

SEWER SERVICE AGREEMENT BETWEEN
RAPID VALLEY SANITARY DISTRICT AND THE
CITY OF RAPID CITY, SOUTH DAKOTA

This Agreement is made this ____ day of, 2011, by and between the City of Rapid City, a municipal corporation, organized under the laws of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, hereinafter referred to as "City", and the Rapid Valley Sanitary District, a Sanitary District organized under the laws of the State of South Dakota, located at 4711 Teak Drive, Rapid City, South Dakota 57703, hereinafter referred to as "District".

RECITALS

The City has constructed and operates a sewage disposal system for the purpose of collection, treatment and disposal of sewage;

The District has constructed, operates and maintains a sewage collection system within the boundaries of the Rapid Valley Sanitary District;

The District encompasses an area which is so situated that the sewage thereof becomes, or may become, a menace to the residents of such area and to the residents of the City;

The District is empowered under SDCL 34-17-27 to enter into a contract with the City to use the facilities of the City for the treatment and disposal of the District's sewage;

The City and District desire to enter into a contract to allow the District to use the sewage treatment and disposal facilities of the City, and to establish the parties' rights and obligations incident thereto. In consideration of the mutual covenants, agreements, and conditions contained herein, City and District agree as follows:

SECTION ONE

DEFINITIONS

The following words, terms and phrases are hereby defined and shall be interpreted as such throughout this Agreement. Terms not herein defined shall have the same definition as they have in the most currently adopted version of the Rapid City Municipal Code (RCMC) or if undefined by the RCMC, the meaning customarily assigned to them.

1. BOD (Biochemical oxygen demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees Celsius expressed in milligrams per liter.
2. Commercial or institutional users shall mean all nonresidential users that introduce only domestic wastewater or primarily segregated domestic wastes into a building sewer.
3. Domestic waste water shall mean the water-carried wastes from dwellings or wastewaters which are similar in physical, biological and chemical characteristics.

4. Industrial users shall mean any commercial, institutional or industrial operation that introduces industrial wastewaters into the city's wastewater facilities.
5. Industrial waste or industrial wastewaters shall mean the water-carried wastes from commercial, institutional and industrial operations as distinct from domestic wastewater discharged from dwellings. Industrial wastes shall include, but not be limited to, the trade wastes produced by restaurants, food processing and bottling plants, food manufacturing plants, slaughtering plants, tallow works, plating works, disposal services, industrial cleaning plants, fertilizer plants, car and truck washing operations, laundries, cleaning establishments, cooling plants, industrial plants, factories, hospitals and chemical treatment installations.
6. Minor industrial users shall mean those industrial users discharging wastes that can be pretreated by simple gravity separation processes. Minor industrial users may include car washing facilities, restaurants and service stations.
7. Residential user shall mean any utility customer using water for domestic, residential purposes. Includes single family residences, multiple family residences, and mobile home parks without a master meter, but excludes nursing homes, group homes and other similar commercial ventures.
8. Significant industrial user shall mean an industrial user that contributes greater than twenty five thousand (25,000) gallons per day, contributes a process wastewater which makes up 5% or more of the average dry weather hydraulic or organic capacity of the city's wastewater treatment system, or has the reasonable potential in the opinion of the Public Works Director to affect the operation of the city's wastewater facility.
9. Total Suspended solids (TSS) shall mean total suspended matter that either floats on the surface of, or is in suspension in water, wastewater, or other liquids, and that is removable by laboratory filtering as prescribed by EPA.
10. Unit equals 100 cubic feet.
11. Wastewater (also sewage) shall mean the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried chemical or solid wastes from residences, commercial buildings, industrial plants, and institutions, together with any groundwater, surface water, and storm water that may be present.

SECTION TWO

USE OF TREATMENT PLANT

City hereby grants to District the right to discharge sewage into the outfall sewer line of the City, and agrees to transport such sewage from the point of entry to the wastewater treatment plant of the City, and to treat and dispose of such sewage, all subject to the conditions contained herein. The District may discharge its sewage into City outfall lines in such manner and under such conditions as prescribed by the City Engineer or their designee.

SECTION THREESEWER ORDINANCES AND PRETREATMENT PROGRAM

The discharge of effluent from the treatment works and the disposal of sewage sludge are regulated by state and federal agencies. The City is required to have a waste pretreatment program through the federal National Pollutant Discharge Elimination System (NPDES) permitting process. To achieve the standards established in the City's NPDES permit and other federal and state regulations, and also to prevent interference with the treatment plant's processes, it is necessary to regulate the introduction of pollutants to the system. The District agrees to cooperate with the City in allowing the City to administer their Pretreatment Program, as has been done for over 20 years, and to do what is necessary to ensure that the City and District have the authority to enforce said standards and prohibitions.

- A. The parties recognize that changes in federal or state law and regulations relating to the environment and to the operation of sewage systems and treatment works may require the modification from time to time of this Agreement and the parties therefore agree to fully cooperate to modify this Agreement as shall be required under such circumstances.
- B. The District agrees to a pretreatment program, as described in 40 CFR Part 403, to be implemented within the District and administered by the City. The District shall supply the City with all documentation necessary in order for the City to comply with the U.S. E.P.A. or its designee for pretreatment program approval under 40 CFR 403.9.
- C. The City agrees to furnish copies of City ordinances and other regulatory measures to the District. The District agrees to enact applicable portions of such ordinances and enforce such within the District in a manner essentially consistent with ordinances and other regulatory measures of the City. This shall be done prior to discharge to the City system, and thereafter as changes are made in the City's ordinances. The District agrees that the enacted ordinances shall comply with the regulations of the U.S. Environmental Protection Agency. The District agrees to submit to the City a copy of its sewer use ordinances and hereafter agrees to submit any amendments to such sewer use ordinances to the City for approval prior to their effective date.
- D. The City's sewer use ordinance authorizes the City's Director of Public Works to set standards and requirements for the purposes mentioned above. The City shall supply the District with a list of such Director-set standards and requirements, and the District agrees to require and enforce the same or more stringent requirements within its service area to:
 - (1) Ensure compliance with federal and state standards and those of any other governmental body having legal authority to set such standards and requirements; and
 - (2) Ensure that there is no interference with the treatment plant's operations. These standards and requirements shall be reviewed and revised periodically by the City.
- E. The District agrees to notify the City of its industrial users as described in 40 CFR 403.8 (f) (2) (i) and (ii).
- F. Both the City and the District shall have the authority to withhold approval of an

application for the discharge of industrial waste. The approval of any application will not be unreasonably withheld.

- G. The City reserves the right to reject, with the authority to disconnect, any wastewater contributor that does not meet its standards or amendments thereto, but the City expressly covenants that any such rejection shall not be arbitrary on its part, and that such rejection shall be preceded by written notice 30 days in advance, unless there shall be an imminent, immediate and substantial danger to the public health and safety in the judgment of the City's Director of Public Works or their designee.
- H. The District does not have pretreatment specialists and agrees to cooperate with the City in allowing the City to administer their Pretreatment Program and to further ensure the City's inspectors and personnel have the authority to conduct inspections and do those other things reasonably necessary administer the pretreatment program as the City has done for the past 20 years.
- I. The District agrees to comply with and be responsible for enforcing violations of national and state pretreatment standards and regulations. The District shall also be responsible for enforcing the pretreatment standards and discharge prohibitions specified in the Rapid City sewer use ordinance. If the District fails to enforce violations of the pretreatment program within the district it shall be in breach of this Agreement.

SECTION FOUR

COMPENSATION FORMULA

The District's rates in this Agreement are based on the rate study conducted by the City in February, 2009. Since the District has its own collection system, performs its own maintenance and only utilizes a small portion of the City's collection system, the rate study assessed the District 100% of the treatment costs, 10% of the collection operation and maintenance costs and 10% of the collection capital replacement costs. The 2010 through 2013 sewer unit, sewer meter, BOD, TSS, Minor industrial user and significant industrial user rates are listed below. Rapid City Council will set subsequent rates based on operation, maintenance and improvement costs.

Sewer Rates Per Unit:

<u>Year</u>	<u>Rate per Unit</u>	<u>Surcharge per Unit</u>	<u>Total Unit Rate</u>
2011	\$2.09	\$0.35	\$2.44
2012	\$2.19	\$0.35	\$2.54
2013	\$2.29	\$0.35	\$2.64

BOD and TSS Sewer Rates:

	<u>2011</u>	<u>2012</u>	<u>2013</u>
BOD/lb	\$0.19	\$0.23	\$0.27
TSS/lb	\$0.14	\$0.17	\$0.21

Industrial Pretreatment Program Annual Fees:

	<u>2011</u>	<u>2012</u>	<u>2013</u>
Minor IU Fees	\$ 200.00	\$ 225.00	\$ 250.00
Significant IU Fees	\$ 2,000.00	\$ 2,500.00	\$ 3,000.00

SECTION FIVECOMPENSATION AND RATE DETERMINATION

The District shall compensate the City for all sewage and industrial wastes conveyed to the City Wastewater Treatment Plant by the District by using the following methods of rate determination:

A. Residential Users.

The amount of sewage flow from residential connections shall be determined on a yearly basis from the metered water to such residents during the months of December, January and February as reflected in the January, February, and March water billings. The average monthly water use during December, January and February as reflected in the January, February and March water billings measured in 100's of cubic feet shall be multiplied by the rate established under Section Four herein per 100 cubic feet. The amount of sewage flow from new residential users or intermittent users shall be based on Seven Hundred (700) cubic feet per month; this volume shall be used until the next averaging period (December, January and February). For any of the three (3) averaging months in which the meter is not actually read, the amount of Seven Hundred (700) cubic feet shall be inserted for that month to determine the average for the three (3) months.

B. Commercial and Institutional Users.

The amount of sewage flow from commercial and institutional connections discharging wastewaters similar in physical, biological and chemical quality to domestic wastewater shall be determined by multiplying the monthly wastewater volume in 100 cubic feet by the rate established under Section Four herein per 100 cubic feet. The wastewater volume shall be determined from the monthly-metered water used by such users unless special allowances are made or the sewage is metered as provided for herein.

C. Industrial Users.

The sewer charge for industrial connections shall be determined by multiplying the monthly wastewater volume measured in 100 cubic feet by the rate established under Section Four herein per 100 cubic feet whenever the BOD concentration is less than Two Hundred Sixty (260)mg/l and the suspended solids concentration is less than Two Hundred Fifty (250)mg/l based on the average of 24-hour flow proportioned, composite samples, collected at the times, frequencies and in the manner designated by the Director. Whenever the BOD concentration exceeds Two Hundred Sixty (260)mg/l or the suspended solids concentration exceeds Two Hundred Fifty (250)mg/l, based on the

sampling and testing program specified by the Director, a surcharge will be assessed at the rates established under Section Four herein per pound of BOD and per pound TSS.

D. Industrial Pretreatment Program

Minor industrial users and significant industrial users shall pay an annual fee as established in Section Four herein.

E. Meter Readings.

It is understood by City and District that should the District rely on the users of its sewage system to report their own water meter readings, the District shall make actual meter readings of residential users at the beginning and at the end of the three (3) month estimate period. The District shall also make a good faith effort to make periodic actual water meter readings of all sewer users.

F. Special Arrangements.

Any commercial, industrial, and institutional water user receiving metered water for uses resulting in portions of water not going to the City's Wastewater Treatment Plant may have its sewer use charge adjusted by showing, at the owner's expense, what percentage of the metered water is not discharged to the Wastewater Treatment Plant. No allowance will be granted for non-metered irrigation water.

G. Monitoring.

The District shall require industrial users who are declared industries to perform monitoring, at their own expense, to determine their industrial rate. Upon request of the City's Director of Public Works or their designee, the District shall require the owner of any of the premises serviced by a building sewer carrying over ten thousand (10,000) gallons per day of industrial waste to install a suitable device for continuously recording the flow discharged to the City's sewer, together with a suitable control manhole to facilitate observation and sampling of the waste. All minor industries shall be exempt from self-monitoring except as provided above for the purposes of this section only.

H. Measurement of Non-Metered Water.

The District shall require any commercial, institutional or industrial user receiving non-metered water to either install water meters for all non-metered sources or provide sewage flow measurement devices. All meters for non-metered water sources and sewage flow measurement devices shall be installed in accordance with plans and specifications approved by the City Director of Public Works or their designee. All costs for design and installation shall be borne by the owner. The owner shall guarantee the City and District access to the meter or meters for monthly meter readings. Failure to allow access to the meters will result in the District cutting off water service to the property until access to the meters is allowed, or taking such other legal action necessary to achieve compliance with this provision.

I. Measurement of Actual Sewage Flow in Lieu of Using Metered Water.

The District may allow any commercial, institutional or industrial user to measure its actual sewage flow in lieu of basing the sewage charge on the metered water. All meters for non-metered water sources and sewage flow measurement devices shall be installed in accordance with plans and specifications approved by the City Director of Public Works or their designee. All costs for design and installation shall be borne by the owner. The owner shall guarantee the City and District access to the meter or meters for monthly meter readings. Failure to allow access to the meters will result in the District cutting off water service to the property until access to the meters is allowed, or taking such other legal action necessary to achieve compliance with this provision.

J. Control Manholes.

Upon request of the City's Director of Public Works, the District shall require the owner of any property served by a building sewer carrying industrial wastes to install a suitable control manhole on the building sewer to facilitate observation and sampling of the wastes. Such manhole, when required, shall be constructed in accordance with plans approved by the City's Director of Public Works or their designee.

SECTION SIX

RECORDS AND PAYMENT

The District shall maintain a monthly sewer charge record of each user who conveys sewage and/or industrial waste to the City Wastewater Treatment Plant using the methods of rate determination described above. The District shall submit an accounting of the total usage and the total sewer use charges in the District as determined above within thirty (30) calendar days after the end of each month. The District shall compensate the City irrespective of whether the District receives payment from its users.

SECTION SEVEN

INSPECTIONS OF METERS AND RECORDS

It shall be the duty of the District to regularly inspect all water and sewage meters to insure that such meters are in good working condition. The District shall require that each user conveying sewage and/or industrial waste to the City Wastewater Treatment Plant shall guarantee to the City access to all water and sewage meters for inspection at any time deemed necessary by the City. The District shall allow the City to inspect its records on water and sewage usage and billing at any time requested by the City.

SECTION EIGHT

ANNEXATIONS TO DISTRICT

The District shall not allow the use of the City Wastewater Treatment Plant by anyone not within the boundaries of the Rapid Valley Sanitary District. If the District should expand its

boundaries, it shall not allow anyone within the extension of such boundaries to convey sewage or industrial waste to the City Wastewater Treatment Plant without prior written approval of the City allowing persons in such extended area to use the City Wastewater Treatment Plant. The present boundaries of the Rapid Valley Sanitary District are filed of record, along with annexations and de-annexations, in the Pennington County Court House, Register of Deeds office.

SECTION NINE

TEMPORARY DISCONTINUANCE OF SERVICE

The City reserves the right to temporarily discontinue service to the District whenever it is necessary to insure proper operation of the City sewer system. No claims for damages for such discontinuance shall be made by the District against the City.

SECTION TEN

ENFORCEABILITY AND ASSIGNMENT

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. The rights and obligations of the parties hereunder shall not be assigned or transferred by either party without the express written consent of the other. Subject to that restriction, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

SECTION ELEVEN

WAIVER

Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon adherence to that term, or any other term of this Agreement.

SECTION TWELVE

SEVERABILITY CLAUSE

If one or more provisions of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this Agreement if they can be given effect without the invalid section(s) or provisions.

SECTION THIRTEEN

AMBIGUITY CLAUSE

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.

SECTION FOURTEEN

CHOICE OF LAWS AND VENUE

This Agreement shall be construed and the parties' actions governed by the laws of the State of South Dakota. The Circuit Court of Pennington County shall be the sole venue for any disputes arising under this Agreement.

SECTION FIFTEEN

BREACH

Should the District fail to pay the City or to enforce any provision of this Agreement, the City may terminate or suspend this Agreement and may discontinue accepting sewage from the District. Recognizing that the City may not be allowed to stop accepting the District's sewage in event of a breach, the District agrees that if it fails to perform any of its obligations under this Agreement the City may impose an additional one dollar surcharge (\$1) to each unit identified in Section Four of this Agreement until such time as the District has cured the breach. Prior to imposing the surcharge, the City will notify the District in writing and provide the District at least 30 days to cure the breach. Based on the violation, the Director of Public Works or their designee shall have the authority to authorize additional time to cure any breach prior to imposition of the surcharge. This Agreement shall also be specifically enforceable. If the City is required to initiate legal action to enforce this Agreement the District shall be responsible for paying the City's reasonable attorney's fees.

SECTION SIXTEEN

TERM AND TERMINATION OF AGREEMENT

This Agreement shall be in full force and effect until December 31, 2013; however, either party may terminate this Agreement upon one (1) year's written notice served upon the other party by delivering the same to the Mayor of the City of Rapid City or the Chairman of the Board of Trustees of the District, or at any time upon mutual consent of both parties.

SECTION SEVENTEEN

TERMINATION OF PRIOR AGREEMENT

This Agreement shall supersede and terminate all prior agreements between the parties related to sewage to the extent such agreements are inconsistent herewith; all other agreements shall remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of twelve (10) pages, on the date first above written.

RAPID VALLEY SANITARY DISTRICT

CITY OF RAPID CITY, SOUTH DAKOTA

President, Board of Trustees

Mayor

ATTEST:

ATTEST:

Finance Officer

(SEAL)

(SEAL)