees to adopt a Community Wildfire Preparedness Plan (CWPP) (or equivalent approved by FFSL).
 - a. If the Participating Entity has a CWPP at the time of executing this agreement, the Participating Entity agrees to maintain and implement the CWPP for the duration of this agreement.
 - b. If the Participating Entity does not have a CWPP at the time of executing this agreement, the Participating Entity agrees to make a good faith effort to develop and adopt a CWPP prior to the expiration of this agreement.
- C. The Participating Entity's fire department or fire service provider as defined in Utah Code § 65A-8-203 (2021) meets minimum standards for wildland fire training, certification, and equipment based on nationally accepted standards as specified by FFSL in R652-122-1400 (2017).
- D. FFSL agrees to provide an Annual Participation Commitment Statement and the Participating Entity agrees to review, approve, and return the signed Annual Participation Commitment Statement to FFSL before the start of the Participating Entity's fiscal year.
- E. The Participating Entity agrees to implement prevention, preparedness, and mitigation actions, which are identified in their CWPP and lead to reduction of wildfire risk, according to their Annual Participation Commitment Statement.

- F. The Participating Entity is not ineligible for a Cooperative Agreement pursuant to R652-122-200 (2017), R652-121-400 (2017), or R652-121-600 (2017)
- G. If the Participating Entity is a county or has jurisdiction over unincorporated private land, the county in question has adopted a wildland fire ordinance based on minimum standards established by FFSL in R652-122-1300 (2017).
- H. If the Participating Entity is a county or has jurisdiction over unincorporated private land, the county in question has a designated fire warden as described in Utah Code § 65A-8-209.1 (2022) and has entered into a County Warden Agreement (Addendum A).

SECTION III: PARTICIPATION COMMITMENT

FFSL and the Participating Entity agree to the following provisions:

A. Participation Commitment

- a. The Participating Entity agrees to fulfill a Participation Commitment as contained in R652-122-800 (2017) and R652-122-200(6)(c) (2017).
- b. The Participation Commitment includes prevention, preparedness, and mitigation actions identified in an FFSL-approved CWPP or equivalent wildland fire preparedness plan.

B. Participation Commitment Expenditures and Activities

- a. The Participation Commitment may be met through either direct expenditures or in-kind activities.
 - i. Direct expenditures include funds spent by the Participating Entity to implement wildland fire prevention, preparedness or mitigation actions identified in Addendum B or with the approval of the Participating Entity's respective FFSL Area Manager.
 - ii. In-kind activities include wildland fire prevention, preparedness or mitigation efforts identified in Addendum B or with the approval of the Participating Entity's respective FFSL Area Manager.
 - 1. In-kind expenditures are valued at the rate calculated by the "Independent Sector" (<https://www.independentsector.org/>), the same source used for FFSL's Fire Department Assistance Grant program.
 - iii. Participation Commitment cannot be met through direct payment to the State.
- b. FFSL staff (e.g., County Warden, WUI Coordinator, FMO, or Area Manager) may assist the Participating Entity with identifying valid Participation Commitment actions and activities based on the Participating Entity's FFSL-approved CWPP or equivalent wildfire preparedness plan.

C. Participation Commitment Accounting and Reporting

- a. The Participating Entity is responsible for accounting for its respective Participation Commitment activities and expenditures.
 - i. The value of Participation Commitment expenditures and activities may, in certain instances, “carry-over” to the next fiscal year with the approval of the respective FFSL Area Manager.
 - 1. The value of capital improvement projects--typically, large “preparedness-type” projects--can carry-over for five years, with no single project’s value accounting for more than 25% of the Participating Entity’s total Participation Commitment for any of those years. This is the same 25% annual maximum that applies to all preparedness activities as noted on Addendum B.
 - 2. All other non-capital improvement actions (e.g., a large fuels reduction project) can carry over for three years. No maximum value applies to mitigation actions as described in Addendum
 - 3. It is the responsibility of the Participating Entity to receive approval from their respective FFSL Area Manager in advance of pursuing a carry-over
 - 4. It is the responsibility of the Participating Entity to account for, track and report in their annual Participation Commitment Report the carry-over from year to year.
- b. The Participating Entity agrees to provide an Annual Participation Commitment Report detailing the Participation Commitment activities and expenditures to their local FFSL Area Office at the conclusion of the Participating Entity’s fiscal year (via the County Fire Warden) for annual review and approval by FFSL.
 - i. FFSL shall have the right to review and verify records related to the Participation Commitment. FFSL shall also have the right to deny unverifiable or incorrect records.

D. Annual Participation Commitment Statement

- a. In advance of a Participating Entity’s fiscal year, FFSL will send the Participating Entity an Annual Participation Commitment Statement.
- b. In order to continue participation for the Participating Entity’s upcoming fiscal year, the Participating Entity’s executive officer must approve, sign, and return the Annual Participation Commitment Statement to FFSL by the due date contained in the Statement. Failure to do so will terminate this agreement at the conclusion of the Participating Entity’s current fiscal year.
- c. The Annual Participation Commitment Statement is based on the Participating Entity’s fiscal year, and the corresponding Participation Commitment must be met throughout the Participating Entity’s next fiscal year.

E. Participation Commitment Calculation

- a. The Participation Commitment is based on two elements, a wildfire risk assessment by acres (“Risk Assessment”) conducted by FFSL, and the historic fire cost average (“Fire Cost Average”) in each Participating Entity’s jurisdiction.
 - i. The Risk Assessment is determined by FFSL’s “Utah Wildfire Risk

Assessment Portal” (UWRAP), which will be updated as data sources, technology, and funding allow.

- ii. The Fire Cost Average is based on historic suppression costs accrued by a Participating Entity. Only wildland fire suppression costs accrued and paid by the State on behalf of a Participating Entity are counted toward that entity’s historic fire cost average. This includes State-paid costs after a Delegation of Fire Management Authority and Transfer of Fiscal Responsibility has occurred.
 1. The Fire Cost Average is calculated on a rolling ten-year average, dropping the highest and lowest cost years and adjusting for inflation (using the Consumer Price Index); therefore, each ten-year average will have eight data points.
 2. The Fire Cost Average will only include State-paid suppression costs for areas for which the Participating Entity has fire suppression responsibility and taxing authority.
- b. FFSL will calculate the Participation Commitment for the Participating Entity according to the formula found in R652-122-300 (2017), R652-122-400 (2017) and R652-122-500 (2017).

F. Participation Commitment Appeals

- a. Decisions related to the Participation Commitment may be informally appealed to the State Forester.

**SECTION IV: INITIAL ATTACK, DELEGATION OF FIRE MANAGEMENT
AUTHORITY, TRANSFER OF FISCAL RESPONSIBILITY,
and EXTENDED ATTACK**

A. Initial Attack

- a. The Participating Entity agrees to primary responsibility for Initial Attack (“IA”). IA is defined as actions taken by the first resources to arrive at any wildland fire incident. Initial actions may be size-up, patrolling, monitoring, holding action, or aggressive suppression action. All wildland fires that are controlled by suppression forces undergo initial attack. The kind and number of resources responding to initial attack varies depending on fire danger, fuel type, values to be protected and other factors. Generally, initial attack involves a small number of resources and the incident size is small. Regardless of fire type, location, or property/resources being threatened, firefighter and public safety is always the highest priority (NWCG Wildland Fire Incident Management Field Guide, 2013).
- b. Effective wildland fire IA will be determined by FFSL based on the definition above and pursuant to Utah Code § 65A-8-202 (2017), defined as what is reasonable for the entity.
- c. The Participating Entity agrees to financial responsibility for all IA costs except aviation assets, which are the responsibility of the State.
- d. FFSL agrees to financial responsibility for all costs of aviation assets, including both IA and extended incidents.

- i. This includes firefighters who are directly involved in the suppression of a wildland fire; firefighters on scene who have supervisory responsibility or decision-making authority over those involved in the suppression of a wildland fire; or individuals who have fire suppression responsibilities within close proximity of the fire perimeter.
 - ii. This does not include a person used as a courier, driver of a vehicle not used for fire suppression, or a person used in a non-tactical support or other peripheral function not in close proximity to a wildland fire.
 - iii. Upon the Delegation of Fire Management Authority, Firefighters not certified by the Utah Fire Certification Council as Wildland Firefighter I will be released from Initial Attack or reassigned to other firefighting duties.
 - iv. FFSL reserves the right to reevaluate these requirements.
- c. The Participating Entity will ensure that firefighters providing Initial Attack to wildland fire within the Participating Entity's jurisdiction will complete RT130 Annual Fireline Safety Refresher Training prior to each statutory "closed fire season" as found in Utah Code § 65A-8-211(2017).
- d. In order to be eligible for state reimbursement for wildland fire suppression response outside of its jurisdiction,
 - i. a Participating Entity's firefighters and fire departments must follow the qualifications outlined in the FFSL Memorandum of Understanding; or
 - ii. the County or participating entity fire departments for qualified resources used under this agreement on federal, state or out-of-county (or out-of-entity) fires pursuant to the terms and conditions outlined in the fire department MOU and rate agreement

B. Wildland Fire Response Equipment Standards

- a. The Participating Entity will ensure that engines, water tenders, hand tools, and water handling equipment used for response to wildland fire on non-federal land within the Participating Entity's jurisdiction will meet the standard for the type of equipment as determined by the National Wildfire Coordinating Group and/or as indicated in FFSL's annual Fire Department Manual.

SECTION VI: WILDLAND FIRE COST RECOVERY LEGAL ACTIONS

- A. Pursuant to Utah Code § 65A-3-4 (2020), the Participating Entity agrees to initiate a civil action to recover suppression costs incurred by the Participating Entity and the State of Utah on non-federal land within the Participating Entity's jurisdiction for wildland fire caused negligently, recklessly, or intentionally.
- B. Counsel for FFSL will provide assistance with these actions.
- C. Any costs recovered may reduce the Participating Entity's Historic Fire Cost Average and Participation Commitment.

SECTION VII: BREACH AND TERMINATION

- A. If, at the end of a fiscal year, FFSL determines that the Participating Entity has not complied with the terms of this agreement, including but not limited to, failing to comply with the Participation Commitment or failing to comply with the terms stated in Utah Code § 65A-8-203(4) (2021), the entity will be placed on Probation Status by FFSL and given notice of this decision, the reasons for this decision, and actions required to remove Probation Status.
- B. A decision to place the Participating Entity on Probation Status may be appealed to the State Forester. The State Forester may conduct an investigation, hold an informal hearing, and/or request further information from the Participating Entity and/or FFSL.
- C. During Probation Status, the Participating Entity may continue to receive assistance as provided in this Cooperative Agreement, but the Participating Entity must come into compliance with the Cooperative Agreement by the end of the fiscal year.
- D. If the Participating Entity comes into compliance with the Cooperative Agreement by the end of the first Probation Status fiscal year, the Probation Status shall be lifted.
 - a. If the reason for the Probation Status is that the Participating Entity has failed to fulfill its Participation Commitment during the previous fiscal year, the Participating Entity must fulfill the Participation Commitment for the previous year, as well as the Participation Commitment for the current fiscal year by the end of the fiscal year in order to have its probation status lifted.
 - i. If during the first Probation Status year, the Participating Entity fulfills its Participation Commitment for the previous fiscal year, but not for the first Probation Status year, the Probation Status may be extended for a second fiscal year.
 - ii. If during the second Probation Status year, the Participating Entity fails to fulfill the Participation Commitment for both the first and second Probation Status years, the Cooperative Agreement shall be revoked as specified in subsection VII(E) herein below
 - b. Participation Commitment expenditures and actions shall be credited towards the outstanding obligation before being credited to the current obligation.
- E. If the Participating Entity does not come into compliance with the terms of this Cooperative Agreement by the end of the first Probation Status fiscal year (or second Probation Status fiscal year if the non-compliance is failure to meet the Participation Commitment), this Cooperative Agreement shall be revoked pursuant to Utah Code § 65A-8-203 (2021) and the entity shall not be eligible for assistance from the Wildland Fire Suppression Fund and shall be responsible for wildland fire suppression costs within its jurisdiction pursuant to Utah Code § 65A-8-203.2 (2017)
- F. If the Participating Entity is on probation or otherwise non-compliant with the terms of this or a prior agreement with FFSL, and enters into a new cooperative agreement with FFSL, the

prior obligations and status remain in effect until rectified according to the terms of this agreement.

- G. Either party may terminate this agreement by providing the other party with written notice 30 days prior to the termination date.
- H. If either party terminates this agreement, the Participating Entity shall only be allowed to enter into a new cooperative agreement pursuant to R652-121-600 (2017).

UTAH DIVISION OF FORESTRY, FIRE, AND STATE LANDS:

R. Joseph
Anderson

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Anderson
Date: 2023.05.30 16:58:03
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5/30/2023

Authorized Signature

Date

Wasatch Front Area Manager

Title

PARTICIPATING ENTITY:

James A. Welch
Authorized Signature
JAMES A. WELCH

6/5/2023
Date

Title

TOOELE COUNTY MANAGER

APPROVED AS TO FORM:

Colin R. Winchester 06/05/2023

Colin R. Winchester
Deputy Tooele County Attorney

APPROVED AS TO FORM: Tony Clinger, Assistant Attorney General, March 29, 2023



State of Utah

SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

Department of Natural Resources
Division of Forestry, Fire & State Lands

JOEL FERRY
Executive Director

JAMIE BARNES
Director/State Forester

May 22, 2023

To whom it may concern:

Since your current Cooperative Wildfire System (CWS) agreement has lapsed, FFSL is presenting the attached Cooperative Agreement that is by and large the same agreement from 2017, with some non-substantive changes. The need for a new agreement gave FFSL the opportunity to revise the agreement for clarity and ensure it is in line with new legislation passed since the initial agreement in 2017. In summary the changes include:

- Updated expiration date
- Termination clause added
- Community Wildfire Preparedness Plan Language (CWPP) in conformity with 2023 legislation
- Updated Utah Code and Administrative Rule citations
- Clarification on non-compliance for new agreements

Please note, that if a Participating Entity is on probation or otherwise noncompliant with a prior Cooperative Agreement, entering into a new or updated agreement does not absolve the Participating Entity from prior obligations or probation status under the old agreement. Entities should work with their respective state contacts to ensure past compliance and future commitments moving forward.

Please execute this agreement and return to FFSL no later than June 23, 2023. Failure to execute and return this agreement in a timely fashion forfeits your rights as an eligible entity to cooperatively discharge your joint responsibilities for protecting non-federal land from wildland fire pursuant to Utah Code 65A-8-203. Please govern yourself accordingly.

Respectfully,

Jamie Barnes
Director/State Forester
Division of Forestry, Fire and State Lands

