

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

WGN
5-5-15

COVENANT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND KOSER ENTERPRISES, LLC FOR SEWER MAIN CONSTRUCTION COST REIMBURSEMENT

THIS AGREEMENT is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation, of 300 Sixth Street, Rapid City, South Dakota, 57701, (the "City") and KOSER ENTERPRISES, LLC, a South Dakota limited liability company, of 5633 Finch Court, Rapid City, South Dakota, 57702, (the "Developer").

WHEREAS, Developer owns property within the City of Rapid City legally described as:

Lot A of Michael Subdivision to the City of Rapid City, Pennington County, South Dakota, as shown on the filed highway plat recorded in Highway Plat Book 9, Page 23,

hereinafter referred to as the "Property;" and

WHEREAS, the Developer intends to construct a building on the Property and is in need of sanitary sewer service for such building; and

WHEREAS, the Property does not have frontage to a public sewer main; and

WHEREAS, the Developer's proposed building necessitate the construction of sewer main in order to provide service to the Property; and

WHEREAS, when adjacent Deadwood Avenue was reconstructed in 1990s, the plan for sanitary sewer service to the Property was from the connection to the sanitary sewer main in Lien Street that would gravity flow to the sanitary sewer main in Commerce Road to the east; and

WHEREAS, it is advantageous for both the City and Developer to coordinate and cost share in the construction of this sewer main; and

WHEREAS, it is in the City's best interest to have the City design and administer construction of the sewer main; and

WHEREAS, the three lots will benefit from having the sanitary sewer constructed within Commerce Road; and

WHEREAS, a preliminary cost estimate has been prepared that anticipates a total project cost of \$140,000.00 to construct the sanitary sewer main.

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

1. The City hereby agrees to design and administer the construction of an 8-inch (8") PVC sewer main within Commerce Road and Lien Street to create a connected sanitary sewer system including a sanitary sewer stubbed to the Property in the project.

2. The City and the Developer agree that the location of the sewer main meets both parties' needs.

3. The Developer agrees to pay the City a total of \$30,000.00 for construction of the public sewer main to the Property within 60 days of execution of this agreement, exclusive of fees as addressed in Paragraph 8.

4. The City agrees to have the sanitary sewer main constructed, tested and accepted by the City by December 31, 2015.

5. The Developer acknowledges that the sanitary sewer connection on the Property cannot be made until the sanitary sewer main is constructed, tested and accepted by the City.

6. The Developer acknowledges that he is responsible for constructing a sanitary sewer service line from the property line to the building constructed on the Property.

7. The City acknowledges that they are responsible for tapping fees to the sanitary sewer as identified in the Rapid City Municipal Code.

8. The Developer acknowledges that he is responsible for connection fees and inspection fees to the sanitary sewer as identified in the Rapid City Municipal Code.

9. The Developer agrees 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 its subdivision regulations in connection with this agreement, or successors in interest agree the City may recover from them its reasonable expenses, including attorney's fees incurred with respect to such action.

10. All of the terms and conditions herein set forth 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.

11. In the event that any section(s), or provision(s) of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision(s) of this Agreement if it can be given effect without the invalid section(s) or provision(s).

12. The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

13. This Agreement is intended solely for the benefit of the parties hereto along with their heirs, assigns and successors in interest and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party. Except as allowed under paragraph 10 of this Agreement, the rights and obligations of the parties hereunder shall not be assigned or transferred by either party without the express written consent of the other. Subject to that restriction, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

14. The parties agree that this writing constitutes the entire Agreement between them and that there are no other oral or collateral agreements or understandings of any kind or character except those contained herein. No modification or amendment to this Agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

Dated this 5 day of May, 2015.

KOSER ENTERPRISES, LLC

By: [Signature]

Its: owner

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

On this the 5 day of May, 2015, before me, the undersigned, personally appeared William Koser who acknowledged himself to be the owner of KOSER ENTERPRISES, LLC, a South Dakota limited liability company, and that he, as such owner, being authorized so to do, executed the foregoing instrument by signing the name of KOSER ENTERPRISED, LLC by himself as William Koser.

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

(seal)



[Signature]

Notary Public, South Dakota

My Commission Expires: September 9, 2017

CITY OF RAPID CITY

Sam Kooiker, Mayor

ATTEST:

Pauline Sumption, Finance Officer

(SEAL)

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

On this the _____ day of _____, 2015, 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 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.

(seal)

Notary Public, South Dakota
My Commission Expires _____