

PREPARED BY: City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF RAPID CITY AND
RAPID CANYON SANITARY SEWER DISTRICT RELATING TO
RAPID CANYON'S TRANSFER OF VARIOUS SEWER MAINS
TO THE CITY OF RAPID CITY**

This Memorandum of Understanding ("MOU") is made and entered into by and between the City of Rapid City, a South Dakota municipal corporation, located at 300 Sixth Street, Rapid City, South Dakota 57701 (the "City"), and Rapid Canyon Sanitary Sewer District, a duly organized sanitary district of the State of South Dakota, located at 2040 West Main #307, Rapid City, South Dakota, 57701 ("Rapid Canyon").

WHEREAS, the City and Rapid Canyon executed an agreement dated March 22, 2011 ("the Agreement"), attached hereto as Exhibit 1; and

WHEREAS, pursuant to the Agreement, Rapid Canyon transferred ownership to the City of a sewer main which ran generally from Cleghorn Canyon along Rapid Creek and Highway 44; and

WHEREAS, pursuant to the Agreement, the City agreed to remove a portion of the existing sewer main and construct a new sewer main as a replacement; and

WHEREAS, pursuant to the Agreement, Rapid Canyon agreed to assign to the City easements Rapid Canyon possessed with regard to the location of the new sewer main; and

WHEREAS, pursuant to the Agreement, upon completion of these easement assignments the parties agreed to execute a Memorandum of Understanding to document the completion of the same; and

WHEREAS, the parties desire to enter into this MOU to document the completion of Rapid Canyon's obligations to assign easements under the Agreement.

NOW, THEREFORE, it is agreed as follows:

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

2. Assignment of Easements. As of the date of execution of this MOU, Rapid Canyon has fulfilled its obligations under the Agreement to assign certain easements to the City.

These easements are as follows:

- a. Dyke Easement, attached hereto as Exhibit 2;
- b. Hill Easement, attached hereto as Exhibit 3; and
- c. South Dakota Department of Transportation easement, as reflected in the attached Exhibit 4.

3. Assumption of Easements. The parties agree that the City has assumed these easements and all the rights and responsibilities thereof, pursuant to their assignment by Rapid Canyon.

4. No further responsibility. The City agrees that Rapid Canyon has fulfilled its obligations as discussed in Paragraph 4 of the Agreement (attached as Exhibit 1) to convey, grant, obtain, and transfer all necessary easements to City. Accordingly, the parties agree that Rapid Canyon has no continuing or future duty under the Agreement to obtain or transfer any additional easements to City.

5. Consideration. The parties agree that this MOU, the transfer of the sewer main from Rapid Canyon to City, and the obligations found in the Agreement are for each party's mutual benefit, and both parties stand to gain from the fulfillment of the obligations found in the Agreement.

6. Effective Date. This MOU shall be effective upon execution by both parties.

7. Time of Essence. Time is of the essence of this MOU.

8. Amendments. This MOU may only be amended by a written document duly executed by all parties.

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

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

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

Dated this ____ day of _____, 2012.

CITY OF RAPID CITY:

Mayor

ATTEST:

Finance Officer

(SEAL)

STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF PENNINGTON)

On this the ____ day of _____, 2012, before me, the undersigned officers, personally appeared Sam Kooiker and Pauline Sumption, 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 Memorandum of Understanding 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.

(SEAL)

Notary Public, South Dakota
My Commission Expires: _____

RAPID CANYON SANITARY SEWER DISTRICT

By [Signature]
Kathleen Hanley, Its Chairwoman

State of South Dakota)
) ss.
County of Pennington)

On this the 12th day of July, 2012, before me the undersigned officer, personally appeared Kathleen Hanley who acknowledged her to be the Chairwoman of Rapid Canyon Sanitary Sewer District, of Rapid City, and that as such Chairwoman, being authorized so to do, executed the foregoing Memorandum of Understanding for the purposes therein contained by signing the name of the Rapid Canyon Sanitary Sewer District, of Rapid City as Chairwoman.

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

(seal)

[Signature]
Notary Public - South Dakota Carole Binger
My Commission Expires May 27, 2016