THIS AGREEMENT IS HEREBY made and entered into by and between the South Dakota Department of Agriculture, Wildland Fire Division, an agency of the State of South Dakota, 3305 West South St., Rapid City, SD 57702-8160, (STATE), and

______________________________
(complete department name and address), (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. This Agreement represents the entire Agreement between STATE and COOPERATOR and supersedes all prior negotiations and cooperative fire suppression agreements. This Agreement will become effective on the date of the last signature and continue until December 31, 2023, unless otherwise terminated according to the terms of this Agreement.

C. 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.

D. 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.

E. 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.

F. While performing services under this Agreement, COOPERATOR is independent and not an officer, agent, or employee of the State of South Dakota.

G. 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.

H. 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.

I. 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.

J. 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.

K. If the contracting party is not a natural person, proof of authority to sign granted by the legal entity to the natural person who signs this Agreement on behalf of the legal entity must be attached as a condition precedent to any obligation by the State of South Dakota under this Agreement. A copy of the resolution of the governing body or minutes of a regular meeting showing approval of the Agreement or an ordinance approving the Agreement and authorizing a named person to sign the Agreement may be used as adequate proof of authority.

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 commercial general liability insurance with a limit of not less than one-million ($1,000,000.00) dollars 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 Insurance – COOPERATOR shall maintain automobile liability insurance or equivalent form for all vehicles 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. If COOPERATOR does not carry roll over or collision insurance on any vehicles, COOPERATOR assumes all risk of loss and agrees to hold STATE harmless for all related losses.
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.

COOPERATOR agrees to provide valid certificate(s) of insurance to STATE. Certificate must be filed with STATE before STATE will sign an Agreement with COOPERATOR. COOPERATOR further agrees to annually file updated certificate(s) of insurance to STATE.

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 Agriculture, Wildland Fire Division, 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 mail 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.

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
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. All parties agree that no member or delegate to Congress, State Legislator, or resident Commissioner, after his election or appointment, and either before or after he has qualified and during his continuance in office; and no officer or agent or employee of federal, state or local government shall be admitted to any share or part of this Agreement or to any benefit therefrom, unless it is made with a corporation for its general benefit and is consistent with constitutional, statutory, and regulatory requirements for such federal, state, or local government entities.

7. 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 and equipment meeting minimum standards as described in the current South Dakota Department of Agriculture Wildland Fire Division Mini-Mobilization Guide and is incorporated by this reference.

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. STATE will apply the rates which are in effect at the time of dispatch.

F. COOPERATOR agrees to submit to STATE current permanent paid personnel rates including wage expenses, twice per year, in January and July, for review. The agreed upon
paid personnel rates are attached to this Agreement, as Exhibit A and is incorporated by this reference.

G. COOPERATOR will be compensated for backfill for permanent paid personnel when the assistance to STATE causes normal staffing levels to fall below minimum staffing levels. Documentation of schedule and need for additional personnel must be submitted to STATE.

H. COOPERATOR will be compensated for equipment meeting minimum requirements pursuant to this Agreement. Equipment rates are attached to this Agreement as Exhibit B and incorporated by this reference.

I. STATE agrees to compensate COOPERATOR in accordance with the current NWCG Standards for Interagency Incident Business Management (PMS 902) and supplements.

J. 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 Division  
   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).

K. COOPERATOR authorizes STATE to audit wildland fire suppression records including, but not limited to, fire logs, expenditures, and fire training records.

L. COOPERATOR agrees to promptly report any vehicle damage sustained on an incident to STATE or appropriate jurisdictional agency.

M. 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.

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

STATE                                                                                      COOPERATOR
BY:                                                                                         BY:
Jay T. Esperance,  
Director and Wildland Fire Coordinator  

Print Name

Date:                                      Date:   