

SOUTH DAKOTA DEPARTMENT OF AGRICULTURE  
STATE OF SOUTH DAKOTA  
JOINT POWER AGREEMENT

AGREEMENT made and entered into by and between the South Dakota Department of Agriculture, an agency of the State of South Dakota, 523 East Capitol Ave., Pierre, SD 57501-3182, (hereinafter "SDDA") and the following government entity City of Rapid City, South Dakota, (hereinafter "CITY").

I

GENERAL PROVISIONS

The SDDA hereby enters into this Agreement for services with CITY in consideration of and pursuant to the terms and conditions set forth herein.

1. The CITY and SDDA will perform those services described in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein.

2. The CITY's services under this Agreement shall commence on the 1<sup>st</sup> Day of August, 2004 and end on the 30th Day of June, 2005, and will automatically renew on an annual basis, unless sooner terminated pursuant to the terms hereof.

3. The CITY will not use SDDA equipment, supplies or facilities. The CITY's Employer Identification Number is \_\_\_\_\_.

4. The SDDA will make payment for services upon satisfactory completion of the services. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$10,000.00. The SDDA will not pay CITY's expenses as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed SDDA voucher.

5. The CITY agrees to indemnify and hold the SDDA 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 the CITY to be responsible for or defend against claims or damages arising solely from errors or omissions of the SDDA, its officers, agents or employees.

6. The CITY, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

A. Commercial General Liability Insurance:

The CITY shall maintain occurrence based commercial general liability insurance or equivalent form of self insurance or pool insurance with a limit of not less than one million dollars for each occurrence.

B. Worker's Compensation Insurance:

The CITY shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, the CITY shall furnish the SDDA with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days' prior written notice to the SDDA. The CITY shall furnish copies of insurance policies if requested by the SDDA.

7. While performing services hereunder, the CITY is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

8. CITY agrees to report to the SDDA 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 CITY or the SDDA to liability. CITY shall report any such event to the SDDA immediately upon discovery. CITY's obligation under this section shall only be to report the occurrence of any event to the SDDA and to make any other report provided for by their duties or applicable law. CITY'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 the SDDA under this section shall not excuse or satisfy any obligation of CITY to report any event to law enforcement or other entities under the requirements of any applicable law.

9. 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 SDDA at any time with or without notice. If termination for such a default is effected by the SDDA, any payments due to CITY at the time of termination may be adjusted to cover any additional costs to the SDDA because of CITY's default. Upon termination the SDDA may take over the work and may award another party an agreement to complete the work under this Agreement. If after the SDDA terminates for a default by CITY it is determined that CITY was not at fault, then the CITY shall be paid for eligible services rendered and expenses incurred up to the date of termination.

10. 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 SDDA. Termination for any of these reasons is not a default by the SDDA nor does it give rise to a claim against the SDDA.

11. This Agreement may not be assigned without the express prior written consent of the SDDA. 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.

12. This Agreement shall be governed by and construed in accordance with the laws of the SDDA of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

13. 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.

14. The CITY will provide the services herein pursuant to a joint power agreement with the Rapid City School District and the City/School Common Energy Plant operated pursuant thereto.

15. 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 \_\_\_\_\_, on behalf of the SDDA, and by and to \_\_\_\_\_, 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.

16. 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.

17. 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.

## II. JOINT POWERS

A. The SDDA and CITY agree to the following provisions pursuant to the Joint Powers Act (SDCL 1-24):

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 the SDDA and CITY 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 the agreement will be undertaken by the respective agencies as described herein. No real property will be purchased to use for this Agreement.

2. A copy of this Agreement will be filed by the CITY, with the Attorney General and the Legislative Research Council not more than 14 days after execution as required by SDCL 1-24-6.1
3. Financing required by this agreement will come from regular annual budgets of the South Dakota Department of Agriculture.
4. This agreement may be terminated by either party upon thirty (30) 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 grounds 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.

In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

SDDA

CITY

BY: \_\_\_\_\_  
 Larry E. Gabriel, Secretary,  
 South Dakota Department of Agriculture

BY: \_\_\_\_\_  
 NAME \_\_\_\_\_  
 TITLE \_\_\_\_\_

RAPID CITY AREA SCHOOL DIST.  
 NO. 51-4

ATTEST:

BY: \_\_\_\_\_  
 ITS: \_\_\_\_\_

\_\_\_\_\_  
 Finance Officer

ATTEST:

\_\_\_\_\_  
 Business Manager

Dated this \_\_\_ Day of \_\_\_\_\_, 2004.

Dated this \_\_\_ Day of \_\_\_\_\_, 2004.

PROOF OF AUTHORITY: CITY will submit proof that the person who signs this agreement has legal authority to bind the CITY to its terms and a copy of such proof shall be attached to this agreement.

Reviewed by:

DOA Staff Attorney PR 7-28-04

Attorney General's Office \_\_\_\_\_ (on \_\_\_ date)

Risk Management \_\_\_\_\_ (on \_\_\_ date)

-State Agency Coding (MSA Center) \_\_\_\_\_.

- State Agency MSA Company for which contract will be paid \_\_\_\_\_.

-Object/subobject MSA account to which voucher will be coded \_\_\_\_\_.

-Name and phone number of contact person in State Agency who can provide additional information regarding this contract

\_\_\_\_\_.

## EXHIBIT A WORK PLAN:

1. The purpose of this Agreement is to allow the City/School Common Energy Plant to provide the following services to the State of South Dakota Dept. of Agriculture (SDDA) and the Great Plains Interagency Dispatch Center:
  - a. Twenty-four (24) hours a day, seven (7) days a week, monitoring and control of the heating, ventilation and air conditioning system (HVAC) at the Interagency Dispatch Center (IDC) located at Rapid City Regional Airport.
  - b. Notification of IDC/State staff of observed problems with these systems and their equipment.
  - c. Notification of contractors designated by IDC/State staff to repair problems with these systems and equipment.
  - d. Time scheduling of these systems and equipment to ensure energy efficiency and occupant comfort.
  - e. Work with IDC/State staff to develop and implement/revise monitoring and control procedures to solve operational problems that develop with these systems and equipment.
  
2. The City of Rapid City Finance Dept. will bill the cost of monitoring and control of the above described HVAC systems and associated equipment to the SDDA on a monthly basis. The amount of the monthly bill will be determined by the following method:
  - a. The Energy Plant staff will determine the average monitoring/control cost per square foot for all the buildings connected to the Energy Plant Building Automation System for the previous fiscal year (January-December).
  - b. The projected cost of inflation determined by the State for the next fiscal year will be added to get the total monitoring/control cost per square foot.
  - c. The total amount of the monitoring/control cost per square foot will be multiplied by 11,194, the total square footage of the IDC, and divided by 12 to determine the monthly bill to the SDDA for the next year.
  - d. The billing year in this agreement, for purposes of determining the monthly bill to the SDDA, and in order to give the Energy Plant staff the necessary time to calculate the billing for the upcoming year, will be from March 1<sup>st</sup> until the last day in February of the following year.
  
3. Pursuant to the “Agreement for Joint Operation and Use of Joint Energy Plant” the money received from the State to pay for monitoring will be used to reduce the Energy Plant operating costs by a like amount. The reduction in operating costs will be shared equally between the School District and Civic Center Plaza Corporation.