

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

This JOINT POWERS AGREEMENT (AGREEMENT) is entered into by and among the State of South Dakota Department of the Military, ATTN: CFMO of 2823 West Main Street, Rapid City, SD 57702-8170 (hereinafter "DM") and the City of Rapid City, a municipal corporation of the State of South Dakota, 300 Sixth Street, Rapid City, SD 57703 (hereinafter "CITY").

WHEREAS, the DM owns a tract of land commonly referred to as West Camp Rapid that is of a suitable size and location for various military training activities;

WHEREAS, the CITY desires to thin trees on property adjacent to West Camp Rapid for purposes of limiting the risk of a wildland fire in order to protect the life, health and safety of the Soldiers and other personnel training on West Camp Rapid, as well as the owners and residents of adjacent properties;

WHEREAS, portions of the area that the CITY desires to thin of trees, and that the CITY must utilize to safely access and remove debris resulting from the clearing and thinning are located outside of any access agreement or easement previously granted to the CITY for this purpose; and,

WHEREAS, the DM wishes to cooperate with the CITY to protect the life, health and safety of Soldiers and property and other improvements on West Camp Rapid, as well as that of persons and property in adjacent residential areas of Rapid City:

NOW THEREFORE, in consideration of the covenants and agreements contained herein, and the joint and mutual benefits and responsibilities flowing to each party as outlined in this AGREEMENT, the parties agree as follows:

1. The parties enter into this AGREEMENT pursuant to the following authority:
  - a. DM pursuant to the provisions in SDCL ch. 1-24 and SDCL ch. 33-11; and,
  - b. CITY pursuant to the provisions in SDCL ch. 1-24, SDCL ch. 9-12-4.
2. The purpose of the thinning of trees on property adjacent to West Camp Rapid is to reduce the risk of a wildland fire on West Camp Rapid and in the adjoining residential neighborhood, and to encourage the maintenance of a healthy forest on West Camp Rapid.
3. Provided that such personnel adhere to current access control and security procedures established by the DM, the DM agrees to allow authorized CITY personnel access to the areas of West Camp Rapid identified as "Temporary Access" on the attached Exhibit A . Primary access shall be via the established trail

identified as "National Guard Road" on Exhibit A. The City acknowledges that the areas identified as "Temporary Access" are based upon the DM's information and belief as to the boundary of West Camp Rapid and are not based upon a survey of the property. To the extent that any portion of National Guard Road is on property that is not owned by the DM, the City is responsible for obtaining permission from the landowner(s) to access the property. The City assumes any risk as to the accuracy of Exhibit A.

4. It is understood and agreed by and between the parties hereto that the DM is under no obligation to maintain or repair National Guard Road for use by the City.

5. If areas on West Camp Rapid are damaged as a result of the CITY obtaining access as provided for in this Agreement, the CITY agrees to repair the damage in a manner that is suitable to the DM and at no cost to the DM. If during the course of the project, the CITY desires to have an alternate access route to those identified herein, the CITY shall submit a written request to the DM for written approval.

6. The CITY agrees to not disturb the areas of West Camp Rapid, other than for purposes of the required access as provided in Section 3 above. Prior to accessing West Camp Rapid, the CITY will obtain approval from the authorized designee of the DM which approval shall not be unreasonably withheld. The CITY is responsible for coordination with the DM's CFMO prior to entry to West Camp Rapid to ensure that such access will not endanger employees of the CITY or of the DM, military members, or guests of the DM..

7. The CITY agrees to reclaim, at its sole cost and expense and to the satisfaction of the DM, the routes of ingress and egress to the adjacent property to include repair of any damage to National Guard Road, to any fences and to any area of West Camp Rapid by which the City's vehicles or equipment will access the adjacent property, including the drainage area adjacent to National Guard Road.

8. Unless sooner terminated as provided herein, the term of this Agreement is for a period of 12 months from the date executed by the parties, with the option to renew for a 12 month period upon approval from the DM. The CITY will submit a written request to renew the Agreement at least thirty days prior to the expiration date.

9. It is understood and agreed by and between the parties hereto that this Agreement shall terminate if it is determined that the terms and conditions violate the terms of the deed from the Federal Government to the DM, or in the event of War or National Emergency.

10. It is understood and agreed by and between the parties that, if the CITY violates any of the terms or conditions contained in this Agreement, the DM may require the CITY to correct the violation(s) or the DM may terminate the Agreement upon 10 day notice. Notwithstanding the foregoing, the DM may terminate this agreement without cause upon thirty days notice to the City and the City may terminate this agreement without cause upon notice to the DM.

11. Notwithstanding any other provision, this Agreement depends upon continued availability of appropriated funds and expenditure authority to the CITY and the DM for the purposes contemplated herein. This Agreement will be terminated if the Legislature fails to appropriate funds or grant expenditure authority or if there is a lack of sufficient appropriated funds or lack of expenditure authority available to perform its obligations under this Agreement, whether due to lack of appropriations by the Legislature or otherwise. Once the determination of funding insufficiency is made, the affected party will provide the other party with written notice of such funding insufficiency and the effective date of the termination of the Agreement based upon such insufficiency. Termination under this provision does not constitute a default or give rise to any claim against the notifying party.

12. The CITY agrees that the DM is not responsible for any damage to the CITY's vehicles, equipment and associated property except to that extent that such damage or loss of use was directly caused by the DM or its employees. Nothing in this Agreement shall be construed as an indemnification by one party of the other for liabilities of a party or third persons for property loss or damage or death or personal injury arising out of and during performance of this Agreement. Any liabilities or claims for property loss or damage or for death or personal injury by a party or its agents, employees, contractors or assigns or by third persons, arising out of and during the performance of this Agreement shall be determined according to applicable law. The DM is self-insured and covered by the Federal Tort Claims Act. The CITY is insured by Atlantic Specialty Insurance.

13. If any provision of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section or provision of this Agreement if such section or provision can be given effect without the invalid section or provision.

14. Except as expressly provided herein, nothing in this Agreement is intended to affect the National Guard Deed or the respective rights, duties, and responsibilities of the State thereunder.

15. The parties declare that no specific entity is being created to implement this Agreement, and that the parties shall administer through their authorized designees the cooperative undertaking herein described. The authorized designees shall be Scott T. Petrik, Construction and Facilities Management Officer, for the DM, and Tim Weaver, Lieutenant, Rapid City Fire Department for the CITY, or such authorized designees as either party may designate in writing.

16. All notices herein shall be in writing and shall be sufficiently given if delivered by personal delivery to the officers administering this Agreement or their authorized designee, or if sent by first class mail to the addresses set forth above. The parties, by giving notice hereunder, may designate any further or different addresses to which subsequent notices shall be sent.

17. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and

this Agreement constitutes the entire Agreement with respect to the subject matter hereof.

18. This Agreement is intended only to govern the rights and interested of the parties named herein. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any third party in any matter, civil or criminal.

19. The parties acknowledge that a true and correct copy of this Agreement will be filed with the Office of Attorney General and the Legislative Research Council within 14 days of its final execution pursuant to SDCL 1-24-6.1.

20. By the signature of their representatives below, each party certifies that approval of this Agreement by resolution or other appropriate means has been obtained by that governmental body's governing body or officer pursuant to SDCL 1-24-3 and 1-24-6 and that the representative is authorized to sign on the party's behalf.

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

STATE OF SOUTH DAKOTA  
DEPARTMENT OF THE MILITARY

By Timothy A. Reisch Date 28 August 2017  
Timothy A. Reisch  
Major General, SDNG  
The Adjutant General  
Department of the Military

THE CITY OF RAPID CITY, SOUTH DAKOTA

By \_\_\_\_\_ Date \_\_\_\_\_  
Mayor

ATTEST \_\_\_\_\_  
City Finance Officer

(SEAL)



# Exhibit A

