

ADDENDUM NO.4  
SOUTH DAKOTA DEPARTMENT OF MILITARY AND VETERANS AFFAIRS LEASE  
AGREEMENT

This Addendum No. 4 further amends the Lease Agreement dated October 13, 1992, by and between the City of Rapid City, a municipal corporation, located at 300 6th Street, Rapid City, South Dakota, 57701, hereinafter referred to as the LESSOR, and the South Dakota Department of Military and Veterans Affairs Office located at 2823 West Main Street, Rapid City, South Dakota 57702, hereinafter referred to as LESSEE. Upon execution by the parties this Addendum No. 4 will be attached to the Lease Agreement and prior Addendums and incorporated therein.

WHEREAS, the LESSEE is in the need of excess soil removed from property leased to LESSEE under the Lease Agreement and Addendums, herein after referred to as the "Leased Premises" to prepare it for expansion of the CSMS #2 storage area, as provided in CSMS #2 Site Earth Removal Plan FY08, SDARNG FMO#FRC080640F, hereinafter referred to as the "Grading Plan," the Stormwater Pollution Prevention Plan (SWPPP) CSMS#2 Site Earth Removal Plan, hereinafter referred to as the "Stormwater Plan," and the South Dakota Department of Water and Natural Resources discharge permit SDR10D670, hereinafter referred to as "Discharge Permit;" and

WHEREAS; the LESSOR is in need of excess soil for the Rapid City landfill and is willing to remove and transport the excess soil from the Leased Premises in accordance with the LESSEE's Grading Plan, Stormwater Plan and Discharge Permit, and the other terms and conditions set forth in this Addendum No. 4.

NOW THEREFORE, for in consideration of the mutual promises and agreements contained in the Lease Agreement, prior Addendums and those set forth below, the parties agree to further amend the Lease Agreement as follows:

1. LESSEE agrees to allow LESSOR access to the Leased Premises for the purpose of allowing LESSOR to remove and transport soil under the terms and conditions of the Grading Plan.
2. LESSEE agrees to provide a copy of the Grading Plan to LESSOR together with copies of all documents, plans and permits prepared or obtained by LESSEE that are associated with the Grading Plan, including the Discharge Permit and Stormwater Plan.
3. LESSOR agrees to remove and transport the soil from the Leased Premises under the terms and conditions set forth in the Grading Plan, at its sole cost.
4. In removing and transporting the soil under the Grading Plan, LESSOR will comply with the terms and conditions of the Stormwater Plan and Discharge Permit.
5. In removing and transporting the soil LESSOR agrees to comply with all State and Federal laws and local ordinances associated with its soil removal and transportation activities.
6. LESSOR agrees that all removal and transportation of soil consistent with this Addendum No. 4 will be completed by December 31, 2010.

- 7. LESSOR will be responsible for all drainage, erosion, pollution and Discharge Permit compliance issues until the soil removal and transportation project is completed. Upon completion, LESSEE agrees to assume responsibility for these issues at its sole cost.
- 8. LESSEE shall not be responsible for any injury to persons or damage to property arising from the LESSOR'S activities under this Addendum No. 4. The LESSOR will be solely responsible for all injury to persons and damage to property of the LESSEE and third parties.
- 9. LESSOR agrees to indemnify and hold the LESSEE and 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 performing activities under this Addendum No. 4. This section does not require the LESSOR to be responsible for or defend against claims or damages arising solely from errors or omissions of the LESSEE, State, and their officers, agents and employees.
- 10. All other prior discussions, communications and representations concerning the subject matter of this Addendum 4 are superseded by the terms of this AGREEMENT, and in the case of conflict, the terms of this Addendum No. 4 are intended to and do control over terms in the Lease Agreement and prior Addendums.
- 11. Except those in conflict with this Addendum No. 4, all other terms and conditions of the Lease Agreement and Addendums thereto shall remain as originally written.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum No. 4 as of the last date written below.

CITY OF RAPID CITY

DEPARTMENT OF MILITARY AND VETERANS


\_\_\_\_\_  
 Alan Hanks  
 Mayor  
**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_  
 Steven R. Doohen  
 The Adjutant General/Secretary  
**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2009

Attest:

\_\_\_\_\_  
 Finance Officer  
**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2009

APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE

  
 \_\_\_\_\_  
 Attorney

12-8-09  
 \_\_\_\_\_  
 Date