

PREPARED BY: City Attorney's Office
300 Sixth Street
Rapid City, SD 57702
(605) 394-4140

STATE OF SOUTH DAKOTA)
)SS **COVENANT AGREEMENT**
COUNTY OF PENNINGTON)

COVENANT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND VSADD HOLDINGS LLC FOR SHARING THE COST OF EXTENDING A SEWER MAIN TO SERVE 2020 JACKSON BOULEVARD.

This agreement is made and entered into by and between the City of Rapid City (the "City") a municipal corporation located at 300 Sixth Street, Rapid City, South Dakota 57701, and VSADD Holdings LLC (the "Landowner"), located at 22428 Elk Vale Road, Rapid City, South Dakota 57703.

WHEREAS, the Landowner owns real property generally located at 2020 Jackson Blvd. and legally described as:

Lot 5 of Block 2 of Rapid River Subdivision, T1N, R7E, Section 3, BHM, Rapid City, Pennington County, South Dakota; and

WHEREAS, the above described property has been connected to the City sewer system by means of a sewer service line extended down an unimproved alley right-of way; and

WHEREAS, the configuration of the current sewer service connection does not meet City standards; and

WHEREAS, the current service line is failing; and

WHEREAS, replacement of the current service line in its present location is not feasible, as this area is needed for storm drainage improvements connected with future City and State Dept. of Transportation projects; and

WHEREAS, the parties have identified an alternative configuration to provide sewer service to the property which would involve constructing a new sewer main from near the City's current water treatment plant east towards Jackson Blvd.; and

WHEREAS, this configuration will better accommodate future expansion which will eventually provide sewer service to several other properties along Jackson Blvd. which are not currently served by City sewer fronting the property in accordance with City standards; and

WHEREAS, the Landowner has agreed to sell the property on the condition that the sewer service line to the property is repaired or reconstructed in conformity with current City standards; and

WHEREAS, the City has adopted a resolution which establishes matching funds for replacement of privately owned, common water and sewer service lines with City mains which calls for the City to contribute 40% of project costs, not to exceed \$4,000 per property; and

WHEREAS, the City recognizes that it benefits from the proposed configuration by being able to reserve the alley right-of-way for future drainage improvements and because the proposed configuration will better accommodate future projects which will bring more properties into compliance with City standards; and

WHEREAS, based on these benefits the City is willing to make an exception to its normal policy and fund more than \$4,000 towards this project; and

WHEREAS, it is the intent of the parties to enter into an agreement whereby the parties agree to construct the proposed sewer configuration and establish an equitable distribution for paying the costs of constructing the project.

NOW THEREFORE, the parties covenant and agree as follows:

1. This covenant agreement pertains to property generally located at 2020 Jackson Boulevard and legally described as:

Lot 5 of Block 2 of Rapid River Subdivision, T1N, R7E, Section 3, BHM, Rapid City, Pennington County, South Dakota.

2. The City will be responsible for designing an extension of the public sewer from its current terminus near the City's water treatment plant east down the street leading from the treatment plant to Jackson Blvd. This design will include approximately 400 linear feet of sewer main, three man holes, and one service tap. The City will bid out, and administer construction of, all improvements located within the public right-of-way.

3. The service line from the Landowners property to the new sewer main will be designed and constructed by the City. The cost of constructing the service line will be identified as a separate line item in the project. The Landowner will be responsible for paying the total cost of constructing the service line from its property and connecting it to the new sewer main.

4. The parties agree the City will pay 40% of the cost of constructing the sewer and the Landowner will pay the balance. Prior to the City awarding the bid, the Landowner will provide

the City Finance Office with funds equivalent to 60% of the total sewer main construction costs of the lowest responsible bid, as well as 100% of the cost for the sewer service line item. If the Landowner fails to pay the City the required amount, the City is under no obligation to award the bid or construct the project. Any change orders increasing or decreasing the cost of the sewer main project will be divided 40/60. Any change orders for the sewer service line will be 100% the responsibility of the Landowner. If a change order increases the cost of the project, the City shall bill the Landowner for its share of the increased cost. The Landowner shall pay such bill within thirty (30) days. Once the project is completed, if the project cost less than the amount of the original bid any leftover money shall be divided between the parties based on the above percentages. The City shall remit any excess funds owed to the landowner within Sixty (60) days of the project being closed out by the City and the service line connection being made.

5. If the lowest responsible bid exceeds the engineer's estimate of the cost to construct the project, either party may decide not to proceed with the project. If the City decides not to award the bid under these circumstances, the Landowner agrees to make no claim against the City. If the Landowner chooses not to proceed with the project the City may abandon it and reject the bids or may proceed at its sole expense.

6. The Landowner acknowledges that the City's promise to design and pay more than \$4,000 for the construction of this sewer main is sufficient consideration for the promises it has made herein.

7. All of the terms and conditions set forth herein shall extend to and be binding upon the heirs, assigns, and successors in interest of the Landowner 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.

8. 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.

9. This agreement is the entire agreement of the parties and can only be amended in writing by the consent of the parties hereto.

10. 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.

Dated this ___ day of _____, 2008.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

VSADD HOLDINGS LLC

By: _____
Its: _____

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

On this ____ day of _____, 2008, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, 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.

[SEAL]

Notary Public, State of South Dakota
My Commission Expires: _____

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

On this ____ day of _____, 2008, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the

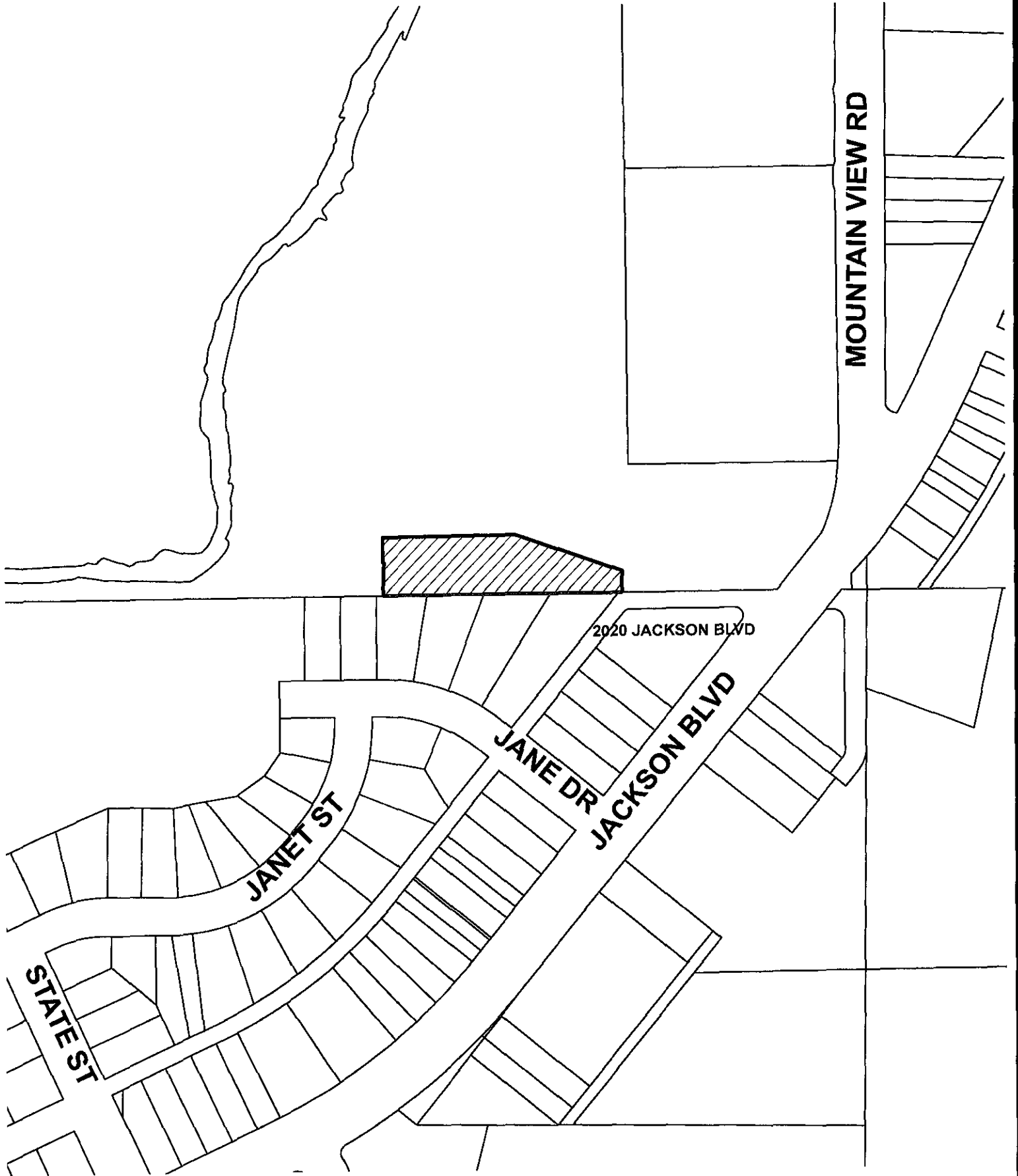
_____ of VSADD Holdings LLC and being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

[SEAL]

Notary Public, State of South Dakota
My Commission Expires: _____

EXHIBIT "A"



**SEWER EXTENSION
RAPID RIVER SUBDIVISION
PROJECT NO SS06-1587**

