

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 FIRE DEPARTMENT AND SPRINGBROOK ACRES  
WATER USERS ASSOCIATION FOR ENTRY UNTO PROPERTY  
FOR FUEL TREATMENT FOR WILDFIRE MITIGATION**

This Memorandum of Understanding (“MOU”) is made and entered into by and between the City of Rapid City Fire Department (“City”), located at 10 Main Street, Rapid City, South Dakota 57701, and Springbrook Acres Water Users Association, located at P.O. Box 9182 Rapid City, South Dakota 57709-9182 (“Owner”).

WHEREAS, Owner owns real property of roughly 80 acres and generally located east of the Springbrook Acres subdivision (“the Property”); and

WHEREAS, the Property is adjacent to a Wildland Urban Interface neighborhood within the City of Rapid City; and

WHEREAS, the Property is forested and covered with timber; and

WHEREAS, the Property’s vegetation could pose a wildfire threat; and

WHEREAS, City has secured federal grant funding to perform fuel modification activities on the Property to decrease the wildfire threat to Owner and to the neighboring properties as part of its Urban Interface Management Plan operated under the Survivable Space Initiative; and

WHEREAS, Owner has agreed to contribute to the cost of the fuel modification activities; and

WHEREAS, City and Owner wish to reduce to writing their commitments and rights concerning the fuel modification activities to be undertaken on the Property.

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

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. Authority. This Agreement is made and entered into by the Chief of the Rapid City Fire Department pursuant to the authority granted by SDCL 9-1-5 and Section 3.04.090 of the Rapid City Municipal Code.

3. Owner Obligations. Owner agrees to allow City and its Contractor as described in Section 4 to enter the Property to conduct the wildfire mitigation activities described in Scope of Work in Contract for Springbrook Acres Hazardous Fuel Reduction (HFR) Project (“Work”).

If Owner is aware of any features, either natural or artificial, which may pose a danger to employees of City or Contractor who enter the Property, Owner agrees to notify City of the same no later than one day before entry is expected, or when the feature is discovered, whichever is earlier.

4. City Obligations.

City has entered into an agreement with a Dakota Pine Thinning (“Contractor”) to perform the Work on the Property as described below. City agrees that it may direct its Contractor to perform the following activities on some or all of the Property:

- Elimination of ladder fuel (small pines, cedar, lower limbs);
- Thinning of the timber stand to an average canopy spacing of not less than 20 feet, or 30 feet within 100 of adjacent properties; and/or
- Removal of dead, dying, insect-infested, or otherwise unhealthy conifers in the designated area.

The parties agree that there is no obligation for City to perform any wildfire mitigation or fuel modification activities on the Property. The Owner agrees that it does not have any right under this Agreement to demand that City enter or perform any activity on the Property, nor does Owner have a right to dictate or direct how City performs any activities it elects to perform on the Property. In the event that City decides it no longer wishes to perform the fuel modification or wildfire mitigation activities, it agrees to notify Owner within ten working days of any such decision.

City agrees to contact the Owner at least two days in advance of City’s entrance onto the Property to initiate the wildfire mitigation and fuel modification activities. City agrees to contact the Owner once wildfire mitigation and fuel modification activities are complete.

The parties agree that the Contractor will dispose of the fuel and materials which it removes from the Property and that Owner retains no further rights to or responsibilities for the fuel or materials.

5. Payment. The parties agree that they will share the costs of the Work. The City has secured federal funding to pay for a portion of the Work, and through Springbrook Acres

Hazardous Fuel Reduction (HFR) the City has selected Contractor for the Work at a cost of \$59,800. City agrees to pay seventy-five percent (75%) of the total cost of the Work, or Forty-Four Thousand, Eight Hundred Fifty Dollars (\$44,850). Owner agrees to pay twenty-five percent (25%) of the cost of the Work, or Fourteen Thousand, Nine Hundred Fifty Dollars (\$14,950). For costs that exceed the bid price, the parties agree that those costs shall be split in the same ratio, with City paying 75 percent and Owner paying 25 percent of any additional approved costs.

The parties agree that Owner will pay City within thirty days of receipt of an invoice from the City.

6. Hold Harmless. Owner agrees to hold City harmless from and against all liability, claims, damages, demands and causes of action for injuries, losses or damages arising out of City's performance of this Agreement or from Contractor's Work on the Property

7. Term. The term of this Memorandum of Understanding shall be for a term of eighteen (18) months to commence on the date this MOU is signed.

Either party may terminate this MOU at any time and for any reason by providing written notice to the other party at least thirty (30) days prior to the intended date of termination. The parties understand that if the MOU is terminated early, City may be required to relinquish some or all of the funds it obtained for the Work to the funding sources and that any amounts that are relinquished will not be available in the future to continue or finish the Work.

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

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

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

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

12. 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.

13. 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 \_\_\_\_\_, 2015.

CITY OF RAPID CITY

\_\_\_\_\_  
Mike Maltaverne, Fire Chief

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

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned officer, personally appeared Mike Maltaverne, who acknowledged himself to be the Fire Chief, of the City of Rapid City, a municipal corporation, and that he, as such Fire Chief, 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 himself as Fire Chief.

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

(SEAL)

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires: \_\_\_\_\_

