

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF RAPID CITY
AND BLACK HILLS AREA HABITAT FOR HUMANITY FOR OPERATION OF A
REUSE CENTER AT THE CITY LANDFILL.**

This memorandum of understanding is made and entered into by and between the City of Rapid City, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the "City," and Black Hills Area Habitat for Humanity, a South Dakota corporation d/b/a the Habitat ReStore, located at 610 E. Omaha Street, Rapid City, South Dakota 57701, herein after referred to as the "Habitat ReStore."

RECITALS

WHEREAS, the City has proposed operating a trash diversion program (ReUse Center) at the City's landfill which would divert certain useable trash items for resale for the general public prior to the items entering the landfill; and

WHEREAS, the program would benefit the City's landfill by decreasing the number of items disposed of, thus increasing the life of the landfill; and

WHEREAS, the Habitat ReStore has submitted a proposal to the City to operate the proposed trash diversion program; and

WHEREAS, the purpose of the Habitat ReStore is to recycle useable construction material and demolition debris and sell them for a fee; and

WHEREAS, during its first year of operation the Habitat ReStore sold or reused 104 tons of construction debris that would have otherwise ended up in a landfill; and

WHEREAS, construction and demolition debris constitutes a significant portion of the materials entering the City's landfill; and

WHEREAS, all donations will be voluntary and would occur prior to the items entering the City's landfill; and

WHEREAS, the Habitat ReStore has agreed to use the revenue it generates from the sale of recycled material to further its program goals including building and remodeling work-force homes in Rapid City and to reimburse the City for any mutually agreed operational or capital expenditures made by the City to assist in establishing the trash diversion program contemplated by this agreement; and

WHEREAS, the City Council has determined that it is in the best interests of the City and the City's landfill to enter into this agreement and divert useable waste from entering the City's landfill and provide the Habitat ReStore with the opportunity to recycle and reuse this material.

NOW THEREFORE, the parties hereby agree as follows:

1. The City will provide a suitable site with a total approximate size of 6,000 sq ft, including a covered cold storage space approximately 2,000 sq. ft in size, within the City's landfill, where the Habitat ReStore can operate a waste diversion operation. Once the site has been agreed to, the City will lease the area to the Habitat Restore. The parties anticipate the area will be identified and the lease will be entered into by April 1, 2010. The initial term of the lease will be for 6 months. The rent for the initial term will be \$1. The parties agree to renegotiate this agreement and the lease at the end of the initial lease term with a maximum annual lease amount of \$3,000.00. The lease amount and term of the lease may be increased, with the amount not to exceed a 3% increase annually. If the project is not deemed to be mutually successful, the agreement and lease may be discontinued. The parties acknowledge that if the Habitat ReStore diversion point is moved to different accommodations at the landfill or if the scope of the operation is otherwise increased, the lease will be renegotiated to the satisfaction of both parties.
2. The Habitat ReStore will provide, at its own expense, a trailer and portable toilet for use by the Habitat ReStore in running the trash diversion program. The City will provide, at its own expense, electric utility to trailer and cold storage facility, as well as work-release laborers as deemed necessary by Habitat ReStore manager. The obligation of the City to provide work-release laborers will be subject to their availability. Further, City will also provide bins where metals, plastics and glass which cannot be reused can be separated for recycling. The City will, at its own expense, be responsible for emptying and maintaining the bins. The parties acknowledge that the City contemplates redesigning the entrance to the landfill in the next several years. If the material diversion program proves successful, provision for a more permanent location of the ReUse Center at the landfill site will be considered.
3. The Habitat ReStore will provide all necessary personnel to staff the diversion program. The diversion program will maintain the same hours as the City landfill. Suitable items can be dropped off at the diversion point where Habitat ReStore staff will be able to sort and process them. It is anticipated that the diversion program will be staffed by two, three quarter time, site supervisors and additional volunteer staff. The Habitat ReStore agrees, for safety reasons to have a minimum of two people on-site at all times. The site will be used for drop off and processing of materials only. Once separated and/or processed, all goods collected will be transported for sale or distribution off-site.
4. The site supervisors will report to the Habitat ReStore manager who will be responsible for overall management of the diversion program. The Habitat ReStore manager will oversee operations, transport of items to the Habitat ReStore, all financial operations, including, but not limited to, accounts payable and receivable and all other business functions. The Habitat ReStore manager will develop written operation procedures, including record keeping polices and formats. The Habitat ReStore manager will provide reports to the City on a quarterly basis which will include the volume of items diverted.
5. The City will also work in good faith with the Habitat ReStore to help market this project and generally increase public awareness about its availability. The understanding being that the City will include information about this diversion program wherever feasible, not to exclude on monthly water/garbage invoices, in any printed material about the land-fill, the Rapid City website, and any related press releases.

6. The employees of the Habitat ReStore working on-site are not employees of the City and are not covered by the City’s worker’s compensation insurance. The Habitat ReStore agrees to maintain suitable worker’s compensation as required by South Dakota law. The Habitat ReStore agrees to defend indemnify and otherwise hold the City harmless for any claims made by its employees or customers against the City, to the extent such claims are not based on the alleged actions or omissions of the City or its agents.

7. The Habitat ReStore will maintain insurance to cover the diversion site operation. The minimum amount of insurance coverage shall be:

Comprehensive General Liability (Including Contractual Liability and Completed Operations)	
Bodily Injury and Property Damage	\$2,000,000 each occurrence
General Aggregate	\$2,000,000

The City will maintain insurance coverage on the actual structure. The City should be named as an additional insured on the policy covering the diversion program. The Habitat ReStore shall provide the City with proof of insurance coverage meeting the minimum standards of this paragraph prior to starting operations at the City landfill. The Habitat ReStore agrees to defend indemnify and otherwise hold the City harmless for any claims made by its employees or customers against the City, to the extent such claims are not based on the alleged actions or omissions of the City or its agents.

8. The Habitat ReStore will be responsible for forming an advisory committee to ensure proper operation of the program. The committee will meet on at least a quarterly basis and will be responsible for reviewing operating procedures, and diversion amounts. The committee will also be responsible for recommending any changes or additions to the project it deems appropriate. At least one representative from the City will be a member of the advisory committee.

9. If funds are not budgeted or appropriated for any fiscal year for services provided by the terms of this agreement, this agreement shall impose no obligation on the City for payment. This agreement is null and void except as to annual payments herein agreed upon for which funds have been budgeted or appropriated, and no right of action or damage shall accrue to the benefit of the Habitat ReStore, its successors or assignees, for any further payments. For future phases of this or any project, project components not identified within this contract shall not constitute an obligation by the City until funding for that component has been appropriated.

10. This document, along with any written lease, constitutes the entire agreement of the parties. No other promises or consideration form a part of this agreement. All prior discussions and negotiations are merged into these documents or intentionally omitted. This agreement may only be amended or modified in writing by mutual agreement of the parties.

11. 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.

12. If the Habitat ReStore shall dissolve or abandon the use of the premises for a period in excess of three (3) months, this agreement and any lease associated with it shall be terminated and the Habitat ReStore shall have no further rights hereunder. Discontinuation of use of all or part of the premises, for any amount of time for maintenance, repair or rehabilitation purposes of the grounds shall not be deemed as abandonment. The parties shall have the right to terminate the lease upon 60 days written notice in the event of substantial failure of the other party to perform in accordance with the terms of this agreement. Notwithstanding this provision, the lease will not be terminated for substantial failure if the party receiving such notice cures such failure within thirty (30) days of the notice being sent. If the party in breach has attempted to diligently cure the breach, to the extent such breach cannot be reasonably cured within thirty (30) days, the other party may grant such additional time to cure as it deems appropriate, but is under no obligation to do so. 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.

13. 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.

14. 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.

15. 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.

Dated this ___ day of _____, 2010.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer
(SEAL)

BLACK HILLS AREA HABITAT FOR HUMANITY

By: Adam Haggerty
Its: Executive Director Board President

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

On this the 5th day of February, 2009, before me, the undersigned officer, personally appeared Adam Haggerty, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged themselves to be the Board President of the Black Hills Area Habitat for Humanity ~~Restore~~ and as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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



Heidi Christner
Notary Public, South Dakota

My Commission Expires: July 15, 2010

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

On this _____ day of _____, 2009, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that he, as such Mayor and Finance Officer, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

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

Notary Public, South Dakota

My Commission Expires:
(SEAL)