

**MUTUAL AID AGREEMENT
FOR THE
INTERCOUNTY/TRIBAL NATION SHARING OF RESOURCES DURING
EMERGENCIES OR DISASTERS WITHIN SOUTH DAKOTA OFFICE OF
EMERGENCY MANAGEMENT'S REGION 3**

This Mutual Aid Agreement (hereinafter referred to as the "Agreement"), is hereby made and entered into as of the date of the last signature below, by and between all counties/tribal nations inclusive of South Dakota Office of Emergency Management's Region 3 (hereinafter referred to as the "Parties") which have duly adopted this Agreement.

WITNESSETH:

WHEREAS, the Parties hereto, acting by and through their respective emergency management director, have determined it is to the mutual advantage and benefit of the Parties to provide uniform provisions to assist each other in jointly and cooperatively exercising their powers and sharing resources in order to preserve the public health, safety and welfare before a state of emergency or disaster has been declared by the Governor of this state, and to establish protocol and a uniform method of obtaining assistance and reimbursement in these circumstances; and

WHEREAS, pursuant to South Dakota Codified Law Chapter's 1-24, 34-48, and the Constitution of the State of South Dakota, Article IX, Section 3 the Parties hereto have the authority to enter into this Agreement; and

WHEREAS, the governing body of each of the Parties hereto has duly authorized and adopted this Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants herein contained the Parties hereby agree with each other and their successors to the terms and conditions set forth herein:

I.

PARTIES

The Parties to this Agreement shall be:

- a. The Counties of Campbell, Corson, Dewey, Edmunds, Faulk, Hand, Hughes/Stanley, Hyde, McPherson, Potter, Sully, Walworth, Ziebach, and tribal nations are Cheyenne River Sioux Tribe and Standing Rock Sioux Tribe, political subdivisions of the State of South Dakota as geographically defined pursuant to the provisions of SDCL Chap. 7-1 and collectively referred to in the South Dakota Emergency Operations Plan as Region 3.
- b. When all of the adopting counties are referred to collectively the term "Parties" shall be used.

II.

RESOURCES

If a county/tribal nation which is a Party to this Agreement is unable to preserve the public health, safety and welfare alone, or does not have the resources or equipment necessary to carry out its duties and is in need of assistance (hereinafter “Requesting County/Tribal Nation”), another county/tribal nation which is a Party to this Agreement may provide resources, in the form of manpower, equipment, expertise and/or supplies (hereinafter “Responding County/Tribal Nation”) upon request of the Requesting County/Tribal Nation.

III.

COMMAND AND CONTROL

The Incident Command System (ICS) as prescribed by the National Incident Management System (NIMS) shall be utilized by the Requesting County/Tribal Nation for the management of the incident to which the requested resources will be assigned. The Requesting County/Tribal Nation shall designate an officer in charge (hereinafter “Incident Commander”) who will provide supervision, direction, and assignments to resources assigned to the incident from both the Requesting County/Tribal Nation and Responding County/Tribal Nation in accordance with NIMS/ICS doctrine. The mutual aid resources provided by the Responding County/Tribal Nation shall be under the direction and control of the Incident Commander until officially released by the Incident Commander or recalled by the Responding County/Tribal Nation.

IV.

RECALL OR DEMOBILIZATION OF RESOURCES

All resources provided by the Responding County/Tribal Nation shall remain under the direction and control of the Incident Commander until such time as:

- a. They are officially released and demobilized by the Incident Commander, or
- b. They are officially recalled by the Responding County/Tribal Nation.

It shall be the responsibility of the Incident Commander to release mutual aid resources as soon as possible or immediately upon notification that the resources are needed in their primary jurisdiction. If the Incident Commander does not immediately release the provided resources upon request of the Responding County/Tribal Nation, the Responding County/Tribal Nation may, at its sole discretion, recall the provided resources back to the Responding County/Tribal Nation. No liability to the Responding County/Tribal Nation shall result by the Responding County/Tribal Nation’s recall of provided resources.

V.

DUTIES OF REQUESTING COUNTY/TRIBAL NATION

The county emergency management director or a county official, authorized to represent the Requesting County/Tribal Nation, shall verbally ask for the assistance of the Responding County/Tribal Nation, shall determine the amount, type, and duration of resources being requested, and shall provide the location for the delivery of requested resources along with the contact information for an individual responsible for the receipt of requested resources. In accordance with the NIMS, Federal Emergency Management Agency (FEMA) and /or National Wildfire Coordinating Group (NWCG) resource typing definitions and job titles/position qualifications will be referenced when possible. At the discretion of the Responding County/Tribal Nation, a written resource request may be required following the verbal request and shall contain reasonable information pertaining to the resource request as stipulated by the Responding County/Tribal Nation.

VI.

DUTY OF RESPONDING COUNTY/TRIBAL NATION

The Responding County/Tribal Nation will provide the requested resources unless doing so would, in the sole discretion of the Responding County/Tribal Nation, leave inadequate resources to preserve the public health, safety and welfare of the citizens of the Responding County/Tribal Nation. The Responding County/Tribal Nation shall promptly notify the Requesting County/Tribal Nation if it is unwilling or unable to provide the requested resources to the Requesting County/Tribal Nation.

VII.

LIABILITY

The Responding County/Tribal Nation shall not be responsible or liable for any loss which may result from its failure to respond or respond promptly to a mutual aid request. The Parties agree that their respective exposure to civil liability is limited to the provisions of SDCL § 34-48-9. By entering this Agreement, the Parties do not waive or abrogate their sovereign immunity, or any statutory immunity provided by law. The Parties agree to indemnify and hold one another, including their officers, agents and employees, harmless from and against all claims, suits, actions, loss, injury, damages or expenses arising out of, and caused by, the willful misconduct or gross negligence of any Party or individual in the requesting of services, supervision of resources and/or providing of resources and services as contemplated in this Agreement.

VIII.

EQUIPMENT

The Parties agree that they shall maintain reasonable and prudent diligence in keeping emergency equipment in their possession and agree that this Agreement does not relieve any of the Parties from the necessity and obligation of providing adequate resources within their own jurisdictions. The Parties will reasonably keep their equipment at minimum standards of repair. In the event the responding agency only provides equipment to the requesting agency, the Requesting agency will reasonably maintain the equipment and safely return it to the Responding County/Tribal Nation in substantially the same condition as when received.

IX.

INSURANCE

Each Party shall provide workers compensation coverage on its own employees/workers and maintain its own liability, vehicle and property coverage insurance. Liability coverage for law enforcement officers responding to mutual aid requests shall comply with the provisions of SDCL § 34-48-11.

X.

REIMBURSEMENT

As the concept of mutual aid implies reciprocal assistance during times of need, it is the intent of this Agreement that the Responding County/Tribal Nation will not bill the Requesting County/Tribal Nation for any charges incurred within the first operational period which shall be limited in duration to no longer than 24 hours with the exceptions of damage incurred to equipment due to negligent orders or inappropriate use of responding resources by the Requesting County/Tribal Nation and expendable items requiring replenishment for operation (such as fuel for equipment). Expenses incurred after the first operating period which shall include, but not necessarily be limited to, salary and benefits, fuel and oil, incidental repairs, room and board, equipment time, and supplies may be billed to the Requesting County/Tribal Nation by the Responding County/Tribal Nation. If volunteer labor is utilized to fulfil the resource request and/or in the absence of established equipment time rates for equipment provided in fulfilment of the resource request, current FEMA equipment reimbursement rates and current Administratively Determined Pay Plan for Emergency Workers (AD) rates consistent with those ordinarily performing the work in the same labor market may be used to calculate costs incurred by the Responding County/Tribal Nation. If the Responding County/Tribal Nation chooses to bill the Requesting County/Tribal Nation for costs incurred after the initial operating period, the Responding County/Tribal Nation shall send an itemized bill of the expenses incurred to the Requesting County/Tribal Nation within 90 days after providing the services. The Requesting County/Tribal Nation shall process the request for reimbursement and provide payment according to its ordinary vouchering process. Wages, pension, worker's compensation, and other service rights and benefits for law enforcement officers responding to requests for assistance shall comply with the provisions of SDCL § 34-48-12.

XI.

DECLARATION OF EMERGENCY

In the event that a state of emergency is declared by the Governor of any state which impacts the services which are being provided under this Agreement, the protocol and delegation of duties provided for herein shall be superseded by the provisions of SDCL Chap. 34-48A.

XII.

SEPARATE AGREEMENTS

Any joint powers agreements or contracts previously entered into directly by and between any public agencies which are also Parties to this Agreement shall take precedence over this Agreement and be deemed controlling unless said separate agreement provides otherwise or is terminated.

XIII.

ADMINISTRATION

The Regional Vice President of the South Dakota Emergency Manager's Association (SDEMA), Region 3 shall be deemed the administrator of this Agreement. Their purpose is to keep track of the entities participating in this Agreement. He/she shall ensure that this Agreement is reviewed annually at one of the SDEMA Region 3 quarterly meetings.

XIV.

DURATION OF AGREEMENT

This Agreement shall be perpetual. If a Party wishes to terminate its participation in this Agreement, the governing body of the withdrawing Party shall provide a thirty-day written notice to each of the other Parties and pass a motion withdrawing from the Agreement, and thereafter, such withdrawing Party shall no longer be party to this Agreement; but this Agreement shall continue in force among the remaining Parties. Any withdrawing Party shall be liable for applicable costs and expenses incurred by another Party and subject to reimbursement by this Agreement up to the effective date of withdrawal.

SIGNATURE PAGE (1 of 15)

IN WITNESS WHEREOF, the Parties agree and do now set their hands and seals in execution of this Agreement on the date(s) signed below:

Campbell County

By:

Name: _____
(Printed) (Signature)

Title/Position: _____

Date: _____

SIGNATURE PAGE (2 of 15)

IN WITNESS WHEREOF, the Parties agree and do now set their hands and seals in execution of this Agreement on the date(s) signed below:

Corson County

By:

Name: _____
(Printed) (Signature)

Title/Position: _____

Date: _____

SIGNATURE PAGE (3 of 15)

IN WITNESS WHEREOF, the Parties agree and do now set their hands and seals in execution of this Agreement on the date(s) signed below:

Dewey County

By:

Name: _____
(Printed) (Signature)

Title/Position: _____

Date: _____

SIGNATURE PAGE (4 of 15)

IN WITNESS WHEREOF, the Parties agree and do now set their hands and seals in execution of this Agreement on the date(s) signed below:

Edmunds County

By:

Name: _____
(Printed) (Signature)

Title/Position: _____

Date: _____

SIGNATURE PAGE (5 of 15)

IN WITNESS WHEREOF, the Parties agree and do now set their hands and seals in execution of this Agreement on the date(s) signed below:

Faulk County

By:

Name: _____
(Printed) (Signature)

Title/Position: _____

Date: _____

SIGNATURE PAGE (6 of 15)

IN WITNESS WHEREOF, the Parties agree and do now set their hands and seals in execution of this Agreement on the date(s) signed below:

Hand County

By:

Name: _____
(Printed) (Signature)

Title/Position: _____

Date: _____

SIGNATURE PAGE (7 of 15)

IN WITNESS WHEREOF, the Parties agree and do now set their hands and seals in execution of this Agreement on the date(s) signed below:

Hughes/Stanley Counties

By:

Name: _____
(Printed) (Signature)

Title/Position: _____

Date: _____

SIGNATURE PAGE (8 of 15)

IN WITNESS WHEREOF, the Parties agree and do now set their hands and seals in execution of this Agreement on the date(s) signed below:

Hyde County

By:

Name: _____
(Printed) (Signature)

Title/Position: _____

Date: _____

SIGNATURE PAGE (9 of 15)

IN WITNESS WHEREOF, the Parties agree and do now set their hands and seals in execution of this Agreement on the date(s) signed below:

McPherson County

By:

Name: _____
(Printed) (Signature)

Title/Position: _____

Date: _____

SIGNATURE PAGE (10 of 15)

IN WITNESS WHEREOF, the Parties agree and do now set their hands and seals in execution of this Agreement on the date(s) signed below:

Potter County

By:

Name: _____
(Printed) (Signature)

Title/Position: _____

Date: _____

SIGNATURE PAGE (11 of 15)

IN WITNESS WHEREOF, the Parties agree and do now set their hands and seals in execution of this Agreement on the date(s) signed below:

Sully County

By:

Name: _____
(Printed) (Signature)

Title/Position: _____

Date: _____

SIGNATURE PAGE (12 of 15)

IN WITNESS WHEREOF, the Parties agree and do now set their hands and seals in execution of this Agreement on the date(s) signed below:

Walworth County

By:

Name: _____
(Printed) (Signature)

Title/Position: _____

Date: _____

SIGNATURE PAGE (13 of 15)

IN WITNESS WHEREOF, the Parties agree and do now set their hands and seals in execution of this Agreement on the date(s) signed below:

Ziebach County

By:

Name: _____
(Printed) (Signature)

Title/Position: _____

Date: _____

SIGNATURE PAGE (14 of 15)

IN WITNESS WHEREOF, the Parties agree and do now set their hands and seals in execution of this Agreement on the date(s) signed below:

Cheyenne River Sioux Tribe

By:

Name: _____
(Printed) (Signature)

Title/Position: _____

Date: _____

SIGNATURE PAGE (15 of 15)

IN WITNESS WHEREOF, the Parties agree and do now set their hands and seals in execution of this Agreement on the date(s) signed below:

Standing Rock Sioux Tribe

By:

Name: _____
(Printed) (Signature)

Title/Position: _____

Date: _____