SEWER SERVICE AGREEMENT BETWEEN THE CITY OF RAPID CITY 
AND NORTHDALE SANITARY DISTRICT

THIS AGREEMENT is executed this ____ day of ______________, 20__, by and 
between the CITY OF RAPID CITY ("City"), a municipal corporation organized under the laws 
of the State of South Dakota, of 300 Sixth Street, Rapid City, SD 57701, and the NORTHDALE 
SANITARY DISTRICT, a sanitary district organized under the laws of the State of South 
Dakota, of 4924 Saratoga Drive, Black Hawk, SD 57718 ("District").

RECITALS

WHEREAS, the City has constructed, operates and maintains a sewage disposal system 
for the purpose of collection, treatment and disposal of sewage; and

WHEREAS, the District has constructed, operates and maintains a sewage collection 

system; and

WHEREAS, the District encompasses an area outside the corporate limits of the City 
which is so situated that its sewage thereof becomes, or may become, a menace to the residents 
of the District and residents of the City; and

WHEREAS, the District is empowered under SDCL 34A-5-34 to enter into a contract 
with the City to use the facilities of the City for the transmission, treatment and disposal of 
sewage of the District; and

WHEREAS, the City and District desire to enter into a contract to allow the District to 
use the sewage system of the City, and to establish rights and obligations incident thereto.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and 
conditions contained herein, City and District agree as follows:

SECTION ONE

DEFINITIONS

The words, terms and phrases of a technical nature relating to the City’s wastewater 
system shall have the meaning assigned to them in Title 13 of the Rapid City Municipal Code 
and shall be interpreted as such throughout this Agreement.

SECTION TWO

USE OF WASTEWATER SYSTEM

The City hereby grants to the District the right to discharge sewage into the City’s 

wastewater system as described in Exhibit A, attached hereto and incorporated herein. The City 
agrees to transport such sewage from the point(s) of entry to the wastewater treatment works of 
the City and to treat and dispose of such sewage, subject to the conditions herein. The metering 
and measuring of the sewage discharge from the District to the City shall be as provided in
Exhibit A. The District shall pay any and all service charges and fees in accordance with Exhibit A.

The District agrees that, for the life of this Agreement, it shall operate its wastewater treatment system in compliance with all applicable requirements and regulations imposed by the State of South Dakota and/or the United States Government, including any applicable licensure/certification requirements for wastewater operators.

SECTION THREE
SERVICE CHARGES

Service charges shall be charged based on unit rates and charges adopted by the City in ordinance or resolution and shall include both the sewer use charge and any meter charges, as described in Exhibit A.

As the City amends its sewer rates and charges over the life of this Agreement, the City agrees it will make efforts to provide the District with timely notice of any increase or decrease to enable the District to incorporate any rate increase or decrease into its wastewater fees and/or rates.

SECTION FOUR
ENACTMENT OF SEWER ORDINANCES AND DESIGN STANDARDS

The parties agree that, at the time of execution of this Agreement, the District has enacted applicable portions of City ordinances related to the discharge of sewage into the City’s system. The District agrees that its ordinances shall comply with the regulations of the Federal Environmental Protection Agency and the governing regulatory bodies of the State of South Dakota. The District shall also adopt the applicable portions of the City’s Standard Specifications for Public Works Construction (current edition) and Infrastructure Design Criteria Manual. The District further agrees to enforce requirements of any such enacted ordinances and regulations within its boundaries.

Upon execution of this Agreement and thereafter whenever the City amends its ordinances or regulations related to the discharge of sewage into the City’s system, the City shall furnish District with the same, and the District shall enact ordinances or regulations which are essentially the same or more strict than the City’s ordinances or regulations and shall enforce such within the District. Such amendment shall occur within 60 days of the District’s receipt of the amended ordinances or regulations. The District’s failure to amend or enforce its ordinances or regulations in accordance with this Section constitutes a breach of this Agreement, and the City shall have the right to terminate this Agreement upon such failure.

At the City’s request, the District shall submit to the City a copy of its sewer use ordinances and regulations. The District agrees to submit any amendments to such sewer use ordinances or regulations to the City in advance of their adoption to ensure they comply with this Agreement prior to the effective date of the amendments.
SECTION FIVE
INDUSTRIAL PRETREATMENT PROGRAM

The discharge of effluent from the treatment works and the disposal of sewage sludge are regulated by state and federal agencies. The City is required to have a waste pretreatment program through the federal National Pollutant Discharge Elimination System (NPDES) permitting process. To achieve the standards established in the City's NPDES permit and other federal and state regulations, and also to prevent interference with the City's treatment plant's processes, it is necessary to regulate the introduction of pollutants to the system. The District agrees to cooperate with the City in allowing the City to administer its Pretreatment Program and to do what is necessary to ensure that the City and the District have the authority to enforce said standards and prohibitions.

1. The parties recognize that changes in federal or state law and regulations relating to the environment and to the operation of sewage systems and treatment works may require the modification from time to time of this Agreement, and the parties agree to fully cooperate to modify this Agreement as shall be required under such circumstances.

2. The District agrees to a pretreatment program, as described in 40 CFR Part 403, to be implemented within the District and administered by the City. The District shall supply the City with all documentation necessary in order for the City to comply with the U.S. E.P.A. or its designee for pretreatment program approved under 40 CFR 403.9.

3. The City's sewer use ordinance authorizes the Rapid City Public Works Director ("Director") to set standards and requirements for the purposes mentioned above. The City shall supply the District with a list of such Director-set standards and requirements, and the District agrees to require and enforce the same or more stringent requirements within its service area to:

   A. Ensure compliance with federal and state standards and those of any other governmental body having legal authority to set such standards and requirements;

   B. Ensure that there is no interference with the treatment plant's operations.

4. The District agrees to notify the City of its industrial users as described in 40 CFR 403.8 (f) (2) (i) and (ii).

5. Both the City and the District shall have the authority to withhold approval of an application for the discharge of industrial waste within the District. The approval of any application will not be unreasonably withheld.

6. The City reserves the right to reject, with the authority to disconnect, any wastewater contributor that does not meet its standards or amendments thereto, but the City expressly covenants that any such rejection shall not be arbitrary on its part, and that
such rejection shall be preceded by written notice 30 days in advance, unless there shall be an imminent, immediate or substantial danger to the public health and safety in the judgment of the Director.

7. The District does not have pretreatment specialists and agrees to cooperate with the City in allowing the City to administer its Pretreatment Program and to further ensure the City’s inspectors and personnel have the authority to conduct inspections and do those other things reasonably necessary to administer the pretreatment program.

8. The District agrees to authorize the appropriate City officials to enforce compliance with national and state pretreatment standards and regulations. The District shall also adopt ordinances authorizing the appropriate City officials to enforce the pretreatment standards and discharge prohibitions specified in the Rapid City sewer use ordinance.

9. **Industrial Pretreatment Program Permit Fees.** Minor industrial users and significant industrial users shall pay an annual permit fee as established by the City for its industrial waste permits.

10. **Monitoring.** The District shall require industrial users who are declared industries to perform monitoring, at their own expense, to determine their industrial rate. Upon request of the Director, the District shall require the owner of any of the premises serviced by a building sewer carrying over ten thousand (10,000) gallons per day of industrial waste to install a suitable device for continuously recording the flow discharged to the City’s sewer, together with a suitable control manhole to facilitate observation and sampling of the waste. All minor industries shall be exempt for self-monitoring except as provided above for the purposes of this Section only.

11. **Measurement of Non-Metered Water.** The District shall require any commercial, institutional or industrial user receiving non-metered water to either install water meters for all non-metered sources or provide sewage flow measurement devices. All meters for non-metered water sources and sewage flow measurement devices shall be installed in accordance with plans and specification approved by the Director. All costs for design and installation shall be borne by the owner. The owner shall guarantee the City and District access to the meter or meters for monthly meter readings. Owner’s failure to allow access to the meter(s) shall result in the District cutting off water service to the property until access to the meter(s) is allowed, or taking such other legal action necessary to achieve compliance with this provision.
12. **Measurement of Actual Sewage Flow in Lieu of Using Metered Water.** The District may allow any commercial, institutional or industrial user to measure its actual sewage flow in lieu of basing the sewage charge on the metered water. All meters for non-metered water sources and sewage flow measurement devices shall be installed in accordance with plans and specification approved by the Director. All costs for design and installation shall be borne by the owner. The owner shall guarantee the City and District access to the meter or meters for monthly meter readings. Owner’s failure to allow access to the meter(s) will result in the District cutting off water service to the property until access to the meter(s) is allowed, or taking such other legal action necessary to achieve compliance with this provision.

13. **Control Manholes.** Upon request of the Director, the District shall require the owner of any property serviced by a building sewer carrying industrial wastes to install a suitable control manhole on the building sewer to facilitate observation and sampling of the wastes. Such manhole, when required, shall be constructed in accordance with plans approved by the Director.

14. **Meter Inspection.** The District shall regularly inspect all water and sewage meters relied upon for billing purposes to ensure that such meters are in good working condition.

**SECTION SIX**

**CONSTRUCTION OR DEVELOPMENT FEES**

If the City adopts any construction, connection, or development fees which may be applied to property within the City or District or which apply to all sewer users, the District or its property owners shall pay any such applicable fees in accordance with the City’s action.

**SECTION SEVEN**

**ANNEXATIONS TO DISTRICT**

The present boundaries of the District are defined in the attached map entitled Exhibit B Boundary Map Northdale Sanitary District dated 3/22/2021 (Exhibit B) to this Agreement and are hereto incorporated herein. The present boundaries of the District are filed of record, along with annexations and de-annexations, in the Pennington County Register of Deeds office.

The District shall not allow the use of the District’s wastewater collection system by anyone not within the present boundaries of the District, except by mutual agreement between the City and the District. The District shall not expand its boundaries, except by mutual agreement between the City and the District. The District shall timely notify the City of its desire to expand its boundaries by annexing property into the District prior to requesting annexation from the County. Such notice shall include the proposed number of new sewage users, user status and billing information. The City shall have the right to approve or deny any such annexation into the District that affects the District’s use of the City’s wastewater system. If the City denies the annexation request, the District shall not pursue annexation to expand its boundaries.
SECTION EIGHT
TRANSFER OF SYSTEM ON ANNEXATION BY CITY

The parties recognize and contemplate that the area within the District’s boundaries may, at some future date, be annexed into the City’s boundaries and that some or all facilities of the District may, at a future date, be transferred to the City. To minimize the difficulty in accomplishing such consolidation, the District agrees that new facilities to be constructed and operated under this Agreement shall conform to City standards, including the City’s Standard Specifications for Public Works Construction (current edition) and Infrastructure Design Criteria Manual, and that all future utilities shall be located in public rights of way or in easements which shall be transferrable to the City.

SECTION NINE
TEMPORARY DISCONTINUANCE OF SERVICE

Should there be a problem within the City’s wastewater system that impedes service to the District, the City may temporarily discontinue service to the areas affected to make necessary corrective actions. Corrective actions will be made on a priority basis. No claims for damages for such discontinuance shall be made by the District against the City.

SECTION TEN
TERM AND TERMINATION OF AGREEMENT

This Agreement shall be in full force and effect for twenty (20) years from the date of execution. However, either party may terminate this Agreement upon one (1) year’s written notice served upon the other party by delivering the same to the Mayor of the City of Rapid City or the Chairman of the Board of Trustees of the District, or at any time upon mutual consent of both parties.

This Agreement shall supersede and terminate all prior agreements between the parties related to the District’s use of the City’s wastewater system. All other agreements between the parties shall remain in full force and effect.

SECTION ELEVEN
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.
SECTION TWELVE
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.

SECTION THIRTEEN
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.

SECTION FOURTEEN
AMBIGUITY CLAUSE

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.

SECTION FIFTEEN
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.

SECTION SIXTEEN
BREACH AND ENFORCEMENT OF AGREEMENT

Should the District fail to pay the City or to perform its obligations under this Agreement, the City may terminate or suspend this Agreement and may discontinue accepting sewage from the District.

The parties acknowledge that, if the District breaches the Agreement, the City may conclude that it is undesirable or impractical to disconnect the District’s system from the City’s wastewater system. The parties therefore agree that, upon District’s breach of any of its obligations under this Agreement, the City may impose an additional one dollar ($1) surcharge to each unit measured by the meter, as described in Exhibit A and Section Three of this Agreement, until such time as the District has cured the breach. This additional charge is intended not as a penalty but as liquidated damages, understood by the parties to be compensation to City for costs incurred directly or indirectly by the District’s breach of its contractual obligations.
Prior to taking any action under this Section, the City will notify the District in writing of
the breach, and the District shall have at least 30 days to cure the breach. Based on the violation,
the Director shall have the authority to authorize additional time to cure any breach prior to
termination or suspension of the Agreement or imposition of a surcharge.

Should the City fail to fulfill any of its obligations under this Agreement, the District will
notify the City in writing of the breach and provide the City at least 30 days to cure the breach.
If the breach is such that the District determines people will be placed in imminent harm or that
public safety is at risk, the District may immediately upon giving notification seek preliminary
injunctive relief requiring the City to comply with the Agreement.

This Agreement shall also be specifically enforceable and both parties maintain all rights
to seek enforcement including by injunction and recovery for damages arising out of the breach.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
by their respective duly authorized officers as of the day and year first above written.

Dated this ___ day of __________________________, 2021.

CITY OF RAPID CITY

________________________
Mayor Steve Allender

ATTEST:

________________________
Finance Director

(SEAL)

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

On this _____ day of __________________________, 2021, before me, the undersigned
officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged
themselves to be the Mayor and Finance Director, respectively, of the City of Rapid City, a
municipal corporation, and that they as such Mayor and Finance Director, being authorized to
do so, executed the foregoing instrument for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.
Notary Public, South Dakota
My Commission Expires:

(SEAL)
Dated this 12th day of May, 2021.

NORTHALE SANITARY DISTRICT

By Antoinette Davila
Its President

STATE OF SOUTH DAKOTA )
COUNTY OF Pennington )

On this 12th day of May, 2021, before me, the undersigned officer, personally appeared Antoinette Davila, who acknowledged himself/herself to be the President of Northdale Sanitary District, and that he/she as such President, being authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

Amelia Palmer
Notary Public, South Dakota
My Commission Expires: 05/16/2024
Discharge points and metering.

The District shall discharge its sewage into the City’s wastewater system through a totalizing flow meter located at District’s sewage lift station and in such manner and under such conditions as prescribed by the Public Works Director (“Director”). The lift station is located at Lat 44° 7’ 43.52088N Lon 103° 17’ 43.52088. District shall calibrate the flow meter at least annually, no later than the first of the month following the month of execution of this Agreement, and shall provide the Director with the calibration results. District shall allow the City to access the flow meter to obtain monthly flow readings. District shall make monthly sewage payments to the City based on this total volume.

Service Charges.

The parties agree that the District shall pay both the sewer use charges and meter charges as described herein for its use of the City’s wastewater system. The District shall pay the rates and charges adopted and calculated by the City in its ordinances and resolutions adopting rates for wastewater users. District shall pay the City monthly based upon the monthly volume reflected on the meter, as read by City staff, multiplied by the sewer use charge. District shall also pay the City monthly the amount of the commercial/institutional meter charge for one six (6) inch meter, based upon the size of the discharge pipe into the City’s wastewater system. The parties agree that the meter charge is based upon the City’s costs to operate and maintain its sewage system, capital expenditures for the sewage system, and an environmental fee.

The parties agree that, over the life of this Agreement, the City may increase or decrease the wastewater service rates and charges to be paid by City wastewater users, and that District shall pay the current wastewater service rates and charges as amended by the City.

Service charges shall be payable monthly, no later than 22 days following the billing date. When applicable, District shall pay late fees as imposed and set by City ordinance or resolution.