

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

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

COVENANT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND LARRY TITUS ALLOWING AN EXCEPTION TO THE REQUIREMENT THAT THE SEWER LINE FROM HIS PROPERTY AT 1225 KANSAS CITY STREET NOT CROSS ADJOINING PROPERTY LINES.

This Agreement is made and entered into by and between the City of Rapid City, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the "City," and Larry Titus, an individual, located at 1225 Kansas City Street, Rapid City, South Dakota 57701, herein after referred to as the "Landowner."

WHEREAS, the Landowner is the owner of real property located at 1225 Kansas City Street within the City of Rapid City; and

WHEREAS, the Landowner's sewer service line currently crosses his neighbors property prior to connecting to the City sewer main located in the alley to the east of his property; and

WHEREAS, the Landowner's sewer service line does not conform to the City's current standards for placement and location of sewer service lines; and

WHEREAS, the City and Landowner both desire that the Landowner's sewer service line be relocated so that it does not cross his neighbor's property; and

WHEREAS, the only way for the Landowner to relocate his sewer service line so that it conforms with the City's current standards is for a City sewer main to be extended down Kansas City Street; and

WHEREAS, the City could assess the entire cost of extending the sewer main to the properties benefited by the extension; and

WHEREAS, the Landowner's property would be the only property to benefit from the extension; and

WHEREAS, extending the sewer main would be extremely expensive for the Landowner as the only benefiting property; and

WHEREAS, the Section 9.3(K)(6) of the City's Standard Specifications for Public Works Construction allows the City to grant an exception which will allow the Landowner to connect his sewer service line in a non-conforming manner; and

WHEREAS, the City and Landowner agree that the best solution is for the City to grant an exception to the Landowner which will allow him to relocate his sewer service line into the City right-of way without extending the City's sewer main.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereby covenant and agree as follows:

1. This Agreement pertains to property generally located at 1225 Kansas City Street and legally described as:

Lots 21 and 22 of Block 8 of Boulevard Addition, Rapid City, Pennington County, State of South Dakota.

2. The City agrees to grant the Landowner an exception to the requirement that his sewer service line be placed so that it runs from the City sewer main at a 90 degree angle directly to his property without crossing adjacent lot lines. The City further agrees the Public Works Dept. will issue a permit to work in the right-of-way which will allow the Landowner's sewer service line to be placed within the City right-of-way along Kansas City Street. It is anticipated that the sewer service line will be placed so that it runs parallel with the street and connects to either the City sewer main in the alley to the east of his property or to the sewer main in West Street. The City Engineer or their designee may dictate which main the Landowner will connect with.

3. The Landowner agrees that within ninety (90) days he will hire a licensed contractor to relocate the sewer service line and properly abandon his old service line across his neighbor's property. The Landowner will pay all costs and expenses associated with relocating his sewer service line and abandoning his old line. The Landowner further agrees to defend, indemnify and otherwise hold the City harmless from any claims and/or damages which may arise from the granting of this exception and the non-conforming nature of his connection to the City's sewer main.

4. At such time as a sewer main fronts the Landowner's property and the City requests in writing that he install a connection to such main which conforms to City standards, he will do so within ninety (90) days at his own expense.

5. 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.

6. The Landowner acknowledges that in the absence of the promises he has made herein, the City would not grant the exception and would require him to construct a connection with the City's sewer system which conforms to current City standards by having him extend the sewer main through an assessed project. The Landowner further acknowledges that the City's granting of the exception which will allow him to legally relocate his sewer service line in a manner which does not conform to current standards thereby saving him considerable expense is sufficient consideration for the promises which he has made herein.

7. 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.

8. This Agreement can only be amended in writing by the consent of all the parties hereto.

9. 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 _____, 2009.

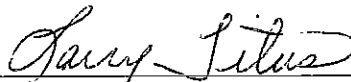
CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

LANDOWNER



Larry Titus

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

On this _____ day of _____, 2009, 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 the 4th day of March, 2009, before me, the undersigned officer, personally appeared Larry Titus, known to me, or satisfactorily proven, to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

Margaret Paed
Notary Public

(SEAL)

My Commission Expires:

6/25/2009