

**STATE OF SOUTH DAKOTA
AGREEMENT/LETTER OF AGREEMENT**

AGREEMENT made and entered into this 1st day of October 2007, by and between the Department of Environment and Natural Resources, a state agency, of Joe Foss Building, 523 East Capitol, Pierre, SD 57501-3181, (the "State") and City of Rapid City, Growth Management Department, Air Quality Program, 300 Sixth Street, Rapid City, South Dakota, 57701-5035, (the "City").

The State hereby enters into an Agreement with the City for a "**Pass Through Agreement**" in consideration of and pursuant to the terms and conditions set forth herein.

I. The City:

- A. The City services on this agreement shall commence on the signing of the agreement by the State and end September 30, 2008, unless terminated sooner.
- B. The City agrees to the following:
 1. **Program administration:** The City shall prepare minutes and agendas for the Rapid City Area Air Quality Board (Air Quality Board) meetings, correspondence, forms and reports; and maintain a complete filing system of the above documents. Agendas and minutes of meetings shall be made available to the State through the program's website in a timely manner. The Air Quality Board minutes and activity reports will be provided to the Air Quality Board representatives for the Rapid City Council, Pennington County Commission and made available to the public in the office and through the program's website.
 2. **Scheduled Site Inspections for Facilities with Compliance Plans:** A baseline timetable for scheduled inspections shall be established for the grant year. Formal inspections shall be conducted yearly on all sources with compliance plans. Formal inspection reports, follow-up inspections and complaint inspections shall be documented, maintained for three years, and made available for review by the State.
 3. **Compliance Plan Reviews:** Compliance plan reviews shall be conducted according to the Pennington County Air Quality Ordinance Number 12 and Rapid City Air Quality Ordinance for those operations within the Air Quality Control Zone regulated by the City and the County. The reviews shall be documented, maintained for three years, and made available for review by the State.
 4. **Construction Permits:** Construction permits will be issued by the City for those operations regulated by the City and the County for projects within the Air Quality Control Zone. Each project will be monitored at least once to ensure requirements are met and on a complaint basis. Permits, inspections and enforcement actions shall be documented, maintained for three years, and made available for review by the State.

5. **Public Information, Education, and Assistance:** The City will provide public information relative to air quality in Pennington County and Rapid City when requested. This will include promoting pollution prevention through education and encouraging individual and corporate measures that have or would improve air quality, and continuing to respond to requests for information received from the public. The City will establish and maintain an air quality website to provide access to air quality permit applications and public information on the air quality of the City and County.
6. **Coordination of EPA/State/Local efforts:** The City will monitor new developments and any proposed changes in State and Federal regulations that would affect the local program and participate in the review process involved in such changes.
7. **Training:** The City staff will attend workshops and training sessions to stay current with new developments provided funds are available. Compliance, enforcement and technical areas are preferred. Staff shall maintain certification for Visual Emission Evaluations (EPA Method 9).
8. **Complaint Reporting:** All complaints shall be documented, maintained for three years, and made available for review by the State. All complaints pertaining to State-regulated sources shall be forwarded to the State no later than 5 working days from receipt of complaint, except for extraordinary circumstances. Complaint reporting shall include the name of the complainant (if known), complainant phone number (if provided), name of the source (if known), date of complaint, a description of the complaint and the action taken on the complaint.
9. **Wood Burning and Dust Control Public Service Announcements:** As part of the program's educational efforts to reduce PM10 pollution from wood burning devices and construction-generated dust, the City will promote the public service announcement videos on wood burning issues and dust control. The City will ensure that these public service announcements are given to the local media for airing during the appropriate seasons.
10. **Paved and Unpaved Streets and Roads:** The City shall continue to permit, inspect and enforce the Ordinance for the paved and unpaved streets and roads in areas regulated by the City and the County within the Air Quality Control Zone. The City shall develop and maintain an inventory for paved and unpaved streets and roads in the area regulated under the Pennington County Ordinance Number 12 and the Rapid City Air Quality Ordinance.
11. **Unpaved Parking Areas:** The City shall continue to permit, inspect and enforce the Ordinance for the unpaved parking and/or storage areas in areas regulated by the City and the County within the Air Quality Control Zone. The City shall develop and maintain an inventory for unpaved parking and storage

areas in the area regulated under the Pennington County Ordinance Number 12 and the Rapid City Air Quality Ordinance.

12. **Air Quality Alerts:** The City and Air Quality Board will continue to assist the State in the implementation of the high wind dust alerts. The City shall, in cooperation with the State and when necessary with the National Weather Service, issue the air quality alerts in accordance with established protocol.
13. **Budget:** The City shall comply with the audit provisions of OMB Circular A-128 per 40 CFR Part 31. The City shall submit quarterly reimbursement requests with proper documentation to the State and shall follow the budget as finalized by the Rapid City Council. The budget and reimbursement requests will identify employee salary(ies), program costs, program expenditures, revenues, soft match contribution, and local (City and County) match to federal funds. The City agrees to provide local match to the federal funds granted under this agreement in an amount no less than 30% local match to 70% federal funds. Local match amounts may be in the form of in-kind services.
14. **Annual Report:** The City shall submit an annual report to the State detailing the work completed in Item I, B, (1 to 12) during the contract year. The annual report is due 60 days after the end of the contract period.

- C. The City agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of performing services hereunder. This section does not require the City to be responsible for or defend against claims or damages arising solely from acts or omission of the State, its officers or employees.

II. The State

A. The State will:

1. Make payment in an amount not to exceed \$60,000 federal Section 105 Air Pollution Control funding for services set forth in the Performance Partnership grant agreement upon proper documentation of performance and the match requirements as set forth in Part I, B,13;
2. Provide technical assistance as requested and investigate referrals from the City on State facilities and street sanding operations;
3. Attend bimonthly meetings of the Air Quality Board and serve as an ex-official member to the City; and
4. Conduct audits of the City. These audits may be in the form of an end of the year audit or may be conducted in the form of monitoring the program during the bimonthly meetings.

- B. The State will not pay the City expenses as a separate item outside of the items listed in this contract.

III. Other Provisions:

- A. 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.
- B. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the City breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to the City at the time of termination may be adjusted to cover any additional costs to the State because of the City's default. Upon termination, the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by the City it is determined that the City was not at fault, then the City shall be paid for eligible services rendered and expenses incurred up to the date of termination.
- C. The state does not require an insurance provision under this agreement.
- D. 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 the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.
- E. The City agrees to provide services in compliance with the Americans with Disabilities Act of 1990.
- F. The City agrees to provide the State with the MBE/WBE status and agreement amount of all sub-contractees/sub-grantees.
- G. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: the City certifies, by signing this agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- H. This Agreement may not be assigned without the express prior written consent of the 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. 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.

- J. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Brad Schultz on behalf of the State, and by Marcia Elkins, on behalf of the City, 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, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.
- K. The City 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.
- L. 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.

IV In witness hereto the parties signify their agreement by signatures affixed below:

Rapid City Area Air Quality Board State

 Jeni Leberknight, Chair (Date)
 Rapid City Area Air Quality Board

 Steven M. Pirner (Date)
 Secretary, South Dakota DENR

City of Rapid City

 Alan Hanks, Mayor (Date)
 City of Rapid City

 Attest: James Preston, Finance Officer (Date)

State Agency Coding (MSA Center) _____
 State Agency MSA company from which contract is to be paid _____
 Object/subobject MSA Account to which voucher(s) will be coded _____
 Name and phone number of contact person in State Agency who can provide additional
 Information regarding this contract:

Brad Schultz (605-773-6038) or brad.schultz@state.sd.us

**APPROVED AS TO FORM
 CITY ATTORNEY'S OFFICE**



 Attorney

8-24-07

 Date