

SOUTH DAKOTA DEPARTMENT OF PUBLIC SAFETY COOPERATIVE 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 (the "State"), and



(complete department name and address), (the "Cooperator").

I. GENERAL PROVISIONS

- A. State and Cooperator hereby enter into this Agreement to cooperate in fire prevention and suppression efforts, pursuant to SDCL 41-20A and SDCL 1-24.
- B. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.
- C. This Agreement will become effective on the date of the last signature and continue until December 31, 2028, unless otherwise terminated according to the terms of this Agreement.
- D. Cooperator 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 Cooperator to be responsible for or defend against claims or damages arising solely from errors or omissions of State, its officers, agents or employees.
- E. 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.
- F. 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.
- G. While performing services under this Agreement, Cooperator is an independent contractor and not an officer, agent, or employee of the State of South Dakota.
- H. Cooperator 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 Cooperator or State to liability. Cooperator shall report any such event to State immediately upon discovery.

Cooperator'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. Cooperator'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 Cooperator to report any event to law enforcement or other entities under the requirements of any applicable law.

- I. 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.
- J. Cooperator shall 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.
- K. Cooperator may not use subcontractors to perform the services described herein without the express prior written consent of State. Cooperator will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify State, and provide proof of insurance coverage in a manner consistent with this Agreement. Cooperator will cause its subcontractors' agents and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements, and will adopt such review and inspection procedures as are necessary to assure such compliance.
- L. Cooperator 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 – Cooperator shall maintain occurrence based commercial general liability insurance with a limit of not less than one million (\$1,000,000.00) dollars for each 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 Insurance – Cooperator shall maintain automobile liability insurance or equivalent form for all vehicles owned or operated and reported as resources to State, with a limit of not less than one million (\$1,000,000.00) dollars per accident, and an occurrence limit of not less than twice that amount.
 - 3. Workers' Compensation Insurance – Cooperator shall comply with all state laws and regulations pertaining to workers' compensation insurance for personnel.
 - a. If Cooperator is the type of entity listed in SDCL 62-1-5.2, Cooperator will be covered by State's workers' compensation policy while engaged in fire suppression efforts under this Agreement within the State of South Dakota. No workers' compensation benefits may be provided by State if a workers' compensation claim arises while Cooperator is dispatched to a wildland fire outside the State of South Dakota, unless the fire is a threat to resources within the state of South Dakota.
 - b. Cooperators that make their department resources available for out-of-state

assignment through this Agreement must provide proof of workers' compensation coverage that provides coverage to their personnel outside of the State of South Dakota.

Before beginning work under this Agreement, the Cooperator shall furnish the 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. The Cooperator shall furnish copies of insurance policies if requested by the State. Cooperator will not use or operate any vehicles while providing services under this Agreement unless the vehicle is covered by the Cooperator's automobile insurance policy.

- M. 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:

on behalf of Cooperator, 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 or electronic mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.



- N. 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 Cooperator 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 Cooperator 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.
- O. COMPLIANCE WITH SDCL ch 5-18A:
Cooperator 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.

P. 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.

Q. Both parties agree to provide services covered by this contract without regard to race, color, sex, religion, national origin, creed, marital status, age, or disability as prohibited by state or federal law.

R. The Cooperator certifies that neither Cooperator 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. Cooperator further agrees that it will immediately notify the State if during the term of this Agreement Cooperator 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.

S. The Cooperator 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. Cooperator agrees to maintain all records that are pertinent to this contract and retain them for a period of three years following final payment against the contract. These records shall be subject at all reasonable times for inspection, review or audit by the State, other personnel duly authorized by the state, and federal officials so authorized by law.
- 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.

II. JOINT POWERS PROVISIONS

- A. State and Cooperator mutually agree that:
1. 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 Cooperator, 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 this Agreement will be undertaken by the respective agencies. No real property will be purchased to use for this Agreement.
 2. State will file a copy of this Agreement with the Attorney General and the Legislative Research Council not more than fourteen (14) days after execution, as required by SDCL 1-24-6.1.
 3. Financing required by this Agreement will come from regular department budgets and the state fire suppression fund. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. 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.

4. This Agreement may be terminated by either party upon sixty (60) days written notice without cause.
5. All parties must 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.
6. 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.

III. FIRE SUPPRESSION PROVISIONS

- A. State agrees to provide firefighting technical assistance to Cooperator.
- B. Cooperator agrees to provide wildland fire suppression assistance to State.
- C. Cooperator agrees to provide personnel holding minimum fire qualifications as described in the current *South Dakota Department of Public Safety Wildland Fire Mini- Mobilization Guide for Cooperators*.
- D. Cooperator agrees to designate a person within their organization as the point of contact (POC). The POC will serve as the contact person regarding cooperative efforts under this Agreement. Cooperator further agrees to notify State in the event the POC designation changes.
- E. State agrees to compensate Cooperator for personnel and equipment provided to State pursuant to this Agreement.
- F. State agrees to compensate Cooperator in accordance with the current *NWCG Standards for Interagency Incident Business Management* (PMS 902) and supplements. Personnel and equipment rates are in the current *South Dakota Department of Public Safety Wildland Fire Mini-Mobilization Guide for Cooperators*. State will apply the rates which are in effect at the time of dispatch.
- G. Cooperator agrees to furnish a cost statement to the State at the address below, within thirty (30) working days of expenditure:
 - Fire Business Staff
 - South Dakota Wildland Fire
 - 3305 West South St
 - Rapid City, SD 57702-8160

Payment shall be made by State in the following manner: State will have fifteen (15) working days to review all bills submitted to assure they are proper and correct. Once the bill is accepted as correct, State will pay the cost statement within forty-five (45) days of receipt, in accordance with the Prompt Payment Act (SDCL 5-26).

- H. Cooperator authorizes State to audit wildland fire suppression records including, but not limited to, fire logs, expenditures, and fire training records.
- I. Cooperator agrees to promptly report any vehicle damage sustained on an incident to State or appropriate jurisdictional agency.
- J. State acknowledges that structural protection work within South Dakota does not currently require a Cooperator to hold an Incident Qualifications Card (IQC). If ordered for structural protection, Cooperator agrees that personnel, who do not have an IQC with wildland fire qualifications on it, will be released from the incident when structural protection is no longer required by the incident.

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

COOPERATOR

BY: _____

BY: _____



Robert Perry

Cabinet Secretary

SD Department of Public Safety

Print Name: _____

Title: _____

Date: _____

Date: _____