

Introduced by: Mayor
Date: 04/20/04
Action: Adopted as Amended
Vote: 9 Yes, 0 No

**KENAI PENINSULA BOROUGH
RESOLUTION 2004-043**

A RESOLUTION APPROVING AN INTERGOVERNMENTAL COOPERATIVE AGREEMENT BETWEEN THE STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES, DIVISION OF FORESTRY, AND THE KENAI PENINSULA BOROUGH ON BEHALF OF ITSELF AND CENTRAL EMERGENCY SERVICE AREA, NIKISKI FIRE SERVICE AREA, BEAR CREEK FIRE SERVICE AREA, ANCHOR POINT FIRE AND EMERGENCY SERVICE AREA, LOWELL POINT EMERGENCY SERVICE AREA, AND KACHEMAK EMERGENCY SERVICE AREA

WHEREAS, pursuant to AS 41.15.010, *et seq.*, the State of Alaska is responsible for the protection of natural resources and watersheds on all state, private, and municipal lands; and

WHEREAS, pursuant to Title 16 of the Kenai Peninsula Borough Code of Ordinances, the borough is responsible for fire protection within its fire service area boundaries; and

WHEREAS, an intergovernmental cooperative agreement has been negotiated between the borough and the State of Alaska, Department of Natural Resources, Division of Forestry, in order to provide more comprehensive fire protection from wildland fires to protect persons within the service area; and

WHEREAS, intergovernmental cooperative agreements for fire protection are sanctioned by the Alaska Statutes; and

WHEREAS, the borough administration has examined the proposed agreement and has concluded that it should be adopted by the assembly; and

WHEREAS, the borough fire service area boards, enumerated in Section 1 below, have reviewed and recommended adoption of this agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

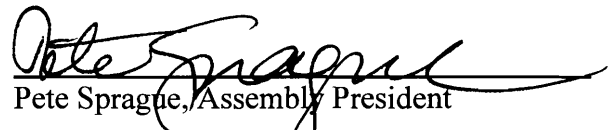
SECTION 1. That the Cooperative Fire Protection Agreement, a copy of which is attached hereto, between the State of Alaska, Department of Natural Resources, Division of Forestry, and the Kenai Peninsula Borough on behalf of itself and Central Emergency Service Area, Nikiski Fire Service Area, Bear Creek Fire Service Area, Anchor Point Fire and Emergency Service Area, Lowell Point Fire Service

Area and Kachemak Emergency Service Area is adopted, and the Mayor is authorized to execute and effectuate this agreement.

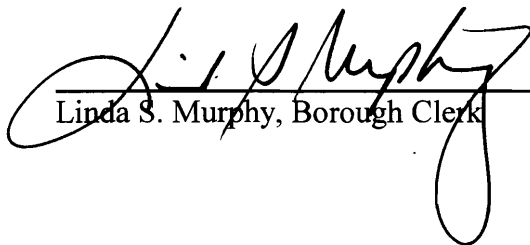
SECTION 2. That the 2004 Operating Plan format attached hereto is approved, and the mayor is authorized to execute operating plans substantially in this format for each service area after considering recommendations by each applicable service area board.

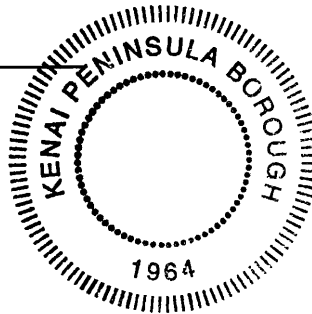
SECTION 3. That this resolution shall take effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20TH DAY OF APRIL, 2004.


Pete Sprague, Assembly President

ATTEST:


Linda S. Murphy, Borough Clerk



COOPERATIVE FIRE PROTECTION AGREEMENT

This agreement is dated the 29th day of November, 2004, and is between the Kenai Peninsula Borough, on behalf of Anchor Point Fire and Emergency Medical Service Area, Bear Creek Fire Service Area, Central Emergency Service Area, Kachemak Emergency Service Area, Lowell Point Emergency Service Area, and Nikiski Fire Service Area, ("Cooperators") with an address of 144 N. Binkley St., Soldotna, Alaska 99669, and the State of Alaska, Department of Natural Resources, Division of Forestry ("State"), Kenai/Kodiak Area with an address of 42499 Sterling Highway, Soldotna, Alaska, 99669.

1. Recitals

It is the intent of AS 41.15.010 that the State provide fire protection, commensurate with the value of the resources at risk, for the natural resources and watersheds on land that is owned privately, by a municipality, or by the State of Alaska. The Cooperator also recognizes that an obligation exists to provide protection to life and property from wildland fires within their area of responsibility. Therefore, it is to the mutual advantage of the Cooperator and the State to coordinate efforts in the prevention, detection, and suppression of wildland fires. It is in the best interests of both the Cooperator and the State that wildland fires be suppressed quickly and efficiently to minimize the destruction of natural resources and the threat to life, property, and communities.

2. Definitions

Fire Apparatus - Fire engine, pumper, tender, tanker, brush rig, fire command vehicle, special resource vehicles, maintenance truck or such other rolling stock as is typically used by fire departments for fire suppression purposes.

Fire Stores - Supplies and equipment used to suppress wildland fires as listed on the List of Approved Fire Stores Loan (SFD).

Incident Command System - An emergency response management system defined by the National Interagency Incident Management System (NIIMS, and endorsed by the governor of Alaska via Executive Order.)

Primary Response Area - An area as designated in the Annual Operating Plan within which the Cooperator agrees, within its ability, to promptly respond and act to suppress or prevent any wildland fire.

Discretionary Response Area - An area outside the Primary Response Area, within which the Cooperator may choose to respond, or assist the State, to suppress or prevent a wildland fire.

Mobilization Response Area - An area outside of both the Primary and Discretionary Response Area and generally off the Kenai Peninsula but within Alaska.

Unified Command - A method for all agencies or individuals who have jurisdictional responsibility, and in some cases those who have functional responsibility at an incident, to contribute to (a) determining overall objectives for the incident (b) selection of a strategy to achieve the objectives or (c) command of the incident.

Wildland Fire - The uncontrolled burning of grass, brush, timber and other natural vegetative material.

3. **Wildland Fires - Primary Response Area**

Within its ability, the Cooperator agrees to promptly respond and act to suppress or prevent any wildland fire within the primary response area. Upon request of the Cooperator, the State shall provide wildland fire suppression assistance to protect life and property without cost to the Cooperator. At any time the Cooperator may request that the State assume command of the wildland fire.

4. **Wildland Fires - Discretionary and Mobilization Response Areas**

From time to time the State may request the Cooperator to respond to a wildland fire outside its primary response area. It is within the sole discretion of the Cooperator to respond, or not, to the State's request for wildland fire suppression assistance.

5. **Command of Incident**

There is a presumption of Unified Command, by mutual consent pursuant to this agreement, for the management of wildland fire incidents. The first responder on-scene shall assume functional command of the incident until the arrival of the other responder(s), after which a Unified Command will normally be established.

The Cooperator or State may, by mutual agreement, solely assume command of the incident, and shall be in command of personnel, fire apparatus and all other aspects of the fire suppression effort for the duration of the incident or until such resources are released.

6. **Reimbursement, Direct Payment and Status of Employees and Apparatus**

The Cooperator will be reimbursed and direct payments will be made as set out in this agreement and the Annual Operating Plan for performance under this Cooperative Fire Protection Agreement and the Annual Operating Plan. The methods of reimbursement are: **Cooperator Reimbursement**, where actual costs of personnel and apparatus are reimbursed to the Cooperator; and **Direct Payment**, where Cooperator personnel, as mutually agreed to by both the Cooperator and the State, are hired as Emergency Fire Fighter (EFF) by the State and paid directly, and apparatus is rented and paid directly to the Cooperator. The method of reimbursement is determined in the Annual Operating Plan. Billing addresses and contacts will be provided in the Annual Operating Plan.

State employees remain employees of the State whether they work under Cooperator or State command. State employees are paid by the State without reimbursement from the cooperator.

Cooperator employees may remain employees of the Cooperator, or may become employees of the State through the Emergency Firefighter program, with the attendant pay and benefits.

A. **Cooperator Reimbursement.** The Cooperator shall be responsible for payment of salary, and fringe benefits, to Cooperator's personnel. The Cooperator shall be responsible for payment of all expenses related to operation of the apparatus pursuant to the Annual Operating Plan. Cooperator shall provide the State with an itemized bill and a completed Individual Incident Report within 15 days after the Cooperators' last day on the incident. The State shall

reimburse the Cooperator, within 30 days, for actual costs of personnel, apparatus, and other reasonable and necessary expenses directly related to wildland fire suppression. Rates of reimbursement shall be set out in the Annual Operating Plan. Cooperator apparatus reimbursement rates shall not exceed the rates listed in the most recent Cooperator Equipment Typing and Rate Guidelines for Wildland Fire Suppression Activities, or as identified in the Annual Operating Plan.

B. Direct Payment. The State shall be responsible for payment of salary directly to Cooperator's personnel including all lawful deductions and taxes. Rates of pay and levels of classification shall be documented in the Annual Operating Plan. The State shall be responsible for payment to the Cooperator for apparatus rental. Cooperator apparatus rental rates shall not exceed the rates listed in the most recent Cooperator Equipment Typing and Rate Guidelines for Wildland Fire Suppression Activities.

Notice of employment as EFF, and hiring of apparatus, will be affected by completion of appropriate hiring documents, or, if the emergency situation demands, notification to the responsible State Dispatch office that Cooperator employment and/or hiring has occurred. In the latter case, official documentation will be completed as soon as practical.

The State's direct payment of Cooperator personnel or apparatus does not effect the presumption of Unified Command necessary under this agreement.

C. Travel and Per Diem. Travel time to and from the incident is also reimbursable. All personnel will be subsisted by the State while on assignment away from their Primary or Discretionary Response area. Per Diem or other travel costs not previously agreed upon, or contained in the Annual Operating Plan, will not be reimbursed.

7. Worker's Compensation

The Cooperator and the State are responsible for their own employee's Worker's Compensation. EFF are considered State employees.

However, for the purposes of the Alaska Workers' Compensation Act, when an incident is outside the Primary Response Area of the Cooperator, and under Unified Command or State command, the State of Alaska and the Cooperator agree to be joint employers of the Cooperator personnel engaged in wildland fire suppression activities under this agreement. The Cooperator is responsible for workers' compensation for its own employees when they are not covered by workers' compensation provided by the state. The state is responsible for workers' compensation coverage for all cooperator employees hired as EFF.

8. Liability Insurance

The State is responsible for it's own liability insurance.

The Cooperator is responsible for its own liability insurance for work performed under the Cooperator Reimbursement scenario.

The Cooperator's apparatus and personnel liability is covered by the State for work performed under the Direct Payment scenario, when Contractor employees and apparatus are hired and employed by the State.

State apparatus, including Federal Excess Personal Property (FEPP), loaned to a Cooperator is covered by State liability insurance, regardless of whether or not the operator is a State employee, provided the apparatus is utilized in the scope of permissive use. Permissive use is described as response to and operation on a wildland fire or other approved uses of the FEPP equipment such as patrol and public education. Liability is not covered for non-wildland fire use.

9. Fire Stores Use

The State will loan to the Cooperator a limited amount of fire stores for use in suppressing wildland fires. The loan of fire stores shall be documented in writing on appropriate forms supplied by the State. The Cooperator will maintain the fire stores loaned under this agreement in an operable condition. The Cooperator providing a proper incident number may replenish consumable fire stores. If non-consumable fire stores become broken, or otherwise unusable, the Cooperator will return the damaged item, along with a statement of how the item was damaged, to the State for repair or replacement. If an item becomes lost or damaged as a result of negligence by the Cooperator, the Cooperator will be liable for replacement. The Cooperator agrees to return fire stores held at the end of each wildland fire season, and account for items not returned. The fire stores loans will no longer be available after the 2004 fire season as the State is phasing out the loan program.

10. Training and Prevention

The State will make wildland fire training available to Cooperator on an annual basis based upon joint agreement between Cooperator and State. The minimum training offered annually will be basic fire fighter and I-220 (Basic Incident Command System). The State, or the Cooperator, may design drills and/or exercises to train and test their personnel on critical elements of Wildland fire suppression as part of the annual Wildland fire training in addition to other training that may occur. The State and Cooperator may agree to jointly participate in such drills to train their personnel. Fire Qualification Cards (red cards) will be issued by the State, or may be delegated to the Fire Chief by the State, to the Cooperator's employees who have successfully completed requirements as established in the Annual Operating Plan. The Fire Chief will ensure Wildland fire qualifications, annual safety refresher training, and physical requirements are met for each person before individual red cards are issued. Subject to availability, the State will provide wildfire prevention material to the Cooperator upon request as outlined in the Annual Operating Plan.

The Cooperator and the State agree that from time to time it may be necessary to jointly conduct tests or exercises of response plans for either agency. The Cooperator and the State agree that they will assume workers compensation liability for their own personnel during such drills. If the Cooperator is outside of the Primary Response Area, State agrees to reimburse the Cooperator for the cost of repair or replacement of equipment and apparatus damaged, destroyed or lost during any drills or exercise at fair market value, except for damage resulting from the sole negligence of another party.

11. Annual Operating Plan

As soon as practical after this agreement is executed, and annually thereafter, the Cooperator and the State Forester, or his designee, shall meet to negotiate an Annual Operating Plan. The subject matter of the Annual Operating Agreement shall include:

- A. Apparatus payment rates & conditions of hire.
- B. Personnel pay rates and classifications & conditions of hire.
- C. Designation of Primary, Discretionary, and Mobilization Response Areas on a 1:63,360-scale USGS topographic map, or equivalent.
- D. A current inventory of each parties local fire fighting resources and provisions for one party to notify the other when significant changes occur.
- E. Coordination of prevention, investigation and public education efforts.
- F. Operational Procedures for Cooperator response within the Primary Response Area covering as applicable:
 - (i). Fire Reporting.
 - (ii). Fire Response and Notification Procedures.
 - (iii). Fire Reports and other Documents.
 - (iv). Burn Closures/Bans and Burning Suspensions.
 - (v). Burn Permits.
- G. Provisions, conditions, and methods for Cooperator reimbursement.
- H. Mobilization procedures for Cooperator discretionary or mobilization responses.
- I. Personnel qualification requirements.
- J. Training.
- K. Fire stores guidelines.
- L. Other special considerations or exceptions pursuant to this agreement.

12. Notification

The Cooperator and the State shall immediately report all wildland fires occurring in the Cooperators Primary Response Area to the other party according to the procedures set forth in the Annual Operating Plan.

13. Termination

Either Party may terminate this agreement at any time by giving written notice to the other party of such termination and specifying the effective date, thereof, at least thirty (30) days before the effective date of such termination. Otherwise, this agreement remains in effect indefinitely from the date of last signature. Termination of this agreement automatically terminates the Annual Operating Plan between the State and Cooperator.

14. Parties Responsible for their own Acts

Each party agrees that it will be responsible for its own acts and the results thereof and each party shall not be responsible for the acts of the other party; and each party agrees it will assume to itself risk and liability resulting from their own acts under this agreement. This provision does not reduce, alter or affect recovery, or eliminate the right to recover, under any insurance carried by either party to this agreement.

15. Permits and Laws

The parties shall acquire and maintain in good standing all permits, licenses and other entitlement necessary to the performance under this agreement. All actions taken by the parties under this agreement shall comply with all applicable laws, statutes, ordinances, rules and regulations.

16. Non-Waiver

The Failure of the Cooperator, or the State, at any time to enforce a provision of this agreement shall in no way constitute a waiver of the provisions, nor in any way affect the validity of this agreement or any part thereof to enforce each and every protection hereof.

17. Modifications

The parties, from time to time may agree to modifications in the scope of services to be performed under this agreement. All modifications to the agreement shall be incorporated by written amendments to this agreement and approved by all signatories prior to effect.

18. Fair Intent

The parties following negotiations between them have jointly drafted this agreement. It shall be construed according to the fair intent of the language as a whole, not for or against any party.

19. Severability.

In the event a provision of this agreement is found to be unenforceable or void for any reason, it shall be considered as severed from this agreement, and the remaining portions of this agreement shall stand as if that provision had never been included in the agreement. In the event the unenforceable or void provision is legally essential to the continuing existence of the agreement, the parties shall attempt to substitute a reasonable replacement provision.

20. Notice.

All legal notices relating to this agreement, including change of address, shall be mailed to the State and the Cooperator at the following addresses:

STATE
DNR, Division of Forestry
Kenai/Kodiak Area Office
42499 Sterling Highway
Soldotna, AK 99669

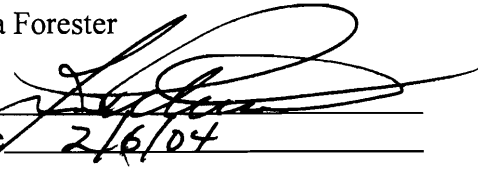
COOPERATOR
Borough Mayor
Kenai Peninsula Borough
144 N. Binkley Street
Soldotna, AK 99669

For The State

Area Forester

BY

Date



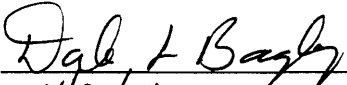
2/6/04

For the Cooperator

Kenai Peninsula Borough Mayor

BY

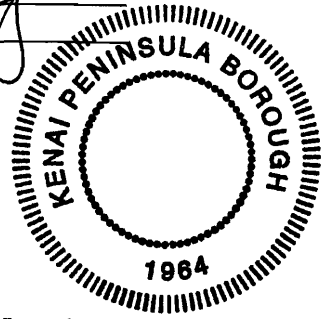
Date



11/27/04

Regional Forester
BY James A. Elcay
Date 3/11/04

Attest, Borough Clerk
BY [Signature]
Date 11/29/04



DNR Procurement Officer
BY [Signature]
Date 3-11-04

Approved As To Form And Legal Sufficiency:
BY [Signature]
Date 3/11/04

Approved As To Form and Legal Sufficiency:
BY [Signature]
Date 11-24-04

For the Cooperator:

Anchor Point Fire Service Area
By: _____
Date: _____

Bear Creek Fire Service Area
By: _____
Date: _____

Central Emergency Service Area
By: _____
Date: _____

Kachemak Emergency Service Area
By: _____
Date: _____

Nikiski Fire Service Area
By: _____
Date: _____

Regional Forester
By: _____
Date _____

Attest, Borough Clerk
By: _____
Date _____

DNR Procurement Officer
By: _____
Date _____

Approved As To Form And Legal
Sufficiency:
By: _____
Date _____

Approved As To Form and Legal
Sufficiency:
By: _____
Date _____

For the Cooperator:

Anchor Point Fire and Emergency Medical Service Area
By: *Ram D. Donald*
Date: 10 13 2004

Bear Creek Fire Service Area
By: _____
Date: _____

Central Emergency Service Area
By: _____
Date: _____

Kachemak Emergency Service Area
By: _____
Date: _____

Lowell Point Emergency Service Area
By: _____
Date: _____

Nikiski Fire Service Area
By: _____
Date: _____

Regional Forester
By: _____
Date _____

Attest, Borough Clerk
By: _____
Date _____

DNR Procurement Officer
By: _____
Date _____

Approved As To Form And Legal
Sufficiency:
By: _____
Date _____

Approved As To Form and Legal
Sufficiency:
By: _____
Date _____

For the Cooperator:

Anchor Point Fire and Emergency Medical Service Area
By: _____
Date: _____

Bear Creek Fire Service Area
By: Daniel C Logan
Date: 29 Sept. 2024

Central Emergency Service Area
By: _____
Date: _____

Kachemak Emergency Service Area
By: _____
Date: _____

Lowell Point Emergency Service Area
By: _____
Date: _____

Nikiski Fire Service Area
By: _____
Date: _____

Regional Forester
By: _____
Date _____

Attest, Borough Clerk
By: _____
Date _____

DNR Procurement Officer
By: _____
Date _____

Approved As To Form And Legal
Sufficiency:
By: _____
Date _____

Approved As To Form and Legal
Sufficiency:
By: _____
Date _____

For the Cooperator:

Anchor Point Fire and Emergency Medical Service Area
By: _____
Date: _____

Bear Creek Fire Service Area
By: _____
Date: _____

Central Emergency Service Area
By: *[Signature]*
Date: *11-18-2004*

Kachemak Emergency Service Area
By: _____
Date: _____

Lowell Point Emergency Service Area
By: _____
Date: _____

Nikiski Fire Service Area
By: _____
Date: _____

Regional Forester
By: _____
Date _____

Attest, Borough Clerk
By: _____
Date _____

DNR Procurement Officer
By: _____
Date _____

Approved As To Form And Legal
Sufficiency:
By: _____
Date _____

Approved As To Form and Legal
Sufficiency:
By: _____
Date _____

For the Cooperator:

Anchor Point Fire and Emergency Medical Service Area
By: _____
Date: _____

Bear Creek Fire Service Area
By: _____
Date: _____

Central Emergency Service Area
By: _____
Date: _____

Kachemak Emergency Service Area
By: Pet Johnson
Date: 22 July 04

Lowell Point Emergency Service Area
By: _____
Date: _____

Nikiski Fire Service Area
By: _____
Date: _____

Regional Forester
By: _____
Date _____

Attest, Borough Clerk
By: _____
Date _____

DNR Procurement Officer
By: _____
Date _____

Approved As To Form And Legal
Sufficiency:
By: _____
Date _____

Approved As To Form and Legal
Sufficiency:
By: _____
Date _____

For the Cooperator:

Anchor Point Fire and Emergency Medical Service Area
By: _____
Date: _____

Bear Creek Fire Service Area
By: _____
Date: _____

Central Emergency Service Area
By: _____
Date: _____

Kachemak Emergency Service Area
By: _____
Date: _____

Lowell Point Emergency Service Area
By: Sydney M. Pasquillo Chan
Date: 10/12/04 CPESA

Nikiski Fire Service Area
By: _____
Date: _____

Regional Forester

By: _____

Date _____

Attest, Borough Clerk

By: _____

Date _____

DNR Procurement Officer

By: _____

Date _____

Approved As To Form And Legal Sufficiency:

By: _____

Date _____

Approved As To Form and Legal Sufficiency:

By: _____

Date _____

For the Cooperator:

Anchor Point Fire and Emergency Medical Service Area

By: _____

Date: _____

Bear Creek Fire Service Area

By: _____

Date: _____

Central Emergency Service Area

By: _____

Date: _____

Kachemak Emergency Service Area

By: _____

Date: _____

Lowell Point Emergency Service Area

By: _____

Date: _____

Nikiski Fire Service Area

By: *Dave J. [Signature]* Vice Chair

Date: 8/11/04