

## AGREEMENT TO ALLOW IMMEDIATE SEWER AND WATER HOOK-UP

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between Black Hills National Forest, herein after referred to as “National Forest”, and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter referred to as “City”.

WHEREAS, Rapid City Municipal Code § 13.08.365 and South Dakota Codified Law § 9-48-15 allows the Common Council to impose sewer construction fees for connection to the sanitary sewer in certain areas; and

WHEREAS, Rapid City Municipal Code § 13.04.095 and South Dakota Codified Law § 9-47-16 allows the Common Council to impose water construction fees for connection to the water utility in certain areas; and

WHEREAS, resolutions have been adopted by the Rapid City Common Council imposing utility construction fees on property which includes property owned by National Forest that benefits from the extension or oversize portion of the construction of the sanitary sewer main and the construction of a lift station; and

WHEREAS, there is a proposed resolution and an adopted resolution establishing utility construction fees on property which includes property owned by National Forest that benefits from the extension or oversize portion of the construction of the water main; and

WHEREAS, utility construction fees are based on the benefits that accrue to property on a per-acre system. Benefiting areas include properties that will benefit from increased sanitary sewer and water main diameter to service the regional area, and do not necessarily directly abut newly constructed sanitary sewer and water mains and thus, may need to extend additional; sanitary sewer and water mains at their cost prior to connecting to this infrastructure; and

WHEREAS, National Forest wants to immediately connect to the City sewer and water systems before paying the construction fees for connection in full; and

WHEREAS, the City does not normally allow connection to the City sewer and water systems until the construction fees for connection have been paid in full; and

Whereas, National Forest agrees to pay the City, under a separate instrument initiated by the National Forest, \$40,000 of the construction fees prior to connecting to the systems and will later pay the remaining balance with the total of the two payments not to exceed \$65,000.00. A breakdown of the utility construction fees is attached hereto as Exhibit A, and incorporated herein.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is hereby agreed as follows:

1. National Forest agrees to pay the City, through a separate instrument, forty thousand dollars (\$40,000.00) prior to connecting to the systems. After receiving such payment, the City will allow National Forest to immediately connect to the City sewer and water systems.
2. National Forest acknowledges that it is still responsible for paying the remaining balance of the construction fees, not to exceed \$25,000.00, for connection, and in exchange for the City allowing an immediate connection to the City sewer and water systems, it agrees to pay the remaining balance of the construction fees for connection by April 1, 2006.
3. Both parties acknowledge that the City does not have a duty to provide the National Forest with immediate connection to the City sewer and water systems before the construction fees for connection are paid in full and that allowing immediate connection to the systems is sufficient consideration for this Agreement.
4. This Agreement constitutes the entire agreement of the parties. No other writings or negotiations are part of the agreement.
5. The parties' rights and obligations under this Agreement shall be governed by, and construed in accordance with applicable law. Any dispute concerning this Agreement shall be litigated and venued in the Circuit Court of the Seventh Circuit for the State of South Dakota, located in Rapid City, Pennington County, South Dakota.
6. Nothing in this agreement shall be construed as indemnification by one party or the other for liabilities of a party or third persons for property loss or damage or death or personal injury arising out of the performance of this Agreement. Any liabilities or claims for property loss or death or personal injury by a party or its agents, employees, contractors or assigns or by third persons arising out of and during this agreement shall be determined according to applicable law.
7. If any section(s), or provision(s) 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(s) of this Agreement if it can be given effect without the invalid section(s) or provision(s).
8. No modification or amendment to this Agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Mayor

ATTEST:

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

Black Hills National Forest

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, 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 instrument 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.

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

(SEAL)

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

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed within instrument and acknowledged that he executed the same for the purposes therein contained and that he had the authority to do so in the name of Black Hills National Forest as its \_\_\_\_\_.

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

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

(SEAL)

