

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

AGREEMENT WAIVING RIGHT TO PROTEST
(SDCL 9-45-26; 9-47-13; 9-48-18; 9-48-42)

THIS AGREEMENT IS MADE and entered into this 22 day of November, 2004, by and between Lew and Kerry Papendick, hereinafter called "Papendicks," and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter called the "City."

WHEREAS, the Papendicks have requested that they be allowed to repair an existing on-site wastewater system on their property that is currently failing; and

WHEREAS, the Papendicks' property is currently within Two Hundred (200) feet of an existing sewer main located in Wildwood Drive; and

WHEREAS, occupied buildings within the City that are located within Two Hundred (200) feet of a sewer main are required to hook up to the City system; and

WHEREAS, the Papendicks and City agree that it is currently impracticable for the Papendicks to hook on to the sewer main located in Wildwood Drive; and

WHEREAS, the Papendicks and City further agree that to connect the Papendicks' property to the sewer main located in Wildwood Drive would not conform to the sewer plan that has been drafted for this neighborhood; and

WHEREAS, the sewer main that the sewer plan anticipates the Papendicks' property connecting to does not currently exist; and

WHEREAS it is the intent and purpose of both the Papendicks and the City to enter into an agreement whereby the City will grant the Papendicks a permit to repair their current on-site wastewater system rather than force them to immediately connect to the City sewer and in exchange the Papendicks will consent to a future assessed project for the construction of a sewer main to benefit their property and agree to connect to the City sewer system at the time the sewer main is completed.

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

1. This agreement pertains to the Papendicks' property at 5508 Sunburst Dr., Rapid City, South Dakota which is legally described as follows:

Lot 2R of Block One (1) of Wildwood Subdivision, located in Section 21, Township One North (T1N), Range Seven East (R7E) of the Black Hills Meridian, Rapid City, Pennington County, State of South Dakota.

2. The Papendicks acknowledge that the City has the authority to require them to immediately connect their property to the City sewer system.

3. The Papendicks acknowledge that the City has the power to make assessments for local improvements on property adjoining or benefited thereby, to collect same in the manner provided by law, and to fix, determine and collect penalties for nonpayment of any special assessments. In consideration for the City not requiring them to immediately connect to City sewer and issuing a permit to repair their current on-site wastewater system the Papendicks agree that if at any time in the future the City determines it is necessary or desirous to construct a sewer main to serve their property through an assessed project, that the Papendicks or their heirs, assigns, or successors in interest, will consent to such project, waive any right to object to such project as allowed under state law and further agree to connect to the City sewer upon completion of the project. It is understood by the Papendicks that the City of Rapid City's primary consideration for the issuance of the permit and not requiring immediate connection to the City sewer system is the Papendicks' covenant and promise to consent to the assessed project, to waive any right to object to the assessed project and their agreement to connect to the City sewer system after the assessed project.

4. The Papendicks further covenant and agree for themselves, their heirs, assigns, and successors in interest, that should they or any of their heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, that they will be immediately required to connect to the City sewer system in order to comply with the City of Rapid City's regulations.

5. 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 Papendicks, and 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 pursuant to the provisions of South Dakota statutes.

6. The City may undertake any legal or equitable action available to enforce the provisions of this agreement in addition to any remedy provided herein. In the event the City is required to undertake any action to enforce the terms of this agreement or other City ordinances in connection with this agreement, the undersigned, heirs, assigns or successors in interest agree the City may recover from the owner of said property its reasonable expenses, including attorney's fees incurred with respect to such action.

7. If any section(s), or provision of this application is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or

provision of this application if they can be given effect without the invalid section(s) or provisions.

8. This agreement shall be construed according to the laws of the State of South Dakota. No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

DATED this _____ day of _____, 2004.

CITY OF RAPID CITY

Jim Shaw, Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2003, before me, the undersigned officer, personally appeared Jim Shaw 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 Agreement Consenting to Assessed Project 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)

Lew Papendick

Lew Papendick

Kerry Papendick

Kerry Papendick

State of South Dakota)
 SS.
County of Pennington)

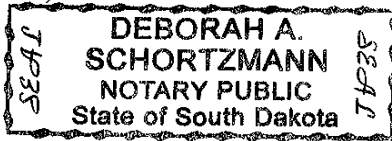
On this the 22nd day of November, 2004, before me, the undersigned officer, personally appeared Lew and Kerry Papendick, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained

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

Deborah A. Schortzmann
Notary Public, South Dakota

My Commission Expires: 01-27-05

(SEAL)



My Commission Expires July 27, 2005