

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES FISH AND WILDLIFE SERVICE
AND
MERCED CITY FIRE DEPARTMENT
FOR
SAN LUIS NATIONAL WILDLIFE REFUGE COMPLEX

This Memorandum of Understanding (MOU) is made and entered into and between the U.S. Fish and Wildlife Service, San Luis National Wildlife Refuge Complex, herein referred to as (SERVICE) and Merced City Fire Department, herein referred to as (DEPARTMENT), and is effective upon signature by all parties and will remain in effect for five (5) years unless terminated by one or more of the parties.

I. AUTHORITIES

The SERVICE has entered into this MOU under the following authorities;

- Reciprocal Fire Protection Act of May 27th, 1955 (69 Stat. 66, 42 U.S.C 1856a-d)
- Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Public Law 93-288, as amended, 42 U.S.C. 5121-5207)
- Federal Fire Prevention and Control Act of October 29, 1974 et seq. (88 Stat. 1535; 15 U.S.C. 2201)
- Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c,
- Department of the Interior and Related Agencies Appropriations Act, 1999 as included in Public law 105-277, Div. A, Section 101(e)

II. PURPOSE

The purpose of this agreement is to coordinate and provide cooperative training and field experience between the SERVICE and DEPARTMENT, in order to more efficiently and effectively suppress wildland fires from damaging natural resource values managed by the SERVICE. This MOU is consistent with the existing Master Cooperative Fire Protection Agreement (FWS agreement #: 2022-CALUR-CAMER), whereas the Master Agreement has documented the commitment of Agencies to improve efficiency by facilitating the coordination and exchange of personnel, equipment, supplies, services, and funds among the Agencies as too will this Agreement. Furthermore, this Agreement describes the working relationship, financial arrangements, and joint activities between the SERVICE and DEPARTMENT not otherwise specified under the terms of the Master Cooperative Fire Protection Agreement. Nothing herein shall be considered as obligating either party to expend or as involving either party in any contract or other obligation other than reimbursement for wildland fire suppression beyond reciprocal period identified in this document.

III. RECITALS

Whereas, both parties have wildland fire protection responsibilities upon lands of their respective jurisdiction and limited fire protection resources.

Whereas, the SERVICE is the jurisdictional agency responsible for fire management on SERVICE lands;

Whereas, the SERVICE has limited specialized equipment and qualified personnel required to manage wildland fires;

Whereas, DEPARTMENT can provide wildland fire initial attack capability to support and supplement the SERVICE's and other fire protection cooperator's resources;

Whereas, DEPARTMENT can provide equipment and overhead for wildland fire suppression activities within DEPARTMENT'S jurisdiction; and

Whereas, if initial attack suppression actions on SERVICE lands are unsuccessful and the fire will not be contained within the first burning period, dispatching, and continued incident support services will be transferred to Sierra National Forest, Emergency Communication Center (559) 500-4546 will provide extended attack support.

Therefore, for the mutual consideration herein stated, the parties hereby enter this MOU.

IV. STATEMENT OF MUTUAL BENEFITS AND INTERESTS

The SERVICE shall:

- A. Provide the DEPARTMENT Firing Boss Training (FIRB) and or Firing Methods and Techniks at no Costs to the DEPARTMENT.
- B. Provide the DEPARTMENT with FIRB opportunities on SERVICE conducted Prescribed Burn Projects at no COST.

The DEPARTMENT shall:

- A. Provide the SERVICE with Emergency Medical Training at the First Responder level or Professional Rescuer Level at no cost.
- B. Provide the SERVICE with annual refresher for First Responder, Emergency Medical Technician Basic Level at no cost.

Both the SERVICE and DEPARTMENT shall:

- A. Provide annually a principal contact information prior to the initiation of fire season. The information will include protection area maps for any new lands acquired by the SERVICE, names, and numbers for principal contacts (Exhibit A).
- B. 42 U.S. Code, 1856a – Authority to enter into reciprocal agreement; waiver of claims; reimbursement; ratification of prior agreements. Parties to the Agreement, and each Party hereby waives any claim against any other Party for loss or damage of its property and/or personal injury or death of its employees or agents occurring as a consequence of the performance of this Agreement; provided, this provision shall not relieve any Party from responsibility for claims from third Parties for losses for which the Party is otherwise legally

liable. This waiver does not extend to ordinary expenses incurred as part of the cost of the fire (gloves, fuses, hose, etc.).

Claims requesting compensation for property loss or damage, personal injury, or death resulting from the negligence or other wrongful acts of employees performing under this Agreement will be received by the Jurisdictional Agency and forwarded to the hiring or home agency of the allegedly negligent employee for processing. Employee claims for loss of or damage to personal property must be submitted to the Jurisdictional Agency and then forwarded to the hiring, or home agency of the employee for processing in accordance with the hiring agency's administrative procedures.

- C. Parties to this agreement will comply with the U.S. Fish and Wildlife Service Fire Management Policies. Policies includes, but not limited to, implementing fire management plans, promoting human safety as well as reducing hazardous conditions, conserving wildlife and its habitat, minimizing air and water quality impacts and meeting other desirable goals.
- D. Agree that the officer-in-charge who arrives first at a wildfire burning on or near lands of both parties will act as Incident Commander (IC). When representatives of both parties have arrived at a fire, the officers-in-charge for each party will mutually agree to designate an IC, provided that nothing shall prevent a party to whom a request is made from refusing to respond when the sole determination of that party's commanding officer is that responding to the incident would create an unreasonable risk of danger to that party's employees, equipment or a third party.
- E. Be responsible for the training, equipment, and welfare of personnel they dispatch, including the treatment of any personal injuries, which may result during any fire or in route to or from any fire as provided by the laws and regulations under which each party operates.
- F. Recognize that the other's training standards are reasonable, prudent, and acceptable for wildland fire response as well as fire support on lands under the jurisdiction of the parties to this MOU.
- G. Be responsible for operating, servicing, repairing, and replacing their own equipment, except as agreed upon in writing by both parties in advance.
- H. Know that regardless of an incident's location, employees of the DEPARTMENT and the SERVICE will be subject only to the laws, regulations and rules governing their respective employers. No employee shall be entitled to compensation and/or benefits under this MOU except as specifically provided for under the terms of his or her employment with respective employer.

V. GENERAL PROVISIONS

- A. Neither party shall be required to incur expenses under the terms of this MOU, except as necessary to effectively implement this MOU.
- B. Reimbursement will begin at the time ordered resources (on a resource order) exceed the reciprocal period when responding to a SERVICE wildland fire and end when resources return to their respective fire station.
- C. Only actual costs for direct wildland fire suppression will be reimbursed by the SERVICE. These costs include, salary and overtime for wildland fire resources directly involved with wildland fire suppression and the logistical support (fuel, meals, etc.) for these firefighters. The cost of "backfilling" local fire service employees into home unit positions for shift personnel that have been mobilized to incidents is accepted with the intent to make the local fire district whole. The reimbursed hours will be for base hours only, no overtime. All backfill hours should be documented and signed.

- D. Parties shall provide (upon request) any maps, documents, instructions, and law enforcement reports which either party considers necessary to conduct work associated with this MOU.
- E. All aircraft and pilots used to transport SERVICE personnel or that are directly controlled by the SERVICE shall be certified by qualified SERVICE or United States Department of Interior National Business Center-Aviation Management inspector prior to SERVICE work.
- F. Both parties shall comply with all Federal statutes relating to nondiscrimination and all applicable requirements of other Federal laws, executive orders, regulations and policies, including but not limited to.
 - i. Title VI of the Civil Rights Act of 1964 (USC 2000d) which prohibits discrimination on the basis of race, color, handicap or national origin.
 - ii. Title IX of the Education amendments of 1972, as amended (USC 1681-1683) which prohibits the discrimination based on sex.
- G. Either Party shall have the right to obtain access to examine all documents related to this MOU. Reasonable notice must be given to the other party through their authorized representatives.
- H. Cost Sharing. On multi-jurisdictional incidents, incidents that threaten, or incidents that burn across direct protection boundaries, the parties will jointly develop a written cost share agreement that describes a fair distribution of financial responsibilities. The parties agree that all reasonable and necessary costs incurred to meet the protection responsibilities within each party's direct protection area will be the responsibility of that party.
- I. Modification of this MOU shall be made by mutual consent of both parties through the issuance of a written modification that is signed and dated by both parties prior to any changes being performed or taking effect.
- J. Either party may terminate this MOU by providing 30 days written notice to the other. Unless terminated by written notice, this MOU shall remain in effect for five years from the date of the last signature.
- K. The parties certify that the person executing this MOU on behalf of its respective entity has the legal authority to enter this MOU.

VI. REIMBURSEMENT AUTHORITY

15 U.S. § 2210 - Reimbursement for costs of firefighting on Federal property

(a) Filing of reimbursement claims

Each fire service that engages in fire suppression on property which is under the jurisdiction of the United States may file a reimbursement claim with the Administrator for the amount of direct expenses or direct losses incurred by such fire service as a result of fighting such fire. The claim shall include such supporting information as the Administrator may prescribe.

(b) Determination Upon receipt of a claim filed under subsection (a) of this section, the Administrator shall determine— (1) what payments, if any, to the fire service or its parent jurisdiction, including taxes or payments in lieu of taxes, the United States has made for the support of fire services on the property in question; (2) the extent to which the fire service incurred additional firefighting costs, over and above its normal operating costs, in connection with the fire which is the subject of the claim; and (3) the amount, if any, of the additional costs referred to in paragraph (2) of this subsection which were not adequately covered by the payments referred to in paragraph (1) of this subsection.

(c) Payment The Administrator of FEMA shall forward the claim and a copy of the Administrator's determination under subsection (b)(3) of this section to the Secretary of the Treasury. The Secretary of the Treasury shall, upon receipt of the claim and determination, pay such fire service or its parent jurisdiction, from any moneys in the Treasury not otherwise appropriated but subject to reimbursement (from any appropriations which may be available or which may be made available for the purpose) by the Federal

department or agency under whose jurisdiction the fire occurred, a sum no greater than the amount determined with respect to the claim under subsection (b)(3) of this section.

(d) **Adjudication** In the case of a dispute arising in connection with a claim under this section, the United States Court of Federal Claims shall have jurisdiction to adjudicate the claim and enter judgment accordingly.

VII. REIMBURSEMENT PACKAGE REQUIREMENTS

- A. The Supporting Party will bill the Protecting Party for actual costs incurred for assistance provided and identified as reimbursable. Reimbursable costs include all costs associated with the direct fire operations and incident support ordered by or for the incident (except as otherwise described in reciprocal initial attack and independent action situations or cost share agreements). All billing packages will include documentation showing the order was processed through and tracked by the Protecting agency. Bills for reimbursement must include resource orders for all resources. For reimbursement under the terms of this agreement all resource orders beyond initial attack must be mobilized and processed by an interagency dispatch center.
- B. All resource ordered personnel must include a detailed account of individual personnel start and end time for the wildland fire, signed by the employee and Time Unit Leader. The OF-288 form (Emergency Firefighter Time Report) is the desired format.
- C. Provide all fire equipment use reports (shift tickets), signed by the incident supervisor and an equipment invoice. The OF-286 form (Emergency Equipment Use Invoice) is the desired format.
- D. Miscellaneous logistical support reimbursement requests must include a resource order (or equivalent) to ensure that items were used in support of the wildland fire.
- E. On fires where costs are incurred pursuant to the terms of this agreement, the Supporting Party shall submit a bill for reimbursement as soon as possible, but no later than 120 days after the fire is declared out. Payment shall be made to the Supporting Party within 90 days after receipt of the billing invoice.
- F. Submit Service reimbursement request documents to:

USFWS, San Luis NWRC
P.O. Box 2176
Los Banos, CA. 93635-2176
ATTN: Fire Management

- G. Submit reimbursement request documents to:

Merced Fire Department
99 E. 16th St.
Merced, CA. 95340
ATTN: Deputy Chief or Fire Chief

VIII. FIRE SUPPRESSION INVOICE REQUIREMENTS:

- List jurisdictional unit on each invoice/bill
- Cooperator name, address, phone number, and agency financial contact
- Department's UEI number
- Invoice or bill number
- Agreement number
- Incident name and number
- Resource Order Number(s)
- Dates of the incident covered by the billing

- Summary and detailed cost data for the amount being billed. Details should include standard resource type designation, number of personnel, and hours worked. Use incident generated cost information or standard generated cost reports generated by the Agency to support the billing whenever possible.

Summary cost data may include, but not be limited to, a list of personnel expenses including base, overtime and travel and a listing by vendor name and amount spent for supplies and services procured.

Electronic Funds Transfer (EFT): District shall designate a financial institution or an authorized payment agent through which a federal payment may be made in accordance with U.S. Treasury Regulations, Money, and Finance at 31 CFR 208, which requires that federal payments are to be made by EFT to the maximum extent possible.

In order to receive EFT payments, the District shall register in the System for Award Management (SAM) at www.sam.gov and follow the instructions online to register as a new entity.

Third Party Cost Recovery: Procedures for determining a cost recovery process will be in the Statewide Operating Plan. Investigation process is determined locally. The USFWS needs to investigate the cause of all fires that cross onto Refuge land. Further, the *Interagency Standards for Fire and Fire Aviation Operations* states, "For all human-caused fires where responsibility and negligence can be determined, actions must be taken to recover the cost of suppression activities, land rehabilitation, and damages to the resources and improvements." The parties will undertake efforts both to protect the point of origin and to facilitate the effective investigation for cost recovery efforts.

IX. DEFINITION OF TERMS

- A. Principal Contacts. A list of appropriate contacts for TBD and the Service.
- B. Direct Costs. Costs directly related to the suppression effort. These costs do not include dispatch or other administrative costs.
- C. Duty Officer. The Service employs a fire management staff person that serves as the "Duty Officer". The Service Duty Officer is the primary point for coordination with local units for payment and reimbursement issues during incidents and they are not the Incident Commander.
- D. Jurisdictional Agency. Agency which has overall land and resource management and/or protection responsibility as provided by Federal or State law.
- E. Overhead Costs. Costs not directly chargeable to suppression efforts, but which are part of the overall cost of operation.
- F. Suppression Work. All work of confining and extinguishing a fire beginning with its discovery.
- G. Reimbursable Work. Providing monetary compensation for the use of any fire engines, fire support vehicles or equipment and wages for qualified wildland fire personnel and support staff responding to wildfires on Service lands.
- H. Reciprocal Fire Assistance. Support response to the protecting party to provide assistance without charge for the **first 24 hours**.
- I. Appropriate Charges. Comprises all charges related to direct costs, overhead costs, and suppression work.
- J. Multijurisdictional Incident. An incident requiring action from multiple agencies that each have jurisdiction to manage certain aspects of an incident. In ICS, these incidents will be managed under Unified Command.

- K. Unified Command. An application of ICS used when there is more than one agency with incident jurisdiction or when incidents cross political jurisdictions. Agencies work together through the designated members of the Unified Command to establish their designated Incident Commanders at a single ICP and to establish a common set of objectives and strategies and a single Incident Action Plan.

This MOU involves no exchange of funds between the parties. Further, nothing shall be considered as obligating the SERVICE to expend funds or otherwise obligate the SERVICE for the future payment of money in excess of appropriations authorized by law and administratively allocated for the activities associated with this MOU, Antideficiency Act, P.L.97-258, 96 Stat 923.

The party's hereto have executed this Memorandum of Understanding by and through their authorized representatives on the day and year last written below.

Stephanie Dietz, City Manager
City of Merced

Date

KIM FORREST Digitally signed by KIM FORREST
Date: 2022.03.24 14:58:40 -07'00'

24 March 2022

Kim Forrest, Project Leader
San Luis National Wildlife Refuge Complex

Date

****, Procurement Officer
U.S. Fish and Wildlife Service, Region TBD

Date

Exhibit A.

Principal Contacts

SERVICE PRINCIPAL CONTACT LIST			
NAME	TITLE	OFFICE	CELL
Shawn Murphy	Fire Management Officer/ Fire Chief	209/826-3508	209/587-0324
Keith Mayer	Prescribed Fire Specialist/ Division Chief	209/826-3508	209/587-0328
Ronald Sandling	Senior Engine Captain	209/826-3508	209/587-5623
Sean Brophy	Deputy Refuge Manager	209/826-3508	209/587-0369
Kim Forrest	Project Leader	209/826-3508	

APPROVED AS TO FORM:

 3-25-22
JOHN B. GOULART Date
Senior Deputy City Attorney

Principal Contacts

DEPARTMENT PRINCIPAL CONTACT LIST			
NAME	TITLE	OFFICE	CELL
Thomas England	Deputy Fire Chief, City of Merced Fire Department	209 398 8873 209/	209 600 1237 209/
Stephanie Dietz	City Manager, City of Merced, CA.	209 398 8670 209/	209-617-1941 209/
Janet German	Management Analyst, City of Merced Fire Department	209 385 6982 209/	209 631- 209/ 2089