

JOINT POWERS AGREEMENT
BETWEEN THE STATE OF SOUTH DAKOTA
DEPARTMENT OF MILITARY AND VETERANS AFFAIRS
AND THE CITY OF RAPID CITY

THIS JOINT POWERS AGREEMENT is entered into the ____ day of _____, 2004, by the State of South Dakota, Department of Military and Veterans Affairs, acting through the South Dakota Army National Guard, located at 2823 West Main Street, Rapid City, South Dakota 57702-8186 hereinafter identified as "Guard," and the City of Rapid City, acting through its mayor, 300 Sixth Street, Rapid City, SD 57701, hereinafter referred to as "City" pursuant to the authority as provided in SDCL ch. 1-24.

WHEREAS, the Guard pursuant to SDCL chs. 33-11 and 33-12, and the City pursuant to SDCL 9-32-11 and 9-12-1(1) have the authority to enter into this type of Agreement for the removal and transportation of soil; and

WHEREAS, the Guard currently leases real property from the City located at 1205 E. Highway 16B where the Guard has constructed its Combined Support Maintenance Shop #2 hereinafter referred to as the Premises; and

WHEREAS, there is excess soil located on the Premises that the Guard and the City agree may be removed and transported to another location for use by the City for soil erosion control in

conjunction with its adjoining solid waste facility, among other uses; and

WHEREAS, the City let for bidding and awarded to the lowest responsible bidder, hereinafter referred to as the "Contractor," a contract for the removal and transportation of the excess soil pursuant to specifications agreed upon by the parties; and

WHEREAS, Guard and the City believe it is a more efficient use of resources to enter into a joint undertaking for the removal and transportation of the excess soil and that this Agreement is for their mutual benefit.

NOW THEREFORE, it is mutually agreed as follows:

1. That the term of this Agreement shall commence upon the execution hereof effective the day and year above first written, and continues until December 31, 2004, unless amended or terminated or extended pursuant to the terms hereof.

2. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. This Agreement also depends upon the continued availability of appropriated funds and expenditure authority from the Rapid City Council for this purpose. If sufficient funding or expenditure authority is not available to a party, whether through a lack of appropriations, expenditure

authority, or if the party otherwise lacks sufficient funds to carry out its obligations and responsibilities under this Agreement, notwithstanding a good faith effort to secure such funds, or if funds become unavailable by operation of law or federal funds reductions, that party shall provide written notice of termination within seven days of determining that it lacks the necessary funding. Termination for the reasons set forth in this section shall not constitute a default

3. In consideration of the City's observance and performance of the terms and conditions set forth herein, the Guard agrees as follows:

a) To allow the Contractor reasonable access to the Premises for removal and transportation of the excess soil subject to: (i) At least five (5) days advance notice of the date, time and duration for which the Contractor is seeking access for removal and transportation of the soil, provided the five day requirement may be waived by the Guard in its sole discretion at the City's request; (ii) Prior to being allowed access the City provides the Guard with the copy of the contract with the Contractor, and provides a copy of a certificate of insurance from the Contractor that demonstrates that the Contractor has

and shall maintain occurrence based commercial general liability insurance with a limit of not less than \$100,000.00, and business automobile liability insurance with a limit of not less than \$300,000 for each accident.

b) The Guard will reimburse the City for fifty percent 50% of the City's actual cost for removing the soil pursuant to the contract, in an amount not to exceed \$43,000.00. Payment will be made upon the City submitting a voucher setting forth the actual payments made by the City to the Contractor together with a description of the work performed, so that a factual basis for reimbursement can be established. The Guard's reimbursement obligations are limited solely to the City's costs associated with the actual removal of the soil from the Premises. The City is solely liable for the remaining costs including but not limited to placement of the removed soil, reseeding and other incidental work.

4. In consideration of Guard's observance and performance of the terms and conditions set forth herein, the City agrees as follows:

- a) To remove and transport the excess soil, currently determined to be not in excess of 62,000 cubic yards, through a contract with Contractor for such removal and transportation;
- b) That the contract with the Contractor complies with all applicable laws and ensures that the Contractor will comply with all the provisions of the Contract and this Agreement;
- c) That the City will be solely responsible and liable for its performance of the terms and conditions of the contract between the City and Contractor and that the contract is fully performed by the Contractor.
- d) That the contract between the City and Contractor will require that any work being performed will be done in compliance with the provisions contained in the Technical Specifications document for Project Number LF04-1368, attached hereto and incorporated herein as "Exhibit A" by this reference, and comply with the air quality requirements contained in Chapter 8.37 of the Rapid City Municipal Code, as well as all applicable state and federal air quality requirements,

and all applicable state and federal erosion control and storm water management requirements.

e) That the City will exercise its rights and enforce the terms of contract with Contractor at its sole cost if the contract is breached.

f) That the City agrees to indemnify and hold the State 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 entry into this Agreement. 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 State, its officers, agents or employees.

7. This Agreement shall be governed and construed in accordance with the laws of the State of South Dakota.

8. This Agreement may not be assigned without the express prior written consent of all parties. 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.

9. This Agreement can be terminated prior to the end of its term upon Agreement of the parties or upon the parties fully complying with all the terms and conditions set forth herein.

10. The rights and remedies herein conferred shall be cumulative and not alternative and shall be in addition and not in substitution of or in derogation of rights and remedies conferred by any other agreements between the parties hereto or by any applicable law. The failure of a party to enforce strict performance of any covenant, promise, term, or condition herein contained, shall not operate as a waiver of that party's right thereafter to require that the terms hereof be strictly performed.

11. The parties declare that no specific entity, as contemplated in SDCL 1-24-4, is being created to implement this Agreement, and that the cooperative undertaking herein described shall be administered by The Adjutant General for the Guard and the Mayor for the City and their authorized designees as contemplated in SDCL 1-24-5.

12. This Agreement and the covenants herein contained shall insure the benefit of and be obligatory upon the legal representatives, agents, employees, successors in interests and assigns to the respective parties hereto.

13. All notices or communications herein shall be in writing and shall be sufficiently given and shall be deemed given as delivered, if delivered by personal delivery to the party representatives set forth above or their authorized designees or by mail to the parties at the addresses set forth in this Agreement. The parties, by giving notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, and other communications shall be sent.

14. In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

15. 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.

16. By the signature of their representative below, the parties certify that approval of this Agreement has been obtained by that governmental entity's governing body or officer pursuant to SDCL 1-24-3 and 1-24-6 by ordinance, resolution or other appropriate means, and that the representative is authorized to sign on the party's behalf. A copy of RC's

authorizing resolution or ordinance is attached to this Agreement and incorporated herein by reference. A copy of this Agreement will be filed with the Office of Attorney General and the State Auditor pursuant to the provisions of SDCL 1-24-6.1.

IN WITNESS HERETO, the parties have set their hand effective the day and year above first written.

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

Michael A. Gorman
MG, SDNG
The Adjutant General

CITY OF RAPID CITY

Jim Shaw
MAYOR

ATTEST:

Finance Officer

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

JPL 6/2/04
Attorney Date