

PREPARED BY: City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

STATE OF SOUTH DAKOTA)
)SS. CONSERVATION EASEMENT
COUNTY OF PENNINGTON)

THE CITY OF RAPID CITY now stipulates to the following statements of fact, and further agrees to restrict the use of the realty described in Exhibit A to this document (hereinafter referred to as the "Land") in accordance with the terms and conditions set forth herein.

STIPULATIONS OF FACT

1. That THE CITY OF RAPID CITY is the applicant for Department of the Army permit Number NWO-2007-03579 to place fill material in the wetlands located in the SW1/4NW1/4 of Section 29, T2N, R8E, BHM, Pennington County, South Dakota; and that the U.S. Army Corps of Engineers has regulatory jurisdiction over the discharge of dredged or fill material into said wetlands pursuant to Section 404 of the Clean Water (33 USC 1344).
2. That THE CITY OF RAPID CITY is the owner in fee of the real estate described in Exhibit A, which encompasses 3.87 acres and is located in Lot 1R of Wastewater Plant Tract and in Lot 2 of Tract C of Section 30, T1N, R9E, BHM, Pennington County, South Dakota.
3. That THE CITY OF RAPID CITY and the Omaha District of the U.S. Army Corps of Engineers have reached an agreement whereby THE CITY OF RAPID CITY will be permitted to discharge fill material in wetlands in accordance with the terms and conditions of Department of the Army permit Number NWO-2007-03579; and that in consideration for said discharge of fill material in the wetland, THE CITY OF RAPID CITY will provide mitigation for the adverse environmental effects resulting from the placement of fill material in the wetland by dedicating the easement described in Exhibit A for perpetual use as a conservancy area in accordance with the terms and conditions of this document and the above-mentioned permit.
4. That the above-mentioned dedication shall consist of the execution of this document by all parties necessary to restrict the use and title of the land; and that this document shall be recorded in the Office of the Register of Deeds for PENNINGTON COUNTY, SOUTH DAKOTA.

5. That the terms and conditions of this Conservation Easement shall, as of the date of execution of this document, bind THE CITY OF RAPID CITY to the extent of its legal and/or equitable interest in the land; and that this Covenant shall run with the land and be binding on THE CITY OF RAPID CITY and its successors and assigns forever.

6. That the terms and conditions of this Covenant shall be both implicitly and explicitly included in any transfer, conveyance, or encumbrance of the Land or any part thereof, and that any instrument of transfer, conveyance, or encumbrance affecting all or any part of the Land shall set forth the terms and conditions of this document either by reference to this document or set forth in full text.

USE RESTRICTIONS

THE CITY OF RAPID CITY hereby warrants that it is the owner in fee of the realty described in Exhibit A; and that the Land is hereby dedicated in perpetuity for use as a conservancy area.

THE CITY OF RAPID CITY hereby agrees to restrict the use and title of the Land as follows:

1. There shall be no construction or placement of structures or mobile homes, fences, signs, billboards or other advertising material, or other structures, whether temporary or permanent, on the land.
2. There shall be no filling, draining, excavating, dredging, mining, drilling or removal of topsoil, loam, peat, sand, gravel, rock, minerals or other materials.
3. There shall be no building of roads or paths for vehicular or pedestrian travel or any change in the topography of the land.
4. There shall be no removal, destruction, or cutting of trees or plants; spraying with biocides, insecticides, or pesticides; grazing of animals, farming, tilling of soil, or any other agricultural activity. Management activities are acceptable upon approval from the Corps.
5. There shall be no operation of all-terrain vehicles or any other type of motorized vehicle on the land.
6. THE CITY OF RAPID CITY reserves to utilize the remaining balance of area not used in the mitigation associated with the Department of the Army permit Number NWO-2007-03579 for future wetland mitigation activities. Future mitigation activities are contingent upon prior approval of the Corps.
7. This Covenant of Dedication may be changed, modified or revoked only upon written approval of the District Engineer of the Omaha District of the U.S. Army Corps of

Engineers. To be effective, such approval must be witnessed, authenticated, and recorded pursuant to the law of the STATE OF SOUTH DAKOTA.

8. This Covenant is made in perpetuity such that the present owner and its heirs and assigns forever shall be bound by the terms and conditions set forth herein.

Dated this ____ day of _____, 2008.

CITY OF RAPID CITY

By: _____
Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 SS.
County of Pennington)

On this the ____ 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, a municipal corporation, 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 the name of the City of Rapid City by themselves as Mayor and Finance Officer.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)