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AGREEMENT BETWEEN CITY OF RAPID CITY AND CITY OF SUMMERSET FOR A FEASIBILITY STUDY TO EVALUATE THE PROVISION OF SANITARY SEWER SERVICE

This Agreement is made and entered into between the CITY OF RAPID CITY, 300 Sixth Street, Rapid City, SD 57701 (“Rapid City”) and the CITY OF SUMMERSET, 7055 Leisure Lane, Summerset, SD 57718 (“Summerset”).

WHEREAS, Summerset has reached the capacity of their wastewater treatment plant and has inquired of Rapid City the possibility of discharging wastewater into the Rapid City sewer collection system for treatment at the Rapid City Water Reclamation Facility; and

WHEREAS, both cities see a potential benefit to Rapid City providing sewer service to Summerset by providing collection and treatment at one facility; and

WHEREAS, the South Dakota Department of Environment and Natural Resources has historically been favorable to regionalizing wastewater treatment; and

WHEREAS, both cities agree that a Feasibility Study is the first step in evaluating the technical and economic impacts of Rapid City providing sanitary sewer service to Summerset; and

WHEREAS, both cities wish to share in the costs of conducting this Feasibility Study and desire to reduce their agreements and understandings to writing.

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions herein set forth, it is agreed by the parties as follows:

1. Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.
2. Cooperation. Rapid City and Summerset agree to participate in a joint feasibility study that will include, but not be limited to, the following items (“Feasibility Study”):
 - a. Evaluation of sanitary sewer connection locations into the Rapid City collection system;
 - b. Confirmation of Rapid City treatment capacity at the Water Reclamation Facility;
 - c. Evaluation of Rapid City collection system capacity;
 - d. Evaluation of potential phasing of service;
 - e. Evaluation of the cost of necessary capital improvements;
 - f. Evaluation of the cost of service for Summerset; and
 - g. Other associated items as agreed to by representatives of the parties.

This Agreement concerns the Feasibility Study only and does not commit either city to future obligations to spend money, provide services, or construct improvements. If the completed Feasibility Study results in both cities wishing to pursue Rapid City providing sewer service to Summerset, a separate agreement will be executed concerning all relevant items, including but not limited to connection points, operating parameters, capital cost responsibilities, service fees, etc.

3. Professional Services. Rapid City will hire a Consultant to perform the Feasibility Study. Rapid City will follow its currently adopted Technical Consultant Selection Procedure for Public Infrastructure. Summerset will participate in the selection process through a representative on the selection committee. Rapid City will negotiate an agreement with the consultant selected, and the scope and fee of the agreement will be reviewed by Summerset for concurrence. A Rapid City Engineering Services Staff Member will serve as the Project Manager for the Feasibility Study. The consultant hired to do the Study may be selected for additional design services beyond this Project's scope; if that occurs, the cities may enter into an amendment to this Agreement to provide for shared costs for the additional work by the consultant.

4. Standards. The Feasibility Study shall be performed according to Rapid City's Standard Specifications for Public Works Construction and Infrastructure Design Criteria, as applicable.

5. Designated Representatives. The designated representatives of the parties for the Study shall be the City of Rapid City's Public Works Director and the City of Summerset's City Administrator, or the designee of either or both.

6. Study Review. Both cities shall have the opportunity to participate in the Feasibility Study review and provide comments on all deliverables. The cities agree to conduct the reviews and provide comments in a timely manner to assist the consultant in completing the Feasibility Study on the timeline designated in the contract.

7. Shared Costs. Both cities agree to designate sufficient funding available for professional services in 2019. No federal funding shall be used for the Project. The parties have agreed to equally share funding of the Project. Summerset will reimburse Rapid City at a rate of 50 percent of the total project cost. Upon completion of the consultant services, Rapid City shall invoice Summerset for 50 percent of the total project cost. Summerset shall pay the invoice within 45 days of its receipt.

8. Integration. This Agreement and the agreements and documents referred to herein (including any exhibits and schedules incorporated herein) contain the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter hereof. This Agreement may only be amended by a written document duly executed by all parties.

9. Third Parties. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein shall give or be construed to give any person or entity, other than the parties hereto, their respective successors, and permitted assigns, any legal or equitable rights hereunder.

10. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

11. Further Action. The parties covenant and agree that each shall execute and deliver such further instruments or documents as shall be necessary or convenient to effectuate the purposes contemplated by this Agreement.

12. Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision. The parties agree that each party has reviewed this Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

13. Severability. The invalidity of all or any part of any Section of this Agreement shall not render invalid the remainder of this Agreement or the remainder of such Section. If any provision of this Agreement is held unenforceable for any reason, it shall be modified rather than voided, if possible, to achieve the intent of the parties to this Agreement to the extent possible. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

14. Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the state of South Dakota, without regard for its choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the state of South Dakota, without regard for its choice-of-law principles.


15. Jurisdiction and Venue. The parties hereto explicitly agree to submit to the personal jurisdiction of South Dakota state courts, and any dispute relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall be decided solely and exclusively by the Circuit Court located in Rapid City, South Dakota.

16. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period provided for in this Agreement.

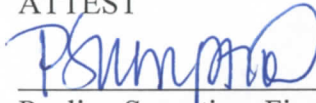
17. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

Dated this 5 day of Dec, 2018.

CITY OF RAPID CITY

By 
Steve Allender, Mayor

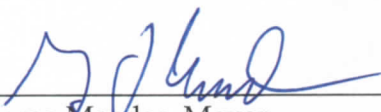
ATTEST


Pauline Sumption, Finance Officer

(seal)

Dated this 15th day of November, 2018.

CITY OF SUMMERSET

By 
George Mandas, Mayor

ATTEST


Debbie Muzio, Finance Officer

(seal)

