

PREPARED BY: City Attorney's Office  
 300 Sixth Street  
 Rapid City, SD 57702  
 (605) 394-4140

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

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND G AND G INVESTMENTS LLP FOR THE ACQUISITION OF A PERMANENT UTILITY EASEMENT.**

This agreement is made and entered into by and between the CITY OF RAPID CITY ("City") located at 300 Sixth Street, Rapid City, South Dakota 57701, and G & G INVESTMENTS, LLP ("Landowner") located at 3118 Glenwood Drive, Rapid City, South Dakota 57702.

WHEREAS, the City plans to construct a high and low level reservoir in the area of Elk Vale Road; and

WHEREAS, the Landowner has property which contains topography that is ideal for the location of both of these reservoirs; and

WHEREAS, it is the intent of the parties to enter into an agreement whereby the City can obtain a permanent utility easement from the Landowner on which to locate both reservoirs.

NOW THEREFORE, the parties agree as follows:

1. The Landowner shall grant to the City concurrent with the execution of this agreement a permanent utility easement across the following property:

The Southwest Quarter (SW1/4) of the Northwest Quarter (NW1/4) & the Northwest Quarter (NW1/4) of the Southwest Quarter (SW1/4) of Section 34, of Township Two North (T2N), Range Eight East (R8E), of the Black Hills Meridian, Rapid City, Pennington County, State of South Dakota, consisting of 11.21 acres, more or less, as shown on Exhibit "A" which has been attached hereto and incorporated herein by this reference.

2. The permanent utility easement will allow the City to construct a high and low level reservoir and appurtenant facilities on the property. The City may also fence in the easement area to limit access and protect the reservoirs.
3. The Landowner also agrees to provide temporary construction easements as necessary for construction of the reservoir, water main and drain line, water quality pond and any other items necessary to effectuate construction of the infrastructure necessary to carry out the intended use of the easement.
4. The Landowner shall also grant to the City concurrent with the execution of this agreement an access easement across its property connecting the reservoir easement site to a public right-of way. Such easement will authorize the City to cross the property in order to both construct and maintain the reservoirs and their appurtenant facilities. The access easement will be located along the existing gravel road to the south of the proposed reservoir site. In order to facilitate access to the reservoir site, the easement shall grant to the City the right to make improvements to the existing gravel road. The alignment of the road/access may be changed upon mutual agreement of the parties. It is understood that access will be coordinated to accommodate further development of the balance of the Landowner's property. At such time as the City can access the reservoir site through dedicated right-of-ways the City will release the access easement across the Landowner's property.
5. At the time the Landowner plats any property which is adjacent to the City's easement, the Landowner agrees to plat the easement area and donate the City fee title to the lot. At the time a final plat for the easement area has been approved, the City agrees to accept fee title to the lot.
6. It is anticipated that the low level reservoir will be constructed in 2008 and 2009. Construction of the high level reservoir will occur when funding is available and water demands from development in the area dictate. If the high level reservoir is constructed prior to the development of the remaining Landowner's property, the Landowner agrees to provide the necessary easements and/or right-of-way necessary for the installation of water mains and appurtenances to the south of the reservoir site at no additional cost to the City. The Landowner will also be responsible for paying its proportional share of the costs of the water mains that will be necessary to serve its property.
7. The City shall pay the Landowner \$56,000 to obtain the promises it has made in this agreement. The money will be paid to the Landowner within Forty-Five (45) days of this agreement being approved.
8. The Landowner acknowledges that the payment of \$56,000 is sufficient consideration for the promises it has made herein. The Landowner further acknowledges that the subject property will materially benefit from the construction of these reservoirs which serves as additional consideration for the promises it has made herein.
9. All of the terms and conditions set forth herein shall extend to and be binding upon the heirs, assigns, and successors in interest of G & G Investments, 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.

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

11. If any section(s), or provision 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 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. No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto. Any action concerning this agreement shall be venued in the Circuit Court for the Seventh Judicial Circuit located in Rapid City, South Dakota.

Dated this 17 day of March, 2008.


CITY OF RAPID CITY

  
\_\_\_\_\_  
Mayor

ATTEST:

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

G & G INVESTMENTS, LLP

  
\_\_\_\_\_  
David Gustafson, General Partner



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

On this the 26<sup>th</sup> day of February, 2008, before me, the undersigned officer, personally appeared Jim Ginsbach, 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.

Lugene K Brown  
Notary Public May 15, 2012

(SEAL)  
My Commission Expires:

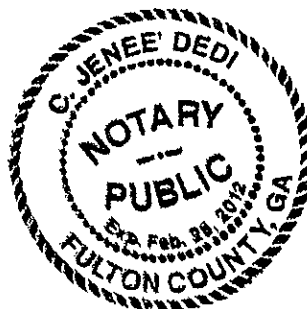
STATE OF SOUTH DAKOTA )  
 ) ss.  
COUNTY OF PENNINGTON )

On this the 4 day of March, 200 , before me, the undersigned officer, personally appeared Mary Gustafson, 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.

C. Jenee Dedi  
Notary Public

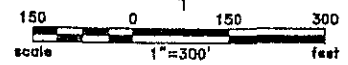
(SEAL)  
My Commission Expires:



# EXHIBIT A

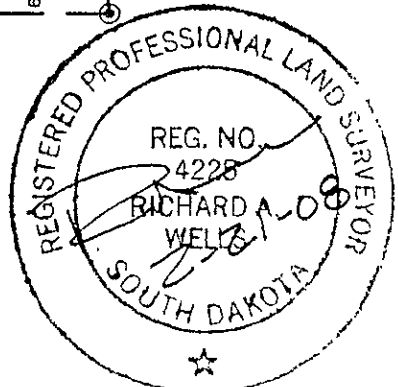
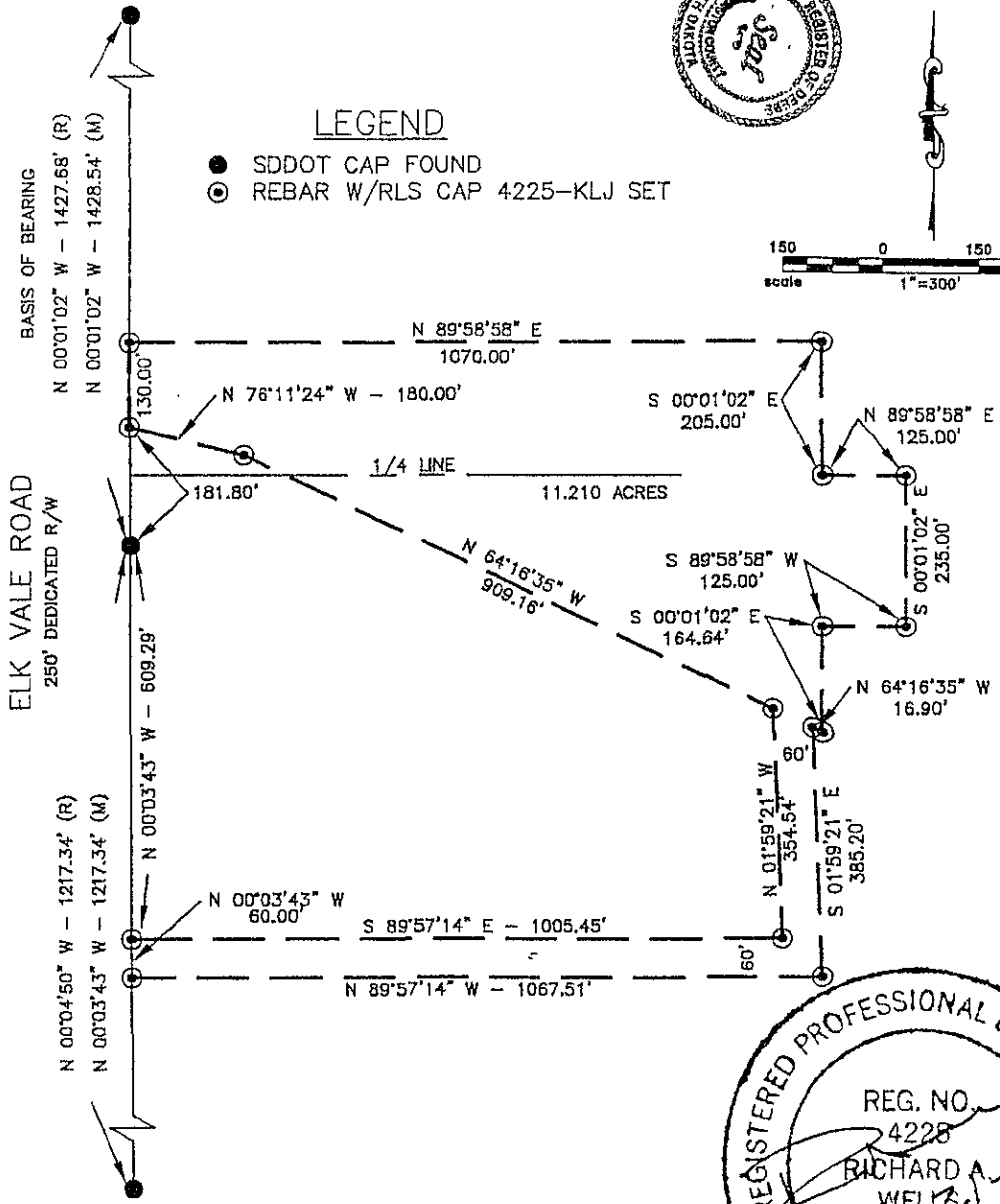
## UTILITY EASEMENT

LOCATED IN THE SW1/4 NW1/4 & NW1/4 SW1/4 OF SECTION 34 TOWNSHIP 2 NORTH,  
 RANGE 8 EAST OF THE BLACK HILLS MERIDIAN  
 RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA



### LEGEND

- SDDOT CAP FOUND
- ⊙ REBAR W/RLS CAP 4225-KLJ SET



BASIS OF BEARING IS ON THE  
 EAST LINE OF ELK VALE ROAD  
 RIGHT OF WAY (S00°01'02"E)  
 AS SHOWN IN BOOK OF PLATS  
 9 HWY, PAGE 82 & 125.

PREPARED BY:  
 KADRMAS, LEE & JACKSON, INC.  
 330 KNOLLWOOD DRIVE  
 RAPID CITY, SD 57701-6611  
 (605) 721-5553

Kadmas  
Lee &  
Jackson  
 Engineers Surveyors