

7-21-99

AGREEMENT

Agreement made this 21st day of July, 1999, by and between Walgar Development Corporation ("Walgar"), and the City of Rapid City ("City").

**I.
RECITATIONS**

(1) Walgar owns certain real property legally described as:

The S310' of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, Less ROW; the unplatted balance of the N350' of SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$; Tract B, less Lot 14, Block 23, Robbinsdale Addition #10; and that property described by an attached Exhibit "A", all located in Section 13, T1N, R7E, of the Black Hills Meridian, Pennington County, South Dakota.

(2) Presently, the construction of Minnesota Street stops approximately 1,400 feet to the east of Fifth Street. The City would like to connect Minnesota Street to Fifth Street.

(3) The parties hereby enter into the following Agreement to facilitate the lengthening or extension of Minnesota Street as described in Recital (2) above.

**II.
CITY OBLIGATIONS**

(1) The City will contract with Renner & Sperlich for bid-ready plans and specifications for the completion of Minnesota Street in the approximate location shown on the sheet entitled "Minnesota Street Extension, Layout Plat" (Preliminary) prepared by Renner & Sperlich, a copy of which is attached hereto. The parties recognize and agree that the standard design shall be a 7-inch thick Portland Cement concrete slab on an 8-inch thick aggregate base course and shall include geogrid and underdrains as determined by the City to be necessary or appropriate; if the City shall determine to use a thicker pavement section, the additional cost thereof based upon alternate bidding, shall be borne by the City and shall not be recoverable from Walgar. It is further recognized and agreed that the street design shall include a sidewalk and a bike path in accordance with City policy and as determined by the City. The bike path will be constructed by the City on the north side of Minnesota Street; oversize cost between a sidewalk and a bike path shall be borne by the City and shall not be recoverable from Walgar. The sidewalk will be constructed by Walgar or its assignees on the south side of Minnesota Street. However, Walgar or its assignees will only be required to construct the sidewalk at the time of, and for those portions of, the property that is sold by Walgar. Therefore, if all of the property is sold in one transaction, Walgar or its assignees will construct the sidewalk at the time of the closing for that sale. If, on the other hand, said property is sold in parcels, Walgar and its assignees will only be required to construct the sidewalk for those parcels.

(2) The City will take bids and contract for the construction of said project which shall consist of grading, storm sewer, curb and gutter, subbase, concrete paving, and the bike path referred to above. Additionally, the City will have included in the plans and in the project such utility sleeves as Walgar shall have approved before the plans are finalized.

(3) The City, at its expense, will have the water main between Wisconsin Street and Fifth Street relocated. The plans for the relocation shall include tee fittings and service line extensions to the right of way line in such locations as Walgar shall have approved before plans are finalized. The installation of any such tee fittings and water service lines shall be at the sole expense of Walgar, which shall be paid within thirty (30) days after certification by the City to Walgar that the relocation is substantially complete.

(4) The City will manage, finance, and pay the cost of designing and constructing the project, subject to its right to recover those costs referred to below in this Agreement.

(5) The City will take bids and contract for the construction of the Nebraska Street Drainage Channel.

III. WALGAR OBLIGATIONS

(1) By August 31, 2000, Walgar will, at its expense, complete the construction of Maple Avenue from its current southern end to its intersection with Minnesota Street.

(2) Walgar will, at its own expense, dedicate and plat an eighty (80) foot public right-of-way for the extension of Minnesota Street as identified in this Agreement. Said right-of-way is identified on a drawing entitled "Minnesota Street Extension, Layout Plat" which was prepared by Renner & Sperlich, a copy of which is attached hereto as Exhibit "B". This platting cannot be completed prior to the start of construction. Therefore, Walgar will grant to the City a construction and utility access easement along what will become the 80 foot public right-of-way.

(3) Subject to inclement weather, within sixty (60) days of the effective date of this Agreement, Walgar will, at its own expense, complete installation of the required sanitary sewer in the Minnesota Street right-of-way as shown on the plans therefor prepared by Renner & Sperlich and approved by the City. The City shall pay oversize costs between a 10 inch sewer line and an 8 inch sewer line in the amount of Two Thousand Four Hundred Eighty Dollars (\$2,480.00), which amount shall be paid by the City to Walgar within thirty (30) days after inspection by the City and certification by Walgar that the construction is substantially complete.

(4) Walgar will bear all costs incurred by it in the abandonment of any water lines on its property but outside the project limits for the construction and extension of Minnesota Street.

**IV.
RECOVERY OF COSTS BY CITY**

The City shall be entitled to recover the following costs from Walgar as hereinafter set forth:

(1) The City's costs incurred in the construction of Minnesota Street, including construction staking, engineering and design services under its contract with Renner & Sperlich, and the bike path, and the usual construction cost-based subdivision fees as set forth in Section 16.20.080 of the Rapid City Municipal Code, less the sum of Thirty-five Thousand Dollars (\$35,000). The cost of relocating or constructing the water main shall not be included in these costs. Walgar shall make such payment to the City at the time of closing for a sale of or the issuance of a building permit for, whichever occurs first, for all or any portion of its property abutting the Minnesota Street right-of-way to be dedicated as referred to in this Agreement and shall be in the proportion that the frontage of any such property bears to the total frontage along such public right-of-way.

(2) Walgar's obligation to pay the City's costs incurred in the construction of Minnesota Street as referred to in Section IV (1) above shall not include costs incurred as the result of installation or placing of concrete paving during cold weather, which costs shall be determined by the amount of a change order therefor.

(3) An amount equal to 36.7 percent of the cost of design, engineering, and construction of the Nebraska Street Drainage Channel as set forth in Section II (5) hereof. Walgar shall pay its 36.7 percent share, up to Ten Thousand Dollars (\$10,000), within thirty (30) days after the substantial completion of the construction of the drainage channel. If Walgar's share exceeds \$10,000, the balance will be divided by the number of lots, agreed to be 21, to be platted as Lots 2 through 19 of Block 3 and Lots 5 through 7 of Block 4, Robbinsdale Addition Number 10, as shown on the preliminary plat prepared by Renner & Sperlich. Payment of such fractional remaining costs shall be made at the time application for a building permit is made for each of such lots and shall be in lieu of the drainage basin fees for the South Robbinsdale Drainage Basin which would otherwise be payable at the time building permits are issued.

(4) The costs to be recovered by the City as specified herein shall not bear interest until such costs become due and payable in accordance with the times specified herein. Walgar shall not be under any obligation to plat any property, except the Minnesota Street right-of-way, by any particular time or date and thereby cause any of the costs to be recovered by the City to become due and payable.

(5) Walgar will execute all appropriate documents prepared by the City, at its expense, providing notice to the public of Walgar's obligations to pay the costs referred to under this section of the Agreement.

V.
EXTENSION OF FIFTH STREET

The parties recognize and agree that the City contemplates the eventual extension of Fifth Street south from Minnesota Street to South Dakota Highway 16B, that the manner of financing such extension is not within the present control of the City or Walgar, and that such extension will affect the value and marketability of Walgar's property. Specifically, if the City should subsidize the cost of construction beyond the payment of oversize costs and without transferring the usual cost thereof to the abutting property owners, then and in that event the marketability of Walgar's property would be adversely affected, thereby likely delaying recovery by the City of the amounts to be recovered pursuant to this agreement.

VI.
NO FINANCIAL CONCESSIONS

To reach and conclude this Agreement, neither the City nor Walgar was required to make financial concessions.

Dated this 27th day of July, 1999.

WALGAR DEVELOPMENT CORPORATION

By: [Signature]
Gary A. Rasmussen, President

By: [Signature]
Walter J. Linderman

Its: _____

CITY OF RAPID CITY

By: [Signature]
Jim Shaw, Mayor

ATTEST:

[Signature]
Finance Officer

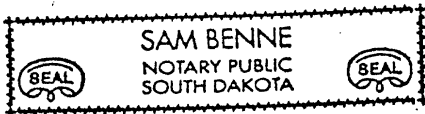
(SEAL)

[Handwritten initials]

State of South Dakota)
 SS.
County of Pennington)

On this the 27 day of July, 1999, before me, the undersigned officer, personally appeared Gary Rasmusson and Walt Linderman, who acknowledged themselves to be the President and Vice President of Walgar Development Corporation, a corporation, and that they, as such President and Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by themselves as President and Vice President.

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



Sam Benne
Notary Public, South Dakota

My Commission Expires: 4-1-2004

(SEAL)

State of South Dakota)
 SS.
County of Pennington)

On this the 27 day of July, 1999, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, 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.

Jeri Lyn
Notary Public, South Dakota

My Commission Expires: 4-3-2002

(SEAL)