

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

NEW
9-17-14

**COVENANT AGREEMENT BETWEEN CITY OF RAPID CITY AND LANDOWNERS
AUTHORIZING LANDOWNERS TO MAINTAIN PRIVATE SEWER MAIN
IN CALLE BAJA STREET**

This declaration of covenant and agreement (the "Covenant Agreement") is entered into this ____ day of _____, 2014, by and between **JAMES A. HUFF**, of 4242 Calle Baja Street, Rapid City, South Dakota 57702 ("Huff"); **THOMAS W. STANTON and MARY A. STANTON**, of 4132 Calle Baja Street, Rapid City, South Dakota 57702 ("Stantons"); and **THOMAS M HELLAND and MARY HELLAND**, of 4200 Calle Baja Street, Rapid City, South Dakota 57702 ("Hellands") (collectively referred to herein as "Landowners"); and the **CITY OF RAPID CITY**, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, South Dakota 57701.

WHEREAS, the Landowners are the owners of record of property generally located along Calle Baja Street, Rapid City, South Dakota, more particularly described below; and

WHEREAS, the Landowners' property is currently served by a private sanitary sewer force main which crosses adjoining properties; and

WHEREAS, the Landowners' individual sewer service lines connect to the private sewer force main; and

WHEREAS, the Landowners acknowledge that the City has the authority to require the Landowners to connect to a public sewer main; and

WHEREAS, the Landowners' private sanitary sewer force main and lift station have recently failed; and

WHEREAS, the City has agreed to not require the Landowner to construct a public sanitary sewer main in Calle Baja Street to serve the property so long as the private sewer force main is adequately maintained according to this Agreement; and

WHEREAS, the City is willing to let the Landowners repair or replace their sewer service lines, individual lift stations and private sewer force main within the easements granted for such purposes; and

WHEREAS, the City and Landowners desire to reduce their agreements to writing.

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

1. Recitals. The recitals set forth above constitute an integral part of this Covenant Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. Property. This Covenant Agreement applies to the following described real property:

Huff property

Lot B of Lot Two of the Northwest Quarter of the Southwest Quarter of Section Nine, Township One North, Range Seven East of the Black Hills Meridian, Pennington County, South Dakota; and

Stantons property

Lot F Revised of Canyon Lake Heights in the City of Rapid City, as shown on the plat filed in Plat Book 9, Page 111, Pennington County, South Dakota; and

Hellands property

Lots C and D of Lot 2 of Canyon Lake Heights located in the Northwest Quarter of the Southwest Quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 9 in Township 1 North of Range 7 East of the Black Hills Meridian, in the City of Rapid City, Pennington County, South Dakota, as shown on the plat filed in Schamber Book of Plats, Page 68.

3. Private Sewer Main. The Landowners are constructing approximately one thousand one hundred fifty feet (1150') of private sewer force main in Calle Baja Street. A portion of Calle Baja Street is a private street located in an access easement providing access to the properties described above. The remainder of the street is located in dedicated public right-of-way. The force main begins at the western terminus of Calle Baja Street, which is private access easement, and proceeds east to the public portion of Calle Baja Street where there is an manhole and 8" public sewer main.

4. Covenants. The Landowners covenant and agree to be responsible for the operation and maintenance of the private sewer force main, individual lift stations and individual sewer service lines that connect to the City sanitary sewer system, which begins at the manhole located in Calle Baja Street. This responsibility includes the following:

- a. Landowners covenant and agree that each shall be responsible for their own individual lift stations and service lines. Such lift stations and service lines shall be maintained and kept in good working condition and repair.
- b. Landowners covenant and agree that an electrical backup system shall be included with each individual lift station to provide power to the lift station in the case of a power outage.
- c. Landowners further covenant and agree that each shall be responsible for one-third (1/3) of the costs of operations, maintenance, repair and/or replacement of the entire shared sewer force main. The force main shall be maintained and kept in good working condition and repair.

5. Consideration. The Landowners acknowledge that the City has the authority to require that they immediately connect to the City sewer system. The City's primary consideration for issuing a permit to repair or replace the current private sewer force main, individual lift stations and associated service lines on the above described properties is the Landowners' covenant and promise to connect to the City sewer system at such time as it is adjacent to their properties and their consent to any future assessed project to extend the City sewer. The City's issuance of the permit to repair or replace their private sewer force main, individual lift stations and sewer service lines in lieu of requiring them to immediately connect to the City sewer system is sufficient consideration for the promises they have made herein.

6. Adjacent Property. At the time of execution of this Covenant Agreement, there are properties near the parcels described above that, if developed, may seek to utilize the private sewer force main. The owner of any such developed parcel may, with the agreement of the Landowners and the City, under such terms and conditions as the parties may stipulate, be added to this Covenant Agreement by amendment hereto. Nothing herein shall be construed as to require any of the Landowners or the City to consent to any such amendment.

7. Term. This restrictive covenant is intended to last the maximum length of time as may be permitted by law, and at the end of any maximum term, as permitted by law, this restrictive covenant will automatically renew and be extended for an additional maximum term as may be permitted by law.

8. Remedies. The City may undertake any legal or equitable action available to enforce the provisions of this Covenant Agreement in addition to any remedy provided herein. Violation of any covenant contained in this Covenant Agreement shall give the City the right to enter upon the land where the violation has occurred and, at the expense of the Landowners, abate and/or remove the same. The Landowners agree to pay the City for any assessments, costs or expenses incurred by the City for any maintenance work due to the Landowners' failure to abide by the covenants contained herein. The assessments shall be a lien upon the real property until paid by the Landowners. In the event the City is required to undertake any action to enforce the terms of this Covenant Agreement, the undersigned Landowners, on behalf of themselves and

their heirs, assigns, and successors in interest, covenant and agree that the City may recover from the owner of said property its reasonable expenses, including attorney's fees incurred with respect to such action.

9. Indemnification. The Landowners agree to indemnify, defend and hold harmless the City of Rapid City from any and all liability, actions, causes of action, claims, demands, losses, damages, fines, expenses and fees, including attorneys fees to defend or to establish the City's right to indemnity or those attorneys fees incurred on appeal, resulting from the Landowners' operation or maintenance of the private sewer main.

10. Binding Effect. 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 Landowners, 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 Covenant Agreement

11. No Waiver. The covenants contained herein shall be deemed as continuing. Any failure or delay in enforcing the same, on any occasion, or repeated occasions, shall not impair or affect the covenant so far as any future or other breach is concerned. It is understood and agreed that no waiver of any breach of the covenant herein contained shall be construed to be a waiver of any other breach of the same or other covenant, nor shall failure to enforce any one of the restrictions, either by forfeiture or otherwise, be construed as a waiver of any other restriction or condition.

12. Integration. This Covenant Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

13. Severability. 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.

14. Amendments. No modification or amendment to this Agreement shall be valid, unless evidenced by a writing signed by the parties hereto or their successors in interest.

15. Construction and Venue. 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 18 day of SEPTEMBER, 2014.



JAMES A. HUFF

State of South Dakota)
 ss.
County of Pennington)

On this the 18th day of September, 2014, before me, the undersigned officer personally appeared **JAMES A. HUFF** 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.

(seal)



Becky Portlock

Notary Public, South Dakota
My Commission Expires: May 21, 2017

Thomas W. Stanton
THOMAS W. STANTON

Mary A. Stanton
MARY A. STANTON

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

On this the 23rd day of September, 2014, before me, the undersigned officer personally appeared **THOMAS W. STANTON and MARY A. STANTON**, husband and wife, 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)

Becky Portlock
Notary Public, South Dakota
My Commission Expires: May 21, 2017



[Handwritten Signature]

THOMAS M. HELLAND

[Handwritten Signature]

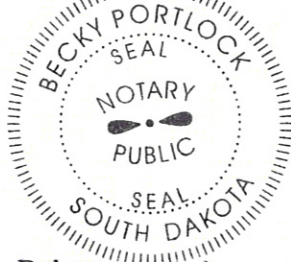
MARY HELLAND

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

On this the 22nd day of September, 2014, before me, the undersigned officer personally appeared **THOMAS M. HELLAND**, 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.

(seal)



[Handwritten Signature]
Notary Public, South Dakota
My Commission Expires: May 21, 2017

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

On this the 22nd day of September, 2014, before me, the undersigned officer personally appeared **MARY HELLAND**, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

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

(seal)



[Handwritten Signature]
Notary Public, South Dakota
My Commission Expires: May 21, 2017

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(seal)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2014, before me, the undersigned officer, personally appeared Sam Kooiker 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 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: _____