

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
WESTERN DAKOTA TECHNICAL INSTITUTE FOR THE
CONSTRUCTION AND JOINT USE OF A BURN TRAINING FACILITY**

This Agreement is made and entered into this ____ day of _____, 2006, by and between the Rapid City School District on behalf of Western Dakota Technical Institute, hereinafter referred to as “Western Dakota”, and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter referred to as the “City”.

WHEREAS, the Rapid City Common Council adopted a five year plan for expenditure of funds from the Rapid City Economic Development and Civic Improvement Fund that allocated money for the construction of a Burn Training Facility; and

WHEREAS, the City and Western Dakota desire to construct and be joint users of the Burn Training Facility; and

WHEREAS, the City and Western Dakota desire to ensure the maximum cooperation between the two entities; and

WHEREAS, the City and Western Dakota need to clarify their respective roles and responsibilities regarding the construction and joint use of the Burn Training Facility.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is hereby agreed as follows:

1. **Construction.** The City shall provide for construction costs of the Burn Training Facility, including design and construction administration, an amount not to exceed five hundred thousand dollars (\$500,000.00) from the Rapid City Economic Development and Civic Improvement Fund.

Western Dakota shall provide the property that the Burn Training Facility will be constructed on at no cost to the City.

Western Dakota shall construct the Burn Training Facility using its own materials and labor.

Construction and other improvements shall be in conformity with the regulatory codes of the city, state, and federal law and be subject to approval by the City. Additionally, construction and improvements shall be in conformity with the National Fire Protection Association guidelines on the construction and improvement of a burn training facility.

2. **Usage and Operation.** The Burn Training Facility shall be used for training and educational purposes.

Western Dakota agrees not to take any action or conduct any activity that would inhibit or prohibit the Burn Training Facility from being used for its intended purpose.

3. **Maintenance and Repair.** Western Dakota agrees to maintain said premises and to keep said premises in a well-maintained and reasonably attractive condition.

Western Dakota agrees to police the premises and on a regular basis to pick up all trash, debris, and waste material of every nature resulting from the use of the premises by itself or any invitees. Western Dakota agrees to provide its own trash receptacles for use at the premises and be responsible for the removal of such waste.

Western Dakota agrees it will be responsible for all sidewalk and parking lot snow removal immediately adjacent to the premises.

Western Dakota shall provide all utility, custodial and maintenance service to the Burn Training Facility in a manner consistent with its use. All costs for these services along with the salaries will be paid by Western Dakota.

The City and Western Dakota will establish sufficient times for custodial and maintenance services that are mutually beneficial and that promote maximum use of the facilities without compromising custodial and maintenance performance.

Repair due to damage caused to the Burn Training Facility from inappropriate use shall be paid by the agency or entity sponsoring the activity that caused the damage. Otherwise, capital improvements and major repairs deemed necessary by the City and Western Dakota will be paid equally by the City and Western Dakota.

4. **Ownership.** The Burn Building Facility shall be owned exclusively by the City of Rapid City.
5. **Schedule.** A schedule for the use of the Burn Training Facility shall be agreed on by the official contacts of each party.
6. **Discrimination.** Western Dakota shall not on the grounds of race, color, sex, creed, religion, ancestry, national origin or disability discriminate or permit discrimination against any person or group of persons, in any manner prohibited by local, state, or federal laws.
7. **Official Contacts.** The official contact for the City shall be the City of Rapid City Fire Chief or designee. The official contact for Western Dakota shall be the President of Western Dakota or designee.

8. **Insurance.** Western Dakota shall at all times during the term of this Agreement maintain general liability insurance with a Three Million Dollars (\$3,000,000) limit per occurrence and Five Millions Dollars (\$5,000,000) aggregate. Western Dakota shall furnish the City with a certificate of insurance acceptable to the City and a statement generally describing the coverage therein contained. Such certificate and statement shall be attached hereto and incorporated herein. Said policy of insurance shall name the City as an additional insured.

Western Dakota will maintain property damage insurance for all structures involved in this Agreement.

Each party shall carry its own insurance for personal property or building contents.

9. **Hold Harmless.** Western Dakota shall indemnify, defend and hold the City harmless from any and all damages, claims, suits, demands, or asserted obligations for injuries or damages arising out of the conduct of Western Dakota or any of its employees, agents, or independent contractors.
10. **Assignment.** Western Dakota agrees not to assign the services, rights, and obligations it has agreed to without the express written permission of the City.
11. **Termination.** In the event that Western Dakota is unable to fulfill the terms of this Agreement, the City has the right to terminate this Agreement, and Western Dakota agrees to repay the City of Rapid City an amount equal to the amount that the City contributed to the construction of the Burn Building Facility plus five percent (5%) interest.
12. **Removal of Facility.** In the event that Western Dakota is for any reason unable to fulfill the provision of this Agreement providing that it shall make available the property on which the Burn Building Facility is located, the facility shall remain the property of the City, and Western Dakota shall be responsible for funding all of the costs associated with the removal of the facility and the reconstruction of the facility at a different location.
13. **Invalid Sections.** In the event that any section(s) or provision(s) of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision(s) of this agreement if it can be given effect without the invalid section(s) or provision(s).
14. **Choice of Law and Venue.** The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this Agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

15. Merger. The parties agree that this writing constitutes the entire Agreement between them and that there are no other oral or collateral agreements or understandings of any kind or character except those contained herein. No modification or amendment to this Agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

16. Term. This Agreement shall be for a period of ninety (90) years from the date hereof. In the event that either the City or Western Dakota default on any provisions of this Agreement, the other party may assume full maintenance, operations and scheduling authority and the other provisions of this Agreement shall remain in full force.

Dated this _____ day of _____, 2006.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

On this the _____ day of _____, 2006, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notary Public, South Dakota
My Commission Expires:

(SEAL)

RAPID CITY SCHOOL DISTRICT

School Board President

ATTEST:

Business Officer

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

On this the _____ day of _____, 2006, before me, the undersigned officer, personally appeared _____ and _____, who acknowledged themselves to be the President and Business Officer, respectively, of the Rapid City School Board, and that they, as such President and Business Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Rapid City School Board by themselves as President and Business Officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notary Public, South Dakota
My Commission Expires:

(SEAL)