

**AGREEMENT BETWEEN _____,
THE CITY OF RAPID CITY, AND WESTERN DAKOTA TECHNICAL INSTITUTE
FOR EMERGENCY RESPONDER TRAINING CENTER USE**

This Agreement is made and entered into between the City of Rapid City, 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as “Rapid City” and _____, of _____, hereinafter referred to as “Training Entity.”

WHEREAS, the City, in cooperation with Western Dakota Technical Institute (WDTI), has constructed an Emergency Responder Training Center (ERTC) on the campus of WDTI; and

WHEREAS, the City is the owner of the ERTC; and

WHEREAS, WDTI is the owner of the property on which the ERTC is built, and controls access to the ERTC; and

WHEREAS, Training Entity is an agency that desires to use the facilities and equipment of the City’s ERTC to conduct training of firefighters or other emergency responders; and

WHEREAS, City and WDTI are willing to allow Training Entity to use the facilities and equipment of the ERTC in exchange for Training Entity accepting responsibility and liability for any property damage or personal injuries that occur during Training Entity’s use of the ERTC; and

WHEREAS, City, WDTI and Training Entity desire to enter into this Agreement to reduce their mutual agreements to writing.

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions herein set forth, it is agreed by the parties as follows:

1. Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.
2. Purpose. The purpose of this Agreement is to set forth the terms and conditions under which Training Entity is allowed to conduct training exercises at the ERTC and to set forth the obligations of each party.
3. Use of ERTC. City and WDTI agree to allow Training Entity to conduct training exercises at the ERTC. All use of the ERTC shall comply with the following:
 - a. All applicable City policies on training or use of the facility, as adopted by the Rapid City Fire Department or Common Council;

- b. All applicable WDTI facility scheduling and reservation policies;
- c. All federal, state and local laws, regulations and ordinances;
- d. All appropriate safety precautions applicable to the training conducted as may be required or recommended by the National Fire Protection Association.

4. Fees and Charges. City agrees that Training Entity may use the ERTC facilities without any rental charge. Fees relating to actual costs of City or WDTI, including but not limited to lost keys or damage repair, may be charged by City or WDTI. Any such charges will be noted on a bill or invoice and sent to Training Entity. Failure to timely pay the charges shall be grounds for immediate termination of this Agreement.

5. Damage to Facility. Training Entity shall be responsible for repair, including replacement, of any ERTC facility, equipment or other property that is damaged as a result of its use of the ERTC. Training Entity shall promptly notify City of any damage to the facilities or equipment. The City shall cause necessary repairs to be made, and bill the Training Entity for the cost of such repairs. Failure to timely pay for repairs shall be grounds for immediate termination of this Agreement.

6. Assumption of Risks. Training Entity acknowledges that conducting and participating in firefighting and/or emergency responder training exercises is inherently dangerous and carries with it certain risks, including damage to property and injury to persons that range from minor to life-threatening, or even death. Training Entity further acknowledges that it and its training participants have a responsibility to reduce the chance of injury by following all safety rules, timely reporting all unsafe conditions, inspecting personal protective gear, and closely monitoring all training activities. Training Entity agrees to assume full responsibility and liability for the risks of bodily injury, including death, and property damage.

7. Release of City, WDTI, and Related Parties. Training Entity agrees to release and discharge the City of Rapid City, Western Dakota Technical Institute, Rapid City Area School District, the South Dakota Health and Educational Facilities Authority, and the officers, directors, employees, and agents of all of them (together the "Releasees"), of and from all liability for any and all actions, claims, demands, losses or damages as a result of injury to persons or property, including death, whether caused by the negligence or other acts or omissions of those released hereunder or otherwise in any way resulting either directly or indirectly from Training Entity's conducting firefighter and/or emergency responder training or using any ERTC facilities or equipment.

8. Waiver of Claims. Training Entity agrees that it will not make a claim against, sue, attach the property of or prosecute the Releasees for any damage to its equipment or injuries to its personnel resulting from the negligence or other acts or omissions of the Releasees while participating in firefighter and/or emergency responder training or using any ERTC facilities or equipment in connection with such activity.

9. Indemnification and Hold Harmless. Training Entity agrees to indemnify, defend and hold harmless the Releasees from all liability, actions, causes of action, claims, demands, losses, damages, expenses and attorney fees, including attorneys fees to establish the Releasees' right to indemnity or those attorneys fees incurred on appeal, resulting from its use of any ERTC facilities or equipment.

10. Individual Waivers. Training Entity shall not allow any person to take part in training activities it sponsors or conducts unless and until such person has executed a release and waiver on a form provided by the City.

11. Ownership and Control of Facility. The City reserves the right to order that all training exercises at the ERTC cease for a period of time as it may determine necessary, for purposes of inspection, certification, investigation, construction, improvement, repairs, or other work or operations at the facility.

12. Insurance. Training Entity shall keep and maintain, at a minimum, occurrence (not claims made) liability insurance for personal injury in the amount of at least \$1,000,000 per person or \$2,000,000 per occurrence, and against liability for property damage in the amount of \$1,000,000 per occurrence. Such policy shall name the City of Rapid City and WDTI as additional insureds. Training Entity shall also keep and maintain workers compensation insurance as required by law. Training Entity shall furnish to City and/or WDTI, upon request, a certificate evidencing such insurance.

13. Term. This Agreement shall be effective from the date executed by both parties until December 31, 2023, unless earlier terminated according to the provisions hereof.

14. Termination. This Agreement may be terminated prior to the end of the term by either party for any reason upon thirty days' notice to the other party. Additionally, City may terminate this Agreement immediately without thirty days' notice should Training Entity breach any term hereof.

15. Notices. All notices given hereunder shall be made by hand delivery or certified mail, return receipt requested, to the parties at the following addresses:

<u>To City</u>	<u>To WDTI</u>	<u>To Training Entity</u>
City of Rapid City	Western Dakota Tech	_____
Attn: Fire Chief	Attn: _____	Attn: _____
10 Main Street	800 Mickelson Drive	_____
Rapid City, SD 57701	Rapid City, SD 57703	_____

16. Time of Essence. Time is of the essence of this Agreement.

17. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

18. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

19. Enforceability. This Agreement is intended solely for the benefit of the parties hereto and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party.

20. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

21. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

22. Severability. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

23. Headings. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

24. Construction. This agreement shall be deemed to be prepared jointly by the parties hereto and neither shall be deemed to be its sole author. In the event of any claim of ambiguity, no provision shall thereby be construed against either party.

25. Jurisdiction and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota without regard to any conflict of laws provision. Any litigation under this Agreement shall be resolved in the circuit court of Pennington County, State of South Dakota.

26. Survival. This and Paragraphs 4 through 9, inclusive, Paragraph 11, and Paragraphs 16 through 23, inclusive, hereunder shall survive the termination of this Agreement for any reason

Dated this ____ day of _____, 20__.

CITY OF RAPID CITY

WDTI

TRAINING ENTITY

By _____

By _____

Fire Chief

Its _____

Its _____