

FIRE MANAGEMENT AGREEMENT
Between
THE NATURE CONSERVANCY
And
WASHBURN VOLUNTEER FIRE DEPARTMENT

This is a Fire Management Cooperative Agreement (“Agreement”) between The Nature Conservancy, hereinafter referred to as the “Conservancy,” and Washburn Volunteer Fire Department, hereinafter referred to as the “Department.” This agreement is to facilitate cooperation of the two parties in wildland fire management. The Department and the Conservancy shall be referred to individually hereinafter as a “Party” and collectively as the “Parties.”

WITNESSETH

WHEREAS, the Conservancy’s mission is to preserve plants, animals, and natural communities that represent the diversity of life on earth by protecting the lands and water they need to survive; and

WHEREAS, the Conservancy owns and manages land in North Dakota; and

WHEREAS, the Department manages state and private lands throughout North Dakota that contain a diverse array of plants and animals; and

WHEREAS, the management of many Conservancy and Department lands requires proper use of fire management including prescribed burning and wildfire suppression, in a manner that considers natural resource needs; and

WHEREAS, the Conservancy and/or the Department have expertise in fire management, including prescribed burning and wildfire suppression, and currently employ or have under contract personnel and equipment capable of performing wildland fire management activities; and

WHEREAS, the Department and the Conservancy benefit from experiences and training gained during wildland fire management activities; and

NOW, THEREFORE, in consideration of the above premises, the parties hereto agree as follows:

1. The following terms shall have the following meanings as used in this Agreement:
 - a. **Assisting Party:** Party that is not leading the fire activities and for which the Burn Boss or Incident Commander is not an employee or contractor.
 - b. **Lead Party:** Party that is leading the fire activities and for which the Burn Boss or Incident Commander is an employee or contractor.

c. **Burn Boss:** Person responsible for supervising a prescribed fire from ignition through mop-up.

d. **Chief-of-Party:** Designated leader of Assisting Party for a particular fire activity.

e. **Project Officer:** Individual for each Party that is responsible for implementation of this Agreement.

f. **Incident Commander:** Person determined responsible by the Parties for overall management under this Agreement of a particular suppression incident. The Incident Commander shall report to the entity having incident jurisdiction. The Incident Commander may have one or more deputies assigned from the Lead Party and/or from an Assisting Party.

2. Upon request, personnel and equipment may be provided by the Department to the Conservancy, or the Conservancy to the Department pursuant to the terms and conditions outlined in this Agreement. Provision of personnel and equipment shall be at the discretion of each individual Party, depending on workloads, priorities, and fire danger. Staff and equipment provided under this Agreement may be used for, but are not limited to, the following purposes:

- a. Technical assistance including preparation or review of site or landscape-level fire management plans and prescribed burn unit plans, forest and other management plans, inventories and analysis.
- b. Preburn preparations including vegetation and fuel load sampling, control line construction and maintenance, environmental monitoring, and fuels manipulation.
- c. Burn implementation including project supervision, ignition, holding, fire behavior and weather monitoring, and mop-up.
- d. Post-burn monitoring and evaluation.
- e. Fire management training, annual refresher, and annual physical fitness testing.
- f. Wildfire suppression activities.

3. The Lead Party for a prescribed burn shall provide staff to perform as the prescribed Burn Boss and prepare a proposed prescribed burn plan (the "Burn Plan"). The Burn Plan must be reviewed and agreed upon by both Parties prior to burn implementation. Burn plans implemented on Conservancy property must be approved by the designated Conservancy Fire Manager, and must address at a minimum the information listed in Appendix A or follow the National Wildland Fire Coordination Group (NWCG) burn plan template. The Burn Plan shall contain sufficient specificity with regard to objectives, responsibilities for various activities, reimbursement of costs, and each Party's role in particular tasks. All Burn Plans must be prepared with a high regard for safety and shall require implementation by an experienced Burn Boss. Contingency planning in the event of an escaped fire will be an essential element of each plan.

4. In the event of an escaped fire, the Burn Boss for the Lead Party shall declare the escape and notify local suppression authorities. The Conservancy will support local fire suppression agencies as requested based on skills and qualifications of available personnel. Conservancy properties have a Fire Management Plan (FMP) that considers the ecologically sensitive areas that are important to biodiversity and provides guidance for wildfire suppression. The Parties will request that the Incident Commander follow these plans to the extent practicable when suppressing wildfires involving Conservancy properties. A Conservancy representative may fill the role of resource advisor and provide guidance identified in the FMP as requested by

the suppression organization, however, the Incident Commander has the ultimate authority on how the fire will be suppressed.

5. A Chief-of-Party will be designated for the purpose of overseeing the Assisting Party's employees and equipment. The Chief-of-Party will work closely with the prescribed Burn Boss or Incident Commander. If the Chief-of-Party determines that the proposed burn or wildfire suppression is unsafe or has serious concerns about the advisability of burning or engaging in specific wildfire suppression tactics, and is unable to reach a satisfactory agreement with the Burn Boss or Incident Commander to rectify the situation, he or she retains the option of refusing the assignment. Individual crew members of the Assisting Party shall have the right to refuse assignments or directives during a burn that they deem to be unsafe. Such individuals will report their safety concerns to the Chief-of-Party.

6. The Lead Party for the burn shall be responsible for consulting with local fire districts, air quality departments, and sheriff offices, for getting necessary permits, licenses, and authorizations (including but not limited to obtaining any necessary governmental burn permits, air quality permits, and other required authorizations) at its own expense, for obtaining access, and for serving as the principal point of contact with third parties. The Lead Party shall also be responsible for obtaining written permission to burn and waivers of liability from third-party landowners. Release of liability against the Conservancy shall be included on all third-party landowner waiver forms when the Conservancy is assisting the Department on a prescribed burn; where time does not allow the Conservancy to specifically be named, the Conservancy shall be included on third-party waiver forms through a catch-all provision releasing other cooperators from liability.

7. Unless expressly agreed to in a written addendum to this Agreement, each Party will provide for salary or wage costs of its own employees and shall cover the costs of operation and maintenance of its own equipment, and there shall be no exchange of funds for the obligations described herein.

8. Each Party will adhere to its own fire qualification standards.

9. On behalf of itself, its officers, directors, members, employees, agents, and representatives, each Party agrees that it will be responsible for its own acts and omissions and the results thereof and that it shall not be responsible for the acts or omissions of the other Party, nor the results thereof. Each Party therefore agrees that it will assume the risk and liability to itself, its agents, employees, and volunteers for any injury to or death of persons or loss or destruction of property resulting in any manner from the conduct of the Party's own operations and/or the operations of its agents, employees, and/or volunteers under this Agreement. Each Party further releases and waives all claims against the other Party for compensation for any loss, cost, damage, expense, personal injury, death, claim, or other liability arising out of the performance of this Agreement, including without limitation any loss, cost, damage, expense, personal injury, death, claim, or other liability arising out of the other Party's negligence, provided, however, that either Party may agree to voluntarily compensate the other for damage to equipment in accordance with Paragraph 12 below. Notwithstanding the foregoing, the Conservancy shall be entitled to any and all applicable protections afforded under local, state, and/or federal law relating to the fire management activities conducted hereunder, either directly or indirectly through its assistance of the Department, or any government agency.

10. Unless expressly provided by law, personnel or volunteers of one Party shall not be considered to be agents or employees of the other Party for any purpose, and no joint venture or principal-agent relationship shall be deemed to exist. The personnel and volunteers of one Party are not entitled to any of the benefits that the other Party provides for its employees or volunteers. Each Party will carry appropriate workers compensation coverage for its employees participating in the fire management activities under this Agreement.

11. The Parties to this Agreement appoint the following Project Officers for implementation of this Agreement:

Clayton Verke, Fire Chief
Washburn Volunteer Fire Dept.
Main Street
Washburn, ND 58577

Eric Rosenquist, Preserve Manager
Cross Ranch
1401 River Road
Center, ND 58577

12. In the event of injury to personnel or volunteers of any participating Party, the Burn Boss or Incident Commander, as appropriate, shall provide or arrange for immediate medical treatment of any injuries incurred at the scene. Serious accident investigations (including but not limited to escaped prescribed fire, and accidents involving hospitalization or fatalities) will be undertaken at the discretion of the Lead Party. The Assisting Party will cooperate in any such investigation. In the event that the Assisting Party's equipment is excessively damaged (i.e., in excess of \$1000.00) or destroyed, an investigation will be conducted in accordance with the Lead Party's policy and procedures. The investigation will make a recommendation for reimbursement, replacement or repair. The Project Officers shall communicate promptly regarding any injury to personnel or damage to equipment and documentation shall be provided as requested.

13. The Lead Party's insurance policy(ies) (including self-insurance programs) shall be primary insurance to any other valid and collectible insurance available to the Assisting Party with respect to any claim arising out of a burn led by the Lead Party.

14. This Agreement will be effective from signature date by both Parties and, unless terminated earlier will continue in effect until March 1, 2013. This Agreement supersedes all prior or contemporaneous communications and negotiations, both oral and written and constitutes the entire agreement between the Parties relating to the work set out above. No amendment shall be effective except in writing signed by both Parties. This Agreement may be terminated by either Party thirty days following written notification to the other Party.

15. This Agreement shall be interpreted, construed and governed by the laws of North Dakota and such laws of the United States as may be applicable. In the event of any litigation over the interpretation or application of any of the terms or provisions of this Agreement, the Parties agree that litigation shall be conducted in the state of North Dakota.

16. If any provision of this Agreement is held invalid, the other provisions shall not be affected thereby.

17. This Agreement may be executed in counterparts, each of which when executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement, effective as of the last date written below.

[DEPARTMENT]

THE NATURE CONSERVANCY

By: _____

By: _____

Print Name: _Clayton Verke_____

Print Name: _____

Its: _Fire Chief_____

Its: _____

Date: _____

Date: _____

APPENDIX A:
MINIMUM PRESCRIBED BURN PLAN COMPONENTS:

- Signature Page
- Geographic location
- Sources of emergency assistance
- Description of the prescribed burn unit area (vegetation type and fuel models by percent of unit; narrative description of unit)
- Goals and objectives
- Fuel and weather prescription
- Desired fire behavior to meet objectives (narrative description)
- Smoke management
- Crew (number and organization)
- Equipment
- Day of burn operations (firebreak prep, ignition plan, holding plan, communications, mop-up standards, public relations)
- Contingency plan (predicted fire behavior for free-running fire, both inside and outside the unit; location, type and response time of emergency resources; secondary control lines)
- Backup source of water delivery
- Safety and medical information
- Documentation (confirmation of required planning, exemptions and justifications for any TNC guidelines)
- Go/No Go Checklist
- Post-burn activities
- Maps that clearly define the location of the burn unit and provide contingency information