



WASHOE COUNTY

Integrity Communication Service
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CM/ACM	<u> x </u>
Finance	<u> x </u>
DA	<u> x </u>
Risk Mgt	<u> x </u>
HR	<u> n/a </u>
Other	<u> </u>

STAFF REPORT Board Meeting Date: April 11, 2017

DATE: March 28, 2017

TO: Board of County Commissioners

FROM: Al Rogers, Management Services Director

SUBJECT: Approve a two year Interlocal Contract between Washoe County and the State of Nevada acting by and through the Nevada Division of Forestry Department of Conservation and Natural Resources in the amount of [\$50,000 per fiscal year, not to exceed \$100,000] for the purpose of resources, equipment and financial assistance in the mitigation of emergency fire incidents; and authorize the Chair to sign the interlocal contract.
(Commission District 5)

SUMMARY

This is a recommendation to approve a two year Interlocal Contract between Washoe County and the State of Nevada acting by and through the Nevada Division of Forestry Department of Conservation and Natural Resources in the amount of [\$50,000 per fiscal year, not to exceed \$100,000]. This contract is for a two year term to be effective July 1, 2017 to June 30, 2019, which allows Washoe County to participate in the State's new Wildland Fire Protection Program ("WFPP"). The State will pay qualifying wildland fire suppression expenses to (or for) Washoe County, and will also provide the County resources without cost to include the use of State aircraft, hand crews, apparatus, and heavy equipment.

Strategic Objective supported by this item: *Safe, Secure and Healthy Communities*

PREVIOUS ACTION

May 12, 2015 – The Board approved a two year Interlocal Contract between Washoe County and the State of Nevada acting by and through the Nevada Division of Forestry Department of Conservation and Natural Resources in the amount of \$50,000 per fiscal year, not to exceed \$100,000. This contract is effective July 1, 2015 to June 30, 2017.

BACKGROUND

Staff with the cooperation of our regional partner, Nevada Division of Forestry (NDF), has drafted the attached two year Interlocal agreement and scope of work (attachment A within the Agreement), which provides that NDF will supply resources, equipment and financial assistance in the mitigation of emergency fire incidents in Washoe County (NT22) territories. The State will provide and deliver to Washoe County as soon as reasonably possible the State's physical resources without cost (subject to

availability) when requested by Washoe County in response to emergencies within the boundaries of Washoe County (NT22) to include the use of State aircraft, hand crews, Conservation Camp Crews, apparatus and heavy equipment. It is to the mutual advantage of the State and Washoe County to work closely together to maintain effective wildfire management without duplication, and to coordinate efforts.

FISCAL IMPACT

The fiscal impact for Washoe County is [\$50,000 per fiscal year, not to exceed \$100,000] for the two year contract and would be funded through the Washoe County Fire Suppression Fund account 187510-710400. Quarterly installments are due in advance on the first of each quarter starting July 1 of each fiscal year.

RECOMMENDATION

Staff recommends that the Board approve a two year Interlocal Contract between Washoe County and the State of Nevada acting by and through the Nevada Division of Forestry Department of Conservation and Natural Resources in the amount of [\$50,000 per fiscal year, not to exceed \$100,000] for the purpose of resources, equipment and financial assistance in the mitigation of emergency fire incidents; and authorize the Chair to sign the interlocal contract.

POSSIBLE MOTION

Should the Board agree with the staff's recommendation, a possible motion could be:

"I move to approve a two year Interlocal Contract between Washoe County and the State of Nevada acting by and through the Nevada Division of Forestry Department of Conservation and Natural Resources in the amount of \$50,000 per fiscal year, not to exceed \$100,000 for the purpose of resources, equipment and financial assistance in the mitigation of emergency fire incidents; and authorize the Chair to sign the interlocal contract."

INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

A Contract Between the State of Nevada
Acting By and Through Its

Department of Conservation and Natural Resources
Nevada Division of Forestry
2478 Fairview Drive, Carson City, Nevada 89701
Phone (775) 684-2500 – Fax (775) 684-2570

And

Washoe County
PO Box 11130, Reno, NV 89520
Phone 775-328-6131

WHEREAS, NRS 277.180 authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and

WHEREAS, it is deemed that the services of Nevada Division of Forestry hereinafter set forth are both necessary to Washoe County (NT22) territories and in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by appropriate official action of the governing body of each party.
2. **DEFINITIONS.** "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.
3. **CONTRACT TERM.** This Contract shall be effective July 1, 2017 to June 30, 2019, unless sooner terminated by either party as set forth in this Contract.
4. **TERMINATION.** This Contract may be terminated by either party prior to the date set forth in paragraph (3), provided that a termination shall not be effective until 60 days after a party has served written notice upon the other party. This Contract may be terminated by mutual consent of both parties or unilaterally by either party without cause. The parties expressly agree that this Contract shall be terminated immediately if for any reason federal and/or State Legislature funding ability to satisfy this Contract is withdrawn, limited, or impaired.
5. **NOTICE.** All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth above.
6. **INCORPORATED DOCUMENTS.** The parties agree that the services to be performed shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT A: WILDLAND FIRE PROTECTION PROGRAM (WFPP) SCOPE OF WORK

7. **CONSIDERATION.** Nevada Division of Forestry agrees to provide the services set forth in paragraph (6) at a cost of \$50,000 for State Fiscal Year 2018 and \$50,000 for State Fiscal Year 2019, not to exceed \$100,000 with quarterly installments payable in advance on the first of each quarter, starting July 1 of each fiscal year. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

8. **ASSENT.** The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations expressly provided.

9. **INSPECTION & AUDIT.**

a. **Books and Records.** Each party agrees to keep and maintain under generally accepted accounting principles full, true and complete records, agreements, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. **Inspection & Audit.** Each party agrees that the relevant books, records (written, electronic, computer related or otherwise), including but not limited to relevant accounting procedures and practices of the party, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location where such records may be found, with or without notice by the State Auditor, Employment Security, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives.

c. **Period of Retention.** All books, records, reports, and statements relevant to this Contract must be retained a minimum of three years and for five years if any federal funds are used in this Contract. The retention period runs from the date of termination of this Contract. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. **BREACH; REMEDIES.** Failure of either party to perform any obligation of this Contract shall be deemed a breach. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$125 per hour for State employed attorneys and County employed attorneys.

11. **LIMITED LIABILITY.** The parties will not waive and intend to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Actual damages for any breach shall never exceed the amount of funds which have been appropriated for payment under this Contract, but not yet paid, for the fiscal year budget in existence at the time of the breach.

12. **FORCE MAJEURE.** Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

13. INDEMNIFICATION.

a. To the fullest extent of limited liability as set forth in paragraph (11) of this Contract, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of the party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

b. The indemnification obligation under this paragraph is conditioned upon receipt of written notice by the indemnifying party within 30 days of the indemnified party's actual notice of any actual or pending claim or cause of action. The indemnifying party shall not be liable to hold harmless any attorneys' fees and costs for the indemnified party's chosen right to participate with legal counsel.

14. INDEPENDENT PUBLIC AGENCIES. The parties are associated with each other only for the purposes and to the extent set forth in this Contract, and in respect to performance of services pursuant to this Contract, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

15. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

16. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

17. ASSIGNMENT. Neither party shall assign, transfer or delegate any rights, obligations or duties under this Contract without the prior written consent of the other party.

18. OWNERSHIP OF PROPRIETARY INFORMATION. Unless otherwise provided by law any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by either party in performance of its obligations under this Contract shall be the joint property of both parties.

19. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

20. CONFIDENTIALITY. Each party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that party to the extent that such information is confidential by law or otherwise required by this Contract.

21. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract and that the parties are authorized by law to perform the services set forth in paragraph (6).

Attachment A
WILDLAND FIRE PROTECTION PROGRAM
SCOPE of WORK

I. IDENTIFICATION OF ENTITIES

- A. The State of Nevada Department of Conservation and Natural Resources (hereinafter “DCNR”) which exists pursuant to NRS 232.010(1), and the Nevada Division of Forestry (hereinafter “DIVISION”) which exists pursuant to NRS 232.090(c), are both agencies of the State of Nevada (and are from time to time collectively referred to as “STATE” in this Agreement);
- B. Washoe County, is a political subdivision of the State of Nevada (hereinafter “COUNTY”);

II. RECITALS

WHEREAS, all signatories to this Agreement are public agencies authorized by Chapter 277 of the Nevada Revised Statutes to enter into interlocal and cooperative agreements with each other for the performance of governmental functions; and;

WHEREAS, the COUNTY is authorized to serve its community in many different ways, including emergency situation management such as fire and emergency medical service, hazardous materials, confined space rescue, fire prevention, aircraft fire rescue, and others.

WHEREAS, the DIVISION has responsibility to supervise or coordinate all forestry and watershed work on state-owned and privately owned lands, including fire control, in Nevada, working with federal agencies, private associations, counties, towns, cities or private persons and;

WHEREAS, the DIVISION may maintain or have access to additional specialized wildfire expertise and suppression resources and;

WHEREAS, wildland fires are defined as unplanned, unwanted wildland fire including unauthorized human-caused fires, escaped wildland fire use events, escaped prescribed fire projects, and all other wildland fires where the objective is to put the fire out;

WHEREAS, it is to the mutual advantage of the DIVISION and the COUNTY to work closely together to maintain effective wildfire management without duplication, and to coordinate efforts with federal cooperators and;

WHEREAS, the DIVISION and the COUNTY desire to define their roles, responsibilities and relationships to achieve the most effective protection of forest, range, and watershed lands and;

WHEREAS, the DIVISION and the COUNTY recognize that safe, aggressive initial attack is often the best suppression strategy to keep wildland fires small and costs down and;

WHEREAS, the DIVISION recognizes the COUNTY as the Agency having primary jurisdiction, the DIVISION will participate at an Incident Command Post (ICP) in a primary Wildland Fire Protection Program (WFPP) fiscal role, yet remain available to assist in other Incident Command System (ICS) roles upon request and;

WHEREAS, it is understood that the mission and intent of all parties is to quickly suppress wildland fires regardless of jurisdiction and/or ownership. It is considered mutually beneficial to all parties to jointly take action as necessary to safely and effectively contain all wildland fires and;

WHEREAS, the COUNTY has requested to participate in the DIVISION Wildland Fire Protection Program (hereinafter WFPP), and the DIVISION is authorized to render wildland fire protection services, including cost reimbursement, to the COUNTY;

WHEREAS, all terminology herein shall be defined by the National Wildfire Coordinating Group (NWCG) Glossary of Wildland Fire Terminology (hereinafter "NWCG Glossary");

WHEREAS, all incident business shall be conducted in accordance with the NWCG Interagency Incident Business Management Handbook (hereinafter "IBMH");

NOW THEREFORE, in consideration of the above premises, it is agreed between the parties as follows:

III. TERMS

A. Location

The COUNTY will provide the DIVISION an accurate map of the current jurisdictional boundaries the COUNTY enrolled in the WFPP.

B. Payment

The DIVISION will assume incident costs consistent with the terms of the Master Cooperative Wildland Fire Management and Stafford Act Response Agreement, or as authorized by the DIVISION Regional Duty Officer due to the accelerated complexity of the incident. The DIVISION will pay qualifying wildland fire suppression expenses to (or for) the participating COUNTY jurisdiction in the WFPP.

1. Qualifying Expenses

Reasonable and prudent expenses (actual costs, based on established rates on file with the DIVISION by December 31st each year, of the jurisdiction) commensurate with values at risk,

for wildland fire suppression and support resources engaged in wildland fire suppression within the COUNTY jurisdiction, or through a cost-share agreement with Federal Agencies on adjacent or comingled jurisdiction and billed in accordance with the IIBMH.

- Assistance By Hire (ABH) resources, including aviation and hand crew resources, when all initial attack suppression forces have been exhausted. All requests shall be processed and recorded through the dispatching systems of the participating agencies on Resource Orders. Except for mutual aid, all requests for fire suppression assistance in an agency's direct protection area shall be Assistance By Hire.
- Extended Attack resources (Assistance by Hire), services and supplies with a Resource Order number.
- Vehicles, equipment and apparatus utilizing established Rates based on actual operating costs.
- Fire Base Camp – Incident Command Post set-up and operational costs.
- Food services for Incident personnel.
- Transportation to/from Incident.
- Repair/replacement of uninsured items and small equipment damaged or destroyed during fire suppression (with IC approval and completed OF-289, Property Loss or Damage Report).
- Use of Aircraft services.
- Personnel costs utilizing established Rates based on actual operating costs.
- Incident Management Team, mobilization and support.
- Cost Share Agreements.
- Dispatch personnel and services
- Fire suppression damage repair.

2. Excluded Expenses

- Costs incurred following the initial dispatch of any ground resources to the fire for the duration of the initial 24 hour mutual aid period.
- COUNTY equipment and repair/maintenance costs associated with wildland fire response and normal wear and tear.
- Individuals and agencies when in "mutual aid" to COUNTY.
- "Profit" and Administrative fees.
- Agency Overhead personnel not specifically assigned to the incident.
- Non-expendable (non-consumable) accountable property, i.e. Chainsaws, FAX Machines, and Mobile Air Conditioners.
- Claims and award payments.
- Interest and indemnities payments.
- COUNTY Burned Area Emergency Rehabilitation (BAER) beyond suppression damage repair.
- Resources demobilized before the end of the mutual aid period.
- Escaped Prescribed Burns that were initiated by the COUNTY and violated the terms and conditions of the burn plan, whether intentionally or not.

3. Negotiable Expenses

Costs not outlined above may be subject to negotiation between the parties for payment.

The COUNTY should notify the DIVISION of any questions, issues or situations regarding qualifying expenses that are not clear or require negotiation. The DIVISION will set a meeting to discuss and/or resolve. If the parties are unable to reach a mutually agreeable resolution, either party may refer the matter to the Review Committee (Section K) for further action.

C. Annual Planning Meeting

Annually, representatives of the DIVISION, the COUNTY, and others deemed necessary, shall meet and jointly discuss, review, and update as necessary the WFPP and set rates for personnel and equipment. The DIVISION will arrange the date and location for the meeting each year.

D. Delegation of Authority

The COUNTY extends a "blanket" delegation of authority to the DIVISION as the DIVISION performs pre-fire activities in the COUNTY's jurisdiction. For emergency activities, a formal delegation of authority by the COUNTY may be created and administered to the DIVISION at the discretion of the COUNTY.

E. Use of Incident Management Teams

The COUNTY will notify the DIVISION State Duty Officer of any wildland fire in their jurisdiction that may require mobilization of an Incident Management Team. The DIVISION will participate in unified command role and actively participate as an Agency Administrator on any Type III, Type II or Type I wildland incident in a WFPP jurisdiction.

The COUNTY may request the DIVISION to assist with "all-hazard" incidents as needed and within the scope and qualifications of DIVISION resources, based upon DIVISION availability.

F. Organizing, Equipping, and Training

The COUNTY will cooperate in the training, equipping and maintaining of wildland firefighting forces in the COUNTY.

The DIVISION will assist the COUNTY in the organizing and training of COUNTY and cooperator forces to detect, contain and extinguish wildland fires, at no charge.

G. Wildfire Pre-Suppression

The DIVISION will provide, at the COUNTY'S request, technical assistance with hazardous fuels reduction and/or modification, including developing projects, prescriptions, and plans; State Historic Preservation Office (SHPO) pre project reviews for potential impacts upon historic properties; Threatened and Endangered (T&E) species occurrences; and other technical services as requested and available. The DIVISION will provide, at the COUNTY'S request, subject to availability, personnel and apparatus to assist in Public Wildfire Education Programs, and the DIVISION and the COUNTY will collaborate on a wildland fire prevention program that includes a common message.

H. Wildfire Suppression

The DIVISION and the COUNTY will utilize the "closest forces" concept for all wildland fire responses. This concept dictates that the closest available, appropriate resources respond to initial attack fires, regardless of jurisdiction, whenever there is a critical and immediate need for the protection of life and property. Beyond initial attack, the "closest forces" concept is modified and the respective agencies will request the most appropriate resource to aid in the suppression of a wildfire. The DIVISION will pay COUNTY volunteer fire departments \$20 per hour (with a two hour minimum) per fire engine/tender for wildland fire suppression responses in the COUNTY.

I. Reporting/Notification

The COUNTY will notify the DIVISION Regional Duty Officer of any wildland fire in their jurisdiction that may require DIVISION assistance at time of size up or as soon as reasonably possible.

J. Prescribed Burning

The DIVISION and the COUNTY will coordinate technical assistance for prescribed fires and fuels reduction projects. The DIVISION will provide burn resources at the discretion and amount requested of the COUNTY based upon availability. Prescribed burning costs are not eligible for reimbursement under the WFPP.

K. Review Committee

The STATE will establish a review committee to adjudicate issues or questions between the DIVISION and the COUNTY which cannot be resolved informally through the parties. The Director of the Department of Conservation and Natural Resources (DCNR) will request one STATE representative and two individuals from jurisdictions other than where the dispute is occurring to serve on the Committee. The Committee will meet and discuss the issue and make a non-binding recommendation to the Director of DCNR for a final decision. The use of a Review Committee, however, is not intended to alter or supplant any other remedy either party may have at law.

L. Reimbursement/Payment

The DIVISION will provide reimbursement to the COUNTY, or provide for direct payment of approved costs to Federal Agencies and other vendors.

The DIVISION will provide a template/process for billing eligible COUNTY costs to the Wildland Fire Protection Program.

1. Billing invoice requirements:
 - a. One incident per invoice;
 - b. Incident name;
 - c. Incident start date;
 - d. Incident number (State and Federal);
 - e. Contact point for questions;
 - f. Standard billing documentation: Dispatch Resource Orders, Cost Share Agreements, Transaction Registers and backup documentation (Resource Order Numbers for all Supplies, Incident Dispatch Log).

The COUNTY will prepare and submit to the DIVISION incident billing packages no later than six (6) months from the date the incident is declared out, with the exception of certain FEMA, Civil Cost Recovery and other incidents that warrant specific time tables. The DIVISION reserves the right to return billing packages not meeting the billing invoice requirements outlined above, for correction. Failure to meet these timelines shall not be construed as a release or waiver of claims for reimbursement against the other party. If the six (6)-month timeframe cannot be met, immediate written notification shall be made to the DIVISION Deputy Administrator.

For Federal Emergency Management Agency (FEMA) billings, the DIVISION will be the lead agency for all bills to be submitted for the Fire Management Assistance Grant Program (FMAG). The DIVISION requires estimated bills from the COUNTY within 30 days of the fire being declared out. The COUNTY will track resources and costs associated with wildland fires.

M. Non-Wildland Fire Emergency Assistance

The DIVISION will provide to the COUNTY participating in the WFPP, assistance without cost (subject to availability) requested by the COUNTY for emergencies which threaten human life or property including the use of DIVISION aircraft, Conservation Camp Crews, apparatus and heavy equipment, when such needs exceed the resource capability of the COUNTY as determined by the State Forester Firewarden or designee.

N. Cost Share Agreements

The COUNTY will notify the DIVISION State Duty Officer of any wildland fire in their jurisdiction that may require a cost share agreement between agencies/jurisdictions. The DIVISION will assume an active role in the development of the cost share agreement and must

ratify the agreement in order for any expenses incurred through the agreement to qualify under the WFPP.

O. Fire Investigations

PARTIES shall render mutual assistance in investigation and law enforcement activities, and in court prosecutions, to the fullest extent possible. The COUNTY shall be responsible for fire-related law enforcement activities on wildfires that originate on their respective lands. The DIVISION has the ability to seek cost recovery actions on known human caused fires. To the extent permitted by State law, the COUNTY will provide investigation files relative to the fire to the DIVISION.