

**SOUTH DAKOTA DEPARTMENT OF PUBLIC SAFETY
FEDERAL EXCESS PERSONAL PROPERTY (FEPP) AND
FIREFIGHTER PROPERTY (FFP) USE AGREEMENT**

This Agreement is hereby made and entered into by and between the South Dakota Department of Public Safety, Wildland Fire, 3305 West South St, Rapid City South Dakota 57702, (State), and



(complete department name and address), (FD).

GENERAL PROVISIONS

- A. State and FD hereby enter into this Agreement for the acquisition of surplus property and distribution of this equipment to fire departments for rural fire prevention and suppression assistance pursuant to the Joint Powers Act, SDCL 1-24, the provisions in SDCL 41-20A and the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 580a and 2106), pursuant to 40 U.S.C. § 483-490 and SDCL 34-31-6 – SDCL 34-31-8 and the terms and conditions set forth below.
- B. This Agreement represents the entire agreement between these two parties and supersedes all prior negotiations and agreements related to the acquisition and use of federal and state surplus equipment.
- C. This Agreement shall commence on the date of the last signature and end on September 30, 2029, unless sooner terminated pursuant to the terms outlined in this Agreement.
- D. FD agrees to indemnify and hold the State of South Dakota, its officers, agents, and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require FD to be responsible for or defend against claims or damages arising solely from errors or omissions of State, its officers, agents or employees.
- E. FD agrees to obtain, and at all times during the term of this Agreement, maintain insurance coverage of the types and with the limits as follows:
 - 1. Commercial general liability insurance with a limit of not less than \$1,000,000.00 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement, or be no less than two times the occurrence limit.
 - 2. Automobile liability insurance or equivalent form, including coverage for comprehensive and collision, for all federal surplus vehicles acquired through the State with a limit of not less than \$1,000,000.00 per accident, and an occurrence limit of not less than twice that amount.
- F. FD shall list State as the Loss Payee with insurance. If any surplus property is damaged and funds are paid out by insurance, all funds must be forwarded to State. FD shall furnish proof of payment for any expenses applied to the surplus property that have been damaged and are not salvageable. State may release funds to compensate FD for its expenses. State will forward all remaining funds to the federal government which is the property owner.

Loss Payee: South Dakota Wildland Fire
3305 W South St, Rapid City SD 57702
605.393.8011

- G. FD shall furnish State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days prior written notice to the State. FD shall furnish copies of insurance policies if requested by State.
- H. While performing services hereunder, FD is an independent contractor and not an officer, agent, or employee of the State of South Dakota.
- I. FD agrees to report to State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject FD or State to liability. FD shall report any such event to State immediately upon discovery.

FD's obligation under this section shall only be to report the occurrence of any event to State and to make any other report provided for by their duties or applicable law. FD's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to State under this section shall not excuse or satisfy any obligation of FD to report any event to law enforcement or other entities under the requirements of any applicable law.

- J. This Agreement may be terminated by either party named in the Agreement upon sixty (60) days written notice. In the event FD breaches any of the terms or conditions of this Agreement, this Agreement may be terminated by State at any time with or without notice. Upon determination by State that any equipment obtained by FD under this Agreement is not being utilized, maintained, or operated in accordance with the provisions of this Agreement, State may terminate this agreement without notice and demand return of all surplus property and equipment in possession of FD and damages for the value of any property improperly disposed of or transferred.
- K. This Agreement may not be assigned without the express prior written consent of State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof and be signed by an authorized representative of each of the parties hereto.
- L. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
- M. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof. Failure by the State to strictly enforce any provision, right or responsibility contained herein shall not operate as a waiver as to any provision, right or responsibility.
- N. FD will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.
- O. FD certifies that neither FD nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the

federal government or any state or local government department or agency. FD further agrees that it will immediately notify State if during the term of this Agreement FD or its principals become subject to debarment, suspension, or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

- P. Any notice or other communication required under this Agreement shall be in writing. Notice shall be sent by and to South Dakota Department of Public Safety, Wildland Fire, 3305 West South St, Rapid City, SD 57702-8160, 605-393-8011, on behalf of State and by and

to: _____
 behalf of FD, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail or email, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.



- Q. Pursuant to Executive Order 2020-01, for contractors, vendors, suppliers, or subcontracts with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by signing this contract the FD certifies and agrees that it has not refused to transact business activities, have not terminated business activities, and have not taken other similar actions intended to limit its commercial relations, related to the subject matter of the contract, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this contract. The FD further agrees to provide immediate written notice to the State if during the term of the contract is no longer complies with this certification, and agrees such noncompliance may be grounds for contract termination.

- R. COMPLIANCE WITH SDCL ch 5-18A:

FD certifies and agrees that the following information is correct:

The bidder or offeror is not an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled, directly or indirectly, by a foreign parent entity from, or the government of, the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the purchasing agency to reject the bid or response submitted by the bidder or offeror on this project and terminate any contract awarded based on the bid or response, and further would be cause to suspend and debar a business under SDCL § 5-18D-12.

The successful bidder or offeror further agrees to provide immediate written notice to the purchasing agency if during the term of the contract it no longer complies with this

certification and agrees such noncompliance may be grounds for contract termination and would be cause to suspend and debar a business under SDCL § 5-18D-12.

S. CERTIFICATION OF NO STATE LEGISLATOR INTEREST:

Cooperator (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to this Agreement. By signing this Agreement, Cooperator hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

S. The FD agrees to abide by all applicable provisions of the following:

(a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352);

(b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686);

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794) and the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq.; PL 101-336);

(d) the Age Discrimination Act of 1975, as amended (42U.S.C. §§ 6101-6107);

(e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended;

(f) the comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970(P.L. 91-616), as amended;

(g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended;

(h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq); the Civil Rights Restoration Act of 1987;

(j) the Drug-free Workplace Act of 1988 (41 U.S.C. 702);

(k) the Buy America Act (49 U.S.C. 5323 (j));

(l) the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328);

(m) Executive Order 11246 Equal Employment Opportunity;

(n) Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708);

(o) Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387);

(p) Debarment and Suspension (Executive Orders 12549 and 12689);

(q) Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

T. Nothing in this Agreement shall prohibit the parties from entering into other agreements or

contracts with any private agency, or any other local, township, county, city, state, or federal agency.

U. Counterpart: This Agreement may be executed in one or more counterparts, including by the way of .pdf (portable document format) file or other electronic means (such as DocuSign or Adobe eSign), each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

V. State agrees:

1. To provide equipment to FD, subject to the availability of the equipment to State and subject to FD paying any required costs.
2. To provide technical assistance regarding the proper utilization, maintenance, refurbishment, and operation of equipment provided to FD.

W. FD agrees:

1. To sign a Property Record form for all equipment received.
2. To use all provided equipment for emergency service purposes only. Personal use or any other use is prohibited and may be a violation of law subjecting violators to criminal and civil penalties in addition to equipment recall.
3. To follow all applicable federal and state laws pertaining to the operation of all equipment obtained under this Agreement.
4. To prohibit the consumption or transportation of alcoholic beverages or illegal substances on or in any equipment obtained under this Agreement.
5. Not to transfer or dispose of the property provided under this Agreement without prior written approval by State.
6. To properly maintain and identify the equipment provided under this Agreement by display of FEPP decals provided by State.
7. To properly house the equipment year-round in a secure building when the equipment is not in use. The inside temperature of the building must always be maintained at a temperature above freezing, unless the equipment has been drained of water and properly winterized. Any damage caused by improper winterization will be the sole responsibility of FD.
8. To modify the equipment only with prior written approval from State.
9. To return all equipment provided under the terms of this Agreement to State upon the termination of this Agreement, or if the equipment is no longer utilized by FD.
10. To license all identified equipment obtained under this Agreement.
11. To allow State to enter FD's property at any time to conduct a physical inventory of the equipment.
12. To properly service and maintain the equipment in good working order and condition; and to regularly conduct safety inspections of the equipment and make all necessary repairs and replacements.
13. To pay for all maintenance and repairs and for all gasoline, oil, anti-freeze and other supplies required for the proper operation, maintenance or protection of the equipment.
14. To prepare and deliver to State a report immediately of any event which might give rise to a claim for liability, consisting of a written statement by the driver and a police report form for all accidents involving FEPP or FFP equipment.
15. To provide notification to State immediately of all major accidents and/or fatalities and within 24 hours of minor incidents.
16. To pay to State all costs incurred by State for the equipment obtained under this Agreement.
17. To provide rural fire statistics on the approved fire report form after every fire and when requested by State.

X. It is mutually agreed:

1. That the title to all equipment obtained under this Agreement will remain in the possession of State or the United States, as appropriate.
2. That both State and FD will maintain an accountable inventory of all equipment that is provided under this Agreement.
3. Only property that can effectively be used for firefighting or emergency services will be requested.
4. Upon State's determination that the title to FFP equipment is eligible for transfer, FD which uses the FFP equipment will accept the title, when applicable, the title will be in FD's name.
5. All FFP will be made operable and put into use for firefighting or emergency services within one year of delivery.
6. Recipients of FFP will provide access to and the right to examine all records, books, papers, or documents relating to Department of Defense (DoD) firefighting property transferred under 10 U.S.C 2576b to the Forest Service, State, and the Department of Defense including the Office of Inspector General, and the Comptroller General of the United States or their authorized Representatives for a period of seventy-five months after receipt of said property.
7. Items identified on the Transfer Document as requiring Demilitarization (DEMIL C, D, and F) will be tracked and inventoried in the Forest Service Federal Excess Property Management Information System (FEPMIS) until final disposition. DEMIL items must be returned to the Defense Reutilization and Marketing Office (DRMO) or transferred to another qualifying agency. The Forest Service and State will coordinate any transfers or returns through the Distribution Reutilization Policy Directorate at the Defense Logistics Agency.
8. Participants in FFP will cooperate with federal and state parties to ensure compliance in federal and state regulations and program and property management requirements.
9. That any of the equipment provided by State pursuant to this Agreement will be made available for temporary relocation to other areas for emergencies, upon the request of State and upon the determination by FD that the relocation will not adversely affect FD's suppression capabilities.
10. Comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352, 42 U.S.C. 2000d) and in accordance with Title VI of that act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives federal financial assistance and will immediately take any measures necessary to effectuate this Agreement.
11. This Agreement does not establish a separate legal entity as contemplated by SDCL 1-24-5. The cooperative undertaking described herein will be financed and conducted under the provisions of this Agreement by State and FD, respectively. Each party has responsibilities under the terms of this Agreement, and no joint board or joint administrator will be used. Purchase and maintenance of equipment used to fulfill the Agreement will be undertaken by the respective agencies. No real property will be purchased to use for this Agreement.
12. If this Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose and if for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by State. Termination for any of these reasons is not a default by State nor does it give rise to a claim against State.

The individual signing this Agreement on behalf of Cooperator directly and expressly warrants that they have been given and have received and accepted authority to sign and execute the Agreement on behalf of the Cooperator, and further has been expressly given and received and accepted authority to enter into a binding agreement on behalf of Cooperator with respect to the matters contained herein and as stated herein.

IN WITNESS WHEREOF, the parties signify their agreement by signing below.

STATE

FD

BY: _____

BY: _____



Robert Perry
Cabinet Secretary
SD Department of Public Safety

Print Name: _____

Title: _____

Date: _____

Date: _____