

## **LEASE OF REAL PROPERTY**

This lease entered into as of the 19th day of May, 2003, between the City of Rapid City, a South Dakota municipal corporation, Lessor, in the County of Pennington in the State of South Dakota and the State of South Dakota by and through the Department of Corrections, Lessee. Lessor for and in consideration of the one dollar (\$1.00) and the covenants and agreements contained herein hereby leases the certain real property in the City of Rapid City, County of Pennington, State of South Dakota as legally described below.

### **I. RECITALS**

Lessor is the owner of certain real property which is used for the purpose of a sanitary landfill, reserved for a sanitary landfill, and for the buffer area for a sanitary landfill. Lessee intends to construct a minimum security corrections facility in Pennington County, South Dakota, and wishes to lease a portion of the buffered area upon which to conduct such operation.

### **II. LEASE**

The City of Rapid City hereby leases to Lessee the following described real property, subject to the terms and conditions hereinafter setforth:

an area 650 feet by 250 feet located in a portion of the South Half (S½), the Northeast Quarter (NE¼), and the East Half (E½) of the Northwest Quarter (NW¼) of Section Nineteen (19), Township One North (T1N), Range Eight East (R8E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota,

and more commonly known as 5555 South Highway 79, Rapid City, South Dakota, 57701. The northern boundary of the leased premises shall be approximately 500 feet south of the main landfill gate, west of the existing property line and east of the storage cells.

### **III. TERM OF LEASE**

The term of this lease shall be for an initial term of twenty (20) years to commence on June 3, 2003; thereafter, this lease shall be subject to ten (10) year renewal terms unless either party shall give one (1) year written notice of intent not to renew or intent to renegotiate.

### **IV. SITE IMPROVEMENTS**

The parties recognize that this is a bare land lease with City sewer and water to be made available in the public right of way. All reasonable easements shall be granted by the City for utilities and access. Lessee shall install suitable landscaping, in accordance with the City landscape ordinance or other landscaping plan approved by the City; such landscaping shall be in

place as soon as practicable but, in any case, within eighteen (18) months from the date of this lease. All grading undertaken upon the site by Lessee shall conform to the Landfill Grading Plan adopted by the City. Lessee shall provide a parking lot, suitably paved with asphalt, and of sufficient size to meet the City's parking ordinance requirements.

## **V. ACCESS**

Lessee shall construct all necessary improvements to the access route including, but not limited to, an asphalt road and other improvements as deemed necessary to bring the route within the requirements of the Department of Engineering of Rapid City and the South Dakota Department of Transportation. Lessee shall bear the full cost of any improvements to the access, fencing, gating or other security measures currently existing at the site. Any changes to the gating, fencing, or other security measures must not adversely affect the security of the land fill. All such changes must be approved by the Solid Waste Division Superintendent prior to construction. Lessee shall be responsible for obtaining any necessary approach permits from the South Dakota Department of Transportation.

## **VI. USE OF PREMISES**

Lessee shall use the leased premises for the sole purpose of constructing and operating a minimum security corrections facility. The Lessee shall not use the premises for any other purpose without first obtaining the consent of the Rapid City Common Council. Failure to seek such approval prior to initiating a use other than a minimum security corrections facility shall be considered a material breach of this agreement.

## **VII. ENVIRONMENTAL CONSIDERATIONS**

Lessee recognizes that the City uses adjoining property for the operation of a sanitary landfill which contains a materials recovery facility and composting facility. Lessee accepts the leased premises fully understanding the attendant noise, odor, and possible litter-related consequences of being located in close proximity to such an operation. Lessee specifically accepts the leased premises subject to such operationally related drawbacks. The Lessor's right to use the property adjoining the leased premises as a landfill, material recovery facility and composting facility is at all times superior to the Lessee's rights to the use of the leased premises and to the quiet enjoyment thereof. Lessor agrees to use all good faith efforts to operate such landfill facility within accepted environmental standards. However, Lessee fully accepts the risk that the existing use of the premises by the Lessor of the adjoining land may adversely impact the Lessee's use and quiet enjoyment of the leased premises.

## **VIII. LIABILITY**

Nothing in the 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 the performance of this Agreement. Any liabilities or claims for property loss or death or personal injury by a party or its agents, employees, contractors or assigns or by third

persons, arising out of and during this agreement shall be determined according to applicable law.

## **IX. TERMINATION BY LESSOR**

Lessor may terminate this lease in the event an environmental hazard is identified; once identified and a determination made by the Common Council that it is in the best public interest, a notice shall be served to the Lessee one year prior to the date the site must be vacated, unless public health and safety concerns would dictate a shorter term of notice. This lease shall also be terminable if the Lessee no longer maintains a minimum security corrections facility at the site. It is understood that Lessee shall have one hundred eighty (180) days from the date of termination to remove the structures from the leased premises.

Upon termination of this lease and surrender of the property, Lessee, at the request of the Lessor, shall remove all structures from the leased premises and shall leave the site in a condition suitable for use of the site for landfill purposes. Lessee shall remove all foundations to five (5) feet below grade surface but shall not be required to remove landscaping or the parking lot. Specifically, the site shall be left with groundcover that is not prone to excessive erosion.

Notwithstanding any provisions to the contrary in this agreement, the City of Rapid City, in the sole discretion of the Rapid City Common Council, may allow the ownership of any or all of the improvements to be transferred to the City of Rapid City. If the Rapid City Common Council elects to allow the improvements to be transferred to the City, the State of South Dakota shall immediately execute all necessary documents to transfer marketable title to all such improvements free and clear of any and all encumbrances or title defects.

## **X. DEFAULT**

In the event that Lessee shall be in default of any provision of this agreement, then the Lessor may terminate and end this lease after giving thirty (30) days notice to the State of South Dakota Department of Corrections. At the expiration of (30) days Lessor may enter upon the premises and remove all persons and property. Lessee shall not be entitled to any monies paid or any part of that money. In the event Lessor shall bring a legal action to enforce any of the terms of this lease or to obtain possession of premises by reason of any default of Lessee or otherwise, Lessee agrees to pay all costs of such legal action if such legal action by Lessor is successful.

## **XI. NOTICES**

Any notices that are required here which either Lessor or Lessee may desire to serve upon the other shall be in writing and shall be deemed served when delivered personally or when deposited in the United States mail, postage pre-paid, return receipt requested, addressed to Lessee at **INSERT DOC ADDRESS HERE** or Lessor at 300 Sixth Street, Rapid City, South Dakota, 57701, Attention: Office of City Attorney.

## **XII. WAIVER**

Waiver by Lessor of any default in performance by Lessee of any of the terms, covenants or conditions contained herein shall not be deemed a continuing waiver of that default or any subsequent default.

## **XIII. LESSOR MAY ENTER**

Lessee agrees that Lessor, its agents or employees, may enter upon the premises at any reasonable time during the term of the lease or any extension of it for the purpose of inspection, digging test holes, making surveys, taking measurements, or doing similar work deemed necessary by the City of Rapid City. All work shall be performed in such manner as to cause a minimum of interference with the use of the property of the Lessee.

## **XIV. MERGER, CHOICE OF LAW, VENUE**

This written document represents the entire agreement of the parties. All previous discussions, negotiations, proposals and terms are incorporated herein or intentionally omitted. No other writing forms a part of this agreement. Any litigation between the parties arising out of this agreement shall be heard only in the Seventh Circuit Judicial Court for the State of South Dakota located in Rapid City, Pennington County South Dakota. The laws of the State of South Dakota shall control the right and responsibilities of the parties to this agreement.

IN WITNESS WHEREOF THE PARTIES HAVE CUASED THIS INSTRUMENT TO  
BE EXECUTED AS OF THIS DAY AND YEAR FIRST ABOVE WRITTEN.

STATE OF SOUTH DAKOTA  
DEPARTMENT OF CORRECTIONS

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Timothy Reisch  
Secretary of Corrections

CITY OF RAPID CITY

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Jim Shaw  
Mayor

ATTEST:

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Finance Officer

(SEAL)

State of South Dakota )  
SS.  
County of Pennington )

On this the \_\_\_\_ day of \_\_\_\_\_, 2003, before me, the undersigned officer, personally appeared Tim Reisch, who acknowledged himself to be the Secretary of Corrections for the State of South Dakota, and that he, as such Secretary of Corrections, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Secretary of Corrections.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires:  
(SEAL)

State of South Dakota )  
SS.  
County of Pennington )

On this the \_\_\_\_ day of \_\_\_\_\_, 2003, before me, the undersigned officer, personally appeared Jim Shaw and James Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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Notary Public, South Dakota

My Commission Expires:  
(SEAL)

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| Prepared by: City Attorney's Office |
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