

Open Space Advisory Committee Staff Report

Meeting Date: April 15, 2013

Agenda Item Number: 3B

Applicant: Tom Tarulli, Deputy Fire Chief
Roger Moellendorf, Parks and Recreation Director
Juan F. Guzman, Open Space Manager



Request: For Discussion and Possible Action: To review and approve the Carson City / Nevada Division of Forestry Wildfire Protection Plan and the associated funding amount and make a recommendation to the Board of Supervisors to approve the plan.

General Discussion: The Nevada Division of Forestry has been working with local governments over the past two years to develop a first for the State of Nevada – a participatory wildland fire plan that allows local and state government to share the responsibility for combating wildland fires.

In exchange for an annual fee of \$150,000 the Division of Forestry will provide unlimited use (based upon availability) of their resources. These resources include engines, helicopters, hand crews, and management personnel. Carson City will be able to use them for any kind of emergency incident (not just wildland fires). In addition, the Division of Forestry will pay for the cost of fighting the fire on lands owned by Carson City or under Carson City's protection responsibility. The plan's effective date would be July 1, 2013.

The cost allocation plan is to split the annual fee equally among four sources: Open Space, General Fund, Utility Fund (water/sewer), and Storm Water. Each fund would pay \$37,500 annually.

Recommend Action: I move to approve the Carson City/Nevada Division of Forestry Wildfire Protection Plan and the associated funding amount and make a recommendation to the Board of Supervisors to approve the plan.

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

The Consolidated Municipality of Carson City
201 N. Carson Street, Carson City, NV 89701
Phone (775) 887-2100 – Fax (775) 887-2286

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 Carson City 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, 2013 to June 30, 2015, 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 **and/or local government 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 SCOPE OF WORK

7. CONSIDERATION. Nevada Division of Forestry agrees to provide the services set forth in paragraph (6) at a cost of \$ 150,000 per fiscal year not exceeding \$300,000 with quarterly installments payable 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 general 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 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.

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 State 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 nonenforceability 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).

22. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Contract.

23. ENTIRE AGREEMENT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto, approved by the Office of the Attorney General.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

Robert L. Crowell, Mayor

Date

Pete Anderson, State Forester/Firewarden

Date

Date

Attest:

Alan Glover, Clerk/Recorder

Date

Approved as to form by:

Neil Rombardo, District Attorney

Date

Signature – Nevada State Board of Examiners

APPROVED BY BOARD OF EXAMINERS

Approved as to form by:

On _____
Date

Harry Ward, Deputy Attorney General for Attorney General, State of Nevada

On _____
Date

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 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. Carson City, is a political subdivision of the State of Nevada (hereinafter "CITY");
- C. The CARSON CITY FIRE DEPARTMENT, the CITY fire department organized pursuant to the terms of the CITY Charter and NRS for the purpose of fire protection in the CITY (herein after "DEPARTMENT");

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, CITY and DEPARTMENT are authorized to serve their community in many different ways, including emergency situation management such as fires and medical services, fire and emergency medical service, hazardous materials, confined space rescue, fire prevention, aircraft fire rescue, and others and;

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

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

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

WHEREAS, the STATE, CITY and DEPARTMENT recognize that safe, aggressive initial attack is often the best suppression strategy to keep wildland fires small and costs down 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, CITY and/or DEPARTMENT has requested to participate in the STATE Wildland Fire Protection Program, and the STATE is authorized to render wildland fire protection services, including cost reimbursement, to CITY, DEPARTMENT;

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

III. TERMS

A. Location

CITY and/or DEPARTMENT will provide the STATE a map of the jurisdictional boundaries the CITY and/or DEPARTMENT enrolled in the WFPP

B. Payment

STATE will pay qualifying wildland fire suppression expenses to (or for) participating CITY and/or DEPARTMENT jurisdiction in the Wildland Fire Protection Program.

1. Qualifying Expenses

Reasonable and prudent expenses (actual costs, based on established rates of the jurisdiction or STATE, attached) with respect to values at risk, for wildland fire suppression and support resources engaged in wildland fire suppression within CITY and/or DEPARTMENT jurisdiction, or through a cost-share agreement with Federal Agencies on adjacent or comingled jurisdiction.

- Initial Attack Suppression forces (Assistance by Hire), including aviation resources.
- 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.

Cooperative Agreement for Wildland Fire Protection Program

- 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-288, Property Loss or Damage Report).
- Use of Mobile equipment.
- Use of Aircraft services.
- Personnel costs utilizing established Rates based on actual operating costs.
- Incident Management Team, mobilization and support.
- Cost Share Agreements.
- Dispatch overtime.
- Fire suppression damage repair.

2. Excluded Expenses

- CITY and/or DEPARTMENT equipment, apparatus, personnel salary and benefits.
- CITY and/or DEPARTMENT equipment and repair/maintenance costs associated with wildland fire response and normal wear and tear.
- Individuals and agencies when in “mutual aid” to CITY and/or DEPARTMENT.
- “Profit” and Administrative fees.
- Dispatch personnel and services, regular time.
- 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.
- CITY and/or DEPARTMENT Burned Area Emergency Rehabilitation (BAER) beyond suppression damage repair.
- Resources demobilized before the end of the mutual aid period.
- Escaped Prescribed Burns.

3. Negotiable Expenses

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

CITY and/or DEPARTMENT should notify the STATE of any questions, issues or situations regarding qualifying expenses that are not clear or require negotiation. The STATE 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 J) for further action.

C. Annual Planning Meeting

Annually, representatives of the STATE, CITY, DEPARTMENT, and others deemed necessary, shall meet and jointly, discuss, review, and update as necessary the Wildland Fire Protection Program and set rates for personnel and equipment. The STATE will arrange the date and location for the meeting each year.

D. Use of Incident Management Teams

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

E. Organizing, Equipping, and Training

CITY and/or DEPARTMENT will cooperate in the training, equipping and maintaining of wildland firefighting forces in the CITY, DEPARTMENT

STATE will assist the CITY and/or DEPARTMENT, in the organizing and training of CITY and/or DEPARTMENT and cooperator forces to detect, contain and extinguish wildland fires at no charge.

F. Wildfire Pre-Suppression

STATE will provide, at CITY and/or DEPARTMENT 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 STATE will provide, at CITY and/or DEPARTMENT request, subject to availability, personnel and apparatus to assist in Public Wildfire Education Programs, and the STATE and CITY/DEPARTMENT will collaborate on a wildland fire prevention program that includes a common message.

G. Wildfire Suppression

STATE and CITY/DEPARTMENT will utilize "closest forces" concept for all wildland fire responses. This concept dictates that the closest available resources to 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.

H. Reporting/Notification

CITY and/or DEPARTMENT will notify the STATE Duty Officer of any wildland fire in their jurisdiction that may require STATE assistance at time of size up or as soon as reasonably possible.

I. Prescribed Burning

STATE and CITY/DEPARTMENT will coordinate technical assistance for prescribed fires and fuels reduction projects. Prescribed burning costs are not eligible for reimbursement under the WFPP. Escaped Prescribed Fires (conversion to wildland fire) are not eligible for reimbursement or direct payment under the WFPP.

J. Review Committee

STATE will establish a review committee to adjudicate issues or questions between STATE and CITY/DEPARTMENT 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.

K. Reimbursement/Payment

STATE will provide reimbursement to the CITY and/or DEPARTMENT, or provide for direct payment of approved costs to Federal Agencies and other vendors.

DIVISION will provide template/process for billing eligible CITY and/or DEPARTMENT 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 CITY and/or DEPARTMENT will prepare and submit to 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. STATE 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 STATE 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 CITY and/or DEPARTMENT within 30 days of the fire being declared out. The CITY and/or DEPARTMENT will track resources and costs associated with wildland fires.

L. Non-Wildland Fire Emergency Assistance

STATE will provide to CITY and/or DEPARTMENT, participating in the Wildland Fire Protection Program, assistance without cost (subject to availability) requested by the CITY and/or DEPARTMENT for emergencies which threaten human life or property including the use of STATE aircraft, Conservation Camp Crews, apparatus and heavy equipment.

M. Cost Share Agreements

CITY and/or DEPARTMENT will notify the STATE Duty Officer of any wildland fire in their jurisdiction that may require a cost share agreement between agencies/jurisdictions. The STATE 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.

N. Fire Investigations

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

IN WITNESS WHEREOF, the parties have set their hands with the intent to be bound.

FOR CITY and/or DEPARTMENT

FOR DCNR and DIVISION (STATE)

CITY/DEPARTMENT

Department of Conservation and Natural Resources

Robert L. Crowell, Mayor

Leo Drozdoff, Director

Division of Forestry

Alan Glover, Clerk/Recorder

Pete Anderson, State Forester

Fire Department

Board of Examiners

R. Stacey Giomi, Fire Chief

By _____

Approved as to form

Approved as to form

Neil Rombardo, District Attorney

Kristen Geddes, Deputy Attorney General