

Forest Resource Improvement Association of Alberta

P.O. Box 11094, Main Post Office, Edmonton, Alberta T5J 3K4

APPLICATION FORM and TERMS AND CONDITIONS Fire Hazard Reduction and Forest Health Program (February 2010)

Applicant Information

Name of Applicant:		Phone:	
Mailing Address:		Fax:	
Contact Person:			
Delivery Address:			

Project Information

Type of Project	Term of Project (month/year to month/year)	Amount of Funds Applied For
Fire Hazard Reduction ____ Forest Health ____		

Attachments:

_____ Proposal

_____ Proposed payment schedule

_____ Schedule of financial and technical reports

_____ Band Council Resolution/Settlement Council Resolution

_____ Other: _____

The Applicant acknowledges having read and agrees to the attached Terms and Conditions to which this Application and Proposal is made subject. The Applicant acknowledges and agrees that by its submission of this Application and Proposal it shall be bound by the Terms and Conditions. The Applicant also acknowledges and agrees that this Application and Proposal may be approved by FRIAA on further terms or conditions which shall be binding on the Applicant.

Applicant (Authorized Representative)

Date

Forest Resource Improvement Association of Alberta (“FRIAA”)

P.O. Box 11094, Main Post Office, Edmonton, Alberta T5J 3K4

TERMS AND CONDITIONS

The Applicant, in consideration for having the Proposal accepted as a Project, hereby expressly agrees with FRIAA as follows:

DEFINITIONS

1. Definitions:

- (a) “Applicant” means an applicant to FRIAA who applies for Funds under the Program by submitting a Proposal;
- (b) “Approval” means the written approval of FRIAA, including the terms set by FRIAA used to implement an approved Proposal;
- (c) “Department” means Her Majesty the Queen in Right of Alberta as Represented by the Minister of Sustainable Resource Development;
- (d) “Eligible Activity” means an activity that is not the responsibility of the Applicant under existing legislation, tenure, or other binding agreement and includes:

- (i) Forest Health / Mountain Pine Beetle Control or Mitigation

Projects may include targeting larger patches of red or green attack, that are not commercially accessible or where the wood is of poor quality and condition, to prevent further infestation or reduction future damage from the infestation. Costs will include overhead and supervision by contractor and tenure holder staff for the elimination of infested timber, reclamation and reforestation. Projects undertaken within existing tenures would be authorized under the tenure holder’s annual operating plan. The Department will issue the appropriate form of timber disposition or authorization for work outside of existing tenures.

- (ii) FireSmart and Reduction of Fire Hazards

Projects will target high risk and spread potential stands adjacent to recreation areas, along recreation routes such as the Forestry Trunk Road, key wildlife habitat and corridors, critical watershed and riparian protection areas and forest based communities. Over-mature stands and strategic debris disposal may also be included. Tenure holder woodland staff could provide supervision of logging contractors employed for projects, undertaking work such as stand thinning, debris disposal (including pile burning) and fuel reduction.

Any activities related to the following items are not considered eligible for funding:

- (i) facility construction, improvement or operations,
 - (ii) product research and development,
 - (iii) road construction, repair and maintenance,
 - (iv) the purchase of any capital assets.
- (e) “FRIAA” means the Forest Resource Improvement Association of Alberta;

- (f) "Funds" means the funds that FRIAA has available for Projects;
 - (g) "Program" means the program known as the Fire Hazard Reduction and Forest Health Program as agreed to by the Department and FRIAA pursuant to an agreement executed on February 27, 2009 and administered by FRIAA;
 - (h) "Project" means a Proposal that has received Approval under the Program;
 - (i) "Proposal" means a plan involving one or more Eligible Activities which is specific in nature, outlining the Eligible Activities being considered for approval under the Program.
2. These terms and conditions expressly incorporate the Proposal, and the Proposal forms part of these terms and conditions.
 3. Where there is a conflict between these terms and conditions and the Proposal, these terms and conditions shall be paramount.

INDEPENDENT CONTRACTOR

4. The Applicant is expressly not an agent of FRIAA with respect to any matter under these terms and conditions and it shall not in any manner represent itself as an agent of FRIAA.

INDEMNITIES

5. The Applicant shall indemnify and hold harmless FRIAA, FRIAA's service providers, contractors and agents, from any and all claims, demands, actions and costs whatsoever that may arise directly or indirectly out of any act or omission of the Applicant, its employees or agents, contractors or sub-contractors, in the performance by the Applicant of the Project or these terms and conditions. Such indemnification shall survive termination of these terms and conditions and completion of the Project.
6. FRIAA shall not be liable or responsible for any bodily or personal injury or property damage of any nature whatsoever that may be suffered or sustained by the Applicant, its employees, agents, contractors or sub-contractors in the performance of the Project or these terms and conditions.

PERMITS AND LICENSES

7. Approval of the Proposal is subject to the Applicant receiving all required approvals, licenses, certificates and permits to carry out the Proposal and the Applicant must satisfy FRIAA that all required approvals, licenses, certificates and permits are received or are forthcoming prior to commencement of work on the Project.
8. The Applicant shall be solely responsible for identifying and obtaining all necessary approvals, licenses, certificates and permits.

REPORT REQUIREMENTS AND ACCESS TO RECORDS

9. The Applicant shall, as soon as reasonably possible, provide any information whatsoever that FRIAA requests respecting any matter under these terms and conditions or the terms of the

Proposal.

10. Without limiting paragraph 9, the Applicant shall preserve for 6 years after the completion of the Project and make available to FRIAA, including but not limited to FRIAA's appointed auditors or any other person designated by FRIAA, the existing records that relate to the Program or the Project, in whatever form, on request and during normal business hours.
11. Where an audited financial report is required by these terms and conditions, the audited financial report shall be prepared by an independent, qualified Auditor and the report shall be prepared in accordance with the *Canadian Institute of Chartered Accountants Handbook*.
12. Within 7 days of the fiscal quarters ending on March 31, June 30, September 30 and December 31 of each year, the Applicant shall submit a quarterly unaudited financial report and quarterly technical report detailing how much of the Project has been completed, how much money has been spent, and how much of the Project remains to be completed, as may reasonably be required by FRIAA.
13. The Applicant shall submit within 30 days of FRIAA's fiscal year ending on March 31 of each year an audited annual financial report as well as an annual technical report detailing how much of the Project has been completed, how much money has been spent, and how much of the Project remains to be completed, as may reasonably be required by FRIAA.
14. The Applicant shall submit an end-of-Project technical report, within 14 days of the Project's completion, summarizing the results of the Project including the number of people employed (person-months created/maintained), the number of businesses created/maintained the number of hectares treated and a description of the benefits from and during the term of the Project.

MONIES HELD IN TRUST

15. All Funds advanced or paid prior to the completion of the Project are hereby held in trust by the Applicant until FRIAA has acknowledged in writing to the Applicant that the Project is completed in accordance with the terms of the Approval by FRIAA.
16. All Funds advanced or paid prior to the completion of this Project in satisfaction of the requirements herein shall be held by the Applicant separate and apart from other assets of the Applicant, and shall be returned to FRIAA in the event of:
 - (a) termination of the Project by FRIAA, or
 - (b) the requirements of paragraphs 13 and 14 are not satisfied, or
 - (c) otherwise as may be provided by the Program or the terms of this Proposal.
17. The Applicant shall be personally liable and where there is more than one Applicant, jointly and severally liable, for ensuring all funding provided by FRIAA is supplied to the Project as required.

PAYMENT OF FRIAA FUNDS

18. Where a portion of the Proposal deals with work that is, in the opinion of FRIAA, the responsibility of the Applicant under existing legislation, only that portion of the Proposal that is not the responsibility of the Applicant under existing legislation, tenure, or other binding agreement is eligible for funding under the Program.

19. No amount shall be paid by FRIAA where in FRIAA's reasonable opinion and having regard to all the circumstances, the Project has the effect of providing subsidies to the forest products industry.
20. The amounts paid under these terms and conditions shall be used exclusively for the Project and not for any other purpose. The Applicant agrees to maintain separate books of account, records and financial statements relating to the Project, and shall identify FRIAA funding applied to the Project.
21. The Applicant acknowledges that no payment of funds will be made until such time as a proper request for payment has been approved by FRIAA. FRIAA may require, and then the Applicant shall provide, verification of any information contained in the payment request accompanied by such vouchers, receipts and other documentation as may be requested by FRIAA prior to FRIAA approving payment.
22. Any payment made by FRIAA, where there is false or misleading information provided by the Applicant, shall be considered to have been paid in mistake, and such payment is held in trust by the Applicant for the sole and exclusive benefit of FRIAA. Such payments or funds shall be returned forthwith to FRIAA upon discovery of the error.
23. FRIAA maintains the right, at its sole discretion, to withhold any payment until the Applicant provides sufficient verification or information in relation to any matter for which FRIAA reasonably requests verification.
24. All payments made under the Program are made in the sole discretion of FRIAA and in accordance with these terms and conditions. FRIAA may withhold, delay or reduce any particular payment to the Applicant in any of the following circumstances:
 - (a) the Applicant has not been able to demonstrate that the Project complies with these terms and conditions;
 - (b) the Applicant's processes, premises, equipment, or procedures are unsafe or are potentially unsafe, in the reasonable discretion of FRIAA;
 - (c) there is a breach of any term, condition or provision of the Project, the Program or any contract or agreement between the Applicant and FRIAA;
 - (d) there is an unsatisfactory audit or compliance review result.
25. The Applicant shall, if directed by FRIAA, forthwith repay FRIAA any overpayments or unexpended monies paid to the Applicant and such amounts shall constitute a debt due to FRIAA.

NON-COMPLIANCE

26. Failure by the Applicant to carry out any of these terms and conditions or any additional terms and conditions of the Proposal shall be considered a breach of these terms and conditions and the Approval may be immediately withdrawn by FRIAA.
27. In the event of any breach of the terms of the Proposal, Project or Program no further payment shall be made hereunder by FRIAA.
28. Non-payment by the Applicant of any fee or charge imposed by FRIAA, shall disentitle the Applicant to receive approval of this Proposal, and shall be considered a breach of these terms and conditions.

29. In the event of a breach of these terms and conditions, FRIAA may enforce its security, if any, and seek whatever other remedies may be available to it in law or equity, including the return of any funds advanced by FRIAA to the Applicant.
30. Failure by the Applicant to provide any deliverable anticipated or required as part of the Project shall be considered a breach of these terms and conditions.

OBJECTIONS

31. Any objection by the Applicant to any decision made by FRIAA hereunder or any disagreement with the carrying out of the terms of these terms and conditions or any dispute hereunder, shall be made in writing by the Applicant and shall be submitted to FRIAA in a timely manner.
32. All objections shall be governed by the policies, bylaws and procedures adopted by FRIAA for this purpose.

INSURANCE

33. FRIAA will not provide any liability or property insurance coverage for the Applicant with regard to anything in respect of these terms and conditions or the Project.
34. The Applicant will maintain all insurance related to its obligations and indemnities hereunder for reasonable limits, or limits as specified by FRIAA from time to time, and in any event, is responsible for all insurance related to its operations and the Project and is required to carry liability coverage in an amount not less than the industry norm, having regard to the business of the Applicant, property coverage where applicable and other coverage that the Applicant may consider necessary.
35. The Applicant shall provide to FRIAA a certificate of coverage upon the request of FRIAA.

ASSIGNMENT

36. The Proposal or Project or any part thereof shall not be assigned by the Applicant without obtaining the prior written consent and approval of FRIAA.

WORKERS' COMPENSATION

37. The Applicant shall comply with the *Workers' Compensation Act* and shall, upon demand by FRIAA, deliver to FRIAA a certification from the Workers' Compensation Board certifying that:
 - (a) the Applicant is registered and in good standing with the Workers' Compensation Board; or
 - (b) the Applicant is not required by the *Workers' Compensation Act* and the regulations under that Act to have coverage thereunder for the work; and
 - (c) FRIAA will not have current or future liability to the Workers' Compensation Board as a consequence of these terms and conditions.

38. The Applicant shall maintain a valid account with the Workers' Compensation Board covering all workers involved with the contract.
39. The Applicant shall, upon demand by FRIAA, provide to FRIAA any other documentation considered necessary by FRIAA or desirable evidencing sub-contractors are covered by the *Workers' Compensation Act*.

OCCUPATIONAL HEALTH & SAFETY

40. FRIAA's role under the Program is strictly limited to providing funding in accordance with the requirements of the Program and not for any work undertaken by the Applicant, its employees, agents or contractors.
41. For the purposes of the work undertaken hereunder, FRIAA will have no physical presence on a work site, and specifically has no responsibility for security of or on a work site, as contemplated under the *Occupational Health and Safety Act*.
42. FRIAA does not direct, prohibit or discourage, or encourage any particular process, protocol or management decisions of the Applicant.
43. The Applicant shall inform itself and cause its employees to inform themselves as to their respective legal responsibilities under the *Occupational Health and Safety Act* and regulations.
44. The Applicant acknowledges that it
 - (a) has the overall responsibility and ultimate authority for directing the activities at the work site;
 - (b) is responsible for the hiring of contractors, employers and workers to perform all Work under the Program at the work site;
 - (c) has control over the work site and its employees, employers and workers at the work site; and
 - (d) is a "contractor" or an "employer", as the case may be, as defined in the *Occupational Health and Safety Act*, and will, as a condition of these terms and conditions, comply with the *Occupational Health and Safety Act* and regulations enacted thereunder.
45. The Applicant shall implement a system or process to ensure compliance with the *Occupational Health and Safety Act* and regulation by employees or contractors at the worksite.
46. Prior to performance of the Project the Applicant shall provide to FRIAA a written safety plan. The safety plan shall address; the hazards of the services to be performed under this contract, the control measures that shall be implemented to eliminate or reduce the risks of the hazards to a reasonable level, the first aid/medical services and measures that shall be activated in event of an emergency. For other hazards identified during the performance of the contract FRIAA may also request that safety plans be provided.
47. The Applicant acknowledges that it is the "prime contractor" as defined in the *Occupational Health and Safety Act*. The Applicant assumes all responsibilities of the "prime contractor" and shall implement a safety plan that shall ensure compliance with the *Occupational Health and Safety Act* and regulations by other contractors and/or employers, as defined under the

Occupational Health and Safety Act, present on the worksite. In the event that the worksites of two or more “prime contractors” coincide, they shall jointly develop, agree and submit a safety plan for the affected worksite. If the “prime contractors” cannot agree upon the safety plan, work at the affected worksite shall cease and FRIAA shall decide which “prime contractor” shall be responsible for resolving the disputed issue. FRIAA’s decision is final and binding upon the prime contractors.

48. All safety plans are to be reviewed by FRIAA before work proceeds. FRIAA reserves the right to review documents and monitor the Applicant’s compliance to the safety plan. Review of the safety plan and monitoring for compliance does not relieve the Applicant of its responsibilities as defined in the *Occupational Health and Safety Act* and regulations of those assigned by the contract.
49. The Applicant shall immediately report to FRIAA all work related accidents resulting in medical aid, disabling injury or fatality and serious occurrences (defined in section 18 of the *Occupational Health and Safety Act*) as a result of any services provided under the Program. The Applicant shall further ensure that, where required by statute or regulations, accidents shall be reported to the Workers’ Compensation Board and to Alberta Human Resources and Employment.
50. Where FRIAA determines and notifies the Applicant that work does not comply with the *Occupational Health and Safety Act* and regulations or the safety plan, that work shall be suspended. That work shall not resume until corrective actions have been taken to the satisfaction of FRIAA. FRIAA shall consider a breach of the *Occupational Health and Safety Act* or safety plan a breach of the contract.
51. The Applicant acknowledges that it has entered into an agreement with the owner of the land in respect of which an Eligible Activity is proposed confirming that the Applicant shall be the “prime contractor” as defined in the *Occupational Health and Safety Act*.

WAIVER OF TERMS

52. FRIAA may, from time to time, waive the performance by the Applicant of any provisions of these terms and conditions, either before or after the performance takes place, but a waiver:
 - (a) is not effective or binding upon FRIAA unless it is in writing and signed by FRIAA, and;
 - (b) does not limit or affect FRIAA’s rights with respect to any other breach or non-performance, whether previous to, subsequent, or in the future.

TERMINATION

53. FRIAA may terminate the Project without cause by giving 30 days’ notice to the Applicant, and upon termination, the Applicant is entitled to be compensated in accordance with the terms of this contract, so that any amounts due under this contract at the time of termination remain payable to the Applicant.
54. In addition, the Project may be terminated by mutual consent of the parties evidenced in writing.

55. In the event that the Applicant has no outstanding obligations under these terms and conditions, the Applicant may terminate this Proposal or the Project without cause by giving notice in writing to FRIAA.
56. Upon termination of the Project, the Applicant shall submit a detailed accounting of the Project incurred up to the termination date.
57. In the event that the Applicant suffers any damages of any kind whatsoever resulting from the termination of the Project, the only claim of any kind that the Applicant may make against FRIAA is for liquidated damages in the sum of one dollar (\$1.00).
58. In the event that the Project is terminated for any reason whatsoever, the unexpended funds allocated to the Project remain the exclusive property of FRIAA and may be used for any FRIAA purpose.

OWNERSHIP OF MATERIAL

59. The Applicant hereby grants to FRIAA, a non-exclusive, fully paid up, royalty-free license to use, publish and distribute the data derived from the Project or any other item funded by FRIAA under the Project (“Licensed Materials”) anywhere in the world, including, but not limited to publication on the Internet, for a period of thirty (30) years from the date of this Agreement.
60. FRIAA shall not assign the license granted pursuant to paragraph 59 except to an Affiliate or successor of FRIAA, or to the Government of Alberta, its agents or representatives.
61. FRIAA shall be entitled to grant sublicenses under the license granted pursuant to paragraph 59 above. FRIAA shall advise the Applicant, within a reasonable time period, of any sublicenses granted by FRIAA.
62. The Applicant represents and warrants the following:
 - (a) that the Licensed Materials will be free from infringement of any proprietary rights;
 - (b) the work relating to the Licensed Materials is original or the Applicant has acquired the right to use, publish, license and distribute the Licensed Materials on a world wide basis, and
 - (c) that the use, publication or distribution of the Licensed Materials will not result in environmental, safety or health hazards.

MISCELLANEOUS

63. The Applicant shall comply with the provisions of:
 - (a) any Act of the Legislature of the Province of Alberta, and of the Parliament of Canada, now in force or enacted hereafter; and
 - (b) any regulation in force from time to time under any of the Acts referred to in these terms and conditions; and
 - (c) any valid by-law, order, resolution, policy or procedure of FRIAA that expressly or by implication applies to the Applicant in respect of these terms and conditions.
64. The Applicant shall execute whatever documents are required to implement and register these terms and conditions or the security interests granted hereunder.

65. No addition to, deletion from, or variation or amendment of, any provision of these terms and conditions shall be binding on the parties hereto unless it is in writing and signed by the parties.
66. The Applicant agrees to be bound by all bylaws, policies and procedures of FRIAA and agrees to take whatever steps are necessary to give effect to all bylaws, policies and procedures of FRIAA.
67. The Applicant represents and warrants that all information provided to FRIAA in the Proposal and in all documents that are provided by the Applicant to FRIAA is true and accurate.
68. The Applicant represents that any environmental issues or concerns relating to the proposed project which are known or ought to be known to the Applicant have been disclosed to FRIAA.
69. The Applicant shall inform FRIAA of any environmental concerns regarding the Project which arise during the term of the Project and shall use its best efforts to resolve any environmental issues that arise.
70. The Applicant agrees that the Project will be carried out in a diligent, professional and environmentally responsible manner.
71. The Applicant declares that any person who has been lobbying on its behalf to obtain Funds in whole or in part for a Project and who is required to be registered pursuant to the federal *Lobbying Act* was registered pursuant to the *Lobbying Act* at the time the lobbying occurred.
72. The Applicant represents and warrants that it has not, nor has any other person, corporation, or organization, directly or indirectly paid or agreed to pay, and covenants that it and they shall not directly or indirectly pay, any person to solicit Funds for a Project for a commission, contingency fee or any other consideration dependent on the payment in whole or in part of Funds for a Project.
73. The Applicant shall obtain the prior written consent of FRIAA to any change that, in the sole judgement of FRIAA, may materially affect the ownership, management or financing of the Applicant.
74. The Applicant acknowledges that information collected in respect of the Project will be subject to the (Alberta) *Freedom of Information and Protection of Privacy Act* and the federal *Access to Information Act* and *Privacy Act*, represents that the Applicant has the authority to consent and consents to the information being made available to the public by any means including information being posted on public websites as part of a list of all projects funded under the Program.
75. The Applicant agrees that it shall upon request from FRIAA promptly:
 - (a) provide FRIAA with information regarding the number of people employed (person-months created/maintained), the number of businesses created/maintained, the number of hectares treated and a description of the benefits accrued from the Project at the time of the request which can be used by FRIAA, the Department or the Government of Canada for public announcements, official ceremonies and publications including news releases, feature stories and annual reports; and
 - (b) allow the placement of signs concerning federal government participation in the

Project on the site of the Project at any time prior to the completion of the Project as may be required by FRIAA.

76. In the event of the death of an individual Applicant (the “Deceased”) prior to the completion of the Project, the estate or personal representative of the Deceased may, upon meeting the reasonable requirements of FRIAA, complete the Project in accordance with the Approval entered into regarding that Project.
77. In the event of the appointment of a receiver over the assets and affairs of an Applicant, FRIAA may allow, in its sole discretion, the receiver to carry out the terms of the Approval prior to receivership, provided always the receiver be obligated to the same extent and in the same manner as the Applicant. Further, FRIAA may, in its sole discretion, allow Funds to be utilized by the receiver of an Applicant in a manner that is in accordance with the bylaws, rules and policies of FRIAA, the Program and the Approval, as well as any applicable agreement, all as if the receiver is the original Applicant.