

PREPARED BY: City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

**COVENANT AGREEMENT BETWEEN CITY OF RAPID CITY
AND LANDOWNERS AUTHORIZING LANDOWNERS TO MAINTAIN
NON-CONFORMING SEWER SERVICE LINE**

This declaration of covenant and agreement (the "Covenant Agreement") is entered into this 4th day of April, 2016, by and between Larry D. Stevens and Mary A. Stevens, of 1505 Tablerock Road Rapid City, SD 57702 (hereinafter the "Landowners") and the CITY OF RAPID CITY, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, SD 57701 (the "City").

WHEREAS, the Landowners are the owners of record of property within the city of Rapid City, as more particularly described below; and

WHEREAS, the Landowners' property is proposed to be served by a sanitary sewer service line which does not conform to the requirements in city ordinances and regulations; and

WHEREAS, the Landowners acknowledge that the City has the authority to require Landowners to construct an individual pumping station and/or a new sewer service line in order to conform to the requirements of city ordinances and regulations; and

WHEREAS, the City is willing to let the Landowners repair, replace and/or maintain the non-conforming sewer service line in lieu of constructing an individual pumping station; and

WHEREAS, the City and Landowner desire to reduce their agreement to writing.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is agreed by the parties as follows:

1. The recitals set forth above constitute an integral part of this Covenant Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.
2. This Covenant Agreement applies to the following described real property owned by Landowners:

Lot AB of Block 1, Tower Ridge 2, Located in the E½ of the SW¼, Section 23, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota.

3. The Landowners covenant and agree to be responsible for the operation and maintenance of the non-conforming sewer service line allowed by the City, including all costs and expenses associated with the maintenance or reconstruction of the sewer service line.
4. The Landowners covenant and agree that the sewer service line shall be maintained in good working condition.
5. The Landowners acknowledge that the City has the authority to require that they construct an individual pumping station and/or a new service line that is conforming to the City's ordinances and regulations with a minimum 3.5' bury depth. They further acknowledge that if they were required to do so, it would have a significant economic impact on them. The City's primary consideration for issuing a permit to allow a non-conforming service line on the above described property is the Landowners' covenants and agreements herein. The City's issuance of the permit to allow a non-conforming service line in lieu of requiring conformance with the City's ordinances and regulations is sufficient consideration for the promises they have made herein.
6. Landowners, on behalf of themselves and their heirs, personal representatives and assigns, do hereby release and discharge the City of Rapid City, its employees, agents, officers and assigns, of and from all liability for damages to themselves or their heirs, personal representatives and assigns, for any and all actions, claims, demands, losses or damages as a result of injury to their property in any way resulting either directly or indirectly from the City allowing Landowners to operate and maintain the non-conforming sewer service line.
7. Landowners further agree for themselves and their heirs, personal representatives and assigns, that they will not make a claim against, sue, attach the property of or prosecute the City of Rapid City for any injury or damage to their property resulting from the City allowing Landowners to continue operating and maintaining the non-conforming sewer service line.
8. Landowners also agree for themselves and their heirs, personal representatives and assigns to indemnify, defend and hold harmless the City of Rapid City from all liability, actions, causes of action, claims, demands, losses, damages, expenses and attorney fees, including attorneys' fees to establish the City's right to indemnity or those attorneys' fees incurred on appeal, resulting from claims or suits related to Landowners operation and maintenance of the non-conforming sewer service line.
9. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of the Landowners, and be considered as a covenant running with the above-described property. Furthermore, it is agreed that, in accepting title to the above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of this Covenant Agreement

10. The City may undertake any legal or equitable action available to enforce the provisions of this Covenant Agreement in addition to any remedy provided herein. Violation of any covenant contained in this Covenant Agreement shall give the City the right to enter upon the land where the violation has occurred and, at the expense of the Landowners, abate and/or remove the same. The Landowners agree to pay the City for any assessments, costs or expenses incurred by the City for any maintenance work due to the Landowners' failure to abide by the covenants contained herein. The assessments shall be a lien upon the real property until paid by the Landowners. In the event the City is required to undertake any action to enforce the terms of this Covenant Agreement, the undersigned Landowners, on behalf of themselves and their heirs, assigns or successors in interest, covenant and agree that the City may recover from the owner of said property its reasonable expenses, including attorney's fees incurred with respect to such action.

11. The covenants contained herein shall be deemed as continuing. Any failure or delay in enforcing the same, on any occasion, or repeated occasions, shall not impair or affect the covenant so far as any future or other breach is concerned. It is understood and agreed that no waiver of any breach of the covenant herein contained shall be construed to be a waiver of any other breach of the same or other covenant, nor shall failure to enforce any one of the restrictions, either by forfeiture or otherwise, be construed as a waiver of any other restriction or condition.

12. This restrictive covenant is intended to last the maximum length of time as may be permitted by law, and at the end of any maximum term, as permitted by law, this restrictive covenant will automatically renew and be extended for an additional maximum term as may be permitted by law.

13. This Covenant Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

14. If any section(s), or provision of this Agreement are 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.

15. No modification or amendment to this Agreement shall be valid, unless evidenced by a writing signed by the parties hereto or their successors in interest.

16. The parties' rights and obligations under this Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this Agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

CITY OF RAPID CITY

Steve Allender, Mayor

ATTEST:

Finance Officer

(seal)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2016, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing Agreement Consenting to Assessed Project for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

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

(seal)

Notary Public, South Dakota
My Commission Expires: _____