

**AN AGREEMENT BETWEEN THE CITY OF RAPID CITY AND ROBERT AND  
DIANE BURGARD FOR THE EXTENSION OF WATER AND SANITARY SEWER  
MAINS ON FULTON STREET.**

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 Robert and Diane Burgard, 23431 Sand Lane, Rapid City, SD 57702, herein after referred to as the “Landowners.”

WHEREAS, the Landowners are the owners of property generally located east of Mill Street, south of Hill Street and north of Fulton Street within Rapid City and which is legally described as Lots 1-4, Block 10, Lamperts Addition, Rapid City, Pennington County, State of South Dakota; and

WHEREAS, the Landowners’ property is not currently served by City water or sewer; and

WHEREAS, the Landowners desire to sell or otherwise make reasonable use of the property; and

WHEREAS, there are several legal non-conforming sewer and water connections between where the City’s water and sewer mains currently end and the Landowners’ property; and

WHEREAS, the City currently has a policy to pay 70% of the cost of extending water and sewer mains to bring utility connections into compliance with the City Code; and

WHEREAS, the extension of the water and sewer mains and along Fulton Street will further this policy by eliminating multiple non-conforming water and sewer services on neighboring properties; and

WHEREAS, the City is willing to participate in this project pursuant to this policy and pay 70% of the cost of extending the sewer for the properties with non-conforming lines and collect the remaining balance through the adoption of construction fees which will be collected at the time any benefiting properties connect to the new water and sewer mains; and

WHEREAS, depending on the cost, it would be in the best interests of the City and Landowner to extend the City’s water and sewer mains up Fulton Street to serve the Landowners’ property and bring the non-conforming water and sewer connections into compliance with the City Code.

NOW THEREFORE, the parties hereby agree as follows:

1. The Landowner agrees to hire a professional engineering consultant, acceptable to the City, to design the water and sewer mains to be extended in Fulton Street. The design shall meet all current City standards and requirements and shall be reviewed and approved by the City. The

design shall include all plans, documents and specifications necessary to publicly bid the project. The professional engineer shall also prepare a cost estimate for all improvements contemplated by this agreement.

2. Once the design is completed and approved, the parties shall evaluate, based on the engineer's estimate, whether they are willing to proceed with the project. If the parties mutually agree to proceed with the project, the City will advertise and publicly bid the project as provided by the Landowners' engineer.

3. The City agrees to fund the project and place a construction fee on all benefitting properties.

4. The Landowners acknowledge that they do not qualify for the current City policy since their property is not currently served by City water or sewer. The Landowners agree to pay 100% of the construction fee for their property as determined by the final project costs. The Landowners will be required to pay the fee within 30 days of the construction fee resolution for this project being approved by the City Council. The Landowner, or their heirs, assigns and successors in interest will also need to pay the normal tapping fees at the time service lines from the property are connected to the mains.

5. The parties acknowledge that they do not have unlimited funds to expend on this project. Either party may unilaterally terminate this agreement if they no longer wish to proceed after 1) the Landowners' engineer has submitted the construction estimate, or 2) after bids have been opened. The City will be under no legal obligation to award the construction contract if after bids are opened the City has insufficient funds budgeted to cover the project costs.

6. The parties agree to waive any claims they may have against the other, based on any theory whatsoever, as a result of the other party terminating the agreement. Including, but not limited to the following: the Landowner will have no claim against the City for any funds expended in designing the water and sewer mains nor will the City have any claim against the Landowner for the time and expense of reviewing the plans or publicly bidding the project.

7. The Landowners acknowledge that the City is under no legal obligation to expend funds to extend City water and sewer to serve their property and that the City's promise to publicly bid and participate in the cost of extending the water and sewer mains is good and sufficient consideration for the promises they have made herein.

8. The parties may undertake any legal or equitable action available to enforce the provisions of this agreement in addition to any other remedies provided herein.

9. Failure of a party to insist upon adherence to any term of this agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon adherence to that term, or any other term of this agreement.

10. This agreement constitutes the entire agreement of the parties. No other writings or negotiations are part of this document. This agreement may only be modified by mutual

agreement of both parties. Any modifications or addendums to this agreement must be in writing.

11. If any section(s), or provisions 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 application if they can be given effect without the invalid section(s) or provisions.

12. This agreement shall be construed according to the laws of the State of South Dakota. Any action concerning this agreement shall be venued in Rapid City, South Dakota in the Circuit Court for the Seventh Judicial Circuit.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2010.

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

\_\_\_\_\_  
Robert Burgard

\_\_\_\_\_  
Diane Burgard

State of South Dakota        )  
  ss.  
County of Pennington        )

On this the \_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned officer, personally appeared Alan Hanks and Pauline Sumption, 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.

(SEAL)

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires:

State of South Dakota        )  
  ss.  
County of Pennington        )

On this the \_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned officer, personally appeared Robert Burgard and Diane Burgard, 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.

(SEAL)

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires: