

# OKLAHOMA PRESCRIBED BURN ASSOCIATION AFFILIATION AGREEMENT



This Affiliation Agreement (“Agreement”) is made this the \_\_\_\_ day of \_\_\_\_\_, 2014 (the “Effective Date”) by and between the Oklahoma Prescribed Burn Association, an Oklahoma not-for profit corporation, with principal offices located at 4295; 32 Y '8j 'C'xg Stillwater, Oklahoma 74076 (“OPBA”) and \_\_\_\_\_, **[SELECT ONE OF THE FOLLOWING - an Oklahoma not-for-profit corporation / unincorporated not-for-profit association / individual]** with principle **[offices/residence]** located at \_\_\_\_\_, Oklahoma \_\_\_\_\_ (“MEMBER”).

WHEREAS, the OPBA is an Oklahoma not-for-profit corporation organized under section 501(c)(3) of the Internal Revenue Code (“Tax Code”) for the purposes of promoting the common good and general welfare of the people in Oklahoma by educating, training, and practicing safe prescribed burn techniques that reduce or eliminate fuel load build-up in open spaces, providing fire protection and/or prevention from wild or unexpected fires in and near these burned, open spaces;

WHEREAS, MEMBER’s interest in the safe use of prescribed fire for the common good and general welfare of itself and the people of Oklahoma is aligned with the purpose of the OPBA;

WHEREAS, MEMBER agrees to conduct its prescribed burning operations and activities in compliance with the terms and conditions of this Agreement;

WHEREAS, MEMBER wishes to become a regular member of the OPBA under the terms and conditions set forth in this Agreement and subject to the OPBA bylaws, and the OPBA is willing to grant MEMBER a regular membership in the OPBA;

WHEREAS, the OPBA has obtained from the Internal Revenue Service (“IRS”) a group tax exemption letter according to which it is a central organization, and, subject to certain terms and conditions, OPBA members organized as Oklahoma not-for-profit corporations may be designated as section 501(c)(3) subordinate organizations;

WHEREAS, the IRS requires the OPBA as a central organization to exercise general supervision or control over its member 501(c)(3) subordinate organizations covered under its group exemption letter to ensure that each such member’s operations and activities are, on an ongoing basis, consistent with the OPBA’s tax-exempt purpose; and

WHEREAS, to the extent that MEMBER is an Oklahoma not-for-profit corporation or an unincorporated not-for-profit association, MEMBER wishes to be included, and the OPBA is willing to accept MEMBER, as a 501(c)(3) subordinate member under the OPBA’s group exemption letter;

NOW THEREFORE, in consideration of the mutual promises and agreements contained in this Agreement and intending to be legally bound by the terms hereof, the parties hereby agree as follows:

1. **Purpose.** As set forth in the recitals above, the OPBA exists for the purpose of promoting the common good and general welfare of the people in Oklahoma by educating, training,

and practicing safe prescribed burn techniques that reduce or eliminate fuel load build-up in open spaces, providing fire protection and/or prevention from wild or unexpected fires in and near these burned open spaces. In furtherance of this effort, the OPBA also promotes and protects Oklahoma landowners' right to use prescribed fire as a safe, economical, and effective management practice to improve the health of Oklahoma grasslands, which enhances production agriculture and wildlife management.

2. **Grant of Regular Membership.** Subject to MEMBER's agreement to and compliance with the terms and conditions of this Agreement, upon execution hereof by both parties, MEMBER shall be afforded all the benefits of a Regular Member of the OPBA as that term is defined in the OPBA bylaws, which are attached hereto as Exhibit A and incorporated fully herein.
3. **Group Exemption.** Provided that MEMBER is either an Oklahoma not-for-profit corporation or an unincorporated not-for-profit association, wishing to be included as a 501(c)(3) subordinate member under OPBA's group exemption letter, MEMBER shall be so included in the OPBA's group tax exemption letter so long as it obtains a federal Employer Identification Number ("EIN") and remains in compliance with the terms of this Agreement and all applicable federal, state and local laws and regulations.
  - a. The terms of this section shall not apply to individual MEMEBERS.
  - b. The terms of this section shall not apply to a MEMBER who at the time of entering into this Agreement has previously been recognized as a tax-exempt organization under the Tax Code and who does not wish to have its previous tax-exempt status superseded.
4. **Obligations of OPBA.** The OPBA will endeavor to assist MEMBER in its operations and activities related to educating, training, and practicing safe prescribed burn techniques. Such assistance may come in the form of educating or training MEMBER itself in the safe practice of prescribed burn techniques or in other forms, including but not limited to, assistance in obtaining financial and other resources necessary to conduct such operations and activities.
5. **Obligations of MEMBER.** MEMBER shall:
  - a. Timely pay its membership fees and dues as set, and as amended from time to time, by the OPBA's board of directors;
  - b. Conduct its operations and activities in accordance with the OPBA's purpose as set forth herein above;
  - c. Comply with the OPBA's education, training and guidance as it relates to practicing safe prescribed burn techniques;
  - d. Conduct its operations and activities in accordance with a written prescribed burn plan and in compliance with all federal, state and local laws and regulations;
  - e. Support the OPBA's purpose by notifying landowners and other stakeholders in close proximity to MEMBER's location of educational programs and events presented by the OPBA.

- f. Be subject to the OPBA's general supervision or control, to the extent MEMBER is an Oklahoma not-for-profit corporation or an unincorporated not-for-profit association
  - g. Maintain records related to all of its prescribed burning programs, operations and activities and to its organizational and tax-exempt status (as applicable);
  - h. Maintain an organizational structure and conduct its operations and activities consistent with the legal requirements imposed upon a public charity under section 501(c)(3) of the Tax Code (as applicable);
  - i. Operate on a calendar-year accounting period beginning in January and ending in December of each year, consistent with the OPBA;
  - j. Timely submit complete and accurate information as reasonably requested by the OPBA on or before September 1st of each calendar year in order to facilitate the OPBA's IRS filings and verify MEMBER's continued eligibility for inclusion in the OPBA's group tax exemption letter (as applicable).
6. **MEMBER Representations and Warranties.** MEMBER hereby represents and warrants to the OPBA as follows:
- a. **Practices and Procedures.** MEMBER will conduct its operations and activities related to educating, training, and practicing prescribed burn techniques in strict compliance with the practices and procedures promoted by the OPBA as set forth in the OPBA's educational and training materials and in accordance with a burn plan as promoted by the OPBA.
  - b. **Compliance with Laws.** MEMBER is in full compliance with all applicable laws, rules and regulations that may affect its performance under this Agreement, including but not limited to section 501(c)(3) of the Tax Code and related treasury regulations (as applicable), and shall remain in full compliance with, and otherwise conduct its operations and activities at all times in accordance with, all such laws, rules and regulations. MEMBER warrants that it will maintain at all times all permits, licenses and other governmental approvals that may be required in connection with conducting its operations and activities.
  - c. **Private Foundations.** MEMBER is NOT a private foundation as described in Section 509(a) of the Tax Code.
  - d. **Organizational Status.** To the extent MEMBER is an Oklahoma not-for-profit corporation or an unincorporated not-for-profit association, it is in good standing with the State of Oklahoma and shall remain in good standing during the term of this Agreement. MEMBER certifies and agrees that MEMBER is and shall remain organized and operated exclusively for charitable and educational purposes under section 501(c)(3) of the Tax Code and shall comply with all legal requirements imposed upon a tax exempt entity and a subordinate organization included in a group tax exemption letter.
  - e. **Governing Documents.** To the extent MEMBER is either an Oklahoma not-for-profit corporation or an unincorporated not-for-profit association, such MEMBER warrants that its governing documents and its stated purposes therein, are and shall at all times

remain consistent in all material respects with this Agreement and the purpose and bylaws of the OPBA (Exhibit A). Such MEMBER shall provide to the OPBA copies of its governing documents, including, but not limited to, its articles of incorporation, if any, and its bylaws and shall submit any proposed amendment to its governing documents to the OPBA for review prior to any adoption thereof in order to ensure such proposed amendment is consistent with this Agreement and the purpose and bylaws of the OPBA.

- f. **Political Activity.** To the extent MEMBER is an Oklahoma not-for-profit corporation or an unincorporated not-for-profit association, MEMBER warrants that it shall not participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office. Such MEMBER further warrants that it shall not conduct any lobbying activities other than to the extent permitted under the Tax Code.
  - g. **Signatory Authority.** To the extent MEMBER is an Oklahoma not-for-profit corporation or an unincorporated not-for-profit association, the individual executing this Agreement is a duly authorized officer of MEMBER, and by entering into this Agreement hereby authorizes the OPBA to include MEMBER in the OPBA's group exemption letter, unless MEMBER provides OPBA with written notice to the contrary.
  - h. **Tax Filings.** MEMBER shall make all required filings, such as annual corporate reports and tax filings, including its IRS Form 990 or Form 990-T, if required, that may affect its corporate or tax status, and pay all applicable taxes, fees or penalties.
7. **Relationship of Parties.** Neither party, nor any of its members, officers, directors, managers, agents, employees, independent contractors or representatives will (a) be considered an agent, partner, joint venturer, employee, or representative of the other party for any purpose whatsoever, (b) have any authority to make any agreement or commitment for, or to incur any liability, obligation or expense on behalf of the other or to use the other's monetary credit in conducting any activities under this Agreement or (c) represent to outside parties that they or any of them has any right to bind the other party. OPBA does not have, and will not assert authority or control over any action of MEMBER on legislative issues in a manner that would create affiliation within the meaning of Section 4911(f) of the Tax Code.
8. **Liability and Indemnification.**
- a. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, MEMBER SHALL AT ALL TIMES AND IN ALL CIRCUMSTANCES REMAIN FINANCIALLY AND LEGALLY RESPONSIBLE AND LIABLE FOR ANY AND ALL OF ITS ACTIONS OR OMISSIONS RELATED TO OR ASSOCIATED WITH PRESCRIBED BURNING.
  - b. MEMBER shall indemnify, save and hold harmless OPBA, its officers, directors, employees, members, agents and representatives from and against any and all claims, actions, suits, demands, losses, damages, judgments, settlements, costs and expenses (including reasonable attorneys' fees and expenses), and liabilities of every kind and character whatsoever, arising out of or related to MEMBER's breach of any representation, warranty, covenant or obligation under this Agreement. The OPBA

shall promptly notify MEMBER upon receipt of any claim or legal action referenced herein. The OPBA shall have the sole right to conduct the defense to any such claim or legal action. Notwithstanding the foregoing, if MEMBER is an unincorporated nonprofit association, no individual person shall be liable for MEMBER's obligations under this section merely because the person is considered a member of MEMBER or is authorized to participate in the management of MEMBER's affairs. The provisions of this Section shall survive any revocation, surrender or other termination of this Agreement.

#### **9. Revocation, Suspension or Surrender of Membership.**

- a. Revocation or Suspension of Membership. The membership granted under this Agreement may be revoked or suspended by the OPBA for a stated period or indefinitely in accordance herewith. The OPBA shall have the authority to revoke (by terminating this Agreement) or suspend the membership of MEMBER if the OPBA determines that MEMBER has breached any provision of this Agreement. Any decision by the OPBA to revoke or suspend MEMBER's charter shall be initiated by sending written notice to MEMBER specifying the grounds upon which the revocation or suspension is based; provided, however, that the OPBA shall provide MEMBER with thirty (30) days from the date of such notice to remedy any alleged breach of this Agreement. In the event that the OPBA determines, in its sole discretion, that MEMBER has not remedied any alleged breach, the OPBA shall so notify MEMBER in writing.
- b. Surrender of Charter. MEMBER may surrender its membership by terminating this Agreement through written notice to the OPBA no less than thirty (30) days prior to the effective date of such surrender.
- c. Effect. If membership is revoked or surrendered, or if this Agreement otherwise expires or is terminated for any reason, MEMBER shall immediately lose all rights, benefits and privileges afforded to Regular Members of the OPBA. To the extent MEMBER availed itself of the OPBA's group tax exemption letter, MEMBER shall be removed immediately from OPBA's group tax exemption letter and the OPBA shall notify the Internal Revenue Service of MEMBER's removal therefrom (as applicable).

#### **10. Miscellaneous.**

- a. Entire Agreement. This Agreement (including the documents referred to herein) constitutes the entire agreement among the parties with respect to the subject matter of this Agreement and supersedes any prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they are related in any way to the subject matter hereof.
- b. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Oklahoma without giving effect to any choice or conflict of law, provision or rule of any other jurisdiction that would cause the application of the laws of any jurisdiction other than the State of Oklahoma.
- c. Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted

assigns. MEMBER shall not assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the OPBA.

d. Rights and Remedies. In the event of any breach of this Agreement by any party or default by any party in connection with performing any obligation of such party under this Agreement, the non-defaulting party's rights and remedies contained herein shall be cumulative and shall not be exclusive of any other rights or remedies which the non-defaulting party may have at law or in equity.

e. Survival. Any terms of this Agreement which by their nature survive the expiration or earlier termination of this Agreement, shall survive the expiration or earlier termination of this Agreement.

f. Notices. All legal notices to a party required or permitted under this Agreement shall be hand delivered or sent by certified mail (return receipt requested), recognized overnight courier service, or another similar form of delivery that provides the sender with written confirmation of receipt. Notices are effective when received, as shown in the written confirmation of receipt, and must be sent to a party at the following address (which the party may change by giving proper notice under this provision):

If to the OPBA:  
%429'5; 32"Y '8j 'Cxg  
Stillwater, OK 74074

Attn: Executive Director

If to MEMBER:

**Address:** \_\_\_\_\_

**City/State/Zip:** \_\_\_\_\_

**Attn:** \_\_\_\_\_

**Title (as applicable)**

g. Waivers. No waiver by any party of any default or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

h. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

i. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

j. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one in the same instrument.

**IN WITNESS WHEREOF** and intending to be legally bound hereby, the parties have hereunto set their hands and seals as of the Effective Date.

**THE OKLAHOMA PRESCRIBED BURN ASSOCIATION:**

By: \_\_\_\_\_

Name (printed): \_\_\_\_\_

Title: \_\_\_\_\_

**MEMBER:**

By: \_\_\_\_\_

Name (printed): \_\_\_\_\_

Title (if applicable): \_\_\_\_\_