

Prepared by City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

WGN
3-7-12

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
OLSEN DEVELOPMENT COMPANY, INC. REGARDING THE DESIGN AND
CONSTRUCTION OF STREET AND UTILITY IMPROVEMENTS WITHIN THE
PROMISE ROAD RIGHT OF WAY**

This Agreement (the "Agreement") is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation of 300 Sixth Street, Rapid City, SD 57701 (herein after referred to as the "City") and OLSEN DEVELOPMENT COMPANY INC., of P.O. Box 795, Black Hawk, SD 57718 (herein after referred to as the "Landowner").

WHEREAS, the Landowner has proposed constructing a residential development (the "Development") which is generally located adjacent to the Promise Road right of way west of US Highway 16, north of Golden Eagle Drive and east of the terminus of Vineyard Lane; and

WHEREAS, the City's ordinances relating to the subdivision of property for the Development require the dedication of the west half of the Promise Road right of way and the construction of street and utility improvements; and

WHEREAS, the City previously dedicated the east half of the Promise Road as right of way when the City platted Lot 4 of Owen Hibbard Subdivision; and

WHEREAS, the City acknowledges that it is responsible for paying for one half of the street and utility improvements within the Promise Road right of way adjacent to Lot 4 of Owen Hibbard Subdivision; and

WHEREAS, the Landowner is willing to design and construct the street and utility improvements within the Promise Road right of way if the City agrees to pay one half of the street and utility improvements adjacent to Lot 4 of Owen Hibbard Subdivision up to a maximum amount of \$130,000.

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties agree as follows:

1. Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. Property. The land which is subject to this agreement is generally located adjacent to the Promise Road right of way west of US Highway 16, north of Golden Eagle Drive and east of the terminus of Vineyard Lane, legally described as

S495' OF NE $\frac{1}{4}$ SE $\frac{1}{4}$ LESS LOT 1 and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota.

3. Covenant Running with the Land. Landowner acknowledges that this Agreement is made for the direct benefit of the real property noted above. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, and successors in interest of the Landowner, 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 in the office of the Pennington County Register of Deeds.

4. Design and Construction. The Landowner agrees to design and construct street and utility improvements. The City shall review the design, and no construction of the street or utility improvements may commence until the City has approved the design plans.

5. Bidding Requirement. Upon design approval, the Landowner shall publicly bid the improvements in compliance with SDCL Chapters 5-18A through 5-18D and any other applicable state bid law requirements.

6. Award of Bid. Prior to entering into a contract for construction of the street and utility improvements, the Landowner shall submit to the City sufficient information necessary to verify the improvements were bid in compliance with State Bid Law. The City's Public Works Director or his designee shall ascertain bid compliance, and such person is hereby designated by the City as its representative for purposes of approval of the bid award. If the parties do not agree on the lowest responsible bid, then both parties to this Agreement will be released from their respective obligations to construct and pay for the street and utility improvements but not from any of their other contractual or legal obligations.

7. Total Cost. Upon agreement of the parties on the lowest responsible bid under paragraph 5, but prior to award of the contract, the Public Works Director or his designee will acknowledge the total cost of the street and utility improvements adjacent to Lot 4 of Owen Hibbard Subdivision on behalf of the City. Upon agreement by Landowner on the total cost, the contract shall be awarded.

8. City's Share of Costs. The City agrees to pay the Landowner one-half of the total cost for the street and utility improvements in Promise Road adjacent to Lot 4 of Owen Hibbard Subdivision in an amount up to, but not to exceed One Hundred Thirty Thousand Dollars (\$130,000) upon completion of the work. Landowner understands and acknowledges that

\$130,000 is the maximum amount the City will pay. If one-half the total cost of the improvements is greater than \$130,000, Landowner will be responsible for paying the difference.

9. City Acceptance of Work. Once construction of the street and utility improvements are completed, the City shall inspect the work to ensure compliance with City's ordinances and other requirements for construction of public improvements. Any deficiencies shall be corrected prior to City's acceptance of the improvements. Acceptance of improvements shall comply with the City's Standard Specifications for Public Works Construction.

10. City's Payment. Upon written acceptance of improvements by the City, the Landowner will submit an invoice to the City's Public Works Department for payment of the City's share of the costs. The invoice will contain sufficient information for the City to review the total construction cost and determine the accuracy of the invoice. Upon acceptance of the amount by the City, the City shall remit payment to the Landowner within forty-five (45) days.

11. Relationship between the Parties. This Agreement does not create an employment or agency relationship between the City and Landowner or Landowner's officers, directors, agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between Landowner and the City. No agent of Landowner shall be the agent of the City, and Landowner covenants that it will not take any action in the name of, or by holding itself out as the agent of, the City.

12. Landowner Authority. Landowner warrants that is a corporation duly organized and validly existing under the laws of the State of South Dakota, and it has the right, power and authority to enter into this Agreement.

13. Remedies. The parties may undertake any legal or equitable action available to enforce the provisions of this Agreement in addition to any other remedies provided herein.

14. Integration. This Agreement is the entire agreement of the parties and supersedes all prior negotiations, agreements and understandings, whether oral or written.

15. Amendments. This Agreement may only be modified by mutual agreement of both parties. Any modifications or addendums to this Agreement must be in writing signed by both parties.

16. Severability. If any section, or provision of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section or provision of this application if they can be given effect without the invalid section or provisions.

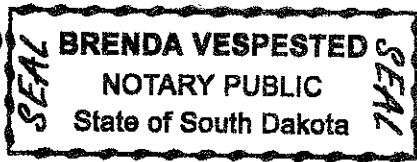
17. Governing Law and Venue. This Agreement shall be construed according to the laws of the State of South Dakota without regard for any choice of law provisions. Any action concerning this agreement shall be venued in the Pennington County Circuit Court.

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

On this 6th day of March, 2012, before me, the undersigned officer, personally appeared Phillip S Olsen, who acknowledged himself to be the President of OLSEN DEVELOPMENT COMPANY., Inc. and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

(seal)



Brenda Vespsted
Notary Public, South Dakota
My Commission Expires _____

My Commission Expires
March 13, 2015