

**AGREEMENT FOR EMERGENCY RESPONSE TO WMD (Weapons of Mass Destruction) AND HAZARDOUS MATERIALS INCIDENTS**

This Agreement made and entered into by and between the City of Rapid City, the Rapid City Department of Fire and Emergency Services, Pennington County, a political subdivision of the State of South Dakota, and Rosebud Sioux Tribe

The parties to this agreement, in consideration of the mutual covenants and stipulations set out herein, agree as follows:

**Section One  
Purpose**

The purpose of this Agreement is to enable the counties to receive emergency assistance in the form of personnel, equipment, and/or technical information in responding to emergencies involving WMD (Weapons of Mass Destruction) and hazardous materials incidents. This agreement is executed pursuant to SDCL 1-24-8; no separate entity is created under this Agreement.

**Section Two  
Initiating Requests**

Hazardous materials and WMD response requests shall be made to the fire chief of the Rapid City, Aberdeen, Watertown, or Sioux Falls fire department or his/her designee. Response shall be subject to the department's good faith discretion that the response will not compromise the ability to respond to the immediate needs of Rapid City, Aberdeen, Watertown, or Sioux Falls. The parties shall not be obligated to respond to every emergency as requested.

**Section Three  
Response Levels**

The response levels are based on the protective clothing required. The levels are as follows:

- Level I – Structural Fire Fighting Protective Clothing
- Level II – Nonencapsulated Protective Clothing
- Level III – Encapsulated Protective Clothing
- Level IV – High-Temperature Protective Clothing.

Hazardous materials (HAZMAT) teams will respond to HAZMAT incident requests for Level II, Level III, and Level IV emergencies. Requests to respond to Level I incidents will be evaluated by the HAZMAT Team.

**Section Four**

## **Priority of Requests**

In the event two or more incidents arise at approximately the same time, the parties will prioritize the requests, and will assign resources as determined by the chief or his/her designee.

## **Section Five Typical Response**

The HAZMAT team will determine the number of units responding based on the information provided. A typical minimum response is one HAZMAT unit, one command unit, and one medical unit. The number of personnel responding will agree with National Fire Protection Association recommendations. The unit staffing levels will be as follows:

- Medical Unit – 2 EMT personnel HAZMAT Technician certified
- Command Unit – 1 chief officer HAZMAT Incident Commander certified
- HAZMAT Unit – 3 or 4 persons HAZMAT Technician certified
- Support Unit – 3 or 4 persons HAZMAT Technician certified
- Fire Apparatus – 3 or 4 persons HAZMAT Operations certified

## **Section 6 Payment or Reimbursement of Costs**

Medical unit, command unit, hazmat unit and support unit mileage shall be reimbursed using the Internal Revenue Service Federal business mileage rate. Reimbursement for fire apparatus shall be at the rates stated in the Wildland Fire Agreement established with the South Dakota Department of Agriculture, Wildland Fire Suppression Division. A copy of this agreement is available in the State Fire Marshal Office. Other reimbursable expenses include:

- Specialty HAZMAT equipment and materials expended or damaged due to incident response at the market replacement or repair cost.
- Salaries at the published salary rates to include overtime expenses. Included are the salaries of the responding personnel and call back personnel to maintain responding department home staffing levels.
- Meal and lodging costs at the published State rates.

Reimbursement from the responsible party (including disaster assistance) is billed by the county jurisdiction requesting the assistance. The requesting jurisdiction shall be responsible to reimburse the responding HAZMAT team(s) within sixty (60) days of invoice. This excludes State and Federal declared disasters.

## **Section Seven**

## **Liability**

In the event any civil case arises, or is threatened, the requesting party shall defend, indemnify and hold harmless the City of Rapid City/responding party and Pennington County, including all of the City and County officers, employees, members, agents, and representatives from and against any and all liability, claims, damages, actions, judgments, losses, costs, and expenses, including costs of litigation and attorney's fees, whether at law, in equity, before an administrative agency or otherwise, arising from the acts or omissions of the responding party, its officers, employees, agents, and representatives under this Agreement.

## **Section Eight Third Party Recovery**

Nothing in this Agreement shall prevent the parties from recovering costs of services rendered from an entity or third party who is the "person having control over the hazardous substance," as defined herein, where such recovery of costs is provided by law, or from seeking reimbursement from the Environmental Protection Agency under the Comprehensive Environmental Response, Conservation, Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 or as subsequently amended. To assist the requesting party in the recovery of costs, the responding party agrees to comply with all State and Federal reporting requirements, including but not limited to, required reporting to the South Dakota Department of Environment and Natural Resources, and U.S. Environmental Protection Agency under CERCLA.

## **Section Nine Effective Period**

This Agreement, unless terminated as stated below, shall be in full force from January 25, 2007 until January 25, 2011. The Agreement may be modified by agreement of both parties. Any agreed modifications must be in writing. Request for modification shall be in writing and include any desired language changes.

## **Section Ten Termination**

Any party may terminate this Agreement at any time for cause upon written notice either delivered or mailed by certified U.S. mail to the address set forth below, for such party. The notice shall give a reasonable period of time to cure the breach. Such notice shall be given at least thirty (30) days before the effective date of termination, and the date of termination shall be stated in the notice.

## **Section Eleven**

**Amendment**


This Agreement may only be amended by written instrument duly executed by the parties hereto.

**Section Twelve  
Third Party Beneficiaries**

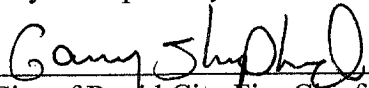
It is the intent of the parties that no person, other than political subdivisions of the requesting party, who is not a signatory to this Agreement, shall benefit from the provisions of this Agreement and that no cause of action is created herein for the benefit of any third party.

Signature blocks:

\_\_\_\_\_  
City of Rapid City Mayor

  
\_\_\_\_\_  
Rosebud Sioux Tribe Chairman

\_\_\_\_\_  
City of Rapid City Finance Officer

  
\_\_\_\_\_  
City of Rapid City Fire Chief

\_\_\_\_\_  
Pennington County Commission