

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND RONALD SHAPE TO
CONSTRUCT OVERSIZE WATER TRANSMISSION MAIN.**

This agreement is made by and between the City of Rapid City, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701 (the “City”) and Ronald Shape, of 6150 Laredo Lane, Black Hawk, South Dakota 57718 (the “Developer”).

WHEREAS, the Developer desires to subdivide property which is generally located west of Reservoir Road and northeast of Big Sky Subdivision at the current terminus of Homestead Street and is legally described as:

The SE1/4 of the NE1/4, Less right-of-way, of Section 3, T1N, R8E, BHM, Rapid City, Pennington County, State of South Dakota; and

WHEREAS, the Developer will be required to construct certain public improvements under the City’s subdivision regulations in order to subdivide his property; and

WHEREAS, the City has requested in conjunction with the installation of Homestead Street the Developer construct an oversize water transmission main which, while not currently needed to serve the Developer’s property, is needed to serve property to the east of the Developer’s including, at some point in the future, the Rapid City Regional Airport; and

WHEREAS, it is in the City’s interest to construct this water transmission line in conjunction with the installation of the subdivision improvements in order to decrease the expense of the installation and the negative impact the project will have on the public if constructed at a later date; and

WHEREAS, despite the fact it is not currently needed to serve his property, the Developer is willing to construct the water transmission main for the City in conjunction with the installation of the subdivision improvements for his development; and

WHEREAS, it is the intent of the parties to establish the terms under which the Developer will be reimbursed for installing the water transmission main.

NOW THEREFORE, the parties agree as follows:

1. This agreement is conditioned upon the Developer proceeding with the subdivision of the above described property.
2. Should the Developer proceed with the subdivision of the above described property, he agrees to contract with a professional engineer to design and incorporate the water transmission main in Homestead Street into the engineering plan for the Developer’s proposed subdivision. Principal components of the transmission main are approximately 840 feet of 16 inch water transmission main, fire hydrants, gate valves and other associated appurtenances. The Developer will be responsible for preparing all contract documents and detailed specifications for the water

transmission main. Such plans shall be reviewed and approved by the City. The Developer will also contract with a professional engineer to provide construction observation services for the water transmission main. The additional engineering costs, including construction observation, for designing and constructing the water transmission main shall be paid by the City in an amount not to exceed Thirteen Thousand Five Hundred and Sixty Dollars (\$13,560.00). This amount is based on an engineering estimate which has been attached hereto and incorporated herein as Exhibit "A."

2. The Developer agrees to solicit a minimum of three quotes for the project as well as manage construction of the entire project. The water transmission line is beyond what is needed to serve the Developer's property and does not need to be publicly bid per the "oversizing" exception contained in SDCL 5-18-18.4. The Developer will request separate quotes on the water transmission main portion of the project in order to establish the City's cost for the water transmission main and separate it from the cost of the other subdivision improvements for which the Developer will be solely responsible. The City's water transmission line will be presented as an alternate for the contractors solicited to submit a separate quote on. The Developer will decide which contractor to award the contract to for construction of its portion of the project. The City will decide, in conjunction with the Developer, whether or not to award the alternate portion of the contract on the oversize water transmission main. If the alternate quote on the oversize water transmission line exceeds One Hundred Seventy Nine Thousand Six Hundred Dollars (\$179,600.00) or if the contractor the Developer decides to award the contract to is not the lowest quote on the water transmission line, the City may decide not to participate and the Developer will not award the alternate portion of the contract for the water transmission main. The City will inform the Developer of its concurrence with awarding the contract for the water transmission main through a written acknowledgement by the Director of Public Works or their designee within Fifteen (15) days of the quotes being provided to the City by the Developer.

3. The Developer will be responsible for all payments to the project engineer. Upon the award of the contract for construction of the water transmission line, the City shall pay the Developer Thirteen Thousand Five Hundred Sixty Dollars (\$13,560.00) for the engineering services. If the alternate portion of the contract is not awarded, the Developer shall submit an invoice to the City for the costs actually expended by the Developer for the additional engineering services, minus the cost of the construction observation. The Developer agrees, upon reasonable notice being given, to provide any all documentation in its possession verifying the work that was done and the amounts disbursed therefore.

4. The City shall pay the Developer for 100% of all costs associated with the construction of the water transmission line. The City will only pay the Developer for the costs actually incurred by the Developer for construction of the water transmission main in an amount not to exceed One Hundred Seventy Nine Thousand Six Hundred Dollars (\$179,600.00). This amount is based on an engineering estimate which has been attached hereto and incorporated herein as Exhibit "B." The City shall remit partial payments for the water transmission line based on the following schedule:

a. Once the water transmission main project is more than 50% complete the City will pay 40% of the total project cost;

b. Once the water transmission main project is more than 75% complete the City will pay an additional 25% of the total project cost;

c. Once the project is complete the City will pay an additional 25% of the total project cost.

The Developer will be responsible for paying the contractor for all work. The Developer may make monthly payment requests for work completed per the above schedule. Requests shall be submitted by Friday of the second week of the month. The City shall make payment to the Developer within thirty (30) days of receiving a payment request and related documentation. Payments submitted after the second Friday of the month will be delayed. The Developer agrees, upon reasonable notice being given, to provide any all documentation in its possession verifying the work that was done and the amounts disbursed therefore. The City will retain 10% of the total project costs until the project has been completed and accepted by the City. Upon acceptance by the City, the final 10% of the project costs shall be disbursed to the Developer.

5. A contingency of Six Thousand Eight Hundred Forty Dollars (\$6,840.00) may be available for additional unforeseen costs that arise during construction. The use of these funds requires the authorization of the City's Public Works Director.

6. The Developer also agrees to provide the City with a permanent utility easement for the water transmission main or have a dedicated public right-of-way, covering the area where the line is located, filed with the Pennington County Register of Deeds by November 1, 2008.

7. In the event that any section(s), or provision(s) 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(s) of this Agreement if it can be given effect without the invalid section(s) or provision(s).

8. The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

9. The parties agree that this writing constitutes the entire agreement between them and that there are no other oral or collateral agreements or understandings of any kind or character except those contained herein. No modification or amendment to this Agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

RONALD SHAPE

State of South Dakota)
)
County of Pennington)

ss.

ACKNOWLEDGEMENT

On this the ____ day of _____, 2006, 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 to do so, 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)
)
County of Pennington)

ACKNOWLEDGMENT

On this the ___ day of _____, 2008, before me, the undersigned officer, personally appeared Ronald Shape, 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.

Notary Public, South Dakota
My Commission Expires:

(SEAL)

EXHIBIT "A"

