

MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES, DIVISION OF FORESTRY & FIRE
PROTECTION
AND
THE KENAI PENINSULA BOROUGH

ARTICLE 1: PARTIES

The parties of this Agreement are the State of Alaska, Department of Natural Resources, (DNR) Division of Forestry & Fire Protection (DOF) and the Kenai Peninsula Borough (KPB).

ARTICLE 2: AUTHORITY and GENERAL INTENT

AUTHORITIES: Pursuant to AS 41.17.055(e), the DNR Commissioner can enter into cooperative agreements as specified under that chapter to complete tasks identified in this document. KPB is a “government agency” with which the DNR Commissioner can enter into this cooperative agreement.

The intent of this Agreement is to reduce the potential for escaped debris burns, reduce the intensity of wildfires, and mitigate spread of the spruce beetle through hazard fuels reduction in accordance with the terms of this Agreement.

ARTICLE 3: PROJECT SCOPE AND RESPONSIBILITIES

PURPOSE: Kenai Peninsula Borough is tasked with managing and maintaining two public disposal sites. The sites are to accept, at no cost, woody debris removed during small landowner fuels projects (defensible space) undertaken by the landowner, tenant, or other private parties not working for financial gain. Commercial operators will be allowed to utilize the sites for disposal under a KPB permit and fee.

The two sites are located in the census-designated places (CDP) of Cooper Landing, AK and Hope, AK, and will accept the materials in a safe and effective manner. Received wood products will be disposed on-site by chipping, mulching, or burning in accordance with federal, state, and/or local laws and regulations.

3.A—DOF WILL:

1. Provide reimbursement of authorized KPB costs of up to the amount specified in Article 4.B—Financial Terms.
2. DOF will reimburse KPB for the relevant portion of wages of KPB personnel, for the time directly performing tasks authorized in Article 4.B—Financial Terms. DOF will reimburse KPB for authorized contractor expenses directly incurred in relation to the fuel treatment projects.

3.B—KPB WILL:

1. Obtain and comply with all required federal, state, and local permits and comply with all regulations required to operate woody debris disposal sites, including but not limited to, stormwater regulations, land use regulations, and the State of Alaska regulations on open burning during fire season.
2. Provide two collection sites for KPB residents to drop off woody debris. Providing collection sites includes creation of a disposal area, establishing and maintaining safe perimeters, creating safe access and utilization of the sites for members of the public, limiting the debris disposed by the user to natural woody materials, and final disposal of transformed natural byproducts produced by distribution or burial.
3. Provide monitoring, maintenance, management, and security at the collection locations.
4. Chip, grind, mulch, or burn all woody debris that is received at the disposal locations.
5. Provide payment to employees and contractors if/when used on this project.
6. Develop a system tracking the amount of biomass received, a metric to determine estimated acres treated, estimated number of residents using the disposal site, and update the DOF quarterly.
7. Assist DOF 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.
8. Provide the DOF with a timely quarterly and final project report that includes an explanation of expenses, work completed, biomass received, photos/videos taken, and invoices for all reimbursable expenses.
9. Provide DOF with any information, documentation, or other assistance necessary to comply with federal grant requirements.

ARTICLE 4: PROJECT-SPECIFIC TERMS AND CONDITIONS

4.A—FEDERAL FUNDS

Funding for this Agreement is provided by the US Forest Service federal Grant 23-DG-11100106-807 and is administered by DOF. This award is federal financial assistance.

Prime and sub-recipients to this award are subject to the OMB guidance in subparts A through F of 2 CFR part 200 as adapted and supplemented by the USDA in 2 CFR Part 400, which are expressly incorporated by reference into this Agreement. Adaption by the USDA of the OMB guidance in 2 CFR 400 gives regulatory effect to the OMB guidance in 2 CFR 200 where full text may be found.

Electronic copies of the CFRs can be obtained at the following internet site: www.ecfr.gov.

Funding under this Agreement is not available for reimbursement of a receipt single item purchase or a purchase of a single piece of equipment over \$5,000.00.

4.B—FINANCIAL TERMS

The total Not-To-Exceed (NTE) value of this agreement is \$89,000 minus any funds already spent during the original contract period. Current records show an estimated remaining balance of \$42,685.36. These amounts are approximate; additional expenditures may have occurred. Any

such project expenditures not yet reported at the time of this agreement are ineligible for reimbursement.

DOF will reimburse KPB for up to a total amount NTE **\$89,000.00** U.S.D., which is the total combined sum of both the previous and current agreements, according to the following terms:

1. DOF will reimburse KPB for the wages and related payroll fringe benefits of personnel who chipped, ground, or burned to dispose of the material.
2. DOF will reimburse KPB for the wages and related payroll fringe benefits of personnel to manage and secure the locations.
3. DOF will reimburse KPB for contractor expenses incurred in relation to chipping, grinding, mulching, or burning the woody materials.
4. DOF will reimburse KPB for use of equipment that was used to establish and maintain the collection sites, as well as provide reimbursement for equipment used in final disposal of transformed materials.

4.C—BILLING PROCESS

1. KPB will submit reimbursement requests via email to **dof.fire.accounting@alaska.gov** as well as the DOF Point of Contact identified. Request should be submitted on KPB letterhead and titled “Reimbursement Request” with the Agreement number and description included.
2. Reimbursement requests will clearly designate the timeframe of the request, the amount(s) requested, the name and complete contact information of the requester, and include complete verification backup information attached linking to the scope of work.
3. DOF may request additional supporting information as necessary to assure claimed costs are appropriately related to the project.
4. KPB has until 30 days after the expiration of this award to submit its final billing and final progress report. Failure to do so may result in delay of payment or nonpayment. DOF will not accept expenditures outside of the period of performance.

4.D—REPORTING

KPB will provide quarterly reports and a final project report to the DOF. Quarterly reports will include information on estimated acres treated, personnel assigned to the collection site(s), contractors used, photos that help illustrate the quarterly accomplishments, estimated number of public users, along with other pertinent information. DOF may use any photos in other reports and/or social media. A final report is due by **October 31, 2027**.

ARTICLE 5. POINTS OF CONTACT

All notices and contacts regarding this Agreement must be submitted to individuals listed below as the Points of Contact for this Agreement, unless otherwise specified. Points of Contact may be amended in writing. Reimbursement requests and Agreement-related communications will be directed to the DOF Point of Contact.

DOF Point of Contact:

Ethan DeBauche
Coastal Region Fuels Specialist
State of Alaska Division of Forestry and Fire Protection
101 Airport Rd Palmer, AK 99645
Ethan.debauche@alaska.gov

KPB Point of Contact:

Aaron Hughes
Land Management Officer
Kenai Peninsula Borough
144 N. Binkley Street Soldotna, AK 99669
Aaronhughes@kpp.us

ARTICLE 6: EFFECTIVE DATE AND PERIOD OF AGREEMENT

This Agreement will be effective upon the date of the final signature required for full execution. The term of this Agreement will be from the effective date until either the expenditure of all funds, delivery of all quarterly reports and final report, and final reimbursement by the DOF, or until **September 30, 2027**, whichever first occurs. The term may be amended upon agreement by all parties.

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 DOF, and only if federal funding remains available. Renewal periods will not extend past one calendar year. If a renewal option is not exercised by DOF, the Agreement will automatically expire on the expiration date noted in Article 6: Effective Date and Period of Agreement, 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, VENUE, & CHOICE OF LAW

Where possible, disputes will be resolved by informal discussion between the parties, and the parties agree to attempt to avoid formal protracted disputes. Any action arising out of this Agreement will be tried in Alaska Superior Courts of the Third Judicial District at Kenai and the laws of the State of Alaska will govern.

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

KPB and the State of Alaska, including but not limited to DNR and/or DOF, 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 Agreement 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 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.

ARTICLE 17: SAVINGS CLAUSE

If any provision of this Agreement is held invalid on any ground by any court of competent jurisdiction, then the invalidated provision will remain in force and effect only to the extent not invalidated and the remainder of this Agreement will not be affected thereby and will remain in full force and effect.

ARTICLE 18: COUNTERPARTS; ELECTRONIC SIGNATURE

This Agreement may be executed in counterparts and may be executed by way of facsimile or electronic signature in compliance with AS 9.80, each of which when so executed will constitute an original and all of which together will constitute one and the same instrument.

Points of Contact

_____	_____	_____	_____
Printed Name	Date	Signature	Date

Printed Name	Date	Signature	Date
Aaron Hughes, Land Manger, KPB - Point of Contact			

Printed Name	Date	Signature	Date
Peter A. Micciche, Borough Mayor			

Printed Name	Date	Signature	Date
Michele Turner, CMC, Borough Clerk			

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Printed Name	Date	Signature	Date
A. Walker Steinhage, Deputy Borough Attorney			

Printed Name	Date	Signature	Date
Deputy Director, Division of Forestry			

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