

**JOINT EXERCISE OF POWERS AGREEMENT**

between

**CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES**

and

**CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION**

Dated as of December 2, 2021

## **JOINT EXERCISE OF POWERS AGREEMENT**

This Joint Exercise of Powers Agreement, dated as of December 2, 2021, ("Agreement"), is between the CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES ("Cal OES") and the CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION ("CAL FIRE"), both agencies of the State of California.

### **WITNESSETH**

WHEREAS, Cal OES is responsible under California Government Code section 8585(e) for the state's emergency and disaster-response services for natural disasters and emergencies, including activities necessary to mitigate the effects of wildfires on people and property; and

WHEREAS, CAL FIRE is responsible under California Public Resources Code section 714(a) for providing fire protection and prevention within the State Responsibility Area; and

WHEREAS, California Government Code section 8654.4 requires Cal OES and CAL FIRE to enter into a joint powers agreement for the purpose of developing and administering a comprehensive wildfire mitigation program; and

WHEREAS, Cal OES and CAL FIRE hereby create a joint exercise of powers entity, the California Wildfire Mitigation Program (the "CWMP") for the purposes stated, and to exercise jointly their powers described in, this Agreement;

NOW, THEREFORE, Cal OES and CAL FIRE, for and in consideration of their mutual promises in this Agreement, do agree as follows:

### **SECTION 1. PURPOSE**

This Agreement is made pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, Sections 6500-6599.2 (the "Joint Exercise of Powers Act" or "JEPA") and Chapter 7 of Division 1 of Title 2 of the Government Code, Sections 8654.2-8654.10 (collectively the "Statutes"), as the same may be amended from time to time, to provide for the joint exercise of powers common to Cal OES and CAL FIRE and the powers separately conferred by law upon the CWMP. The CWMP is created for the sole purpose of encouraging cost-effective structure hardening and retrofitting that creates fire-resistant homes, businesses, and public buildings, and facilitating vegetation management, the creation and maintenance of

defensible space, and other fuel modification activities that provide neighborhood or communitywide benefits against wildfire. The purpose of this Agreement is to exercise those powers jointly by funding and managing programming to accomplish that purpose; the purpose will be accomplished, and those common powers jointly exercised as stated in this Agreement. The CWMP will fulfill the purposes of this Agreement by exercising the powers described in Section 4 in accordance with the Statutes and all other applicable laws.

## **SECTION 2. TERM**

This Agreement becomes effective on the date it is executed on behalf of both parties and it will continue in effect until July 1, 2025, unless it is terminated by written agreement of Cal OES and CAL FIRE by at least 30 days' notice of termination from either member to the other member. This Agreement may only be extended by written agreement of both parties after July 1, 2025 if authorized by statute.

## **SECTION 3. CWMP**

### **A. Creation of CWMP**

There is hereby created pursuant to the Statutes an authority and public entity to be known as the "California Wildfire Mitigation Program Authority" (the "CWMP"). The CWMP is a public entity and is separate from Cal OES and CAL FIRE. The debts, liabilities, contracts, obligations, employees, and agents of the CWMP shall not constitute debts, liabilities, contracts, obligations, employees or agents of Cal OES, CAL FIRE, or the State of California.

### **B. Governing Board**

The CWMP is administered by a governing board (the "Board") consisting of two members selected by CAL FIRE and two members selected by Cal OES. CAL FIRE may designate one or more employees of CAL FIRE to act for each CAL FIRE-selected member at any one, or at any number of, Board meetings. Cal OES may designate one or more employees of Cal OES to act for each Cal OES-selected member at any one, or at any number of, Board meetings. A designation for a single meeting must be in writing and provided to the Executive Director and to the Secretary, as defined in Section 3(D), below, at or before the time and date set for that meeting. A designation for multiple meetings must be in writing and provided to the Executive Director and to the Secretary at or before the time and date set for the first meeting for which the designation is effective. Multiple designees

may be named; designations for a single meeting are effective until the meeting for which he or she is designated is adjourned; designations for multiple meetings are effective until revoked in writing in the same manner as originally made, but in no event may the term of any designation extend beyond the term of the Board member for whom the designation is made. A designation confers the voting authority of the Board member for whom the designee attends. The term of office of any member of the Board shall continue for two years. Neither members of the board nor their designees shall receive compensation for serving but members and designees are entitled to reimbursement for any expenses they reasonably incur in connection with their Board service.

#### C. Meetings of Board

- (1) Regular Meetings and Special Meetings. The Board shall hold no less than one regular meeting per quarter of a year, and by resolution, may provide for holding regular meetings at more frequent intervals. The date, hour, and place of each such regular meeting shall be fixed by resolution of the Board. The chairperson or vice chairperson of the Board, or a majority of the members of the Board, is authorized to call a special meeting of the Board on the date, and at the hour and place, fixed by notice to all Board members.
- (2) Legal Notice. All regular and special meetings of the Board shall be called, noticed, held, and conducted under the provisions of the Bagley-Keene Open Meeting Act (California Government Code section 11120 et seq.).
- (3) Minutes. The secretary of the CWMP shall cause minutes of all Board meetings to be kept and, as soon as practicable after each meeting, shall send a copy of the minutes to be sent to each Board member and to Cal OES and CAL FIRE.
- (4) Quorum. A majority of the members of the Board constitutes a quorum for the transaction of business. The Board shall take action only by the unanimous vote of all members present at a meeting at which a quorum is present.

#### D. Officers; Duties: Related Subjects

- (1) The Board may elect from among members of the Board a chairperson and vice chairperson of the CWMP. By resolution, the Board shall appoint a Secretary of the CWMP.

- (2) The Director of Cal OES shall designate an Executive Director of the CWMP, who shall then serve at the pleasure of the Board. The Executive Director shall be responsible to the Board for the proper and efficient administration of the CWMP as directed by the Board pursuant to the provisions of this Agreement or of any resolution of the Board. In addition to any other duties that may be assigned, the Executive Director shall have the following authority:
  - (a) under the policy direction of the Board, to plan organize, and direct all CWMP activities;
  - (b) to authorize expenditures within the designations and limitations of the budget approved by the Board;
  - (c) to make recommendations to and requests of the Board concerning any matter that is to be performed, done or carried out by the Board; and
  - (d) other duties and responsibilities identified by the Board and approved by official Board action.
- (3) The Board shall appoint, or secure via contract, a Treasurer and Auditor pursuant to the JEPA and shall have the power to appoint, or secure via contract, only such other officers, managers, legal counsel, and staff as it determines to be necessary to accomplish its purpose as stated in Section 1.

#### E. Business Plan

At its first meeting, the Board shall adopt a business plan and thereafter use its best efforts to have the CWMP operate in accordance with the business plan. The Board shall review and update the business plan no less frequently than annually.

### **SECTION 4. POWERS**

#### A. General Powers

- (1) The CWMP has, and may in its discretion exercise, in accordance with its Business Plan, the powers common to Cal OES and CAL FIRE to supply grants (and related assistance, services, and incentives) to qualifying recipients in California who wish to structure harden,

retrofit, manage or otherwise modify their property to protect against wildfires and reduce loss from wildfires, consistent with the purpose of this Agreement and the authorizing Statutes.

- (2) The Board may select and contract with a private-sector or non-profit program administrator and for program funds to be released in increments to the program administrator as Board-approved goals for educating the public, training contractors, structure hardening, retrofitting, managing or otherwise modifying properties consistent with the purpose of this Agreement and the authorizing Statutes.
- (3) The CWMP is hereby authorized to exercise all of the powers enumerated in Section 6508 of the JEPA or implied from that section, including the power to enter into contracts to manage the CWMP's programs and provide program services consistent with the purpose of this Agreement and the authorizing Statutes.

B. Financial Assistance Eligibility and Limits

- (1) The CWMP shall develop eligibility criteria for property owners, community organizations, and local governments who may receive financial assistance under the wildfire mitigation program.
- (2) The CWMP may establish financial assistance limits and matching funding or other recipient contribution requirements, as necessary, to ensure the viability and efficient operation of the wildfire mitigation program and to maximize the program's impact on reducing wildfire risk in California.

C. Financial Assistance Prioritization Criteria

- (1) The CWMP shall develop criteria and a scoring methodology to prioritize financial assistance provided under the wildfire mitigation program to areas and communities based upon criteria that include, but are not limited to:
  - (a) area and community vulnerability to wildfire;
  - (b) the impact of future climate risk factors on area and community wildfire vulnerability assessments; and
  - (c) age of the structure and fire/ember resistance of the building materials; and

- (d) factors that lead some populations to experience a greater risk to wildfire, adverse health outcomes, or an inhibited ability to respond to a wildfire, including socioeconomic characteristics of the areas or communities that would be protected by financial assistance.<sup>1</sup>

(2) The criteria developed pursuant to this subsection shall apply to all financial assistance provided under the wildfire mitigation program unless the CWMP determines that all, or a portion of, the criteria should not apply to an award of federal funds on the basis of terms and conditions imposed by the federal government on that award of federal funds.

#### D. Cooperative Agreements to Perform Eligible Work

(1) The CWMP may enter into cooperative agreements with any of the following eligible entities to perform those functions eligible for financial assistance under the wildfire mitigation program in lieu of, or in addition to, an award of financial assistance:

- (a) The California Conservation Corps;
- (b) University of California fire advisors;
- (c) regional conservation corps;
- (d) resource conservation districts;
- (e) fire safe councils;
- (f) fire protection districts;
- (g) state conservancies;
- (h) cities;
- (i) counties; and
- (j) any other qualified state and local agencies.

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<sup>1</sup> For purposes of this paragraph “relevant socioeconomic characteristics” may include, among other things, data on poverty levels, residents with disabilities, language barriers, residents over 65 or under 5 years of age, and households without a car.

- (2) If applicable, CAL FIRE may specify the required training, experience, or other qualifications necessary before a person may perform those functions eligible for financial assistance under the wildfire mitigation program pursuant to a cooperative agreement.

#### E. Report to the Legislature

No later than July 1, 2024, the CWMP shall submit a report to the California Legislature regarding the implementation of the wildfire mitigation financial assistance program. The report must be submitted in compliance with Government Code Section 9795 and shall include, but is not limited to, the following:

- (1) An evaluation of the cost-effectiveness of the wildfire mitigation program compared to other structure hardening, defensible space, vegetation management, and fuel reduction incentive programs;
- (2) An evaluation of the overall wildfire risk reduction achieved statewide through awards of financial assistance under the wildfire mitigation program;
- (3) Detailed information about the quantity, monetary value, geographic distribution, and categories of awards of financial assistance made under the wildfire mitigation program;
- (4) Detailed information about the sources and amounts of funds appropriated or granted to the wildfire mitigation program;
- (5) Detailed information about barriers encountered to completing work awarded financial assistance under the wildfire mitigation program, including state, regional, or local permitting requirements; and
- (6) Any other information the office determines is necessary or convenient to evaluate the financial assistance awarded under the program.

#### F. Funding Sources

- (1) The CWMP may accept-from federal, state, and local government sources, and from private sources-grants and gifts of property, real or personal, tangible and intangible, and services in financial support of its programs.
- (2) The CWMP may not issue bonds or other forms of indebtedness or notes or certificates of participation or lease-purchase agreements



or any other securities, notwithstanding Article 2 and Article 4 of the JEPA; with those exceptions the CWMP shall have all powers conferred under the Statutes as necessary to accomplish the purpose stated in Section 1.

## **SECTION 5. MANNER OF EXERCISING POWERS AND TERMINATION OF POWERS**

The CWMP shall exercise its powers (such as its procurement and other contracting powers) in the same manner as CAL FIRE and Cal OES exercise their powers, and the CWMP may continue to exercise its powers until the end of the term of this Agreement provided in Section 2.

## **SECTION 6. FISCAL YEAR**

Unless and until changed by resolution of the Board, the fiscal year of the CWMP shall be the period from July 1 of each year to and including the following June 30, except for the first fiscal year which shall be the period from the date of this Agreement to the following June 30.

## **SECTION 7. CONTRIBUTIONS AND ADVANCES**

At its sole discretion, a member may contribute or advance funds or property to the CWMP after obtaining the prior written consent of the other member to each contribution or advance. The CWMP shall deposit all funds received from any and all sources, and all property received from Cal OES, CAL FIRE, and any other sources-including funds and property received pursuant to Section 4(F), above-in a fund that is hereby authorized to be established and operated by the CWMP as a fund not in the California State Treasury. Any advance may, but need not, be made subject to repayment, and if made subject to repayment shall be repaid in the manner agreed upon by the contributor and the CWMP at the time of making the advance. It is understood and agreed that neither Cal OES nor CAL FIRE has any obligation to make advances or contributions to the CWMP. At its sole discretion, a member may allow the use of its personnel, equipment, or property in lieu of other contributions or advances to the CWMP after obtaining the prior written consent of the other member thereto. After termination of this Agreement pursuant to Section 2, any money and other assets in possession of the CWMP after repayment of any advances made subject to repayment shall be returned to Cal OES and CAL FIRE in proportion to the contributions each has made.

## **SECTION 8. SEVERABILITY**

Should any part, term, or provision of this Agreement be decided by

the courts to be illegal or in conflict with any applicable law or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions of this Agreement shall not be affected.

## **SECTION 9. SUCCESSORS; ASSIGNMENT**

This Agreement shall bind and inure to the benefit of the successors of the parties.

Neither member may assign any right or obligation under this Agreement without the prior written consent of the other.

## **SECTION 10. AMENDMENT OF AGREEMENT**

This Agreement may be amended only by an agreement executed by Cal OES and CAL FIRE.

## **SECTION 11. MISCELLANEOUS**

Section headings are for convenience and are not to be construed as modifying or governing the language in the section. Whenever this Agreement requires any consent or approval, consent or approval shall not be unreasonably withheld. Whenever this Agreement refers to actions to be taken by Cal OES or by CAL FIRE, those actions may be exercised through the officers, staff, or employees of Cal OES or CAL FIRE, as the case may be, in the manner provided by law or regulation.


IN WITNESS WHEREOF, Cal OES and CAL FIRE have caused this Agreement to be executed and delivered on \_\_\_\_\_, 2021, by their proper and duly authorized officers.

### **CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES**

By:  \_\_\_\_\_  
DocuSigned by:  
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Print name and title: Mark Ghilarducci Director

### **CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION**

By:  \_\_\_\_\_  
DocuSigned by:  
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Print name and title: Thom Porter Director