WATER AND SEWER SERVICE AGREEMENT BETWEEN
THE CITY OF RAPID CITY AND THE GREEN VALLEY SANITARY DISTRICT

This agreement is made this ______ day of ______________________, ______, hereinafter “Agreement,” 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, (“City”), and the Green Valley Sanitary District, a Sanitary District organized under the laws of the State of South Dakota, located at PO Box 1105, Rapid City, South Dakota, 57709-1105, (“District”).

RECITALS

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

The District intends to construct a sewage collection system in areas within the boundaries of the District that, once constructed, will be operated and maintained by the City; and

The City operates a water service system to deliver clean, potable water to its customers inside and outside the City; and

The District currently operates a water system within the District area pursuant to SDCL 34A-5-41 and wishes to install improvements to connect to City water service; and

The District is empowered under SDCL 34A-5-34 and SDCL 34A-5-41 to enter into contracts with the City to connect to the facilities of the City for the provision of water and sewer service; and

The City and District desire to enter into a preliminary agreement to provide that if the District constructs certain improvements to its water and sewer systems, pursuant to this Agreement, then the City shall permit the District to connect to the City’s water distribution and sewer service systems; and

The City and District wish to establish the terms and conditions under which the City will operate and maintain the water and sewer systems within the District and the parties’ rights and obligations incident thereto.

In consideration of the mutual covenants, agreements, and conditions contained herein, the City and District agree as follows:
SECTION ONE
DEFINITIONS

Terms used herein 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.

SECTION TWO
CONDITION PRECEDEENT

The parties agree and understand that the City’s performance as discussed in this Agreement is contingent upon District completing the entirety of the performance discussed in Section Three. If District fails to complete any part of its performance discussed in Section Three, then the City is not obligated to perform as discussed in Section Four.

SECTION THREE
DISTRICT’S PERFORMANCE

The parties agree District intends to complete the following improvements by December 31, 2021 at its own cost (“District Improvements”):

1. Design a sewer collection system within the District that complies with all City standards, regulations, and policies. The District agrees to require its consultants and professional engineers to consult with the City Engineer regarding connection points to the City’s sewer system and conformance with the City’s applicable master plans. The District shall require its consultants and professional engineers to design the sewage collection system in conformance with the City’s Standard Specifications for Public Works Construction (current edition) and the City’s Infrastructure Design Criteria Manual. The City agrees to complete a review of all plans at the end of the preliminary design phase. All plans for District Improvements shall be reviewed and approved by the City Engineer prior to the solicitation of bids for construction.

2. Upon City’s approval of design plans and acquisition of funding, construct a sewer collection system in compliance with design plans reviewed and approved by the City, to include improvements to connect the system with the City’s sewer collection system.

3. Design improvements to District’s water system that are necessary to connect to the City’s water system, including a portion of a City water main. Such design shall comply with all City standards, regulations, and policies. The District agrees to require its consultants and professional engineers to consult with the City Engineer regarding connection points to the City’s water systems and conformance with the City’s applicable master plans. The District shall require its consultants and professional engineers to design improvements to the water distribution system in conformance with the City’s Standard Specifications for Public Works Construction (current edition) and the City’s Infrastructure Design Criteria Manual. The City agrees to complete a review of all plans at the end of the preliminary design phase. All plans for District Improvements shall be
reviewed and approved by the City Engineer prior to the solicitation of bids for construction.

4. Construct improvements to District’s water system to connect to the City’s water system in compliance with plans that have been reviewed and approved by the City.

5. Conduct an inventory of all District water system assets, including but not limited to water mains, fire hydrants, water meters, curb stops, meter pits, etc. which the City will take responsibility for maintaining and operating pursuant to this Agreement. Such inventory shall include a general description of the condition of each asset as well as a general map of the same, as well as any deviations from the City’s standards or regulations.

6. For all improvements that are constructed pursuant to this Section, the District agrees to provide all design and construction information and as-built plans to the City.

The District shall be responsible for obtaining all necessary financing for constructing the District Improvements. The City agrees to cooperate with the District in its applications for financing, to provide any required documentation, and to provide letters of commitment as may be required beyond this Agreement.

SECTION FOUR
CITY’S CONDITIONAL OBLIGATIONS

If District performs in accordance with Section Three, then the City agrees that it will perform the following:

1. Accept the improvements constructed in Section Three so long as they comply with the design plans and with all City standards, regulations, and policies or exceptions granted by the City. Acceptance will be documented by issuance of an acceptance letter by the City upon completion of the project according to the City’s Standard Specifications for Public Works Construction.

2. Upon acceptance of the infrastructure, City shall operate and maintain the systems in the same manner as any other City infrastructure. The City shall take ownership of the water and sewer systems either at the time of acceptance or, if the financing package does not allow for City’s ownership of either system, the District agrees to transfer the water and/or sewer system to the City upon satisfaction of all of its financing obligations.

3. Allow the District to connect to the City’s sewer system and grant District the right to discharge sewage into the outfall sewer lines of the City at the same rates and fees as City sewer customers, except as provided in Section Five.

4. Allow the District to connect to the City’s water system and grant District the right to purchase water from the City at the same rates and fees as City water customers, except as provided in Section Five.
5. Bill and meter the individual customers within the District directly for the water and sewer services utilized. The parties agree that individual customers within the District, prior to receiving City water and sewer services, shall enter into a service agreement with the City providing the terms for provision of City utilities. Exhibit A is a sample service agreement that includes the general provisions required in such agreements at the time of execution of this Agreement. The parties acknowledge that Exhibit A is a sample service agreement and that the terms of the service agreement for District users may differ from Exhibit A.

6. Enter into a supplementary agreement with District establishing the terms and conditions of City water and sewer service, including imposition of sewer and water ordinances, pretreatment standards, annexations to district, City’s rights and authority to operate the system within the district, etc. Both parties commit to negotiating in good faith for this supplementary agreement concerning the provision of water and sewer service.

If District fails to perform any condition discussed in Section Three, the City may excuse the nonperformance by amendment of this Agreement only.

The parties agree that neither the acceptance of the infrastructure by City, nor the City’s ownership of the system, shall alleviate or extinguish any debt obligation of the District.

SECTION FIVE
CONSTRUCTION FEES

The parties agree that if District performs its conditions precedent in Section Three, and if City is obligated to and does complete the conditional obligations provided in Section Four, then the District shall be responsible for Construction Fees due to reimburse the City for previous City water and sewer system improvements that service the District upon its connection to City water and sewer. At the time of this Agreement, those Construction Fees are $253,368.99 for the District. The parties agree that to impose the Construction Fees, the City will adopt a resolution setting the same, and District agrees that it will not object to or contest the Construction Fees resolution.

SECTION SIX
ADDITIONAL PROVISIONS

1. **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.
2. **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 the Agreement.

3. **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. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible.

4. **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.

5. **Term and Termination of Agreement.** This Agreement shall be in full force and effect until January 1, 2021. Either party may terminate this Agreement upon ninety (90) days written notice served upon the other party by delivering the same to the Mayor of the City of Rapid City or the President of the Board of Trustees of the District, or at any time upon mutual consent of both parties. This term may be extended by written consent of the parties, as indicated by a writing executed by the Public Works Director and the President of the Board of Trustees for the District.

6. **Termination of Prior Agreements.** This Agreement shall supersede and terminate all prior agreements between the parties related to sewage or water service 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 on the date first above written.

GREEN VALLEY SANITARY DISTRICT  CITY OF RAPID CITY, SOUTH DAKOTA

President, Board of Trustees  Mayor

ATTEST:  ATTEST:

District Clerk  Finance Officer

(SEAL)  (SEAL)