

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 THE BENEDICTINE CONVENT OF SAINT
MARTINS 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 300 6th Street, Rapid City, South Dakota 57701, and the Benedictine Convent of Saint Martins, located at 1851 City Springs Road, Rapid City, SD 57702 (“Owner”).

WHEREAS, Owner owns real property of roughly 118 acres generally located west of City Springs Road (“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 wishes to enter the Property to perform fuel modification activities 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.

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. Owner Obligations. Owner agrees to allow City to enter the Property to conduct the wildfire mitigation activities described below.

If Owner is aware of any features, either natural or artificial, which may pose a danger to employees of City 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.

3. City Obligations.

If the City's Fire Official determines that wildfire mitigation and fuel modification activities are to be performed, City agrees that it may elect 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;
- Removal of dead, dying, insect-infested, or otherwise unhealthy conifers in the designated area; and/or
- Perform regular maintenance on the above work, as needed, to extend the effect of the wildfire mitigation and fuel modification activities.

The parties agree that City is not obligated 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, including any maintenance activities. City agrees to contact the Owner once wildfire mitigation and fuel modification activities are complete.

4. Costs. The parties agree that City will perform any wildfire mitigation or fuel modification activities at its own cost, and that Owner will not be responsible for any payment for such activities.

The parties agree that City 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. 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.

6. Term. The term of this Memorandum of Understanding shall be for a term of 5 years, to commence on the date this MOU is signed. The parties agree that the City intends its fire mitigation and fuel modification activities to be completed within 18 months of the date this

MOU is signed, and thereafter the City's activities will be maintenance activities to extend the effect of the initial activities on wildfire mitigation.

At the conclusion of the initial term, this Agreement shall automatically renew for a period of 5 years, unless a party delivers written notice of cancellation of renewal term to the other, or unless the agreement is otherwise terminated pursuant to Section 7.

7. Termination. 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.

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.

14. Construction 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.

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