

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

**SEWER SERVICE AGREEMENT BETWEEN TERRACOTTA
ESTATES HOMEOWNERS ASSOCIATION AND
CITY OF RAPID CITY, SOUTH DAKOTA**

This Agreement entered into this _____ day of _____, 2009 by and between the City of Rapid City, a municipal corporation organized under the laws of the State of South Dakota, hereinafter referred to as the "City", and Terracotta Estates Homeowners Association, a homeowners association outside the Rapid City limits, hereinafter referred to as "the Association".

WHEREAS, the City has constructed and operates a wastewater collection and treatment system for the purpose of collection, treatment and disposal of sewage, and;

WHEREAS, Prairie Fire Development has constructed a sewage collection system within the Prairie Fire Subdivision, located in the NE1/4 Section 26, T1N, R8 E B.H.M., Pennington County, South Dakota; and

WHEREAS, Prairie Fire Subdivision encompasses an area, outside the City Limits, which is so situated that the sewage thereof becomes, or may become, a menace to the residents of such area; and

WHEREAS, the City has adopted a Resolution establishing a policy regulating the provisions of City utility to property outside city limits, dated May 16, 2005, and attached hereto as Exhibit A and incorporated herein; and

WHEREAS, the Association is eligible to enter into an Agreement with the City to connect to the facilities of the City for the treatment and disposal of sewage of the six (6) block subdivision, serving seventy five (75) lots; and

WHEREAS, the City and the Association desire to enter into an Agreement to allow the Association to use the sewage treatment and disposal facilities of the City and to establish rights and obligations incident thereto; and

WHEREAS, the Common Council finds that said Agreement is appropriate and in the best interests of the City.

NOW THEREFORE, in consideration of the City of Rapid City's above-referenced adopted Resolution establishing a policy regulating the provisions of city utility services to property outside city limits, and in consideration of the mutual covenants and conditions contained herein, the City and the Association hereby agree as follows:

SECTION ONE DEFINITIONS

A. The words, terms and phrases of a technical nature relating to wastewater collection and treatment shall have the meaning assigned to them in Section 13.08.010 of the Rapid City Municipal Code and shall be interpreted as such throughout this Agreement.

B. One (1) SFRE equals one (1) single-family residential user, as defined by Section 13.08.010 of the City's Municipal Code.

SECTION TWO USE OF WASTEWATER TREATMENT PLANT

A. The City hereby grants to the Association the right to discharge sewage into the City's sewer system. The City agrees to transport such sewage from the point of entry to the wastewater treatment works of the City, and to treat and dispose of such sewage, all subject to the conditions herein. The Association shall discharge its sewage into the City sewer system through a totalizing flow meter located within the Developer's sewer system as near to the point of discharge into the South Side Sewer line as possible and convenient. The totalizing flow meter shall be designed to the approval of the City prior to being constructed. Prairie Fire Development shall furnish and install the meter and the City shall read the meter. The calibration shall be performed annually in the presence of a "Home Owners Association" representative and be submitted to the Water Billing office by March 1, 2010, and every year thereafter by said March 1 date.

B. The City shall tabulate measured flows and submit monthly to the Association, the volume of sewage measured each month. The sewage payments to the City will be by monthly volumes of sewage comprising the total volume measured divided by seven hundred forty eight (748) gallons per unit, as well as a monthly meter charge. Payments per unit, times 1.5 the effective rate, to the City shall begin thirty (30) days from the installation and acceptance by the City of the sewer totalizing flow meter.

SECTION THREE ENACTMENT OF SEWER ORDINANCES

A. The City hereby agrees to furnish copies of City ordinances and the Association hereby agrees to enact all applicable portions of such ordinances to govern the Home Owners Association prior to discharge of any sewage into the City's system. The Association hereby agrees that the enacted ordinances shall comply with the regulations

of the Federal Environmental Protection Agency and the South Dakota Department of Environment and Natural Resources. The Association further hereby agrees to enforce the terms of any such enacted ordinances and to furnish the City with a copy of such ordinances and any amendments adopted subsequent thereto. The Association agrees to establish and enforce an industrial pre-treatment program at least equal to that established by the City in the event any user within the Subdivision conducts any operation, which would be subject to such program if located within previously identified Prairie Fire Subdivision boundaries.

B. The Trunk Sewer in the South Side Drive right-of-way shall be owned and operated by the City of Rapid City. Prairie Fire shall own, operate and maintain its sewer system until such time as its development is annexed by the City of Rapid City.

SECTION FOUR SERVICE CHARGES

A. The Association shall pay to the City monthly service charges based upon the volume of sewage as tabulated under SECTION TWO above times 1.5 the service charge the City is imposing upon its wastewater subscribers, as calculated pursuant to Section 13.08.370 of the City's Municipal Code, as said Section is in existence at the time of the entering into of this Agreement, and as said Section may be amended in the future to reflect any increase or decrease to the charge imposed by the City to be paid by a tenant or owner of a premises served by the wastewater collection and treatment system of the City. In addition, the Association shall pay to the City a monthly meter charge. At the time of the entering into of this Agreement, "Resolution Establishing a Policy Regulating the Provisions of City Utility Services to Property Outside City Limits" dated May 16, 2005, provides that the rate to be paid for service to the lines owned by a governmental entity, such as the Association, shall be 150% of the rate charged to retail customers of the wastewater collection and treatment system.

B. Service charges shall be payable monthly, on or before the tenth (10th) day of each month.

SECTION FIVE INDUSTRIAL AND COMMERCIAL USERS

A. In the event an industrial or commercial user shall desire to convey wastes other than domestic sewage to the Association's sewage collection system, this Agreement shall be amended to include a permit system as provided in Section 13.08 of the City's Municipal Code, including pretreatment, monitoring, sampling, record keeping, and reporting as required under Section 13.08, and in compliance with federal categorical pretreatment standards, as provided in section 13.08.330.

B. The Association shall permit no significant or minor industrial user to use the Association's sewage collection system until such aforementioned conditions have been implemented by mutual agreement between the City and the Association.

**SECTION SIX
ADDITIONS TO PRAIRIE FIRE DEVELOPMENT**

A. The present boundaries of Prairie Fire Subdivision are the same and unchanged from the boundaries described and outlined above.

B. The Association shall not allow the use of its sewage collection system by any properties, other than those properties set forth in the Recitals of this Agreement and displayed on a map of the area attached hereto as Exhibit B and incorporated herein. In the event that the Association expands its boundaries, it shall not allow anyone within the extension of such boundaries to convey sewage or industrial waste to the City Wastewater Treatment Plant without prior written approval of the City allowing persons in such extended area to use the City Wastewater Treatment Plant.

**SECTION SEVEN
TEMPORARY DISCONTINUANCE OF SERVICE**

The City reserves the right to temporarily discontinue service to the Association, with proper notification, whenever it is necessary to insure proper operation of the City's wastewater collection and treatment system. No claims for damages for such discontinuance shall be made by the Association against the City.

**SECTION EIGHT
EFFECTIVE DATE OF AGREEMENT**

This Agreement shall become effective upon the installation, approval, and acceptance by the City of the sewer flow meter, or upon Prairie Fire Development providing surety that is acceptable to the City and adequate to cover the cost of purchasing and installing a sewer flow meter that meets the City's requirements.

**SECTION NINE
TERM AND TERMINATION OF AGREEMENT**

This Agreement shall be in full force and effect for an unlimited time or until the Association and its entire jurisdiction is annexed into the Corporate Limits of the City of Rapid City. At such time of annexation, the City may elect to assume the ownership and maintenance of the Association's jurisdictional collection system and a new Agreement may be executed. The City may elect to assume ownership and maintenance of that portion of the collection system along South Side Drive at any time and without mutual agreement between the parties.

Dated this ____ day of _____, 2009.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

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.

Notary Public, South Dakota

My Commission Expires:

(SEAL)

TERRACOTTA ESTATES
HOMEOWNERS ASSOCIATION

By: _____
Its: _____

State of South Dakota)
 ss.
County of Pennington)

On this the ____ day of _____, 2009, before me, the undersigned officer personally appeared _____, who acknowledged himself to be the _____ of TERRACOTTA ESTATES HOMEOWNERS ASSOCIATION., and that he, as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of TERRACOTTA ESTATES HOMEOWNERS ASSOCIATION.

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

Notary Public

My Commission Expires:

(SEAL)