

**City of Carson City
Agenda Report**

Date Submitted: 3-27-12

Agenda Date Requested: 4-5-12

Time Requested: Consent

To: Mayor and Supervisors

From: Fire Department

Subject Title: For Possible Action: To authorize the mayor to sign the Operating Plan (Attachment A to the July 2010 Interlocal Contract) between the Carson City Fire Department and the Nevada Division of Forestry. *(Stacey Giomi)*

Staff Summary: This document is an update of the annual Operating Plan between the City and the Nevada Division of Forestry. The document provides the details of how we will provide mutual assistance between the agencies for responses to wildland fires as designated in the master agreement dated July of 2010. The Annual Operating Plan (AOP) delineates specific information about operational procedures, district boundaries, and parameters under which assistance will be provided.

Type of Action Requested: (check one)
(X) Resolution () Ordinance
() Formal Action/Motion () Other (Specify)

Does This Action Require A Business Impact Statement: () Yes (x) No

Recommended Board Action: To authorize the mayor to sign the Operating Plan (Attachment A to the May 2010 Interlocal Contract) between the Carson City Fire Department and the Nevada Division of Forestry.

Explanation for Recommended Board Action: By entering into this agreement, Carson City strengthens its ability to respond to wildland fires by joining forces with a similar agency to provide reciprocal services.

Applicable Statute, Code, Policy, Rule or Regulation: NRS 277.180

Fiscal Impact: Undetermined – based upon number of fires that we respond to.

Explanation of Impact: It is not possible to determine the fiscal impact. The impact will be based upon the number and severity of wildland fires. This agreement will allow the City to both receive and provide fire assistance through the exchange of resources with the Division of Forestry.

Funding Source: N/A

Supporting Material: July 2010 agreement

Prepared By: R. Stacey Giomi, Fire Chief

Reviewed By: Ronald S. Giomi
(Fire Chief)
Michael A. Prichard
(City Manager)
Randy Lee
(District Attorney)
Daney Paulson
(Finance Director)

Date: 3/27/12
Date: 3/27/12
Date: 3/27/12
Date: 3/27/12

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____

(Vote Recorded By)

NOTE: There are two original contracts for signature. One copy for the Clerk Recorder official file, one copy to be returned and processed by the Fire Department.

**SUPPORTING MATERIAL FOR 2012 ANNUAL OPERATING
PLAN BETWEEN THE FIRE DEPT. AND DIV. OF FORESTRY**

INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

A Contract Between the State of Nevada
Acting By and Through Its

**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF FORESTRY**

2478 Fairview Drive, Carson City, NV 89701
Phone: 775-684-2500 Fax: 775-684-2570

And
Carson City Acting by and Through the

CARSON CITY FIRE DEPARTMENT
777 South Stewart St. Carson City, NV 89701
Phone: 775-887-2210 Fax 775-887-2209

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 are authorized by law to perform; and

WHEREAS, it is deemed that the services of Carson City Fire Department hereinafter set forth are both necessary to Nevada Division of Forestry and are 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 upon approval to June 30, 2014, 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 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: Operating Agreement
ATTACHMENT B: Fire District Map

7. **CONSIDERATION.** Each party to this agreement agrees to provide reciprocal fire protection to one another pursuant to the Operating Agreement identified in Paragraph 6. It is understood that the mission and intent of each party is to quickly and safely suppress wildland fires regardless of jurisdiction and/or ownership during the first twenty-four hours. The mutual aid period is defined as: initial dispatch of an incident to twenty-four hours from initial dispatch. If an incident exceeds the mutual aid period of twenty-four hours, all resources will be billed retroactively for the full period from the time of initial

dispatch. If an incident is less than twenty-four hours, or responsible agency resources are staffing the incident after twenty-four hours, no billing will occur. For single jurisdictional wildland fires, all assistance beyond the mutual aid period will be assistance by hire. For wildland fires involving both jurisdictions, a cost share agreement will be completed. Cost share agreements will be made in accordance with the guidelines in the "Interagency Incident Business Management Handbook".

If reimbursement is available as a result of a federal declaration of disaster, grant and/or cost recovery, reimbursement for personnel, apparatus and support equipment shall cover the entire time of commitment, beginning at the time of initial dispatch from the Party's home base, to the time of return to home base. Unless such reimbursement is available, there shall be no reimbursement for responses of less than twenty-four (24) hours duration.

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 generally accepted accounting principles (GAAP) 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 non-enforceability 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.

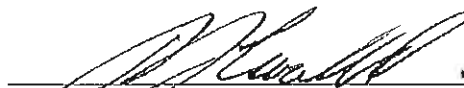
23. THIRD PARTYS This Agreement shall not be construed as or be deemed to be an Agreement for the benefit of any third party or parties not specifically named herein, and no third party or parties shall have a right of action hereunder for any cause whatsoever.

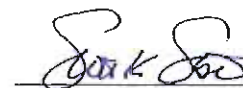
24. ENTIRE AGREEMENT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in 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.

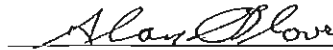
IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

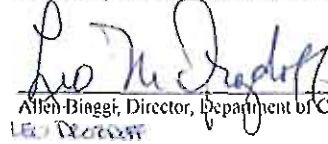
 5-11-10
Stacey Giomi, Carson City Fire Chief Date

 4/28/10
Pete Anderson, State Forester, Fire Warden Date

 4/30/10
Robert L. Crowell, Mayor, City of Carson City Date

 4/26/10
Scott Sisco, ASO IV, Nevada Division of Forestry Date

 5-20-10
Alan Glover, Carson City Clerk/Recorder Date

 5/4/10
Allen Binggi, Director, Department of Conservation Date
~~LEO DeCoursey~~

Approved as to form by:

 5-11-10
Neil Lombardo, Carson City District Attorney Date

Approved as to form by:

 4/19/10
Kristen R. Geddes, Deputy Attorney General, Date

**ATTACHMENT A
OPERATING PLAN
Between the
CARSON CITY FIRE DEPARTMENT
and the
NEVADA DIVISION OF FORESTRY**

This Operating Agreement is entered into by and between the State of Nevada, Department of Conservation and Natural Resources, Nevada Division of Forestry (hereinafter, Division), and the Carson City Fire Department, (hereinafter Carson City) pursuant to the terms of the Interlocal Contract dated July 1, 2010.

1. It is in the interest of both agencies to render mutual aid at the request of a responsible command officer to suppress a fire or emergency of such magnitude that it requires the combined forces of both agencies.
2. No response to a mutual aid request, as provided for in this Operating Plan and in the Mutual Aid Response, will be made by the agencies unless the request is received through the established communication channels, and is approved by a responsible officer of the agency granting such aid.
3. Such aid shall be provided by the Division and Carson City without expectation of reimbursement for the first 24 hours from the time of initial request and within the limits of local resources, which term is defined as the limits of local resources within the local dispatch center's area of responsibility; however, neither party should be required to deplete its own fire protection resources, services or facilities to the detriment of its fire protection responsibilities. If an incident exceeds the mutual aid period of 24 hours, all resources will be billed retroactively for the full period from the time of initial dispatch.
4. Carson City and Division shall furnish each other with updated rate schedules annually at the start of the fiscal year for billing purposes.
5. On all incidents when Carson City or the Division assists the other, the requesting agency shall furnish the assisting agency with an incident and/or fire report within twenty (20) days after the incident.
6. Carson City and the Division agree that each shall maintain, operate, and monitor all mobile radios on the appropriate frequencies when interagency communications are required.
7. All communications shall be conducted on the frequency of the agency having jurisdiction or as assigned by the requesting agency. A command frequency and a tactical frequency shall be established for all incidents.

8. The Sierra Front Interagency Dispatch and Carson City Dispatch are responsible to contact the other agency using the most expedient method available when emergency responses are dictated by the specific terms of this Operating Plan.
9. Carson City and the Division will advise the other agency of wildland fires that have the potential to threaten the each other's jurisdiction.
10. Carson City and the Division agree to assist each other with fire investigations, fire prevention and public education programs if requested by the agency having jurisdiction.
11. For fires burning in the other agency's jurisdiction, the financial responsibility for the protection and suppression of structures remains with the agency that has statutory responsibility for such duty.
12. With the exception to specific Federal Emergency Management Agency (FEMA) provisions, the Civil Cost Recovery and other incidents that warrant specific time tables; fires where costs are incurred pursuant to the terms of this agreement, the Billing Agency shall submit a bill or estimate for reimbursement as soon as possible, but no later than 180 days after the fire is declared out. If the total cost is not known at the time of the billing, a partial bill or estimated bill, so identified, may be submitted. Absent a written extension of the time granted by the reimbursing agency because of circumstances outside of the invoicing agency, the final itemized claim must be submitted to the reimbursing agency within 270 days of the suppression action. However, it is recognized that certain situations may warrant agencies to cooperate, resolve bills and/or cost packages prior to established timelines. All bills will have a due date of sixty (60) days after the date of issuance.
13. The following items are not considered billable by the agencies: incident home unit dispatchers during the mutual aid period, that are not on specific request number; agency overhead personnel not specifically assigned to the incident; non-expendable accountable property; claims and award payments; interest and indemnities payments; move-up and cover during the mutual aid period; agency specific rehabilitation beyond suppression damage rehabilitation and resources demobilized before the end of the mutual aid period.
14. The Nevada Division of Forestry is the Governor's Authorized Representative for FEMA – Fire Management Assistance Grants (FMAG). FMAG requests must be submitted while the fire is burning uncontrolled and threatens such destruction as would constitute a major disaster. Therefore requests for FMAG declarations shall be submitted, regardless of the time of day or night, to the Division's state duty officer, so that the processing of the request may begin and a determination may be made when assistance is needed the most. The state duty officer can be contacted through Sierra Front Interagency Dispatch Center.

MUTUAL AID RESPONSE:

Nevada Division of Forestry

1. Upon request the Nevada Division of Forestry will respond brush engines, state hand crews, aircraft and command officers to wildland fires within the Carson City Fire Department's jurisdiction, subject to availability. Additional resources will be made on an assistance by hire basis.
2. A Unified Command Organization should be established if the fire involves both state and city owned or private lands.
3. Other resources can be ordered through established mutual aid agreements or cooperative agreements to keep costs at a manageable level.

Carson City Fire Department

1. Upon request Carson City Fire Department will respond brush engines, water tenders and command officers to wildland fires on state lands and state park in Carson City, subject to availability. Additional resources will be made on an assistance by hire basis.
2. A Unified Command Organization should be established if the fire involves both state and city owned or private lands.
3. Other resources can be ordered through established mutual aid agreements or cooperative agreements to keep costs at a manageable level.

IN WITNESS WHEREOF, the Parties have executed this Operating Plan as of July 1, 2012

Concurrence:



Pete Anderson, State Forester Firewarden

Date 2-28-12



Administrative Service Officer

Date 3/1/12

Approved as to form:



Carrie Parker, Deputy Attorney General

Date 2/27/12



Stacey Giomi, Fire Chief, Carson City

Date 3/27/12

Robert Crowell, Mayor, Carson City

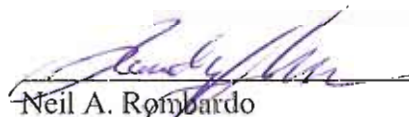
Date _____

Attest to:

Alan Glover, Clerk-Recorder Carson City

Date _____

Approved as to form:



Neil A. Rombardo
Carson City District Attorney

Date 3/27/12