

**OPERATION AND MAINTENANCE AGREEMENT BETWEEN
ELK VALE BUSINESS PARK, LLC
AND THE CITY OF RAPID CITY
FOR NORTHERN LIGHTS WATER METER PIT**

This agreement is made this ____ day of _____, 2008 by and between the Elk Vale Business Park, LLC, a South Dakota limited liability company ("Elk Vale") located at P.O. Box 330, Rapid City, SD 57709, and the City of Rapid City, a municipal corporation, organized under the laws of the State of South Dakota, ("City"), located at 300 Sixth Street, Rapid City, SD 57701.

WHEREAS, on September 17, 2007, the City and Elk Vale entered into a covenant agreement whereby the City agreed to provide water to Northern Lights, a residential subdivision being constructed by Elk Vale, which is generally located at the eastern terminus of Cheyenne Boulevard., south of I-90 in the City of Box Elder ("Box Elder"); and

WHEREAS, Box Elder approved a Resolution of Consent to this agreement on October 2, 2007; and

WHEREAS, one of the City's primary considerations for providing water outside the City's corporate limits under the agreement, is Elk Vale's promise to bear all costs for constructing the infrastructure necessary to bring the City's water to the subdivision; and

WHEREAS, the City will supply the water through a water meter vault located within the public right-of-way on the south side of Cheyenne Boulevard, west of the boundary line between the City and Box Elder; and

WHEREAS, the purpose of this agreement is to establish and clarify the ownership, operation and maintenance of the water meter vault, as well as responsibility for the eventual removal and abandonment of the water meter vault.

NOW THEREFORE, the parties agree as follows:

1. The water meter vault will be located within the corporate limits of the City on the south side of the Cheyenne Boulevard public right-of-way. The specific location of the water meter vault will be coordinated between Elk Vale and the Public Works Director or his designee. Once completed, the water meter vault shall be owned and maintained by the City.
2. Elk Vale will be responsible for constructing the water meter vault. City staff shall review and approve the construction plans for the water meter vault. No water will be provided to Elk Vale under the covenant agreement until the water meter vault has been completed and accepted by the City.
3. Once the water meter vault has been completed and accepted by the City, the City shall be responsible for its operation and maintenance. Elk Vale shall be responsible for reimbursing the City for any costs the City incurs operating and/or maintaining the water meter vault. Should the

City incur any costs for operating and/or maintaining the water meter vault, it shall send an invoice to Elk Vale at the above address requesting payment. Elk Vale shall have 30 days to pay the invoice or dispute the bill. If City staff and Elk Vale are unable to resolve the dispute, the issue will be placed in front of the City Council for resolution. The parties agree that the decision of the City Council on any billing issues is final. Elk Vale will have 15 days from the date of any Council decision to pay any amounts that may still be due and owing. Should Elk Vale fail to pay or dispute any invoice in the time allowed, or fail to pay amounts due and owing within 15 days of the City Council's decision, the City may shut off the water to Northern Lights. Recognizing that shutting off the water may not be a realistic option once homes have been sold within the subdivision, Elk Vale further agrees to pay a penalty of \$500 dollars per day for each day that it is delinquent in paying an outstanding invoice. The City Council may, in its sole discretion, waive any or all of this penalty.

4. It is anticipated that Box Elder will eventually provide the water for this subdivision. At the time Northern Lights connects to Box Elder's water system, Elk Vale will be responsible for disconnecting from the City's water system. Once the water meter vault is no longer needed, Elk Vale agrees to have the vault completely removed and return the area to an acceptable condition, including seeding, at its sole expense. Elk Vale agrees to coordinate with the City prior to removing the water meter vault so the City may inspect the work to ensure that the water meter vault is properly removed and the area affected is returned to an acceptable state. If Elk Vale fails to meet its obligation to remove the water meter vault, the City may do so and invoice the cost to Elk Vale in the same manner as the billing described in paragraph 3.

5. Elk Vale acknowledges that the City is under no obligation to provide water to Northern Lights, that Box Elder's water system does not currently have the ability to serve this development and without the City's promise to provide water it would be extremely difficult for the development to proceed, that the City's primary consideration for agreeing to provide Elk Vale water are Elk Vale's promises contained in this agreement and the covenant agreement the parties previously entered into. Elk Vale further acknowledges that the City's obligation to provide water to Northern Lights is sufficient consideration for the promises which it has made in this agreement.

6. This agreement along with the covenant agreement previously entered into on September 17, 2007, are the entire agreement of the parties.

7. The validity, construction and effect of this agreement shall be governed under the laws of the State of South Dakota. Any action concerning this agreement shall be venued in Pennington County, South Dakota, in the Circuit Court for the Seventh Judicial Circuit.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

ELK VALE BUSINESS PARK, LLC

By:_____

Its:_____

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2008, 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, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing Agreement Consenting to Assessed Project 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.

Notary Public, South Dakota

My Commission Expires:

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the ____ day of _____, 2008, before me, the undersigned officer personally appeared _____, who acknowledged himself to be the _____ of ELK VALE BUSINESS PARK, LLC, and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)