

Agreement Summary with Prairie Acres LLC Mobile Home Park (The Agreements follow on next pages).

On November 16, 2015 the City of Rapid City (City) entered into an agreement with Prairie Acres LLC (Owner) where the City agreed to allow the Owner to connect to City sewer. Refer to Sewer Service Agreement between Prairie Acres LLC and City of Rapid City, South Dakota. Per the agreement, the Owner will construct a public sewer main and a private sewer main per City standards and the City will own and operate the public sewer component. At the time the agreement was executed, approximately $\frac{3}{4}$ of the Owner's property was within City limits and $\frac{1}{4}$ was in the county. As part of the agreement the Owner was to construct the sewer mains and annex the $\frac{1}{4}$ portion of the property that was not currently within City limits.

The Owner submitted drawings for approval and the City approved the project for construction, but a contingency was added to the approval stating the Owner could not discharge sewage to the City until annexation occurred. While the project was under construction, the Owner was attempting to voluntarily annex into the City. At the completion of the sewer main construction, the Owner had not been able to voluntarily annex the property. The Owner had encountered difficulties with the annexation process due to State requirements regarding registered voter signature to voluntarily annex.

On December 7, 2015, the Rapid City Common Council authorized staff to begin involuntary annexation of said property. On February 18, 2016 the City and Owner executed an amendment where the City agreed to allow the Owner to connect to City sewer and discharge sewage to the City collection system. The amendment states "The parties understand that per the Landowner's request, the City has begun the procedures to involuntary annex the properties pursuant to South Dakota Codified Laws Chapter 9-4 et seq. Landowner agrees that its owners, agents, and employees will not object to the involuntary annexation in any manner, including pursuing legal options for objection found within SDCL Chapter 9-4. In the event the property is not annexed, the property outside the City shall immediately pay 300% of the rate established by ordinance, until the property is annexed or another agreement is reached by the parties." Refer to the Amendment to Sewer Service Agreement between Prairie Acres LLC and City of Rapid City, South Dakota dated February 18, 2016.

**SEWER SERVICE AGREEMENT BETWEEN PRAIRIE ACRES LLC AND CITY OF
RAPID CITY, SOUTH DAKOTA**

This Agreement is entered into this 14 day of November, 2015, by and between Prairie Acres LLC, (the "Landowner"), of 2348 Carter Drive, Rapid City, South Dakota, 57701, and the **CITY OF RAPID CITY** (the "City"), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

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

WHEREAS, the Landowner's property is currently served by a private sewer collection system and private lagoons for treatment of wastewater; and

WHEREAS, the sewage collection system is located within, and between the mobile home parks known as Prairie Acres and Country Village South, (the "Property"), legally described as;

Southwest Quarter of the Southwest Quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$) and the North Eight-Tenths (N8/10) of the West Half of the West Half of the Southeast Quarter of the Southwest Quarter (W $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section Twenty (20), Township Two North (T2N), Range Eight East (R8E), Black Hills Meridian, Pennington County, South Dakota, including all improvements located thereon, subject to restrictions, reservations, covenants, easements, and rights-of-way of record; and

The West Half of the East Half of the Southeast Quarter of the Southwest Quarter (W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$) and the East Half of the West Half of the Southeast Quarter of the Southwest Quarter (E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section Twenty (20), Township Two North (T2N), Range Eight East (R8E) of the Black Hills Meridian, Pennington County, South Dakota, excepting therefrom Tract One (1) of Vetsch's Subdivision; and

WHEREAS, the Property encompasses an area, partially within the City limits, and partially outside the City limits, which is so situated that the sewage thereof becomes, or may become, a menace to the residents of such area; and

WHEREAS, the City has adopted Resolution 2014-092 establishing a policy regulating the provisions of City utility to property outside city limits, dated October 6, 2014; and

WHEREAS, the City and the Landowner desire to enter into an Agreement to allow the Landowner to use the sewage treatment and disposal facilities of the City and to establish rights and obligations incident thereto.

NOW THEREFORE, in consideration of the City of Rapid City's above referenced adopted Resolution establishing a policy regulating the provisions of city utility service to property outside city limits; and in consideration of the mutual covenants and conditions contained herein, the City and the Landowner hereby agree as follows:

SECTION ONE DEFINITIONS

The words, terms and phrases of a technical nature relating to wastewater collection and treatment shall have the meaning assigned to them in Section 13.04.010 of the Rapid City Municipal Code and shall be interpreted as such throughout this Agreement.

SECTION TWO USE OF WASTEWATER TREATMENT PLANT

A. The City hereby grants to the Landowner the right to discharge sewage into the City's sewer system. The City agrees to transport such sewage from the point of entry to the wastewater treatment works of the City, and to treat and dispose of such sewage, all subject to the Conditions herein. The Association shall discharge its sewage into the City sewer system through a sewer manhole.

B. The Landowner shall provide to the City water meter readings from the source water used to supply the Property for water used during the winter months of December, January and February of each year. The average monthly winter use measured in hundreds of cubic feet shall be multiplied by the rate described in SECTION FOUR and the product will determine the monthly sewer use charge for the 12-month period commencing April 1 for each year. In the event the winter meter readings are not available for the months noted above, actual meter readings will be used. When a new home is added within the Property, the monthly sewer charge shall be increased based on the average single family residential water use of 700 cubic feet per month per dwelling unit served, and this volume shall be used until the end of the next averaging period.

SECTION THREE INCORPORATION OF SEWER ORDINANCES

A. The Landowner hereby agrees to incorporate all applicable portions of city ordinances relating to its sewer service system into its rules and agreements with its tenants. The Landowner further agrees to enforce the terms of any such rules and agreements. If Landowner fails or refuses to enforce such rules and agreements, the City may terminate service to any or all of the Property.

B. The Trunk Sewer in the Seger Drive right-of-way and the sewer main identified as "public" on Exhibit B, attached and incorporated herein, shall be owned and operated by the City of Rapid City. The Landowner shall own, operate and maintain all other sewer mains and service lines located on the Property.

SECTION FOUR SERVICE CHARGES

A. The Landowner shall pay to the City monthly service charges based upon the volume of sewage as tabulated under SECTION TWO. The rate charged for sewer within the City of Rapid City shall be per Section 13.16.360 of the Rapid City Municipal Code. The current established rate is \$3.25/unit. The rate will be periodically increased in accordance with any changes to the Rapid City Municipal Code. For the portion of the Property outside the City, in accordance with Resolution

No. 2014-092, no sewer service shall be provided until annexation of the portion of the Property contiguous to the city is approved and effective.

B. Service charges shall be payable monthly, on or before the tenth (10) day of each month.

SECTION FIVE PRIVATE INFRASTRUCTURE

A. Landowner shall provide copies of all records in its possession of or relating to the existing sewer system.

B. The City shall inspect all taps to public or private sewer mains within the Property. All taps to public sewer mains shall be made by the City.

SECTION SIX INDUSTRIAL AND COMMERCIAL USERS

A. In the event an industrial or commercial user shall desire to convey wastes other than domestic sewage to the Landowner's sewage collection system, this Agreement shall be amended to include a permit system as provided in Chapter 13.16 of the City's Municipal Code, including pretreatment, monitoring, sampling, record keeping, and reporting as required under Chapter 13.16, and in compliance with federal categorical pretreatment standards.

B. The Landowner shall permit no significant or minor industrial user to use the Landowner's sewage collection system until such aforementioned conditions have been implemented by mutual agreement between the City and the Landowner.

SECTION SEVEN ADDITIONS TO PROPERTY

A. The present boundaries of the Property are the same and unchanged from the boundaries described and outlined above.

B. The Landowner shall not allow the use of its sewage collection system by any properties, other than those properties set forth in the Recitals of this Agreement and displayed on a map of the area attached hereto as Exhibit B and incorporated herein as if fully set forth. In the event that Landowner expands its boundaries, it shall not allow anyone within the extension of such boundaries to convey sewage or industrial waste to the City Wastewater Treatment Plant without prior written approval of the City allowing persons in such extended area to use the City Wastewater Treatment Plant. No commercial for industrial uses may be permitted within the boundaries without prior written approval of the City.

SECTION EIGHT TEMPORARY DISCONTINUANCE OF SERVICE

The City reserves the right to temporarily discontinue service to the Landowner, with proper notification, whenever it is necessary to insure proper operation of the City's wastewater collection

and treatment system. No claims for damages for such discontinuance shall be made by the Landowner or its users against the City. The Landowner agrees to indemnify and hold harmless the City against all claims made for discontinuance of service.

**SECTION NINE
EFFECTIVE DATE OF AGREEMENT**

This Agreement shall become effective immediately.

**SECTION TEN
TERM AND TERMINATION OF AGREEMENT**

- A. This Agreement shall be in full force and effect for an unlimited time.
- B. At the time of connection, Landowner agrees to contact the City's utility billing department to confirm that an account has been set up in his/her name, and to provide all necessary information and assistance as may be required to set up such account.
- C. 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 Landowner.
- D. This Agreement and the documents referred to herein constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written, with respect to the subject matter hereof. This Agreement may only be amended by a written document duly executed by all parties.
- E. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the circuit court of Pennington County, State of South Dakota.

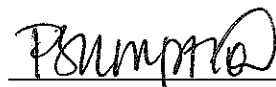
Dated this 14 day of November 2015.

CITY OF RAPID CITY



Mayor

ATTEST:



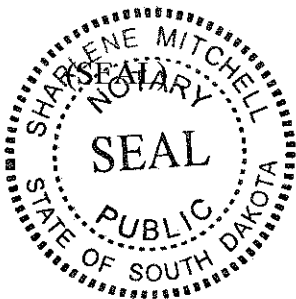
Finance Officer

(SEAL)

State of South Dakota)
) ss.
County of Pennington)

On this the 14 day of August, 2015, 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 and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

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



[Signature]
Notary Public – South Dakota
My Commission Expires 4-19-17

LANDOWNER
Prairie Acres, LLC

By: [Signature: Ted C. Pettyjohn]
Its: Member

State of South Dakota)
) ss.
County of Pennington)

On this the 30th day of October, 2015, before me, the undersigned officer, personally appeared Ted C. Pettyjohn, who acknowledged himself to be the Member of Prairie Acres LLC., and that he, as such Member, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of Prairie Acres LLC.

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

(SEAL)

[Signature: Wanda L. Schmatz]
Notary Public – South Dakota
My Commission Expires **My Commission Expires**
January 4, 2017

PW 020716 15
4/1/16

**AMENDMENT TO SEWER SERVICE AGREEMENT BETWEEN PRAIRIE ACRES
LLC AND CITY OF RAPID CITY, SOUTH DAKOTA**

WHEREAS, the sewer service agreement (Agreement) was entered into on November 16, 2015 by and between Prairie Acres LLC, (the "Landowner"), of 2348 Carter Drive, Rapid City, South Dakota, 57701, and the **CITY OF RAPID CITY** (the "City"), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701; and

WHEREAS, the Landowner has completed the construction of the public sewer main within the portion of its property outside the City, and

WHEREAS, the Landowner desires to connect the private sewer system to the public sewer system as soon as possible; and

WHEREAS, Section 4.A of the Agreement requires the portion of the property outside the City to be annexed prior to sewer service being provided for the property; and

WHEREAS, the Landowner has been unable to obtain the necessary signatures for the voluntary annexation petition; and

WHEREAS, on December 7, 2015, the Rapid City Common Council authorized staff to begin involuntary annexation of said property; and

WHEREAS, the involuntary annexation process may take several months to complete; and

WHEREAS, the parties agree that Section 4.A of the Agreement should be amended to remove the obligation of the Landowner to annex the property prior to sewer service being provided; and

WHEREAS, the parties therefore seek to amend the Agreement.

NOW THEREFORE, for and in consideration of the mutual promises, covenants, and agreements herein contained, the parties covenant and agree as follows:

1. Incorporation of Recitals. The aforementioned recitals are incorporated herein by reference as if more fully set forth hereinafter.
2. Amendments to Landowner Obligations.

SECTION FOUR A

Section 4.A of the Agreement shall be deleted and replaced in its entirety with the following:

A. The Landowner shall pay to the City monthly service charges based upon the volume of sewage as tabulated under SECTION TWO. The rate charged for sewer within the City of Rapid City shall be per Section 13.16.360 of the Rapid City Municipal Code. The current established


rate is \$3.25/unit. The rate will be periodically increased in accordance with any changes to the Rapid City Municipal Code. Once connected to City sewer, the rate for both properties shall be per the current established rate.

Once the property is annexed, the rate shall be per the Rapid City Municipal Code. The parties understand that per Landowner's request, the City has begun the procedures to involuntarily annex the properties pursuant to South Dakota Codified Laws Chapter 9-4 *et seq.* Landowner agrees that its owners, agents, and employees will not object to the involuntary annexation in any manner, including pursuing legal options for objection found within SDCL Chapter 9-4. In the event the property is not annexed, the property outside the City shall immediately pay 300% of the rate established by ordinance, until the property is annexed or another agreement is reached by the parties.

3. Balance of Agreement Terms Remain. All other terms of the Agreement shall remain unchanged, and in full force and effect. In the case of conflict of another portion of this Agreement not amended hereby with the amended sections above, the amended sections and the intent of those amended sections, shall control.

Dated this 18 day of Feb 2016.

CITY OF RAPID CITY



Mayor

ATTEST:



Finance Officer

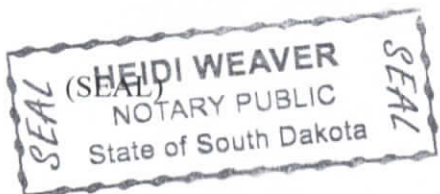
(SEAL)



State of South Dakota)
) ss.
County of Pennington)

On this the 18 day of Feb, 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 and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

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



Heidi Weaver
Notary Public – South Dakota
My Commission Expires 6-4-21

Dated this 14 day of February 2016.

LANDOWNER
Prairie Acres, LLC

Ted C. Pettyjohn
Ted C. Pettyjohn, Member

State of South Dakota)
) ss.
County of Pennington)

On this the 14 day of February, 2016, before me, the undersigned officer, personally appeared Ted C. Pettyjohn, who acknowledged himself to be the Member of Prairie Acres LLC., and that he, as such Member, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of Prairie Acres LLC, by himself as Member.

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

(SEAL)



Susan Donat
Notary Public – South Dakota
My Commission Expires September 9, 2017

My Commission Expires
September 9, 2017