

Prepared by City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

**AGREEMENT BETWEEN CITY OF RAPID CITY AND BUTLER MACHINERY
COMPANY TO CONNECT TO CITY SEWER SYSTEM**

This Agreement is entered into this 19 day of November, 2018, by and between **BUTLER MACHINERY COMPANY**, (the "Landowner"), of 3401 33rd Street SW, Fargo, ND 58104, and the **CITY OF RAPID CITY** (the "City"), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

WHEREAS, the Landowner hereby acknowledges it is the owner of record of property which is legally described as:

**Lot 4 of Tract A of Lien Subdivision, NE1/4 SE1/4 and SE1/4 NE1/4, Sec 21, T2N,
R7E, BHM, Rapid City, Pennington County, South Dakota**

("the Property"); and

WHEREAS, Landowner uses the North 960 feet of the Property ("North Portion") for its commercial activities, and the North Portion includes a building that utilizes a private septic system; and

WHEREAS, Landowner currently uses the remainder portion of the Property ("South Portion") for storage of materials and equipment, and the South Portion does not have or require any sewer service at this time; and

WHEREAS, both the North Portion and the South Portion of Landowner's Property are currently unserved by City sanitary sewer; and

WHEREAS, a project has been undertaken to extend a new sanitary sewer main adjacent to Landowner's property on Deadwood Avenue; and

WHEREAS, Landowner wishes to abandon its private septic system and connect the North Portion of the Property to the City's new sewer main; and

WHEREAS, Landowner cannot connect to the City's sanitary sewer system until the construction project has been completed, accepted by the City, and construction fee resolutions approved by the City Council; and

WHEREAS, it is beneficial for both Landowner and the City to allow Landowner's connection to the City's sanitary sewer systems once the sanitary sewer main has been constructed and accepted, which generally occurs prior to approval of construction fee resolutions; and

WHEREAS, the City and Landowner desire to enter into this Agreement in order to reduce their mutual understandings and agreements regarding the connection of Landowner's property to the City's sanitary sewer system to writing.

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

1. Construction Fee Resolutions. The City hereby grants Landowner the right to connect the North Portion of the Property to the City's sanitary sewer system prior to approval of construction fee resolutions. The parties agree that City shall include both the North Portion and the South Portion of Landowner's Property in the construction fee resolutions and any other actions taken to recover the cost for the sewer main, and appurtenances, installation under the Deadwood Avenue Reconstruction project, and that Landowner shall pay those fees in accordance with this Agreement. Such construction fees shall be for sewer materials and installation only and not for any grading improvements or improvements to the roadway.

2. Fees for North Portion. Landowner shall pay all Construction Fees and other fees to be established from the extension of public sewer main attributable to the North Portion of the Property, once City has imposed such fees upon the North Portion. The City shall invoice Landowner for these imposed costs, and Landowner agrees to pay the amount in full within thirty days of issuance of the invoice.

3. Fees for South Portion. The Landowner agrees to pay the Construction Fees for the South Portion of the Property when additional development or redevelopment occurs on the South Portion, or when the Landowner applies for a building permit, whichever is earlier.

4. Nonconforming Sewer Service. The City hereby grants Landowner an exception for the North Portion to allow a temporary non-conforming sewer service connection to the existing public sewer main at the intersection of Deadwood Avenue and Tatanka Road, and to allow a private service to be located in the public right-of-way. At such time as public sewer is extended to the North Portion of the Property as part of the Deadwood Avenue Reconstruction project, the City shall reconnect Landowner's sewer service to the adjacent public sewer main. At the time of connection to the new sewer main, the City shall immediately abandon the temporary sewer service tap and the portion of the sanitary sewer service line located within the

public right-of-way. If the Landowner sells the South Portion of the Property at any time, an easement shall be secured for the sanitary sewer service line located within the South Portion of the Property.

5. Remedies. Should Landowner fail to make payment within the thirty days provided in Section 2 above, the City shall have all legal and equitable remedies provided by law to collect said payment. In addition, the City shall have the right to disconnect any and all wastewater connections to the property at the Landowner's expense. In the event City is forced to initiate collection, the Landowner agrees to be responsible for all costs of collection including reasonable attorneys' fees and costs, court costs, and interest on the construction fee at the rate of ten percent per annum.

6. Indemnification. Landowner agree to defend, release, indemnify and hold City harmless from any and all liability arising from the connection of Landowner's property to the City's sanitary sewer main by Landowner, its officers, directors, contractors, agents and/or employees.

7. Responsibility for Costs. Landowner agrees to obtain all applicable permits and follow all laws, ordinances, administrative rules, and regulations, including payment of all applicable fees relating thereto, when constructing any connections to the City's sanitary sewer systems. The Landowner is also responsible for all costs associated with construction or reconstruction of the service line or lines from any building to the main or service stub as needed to provide facilities that comply with the City's standard specifications and ordinances.

8. Utility Billing. 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 its name, and to provide all necessary information and assistance as may be required to set up such account. The parties agree that City will install a meter on Landowner's water usage as well as a remote reading device in order to calculate sewer fees in accordance with City ordinance and resolution. The parties agree that Landowner will pay the fees for the meter and the remote reading device for the water meter as well as all calculated sewer usage charges. Meter and usage charge will be based on Industrial usage and actual meter size per the Water Reclamation Section of Resolution 2018-084 and as updated annually.

9. Successors and Assigns. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, and successors in interest of the Landowners, and shall 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 Agreement recorded with the Pennington County Register of Deeds' Office.

10. General Conditions.

- a. 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.

- b. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written. This Agreement may only be amended by a written document duly executed by all parties.
- c. 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 19 day of November, 2018.

BUTLER MACHINERY COMPANY

Dan Werdel

(signature)

Dan Werdel

(printed name)

Its Rapid City Opps Manager
(title)

State of South Dakota

ss.

County of Pennington

On this the 19 day of November, 2018, before me, the undersigned officer personally appeared Dan Werdel, who acknowledged himself/herself to be the Opps Manager of BUTLER MACHINERY COMPANY, and acknowledged that he/she as such Mitzi Ringgaard, being duly authorized to do so, executed the foregoing instrument as the act of its principal for the purposes therein contained.

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

Mitzi Matie Ringgaard

Notary Public - Meade County

My Commission Expires:

March 19, 2019

(SEAL)



Dated this ____ day of _____, 2018.

CITY OF RAPID CITY:

Mayor Steve Allender

ATTEST:

Pauline Sumption, Finance Officer
(SEAL)

STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF PENNINGTON)

On this the ____ day of _____, 2018, 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 as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein.

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

(SEAL)

Notary Public, South Dakota
My Commission Expires: _____