

Memorandum of Understanding Conducting Cooperative Prescribed Fire and Mechanical Fuel Mitigation

This Memorandum of Understanding (MOU) is entered into by and between the Texas A&M Forest Service, a member of The Texas A&M University System, an agency of the State of Texas (TFS), and City of Tomball (COOPERATOR).

I. PURPOSE

The purpose of this MOU is to provide opportunities to capitalize on training during mechanical fuel mitigation projects, prescribed fire, and field training activities to meet qualifications for wildfire certification (Activities), which is available to COOPERATOR through TFS. TFS will benefit by having additional labor available during Activities. This MOU delineates responsibilities and procedures for conducting Activities.

II. SCOPE

The provisions of this MOU apply to Activities performed under the management of TFS as a part of its normal forest management within the State of Texas on land owned by TFS or other governmental entities.

III. PERIOD OF PERFORMANCE

This MOU will commence on the date of the last part to sign and will continue for a period of five years, unless terminated earlier in accordance with section VII.B.

IV. RESPONSIBILITIES

A. TFS will:

1. Manage, organize and provide personnel management of the Activities, according to guidelines prescribed by TFS.
2. Provide coordination between TFS and COOPERATOR.
3. Assist COOPERATOR in documenting the participation of COOPERATOR's personnel in a cooperative prescribed fire exercise for training file purposes.

B. The COOPERATOR will:

1. Maintain a roster of all its personnel who will be participating in Activities and provide the roster to TFS before each Activity.

2. Provide a primary point of contact to TFS for the purpose of notification.
3. Have basic fireline qualifications as required by his/her jurisdiction.
4. Provide administrative support to its personnel when performing activities under this MOU.
5. Provide all tools and equipment, including appropriate personal protective equipment, to its personnel necessary to complete performance under this MOU.
6. Advise TFS point of contact of any change in notification process, i.e. address or phone number changes.
7. Only assign personnel to participate under this MOU that are physically capable of performing assigned duties and maintain knowledge, skills and abilities necessary to operate safely and effectively in the assigned position.

V. ADMINISTRATIVE, FINANCIAL AND PERSONNEL MANAGEMENT

A. Reimbursement

1. Each party will bear its own costs and expenses incurred under this MOU without expectation of reimbursement from the other party..

B. Medical Care for Injury or Illness

1. If COOPERATOR's personnel incurs an injury or illness during the performance of this MOU, TFS will cooperate logistically with COOPERATOR to help ensure COOPERATOR's personnel receives appropriate emergency care.

C. Liability

1. It is mutually agreed that TFS and COOPERATOR will each be responsible for their own losses arising out of the performance of this MOU to the extent authorized by law.

VI. NOTICES

Any notice required or permitted under this Agreement must be in writing, and will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. A&M System and PROVIDER can change their respective

notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

TFS:
Joel Hambright
513 State Hwy 75N
Huntsville, TX 77320-1121
936-295-5688
jhambright@tfs.tamu.edu

COOPERATOR:
City of Tomball Fire Department
401 Market Street
Tomball, Texas 77375
281-351-7101
jsykora@tomballtx.gov

VII. GENERAL PROVISIONS

- A. This MOU may be modified or amended only by the written agreement of both parties.
- B. Either party, upon 30 day written notice, may terminate this MOU.
- C. The substantive laws of the State of Texas (and not its conflicts of law principles) govern all matters arising out of or relating to this MOU and all of the transactions it contemplates. Venue for any for any claim arising out of or relating to this MOU or any of the transactions it contemplates will be in Brazos County, Texas.
- D. This MOU, with the rights and privileges it creates, is assignable only with the written consent of both parties.
- E. Each provision of this MOU is severable. If any provision is rendered invalid or unenforceable by statute or regulations or declared null and void by any court of competent jurisdiction, the remaining provisions will remain in full force and effect if the essential terms of this MOU remain valid, legal, and enforceable.
- F. Compliance with Laws. Each Party hereto will comply with all federal, state, and local laws, rules, and regulations applicable to the performance of its obligations under this MOU.
- G. This MOU constitutes the entire and only agreement between the Parties hereto and supersedes any prior understanding, written or oral agreements between the Parties, or “side deals” which are not described in this MOU. This MOU may be amended

only by a subsequent written agreement signed by authorized representatives of both Parties.

- H. Notwithstanding any provision of this MOU to the contrary, the Parties hereto are independent contractors. No employer-employee, partnership, agency, or joint venture relationship is created by this MOU or by COOPERATOR's service to TFS. Except as specifically required under the terms of this MOU, COOPERATOR (and its representatives, agents, employees and subcontractors) will not represent themselves to be an agent or representative of TFS or A&M SYSTEM. As an independent contractor, COOPERATOR is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance. COOPERATOR and its employees must observe and abide by all applicable TFS policies, regulations, rules and procedures, including those applicable to conduct on its premises.
- I. COOPERATOR acknowledges that TFS is obligated to strictly comply with the Texas Public Information Act, Chapter 552, Texas Government Code (the "PIA"), in responding to any request for public information pertaining to this MOU, as well as any other disclosure of information required by applicable Texas law. Upon TFS's written request, and at no cost to TFS, COOPERATOR will provide specified public information (as such term is defined in Section 552.002 of the PIA) exchanged or created under this MOU that is not otherwise excepted from disclosure under the PIA to TFS in a non-proprietary format acceptable to TFS that is accessible by the public.
- J. TFS is an agency of the state of Texas and under the Constitution and the laws of the state of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has authority as is granted to it under the Constitution and the laws of the state of Texas. COOPERATOR expressly acknowledges that TFS is an agency of the state of Texas and nothing in this MOU will be construed as a waiver or relinquishment by TFS of its right to claim such exemptions, remedies, privileges, and immunities as may be provided by law.
- K. Each Party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that Party (its "Marks"), including all goodwill pertaining to the Marks, are the sole property of that Party. Neither Party may use the Marks of the other without the advance written consent of that Party, except that each Party may use the name of the other Party in factual statements that, in context, are not misleading.

COOPERATOR hereby acknowledges that they have read and understand this entire MOU. All oral or written agreements between the parties hereto relating to the subject matter of this MOU that were made prior to the execution of this MOU have been reduced to writing and are contained herein. COOPERATOR and TFS agrees to abide by all terms and conditions specified herein, intend that the terms and conditions of this MOU be legally binding, and certify that the information provided is true and correct in all respects to the best of their knowledge and belief.

This MOU is entered into by and between the following parties:

TEXAS A&M FOREST SERVICE:

Signature: _____
Name: _____
Title: Director
Date: _____

COOPERATOR

Signature: _____
Name: David Esquivel
Title: City Manager
Date: _____

Signature: _____
Name: Joe Sykora
Title: Fire Chief
Date: _____

Signature: _____
Name: _____
Title: _____
Date: _____