

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND THE CITY OF BOX ELDER FOR EXCHANGE OF UTILITY SERVICE AREAS**

This Agreement is made by and between the City of Rapid City, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, SD 57701, (“Rapid City”) and the City of Box Elder, a South Dakota municipal corporation of \_\_\_\_\_, Box Elder, SD 57719.

WHEREAS, Rapid City and Box Elder both operate water and sewer utilities that serve the citizens of each respective city; and

WHEREAS, Rapid City and Box Elder are located in close proximity to each other, including several areas where the cities share a boundary line; and

WHEREAS, a service area exchange as described in this Agreement will allow Rapid City and Box Elder to work together to economically serve the citizens of both cities.

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

1. Rapid City Property. The following property is located within the corporate limits of the City of Rapid City:

**Lot 3 of Tract D, W-Y Addition, located in Section 27, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota**

commonly known as 4503 and 4507 I-90 South Service Road, Rapid City, SD 57703. Rapid City agrees that this property shall be served by Box Elder’s water utility pursuant to the terms of this Agreement.

2. Box Elder Property. The following property is located within the corporate limits of the City of Box Elder::

**Lot 1 of Tract L of SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> Less Lot H-2; Lot 2 of Tract L of SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> Less Lot H-2; Box Elder, Pennington County, South Dakota**

commonly known as 2112 North Elk Vale Rd, Rapid City, SD 57701. Box Elder agrees that this property shall be served by Rapid City’s sewer utility pursuant to the terms of this Agreement.

3. Main Extensions and Other Improvements. Each party shall be responsible for causing any necessary main extensions or other improvements as needed to accomplish the service exchange contemplated herein. Neither City is accepting responsibility for the costs of such improvements by entering into this Agreement, but its ordinances, resolutions, and adopted policies shall govern the laying of main extensions and other improvements.

4. Right-of-way Permit. This Agreement shall operate as consent for each party to construct and maintain within the other party’s easements and rights-of-way, all infrastructure

required to effectuate the purposes of this exchange. No fee or other charge shall be necessary for one party to construct, use or occupy the other's rights-of-way.

5. Property Owners. This Agreement is expressly conditioned upon the property owners' acceptance of service by the municipality hereby assigned to serve it. Each party may require a covenant agreement or similar indenture or servitude by the property owners that requires adherence to the ordinances, rates, and other rules of the municipality providing service.

6. Consideration. It is agreed that no monetary consideration shall be exchanged. The parties agree that each other's promises and agreements made hereunder are good and valuable consideration for the execution of this Agreement.

7. Term. This Agreement shall become effective on the date it is executed. The term shall be the maximum allowed by law. Either party may terminate this Agreement upon one hundred eighty days' notice to the other party.

8. Notices. All notices given hereunder shall be made by hand delivery or certified mail, return receipt requested, to the parties at the following addresses:

City of Rapid City  
Attn: Public Works Director  
300 Sixth Street  
Rapid City, SD 57701

City of Box Elder  
Attn: Public Works Director  
Box Elder, SD 57719

9. Time of Essence. Time is of the essence of this Agreement.

10. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

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

12. 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.

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

14. 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.

15. 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.

16. Construction. This agreement shall be deemed to be prepared jointly by the parties hereto and neither shall be deemed to be its sole author. In the event of any claim of ambiguity, no provision shall thereby be construed against either party.

17. 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.

18. Jurisdiction and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota without regard to any conflict of laws provision. 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**

**CITY OF BOX ELDER**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Mayor

ATTEST:

ATTEST:

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

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

(SEAL)

(SEAL)