

MEMORANDUM OF AGREEMENT

BETWEEN

DEPARTMENT OF NATURAL RESOURCES, Division of Forestry and Fire Protection

AND

CITY OF DILLINGHAM

FOR MITIGATION OF WILDLAND FUELS AT THE CITY LANDFILL

ARTICLE 1: PARTIES

The parties of this Agreement are the State of Alaska, Department of Natural Resources, (DNR) Division of Forestry and Fire Protection (DOF) and The City of Dillingham (Dillingham, The City).

ARTICLE 2: AUTHORITY and GENERAL INTENT

AUTHORITIES: Pursuant to AS 41.17.055(e), the State Forester can enter into cooperative agreements as specified under that chapter to complete tasks identified in this document.

The Cooperator is a “government agency” that the State Forester can enter into a/this cooperative agreement with.

ARTICLE 3: PROJECT SCOPE AND RESPONSIBILITIES

PURPOSE: Per AK-DEC Notice of Violation, Dillingham is to remove and manage all vegetation within 50 feet of the landfill property boundary to serve as a fuel break. Where warranted, gravel can be applied to the fuel break to decrease hazardous fuel regeneration. This scope of work pertains to the project described in detail below.

THE ALASKA DEPARTMENT OF NATURAL RESOURCES, DIVISION OF FORESTRY AND FIRE PROTECTION WILL:

1. Provide financial compensation for the entire duration of this Agreement, total funding not to exceed (NTE) \$100,000.
2. The DOF will reimburse The City for the wages of the personnel who assist with the prescribed hazardous fuels treatment, including for personnel to manage and secure the

project sites. DOF will reimburse The City for contractor expenses incurred in relation to planning and completing the fuel treatment projects.

THE CITY OF DILLINGHAM WILL:

1. Undertake construction of a hazardous fuels break, that is a minimum of 50 feet wide, around the landfill perimeter on City owned lands. To reduce the regeneration of flammable grasses and other wildland fuels, increase the clearing's effectiveness, and increase emergency access and egress, gravel may be distributed over the fuel break. The fuel break must meet the specifications detailed in the 2022 DEC Notice of Violation and adhere to the plans submitted to the DEC.
2. Utilize City or Contractual resources for project engineering, including but not limited to, identifying site boundaries, authoring site-specific prescriptions, and staying within the identified boundaries and prescription.
3. Provide payment to employees and contractors if/when used on this project.
4. Utilize a metric to determine estimated acres treated and update the Division of Forestry quarterly.
5. Assist Division of Forestry with initial public outreach to inform residents of the project, inform the public of any available firewood, and provide updates for continued public information on the project.

ARTICLE 4: PROJECT SPECIFIC TERMS AND CONDITIONS

4.A—FUNDS

Funding for this agreement is provided by State of Alaska appropriated Capital Improvement Project Funds and is administrated by the Alaska Division of Forestry and Fire Protection.

4.B – FINANCIAL TERMS

1. DOF will reimburse Dillingham for the wages of personnel who assist with the prescribed hazardous fuels treatment, including for personnel to manage and secure the project sites.
2. DOF will reimburse Dillingham for contractor expenses incurred in relation to the wildland fuels treatment project.
3. DOF will reimburse Dillingham for equipment expenses incurred in relation to the fuel treatment projects.
4. DOF will reimburse Dillingham for the cost of gravel purchased for the sole purpose of meeting the hazardous fuels reduction prescription.

4.C – BILLING PROCESS

1. Request for payment shall be submitted on City of Dillingham letterhead. Requests shall have verification backup information attached linking to the scope of work outlined in Article 3.

Point of Contact for all pay items:

Ethan DeBauche

Coastal Region Fuels Specialist

101 Airport Rd

Palmer, AK 99645

Ethan.debauche@alaska.gov

4.D – REPORTING

The City of Dillingham will provide quarterly reports and a final project report to the Division of Forestry. Quarterly reports will include information on estimated acres treated, personnel assigned to the project site(s), contractors used, photos that help illustrate the quarterly accomplishments, along with other pertinent information. DOF may use any photos in other reports and/or social media. A final report is due by May 1, 2024.

ARTICLE 5. POINTS OF CONTACT

Ethan DeBauche: Coastal Region Fuels Specialist

State of Alaska Division of Forestry

101 Airport Rd

Palmer AK, 99645

Ethan.debauche@alaska.gov

Lori Goodell: Acting City Manager

City of Dillingham

PO Box 889

Dillingham, AK 99576

manager@dillinghamak.us

ARTICLE 6: EFFECTIVE DATE AND PERIOD OF AGREEMENT

The City will provide quarterly reports and a final project report to the Division of Forestry. Reports will include information on estimated acres treated, personnel assigned to project site, and contractors used along with other pertinent information. DOF encourages Dillingham to include photos that help illustrate the accomplishments and may use these photos in reports and/or social media. A final report is due by May 1, 2024.

ARTICLE 7: CHANGES AND AMENDMENTS

Changes and/or amendments to this Agreement shall be formalized by written amendment that will outline—in detail—the exact nature of the change, including any changes to funding sources, scope of work, location, etc. Any amendment to this Agreement will be executed in writing and signed by the authorized representative of each party. The parties signing this Agreement and any subsequent amendment(s) represent that each has the authority to execute the same on behalf of their respective organizations. No oral statement by any person shall be interpreted as amending or otherwise affecting the terms of this Agreement. Any party to this Agreement may request that it be amended, whereupon the parties will consult to consider such amendment.

This Agreement includes renewal options, to be exercised solely at the discretion of The Division of Forestry and Fire Protection. Renewal periods will not extend past one calendar year. If a renewal option is not exercised by DOF, the Agreement shall be considered expired on the expiration date noted in Article 6 and does not require notification of such by DOF. All exercised renewal options shall be executed via written amendment to the Agreement.

ARTICLE 8. TERMINATION

Either party may terminate this Agreement at any time prior to its expiration date, with or without cause, by giving the other party at least thirty days prior written notice of termination. The party initiating the written notice of termination will not incur any liability or obligation to the terminated party, other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date. The party receiving the written notice of termination will take immediate steps to stop the accrual of any additional obligations which might require payment. All funds due after termination will be established based on payments issued prior to termination and, as appropriate, a refund or bill will be issued.

ARTICLE 9: DISPUTES

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any dispute through good faith negotiations, the dispute will be resolved by alternative dispute resolution using a method to be agreed upon by the parties. The outcome of the alternative dispute resolution will be final.

ARTICLE 10. WORKPLACE CONDUCT

The State of Alaska is an equal opportunity employer and does not discriminate in employment on the basis of race, color, religion, sex, national origin, age, disability, marital status, changes in marital status, pregnancy, and parenthood. This includes behavior such as making threats, abusive language, slurs, unwelcome jokes, teasing and other such verbal or physical conduct. Creating a hostile work environment will not be condoned. This includes verbal or physical conduct of a sexual nature, making unwelcome sexual advances or requests for sexual favors, and unreasonably interfering with the work of others.

ARTICLE 11: PARTIES RESPONSIBLE FOR THEIR OWN ACTS

The City of Dillingham and the State of Alaska, including but not limited to the Alaska Department of Natural Resources and/or the Alaska Division of Forestry and Fire Protection, each agree that they will be responsible for their own acts, omissions, or other culpable conduct and neither shall be responsible for the actions or inactions of the other. Each party agrees to defend itself individually from claims, demands, or liabilities arising out of any activities authorized by this Agreement or the performance thereof. In any claim arising out of the performance of this Agreement, whether sounding in tort, contract, or otherwise, and whether alleging sole liability, joint liability, vicarious liability, or otherwise, each party shall defend itself but may assert comparative fault, the sole liability of another, or any other defense, affirmative defense, or request for relief.

ARTICLE 12: LEGISLATIVE APPROPRIATIONS

The State is a government entity, and it is understood and agreed that the State's payments herein provided for may be paid from Alaska State Legislative appropriations; and approval or continuation of an agreement is contingent upon Legislative appropriation. The State reserves the right to terminate the agreement in whole or part if, in its sole judgment, the Legislature of the State of Alaska fails, neglects, or refuses to appropriate sufficient funds as may be required for the State to continue such payments; or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available. Further, in the event of non-appropriation, the State shall not be liable for any penalty, expense, or liability; or for general, special, incidental, consequential, or other damages resulting therefrom.

ARTICLE 13: FORCE MAJEURE

The parties to this contract are not liable for the consequences of any failure to perform, or default in performing, any of their obligations under this Agreement, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the respective party. For the purposes of this Agreement, Force Majeure will mean war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.

ARTICLE 14: LAWS AND REGULATIONS

Nothing in this Agreement is intended to conflict with the Federal, State, or local laws or regulations. If there are conflicts, this Agreement will be amended to bring it into conformation with applicable laws and regulations.

ARTICLE 15: EXPENDITURE OF FUNDS

Nothing in this Agreement shall obligate any party in the expenditure of funds or future payments of money in excess of appropriations authorized by law.

ARTICLE 16: ENTIRE AGREEMENT

This document is the entire Agreement of the parties, who accept the terms of this Agreement as shown by their signatures below. In the event the parties duly execute any amendment to this Agreement, the terms of such amendment will supersede the terms of this Agreement to the extent of any inconsistency.

Ethan DeBauche	5/26/2023	<i>Ethan DeBauche</i>	5/26/2023
Printed Name	Date	Signature	Date

Coastal Region Fuels Specialist, Division of Forestry - Point of Contact

Printed Name	Date	Signature	Date
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Acting City Manager, Dillingham - Point of Contact

Printed Name	Date	Signature	Date
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Deputy Director, Division of Forestry

Printed Name	Date	Signature	Date
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Procurement Specialist III, Division of Forestry