

MUTUAL AID IN FIRE EMERGENCY SERVICES (US)

This Mutual Aid Agreement (the "Agreement"), is made and entered into this 15th day of August 2014, between the Secretary of the Air Force (the "Air Force") acting by and through the Commander Ellsworth AFB pursuant to the authority of 42 U.S.C. § 1856a and the Rapid City Fire Department. Together the Air Force and Rapid City Fire Department are hereinafter referred to as the "Parties".

WITNESSETH:

WHEREAS, each of the Parties hereto maintains equipment and personnel for the suppression of fires and the management of other emergency incidents occurring within areas under their respective jurisdictions; and

WHEREAS, as set forth in 42 U.S.C. § 1856 the term 'fire protection' includes personal services and equipment required for fire prevention, the protection of life and property from fire, firefighting, and emergency services, including basic medical support, basic and advanced life support, hazardous material containment and confinement, and special rescue incidents involving vehicular and water mishaps, and trench, building, and confined space extractions; and

WHEREAS, the Parties hereto desire to augment the fire protection capabilities available in their respective jurisdictions by entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, obligations and agreements herein established, the Parties hereby agree as follows:

- a. The authority to enter into this Agreement is set forth in 42 U.S.C. § 1856a, and Title 15 United States Code Section 2210, the regulations implementing same at Title 44 Code of Federal Regulations Part 151 *Emergency Management and Assistance* and Air Force Instruction 32-2001, *Fire Emergency Services Program*.
- b. This Agreement will serve as the agreement between the Parties for securing to each mutual aid in fire protection services as defined above.
- c. On request to the Fire Chief or his delegatee of the Ellsworth AFB fire department by a representative of the Rapid City Fire Department, fire protection equipment and personnel of the Ellsworth AFB fire department will be dispatched to any point within the area for which the Rapid City Fire Department normally provides fire protection services as designated by the representatives of the Rapid City Fire Department.
- d. On request to a representative of the Rapid City Fire Department by a representative of the Ellsworth AFB fire department, fire protection equipment and personnel of the Rapid City Fire Department will be dispatched to any point within the jurisdiction of Ellsworth AFB as designated by the representative of the Ellsworth AFB fire department.
- e. Any dispatch of equipment and personnel by the Parties pursuant to this Agreement is subject to the following conditions:

(1) Any request for aid hereunder will include a statement of the amount and type of equipment and personnel requested and will specify the location to which the equipment and personnel are to be dispatched, but the amount and type of equipment and the number of personnel to be furnished will be determined by the responding organization. The requesting organization will ensure access to site for the responding organization.

(2) The responding organization will report to the officer in charge of the requesting organization at the location to which the equipment is dispatched, and will be subject to the orders of that official.

(3) The responding organization will be released by the requesting organization when the services of the responding organization are no longer required or when the responding organization is needed within the area for which it normally provides fire protection.

(4) Hazardous Materials incident response will include the response to, and control and containment of any release or suspected release of any material suspected to be or known to be hazardous. Where the properties of a released material are not known, it will be considered hazardous until proven otherwise by the requesting organization using all technical resources available. Cleanup and removal of contained hazardous materials will be the responsibility of the requesting organization.

(5) In the event of a crash of an aircraft owned or operated by the United States or military aircraft of any foreign nation within the area for which the Rapid City Fire Department normally provides fire protection services, the chief of the Ellsworth AFB fire department or his or her representative may assume full command on arrival at the scene of the crash.

(6) Where local agencies do not assign an incident safety officer, an Air Force representative will be assigned to act as the incident safety officer for Ellsworth AFB to observe Air Force operations.

f. Notwithstanding the above, the Parties hereby recognize that pursuant to the Section 11 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. § 2210) and Federal regulations issued there under (44 CFR Part 151), the Rapid City Fire Department is permitted to seek reimbursement for all or any part of its direct expenses and losses (defined as additional firefighting costs over normal operational costs) incurred in fighting fires on property under the jurisdiction of the United States. Furthermore, under the authority of 42 U.S.C. § 1856a, and pursuant to any applicable state or local law each Party hereby reserves the right to seek reimbursement from the other for all or any part of the costs (defined as additional firefighting costs over normal operational costs) incurred by it in providing fire protection services to the other Party in response to a request for assistance.

g. Both Parties agree to implement the National Incident Management System during all emergency responses on and off installations in accordance with National Fire Protection Association (NFPA) Standard 1561.

h. Each Party waives all claims against the other Party for compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance of this Agreement. This provision does not waive any right of reimbursement pursuant to paragraph f.

i. All equipment used by the Rapid City Fire Department in carrying out this Agreement will, at the time of action hereunder, be owned by it; and all personnel acting for Rapid City Fire Department

under this Agreement will, at the time of such action, be an employee or volunteer member of Rapid City Fire Department.

j. The rendering of assistance under the terms of this Agreement will not be mandatory; however, the Party receiving a request for assistance will endeavor to immediately inform the requesting Party if the requested assistance cannot be provided and, if assistance can be provided, the quantity of such resources as may be dispatched in response to such request.

k. Neither Party will hold the other Party liable or at fault for failing to respond to any request for assistance or for failing to respond to such a request in a timely manner or with less than optimum equipment and/or personnel, it being the understanding of the Parties that each is primarily and ultimately responsible for the provision of fire protection services needed within their own jurisdictions.

l. Should a dispute arise between the Parties under or related to this Agreement, the Parties agree that within 30 days after notice of the dispute from one Party to the other, the Parties will attempt to resolve the dispute through negotiations. If such negotiations reach an impasse, the Parties agree that within 60 days after Notice of an impasse, they will attempt to resolve the matter through any method or combination of non-binding alternative dispute resolution (ADR) methods available under the Administrative Dispute Resolution Act of 1996, Pub. L. No. 104-320 (codified at 5 U.S.C. §§ 571-583). The cost of any third party neutral will be divided equally between the Parties, and the selection of any third party neutral will be by agreement of the Parties. If such ADR proceeding does not result in resolution of the dispute, the Parties may separately pursue any remedy available to a Party under the law. However, both Parties agree that the initiation of formal litigation does not preclude further attempts at resolving the dispute through alternative dispute resolution methods. Both Parties agree that the terms of this clause will be considered the "Administrative Remedies" that must be exhausted, prior to institution of any formal litigation.

m. All notices, requests, demands, and other communications which may or are required to be delivered hereunder will be in writing and will be delivered by messenger, by a nationally-recognized overnight mail delivery service or by certified mail, return receipt requested, at the following addresses:

For the Air Force:
Ellsworth AFB
c/o Commander, 28th Bomb Wing
1958 Scott Drive, Suite 1
Ellsworth AFB SD 57706-4710

And:
Department of the Air Force
AFCEC/CXF
139 Barnes Dr, Suite 1
Tyndall AFB FL 32403-5319

And:
Ellsworth AFB
c/o Fire Chief
1800 LeMay Blvd
Ellsworth AFB SD 57706-4607

For Rapid City Fire Department:
City of Rapid City
c/o Mayor
300 6th Street
Rapid City SD 57701

And:
City of Rapid City
c/o Finance Officer
300 6th Street
Rapid City SD 57701

And:
Rapid City Fire Department
c/o Fire Chief
10 Main Street
Rapid City SD 57701

TERMS OF THE AGREEMENT

n. This Agreement will become effective on the date of the last signature to the Agreement and will remain in effect for 5 years from that date (the "Term") and automatically renews annually for a term of 20 years. Either Party may unilaterally terminate this Agreement during the Term by sending notification of its intent to terminate to the other Party at least one hundred and eighty (180) days in advance of the proposed date of termination. Such notification will be in the form of a written submission to the other Party.

o. Upon becoming effective, this Agreement will supersede and cancel all previous agreements between the Parties concerning the rendering of assistance from one to the other for the purposes stated in this Agreement.

p. The modification or amendment of this Agreement, or any of the provisions of this Agreement, will not become effective unless executed in writing by both Parties.

q. This Agreement may be executed in one or more counterparts, each of which will be deemed an original.

IN WITNESS WHEREOF, The Parties have caused this Agreement to be executed by their duly authorized representatives on the dates shown below:

FIRE DEPARTMENT
For Rapid City Fire Department:

SAM KOOIKER
Mayor of Rapid City
300 6th Street
Rapid City SD 57701

Date: _____

PAULINE SUMPTION
Finance Officer
300 6th Street
Rapid City SD 57701

Date: _____

THE UNITED STATES OF AMERICA
For the Secretary of Air Force:

KEVIN B. KENNEDY, Colonel, USAF
Commander, 28th Bomb Wing
1958 Scott Drive, Suite 1
Ellsworth AFB SD 57706-4710

Date: _____