JOINT POWERS AGREEMENT

Regarding
Emergency Response of the State Regional Response Teams

This Joint Powers Agreement is made and entered into between the Rapid City Fire Department (hereafter the “Department”) and the State of South Dakota, Department of Public Safety, Office of Homeland Security (hereafter the “State”), for emergency response within the State of South Dakota and is effective _______________ until _______________.

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 Joint Powers Agreement is for the State and the Department to cooperate in establishing and maintaining technical response capabilities within the State of South Dakota, enabling all counties to receive emergency assistance in the form of an on-site response team to respond to incidents, terrorism, or other emergencies. These capabilities include, but are not limited to, hazardous materials response, structural collapse, wide area search, and technical rescue operations.

In consideration of the Department’s ability to provide personnel to achieve this purpose and its compliance to the terms and conditions set forth in this Agreement, the State agrees to provide funding from Homeland Security Grant Funds for the express purpose of providing training, equipment, and supplies to maintain these response capabilities. The State further agrees to provide a Response Team Coordinator who will ensure that proper equipment, training, supplies and proficiency exercises are maintained and documented.

Homeland Security Grant Funds are currently allocated at up to $125,000 annually, to be disbursed by the Response Team Coordinator, at the discretion of the Director, Homeland Security or designee, on authorized expenses. This funding will be allocated annually; any changes to the maximum amount will be communicated to the Department by the Response Team Coordinator.

SECTION TWO
DURATION

This Joint Powers Agreement, unless terminated as stated herein, shall be in full force from this date of last signature and will remain in effect for the time period shown above. This agreement may be modified by agreement of all parties, in writing. Request for modification shall be in writing and include any desired language changes.
SECTION THREE
DEFINITIONS

A) **Activation**: the process of mobilizing team members to deploy to an incident or disaster site. For responses to events that fall under a current or future emergency or disaster declaration by the Governor pursuant to South Dakota Codified Law ("SDCL") Chapter 34-48A (a “Declared Emergency or Disaster”), the time at which the Response Team member receives a request for activation and verbally accepts the mission will be considered the time at which personnel costs may be charged under this Joint Powers Agreement. For activations that do not involve a Declared Emergency or Disaster, or for those activations involving pre-deployment of members in anticipation of an event, the time at which personnel costs to be charged to Response Team activities shall be determined by the Fire Department Chief, in consultation with the Requesting Agency.

B) **Alert**: the process of informing the Department that an event has occurred and that the Response Team may be activated at some point within the next 24-48 hours.

C) **De-activation**: The process of de-mobilizing the Response Team members upon notification from the incident commander to stand down.

D) **Response Team**: Identified members of the Department that have been provided training, expertise, or equipment to allow for qualified response to incidents or disasters.

E) **Member**: An individual who has been formally accepted into the Response Team, meeting all requirements for skills and knowledge, and is in good standing with regard to compliance of necessary training and fitness.

SECTION FOUR
ACTIVATION REQUESTS

Requests for emergency response can be made directly to the Department, or through the Response Team Coordinator, or to the State Duty Officer at 605 773-3231. Requests for assistance that are in response to Declared Emergencies or Disasters must be approved by the State Duty Officer at the Office of Emergency Management. Requests for assistance made by local governments to the State Duty Officer will be forwarded to the Department or Response Team Coordinator and response activities will be coordinated between the Requestor and Department. Except as otherwise required by SDCL Chapter 34-48A, a Department's response to a request under this Section Four is subject to its good faith determination that the response will not compromise its ability to respond to the immediate needs of the local jurisdiction that it ordinarily serves. Department’s discretion with respect to such requests is absolute, and the Response Team shall not be obligated to respond to every emergency as requested. The deployment of a
Response Team will be limited to emergency situations. Clean up and remediation is not the responsibility of the Department.

SECTION FIVE
PRIORITY OF REQUESTS

Except for requests received in response to a Declared Emergency or Disaster, in the event two or more incidents arise at approximately the same time, the Department may prioritize the requests and assign resources as determined most appropriate at its own discretion. In the event of multiple requests in response to a Declared Emergency or Disaster, Department and State shall prioritize requests in a manner consistent with SDCL Chapter 34-48A.

SECTION SIX
TYPICAL RESPONSE

The Department will respond as approved by its chief. The Response Team will function under National Incident Management System (NIMS) Incident Command Protocol during deployment and report to the Incident/Unified Command at all times. The Response Team will perform specialized and technical response. When necessary, the responding members may work in unison with an emergency response team from another jurisdiction to form a cumulative response.

Response activities for a deployment request made directly to the Department by a Requesting Agency shall be determined by the Department in accordance with information provided at the time of the request and coordinated appropriately with the Requesting Agency. For responses that are made in conjunction with Declared Emergency or Disaster, details such as response force, equipment, and other protocols will be coordinated between the department and the Response Team coordinator. This coordination will determine the number and type of responding units based on the best information available at the time of deployment. Responses made in conjunction with a Declared Emergency or Disaster must be approved by the Office of Emergency Management.

SECTION SEVEN
DEACTIVATION OF RESPONSE

The deactivation of a response will be negotiated by the Incident Commander in charge of the response and the Response Team Coordinator. Every effort will be made to ensure the brevity of the response in order to avoid unnecessary expense and time away from the local jurisdiction.

SECTION EIGHT
PAYMENT OR REIMBURSEMENT OF COSTS
A request for payment or reimbursement of costs for response to an incident that is not part of a Declared Emergency or Disaster may be made under the mutual aid request provisions in SDCL Chapters 34-48 and SDCL 34-48A.

Payment or reimbursement of costs for response to an incident that is part of a Declared Emergency or Disaster will be handled through the Department of Public Safety, Office of Emergency Management ("OEM").

Reimbursable expenses include and will be prioritized in the following manner:

1. Overtime for callback personnel to maintain responding department home staffing levels and wage and overtime expenses of responding personnel.
2. Travel expenses of responding personnel (mileage, lodging and meals).
3. Equipment and materials expended or damaged due to incident response if items were not purchased with federal funds.
4. Replacement and/or repair of equipment or materials purchased with federal funds.

Vehicle mileage shall be reimbursed using the State mileage reimbursement rates published at the following website: [www.state.sd.us/boa/fleet&ctr.htm](http://www.state.sd.us/boa/fleet&ctr.htm). Reimbursement for equipment usage shall be at the most recent rates stated in FEMA’s Schedule of Equipment Rates with the following exception: if the equipment was purchased with federal funding, usage rates will not be reimbursed (except for fuel for travel to the incident site, which will be reimbursed).

In order to be compensated, the Department shall submit any required documents to OEM in accordance with its procedures.

**SECTION NINE**

**DEPARTMENT RESPONSIBILITIES**

The Department will ensure that each member is properly trained and qualified for his/her functional position. Team members are expected to prioritize safety, minimize risk, demonstrate good personal conduct, maintain open communication and be accountable for personnel and equipment. Team members also must maintain physical condition and immunization standards. Teams are also recommended to participate in annual coordinated training.

The Department agrees to provide the State, upon request, data and information related to response activities undertaken pursuant to this Agreement. This may include numbers and types of responses, equipment and personnel utilized for responses, cost estimates for responses outside of jurisdiction, and any billing or reimbursement information regarding responses.

**SECTION TEN**

**PROVISION FOR CARE OF VEHICLES AND EQUIPMENT**
It shall be the responsibility of the Department or its designated representative to title, store, and maintain any Specialized WMD, Hazardous Materials, and Technical Rescue Equipment obtained through this Joint Powers Agreement.

SECTION ELEVEN
LIABILITY

The Department 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 an error or omission of the Department, its officers, agents, and employees in performing services hereunder. This section does not require the Department to be responsible for or defend against claims or damages arising from errors or omissions of the State, its officers, agents or employees or from the errors or omissions of third parties that are not officers, employees or agents of the Department, unless such errors or omissions resulted from the acts or omissions of the Department. Nothing in this Agreement is intended to impair the insurance coverage of Department or any subrogation rights of Department's insurers.

SECTION TWELVE
FUNDING OUT

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 may be terminated by the State.

SECTION THIRTEEN
TERMINATION

Any party may terminate this Agreement at any time and for any reason upon written notice either hand-delivered or mailed via first class to the addresses set forth below. Such notice shall be given at least ninety (90) days prior to the effective date of the termination, and the effective date of the termination shall be stated in the notice. Termination of the Agreement also terminates any obligation on the part of the State for any federal fund awards; however, termination of the Agreement does not relieve the State or a Requesting Agency of any obligation for payment or reimbursement of Department’s costs incurred for response prior to the date of termination.

SECTION FOURTEEN
TITLE IV COMPLIANCE

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, no person in the Unites States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied
benefits of, or be otherwise subject 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.

SECTION FIFTEEN
MANDATORY PROVISIONS

The parties acknowledge that no separate entity as contemplated in SDCL 1-24-4 is being created to implement this agreement, and that the cooperative undertakings herein described shall be administered by the director of the Office of Homeland Security on behalf of the State and by the fire department chief on behalf of the Department, or by their designees as contemplated in SDCL 1-24-5. The approval of the secretary of the Department of Public Safety and the mayor/city commission (as applicable), as required by SDCL 1-24-6, is signified by each party’s respective execution of this Agreement. The parties acknowledge that a true and correct copy of this Agreement will be filed with the Office of the Attorney General and the Legislative Research Council within 14 days of the execution hereof, as required by SDCL 1-24-6.1.

IN WITNESS WHEREOF the parties hereto cause this agreement.

STATE:

BY: _______________________________ __________
  Craig Price, Secretary
  Department of Public Safety
  Date

BY: _______________________________ __________
  Jon L. Bierne, Director,
  Office of Homeland Security
  Date

DEPARTMENT:

BY: _______________________________ __________
  Mayor/City Commission Chair
  Date

_______________________________ __________
  Fire Department Chief
  Date

_______________________________ __________
  Finance Officer
  Date