

USE AGREEMENTS

3843

(No. 16 March 2002)

Use agreements are contracts that are used by the Department of Forestry and Fire Protection as binding agreements for the use of bare land, facilities (including structures or other improvements), or land and facilities. This contract shall be used **only** in an emergency situation. Use of this contract is not authorized for any situation or event other than emergencies.

FACILITY USE AGREEMENTS CAL FIRE-95/CAL FIRE-96 3843.1

(Revised 2000)

The use of property for incident base, staging areas, camps facilities, helitack bases, heliports, etc. is negotiated through facility use agreements. Types of property involved could include private lands, county or city parks, fair districts, state parks and school grounds. Some of these agencies may have their own format for use agreements; however, **the state's use agreement (CAL FIRE-95/CAL FIRE-96) is to be the only binding document.**

INTRODUCTION

3843.1.1

(No. 16 March 2002)

The Facility Use Agreement is a legally binding contract for usage of private land in an emergency situation, such as a fire, for various purposes as:

- Incident base camp
- Helicopter base
- Sleeping area
- Mobilization center
- Staging area

DESCRIPTION OF FACILITIES USE AGREEMENT/INSPECTION REPORT (CAL FIRE-95/CAL FIRE-96)

3843.1.2

(No. 16 March 2002)

The Facility Use Agreement is made up of two components: the basic agreement and signature page, and the Facilities Inspection Report. The first component, the basic Facilities Use Agreement (CAL FIRE-95) is produced as an 8-1/2 x 11-inch, 3-page form. The second component is the Facilities Inspection Report (CAL FIRE-96) Pre-Use and Post-Use Inspections and is produced as an 8-1/2 x 11-inch form. Both the CAL FIRE-95 and 96 are available in electronic format on the Intranet.

NUMBER AND DISTRIBUTION OF ORIGINALS

3843.1.3

(No. 29 March 2006)

The CAL FIRE employee is to complete the basic agreement (CAL FIRE-95) **with original signatures** plus the Pre-use Inspection form CAL FIRE-96 (the top portion of the Facilities Inspection, CAL FIRE-96). The property owner receives one original set of the **CAL FIRE-95** and **CAL FIRE-96**. The other original set is photocopied (making a second set) and is to be added to the contract package and retained in the Finance Section. When the incident is over, distribution of the documents (completed CAL FIRE-95 and CAL FIRE-96) will be as follows:

- One set (original), along with the original CAL FIRE 93, is routed to the Payment Process Technical Specialists or Accounting Office (Sacramento Headquarters - Attn: Claims)
- One set (copy) is retained by the Incident Finance
- One set (copy) is given to the vendor

DESCRIPTION OF FACILITIES

3843.1.4

(No. 16 March 2002)

The land and/or facilities should be described in as much detail as is necessary to identify them with particularity, and to specifically exclude any portion of the land and/or facilities that is not covered by the agreement. CAL FIRE, along with a representative of the facility, will inspect and note the condition of the property. The narrative could include the physical condition of the facility identifying existing property damage (broken doors, down fences, leaking facets, etc). Photographs are encouraged for facilities such as halls and gymnasiums. CAL FIRE and lessor or representative would, at the completion of the agreement, inspect and note damages, if any, other than those noted on the agreement.

RATE

3843.1.5

(No. 16 March 2002)

The daily rate (based on a 24-hour day) is agreed upon by the parties and shall include any charges for heat, water, gas, electricity or other utilities normally provided to the facilities. Any daily rate that appears unreasonable for the particular facilities leased may result in delay or refusal of payment to the owner. Therefore, any extraordinarily high daily rate should be justified in an addendum to the contract, and the **ACTUAL** Incident Commander shall be required to sign the contract; **a designee of the Incident Commander shall be insufficient under these circumstances.**

TERM OF AGREEMENT

3843.1.6

(No. 16 March 2002)

The term of the agreement shall start on the date the agreement is signed by the parties. The termination date may be determined by date (if known) or by a statement to the effect that the agreement will terminate within a designated amount of time (24 or 48 hours, or whatever is reasonable) at the end of the emergency.

MAINTENANCE

3843.1.7

(No. 16 March 2002)

All utilities that the owner is to supply to the leased facilities or land during the term of the agreement must be specified in this item. Any limitations on such supply should also be specified. Maintenance shall be supplied by the owner or by a person or entity designated by the owner in "SERVICE" below. The parties may agree that the owner shall not provide certain types of maintenance. However, any such agreement must be laid out specifically in an addendum to this agreement and signed by the Incident Commander of the fire or other emergency.

SERVICE

3843.1.8

(No. 16 March 2002)

Except as provided in "MAINTENANCE" above, the owner must identify a local person or entity that may be contacted to provide service, repairs or maintenance to the leased facilities or property. That person or entity may be the owner himself/herself or another local person or entity designated by him/her to provide service, repairs or maintenance to the leased facilities.

ALTERATIONS

3843.1.9

(Revised 2002)

The State may put up temporary structures, or make alterations to the leased facilities or property, which the State may remove at the termination of the agreement. Anything left behind becomes the property of the owner of the facilities or land unless the parties have made written arrangements otherwise. In addition, any damage to the facilities or land resulting from alterations made by CAL FIRE personnel, or the removal of such alterations by CAL FIRE personnel, is covered under "LOSS, DAMAGE, OR DESTRUCTION" below.

CONDITIONS REPORT

3843.1.10

(No. 16 March 2002)

The Conditions Reports (initial and final) are necessary to establish the condition of the premises at the beginning and the end of the term of the agreement. The conditions reports are dealt with more specifically in "INITIAL AND FINAL CONDITION OF PREMISES" section of these instructions.

LOSS, DAMAGE OR DESTRUCTION

3843.1.11

(No. 29 March 2006)

The State must assume liability for any loss, damage or destruction caused to the leased facilities and/or property which occurs during the occupancy of the facilities or property by state personnel. Exempt from this agreement is any loss, damage, or destruction that occurs from wear and tear or from the fault of the owner and/or his/her agent. Every effort would be made to informally work out a fair settlement over damages that were caused by CAL FIRE. Part or all of that settlement may involve voluntary repairs done by CAL FIRE and/or a monetary settlement for damages. Only damages that cannot be agreed upon by the parties at the time should be left to the California Victim Compensation and Government Claim Board. Any agreement reached, however, should be put into writing and signed by both parties to this agreement.

HOLD HARMLESS

3843.1.12

(No. 16 March 2002)

To the extent that we (CAL FIRE) are legally able (not barred by statute or regulation), we will not sue the owner and he/she will not sue the State for personal injury or property damages or for conditions or acts that are the person's own fault. For instance, if CAL FIRE leases facilities that are infested with rats, and we know or reasonably should know that there are rats there, we cannot sue the owner for damage to state property caused by the rats. Nor can the owner sue us if he/she comes on the property when we are occupying it, picks up a heavy piece of our equipment (knowing that he/she has a back problem), and strains his/her back.

HOLDING OVER

3843.1.13

(No. 29 March 2006)

If CAL FIRE has agreed to be out of the facility by a certain date and is not out of the facility by that date, the agreement will be amended on a day-by-day basis until CAL FIRE vacates the premises.

SUBROGATION WAIVED

3843.1.15

(No. 16 March 2002)

If the owner's fire or liability insurance authorizes the owner to do so (most would **NOT**), he/she releases the State from liability for any loss or damage to his/her property caused by the State. **Normally**, when an owner has fire or liability insurance on property and makes a claim for which he/she receives benefits under the policy, he/she must give the insurance company the right to go after the person or entity responsible for the damage or loss. Most insurance policies would not allow an owner to receive benefits under a policy and not allow the insurance company to sue the party responsible for causing the loss.

An owner does not have to check his/her policy before signing this agreement to see if he/she is allowed to waive the insurance company's subrogation rights. If the policy does not allow it, this item would not be effective. If this item were not effective, then the "LOSS, DAMAGE, OR DESTRUCTION" section would cover the situation.

ORAL STATEMENTS

3843.1.15

(No. 16 March 2002)

This does not mean that the parties to this Agreement cannot verbally agree to something different from, or in addition to, the terms of this agreement. It just means that if they **DO** verbally agree to something different or contradictory to the terms in this agreement, **they must put those different or additional terms in writing**, as an addendum to this agreement, and **both** parties must sign and date it. Otherwise, the earlier written terms, not the later verbal terms, will be the ones enforced (and paid for).

SIGNATURES

3843.1.16

(No. 16 March 2002)

One original set of the agreement must be signed by the owner or his/her designated representative. The designation of a representative by the owner should either be in writing or by some other reliable means. If the designation is not in writing, the method of designation must be verified by CAL FIRE or the whole contract may be held invalid (the owner may not get paid, and CAL FIRE may be subject to liability).

INITIAL AND FINAL CONDITION OF PREMISES

3843.1.17

(No. 16 March 2002)

It is very important that both of these reports be completely filled out at the appropriate times. The Initial Conditions Report ([CAL FIRE-96](#)) must be completed and signed by both parties **before** CAL FIRE takes possession of the premises. The final conditions report must be completed and signed once CAL FIRE has vacated the premises. These reports are important in ensuring that no false claim may be made by either party regarding damages to the premises.

OTHER USE AGREEMENTS

3843.2

(No. 16 March 2002)

A use agreement frequently must be prepared in advance of formalizing a contract arrangement through the [CAL FIRE-294](#) process (see "Hired Equipment"--Section 3844.4 below). Typical rental of services may include shower units, mobile food services, janitorial services, security services, etc.

The method of rental may be:

- by negotiated rate established at the beginning of the fire season;
- by accepting a pre-negotiated contract such as USFS, BIFC, etc.; or
- negotiated at the scene.

All rental methods, whether accepting an existing agreement or negotiating your own, are to be formalized on the CAL FIRE-294. Transfer of the agreed upon terms to the CAL FIRE-294 can be accomplished by noting, "see attached agreement." When accepting another agreement, you may want to delete or modify certain provisions to best fit the individual incident and accommodate state limitations for paying bills. **See also:** the discussion of hired equipment under the section on contracts, below; the presentation on the CAL FIRE-294 in Section 3834 (et seq.); and review the discussion on hired equipment in Section 3833.2.5 (et seq.).

[\(see next section\)](#)

[\(see HB Table of Contents\)](#)

[\(see Forms or Forms Samples\)](#)