

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

This Agreement is entered into this ____ day of _____, 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 _____ day of _____ 2015.

CITY OF RAPID CITY

ATTEST:

Mayor

Finance Officer

(SEAL)

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

On this the _____ day of _____, 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.

(SEAL)

Notary Public – South Dakota
My Commission Expires _____

LANDOWNER
Prairie Acres, LLC

By: *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)

Wanda L. Schmatz
Notary Public – South Dakota
My Commission Expires _____

**My Commission Expires
January 4, 2017**