

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND PENNINGTON COUNTY  
AUDITOR FOR COLLECTION OF STORMWATER DRAINAGE UTILITY FEES**

This Agreement is made by and between the City of Rapid City (“City”), of 300 Sixth Street, Rapid City, South Dakota 57701, and Pennington County Auditor (“Auditor”), of 315 Saint Joseph Street, Rapid City, South Dakota 57701.

WHEREAS, the City has created by ordinance a stormwater drainage utility; and

WHEREAS, the City has funded the utility by establishing a fee pursuant to SDCL 9-43-138; and

WHEREAS, the Auditor has agreed to cause certain upgrades to be made in the County’s special assessment notice, collection, and remittance programs to accommodate collection of the stormwater drainage fee for the City; and

WHEREAS, in exchange for the Auditor making these upgrades, the City has agreed to not assess the fee to County-owned property; and

WHEREAS, the Common Council of the City of Rapid City and the Pennington County Auditor agree that this exchange of consideration is fair, equitable and appropriate; and

WHEREAS, the parties wish to reduce their agreement to writing.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. Web Application. The Auditor agrees to direct appropriate County staff to design a web application that will allow upload of information from the Pennington County Director of Equalization records, including, but not necessarily limited to building uses, parcel acreage, and senior citizen property tax freeze status. The application will allow the City to access and use the information to maintain tables and formulas for calculating stormwater drainage fees via the internet. With the web application, the City will have the ability to calculate fees, run reports, and submit fees to the Auditor for notice and collection by the County. The fees shall be submitted by the City on or before September 1 of each year for collection in the next calendar year.

3. Fee Notices. After submission to the Auditor for processing, the stormwater drainage fees will be printed on the tax notices that are produced from the County’s property tax billing system. The Auditor agrees to cause all necessary upgrades or changes to the County’s tax notices, and the Auditor also agrees to generate new tax notices for parcels that do not currently receive them due to real estate tax exemptions. The Auditor will be responsible for all

fees, charges or other costs relating to software upgrades, acquiring additional user licenses, and/or hardware needed to make these changes. The City shall cause the initial notice of the stormwater drainage fee's assessment to be made as required by law.

4. Fee Collection. The Auditor agrees to cause all stormwater drainage fee payments received to be submitted to the City on a monthly basis via the County's apportioning system. The Auditor will be responsible for all fees, charges or other costs relating to software upgrades, acquiring additional user licenses, and/or hardware needed to support the County's apportioning program.

5. Request for Program Changes. Any program changes requested by the City shall be communicated to the County as soon as practicable. The Auditor shall have the discretion to cause the program changes to be made either prior to that year's submission of fees by the City or prior to the following year's submission of fees. The Auditor's decision shall be based on the change requested, County resources available, and the time needed to implement the requested change.

6. City's Consideration. The parties agree that pursuant to SDCL 9-43-138, the City has the power to assess a fee against property owned by the County within the city limits, and the City's stormwater drainage utility ordinance in fact provides for the assessment of the fee against all properties within the City's contiguous corporate boundaries. The parties agree that the work, upgrades, services provided and costs incurred by the County as detailed above justify a payment by the City. The parties agree that such payment is roughly equal to what the County would pay in assessments during the term of this Agreement. In the interests of economy and to prevent collecting an assessment that would be paid back as a fee for services, the parties agree that the City will not assess the stormwater drainage utility fee that would otherwise be assessed against County-owned properties located within the City of Rapid City.

7. Term. This Agreement shall have an initial term commencing on the date of execution and continuing for five (5) years. It shall automatically renew for successive five (5) year terms unless either party shall notify the other of its intent to not renew this Agreement. Such notice shall be delivered no later than one hundred eighty (180) days prior to the end of the then-current term. The maximum total of the initial and renewal terms shall be fifty (50) years. In the event that the City's stormwater drainage utility fee ordinance is repealed or substantially changed so as to no longer impose a fee or require County collection thereof, or in the event that state law is changed so as to not allow the fee to be assessed in the manner contained in SDCL 9-43-138, then this Agreement may be terminated immediately upon effective date of the ordinance repeal or change.

8. Integration. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

9. Effect of Agreement. The covenants and agreements contained in this Agreement shall apply to, inure to the benefit of and be binding upon the parties hereto and upon their respective successors administrators, executors and assigns.

10. Enforceability. This Agreement is intended solely for the benefit of the parties hereto and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party.

11. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

12. Time. Time is of the essence of this Agreement.

13. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

14. Severability. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

15. Construction. This Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

16. Headings. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

17. Governing Law and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the Circuit Court of Pennington County, State of South Dakota.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2014.

**CITY OF RAPID CITY**

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

(seal)

**PENNINGTON COUNTY AUDITOR**

\_\_\_\_\_  
Julie A. Pearson