

**DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
DIVISION OF FORESTRY
WILDLAND FIRE INITIAL ATTACK AGREEMENT**

This Agreement is between the Montana Department of Natural Resources and Conservation (hereinafter DNRC), and Twin Butte Rural Fire District, Employer I.D. No. 81-xxxxxxxx hereinafter Government Entity). The parties to this Agreement, in consideration of the mutual covenants and stipulations set out herein, agree as follows:

Section 1. **PURPOSE.** The purpose of this agreement is to establish mutually agreeable terms and conditions and requirements for the Government Entity to carry out initial attack wildland fire suppression activities on lands on which DNRC has protection within the Government Entity's normal operating area. The specific lands to be protected by the Government Entity are identified on the map attached hereto as Exhibit "A" and incorporated herein by reference. For the purposes of this agreement, Initial Attack is defined as: *"The actions taken by the first resources to arrive at a wildfire to protect lives and property, and prevent further extension of the fire."*

Section 2. **TERM.** The effective date is the last date of signing, or upon compliance with Section 7. **PERSONNEL/INSURANCE;**, whichever is later, and shall terminate on June 30, 2008 unless terminated earlier pursuant to Section 15, **Termination.**

Section 3. **LIAISON.** All communications by the Government Entity to the DNRC concerning this Agreement shall be addressed Department of Natural Resources and Conservation, Clearwater Unit, PO Box xxxx, etc.. All communications by the DNRC to the Government Entity shall be addressed to: Twin Butte Rural Fire District, PO Box xx, Twin Butte, MT. 59xxx; Attn: Chief/Trustees/ etc.

Section 4. **SCOPE OF WORK.** The Government Entity shall administer all activities provided for in this Agreement on behalf of the DNRC.

The Government Entity shall be responsible for the initial attack of wildland fires; specifically to suppress wildland fire, notify the Missoula Dispatch Center of the response and associated size up information, mop up, patrol such fires, and turn over such fires to the DNRC Clearwater Unit. The DNRC Clearwater Unit will always retain the responsibility for calling fires "dead out".

- A. To establish timely coordination and review of initial attack fire occurrence and jurisdictional responsibility verification, it is agreed that a Government Entity representative will notify 911 dispatch of any fire that is suspected of being on DNRC protection as soon after detection as possible so that a DNRC representative can be notified. If notification is not possible during the initial attack phase the Government Entity will notify a DNRC Duty Officer within 4 hours of an occurrence of a fire "service call". A "service call" is defined as:
1. Any Government Entity initial wildland fire response where the fire starts on any ownership within the Government Entity's jurisdictional boundaries that are also within the DNRC direct protection boundary and provided that suppression action is taken.

B. The attached fire protection map (Exhibit “A”) will be the resource to establish ownership and jurisdictional responsibility of any questionable incidents (fires) on which this information is not readily identifiable. In order for the Government Entity to receive payment under this Agreement, the following requirements must be met:

1. A DNRC **Clearwater** Unit representative has determined that the DNRC is unable to respond to the incident.
2. The incident is within the boundaries of the DNRC **Clearwater** Unit's direct protection.
3. DNRC and the Government Entity make a determination as to whether the fire occurred in an area of overlapping protection, or is within the Government Entity's jurisdictional boundary
4. The Government Entity has submitted a completed NFIRS Fire Incident Report form. DNRC will be responsible for assigning the appropriate fire numbers and will complete the DNRC F-1000 Fire Report.
5. The incident required suppression action and is not classified as a false alarm or non-action.
 - i. A False Alarm is defined as: A suspected wildfire resulting in a response upon which no suppression action was required.
 - ii. A Non-Action is defined as: A wildfire, confirmed through observations, that went out by itself or was extinguished by persons or factors other than initial attack resources.

C. RECIPROCITY: Under this agreement the DNRC must meet the following requirements:

1. Existing Mutual Aid or Annual Operating Agreements will apply, when DNRC responds to a fire, which is within the Government Entity's protection whether within or outside of DNRC's protection boundary.
2. DNRC will be responsible for assigning the appropriate fire numbers and will complete the DNRC F-1000 Fire Report.
3. Through this contract, the DNRC or its cooperators may assist the Government Entity with mutual aid fire suppression assistance without charge. The Government Entity may assist the DNRC for the first **4** hours of each fire. After **4** hours, the DNRC may hire the Government Entity at standard equipment rates identified in the National Interagency Incident Business Management Handbook, NRCG supplement to Chapter 50, Montana DNRC.

Section 5. PAYMENT.

- A. The amount to be paid the Government Entity for services is:
1. A flat fee of \$250 per response, no matter the extent of resources assigned, to help defray the costs that the Government Entity incurs during the suppression of wildfires that occur in areas of overlapping (DNRC and Government Entity) protection when DNRC is unable to respond. When a given response exceeds 4 hours the Government Entity may be hired for appropriate equipment and personnel costs at the appropriate rates as listed in the National Interagency Incident Business Management Handbook, NRCG supplement to Chapter 50, Montana DNRC. The duration of a response will be considered the time elapsed when the first resource leaves the appropriate fire station until it returns to its point of origin. Standby costs will not be paid under this agreement.
 2. Existing Mutual Aid Agreements apply when DNRC and the Government Entity both respond to fires occurring on overlapping protection, in these circumstances the flat fee will not apply. (i.e. DNRC assistance to protect Wildland from structure fires)
 3. In all instances there will be no payment for false alarms or cancelled calls (see Section 5, C (5)).

Section 6. LEGAL REQUIREMENT. The Government Entity shall comply with all applicable federal, state, and local laws, statutes and ordinances and all applicable rules, regulations, and standards established by DNRC. During an Initial Attack action, each entity's established qualifications and certification standards will be accepted by the cooperating agency.

Section 7. PERSONNEL/INSURANCE REQUIREMENTS: It is understood and agreed between DNRC and the Government Entity that none of the employees of the Government Entity is an employee of the State of Montana as defined in Section 39-71-118, MCA, for Workers' Compensation purposes. The Government Entity shall at all times be solely responsible for providing Workers Compensation Insurance for its employees who are assigned to provide initial-attack assistance pursuant to this Agreement. The parties agree that by the Government Entity providing initial-attack assistance pursuant to this Agreement, its employees will not thereby become employees of DNRC.

The Government Entity shall provide DNRC with the appropriate proof of Workers' Compensation coverage or of an approved exemption prior to commencement (signature) of this Agreement by DNRC.

Section 8. EQUAL EMPLOYMENT. Any hiring of employees under this Agreement shall be on the basis of merit and qualifications, and there shall be no discrimination on the basis of race, color, religion, creed, sex, national origin, age, disability, marital status, or political belief. "Qualifications" mean qualifications as are generally related to competent performance of the particular occupational task.

Section 9. INDEMNITY AND LIABILITY (Hold Harmless/Indemnification): The Government Entity agrees to be financially responsible for any audit exception or other financial loss to the

State of Montana which occurs due to the negligence, intentional acts, or failure by the Government Entity and/or its agents, employees, subcontractor, or representative to comply with the terms of this Agreement. The Government Entity agrees to indemnify the state, its officials, agents, and employees, while acting within the scope of their duties and hold harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense, arising in favor of the Government Entity's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, goods or rights to intellectual property provided or omissions of services or in any way resulting from the acts or omission of the Government Entity and/or its agents, employees, subcontractors or its representatives under this Agreement, all to the extent of the Government Entity's negligence.

Section 10. ASSIGNMENTS, TRANSFERS AND SUBCONTRACTS. There will be no assignment, transfer or subcontracting of this Agreement, nor any interest in this Agreement, unless agreed to by both parties in writing as provided in Section 12, Modifications. This Agreement shall be binding on all successors and assigns of the Government Entity, including successors in interest.

Section 11. AUDIT. The Government Entity shall maintain reasonable records of its performance under this Agreement. The Government Entity agrees that DNRC, the Legislative Auditor, or the Legislative Fiscal Analyst may audit all records, reports, and other documents which the Government Entity maintains under or in the course of this Agreement to insure compliance with this Agreement. Such records, reports, and other documents may be audited at any reasonable time. The Agreement may be unilaterally terminated by DNRC upon the Government Entity's refusal to comply with this or any other section. In the event the Agreement is terminated for such failure to comply, the Government Entity, at the option of DNRC, shall return to DNRC all funds previously awarded the Government Entity and all results of the project to date.

Section 12. MODIFICATIONS. This instrument contains the entire Agreement between the parties, and no statement, promises, or inducements made by either party, or agents of either party, that are not contained in this Agreement shall be valid or binding and this Agreement may not be enlarged, modified or altered except as provided in this Agreement. No letter, telegram, or other communication passing between the parties to this Agreement, concerning any matter during the term of this Agreement shall be deemed a part of this Agreement unless it is distinctly stated in such letter, telegram, or communication that it is to constitute part of this Agreement, and such letter, telegram, or communication is attached as an appendix to this Agreement and is signed by the authorized representative of each of the parties to this Agreement. If executed properly under this section, modifications of this Agreement do not need independent consideration to be legally enforceable.

Section 13. TERMINATION. Upon breach of any of the terms and conditions of this Agreement by the Government Entity, DNRC may terminate this Agreement and have any and all remedies at law or equity. In the event of such breach and termination, DNRC may further, at its option, take over the work and services and prosecute the same to completion by contract or otherwise and the Government Entity shall be liable to DNRC for any excess cost occasioned to DNRC thereby. The Government Entity may cancel this Agreement upon DNRC's mutual written agreement and DNRC may postpone or cancel this Agreement if subsequent funding is not available.

Section 14. WAIVER. A waiver of any particular provision of this Agreement by DNRC shall not be construed as a waiver of any other provision, nor shall any such waiver otherwise preclude DNRC from insisting on strict compliance with this Agreement in other circumstances.

Section 15. REPORT (S): Government Entity shall notify the DNRC when service is rendered.

Section 16. AGREEMENT RENEWAL. This Agreement may, upon mutual agreement between the parties and according to the terms of the existing contract, be extended each year for a period not to exceed one (1) year. This extension is dependent upon legislative appropriation.

Section 17. CONTENTS. This Agreement consists of pages 1 through 5 including the signatory page, as well as Exhibit "A," a map of the Government Entity's protection area.

Date Contractor's Authorized Representative

Date Department of Natural Resources and Conservation