

AGREEMENT BETWEEN THE CITY OF RAPID CITY AND GRANDVIEW LAND LLC
FOR FARMING AT THE WATER RECLAMATION FACILITY

This Agreement is made his 20th day of June, 2022, by and between the CITY OF RAPID CITY, a South Dakota municipal corporation of 300 Sixth Street, Rapid City, SD 57701 (hereinafter the “City”, and Grandview Land LLC, of 2601 Grandview Drive, Rapid City, SD 57701 (hereinafter “Supplier”)

The parties agree as follows:

1. Background. The property to be farmed according to this agreement is the former sludge application site for the City of Rapid City Water Reclamation Facility. Due to the build up of nitrate in the soil, the site was closed in 2004. Remediation plans call for farming of crops to assist in removal of soil nitrates on the site.
2. Purpose. The purpose of this agreement is to set for the terms and conditions under which the parties have agreed that Supplier will farm the property described below.
3. Property. The property to be farmed is legally described as follows:

City of Rapid City property, Legal Description E1/2 of the NE ¼ of Section 25, Township (1) North, Range Eight (8) East of the Black Hills Meridian, Pennington County, SD, containing approximately 80 acres.

City of Rapid City property, Legal Description Lots One R (1R) of the Wastewater Plant Tract, located in Section (30) and Section Nineteen (19), Township One (1) North, Range Nine (9) East of the Black Hills Meridian, Pennington County, South Dakota, containing approximately 86.7 acres.

City of Rapid City property, Legal Description Lot 2 of Tract C of Section Thirty (30) Township One (1), North, Range Nine (9) East of the Black Hills Meridian, Pennington County, South Dakota, containing approximately 118.71 acres.

The foregoing property referred to herein as the “property”, is shown on Exhibit A, attached hereto and incorporated herein by this reference.

Specifically exempt from this contract is the wetlands area indicated in Exhibit B, attached hereto and incorporated herein by this reference. This area is not to be disturbed. Supplier shall refrain from farming, mowing, or driving across wetlands. Supplier shall be responsible for all costs of remediation, fines, and assessments should its damage, injure, or cause any loss to wetlands.

4. Farming. The actual farmable acreage of the Property is approximately 285 acres. The right granted herein is limited to the right to conduct supplemental planting of intermediate wheat grass or harvesting operations of wheat grass & or alfalfa only, without irrigation of any kind. No fertilizer or weed control or other amendments may be applied to the acreage

without express written permission of the City. No water whatsoever may be diverted to or used directly or indirectly on any of the above-mentioned properties. No grazing will be allowed on the site at any time. All crops shall be removed from the Property on or before November 1st of each year. The Public Works Director may, for good cause, grant an extension of time for removal.

5. Term. This Agreement shall be for a term beginning on June 1, 2022, and ending December 31, 2026, This Agreement shall terminate at the end of the term, and City is under no obligation to renew Agreement with Supplier. Supplier agrees to surrender and vacate the premises at the termination of this Agreement.
6. Consideration. In consideration of their ability to farm the Property, Supplier agrees to pay the City the sum of \$70.00 per acre, remitted according to the schedule listed below:

Period	Amount	Due Date
June 1, 2022-December 31, 2022	\$19,950.00	July 15, 2022
January 1, 2023-December 31, 2023	\$19,950.00	March 1, 2023
January 1, 2024-December 31, 2024	\$19,950.00	March 1, 2024
January 1, 2025-December 31, 2025	\$19,950.00	March 1, 2025
January 1, 2026-December 31, 2026	\$19,950.00	March 1, 2026

A payment will be delinquent if not paid prior to due date listed above. Late or unpaid payments will bear a fee of 1 1/2% per month from the 1st of each month.

A payment shall be in legal tender and submitted to the City Finance office, 300 6th Street, Rapid City, SD 57701

7. Insurance. The Supplier shall keep and maintain an insurance policy in a minimum amount of coverage of One Million Dollars (\$1,000,000.00) single limit liability for any one accident or occurrence. The insurance required by the City will not be unreasonable or arbitrary.

The policy shall name the “City of Rapid City” as additional named insured.

A certificate covering conditions described shall be filed at the City Finance Office within thirty (30) days from the date of this Agreement. Notice of certificate renewal is required prior to policy expiration, and a new certificate shall be filed within fifteen (15) days.

The Supplier shall, during the term hereof, or any part hereof, hold the City harmless, defend and indemnify it from any and all damages and demands that may result from negligence of Supplier, including specifically, but not limited to, personal injury and property damage claims arising out of or incidental to the Supplier’s harvesting of crops or the use, maintenance or operation by Supplier or his employees or agents, of any of the structures, appliances, equipment or operations referred to in this Agreement.

8. City Rights. The City, through its Public Works Director, reserves the right to approve crops planted. The City shall have the right to take crop samples for assessing the nitrogen uptake of the crop.
9. No Lease. This Agreement is not a lease of the Property, and Supplier shall have no interest in the Property by virtue of this Agreement. The City shall maintain the right to enter the property at all times for all lawful purposes, including but not limited to soil sampling, water sampling, maintenance and upkeep, and general property management purposes.
10. Supplier Rights. Supplier shall have the right to enter the Property at all reasonable times for purposes of farming the Property.
11. Termination. Either party shall have the right to terminate this Agreement following the default in any of the terms or conditions contained herein, if such default is not cured by the defaulting party within 30 days. Upon termination, Supplier shall no longer have the right to enter upon the Property for any reason. Supplier shall retain ownership of any crops that are planted and not harvested, but such ownership shall be subject to a lien in favor of the City on any harvested crop. The lien shall be in an amount equal to the damages caused by Supplier's default.
12. Authority. This Agreement is made and entered into by the Director of Public Works pursuant to the authority granted by SDCL 9-1-5 and Section 3.04.090 of the Rapid City Municipal Code.
13. Notices. All notices and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when either (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid) or (b) when deposited in the US mail, postage prepaid, in each case to the addresses designated below (or such other address as a party may designate by notice to the other parties):

City of Rapid City
Attn: Public Works Director
300 6th Street
Rapid City, SD 57701

Grandview Land LLC
Attn: Dan Lewis
2601 Grandview Drive
Rapid City, SD 57701

14. Relationship between the Parties. The relationship of the parties is that of independent contractors. The parties are not, by virtue of this Agreement or otherwise, in an employer/employee, principal-agent, joint venture or partnership relationship with each other, and each party agrees not to represent to any other person, or to assert in any form or forum to the contrary. Neither party is authorized to act as an agent for, or legal representative of, the other party and neither party shall have the authority to assume or create any obligation on behalf of, in the name of, or binding upon the other party.

15. Indemnity. Supplier agrees to indemnify, defend and hold the City harmless from and against any and all liability, losses, claims, damages, suits, costs, and expenses including, but not limited to, costs of defense and reasonable attorney's fees, which the City may hereafter suffer itself or pay to another party by reason of any claim, action, or right of action, at law or in equity, arising out of willful misconduct, error, omission or negligent act of Supplier and resulting in injury (including death) to any person or damage to any property to the extent such are caused by or are alleged to be caused by Supplier or its employees, any subcontractor or its employees, or any person, firm, partnership, or corporation employed or engaged by Supplier.
16. 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.
17. Amendments. This Agreement may only be amended by a written document duly executed by all parties.
18. 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.
19. Assignment. This Agreement and the rights, duties, and obligations hereunder may not be transferred or assigned by either of the parties, whether directly or indirectly by merger, consolidation, reorganization, dissolution, operation of law or otherwise, without the prior written consent of the other party. Any attempted transfer or assignment without consent in violation of the foregoing shall be void. Subject to the foregoing, this Agreement and the provisions hereof shall be binding on the parties and their respective permitted successors and assigns.
20. Waivers. No waiver of any term or provision of this Agreement shall be binding unless executed in writing by the party waiving such term or provision.
21. Integration. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.
22. Binding Agreement. This Agreement is binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.
23. 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.

24. Severability. 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.
25. Headings. 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.
26. Construction and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation relating to this Agreement shall be resolved only in the Seventh Judicial Circuit Court of Pennington County, South Dakota.

THE CITY OF RAPID CITY, SOUTH DAKOTA

ATTEST:

by _____
STEVE ALLENDER, MAYOR

Pauline Sumption
City Finance Officer

Date _____

(SEAL)

GRANDVIEW LAND LLC

by _____
AUTHORIZED SIGNATURE

DAN LEWIS, OWNER/EXECUTIVE OFFICER
BIDDER

Date

Exhibit A

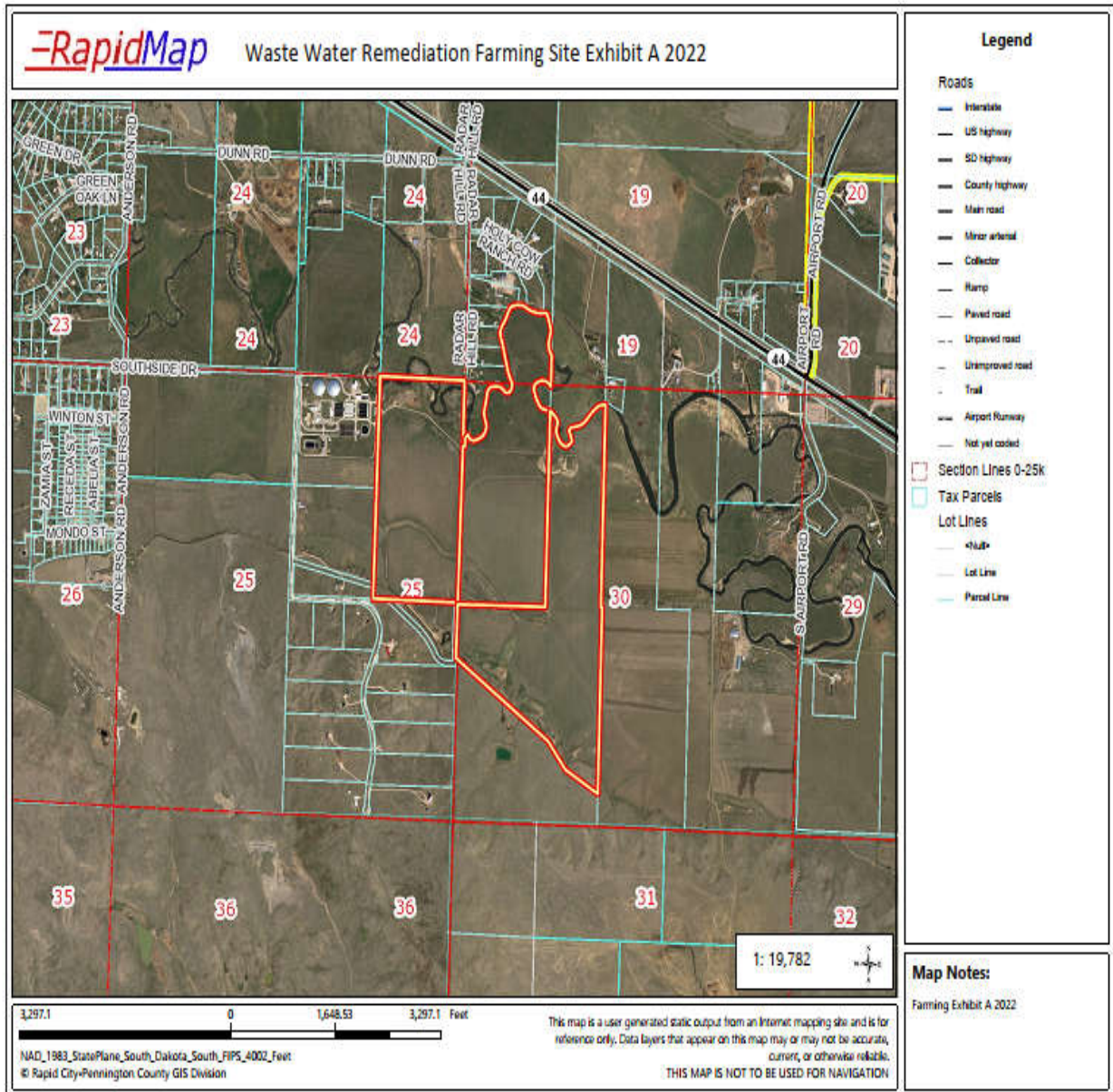


Exhibit B Wetlands Area

