

**LOAN AND INFRASTRUCTURE
DEVELOPMENT AGREEMENT**

This Agreement is made and entered into by and between the **CITY OF RAPID CITY**, a municipal corporation, hereafter called the “City,” and **HAROLD L. BIES, LYLE E. PETERSON, LEGACY LAND CO. and LAZY P6 LAND CO., INC.**, hereafter called collectively the “Developers.”

Recitals

WHEREAS, the City has established an Infrastructure Development Partnership Fund (hereafter called the “Fund”) to assist in providing adequate public improvements in areas of new development by financing the development of public improvements where such costs shall be repaid by the Developers, and shall hereinafter be referred to as the “loan”; and

WHEREAS, Harold L. Bies and Lyle E. Peterson are the owners and developers of certain real property more particularly described as follows:

Portion of Parcel A (less Lots 1 & 2 of Parcel A, less Heartland Drive
Less Lot H1), MJK Subdivision lying south of Dakota Subdivision,
Rapid City, Pennington County, South Dakota;

and

WHEREAS, Legacy Land Co. is the owner and developer of certain real property more particularly described as follows:

Portion of the Balance of Parcel B (less the Meadows Subdivision), MJK
Subdivision lying south of Meadows Subdivision, Rapid City, Pennington
County, South Dakota;

and

WHEREAS, Harold L. Bies is the owner and developer of certain real property more particularly described as follows:

Tract B of Parcel C, MJK Subdivision, Rapid City, Pennington County,
South Dakota;

and

WHEREAS, Lazy P6 Land Co., Inc. is the owner and developer of certain real property more particularly described as follows:

Government Lot Two (2) (less right of way), Section Nineteen (19),
Township One North (T1N), Range Eight East (R8E) of the Black Hills
Meridian, Pennington County, South Dakota;

and

WHEREAS, Developers have made application for the use of Infrastructure Development Partnership funds in connection with the development of the real property above described and, in particular, for construction of approximately 6,400 feet of 15” sanitary sewer main from the existing Highway 79 sewer west to the proposed Fifth Street extension, as shown on Exhibit “B”; and

WHEREAS, the Rapid City Infrastructure Development Partnership Review Committee has recommended approval of the application for a loan to the Developers of \$244,140 from the Fund; and

WHEREAS, the parties hereto desire to enter into this Agreement to set forth the terms and conditions under which the Developers will borrow \$244,140 from the Fund;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions herein set forth, it is agreed as follows:

1. The City shall loan to Developers and Developers shall borrow from the Fund the principal sum of \$244,140. The principal sum of \$244,140 shall be interest-free for a period of five years from the date of substantial completion of the public improvements to be constructed from the loan proceeds. Thereafter and commencing at the beginning of the sixth year following substantial completion of the public improvements, interest shall accrue on the unpaid balance at an annual rate of 1% above the Prime Rate determined as of the date interest commences.

2. Repayment. Developers shall each repay their individual loans prior to final plat approval by the City. In the event final platting of the Development is accomplished in separate phases, then repayment of the principal and accrued interest shall be prorated based upon the number of lots then receiving final plat approval in relation to the total number of lots to be platted in the entire Development, expressed by the following formula:

$$\frac{\text{number of lots receiving final plat approval}}{\text{total number of lots in Development}} \times \text{principal and accrued interest as of date of plat approval} = \text{loan repayment amount}$$

Notwithstanding the above formula, Developers shall be obligated to repay the City the entire balance of the loan when the final plat is approved for the last phase of this project.

3. Loan Guaranty and Security for Repayment. In order to assure to the City repayment of the principal and all accrued interest as herein provided, each of the Developers shall provide the City with a bank secured letter of credit. The letter of credit will be provided before loan

proceeds are distributed. Each Developer shall provide a letter of credit to cover the costs of his/its share of the funding allocation responsibilities as set forth in paragraph 5.

4. Promissory Note. The loans as herein provided shall be evidenced by a Promissory Note in the form shown on the attached Exhibit A.

5. Sewer Line Construction Project. The City shall construct in accordance with applicable City construction standards and requirements a certain sewer line extension which will service the developed land and which may also in the future service other development in the area. The parties have estimated the costs of the separate constituent parts of the entire construction project, inclusive of design fees, and have agreed as to the apportionment of the costs between the City and Developers based on percentage of front foot. The following is the agreed division of the respective costs of the sewer line construction:

FUNDING ALLOCATION FOR SEWER LINE CONSTRUCTION

<u>LANDOWNER</u>	<u>LEGAL DESCRIPTION</u>	<u>APPROXIMATE FRONT FOOTAGE</u>	<u>%</u>
Harold L. Bies & Lyle E. Peterson	Portion of Parcel A (less Lots 1&2 of Parcel A, less Heartland Drive, less Lot H1), MJK Subdivision lying south of Dakota Subdivision	1800 Lineal Feet	28.1%
Legacy Land Co.	Portion of the Balance of Parcel B (less the Meadows Subdivision), MJK Subdivision lying south of Meadows Subdivision	1000 Lineal Feet	15.6%
Harold L. Bies	Tract B of Parcel C, MJK Subdivision	2100 Lineal Feet	32.8%
Lazy P6 Land Co., Inc.	Government Lot 2 (less right- of-way), Section 19 T1N, R8E, BHM	1500 Lineal Feet	23.5%
TOTAL		6,400	

TOTAL PROJECT COST = \$334,140
CITY'S OVERSIZE COST = \$ 90,000
LOAN AMOUNT = \$244,140

The design and construction contracting will be provided by the City.

6. Costs Variations. In the event the actual construction costs vary from the above construction costs estimates, the parties agree that any actual costs will be paid by the Developers in proportion to the percentages described above unless otherwise agreed to by the parties. Any agreements by the parties regarding actual costs shall be confirmed in writing and approved by the Rapid City Council.

7. Easements and Rights of Way. In order for the City to accomplish the construction project, Developers shall dedicate or obtain and provide to City, at no cost to the City, such easements and rights of way over, under and across private property, both permanent and for construction purposes, as may be necessary to construct and permanently locate, repair and maintain the streets as depicted on the attached Exhibit B. All easements and rights of way shall be conveyed and assigned to the City by deed or other appropriate conveyance, free and clear of all liens and encumbrances. Easements and rights of way shall be dedicated or provided to the City not later than April 15, 2001.

8. Project Improvements. The parties agree that all infrastructure project improvements constructed by the City pursuant to this Agreement are public improvements required pursuant to City ordinances.

9. Further Assurances. The parties agree to execute such other and further documents and instruments, not inconsistent herewith, as may be reasonably necessary to accomplish the intent and purpose of this Agreement.

10. Modification. This Agreement may be amended only by written agreement of the parties hereto.

11. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

DATED: _____, 2001.

CITY:

DEVELOPERS:

CITY OF RAPID CITY, a municipal corporation

By _____
Jim Shaw, Mayor

Harold L. Bies

ATTEST:

Lyle E. Peterson

LEGACY LAND CO.

James F. Preston, Finance Officer

By: _____
Its: _____

LAZY P6 LAND CO., INC.

By:_____

Its: _____

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

ON THIS DAY, _____, 2001, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, who acknowledged himself to be Mayor and Finance Officer of the **CITY OF RAPID CITY**, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized to do so, 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

My Comm. Expires:_____

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

ON THIS DAY, _____, 2001, before me, the undersigned officer, personally appeared Harold L. Bies, 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)

Notary Public

My Comm. Expires:_____

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

ON THIS DAY, _____, 2001, before me, the undersigned officer, personally appeared Lyle E. Peterson, 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)

 Notary Public
 My Comm. Expires: _____

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

ON THIS DAY, _____, 2001, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of Legacy Land Co., a corporation, and that he, as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as _____.

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

(SEAL)

 Notary Public
 My Comm. Expires: _____

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

ON THIS DAY, _____, 2001, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of **LAZY P6 LAND CO., INC.**, a corporation, and that he/she, as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself as such _____.

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

(SEAL)

Notary Public

My Comm. Expires:_____

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