

**STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES  
PETER GOLDMARK, Commissioner of Public Lands**

**FIRE SUPPRESSION RESOURCES AVAILABILITY AGREEMENT**

**Agreement No.** \_\_\_\_\_

This Agreement is entered into by the State of Washington, Department of Natural Resources, hereinafter referred to as the DNR, and the party whose name appears on Attachment C, hereinafter referred to as the Cooperator.

**Purpose:** The purpose of this Agreement is to provide personnel and equipment for fire suppression activities. The Cooperator understands this Agreement is an option use agreement by the DNR and not a mandatory use contract.

**Authority:** Under the authority of RCW 76.04.015 (5) . . . the department . . . may cooperate with any . . . individual . . . within the state of Washington in forest fire fighting and patrol.

In consideration of the terms, conditions and covenants contained herein, or attached and incorporated and made a part hereof, the parties mutually agree as follows:

**1.01 The Cooperator Shall:**

- (1) Provide, when available, personnel and/or equipment to DNR for fire suppression or standby when requested by DNR. The personnel/equipment list is attached as Attachment B.
- (2) Dispatch their personnel and/or equipment as quickly as possible to the fire when requested by DNR. The Cooperator(s) personnel and equipment are under the supervision of the DNR while suppressing fires and may not leave the fire until released by the DNR.
- (3) Ensure Cooperator(s) personnel and/or equipment furnished under this Agreement are properly trained, have appropriate attire and the proper equipment to accomplish the contracted duties.
- (4) Be responsible for any fines or penalties levied against the Cooperator, the Cooperator(s) employees or equipment while under the Cooperator(s) control, employment or direction.
- (5) Present this Agreement (including attachments) to the timekeeper upon arrival at DNR fires.

**2.01 The DNR Shall:**

- (1) Release the Cooperator(s) personnel and/or equipment as soon as possible.
- (2) Reimburse the Cooperator in accordance with paragraph 5 Compensation and Payment of this Agreement.

**3.01 Period of Performance:** This Agreement shall be effective on \_\_\_\_\_, and shall remain in full force and effect until **June 30, 2015**, unless terminated by either party as provided herein.

**4.01 Rights and Obligations:** Attachment A contains the General Terms and Conditions governing work to be performed under this Agreement, the nature of the working relationship between the DNR and the Cooperator, and specific obligations of both parties which is incorporated by reference. All rights and obligations of the parties to this Agreement shall also be subject to and governed by Attachment(s) B, personnel/equipment requirements; and Attachment C, the personnel/equipment rates, each incorporated by reference herein.

**5.01 Compensation and Payment:** The Cooperator shall be compensated for services provided under this Agreement in accordance with Attachment C, which is incorporated by reference.

Payment shall be considered timely if made by the appropriate DNR office within thirty (30) days after receipt of pay documents. Payment shall be sent to the address designated by the Cooperator. The DNR may, at its sole discretion, terminate the Agreement or withhold payments claimed by the Cooperator for services rendered if the Cooperator fails to satisfactorily comply with any term or condition of this Agreement.

**6.01 Insurance Requirements:** Cooperator must furnish evidence of insurance in the form of a Certificate of Insurance satisfactory to the DNR, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements set forth below. The Certificate of Insurance must reference DNR and Agreement number. The Cooperator must provide proof of coverage before implementing this Agreement.

The Certificate(s) of Insurance must provide forty-five (45) days written notice to the DNR before cancellation, non-renewal, or material change of any insurance coverage included therein. Notices must be sent to the DNR's Resource Protection Division office, PO Box 47037, Olympia, WA 98504-7037.

**7.01 Additional Requirements:**

- (1) All insurance policies must name State of Washington Department of Natural Resources, as an additional insured.
- (2) All insurance policies must include Other Insurance provisions that state Cooperator(s) policy provides primary insurance coverage.
- (3) All insurance policies must provide liability coverage on an **occurrence** basis unless otherwise specified in this Agreement.

- (4) Policies must be issued by an insurer admitted and licensed by the Insurance Commissioner, to do business in the state of Washington. Excess or surplus lines carriers must be approved in advance by the Risk Manager (or other authorized representative) of DNR. All insurers must have a Bests rating of B+ or better.

**8.01 Breach of Contract:** Failure by Cooperator to maintain or show evidence of insurance or comply with any of the provisions in this Agreement is a material breach of contract. Upon breach of contract, the Department may, at its discretion, cancel or suspend the Agreement. All monies paid by DNR on behalf of Cooperator shall be repaid to DNR on demand.

**9.01 Minimum Coverage Requirements:** The Minimum Coverage Requirements set forth the *minimum* limits of insurance the Cooperator may purchase to enter into a contract with DNR. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these minimum limits of coverage does not relieve the Cooperator from liability for losses and settlement expenses greater than these amounts. DNR shall not be charged for the cost for insurance coverage(s) greater than those listed in the Minimum Coverage Requirements without prior approval by DNR.

During the term of the Agreement, Cooperator must purchase and maintain the insurance coverages and limits specified below:

- (1) **Commercial General Liability (CGL) Insurance.** Cooperator must purchase and maintain CGL on an Insurance Services Office (ISO) form CG 00 01 or equivalent form, covering liability arising from premises, operations, independent contractors, personal injury, products-completed operations, and liability assumed under an insured contract. Such insurance must be provided on an occurrence basis. Insurance must include liability coverage with limits not less than those specified below:

<u>Description</u>	<u>Dollar Amount</u>
General Aggregate Limit (Other than products-completed operations)	\$2,000,000
Each Occurrence Limit	\$1,000,000

- (2) **Business Auto Policy (BAP) Insurance.** If activities pursuant to this Agreement involve the use of vehicles, the Cooperator must purchase and maintain a BAP on an Insurance Services Office (ISO) form CA 00 01 or equivalent form. The Description of Covered Autos must include one or more of the following:

- A. Any Auto (Symbol 1).
- B. If Cooperator-owned personal vehicles are used, the BAP must cover "Owned Autos Only" (Symbol 2).
- C. If Cooperator hires autos, the BAP must cover "Hired Autos Only" (Symbol 8).
- D. If Cooperator employee's vehicles are used, the BAP must cover "Non-Owned Autos Only" (Symbol 9).

Such insurance must be provided on an occurrence basis. The BAP insurance must include liability coverage with limits not less than those specified below. The Cooperator is responsible for any deductible.

<u>Description</u>	<u>Each Accident</u>
Bodily Injury and Property Damage	\$1,000,000

(3) **Workers Compensation and Employers Liability Insurance.** Cooperator must comply at all times with applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations (and, if applicable, the Federal Longshoremen's and Harbor Workers' Act and the Jones Act). Such coverage must be afforded for all employees of Cooperator, and for all employees of any subcontractor retained by Cooperator. Coverage must apply to bodily injury (including resulting death) by accident or disease which arises out of or in connection with the performance of the Agreement. Satisfaction of these requirements shall include, but not be limited to:

- A. Full participation in any required governmental occupational injury and/or disease insurance program, to the extent participation in such program is mandatory in any jurisdiction.
- B. Purchase of workers compensation and occupational disease insurance, to the extent such coverage is not provided under a mandatory government program as in paragraph I., above.
- C. Maintenance of a legally permitted and governmentally approved program of self-insurance.
- D. Cooperator must purchase and maintain Employers Liability or 'Stop Gap' Insurance to include liability coverage with limits not less than those specified below. Cooperator waives immunity under Title 51 RCW to the extent required by this clause. Insurance must include liability coverage with limits not less than those specified below:

	Each Employee	Policy Limit	
<u>Description</u>	<u>By Accident</u>	<u>By Disease</u>	<u>By Disease</u>
Bodily Injury	\$1,000,000	\$1,000,000	\$1,000,000

Except where prohibited by law, workers compensation coverage shall provide for a waiver of rights of subrogation against DNR, its directors, officers, and employees. If DNR incurs fines or is required by law to provide coverage or benefits due to failure by

Cooperator, or any subcontractor retained by Cooperator, to effect or maintain a program of compliance with all applicable workers compensation, occupational disease, and occupational health and safety laws, statutes and regulations, Cooperator must indemnify DNR for all benefits, costs, and fines. Amounts owed to DNR by Cooperator pursuant to any such indemnity may not be deducted for any payments owed by DNR to Cooperator for performance of this Agreement.

- (4) **Aircraft. (Optional Clause)** Cooperator shall buy and maintain insurance covering aviation liability arising from ownership, maintenance, or use of aircraft, including liability assumed under an insurance contract. This insurance must include liability coverage with limits not less than \$1,000,000 per seat for bodily injury and property damage, and \$5,000,000 general aggregate limit. This coverage shall contain a separation of insureds condition.

**10.1 Indemnity:** To the fullest extent permitted by law, the Cooperator shall indemnify, defend, and hold harmless the State, its employees, officers, contractors, subcontractors and agents, from and against any and all claims arising out of, resulting from or incident to any intentional or negligent act or omission of the Cooperator, its employees, officers, contractors and subcontractors, or agents, in the performance of this Agreement or in the use or control of property or equipment provided under this Agreement. The Cooperator's obligation to indemnify, defend and hold harmless includes any claim by the Cooperator's employees, officers, contractors or subcontractors or agents. The Cooperator's obligation to indemnify, defend and hold harmless shall not be eliminated or reduced by the actual or alleged concurrent negligent act or omission of the State, its employees, officials, contractors, subcontractors or agents. "Claims" includes but is not limited to damages, actions, expenses, liabilities, financial losses, suits, costs, fees (including attorney fees), penalties or judgements of any nature whatsoever, attributable for bodily injury, sickness, disease or death, or injury to or destruction of tangible property including loss of use resulting therefrom, and personal injury and injury to land or other natural resources. The Cooperator waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the State, its employees, officials, contractors, subcontractors or agents.

**11.1 Agreement Managers:**

The Agreement Manager for the Cooperator is:

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

The Agreement Manager for the DNR is:

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

**STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**COOPERATOR (COMPANY)**

**NAME:** \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Fire Suppression Resources Availability Agreement  
Approved as to Form  
By the Assistant Attorney General  
State of Washington, December 23, 1996

## ATTACHMENT A

### GENERAL TERMS AND CONDITIONS

- 1.01 Independent Capacity of Cooperator:** The Cooperator and its employees or agents performing under this Agreement are not employees or agents of the DNR. The Cooperator will not represent itself nor claim to be an officer or employee of the DNR or of the state of Washington by reason hereof, nor will the Cooperator make any claims of right, privilege or benefit which would accrue to an employee under Washington law.
- 2.01 Assignability:** This Agreement, and any claim arising under this Agreement, is not assignable or delegable by the Cooperator either in whole or in part.
- 3.01 Non-Discrimination:** During the performance of this Agreement, the Cooperator shall comply with all federal and state non-discrimination laws, regulations and policies. In the event of the Cooperators non-compliance or refusal to comply with any non-discrimination law, regulation or policy, this Agreement may be rescinded, canceled or terminated in whole or in part, and the Cooperator may be declared ineligible for further contracts with the DNR.
- 4.01 Termination of Agreement for Cause:** The DNR may terminate this Agreement in whole, or in part, at any time after one (1) days notice whenever it is determined that the Cooperator has failed to comply with the terms and conditions of the Agreement. The DNR shall promptly notify the Cooperator in writing of the termination and the reasons for termination, together with the effective date of termination.
- 5.01 Termination for Funding Reasons:** The DNR may unilaterally terminate this Agreement in the event that funding from federal, state or other sources becomes no longer available to the DNR, or is not allocated for the purpose of meeting the DNR's obligation hereunder. Such action is effective when the DNR sends written notification of termination.
- 6.01 Termination for Convenience:** The DNR may terminate this Agreement in whole or in part by giving five (5) days written notice to the Cooperator when it is in the best interest of the DNR. If this Agreement is so terminated, the DNR shall be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination.
- 7.01 Disputes:** Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by Agreement shall be decided by the DNR's Resource Protection Division Manager who shall reduce his/her decision to writing and furnish a signed copy to the Cooperator. The decision of the Division Manager shall be final and conclusive unless, within ten (10) days from the receipt of such copy, the Cooperator mails or otherwise furnishes to the Division Manager a written appeal. The appeal will be decided by a DNR Executive Supervisor. The decision of the Executive Supervisor, or duly authorized representative, for the determination of such appeals shall be final and conclusive.

The Cooperator does not hereby waive any right to seek review of the DNR's decision. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal. However, such further review shall be sought only in the Superior Court of Thurston County. Pending final decision of a dispute hereunder, the Cooperator shall proceed diligently with the performance of the Agreement and in accordance with the decision rendered by DNR.

**8.01 Waiver:** A failure by the DNR to exercise its rights shall not constitute a waiver of any rights under this Agreement unless stated to be such in writing and signed by an authorized representative of the DNR and attached to the original Agreement.

**9.01 Right of Inspection:** The Cooperator shall provide right of access to its facilities to the DNR, any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance and/or quality assurance under this Agreement.

**10.1 Retention of Records:** The Cooperator shall maintain books, records, documents and other materials, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. These materials shall be available at all reasonable times for inspection, review or audit by personnel duly authorized by the DNR, and state or federal officials so authorized by law, rule, regulation or contract. The Cooperator will retain these materials for six (6) years after settlement or termination. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

**11.1 Jurisdiction/Venue:** This Agreement shall be construed and interpreted under the laws of the state of Washington and the venue of any action brought under this Agreement shall be in the Superior Court of Thurston County. The Cooperator, by execution of this Agreement, acknowledges the jurisdiction of the courts of the state of Washington in this matter.

**12.1 Conflict of Interest:** The DNR may, by written notice to the Cooperator, terminate this Agreement if it is found that there is a violation of the State Ethics Law, Chapter 42.52 RCW or any similar statute involving the Cooperator in the procurement of, or performance under, this Agreement.

In the event this Agreement is terminated as provided above, the DNR shall be entitled to pursue the same remedies against the Cooperator as it could pursue in the event of a breach of the Agreement by the Cooperator. The rights and remedies of the DNR provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

**13.1 Deductions:** The DNR shall make no deductions from the stated amount of compensation for income tax, social security taxes, medical insurance, industrial insurance, and license fees. Cooperator is responsible for all deductions for which the Cooperator may be liable.



**14.1 Licensing, Accreditation and Registration:** The Cooperator shall comply with all applicable local, state and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Agreement.

**15.1 Severability:** If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

**16.1 Entire Agreement:** This document contains all covenants, stipulations and provisions agreed by both parties. No agent or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement representation, promise or agreement not set forth herein except for extension of the completion date. No changes, amendments or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this Agreement.

\_\_\_\_\_ *Vendor Initial*

\_\_\_\_\_ *Agency Initial*

**ATTACHMENT C**

**FIRE SUPPRESSION RESOURCES AVAILABILITY AGREEMENT**

The intent of this solicitation is to establish is to establish a list of Cooperators who can supply equipment at various field locations throughout the state of Washington for use by the Department of Natural Resources and Cooperators.

**Cooperator Information**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

City State Zip

Contact person: \_\_\_\_\_

Telephone: Day \_\_\_\_\_ Night \_\_\_\_\_

Cell Phone Number \_\_\_\_\_ Email Address \_\_\_\_\_

FAX Number \_\_\_\_\_ Pager \_\_\_\_\_

*Many incidents occur at night or on weekends. It is essential that we have a 24-hour phone number.*

**ATTACHMENT C cont.**

<b>Equipment</b>	<b>Equipment Description</b>	<b>Qty</b>	<b>Location</b>	<b>Rate</b>	<b>Rate type (daily, hourly)</b>	<b>Pumping ?</b>	<b>Delivery charge</b>	<b>Min/ delivery</b>	<b>Max / delivery</b>	<b>Relocation charge</b>	<b>Service truck charge</b>
<i>EXAMPLE: Toilets</i>	<i>w/sanitizer</i>	<i>100</i>	<i>Olympia</i>	<i>\$10</i>	<i>Daily</i>	<i>yes</i>	<i>\$0.40/mile each</i>	<i>10</i>	<i>32</i>	<i>\$40/each</i>	<i>included</i>

Comments \_\_\_\_\_

\_\_\_\_\_ *Vendor Initial*

\_\_\_\_\_ *Agency Initial*