

**AN AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
RAPID CANYON SANITARY SEWER DISTRICT TO TRANSFER OWNERSHIP
OF A SEWER MAIN WHICH GENERALLY RUNS FROM CLEGHORN CANYON
ALONG RAPID CREEK AND HWY 44.**

THIS AGREEMENT is made 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 (the "City") and the Rapid Canyon Sanitary Sewer District, a duly organized sanitary district of the State of South Dakota, located at 2040 West Main #307, Rapid City, South Dakota 57701 ("Rapid Canyon").

RECITALS

WHEREAS, Rapid Canyon provides sewer services to an area generally located in southwestern Rapid City; and

WHEREAS, Rapid Canyon owns and maintains sewer mains within its service area; and

WHEREAS, the sewage collected by the Rapid Canyon system is ultimately discharged into the City's sewer system; and

WHEREAS, the City is constructing a water treatment plant in the Rapid Canyon service area; and

WHEREAS, the City will be discharging sewage from this plant into the Rapid Canyon sewer system; and

WHEREAS, the City desires to own and control the Rapid Canyon sewer main which it will be discharging sewage into; and

WHEREAS, Rapid Canyon desires to transfer ownership to the City and acknowledges it will receive a benefit from no longer being responsible for maintenance and replacement of this sewer main.

NOW THEREFORE, be it agreed by the parties:

1. From the date of approval of this Agreement, the City will be responsible for ownership, maintenance and replacement of a sewer main which generally runs from Cleghorn Canyon along Rapid Creek and Hwy 44 to where it connects to the City's sewer system. The sewer main is more fully identified in Paragraph 4 of this Agreement as shown on Exhibit A which has been attached hereto and incorporated herein. Manholes within the Rapid Canyon system are identified with different numbers on the two attached Exhibits. Identifying labels such as MH III-A-2 are from the original system design drawings titled Rapid Canyon District Sanitary Sewer Facilities; prepared by J.T. Banner & Associates, Inc.; H.U.D. Project No. P-S. Dak.-3018; dated July 1968. Identifying labels such as S-3 are from a drawing provided by Rapid Canyon titled Rapid Canyon Sanitary Sewer District; prepared by Banner Consulting Engineers

& Associates; date prepared June 1993. Within this document the original design manhole labels are used as the primary identifier and the 1993 labels are provided in parenthesis. Manholes that are part of the City's current system are identified as such.

2. Rapid Canyon will allow the City to remove an existing 8 inch sewer main and related manholes located between approximately 70 feet northwest of Rapid Canyon manhole MH III-A-2 (S-3) and Rapid Canyon manhole MH III-3 (C-2). Rapid Canyon shall also abandon the sewer easement across City property associated with this sewer main. The location of the sewer main to be removed and the easement to be abandoned is shown on attached Exhibit B, which has been attached hereto and incorporated herein.
3. The City shall construct as part of the water treatment plant project a new sewer main beginning at a new manhole located approximately 70 feet northwest of Rapid Canyon manhole MH III-A-2 (S-3) and extending to Rapid Canyon manhole MH III-3 (C-2). This sewer main and the related manholes shall be constructed in existing right of way, easements and City property. The proposed location of this new sewer main is also shown on attached Exhibit B.
4. The sewer main which is subject to this Agreement runs from the new manhole located approximately 70 feet northwest of Rapid Canyon manhole MH III-A-2 (S-3) to Rapid Canyon manhole MH III-3(C-2) to Rapid Canyon manhole MH II-8-A (J-8) and then generally along Rapid Creek to City manhole D8-003 (F-13) where it connects to the City's sewer system. The alignment and location of this sewer main is shown on attached Exhibit A. Rapid Canyon shall convey all easements related to this sewer main to the City and grant any easements for the sewer main across its property where none currently exist. If there are any portions of this sewer main which are not located in an easement Rapid Canyon agrees to obtain an easement and transfer it to the City. The transfer of the main shall not occur until all necessary easements are in place and have been transferred to the City. Once all necessary easements are in place and have been transferred to the City, Rapid Canyon and the City agree to execute a memorandum of understanding to document the completion of any easement transfer(s) and completion of the transfer of the main.
5. Rapid Canyon shall remain responsible for any connections to this main other than the connections from the City's water treatment plant, the City's raw water pump station and the South Dakota Game Fish and Parks (SDGF&P) facilities located outside of the Rapid Canyon Sanitary Sewer District. Rapid Canyon will not be responsible for any work to connecting lines which is made necessary by City maintenance or replacement of the sewer main which is subject to this Agreement.
6. There is one point of connection between the City sewer system and Rapid Canyon at City manhole D8-003 (F-13). The City currently meters the sewage discharged by Rapid Canyon into the City system at this connection point. The City will meter the sewer discharge and water usage at the new water treatment plant and the water usage at the raw water pump station. The City will then subtract the volume of metered sewage discharged and water being used at the water treatment plant and water being used at the raw water pump station from the total volume of discharge being measured at the meter located at the systems connecting point. The City shall also determine the amount of sewage discharge by the SDGF&P through metered water usage

and estimation of volume being discharged during special discharge events. This volume shall also be subtracted from the volume of metered sewage discharge being measured at the meter located at the systems connecting point. The sewage discharge volume of future connections to this sewer main with discharge originating outside of the Rapid Canyon Sanitary Sewer District but within the City's service area will be determined by metered water usage, metered or estimated sewage discharge or a combination of these items and the sewage discharge volume will be subtracted from the volume of metered sewage discharge being measured at the meter located at the systems connecting point. If Rapid Canyon requests confirmation of the accuracy of the amount of sewage being discharged by City facilities or City customers upstream of the systems metered connection point the City agrees to provide Rapid Canyon with this information.

7. When a significant increase in the volume of metered sewage discharge is measured at the metered connection point, which increase cannot be directly attributed to Rapid Canyon's or the City's known discharge, the City, at the request of Rapid Canyon, will inspect the subject sewer main for inflow, infiltration, or illicit discharges. Rapid Canyon will not make unreasonable requests for these inspections nor will the City deny a reasonable request. The City will inspect the subject sewer main for inflow, infiltration, or illicit discharges within one year after transfer of the sewer main. The City will inspect the effected portion of the subject sewer main for inflow and infiltration after repair or replacement of the effected portion. The results of all of these inspections will be provided to Rapid Canyon by the City.

8. Rapid Canyon certifies to the City, that there is no money currently owed, or any outstanding bonds or other indebtedness related to, or secured by, the sewer main the City is taking ownership of. Rapid Canyon agrees to satisfy any claims, liens or other indebtedness related to this main which arose prior to this Agreement becoming effective and for any maintenance or improvements to this line which occurred prior to the City's ownership of the line.

9. Rapid Canyon acknowledges that the City taking over ownership and future maintenance responsibility for the sewer main which is subject to this Agreement will provide it with a significant benefit. It further acknowledges that the benefit it will receive provides sufficient consideration for the promises it has made herein.

10. Rapid Canyon agrees to defend, indemnify or otherwise hold the City harmless for any and all claims which may arise and are alleged to have occurred prior to the City's ownership of the sewer main to the extent such claims are not alleged to be due to the negligent actions of the City. The City agrees to defend and indemnify Rapid Canyon for claims arising out of the maintenance and/or work done to the sewer main to the extent such claims are not alleged to arise out of the negligent actions of Rapid Canyon.

11. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, beneficiaries, assignees, or successors in interest of the parties.

12. In the event that 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).

13. The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. Any legal action arising out of, or relating to, this Agreement shall be brought only in Pennington County, South Dakota, in the circuit court for the Seventh Judicial Circuit.

14. The parties agree this writing constitutes the entire Agreement of the parties related to ownership and maintenance of the sewer main identified in Paragraph 1. There are no other oral or collateral agreements of any kind except those contained herein. All other agreements between the parties remain valid and in full force, except to the extent modified by this Agreement. To the extent there are any conflicts between the terms of this Agreement and any past agreements, the terms of this Agreement shall be controlling. No modification or amendment to this Agreement shall be valid, unless evidenced in writing and signed by the parties hereto.

Dated this 22nd day of march, 2011.

CITY OF RAPID CITY

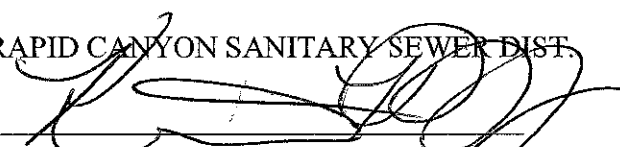
Mayor

ATTEST:

Finance Officer

(seal)

RAPID CANYON SANITARY SEWER DIST.


By: Kathleen H. Henley

Its: Chairperson Rapid Canyon Sanitary Sewer District

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

On this the _____ day of _____, 2011, before me, the undersigned officer, personally appeared Alan Hanks and Pauline Sumption, 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 Agreement Consenting to Assessed Project 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.

(seal)

Notary Public, South Dakota
My Commission Expires: _____

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

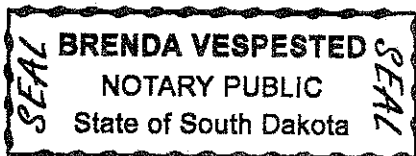
On this 22nd day of march, 2011, before me, the undersigned officer, personally appeared Kathleen Hanley, who acknowledged him/herself to be the Chairperson of Rapid Canyon Sanitary Sewer District, and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

(seal)

Brenda Vespested

Notary Public, South Dakota
My Commission Expires: 3/13/2015



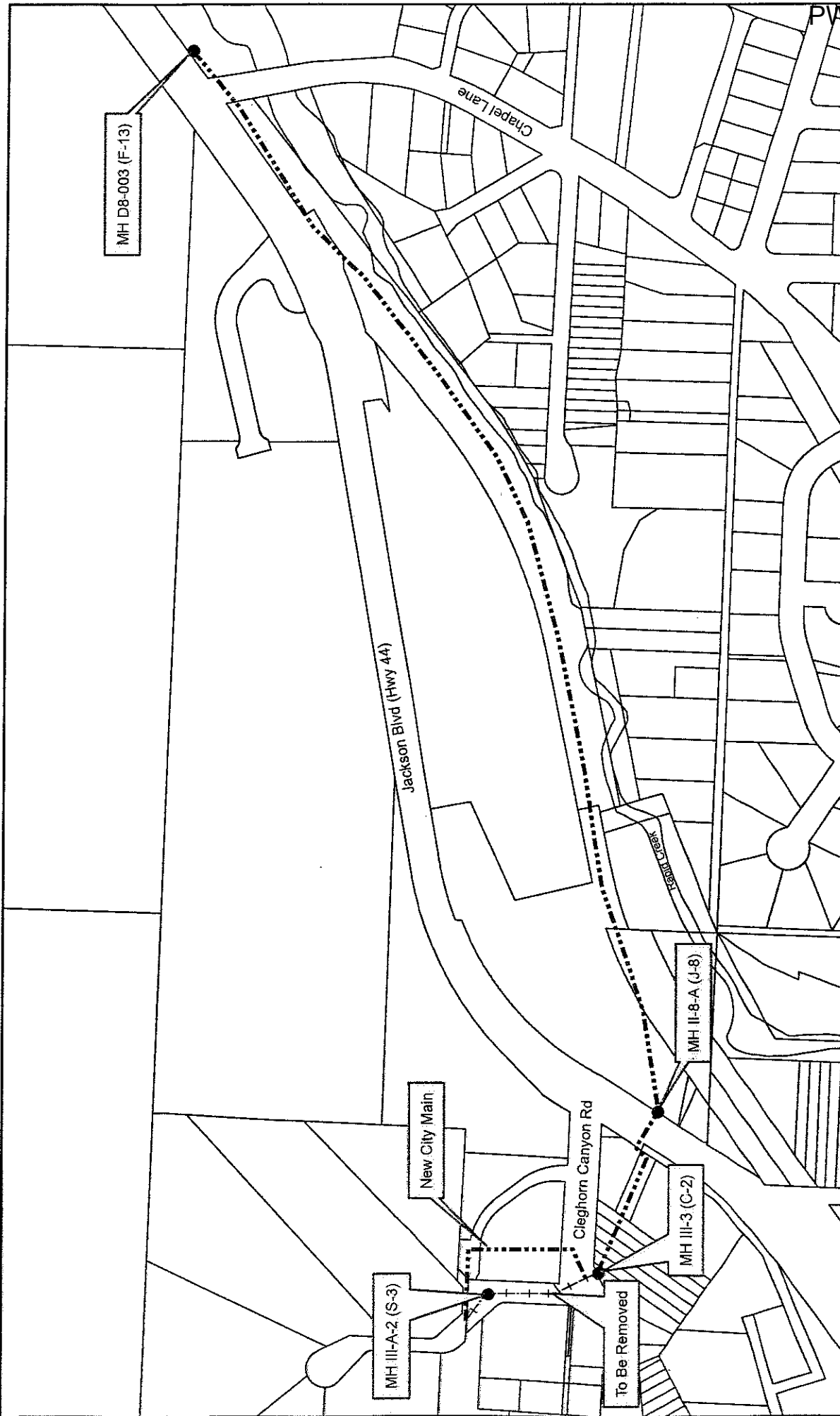
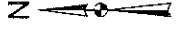


Exhibit A
 Rapid Canyon Sanitary District
 Sewer Main to be
 Acquired by the City of Rapid City

Item # **Legend**

- - - - - Sewer Main Acquired
- · · · · Sewer Main Removed

