

DRAFT - 7/3/2000

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CITY OF PLANKINTON

AND THE

SOUTH DAKOTA DEPARTMENT OF CORRECTIONS

CONCERNING

SHARED USE OF THE CITY OF PLANKINTON'S
WASTEWATER
TREATMENT FACILITY WITH THE SOUTH DAKOTA STATE
TRAINING SCHOOL

_____, 2000

INTRODUCTION

The City of Plankinton (City) has been offered funding to upgrade and improve its wastewater treatment facility. The upgrade and improvement of these facilities will be accomplished through funding provided by the State of South Dakota. The South Dakota Department of Corrections (Department) operates the State Training School near Plankinton. The State Training School (Training School) currently operates its own wastewater treatment facility. The City and the Department agree that it is in the Training School's best interest to cease operation of its independent, wastewater treatment facility and for its wastewater treatment needs to be provided by the City at its upgraded and improved wastewater treatment facility.

This Memorandum of Understanding (MOU) defines the terms and conditions under which the Training School's wastewater treatment needs will be met by the City's facility and the terms and conditions under which the city will provide and be compensated for those services. This MOU is entered into pursuant to SDCL Chapter 1-24 and SDCL 1-15-10.

DURATION

The term of this MOU shall be for a period of twenty years from the date of execution by both parties.

DESIGN CONSIDERATIONS

1. The 20-year design population equivalent of the Training School is 313 (annual average). For the purposes of this MOU, the population equivalent will be calculated pursuant to the following:
 - a. State employees and others working an 8 hour shift = 0.2 population equivalent, and
 - b. State employees, and members of their households, and inmates residing full time at the complex = 1.0 population equivalent.
2. The 20-year design population of the City is 790.
3. The 20-year design population of the City's expanded system, to include the Training School, will increase to 1103.

4. The proposed improvements include the construction of a new lift station and forcemain to pump the Training School's wastewater to the City's wastewater treatment facility. The Training School's forcemain will follow the route specified in Figure 4.2.2 on page 27 of the Facilities Plan completed for this project by Schmucker, Paul, Nohr & Associates. The route is contingent upon securing the necessary construction permits from applicable agencies. The forcemain will have cleanouts installed at least every 500 feet to facilitate maintenance. The City's wastewater lagoon system will be expanded by the construction of a third cell of no less than 5.6 acres. The new stabilization lagoon addition will be riprapped. An additional wetland cell of no less than 5.1 acres will also be constructed in the borrow area used for the construction of the lagoon addition. The improvements will conform to the South Dakota Department of Environment and Natural Resources "Recommended Design Criteria for Wastewater Collection and Treatment Facilities, march 1991".

5. The purchase price of the land will be mutually agreed to by both the Training School and City prior to said purchase occurring. The Department agrees to advance funds to the City for its purchase of 52.36 acres, more or less, of the Mayclin property to be used for the construction of the new lagoon and wetland additions. The legal description of said acres is the North Half of the Southeast Quarter, less the East 528 feet, Section 14, Township 103 North, Range 64 West of the Fifth Principal Meridian, Aurora County, South Dakota . The land shall be held in fee simple title in the name of the city upon acquisition of said property.

TERMS AND CONDITIONS OF PROVIDING SERVICE

1. The Department agrees to contribute \$189,000 towards the cost of this project. In addition, the City is to receive a Community Development Block Grant of \$373,200 to be used to pay for the remainder of the costs for this project. As the City receives bills for costs incurred, for engineering, project administration, and construction of the project specified in Sections 4 and 5, page 3, the City will submit the bill for payment and when the City receives the money from the grant or the Department of Corrections, it will pay the bills. In the event

project bids exceed the available funding as provided for in this Section, either party to this agreement may cancel further participation under this MOU. In the event of cancellation under this Section, the Department shall be responsible for all eligible costs up to that date including engineering, administration, design and land purchase option expenses. Nothing in this Section prohibits the parties from negotiating with the State for additional grant funding, or, if additional funds are available above the base bid, additional components or improvements may be included. The parties further agree that in the event that a conditional use permit for the construction of the project is not granted by Aurora County that this agreement may be canceled and that the Department shall be responsible for all costs as set forth above.

2. The Department agrees to operate and maintain, at its sole expense, the Training School's lift station and forcemain line to the point where the forcemain enters City property. The City shall be responsible for operation and maintenance of the forcemain line located on City property. The City's sole compensation for this operation and maintenance of the forcemain line and the treatment of the Training School's wastewater are the user charges provided for under this MOU. The Department agrees to provide annual records of lift station pumping hours and maintenance records to the City. The Department will report any sewer cleaning or similar activities, that would have the potential to affect the quality of the Training School's wastewater discharge quality, to the city at least 24 hours prior to said activity occurring.

3. The City agrees to provide the Department the opportunity to have input into the design of the proposed project and to let the Department review the bid specifications prior to the advertisement for bids. The Department and City will reach a consensus on mutually agreeable bid specification prior to bid advertisement. The Department and City agree the project budget is limited and the scope of the project shall not be changed significantly. However, in the event that the bid project cost is less than the amount of the Project budget, City shall have the right to expend the remainder of budgeted funds for other improvements in its wastewater treatment system in its sole discretion.

4. In the event of repair, maintenance, or other emergency conditions requiring temporary curtailment in the use of the City's wastewater system, the City agrees to contact the Training School's superintendent or designated representative for assistance with the City's request. The Department agrees to make every reasonable effort to comply with the City's request. The City acknowledges that the Training School requires basic, safe, and dependable wastewater services for the need of residents and employees. The Department and the City agree to communicate with and assist each party to accommodate their mutual needs and interests in maintaining a safe and dependable wastewater system.

5. In the event of a discharge of untreated wastewater from the Training School's collection system, lift station, or forcemain, the Department shall notify the City and the South Dakota Department of Environment and Natural Resources within 24 hours of said discharge. In addition, the Department agrees to collect a sample of said discharge and analyze the sample for total suspended solids, pH, and biochemical oxygen demand. The Department shall supply the City and the South Dakota Department of Environment and Natural Resources a copy of the test results from this sample within 2 days of receipt. Additionally, Training School agrees to construct a bypass such that if a leak or break in the forcemain occurs, the bypass may be used to divert the Training Schools wastewater into the Training School's current lagoon. In the event of a leak or break in the Training School's collection system, lift station, or forcemain, or back-up of wastewater, the Training School agrees to assume responsibility for said leak, break, or backup of wastewater.

6. The Department agrees to collect a grab sample of wastewater from the Training School in October of each year to be tested for total suspended solids, pH, and biochemical oxygen demand. If after five years sampling and testing, the results show no substantial difference from ordinary domestic sewage, sampling and testing may be stopped. The Department shall supply the City a copy of the annual test results within 14 days of receipt. Nothing in this provision prohibits the City from conducting its own independent sampling and testing, at the City's sole expense, of the Training School wastewater at any time during the term of this MOU.

7. As long as the total design population of 1103 is not exceeded, the City and Department acknowledge that the capacity of the City's wastewater facility will be adequate to meet each of their respective needs during the term of this MOU. The Department also acknowledges that major growth or changes at the Training School have the potential to impact the City's wastewater treatment facility. The Department agrees to provide the City with information on proposed major changes at the Training School that would significantly affect the quality or quantity of the Training School's wastewater as soon as possible to provide the City adequate time to make necessary wastewater system modifications. Provided, however, that City shall not be obligated to furnish wastewater services for a Training School population in excess of 313, except as set forth in paragraph 9 below.

8. The Training School will be charged for user charges based upon the formula contained under TERMS AND CONDITIONS OF USER FEES on Page 7.

9. City shall not be obligated to provide wastewater service for a Training School population in excess of 313, without additional contribution by the Department, to be negotiated and agreed to prior to the Training School population exceeding 313.

10. The Department agrees that the Training School will comply with all state, federal, and local laws, regulations, and ordinances regarding wastewater handling and treatment requirements during the term of the MOU.

11. Except as expressly provided for in this MOU, the City is solely responsible for all aspects of the operation of its wastewater system including but not limited to operation, maintenance, repair, management of operational personnel, reporting, and regulatory compliance, except as set forth in paragraph 5 of terms and conditions.

12. Nothing in the Memorandum of Understanding shall be construed as an indemnification by one party or the other for liabilities of a party or third parties for property loss or damage or death or personal injury arising out of the performance of this agreement. State employees are provided with liability coverage for negligence as provided for by SDCL Chapter 3-22 and under the

terms and conditions of the Participation Agreement between the State of South Dakota and the Public Entity Pool for Liability and the Memorandum of Liability Coverage to the Employees of the State of South Dakota. Coverage limits shall not be less than \$1 million per occurrence. The city will provide liability coverage in the amount of not less than \$1 million per occurrence for negligence by city employees through either a self-insurance fund or policy of insurance. Any liabilities or claims for property loss or death or personal injury by a party or its agents, employees, contractors or assigns or by third persons, arising out of and during this Memorandum of Understanding shall be determined according to applicable law, such as, if liability is joint, proportional responsibility will be determined according to the laws of the State of South Dakota as provided for in SDCL Chapter 20-9, and other applicable laws.

TERMS AND CONDITIONS OF USER FEES

The City agrees to provide to the Department, at no charge, five years of wastewater treatment services for up to 313-population equivalent at the Training School. The five-year period commences upon project completion. After the first five years, the Department agrees that wastewater treatment user charge fees shall be calculated monthly, but timed in a manner allowing the Department to budget for the user fees. Beginning in the first month of the sixth year, the monthly user fee will be calculated on the preceding year's average Training School's population equivalent. Thereafter, the monthly user charge will be calculated on the preceding month's population equivalent of the Training School. For the purposes of this MOU, the Training School will be billed for monthly user charges on the basis of the Training School's previous month's population equivalent divided by the average household size (2.3) times a factor of 1.33 times the residential rate for a domestic residence within city limits. The Department will provide the City a written monthly, staffing summary for billing purposes.

AMENDMENTS AND NON-ASSIGNMENT

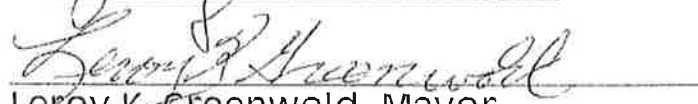
The Department and the City acknowledge that this MOU represents the entire agreement between the two parties concerning the subject matter addressed in this MOU, and is contingent upon the receipt of the funding specified in Section 1, Page 3 - TERMS AND CONDITIONS OF PROVIDING SERVICE. The Parties may amend this MOU at any time, but no amendment shall be effective unless it is in writing and signed by both parties. Neither the duration nor any other term or condition of this MOU may be unilaterally rejected, altered, or otherwise amended by one party without the express written consent of the other. This MOU shall be binding under the laws of the State of South Dakota and its terms may be enforced by the parties in the Courts of the State of South Dakota as provided for by law.

The parties each agree that this agreement, and the services provided thereunder, may not be transferred, sold or assigned without the express written permission of the other party.

Dated this 5th day of July, 2000.


Jeff Bloomberg, Secretary
South Dakota Department
Of Corrections

Dated this 3 day of July, 2000.


Leroy K. Greenwold, Mayor
City of Plankinton

(ATTEST)


Rosalie Brink
Finance Officer, Plankinton City Council

(SEAL)

City of Plankinton