SEWER SERVICE AGREEMENT BETWEEN THE CITY OF RAPID CITY AND RAPID VALLEY 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 RAPID VALLEY SANITARY DISTRICT, a sanitary district organized under the laws of the State of South Dakota, of ______________________, SD ________ ("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 located both inside and 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 currently 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 it is obligated to pay 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, as described in Exhibit A. The charges and rates that act as the basis of the charges to be paid by the District shall be City wide charges or rates. The City will not adopt special or targeted rates that would be specific to the District or not charged within the City.

As the City amends its City 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’ rate structure.

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 shall apply unless the District standards issued in the Design and Construction Standards for Water and Wastewater piping and Appurtenances are more restrictive. 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 90 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. The District’s amendments will not conflict with applicable State and Federal Regulations or be contrary to City’s sewer use ordinance.
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 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 the industrial user’s own expense, to determine its 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**

**ANNEXATIONS TO DISTRICT**

The present boundaries of the District are defined in the map attached as Exhibit C 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 which will not be unreasonably withheld, between the City and the District. The District shall not expand its boundaries with expectation that the City will accept the sewer effluent unless by mutual agreement between the City and the District the City has agreed to accept the effluent. For any area annexed by the District in the future where the City has not agreed to accept sewer effluent, the District will not commence any activity to build out sewer lines that would deliver effluent to the City until the City agrees to accept the effluent from the area. Upon the City agreeing in writing to accept the discharge, the District may at that time build out the sewer lines and discharge that area’s effluent to the City’s treatment facility. The City shall have the right to approve or deny the acceptance of treating the sewer effluent from the District’s newly annexed area. If the City denies the request, the District may pursue other methods to treat the sewer that are consistent with State and Federal regulations.
SECTION SEVEN
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 EIGHT
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 NINE
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 TEN
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 ELEVEN
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 TWELVE
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 THIRTEEN
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 FOURTEEN
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. The parties agree that in the event of a breach by either party, the party seeking to enforce this Agreement shall have the right to seek specific enforcement of the Agreement terms and preliminary and permanent injunctions without the need to show monetary damages are inadequate.

SECTION FIFTEEN
NO OTHER RIGHTS WAIVED

By entering into this Agreement, neither party waives any another right it may have as regards the other party or any third party. It is specifically acknowledged that the District currently conveys a portion of the City’s sanitary sewer effluent through the District’s collection system for transportation to the City’s treatment facility. Further, that the District to date has not charged for wheeling this effluent flow but maintains the right to begin to charge for this transportation when the District Board of Trustees may in its discretion determine it is needed.

SECTION SIXTEEN
AMENDMENT

This Agreement and its exhibit may not be amended except by written document approved by the City and the District by appropriate resolution and signed by their representatives.

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 ___ day of ______________________, 2021.

RAPID VALLEY SANITARY DISTRICT

By ________________________________

Its ________________________________

STATE OF SOUTH DAKOTA )
s.
COUNTY OF _________________)

On this ____ day of ______________________, 2021, before me, the undersigned officer, personally appeared ____________________, who acknowledged himself/herself to be the ____________________ of Rapid Valley Sanitary District, and that he/she as such ____________________, 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)
Exhibit A to Sewer Service Agreement

DISCHARGE POINTS AND METERING

The district shall discharge its sewage into the City’s wastewater system through 18 connection points located as shown on Exhibit B, the connection point map and at such other points in the future where the City and District may agree.

SERVICE CHARGES

The parties agree that the City shall directly bill the District, in accordance with this Section, for its wastewater usage. City shall charge District based upon the volume as tabulated in this Section multiplied by the appropriate rate the City imposes on its own wastewater subscribers, as calculated and imposed by City ordinance or resolution as adopted and as amended. The parties agree that, over the life of this Agreement, the City may increase or decrease its wastewater service rates to be paid by City wastewater users, and that District shall pay City the applicable current wastewater service rates as amended by the City. The meter charge for the District shall be calculated as the number of connections shown on Exhibit B minus two connections multiplied by the rate for an 8” residential meter.

District shall compensate the City for all sewage and industrial wastes conveyed to the City’s wastewater system by the District by using the following methods of rate determination:

1. Residential Users.

   The City and District agree to use the winter averaging method for determining sewer usage as set forth in RCMC § 13.16.360. The District shall calculate the average, and shall provide the City with the monthly consumption based on the December, January and February usage. The City shall bill the District based on a modified usage rate.

   District shall determine the amount of sewage flow from residential connections on a yearly basis by using the metered water to such residents as reflected in the January, February and March water billings. Depending on the billing area, the readings span the timeframe from Mid-November to Mid-February or the inclusive months of December through February. The District shall provide City with the total sewer gallons being billed monthly based on sewer average.

   For new residential users or intermittent users within the District, the amount of sewage flow the District determines shall be based on the District’s system average for residential users. This volume shall be used until the next averaging period (mid-November to mid-February or December through February). Residential users must be an active account and have a meter reading for all three (3) of the averaging months to have their rate re-averaged. If any month is missing, they will remain at the over-all
average or a previously determined average until the next averaging period (mid-November to mid-February or December through February).

2. Commercial and Institutional Users.

The monthly sewer charges for sewage flow from commercial and institutional connections discharging wastewaters similar in physical, biological and chemical quality to domestic wastewater shall be determined by multiplying the monthly wastewater volume in 100 cubic feet by the applicable City rate for commercial and institutional users per 100 cubic feet. The wastewater volume shall be determined from the monthly-metered water used by such users unless special allowances are made or the sewage is metered as provided for herein.

3. Industrial Users.

The sewer charge for industrial connections shall be determined by multiplying the monthly wastewater volume measured in 100 cubic feet by the applicable City rate for industrial users per 100 cubic feet whenever the BOD concentration is less than two hundred sixty (260) mg/l and the suspended solids concentration is less than two hundred fifty (250) mg/l based on the average of 24-hour flow proportioned, composite samples, collected at the times, frequencies and in the manner designated by the Director. Whenever the BOD concentration exceeds two hundred sixty (260) mg/l or the suspended solids concentration exceeds two hundred fifty (250) mg/l, based on the sampling and testing program specified by the Director, a surcharge will be assessed at the rates established by the City for its users herein per pound of BOD and per pound TSS.

Minor industrial users and significant industrial users shall pay an annual permit fee as established by the City for its industrial waste permits.