

Prepared by City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
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WEN
2-22-17

**AGREEMENT TO ALLOW TEMPORARY WATER SERVICE BY
RAPID VALLEY SANITARY DISTRICT AT 3301 AND 3011 SOUTH VALLEY DRIVE**

This Agreement is made by and between the **CITY OF RAPID CITY**, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, SD 57701, (the "City"), **RAPID VALLEY SANITARY DISTRICT**, a political subdivision of the State of South Dakota, of 4611 Teak Drive, Rapid City, SD 57703, (the "Sanitary District"), **ROBERT E. FUCHS**, of PO Box 3362, Rapid City, SD 57709 ("Fuchs"), and **TERRY LEE HOOK, ANNICE E. HOOK, AND TERRY LEE HOOK and THOMAS E. HOOK**, as Trustees of the **Robert G. Hook Credit Equivalent Trust** of 1876 Lombardy Drive, Rapid City, SD 57703 (collectively "Hook").

WHEREAS, Fuchs owns property located at 3301 South Valley Drive; and

WHEREAS, Hook owns property located at 3011 and 3035 South Valley Drive; and

WHEREAS, the 3301 and 3011 South Valley Drive are outside of the Sanitary District and within the water service area of the City; and

WHEREAS, Fuchs and Hook are in need of water service for the property, and the City's closest water main would require public improvements in addition to private improvements to serve the property; and

WHEREAS, the Sanitary District is willing to temporarily provide water service from its main in South Valley Drive; and

WHEREAS, the water service line would cross property owned by Hook, who is agreeable to the arrangement detailed in this Agreement; and

WHEREAS, the parties wish to reduce their agreement to writing.

NOW THEREFORE, it is agreed by the parties as follows:

1. Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. Temporary Water Service. The parties agree that Fuchs and Hook may obtain water service temporarily from the Sanitary District. Fuchs and Hook, and their respective successors in interest, may maintain such water service until the earlier of one of the following:

- a. such development occurs that results in a City water main being constructed up to or adjacent to a property receiving service under this Agreement, at which time the property owner shall have ninety days to construct a water service line conforming to all applicable city standards;
- b. the respective property owner is in default of the terms and conditions of this Agreement or any ancillary agreements for water service to the property, including applicable ordinances of the Sanitary District, and the Sanitary District gives sixty days' notice that it is no longer agreeable to providing service to a property served hereunder; or
- c. any subdivision, development, redevelopment, or change in use of the Fuchs Property or the Hook Property, described below.

Upon termination of service due to one of the above conditions, Fuchs and/or Hook, or their successors in interest, shall construct compliant water mains as required by the City and shall abandon the temporary service lines constructed pursuant to this Agreement. Any redevelopment, development, or change in use within the Sanitary District boundaries will require approval from the Sanitary District.

3. Easement from Hook. Hook agrees to execute a utility and access easement allowing a water service line to cross the Hook Property for the purpose of maintenance and supply of water service to the Fuchs Property. Such easement shall be 20 feet in width, and its length to be in its entirety on Hook's private property. Survey and design costs shall be borne by the property owner. The easement must be agreeable to all parties and recorded at Pennington County Register of Deeds before installation of service commences. The easement's exhibit shall be prepared by a professional land surveyor.

4. Fuchs Property. Fuchs owns the following property, which will be served by the Sanitary District as provided in this Agreement:

The Southwest Quarter of the Southeast Quarter (SW¼SE¼) of Section Eight (8), Township One North (T1N), Range Eight East (R8E) of the Black Hills Meridian (BHM), Pennington County, South Dakota, EXCEPTING the east 424.2 feet thereof

5. Hook Property. Hook owns the follow property:

SE¼SE¼, less Jepsen Subdivision, Section 8, T1N, R8E, BHM, Pennington County, South Dakota,

Terry Lee Hook owns the following property:

The East 424.2 feet of the SW¼SE¼ of Section 8, T1N, R8E, BHM, Pennington County, South Dakota.

6. Construction of Water Service. Fuchs and Hook agree to bear all costs and fees relating to construction and installation of their respective service lines, meter pits, meters, and all appurtenances. All service lines and connections shall be made in accordance with the Sanitary District's design criteria and construction standards and approved by the Sanitary District prior to installation. All payments for costs and fees shall be remitted directly to the Sanitary District at its address above.

7. Consumers' Responsibility. Fuchs and Hook, or their successors in interest, shall be responsible for all costs of repairs or replacement of their respective water service lines and associated appurtenances from the Sanitary District water main approved connection point to the existing homes. Fuchs and Hook, or their successors in interest, shall also be responsible for paying all costs related to their respective water service lines upon disconnect or abandonment of service from water main to meter pit.

8. Sanitary District Service. Fuchs and Hook agree to follow all ordinances, bylaws, policies, rules and regulations of the Sanitary District, as may be made or amended from time to time, which are required of its customers.

9. Restrictions on Service. Service to the Fuchs Property and Hook Property shall include only water service for the existing homes. Service shall be used for domestic household use only. No outside watering is allowed. No expansion of this service or use shall be allowed under this Agreement unless evidenced by a writing signed by all parties hereto, or their respective successors in interest.

10. 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) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the addresses above (or such other address as a party may designate by notice to the other parties).

11. 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.

12. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

13. 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.

14. 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. This provision does not apply to the sale of the property by the above-named property owners or successors provided they comply with notice to the Sanitary District that there is a new owner of the property and that owner complies with the Sanitary District requirements for customer services.

15. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period provided for in this Agreement.

16. 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.

17. Cumulative Remedies. The rights and remedies under this Agreement are in addition to and not exclusive of any other rights, remedies, powers and privileges, whether at law or in equity, under this Agreement or otherwise, that any party may have against another. No failure to exercise and no delay in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude the exercise of any other right, power or privilege. No waiver of any breach or default of any covenant or agreement hereunder shall be deemed a waiver of any preceding or subsequent breach or default of the same or any other covenant or agreement.

18. Force Majeure. Neither party shall be liable for any delay or failure in performance due to any reason or unforeseen circumstance beyond the affected party's reasonable control, including shortages or delays in obtaining materials from suppliers that cannot reasonably be cured by obtaining the needed materials from another source, work stoppages not involving employees of either party that cannot reasonably be overcome, fires, riots, rebellions, wars, acts of terrorism, accidents, explosions, floods, storms, acts of God, and similar occurrences. The obligations and rights of the excused party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.

19. 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.

20. Further Action. The parties covenant and agree that each shall execute and deliver such further instruments or documents as shall be necessary or convenient to effectuate the purposes contemplated by this Agreement.

21. Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. 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. The parties agree that each party has reviewed this Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

22. Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the state of South Dakota, without regard for its choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the state of South Dakota, without regard for its choice-of-law principles.

