

**FORESTLAND PROTECTION AGREEMENT  
BETWEEN  
STATE FORESTER – STATE BOARD OF FORESTRY  
AND  
EAST OREGON FOREST PROTECTIVE ASSOCIATION**

This agreement (the "**Agreement**") is between the State of Oregon, acting by and through the State Forester (the "**Forester**"), by authority and under the general direction of the State Board of Forestry (the "**Board**") on behalf of the State Forestry Department (the "**Department**"), and the East Oregon Forest Protective Association (the "**Association**"). It is effective as of the last date signed.

**BACKGROUND**

- A. ORS 477.210 requires every owner of forestland to provide adequate protection against the starting or spread of fire during the season of the year when there is danger of fire.
- B. ORS 477.406 provides that the Forester, with the approval and authority of the Board, may enter into cooperative agreements with any association of landowners for the purpose of maintaining a system for the prevention and suppression of fires.
- C. ORS 526.041 requires the Forester to cooperate with landowners, political subdivisions, private associations and agencies and others in forest protection.
- D. The Association is a non-profit corporation with members and is duly organized to provide fire protection for forestlands of its members within the geographic area described in OAR 629-041-0515 referred to as the Central Oregon Forest Protection District and OAR 629-041-0550 referred to as the Northeast Oregon Forest Protection District (the "Districts") as shown on Exhibits A and B respectively.
- E. The Forester and the Board deem it practical and in the public interest to contract for the Forester to furnish certain specified services to the Association.
- F. The parties desire to enter into this cooperative agreement to enable the Association to provide adequate protection for its Membership Lands; to engage the Forester to furnish that adequate protection for Membership Lands as a function of the Agreement rather than by default pursuant to ORS 477.210(4); to establish a collaborative decision making process for matters that concern protection of the Districts from fire; to establish a mechanism by which the Association or its Members will pay the Forester for services rendered under this Agreement; and to establish and maintain a procedure for cooperation between the Association and the Forester relating to implementation of the Agreement under ORS Chapter 477.

The Forester and the Association agree as follows:

## ARTICLE I DEFINITIONS

- 1.1 Generally. Except as modified by this Article, the definitions set forth in ORS Chapter 477 are incorporated into the Agreement.
- 1.2 Defined Terms. In addition to any capitalized terms defined elsewhere in the Agreement, the following terms have the meanings defined below.
- a. "**Annual Budget**" means the fire protection budget for the period July through June, prepared annually by the Forester in conjunction with the Association, for the District, as required by ORS 477.205 to 477.281.
  - b. "**Districts**" means the Central Oregon Forest Protection District and the Northeast Oregon Forest Protection District, including all lands paying forest patrol assessment in the geographic areas as authorized by ORS 477.225 and as described in OAR 629-041-0515 and 629-041-0550.
  - c. "**District Forester**" means the district fire warden of either or both districts, appointed by the Forester, to coordinate the protection activities under this Agreement.
  - d. "**Facilities**" means the Motor Pool, guard stations, fire crew quarters, headquarters buildings, detection sites and equipment, communication equipment, transportation equipment, maintenance equipment, computer hardware and data sets, and other firefighting equipment identified by the Forester or the Annual Budget to be used in performing this Agreement.
  - e. "**Fire**" means a wildland fire occurring on or threatening forestland within a District, whether caused naturally or otherwise, and whether located on Membership Lands, lands managed by the Forester or on Non-Member Forestland.
  - f. "**Fire Protection**" means fire prevention, pre-suppression preparations, fire detection, fire suppression and post-suppression activities on forestland.
  - g. "**Member**" means a member of the Association.
  - h. "**Membership Lands**" means forestlands within the Districts that are owned or controlled by individuals or entities that are members of the Association.
  - i. "**Motor Pool**" means the motorized vehicles and heavy equipment assigned by the Forester for Fire Protection purposes within the Districts.
  - j. "**Non-Member Forestland**" means forestlands within the Districts that are owned or controlled by individuals or entities that are not members of the Association.
  - k. "**Operational Control**" means the exclusive authority under this Agreement to determine the use and allocation of space within buildings, or who may enter upon real property owned, jointly or separately, by the State or the Association or, in the case of the Motor Pool, to determine the use and location for day-to-day assignment of vehicles and equipment including out-of-District use, when necessary.

- l. "**Plans**" means plans for Facilities, operation and policy as such pertain to protection of forestlands within the Districts.
- m. "**State**" means the State of Oregon.

## **ARTICLE II FORESTER OBLIGATIONS**

- 2.1 Facilities for Fire Protection. The Forester, subject to approval by the Board, and acting within the scope of ORS Chapter 477, shall furnish and maintain Facilities and personnel at designated locations as provided for in the Annual Budget and Plans referred to in Article IV of the Agreement. The Association may furnish and finance additional Facilities and personnel for fire protection of Membership Lands at the Association's discretion.
- 2.2 Fire Suppression Action. Upon the occurrence of a Fire on or threatening Membership Lands that is burning uncontrolled or without proper action being taken to prevent its spread, the Forester shall promptly, diligently, and to the best of the ability of the Department, act to control and extinguish the Fire by using all Facilities and personnel available to the Forester, or so much as may be necessary and appropriate under the conditions.
- 2.3 Budgets. The Forester, with the participation of the Association, shall prepare Annual Budgets for District Fire Protection activities.
- 2.4 Meetings with the Association. The Forester recognizes the Association as having a collaborative role in decision-making processes concerning Fire Protection in the Districts and shall meet periodically with the Association to facilitate the purposes of the Agreement.
- 2.5 Review of records. With the exception of records that the Forester determines may be withheld from disclosure under the Oregon Public Records Law or other provision of law, the Forester shall make the accounts and records of the Forester pertaining to this Agreement available upon the request of the Association for review by the Association or its duly authorized representatives at reasonable times at the District Foresters' offices.

## **ARTICLE III FOREST PATROL ASSESSMENT PAYMENT**

- 3.1 Membership Lands. The Association shall maintain, or be able to obtain and provide in a timely manner upon request of the Forester, an accurate and current list of the name and address of each Member, with a description by legal subdivision of the Member's land as well as other pertinent information. Membership Lands on the list provided by the Association are deemed to have met the requirements of ORS 477.210 and will be subject to a forest patrol assessment.

- 3.2 Payment by Association. On or about July 15 of each year, the Forester shall submit to the Association an estimate of the expenses the Forester will incur for Fire Protection of the Districts during the current fiscal year. The estimate must be based on the budgets referred to in Article IV. The Association shall assess the Members for their pro rata share of the estimate and remit the full amount received from the Members to the Forester not later than January 15 of the following calendar year, less deductions for prompt payment as allowed for forest patrol assessments or taxes.
- 3.3 Delinquent Member. In conjunction with its remission to the Forester of the amounts described in section 3.2, the Association shall provide to the Forester a list of the names of the Association's Members who have failed to pay their pro rata share of the Forester's estimate, and the acreage for which no payment has been received. After verifying the information provided by the Association, the Forester may cause the lands of delinquent Members to be subject to the forest patrol assessments described in ORS 477.230, 477.270, and 477.232. Membership Lands may not be placed on the county roll for forest patrol assessment for the ensuing fiscal year except as provided in this section 3.3.
- 3.4 Election of County Administration. In lieu of paying assessments to the Forester under section 3.2, the Association may elect to have its Members be subject to county administered forest patrol assessments as described in ORS 477.230, 477.270, and 477.232, in which event Sections 3.2 and 3.3 are not applicable.
- 3.5 Association's Assessment Election. At present, the Association has chosen to have the county assessor collect forest patrol assessments from its Members the same as non-members.

#### **ARTICLE IV PLANS AND BUDGETS**

- 4.1 Budget and Plan Preparation. The Association shall appoint a committee or committees for each district to review needs and collaborate with the Forester in preparing District Plans and Annual Budgets. On or before May 1, the Forester and the Association shall prepare the Plans and Annual Budgets for the ensuing budget period. The Association shall appoint additional committees for such other purposes as the Association or the District Foresters determine to be necessary to assist in District planning and operations.
- 4.2 Content of Annual Budgets. Annual Budgets must include:
- a. Estimated balances or deficits carried forward from the previous fiscal year;
  - b. Any unreimbursed costs incurred by the Forester in the suppression of Fires on forestlands within the District in excess of the normal budget for the preceding fiscal year, in accordance with ORS 477.232;
  - c. Estimated receipts;
  - d. Estimated expenditures;

- e. Provisions for Facilities, personnel and services to be provided by the Forester to protect forest resources from Fire; and
  - f. The district's pro-rata share of statewide and area protection costs currently referred to as headquarters services, including Salem Fire Management and equipment pool, and Area Fire Management.
- 4.3 Final Approval. If the Association and the Forester fail to agree upon District Plans or Annual Budgets, either party may propose in writing any amendments it considers necessary or desirable. The Forester shall submit these recommended amendments to the Board for review, resolution and approval, consistent with ORS 477.265.
- 4.4 Approved Plans and Budget. The Plans and Annual Budget approved by the Board at its June meeting will be deemed to provide adequate resources to protect against the starting or spread of Fire on or from the Membership Lands; however, nothing in this Agreement relieves Members or others of any obligation imposed by ORS 477.120 or 477.580.

## **ARTICLE V ADMINISTRATIVE MATTERS**

- 5.1 Forester's Representative. The Forester shall designate an employee or employees of the Department to serve as an authorized representative(s) to the Association. The Forester's designee may attend Association membership and director meetings related to matters of common interest to the Department and the Association.
- 5.2 Informal Conference. At any reasonable time, the Association or the Forester may request an informal conference on matters of common interest, such as fire-related restrictions on use of forestlands, maintenance of Facilities, and any problems affecting the efficient performance of Fire Protection functions in the Districts. Such a request may be directed to the Forester or the president of the Association or any of their designated representatives. The Association and the Forester shall accommodate such a request by arranging for a meeting of the District Forester with directors of the Association or of their respective designated representatives or committee.
- 5.3 Communication Plan. The Forester and the Association shall jointly ensure a timely flow of communications on all matters of common interest between the Forester and the Association and, as necessary, between the Association and owners of Non-Membership Lands within the District, including but not limited to:
- a. A District annual report summarizing activity for the prior twelve months;
  - b. An annual letter from the Association to the Forester (preferably prior to March 15) providing input on Department operations affecting the Districts or the Association (to be transmitted to all members of the Board);
  - c. Attendance and participation in appropriate staff meetings, conferences and training sessions;

- d. Tours or demonstrations focusing on current issues, solutions or techniques; and
- e. Informal updates (e.g.; e-mail) during fire season regarding matters such as critical fire weather forecasts, industrial precaution levels, prevention messages, closures, District resource drawdown or need for cooperator stand-by.

5.4 Reviews; Amendments. To facilitate cooperation and to maintain this Agreement in a current status, the Association and the Forester will mutually review and revise the Agreement as needed; however, any amendment must be consistent with the requirements of ORS 477.406 and 477.408, and no amendment to this Agreement will be effective until it has been signed by all parties and all necessary state approvals have been obtained.

5.5 Personnel. The Forester shall select the District Foresters and principal fire protection assistants, but will to the extent legally allowed, involve an Association representative in the selection process. The Forester shall timely communicate to the Association any permanent reassignment, dismissal or involuntary transfer of the District Foresters or principal protection assistants.

5.6 Use and Control of Facilities. The Forester and the Association may enter into one or more supplemental agreements for the sharing of work space in Facilities or other property owned by either party. Unless otherwise specified in any such supplemental agreement, the Forester has Operational Control of all Facilities addressed by the Agreement, and shall operate them as part of a complete and coordinated Fire Protection system.

5.7 Other Contracts. Nothing in this Agreement may be construed to prevent the Association or the Forester from entering into separate agreements for the purposes of complying with ORS 477.406 and 477.408.

## **ARTICLE VI MOTOR POOL**

6.1 Intent. The purpose of this Article is to allocate responsibility for providing and maintaining motor vehicles and heavy equipment of the type and capabilities suited to meet the work objectives and demands of the District when needed and within budget limitations.

6.2 Association Option to Provide Vehicles. The Association has the option to provide vehicles and equipment for inclusion in a District Motor Pool. At present, the Association has chosen to not provide District Motor Pools.

6.3 Use of Motor Pool Vehicles and Equipment. All vehicles and equipment in the Motor Pool are dedicated to the protection of all forestlands within the District and other related purposes.

6.4 Title to and Operational Control of Motor Pool. So long as this Agreement is in effect, title to Motor Pool vehicles will be held in the name of the State. The Forester shall have Operational Control of the Motor Pool and shall arrange for and shall provide all maintenance and repairs necessary to keep the Motor Pool in a condition sufficient to perform the functions contemplated by the Agreement in a manner acceptable to the Forester and the Association. The Forester is responsible for any loss or damage, and for providing adequate insurance against any such loss or damage, to the Motor Pool per ORS 477.410.

6.5 Motor Pool Budget. The Forester shall include in the Annual Budget sufficient funds for motor vehicle maintenance, repairs and operational costs incurred by the Forester's use of the Motor Pool including all materials, parts, labor, tools, and other related costs.

## **ARTICLE VII DURATION, TERMINATION AND DISPOSITION**

7.1 Term of Agreement. This Agreement is effective upon the signature of all parties and will remain in force until terminated pursuant to Section 7.2.

7.2 Termination.

- a. Either party may terminate this Agreement for cause, effective January 1 of any year, by delivering written notice to the other party not later than December 1 of the previous year, specifying the reasons for the termination. However, the Association may request a hearing by the Board to review such termination, in which event termination shall occur only upon approval of the Board following such hearing.
  
- b. This Agreement may also be terminated by mutual agreement of the parties upon the parties' determination of a satisfactory method for the adequate protection of Membership Lands, including a sufficient time for transition to such method before the termination becomes effective.

7.3 Severability. The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

7.4 Disposition of Facilities. If this agreement is terminated under any circumstances, all Facilities shall remain the property of the State.

**ARTICLE VIII  
MISCELLANEOUS**

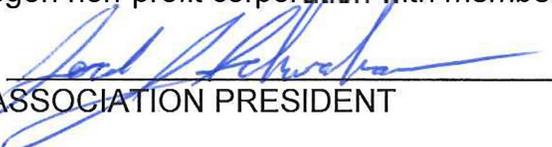
- 8.1 Association Limitations. Nothing in this Agreement may be construed to require the Association to undertake duties or obligations that do not comply with or that exceed the authority granted in its corporate articles and bylaws.
- 8.2 Forester Limitations. Nothing in this Agreement may be construed to require the Forester to expend funds beyond those duly authorized by act of the Oregon Legislature, or to undertake duties or obligations beyond the legal authority granted to the Forester under state law or inconsistent with administrative rules.
- 8.3 Incorporation of Laws. All laws of the State of Oregon applying to the subject matter of this Agreement are incorporated by this reference.
- 8.4 Integration. This Agreement is the final and complete agreement of the parties with respect to its subject matter and supersedes all prior agreements between the parties respecting this subject matter.

Executed by the parties on the dates listed below.

The State of Oregon, acting by and through the State Forester, by authority and direction of Oregon State Board of Forestry

By:  7/24/2019  
STATE FORESTER DATE

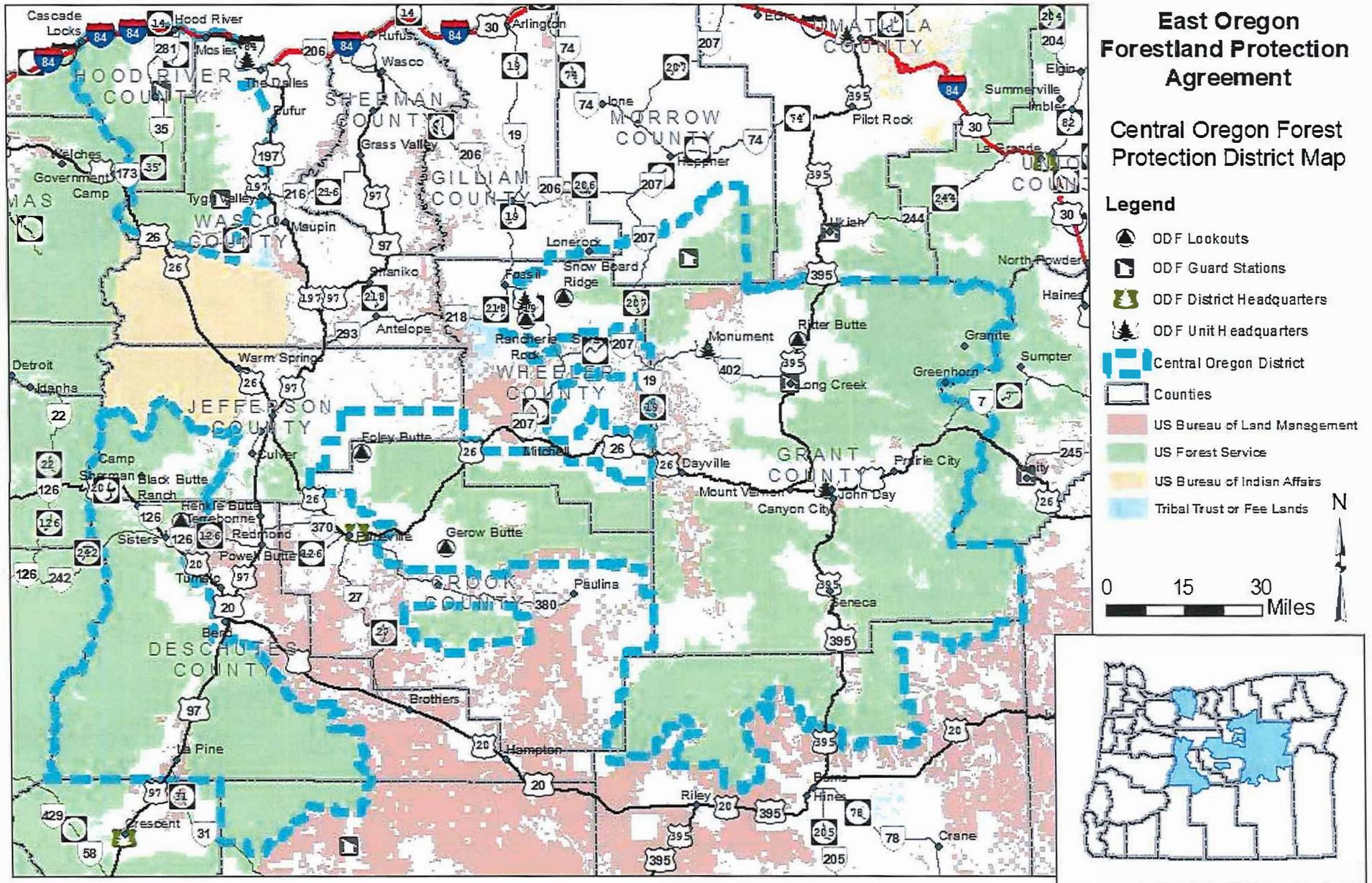
The East Oregon Forest Protective Association, an Oregon non-profit corporation with members.

By:  7/25/2019  
ASSOCIATION PRESIDENT DATE

APPROVED for legal sufficiency purposes:

 7/24/2019  
Assistant Attorney General DATE  
Oregon Department of Justice

# EXHIBIT A



# EXHIBIT B

