

COOPERATIVE FIRE CONTROL AGREEMENT

Between

STATE OF FLORIDA DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES, DIVISION OF FORESTRY

and

FOREST SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE

The AGREEMENT, made and entered into by and between the Forest Service, United States Department of Agriculture, acting by and through the Forest Supervisor, National Forests in Florida, hereinafter referred to as the Forest Service, and the State of Florida Department of Agriculture and Consumer Service, Division of Forestry, acting by and through the Director, hereinafter referred to as the Division, under the provisions of the Fire Protection Act of May 27, 1955 (42 USC 1856), the Granger-Thye Act of April 24, 1950 (16 USC 572), PL 94-148 (16 565a-1-3), and Section 589.04 Florida Statute.

WITNESSETH:

WHEREAS, responsibility for prevention and control of forest fires on State and/or Private lands rests with the Division, and for National Forest lands, with the Forest Service. Each agency maintains separate organizations for these purposes, and

WHEREAS, the Forest Service maintains prevention, detection, and suppression forces throughout the National Forests, covering areas adjacent to lands which the Division protects. The Division maintains prevention, detection and suppression forces to protect areas of State and Private lands in 67 counties of the state of Florida, in which 11 counties have lands intermingled with National Forest land, and

WHEREAS, it is to the mutual advantage of both the Division and the Forest Service to coordinate their efforts in conducting fire management activities in and adjacent to the lands under their respective jurisdiction without duplication of effort or resources; and

WHEREAS, it is the intent of the parties hereto that Division firefighters be allowed to assist in the suppression of wildfires on all National Forests, and other lands on which the Forest Service is obligated to deploy suppression forces, including border fires in Canada and Mexico, and

WHEREAS, it is the intent of the parties hereto that Forest Service firefighters be allowed to assist in the suppression of wildfires on all State and Private lands which the Division is committed to protect in the State of Florida.

NOW, THEREFORE, in consideration of the mutual advantage in attainment of the common objectives stated herein, the parties hereto agree to be bound by the terms, conditions and statements of responsibility hereinbelow stated.

I. DEFINITION OF TERMS

a. Reciprocal Fire Protection Services shall mean non-reimbursable fire protection assistance, extended by either party to lands of the other party; as each may be in a position to furnish. These lands are displayed in the Annual Operating Plan.

b. Reimbursable Work shall mean reinforcements exceeding reciprocal fire protection services furnished by either party, at the request of the other, or fire protection furnished as a chargeable cooperative fire protection service.

c. First 24 Hours shall mean the period of fire suppression from the time of first actual attack on the fire to 24 hours hence.

d. Initial Attack Forces are the first forces (air and/or ground) that take fire suppression action on a fire, including normal reinforcements used to control a fire in continuation of initial attack.

e. Reinforcements are all additional personnel and equipment needed to facilitate suppression action after initial attack (refer to definition of Initial Attack Forces regarding normal initial attack reinforcements).

f. Unified Command refers to the method by which all agencies or individuals who have jurisdictional responsibility, and in some cases those who have functional responsibility at an incident, contribute to 1) the determination of overall objectives for the incident and 2) the selection of a strategy to achieve those objectives.

g. Incident Commander refers to the individual responsible for the management of all incident operations.

h. Direct Costs are those costs directly related to the suppression effort. These costs are not to include dispatch or other administrative costs.

i. Overhead Costs as applicable to services provided for under this agreement, are those costs not directly chargeable to suppression efforts, but which are part of the overall cost of operation.

--- Forest Service overhead costs are chargeable at the current Forest Service Overhead Assessment Rate.

--- Division overhead costs are chargeable at the current Indirect Cost Rate negotiated under the provision of Federal Management Circular (FMC) 74-4.

j. Offset Fire Protection shall mean a trade of protection area or services - one action balancing the other - between the two agencies on the basis of cost equality, rather than acreage equality.

k. Time of Departure is the time of start of the employment period, beginning at the point and time individuals make themselves available for hire or work, at the request of the Forest Service Duty Officer (Dispatcher) or the Division Officer-in-Charge (OIC).

l. Return to Official Station is the time the employee is returned to the point of hire, or is no longer available.

m. Boundary Fires shall mean fires that burn on adjoining lands of both parties or threaten to burn across fire protection boundaries. This includes the situation where the actual location of the fire protection boundary is uncertain.

n. Cooperative Fire Protection Services shall mean providing specific services or fire protection responsibility on a reimbursable basis, pursuant to the Annual Operating Plan.

o. Annual Operating Plan is a document that provides:

(1) Maps showing boundaries delineating Division and Forest Service areas of responsibility under this agreement.

(2) The procedures and strategies for coordinating and conducting fire management activities under each agencies jurisdiction and under the terms of this agreement.

(3) Details of reimbursement and non-reimbursement costs and services, including provisions for overhead costs.

(4) Details of Federal suppression assignments for Division personnel (pay schedule, personal and safety gear, SF-228 (Red Card), etc.).

II. RECIPROCAL FIRE PROTECTION (Act of May 27, 1955) (42 USC 1856)

A. The Forest Service may:

Make initial attack on fires on those Division-protected lands shown on maps which are a part of the Annual Operating Plan or which are determined to be a threat to National Forest land.

B. The Division may:

Make initial attack on fires on those Forest Service-protected lands shown on maps which are part of the Annual Operating Plan or which are determined to be a threat to state protected lands.

C. Both Parties agree:

1. Annually, before January 15, the Division and the Forest Service will mutually review plans for and set up reciprocal 24-hour initial attack areas (shown on maps that are part of the Annual Operating Plan) for fires occurring on lands of intermingled or adjoining protection responsibility. In the absence of a specified zone on the annual map, any fire within three miles, inside or outside, of the Proclaimed National Forest Boundary will be considered a boundary fire and reciprocal rules will apply. The plan will be approved and signed by the designated representatives of the Division State Forester and the Forest Supervisor, and made a part of this agreement as Attachment "I".

2. The receiving party will not be required to reimburse the assisting party for its costs when a fire is controlled by the assisting party's initial attack forces within the first 24-hour period. For purposes of this agreement, all aircraft will be reimbursable with the exception of helicopters responding to fires in the reciprocal zone based on a threat of fire spread to their agency's protected land.

3. The receiving party will reimburse the assisting party for all costs, including overhead, incurred by the assisting party for reinforcements and services furnished beyond the initial attack force during the first 24-hour period, and for all costs, including overhead, for the services of both the initial attack force, including mopup work and reinforcements, incurred beyond the first 24-hour period in accordance with Section III of this Agreement.

III. COOPERATIVE FIRE PROTECTION (REIMBURSABLE) (Act of April 24, 1950) (16 USC 572) (PL 94-148) (16 USC 565a-1-3)

A. The Forest Service will:

Furnish personnel and firefighting equipment to the Division at the request of an authorized Division Officer. Such assistance will be sent provided that the fire danger and risks are such that personnel and equipment may be safely released. All such efforts shall be reimbursed by the Division, as provided for in the Annual Operating Plan.

B. The Division will:

Furnish personnel and equipment to the Forest Service at the request of an authorized Forest Service Officer. Such assistance will be sent provided that the fire danger and risks are such that personnel and equipment may be safely released. All such efforts shall be reimbursed by the Forest Service, as provided for in the Annual Operating Plan.

C. Both Parties agree:

1. The Annual Operating Plan will cover reimbursable services to be furnished by each agency. The current equipment rental rates and aircraft hourly rates of each agency are included in Appendix of the Operating Plan. Salary and wage costs of personnel assigned to fire suppression shall be at the actual cost of the sending agency.

2. Itemized billings for reimbursable services under this agreement shall be made within 60 days of the occurrence.

3. Resource orders will be considered required documentation for payment purposes.

4. No reimbursable expenditures in excess of \$10,000 shall be incurred without the express authorization of the individuals designated below:

Division of Forestry

Director
Assistant Director
Chief, Forest Protection Bureau
Assistant Chief, Forest Protection Bureau

National Forests in Florida

Forest Supervisor
District Rangers
Fire Management Staff Officer
Forest Fire Management Officers
Coordination Center Primary Dispatcher

5. The Division may provide equipment repair or fabrication services to the Forest Service under this agreement contingent on available personnel. Work will be performed at Division's Lake City Maintenance Facility at negotiated rates.

IV. OFFSET FIRE PROTECTION (Act of April 24, 1950) (16 USC 574) (PL 94-148)
(16 USC 566a-1-3)

A. The Forest Service will:

Provide the Division, by January 15 annually, an updated map of Forest Service land to be protected on an offset basis by the Division. The acreage covered and how it was calculated will be included.

B. The Division will:

Provide the Forest Service, by January 15, annually, an updated map of Division land to be protected on an offset basis by the Forest Service. The acreage covered and how it was calculated will be included.

C. Both Parties will:

1. Make specific requests known, by January 15 annually, as a subject for the Annual Operating Plan meeting group to consider.

2. Identify the services to be supplied by each party in the Annual Operating Plan.

3. Identify the value of the offset services and the standards for these services in the Annual Operating Plan.

V. GENERAL CONDITIONS

1. Annually, no later than January 15, the parties hereto will meet and develop an Annual Operating Plan, in writing, which will be attached hereto and made a part hereof.

2. Either party may terminate this agreement by providing 60 days written notice to the other. Unless terminated by written notice, this agreement will remain in force indefinitely.

3. Either party will notify in advance, the other of prescribed burning operations on adjacent lands.

4. Each agency will be responsible for the training of their respective fire organizations, however where practical, both agencies will notify the other of training opportunities and include participation of the other agencies' instructors and trainees.

5. When Forest Service personnel are fighting fires on land for which the Division is responsible, the United States of America shall not be liable to the Division or any landowner for any damage in consequence of the performance of work under all sections of this agreement.

6. When Division personnel are fighting fires on lands for which the Forest Service is responsible and at such time when they are specifically assigned to the direct supervision of the Forest Service, such Division personnel, although not Federal employees for any other purposes, will be

considered as Federal employees for the purpose of the Federal Employees Compensation Act and the Federal Tort Claims Act in consequence of the performance under all sections of this agreement.

7. Nothing in this agreement shall be construed to imply that the Forest Service has accepted any responsibility for structural protection on private lands. Any private land the Forest Service protects under Offset authority is for wildland fire only. Protection for structures still resides with the local fire department or other designated agency.

8. Fire prevention and law enforcement efforts will be coordinated to the maximum extent possible, at all levels of both agencies.

9. Each agency will render mutual assistance in law enforcement activities and the gathering of evidence, and in actual court prosecutions to the fullest extent practicable. The Forest Service will be responsible for law enforcement on fires originating on and confined to National Forest land. The Division will be responsible for law enforcement on fires that originate on and are confined to Private and State land on which it takes sole action. On boundary fires, any law enforcement action shall be agreed to between the Forest Supervisor and the Division Director or their representatives. Nothing in this provision shall be construed to prevent immediate arrest by (1) a federal officer under a federal law of a party caught in the act of a fire law violation, or (2) a state law enforcement officer. Regardless of which agency responds to a fire under the various provisions of this agreement, the responding agency dispatch will notify law enforcement from the jurisdictional agency as soon as possible.

10. Both agencies will furnish each other, or otherwise make available upon request such maps, documents, instructions, records, and reports including, but not limited to fire reports and law enforcement reports, which either agency considers necessary in connection with this agreement, subject to the United States Department of Agriculture and the State of Florida rules and regulations.

11. Each agency may install and maintain radio equipment in the other agency's facilities without charge, as provided for in the Annual Operating Plan.

12. Both agencies shall follow and adhere to any and all special limitations and exceptions in the license granted for the frequency(s) used. This agreement covers "mobile, personal portable, and temporary base stations" used within the State of Florida.

13. Each agency will provide a letter authorizing use by the other of identified fire frequencies as required by FCC regulations.

14. Each agency, when suppressing fires for the other agency, will adhere to the suppression and mopup standards of the receiving agency insofar as facilities and manpower are available. If adequate facilities and manpower are not available to meet standards, the sending agency will notify the other agency at the earliest possible time.

15. Rehabilitation of plowlines or other resource damage from the suppression action will be the responsibility of the agency with jurisdictional responsibility for the land on which the fire occurred, regardless of which agency takes the suppression action.

16. Fire tower lookouts and other employees of either agency shall, upon discovering or receiving reports of fires on areas protected by the other agency, report such fires promptly to the other agency in accordance with current practice.

17. In the event both agencies are engaged on a fire at or near the boundary of lands under both jurisdictions, Unified Command will be used. The Incident Commander for each agency shall mutually agree upon the fire control strategies that achieve land management objectives.

18. When the Division suppresses fires burning wholly or in part on National Forest lands, the necessary fire report data will be forwarded to the responsible Forest Service District Ranger on Division Form FC-3. The Forest Service (District Ranger) will report by copy of Form 5100-29 to Division (District/ Center Manager) all fires on State and Private land suppressed by the Forest Service for inclusion in the Division's Annual Cooperative Fire Protection Report. These reports will be forwarded with estimates of all costs involved, within 30 days of the fire.

19. Except as provided for in Clause 6 of this Section, personnel dispatched by either agency for the benefit of the other agency under the terms of this Agreement (including persons undergoing sentence of imprisonment furnished by the Division under agreement with the State Department of Corrections) will be considered as employees of the sending agency, and the said sending agency shall be responsible for the welfare of such personnel, including the treatment of any injuries which may result from, or be incurred enroute to or from or on any fire, as provided by the laws and regulations under which each agency operates.

20. Equipment owned and used by either agency to suppress fires on lands for which the other is responsible will normally be operated, serviced, and repaired by the owning agency. Exceptions to this practice, where needed, will be agreed to, in writing, by both parties.

21. Each party will be responsible for damage to its equipment under its laws and rules, except that if equipment is rented without operators, the receiving agency will be responsible under applicable laws of the agency and signed rental agreement.

22. Aircraft requested from the other agency will be paid for at the sending agency's rate per hour, plus overhead assessment.

23. The salary or wages of assigned, resource ordered, personnel shall be at the actual cost to the sending agency for work time from the time of departure until return to official station, including overtime, if and when overtime is earned, under the laws or rules governing the employees of the sending agency. Overhead costs shall be billed at the overhead rate current at the time of the suppression action.

24. When either agency requests reimbursable assistance from the other, the sending agency will dispatch only personnel who meet or exceed the minimum requirements for training and physical standards of the National Interagency Wildland Fire Qualifications System.

25. Where there is a need for joint use of a detection tower and one agency is staffing a tower owned by the other agency, the owning agency will normally provide all the materials and supplies for maintenance and repair of the structure. The staffing agency will furnish all labor for this maintenance and repair, including grounds clean-up and maintenance. The staffing agency will pay for utilities and telephones services used at that location, except where the owning agency has a repeater station. At these locations, the owning agency will install separate meters and pay for utility services to operate the station. The owning agency will permit the other agency to use, with compensation, the facilities available at the tower site.

26. Occupancy and use of Forest Service towers and facilities at tower sites for which the Forest Service does not have any need, shall be authorized by special use permit. The Forest Service will pay for any utility services at these sites necessary to operate any communication equipment for their sole benefit. Separate meters will be installed.

27. All burning authorizations for agricultural, silvicultural and rural land clearing fires within the State of Florida are issued by the Florida Division of Forestry pursuant to the Department's Open-Burning regulations 5I-2.03, 5I-2.06, 5I-2.061 and 5I-2.07. The Forest Service will adhere to all State burning guidelines.

28. Neither the Division or the Forest Service shall be bound to make any expenditures under the terms of this agreement, except as funds are appropriated by the legislature of the State of Florida or by the Congress of the United States, or which may otherwise be made available.

29. No member of, or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement, or to any benefit to arise therefrom; but, this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

30. In the performance of work, the Division agrees to comply with provisions shown in Section 1, Equal Opportunity, of Part B, Labor Standards Provisions, which is attached and made a part of this agreement. For the purpose of this agreement "contractor" means "Division"; "Contracting Officer" and "contracting agency" means "Forest Service".

31. By accepting this agreement, the Division hereby agrees to comply with Title VI of the Civil Rights Act of 1964 and all requirements imposed by or pursuant to the regulations of the United States Department of Agriculture (7 CFR, Part 15) issued pursuant to that Act, and hereby assures that in the operation and performance of this agreement to take immediately any measures necessary to effectuate this requirement. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Division by the United States Department of Agriculture, such assurance shall obligate the Division, or in the case of any transfer of such property, any transferee, for the period during which the Federal Financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property so provided, this assurance shall obligate the Division for the period during which he retains ownership or possession of the property. In all cases, this assurance shall obligate the Division for the period during which the Federal financial assistance is extended to him by this agreement. This agreement is given in consideration of the Federal financial assistance extended in this agreement to the Division by the United States Department of Agriculture. The Division recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance. The Division further agrees that the United States, in addition to any other rights

and remedies provided by this assurance, the Civil Rights Act of 1974, or the regulations issued thereunder, shall have the right to enforce this agreement by suit for specific performance or by any other available remedy under the laws of the United States or the State in which the breach of violation occurs.

32. To comply with PL 91-190, the National Environmental Policy Act of 1969, the Division and Forest Service agree to direct their program activities covered by this agreement toward managing and enhancing the environment for the widest range of beneficial uses without its degradation or risk to health or safety or other undesirable consequences. The Division further agrees to assist the Forest Service in the preparation of environmental statements as required by section 102(2) (c) of PL 91-190 for all major Federal actions taken under this agreement which might significantly affect the quality of the human environment or be highly controversial in regard to unresolved conflicts concerning the use of resources

33. The Division agrees to comply with all the requirements of Section 114 of the Clean Air Act (42 USC 1856, et. seq., as amended by PL 91-604) and Section 308 of the Federal Water Pollution Control Act (33 USC 1251, as amended by PL 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the execution of this agreement; that no portion of the work required by this agreement will be performed in a facility listed on the Environmental Protection Agency's List of Violating Facilities on the date when this agreement was executed unless and until the EPA eliminates the name of such facility or facilities from such listing; to use his best efforts to comply with clean air standards and clean water standards at the facilities in which the agreement is being performed; to insert the substance of the provisions of this clause in any non-exempt sub-agreement, including this statement.

34. The Forest Service agrees to comply with Executive Order 111752 Prevention, Control and Abatement of Environmental Pollution at Federal Facilities; whereas the Forest Service in accordance with Executive Order 111752 will comply with Florida Statute 590.12 and Division Rule 51-2, respectively, and will obtain Outdoor Burning Authorizations from the Division according to Florida Statute 590.12 and will conduct the burning in keeping with Division Rules 51.2.

35. Authority to sign the annual operating plan is delegated to the Chief, Forest Protection Bureau for the Division, and to the Fire Management Staff Officer for the Forest Service.

36. The Division agrees to maintain all of its aircraft and pilots to Forest Service standards as any aircraft used by the Forest Service must be carded and approved for its specific mission to allow payment for the work. The Forest Service may authorize certain individuals of the Division to inspect and card aircraft and/or pilots. The Forest Service agrees to furnish inspectors as needed.

37. Each Agency agrees to be responsible for meeting the requirements of the Immigration Reform and Control Act of 1986 (Simpson-Rodino Act) for non-U.S. citizens hired as casuals for assignment to incidents.

38. The Forest Service shall furnish the Division the current documentation required by the Federal Aviation Administration for validation of emergency use of public category aircraft.

IN WITNESS WHERE OF, the parties hereto have executed this agreement on the dates shown below.


U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE
NATIONAL FORESTS IN FLORIDA

August 29, 1997
Date


Forest Supervisor


STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES

September 12, 1997
Date


Director, Division of Forestry

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES

OCT 07 1997
Date


Director, Division of Administration