

**COOPERATIVE FIRE AGREEMENT**  
**between the**  
**UNITED STATES OF AMERICA**  
**DEPARTMENT OF THE INTERIOR**  
**Midwest Regional Office**  
**And**  
**The Mille Lacs Band of Ojibwe**  
**and**  
**STATE OF MINNESOTA**  
**Department of Natural Resources**  
**for the**  
**WILDLAND FIRE PROTECTION OF THE MILLE LACS BAND RESERVATION**

THIS AGREEMENT, effective as of the date of the last required signature and continuing for five (5) years, is entered into by and among the UNITED STATES OF AMERICA, Department of the Interior, Bureau of Indian Affairs, Midwest Regional Office, hereinafter referred to as the "BUREAU", The Mille Lacs Band of Ojibwe hereinafter referred to as the "TRIBE" and the STATE OF MINNESOTA, Department of Natural Resources, hereinafter referred to as the "STATE":

WITNESSETH:

WHEREAS, the BUREAU is authorized to enter into this Cooperative Agreement pursuant to the Timber Protection Act of September 20, 1922, 16 U.S.C., §594; 42 Stat. 857, and the Reciprocal Fire Protection Act of May 27, 1955, as amended by the Wildfire Suppression Assistance Act of 1989, 69 Stat. 66, 67; 42 U.S.C., §§ 1856 and 1856a, 102 Stat. 1615; and the National Indian Forest Resources Management Act, P.L. 10-630, 25 U.S.C. § 1301-1320. Specifically 3115; and

WHEREAS, the STATE is authorized to enter into this Agreement pursuant to Minn. Stat. 84.025 Subd. 7, 89.01, Subd. 4, and 90.041, Subd. 1; and

WHEREAS, the BUREAU has responsibility for wildfire protection on trust lands within the Mille Lacs Reservation; and

WHEREAS, the STATE has responsibility for wildfire protection on lands other than those trust lands within the Mille Lacs Reservation or within the responsibility of another federal or local agency; and

WHEREAS, certain forest lands which the STATE is obligated to protect from wildfire are intermingled or adjacent to those certain lands which the BUREAU is obligated to protect from wildfire; and

WHEREAS, it is advantageous to both parties to this Agreement to provide the most effective and economical wildfire protection system for those lands;

NOW THEREFORE, the BUREAU and STATE do hereby agree to the following terms and

conditions:

## **ARTICLE I**

**1.01.1 TRIBE OBLIGATIONS:** To the best of its ability, within its authority, and dependent on appropriation of funds for such purposes, the TRIBE agrees to:

- a Take initial action on wildfires in the Mille Lacs Band District I Area, as designated in joint fire planning; and,
- b Promptly report all wildfires occurring in the District I Area, on adjacent STATE protected lands to the appropriate DNR fire dispatch office, as agreed upon in joint fire plans.
- c Cooperate, and when requested by the STATE, take initial action on wildfires on lands which are protected by the STATE in the District I Area, until relieved by the STATE, provided the wildfire is within reasonable distance of the Reservation boundary and such action will not leave Indian lands unprotected; and
- d Assume control, as soon as practical, of that portion of any wildfire in District I, which burns onto Reservation lands and be responsible for suppression of that portion of the wildfire; and
- e Provide a Resource Advisor when sensitive cultural areas are threatened or when requested by the BUREAU or STATE in all three Districts. The Resources Advisor will work directly with the Incident Commander to identify critical cultural areas and advise on suppression line construction location; and
- f Provide resources when requested by the STATE; and Coordinate large wildfire incidents and numerous wildfire incidents occurring on trust lands on the Mille Lacs Reservation. The Federal government will pay all direct expenses related to large wildfire incidents and numerous wildfire situations on, and off but near, and having potential impact to the Mille Lacs Reservation.

## **ARTICLE II**

**2.01 BUREAU OBLIGATIONS:** To the best of its ability, within its authority, and dependent on appropriation of funds for such purposes, the BUREAU agrees to:

- a. Assist the TRIBE in preparation of mutual aid and wildland fire reimbursable agreements, contracts, and/or memorandums of understanding;
- b. Provide resources when requested by the TRIBE or STATE;
- c. Coordinate large incident and numerous wildland fire situations for wildland fires within the Mille Lacs Reservation. The BUREAU will pay all direct expenses related to large wildland fire incident and numerous wildland fire situations on and off the Mille Lacs Reservation, but near and having potential impact to Mille Lacs Reservation.



### **ARTICLE III**

- 3.01 **STATE OBLIGATIONS:** To the best of its ability, within its authority, and dependent on appropriation of funds for such purposes, the STATE agrees to:
- a Take initial action on wildfires on areas of the Mille Lacs Reservation designated as District II and III.
  - b Assume control, as soon as practical, of that portion of any wildfire which burns onto STATE protected lands and be responsible for suppression of that portion of the wildfire.
  - c Protect all scattered Mille Lacs Reservation trust lands, outside the three designated districts of the Mille Lacs Reservation.
  - d Coordinate large incident and numerous wildfire situations for all wildfires on non-trust lands within the three designated Mille Lacs districts.

### **ARTICLE IV**

- 4.01 The parties to this Agreement agree to pay all reimbursable wildfire suppression costs incurred when a party responds to a request to suppress wildfire on lands the requester is obligated to protect. Reimbursable costs shall be defined as those extra costs incurred by the responding party. Salaries of the BUREAU and STATE personnel shall not be reimbursed during the first 24 hour period of a wildfire. After the first burning period, salaries of BUREAU, and STATE personnel shall be reimbursed. The burning period is first 24 hour period following a wildfire.
- 4.02 The party with authority to make the initial decision regarding suppression will be responsible for all suppression costs in the event that the deciding party takes limited suppression action (or none) and as a consequence the wildfire burns onto the lands protected by the other party and requires suppression by that party.
- 4.03 Reimbursement will be made as soon as possible after costs become known on each wildfire. Such reimbursement will be paid upon submission to the BUREAU or the STATE of a bill showing:
- a The name and date of each wildfire.
  - b The location of each wildfire.
  - c The itemized allowable cost of each wildfire.
  - d Access to Information: The books, records, documents, and accounting procedures of the BUREAU and STATE relevant to this Agreement shall be subject to examination by the other party upon request and as provided by law.

### **ARTICLE V**

- 5.01 Nothing in this Agreement shall be understood to impair the right of the United States or the State of Minnesota to recover costs, damages or penalties from third parties under applicable Minnesota, or Federal Law.
- 5.02 No State or Federal Official shall be admitted to any share or part of this contract, or any

benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to such contract if made with a corporation for its general benefit.

- 5.03 Nothing in this Agreement shall be construed as binding either party hereto to expend any sum in excess of the appropriation or appropriations available.
- 5.04 Each party agrees to waive all claims against each other for compensation for any loss, damage, personal injury, or death occurring in consequence of the performance of this Agreement.
- 5.05 Each party agrees that they will be responsible for their own act and results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof.

## **ARTICLE VI**

- 6.01 The TRIBE, BUREAU and STATE agree that at least once each year, prior to March 15, they will meet to inter alia:
- a Discuss and prepare annual work and contingency plans; and
  - b Exchange both an updated list of all personnel responsible for fulfilling the obligations of this agreement and a list of all equipment available to those personnel; and
  - c Apprise one another of the name (s) of Resource Advisors designated for purposes of Section 1.01 e; and
  - d Provide one another maps indicating any new land acquisitions by either party.

## **ARTICLE VII**

### **DURATION - TERMINATION**

- 7.01 This Agreement shall be effective as of the date of the last required signature and shall remain in full force and effect for five (5) years from the date in the first paragraph unless canceled by not less than sixty (60) days written notice from one party to the other party.
- 7.02 The parties agree that this Agreement may be terminated at any time in writing by mutual consent.

## **ARTICLE VIII**

### **GENERAL PROVISIONS**

#### **A. General Provisions**

**OMB Circulars and Other Regulations** – The following OMB Circulars and other regulations are incorporated by reference into this Agreement:



**1. Determination of Allowable Costs:**

2 CFR Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E-Cost Principles, *secs.* 200.400 through 200.475 *et al.*

**2. Audit Requirements:**

The audit requirements under 2 C.F.R. Part 200 apply to this agreement. 2 C.F.R. Part 200 is Attachment A to this agreement.

**3. Code of Federal Regulations/Regulatory Requirements: (as applicable):**

- a. 25 CFR Part 276, Uniform Administrative Requirements for Grants
- b. 2 CFR Part 1400, Non-Procurement Debarment and Suspension
- c. 2 CFR Part 1401 Requirements For Drug-Free Workplace (Financial Assistance)
- d. 43 CFR Part 18 New Restrictions on Lobbying
- e. 2 CFR Part 175, Award Term for Trafficking in Persons
- f. FAR Clause 52.203-12, Paragraphs (a) and (b), "Limitation on Payments to Influence Certain Federal Transactions."

**4. Non-Discrimination:** All activities pursuant to this Agreement shall be in compliance with the requirements of Executive Order 11246, as amended; Title VI of the Civil Rights Act of 1964, as amended, (78 Stat. 252; 42 U.S.C. §§2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973, as amended, (87 Stat. 394; 29 U.S.C. §794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§6101 et seq.); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex as applicable.

**5. Lobbying Prohibition:** 18 U.S.C. §1913, Lobbying with Appropriated Moneys, as amended by Public Law 107-273, Nov. 2, 2002 - No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such members or official, at his request, or to Congress or such official, through the proper official channels, requests for legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31. In addition to the above, the related



restrictions on the use of appropriated funds found in Div. F, § 402 of the Omnibus Appropriations Act of 2008 (P.L. 110-161) also apply.

6. **Anti-Deficiency Act:** Pursuant to 31 U.S.C. §1341 nothing contained in this Agreement shall be construed as binding the BIA to expend in any one fiscal year any sum in excess of appropriations made by Congress, for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.
7. **Assignment:** No part of this Agreement shall be assigned to any other party without prior written approval of the BIA and the Assignee.
8. **Member of Congress:** Pursuant to 41 USC § 6306, a member of Congress may not enter into or benefit from a contract or agreement or any part of a contract or agreement with the Federal Government unless certain exemptions apply.
9. **Non-Exclusive Agreement:** This Agreement in no way restricts the Tribe or BIA from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.
10. **Survival:** Any and all provisions which, by themselves or their nature, are reasonably expected to be performed after the expiration or termination of this Agreement shall survive and be enforceable after the expiration or termination of this Agreement. Any and all liabilities, actual or contingent, which have arisen during the term of and in connection with this Agreement shall survive expiration or termination of this Agreement.
11. **Partial Invalidity:** If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
12. **No Employment Relationship:** This Agreement is not intended to and shall not be construed to create an employment relationship between BIA or any bureau thereof and the Tribe or its Members. No Member shall perform any function or make any decision properly reserved by law or policy to the federal government.
13. **No Third-Party Rights:** This Agreement creates enforceable obligations between only BIA and the Tribe. Except as expressly provided herein, it is not intended nor shall it be construed to create any right of enforcement by or any duties or obligation in favor of persons or entities not a party to this Agreement.
14. **Captions and Headings:** The captions, headings, article numbers and paragraph numbers appearing in this Agreement are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provision of this Agreement nor in any way affecting this Agreement.



## **B. Special Provisions**

- 1. Retention and Access Requirements for Records:** All recipient financial and programmatic records, supporting documents, statistical records, and other grants-related records shall be maintained and available for access in accordance with 2 CFR Part 200, Record Retention and Access 200.333 through 200.337.
- 2. Audit Requirements:**
  - a. Non-Federal entities that expend \$750,000 or more during a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and Omni Circular , which is available at <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=41827a1faca8eb891be082c3e4df283c&ty=HTML&h=L&n=2y1.1.2.2.1&r=PART>.
  - b. Non-Federal entities that expend less than \$750,000 for a fiscal year in Federal awards are exempt from Federal audit requirements for that year, except as noted under 2 C.F.R. Part 200 but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).
  - c. Audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits. Additional audit requirements applicable to this agreement are found 2 CFR Part 200, Subpart F-Audit Requirements, as applicable. General guidance on the single audit process is included in a pamphlet titled, "Highlights of the Single Audit Process" which is available on the internet at <http://www.dot.gov/ost/m60/grant/sincontact.html>. Additional information on single audits is available from the Federal Audit Clearinghouse at <http://harvester.census.gov/sac/>.
- 3. Procurement Procedures:** It is a national policy to place a fair share of purchases with minority business firms. The Department of the Interior is strongly committed to the objectives of this policy and encourages all recipients of its grants and cooperative agreements to take affirmative steps to ensure such fairness. Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal:
  - a. Ensure that Indian owned enterprises, small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
  - b. Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by Indian owned enterprises, small businesses, minority-owned firms, and women's business enterprises.

- c. Consider in the contract process whether firms competing for larger contracts intend to subcontract with Indian owned enterprises, small businesses, minority-owned firms, and women's business enterprises.
  - d. Encourage contracting with consortiums of Indian owned enterprises, small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
  - e. Use the services and assistance, as appropriate, of such organizations as the Small Business Development Agency in the solicitation and utilization of small business, minority-owned firms and women's business enterprises.
4. **Prohibition on Text Messaging and Using Electronic Equipment Supplied by the Government while Driving:** Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, was signed by President Barack Obama on October 1, 2009 (ref.: <http://edocket.access.gpo.gov/2009/pdf/E9-24203.pdf>). This Executive Order introduces a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. Additional guidance enforcing the ban will be issued at a later date. In the meantime, please adopt and enforce policies that immediately ban text messaging while driving company-owned or – rented vehicles, government-owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government.

[Proceed to next page for signature acknowledgements]



IN WITNESS WHEREOF, the parties hereto, BUREAU through the Regional Director of the Midwest Regional Office, TRIBE through the Commissioner of Natural Resources, Mille Lacs Band and STATE through the Commissioner of Natural Resources, State of Minnesota, have executed this Agreement on the date first herein above mentioned.

**STATE OF MINNESOTA**  
Department of Natural Resources

Approved:

for BY: Forest T. Ba  
Commissioner of Natural Resources

Printed Name: Forest Ba

Date: 5/9/17

**UNITED STATES OF AMERICA**  
Department of the Interior  
Bureau of Indian Affairs  
Midwest Regional Office

Approved:

BY: Scott Sufficiency Acting  
Midwest Regional Director

Printed Name: Scott Sufficiency

Date: 7/6/17

**STATE OF MINNESOTA**  
Commissioner of Administration

Approved:

By: Sara Freedland

Printed Name: Sara Freedland

Date: 5-17-17

**MILLE LACS BAND OF  
OJIBWE INDIANS**  
Commissioner of Natural Resources

Approved:

By: Melanie Benjamin

Printed Name: Melanie Benjamin

Date: 3-31-2017

**U.S. Fish & Wildlife Services**  
Midwest Regional Office  
Grants Management Specialist  
Concur:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

No signature required. No signature required.

Contract 123412



IN WITNESS WHEREOF, the parties hereto, BUREAU through the Regional Director of the Midwest Regional Office, TRIBE through the Commissioner of Natural Resources, Mille Lacs Band and STATE through the Commissioner of Natural Resources, State of Minnesota, have executed this Agreement on the date first herein above mentioned.

**STATE OF MINNESOTA**

Department of Natural Resources

Approved:

BY: \_\_\_\_\_

Commissioner of Natural Resources

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**UNITED STATES OF AMERICA**

Department of the Interior

Bureau of Indian Affairs

Midwest Regional Office

Approved:

BY: \_\_\_\_\_

Midwest Regional Director

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**STATE OF MINNESOTA**

Commissioner of Administration

Approved:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**MILLE LACS BAND OF**

**OJIBWE INDIANS**

Commissioner of Natural Resources

Approved:

By: Melanie Benjamin

Printed Name: Melanie Benjamin

Date: 3-31-2017

**U.S. Fish & Wildlife Services**  
Midwest Regional Office  
Grants Management Specialist  
Concur:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

No signature required. No signature required.