

**AGREEMENT CONCERNING VOLUNTARY ANNEXATION
AND TRANSFER OF WATER SYSTEM BETWEEN COUNTRYSIDE
HOMEOWNERS ASSOCIATION, INC. AND CITY OF RAPID CITY**

This annexation agreement (“Agreement”) is entered into this ____ day of ____, 2014, by and between COUNTRYSIDE HOMEOWNERS ASSOCIATION, Inc., (“Association”) a South Dakota non-profit corporation of 5110 Waxwing, Rapid City, South Dakota, 57702, and the CITY OF RAPID CITY (“City”), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

WHEREAS, City is a municipal corporation organized and existing under the laws of the State of South Dakota; and

WHEREAS, Association is the owner of a water system located in Countryside Subdivision (“Subdivision”) providing services to the subdivision and an adjoining parcel that are legally described in Exhibit 1 to this Agreement (“the Property”); and

WHEREAS the Property is generally located in the Northwest Quarter of the Southeast Quarter, and the Southwest Quarter of Section 29, Township 1 North, Ranger 7 East, of the Black Hills Meridian, in Pennington County, South Dakota; and

WHEREAS the Property is contiguous to existing boundaries of the City of Rapid City; and

WHEREAS, Association is submitting a Petition for Annexation pursuant to SDCL 9-4-1 that will be filed with City requesting that the Property legally described herein be annexed into the City; and

WHEREAS, Association desires to convey to the City its water system and abandon identified components of the system upon annexation of the Subdivision and the City desires to provide water service to the residences within the Property who are currently served by the Association; and

WHEREAS, it is the intent of the parties to enter into this agreement stating the conditions under which City will approve the annexation and include the Property within the boundaries of the City and take over the water system.

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

1. Applicable Law. This Agreement is made pursuant to the provisions found in SDCL 9-4-1.1. The parties’ rights and obligations under this Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this Agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

2. Annexation Petition.

A. Association represents it has pursued a proper annexation petition at its own cost and will file the petition with the City in accordance with the provisions found in SDCL 9-4-1.

B. Association certifies that the annexation petition has been signed by at least three-fourths of the registered voters registered within the Property to be annexed, and by the owners of at least three-fourths of the value of the Property to be annexed. If the City determines it cannot certify the petitions, the Association shall have one year of the date of this Agreement to file additional petition signatures otherwise the obligations and rights found in this Agreement are null and void.

3. Contiguous Territory. The parties agree that the Property is contiguous to the City of Rapid City, as that term is defined and understood in SDCL 9-4-1.

4. Association's Obligations. Association agrees to perform the following to the satisfaction of the City in the timeframes discussed below or if no timeframe is specifically set forth within one year from annexation:

A. Association Water System Assets. Conduct an inventory of all Association water system assets, including but not limited to water mains, fire hydrants, water meters, curb stops, meter pits, etc. which the City will acquire and take responsibility for as a result of the annexation. Association agrees that the inventory will include a general description of the condition of each asset as well as a general map of the same. Association agrees to complete this inventory prior to the City acting on the annexation petition. The Association will use its best efforts to complete the inventory on one hundred percent of the water users' properties. The inventory shall be deemed completed if the Association completes the inventory on eighty per cent of the current water users' properties.

B. Timely obtain all necessary easements to permit the City to make the initial connections to the City's water system as discussed in Section 5 Paragraph B and all necessary easements inside and outside the Subdivision that the City determines are necessary to complete all work provided in Section 5 Paragraph C.

C. Install meters with radio reads per City specifications on all properties within the Subdivision. Association also agrees to complete any or all plumbing modifications necessary to install meters. Association agrees to install backflow preventers, pressure relief valves, expansion tanks etc. as needed per City specifications and the Rapid City Plumbing code. Unless waived by the Public Works Department, Association will modify any facility that utilizes a meter pit to abandon the meter pit and perform the work needed to comply with City standards.

D. Verify and ensure that all service line curbstops are visible and in working order. Association shall install curbstops as necessary if they are missing for service connections. All curbstops shall be located per City of Rapid City specifications and criteria, or Association shall provide properly-executed access easements for City Operations to access the curbstops.

Curbstops located in the utilities easement right of ways recorded on the Subdivision plats will be deemed to be located in a properly-executed access easement.

E. Ensure that all landowners open new water accounts with the City prior to the Subdivision's switch over to City water service as provided in Section 6. The parties understand that each new water account with the City the landowner will be charged and need to pay (1) a deposit based on meter size in effect at the time (charges in 2014 were \$43.92 for a 3/4 inch line, and \$175.69 for a 1-inch line) refundable when the account is closed, and (2) a one-time nonrefundable service charge of \$37 to set up each account. The Association has collected water meter deposits of \$50 per water meter. Upon transfer of the system to the City and the landowner opening a new water account with the City, the Association will return the deposits subject to the Association rules. If a landowner refuses to open a new account with the City, the parties agree that the individual water service may be shutoff for failure to comply with Association rules or City Ordinance.

F. Pay into an escrow account that is established under Section 14 Two Hundred Fifty Thousand Dollars (\$250,000.00) to be used to offset costs incurred by the City in construction of water system facilities that benefit the annexed Property. Such payment shall be made no later than 180 days after passage of the Annexation Resolution.

If Association fails to perform the obligations described in this Agreement within the timeframes discussed, and if the Property has been annexed into the City and the water system transferred, the parties agree that City may perform the items that have not been completed and may seek reimbursement for the total costs of the same from Association or from Subdivision landowners. If City seeks this reimbursement, Association agrees to reimburse City for the work it has performed. Association agrees that it will not dispute or protest City's efforts to obtain reimbursement nor will it dispute the amounts for which City seeks reimbursement as long as the City costs are commercially reasonable.

5. City Obligations.

A. If Association agrees to perform the obligations listed in Section 4, City agrees to adopt a resolution pursuant to SDCL 9-4-1 that annexes the Property to the City and includes the Property within the boundaries of the municipality of Rapid City. The City agrees to record with the Pennington County Register of Deeds an Annexation Resolution as well as an accurate map of the annexed territory, pursuant to SDCL 9-4-11.

B. Within one year of passage of the Annexation Resolution, City agrees to construct two initial connections to City's water system as discussed in the Countryside Homeowners Association Preliminary Engineering Report for Water System Improvements by CETEC Engineering Services, Inc. ("CETEC report") with revised Figure 10 (3-17-14), attached hereto as Exhibits 2 and 3 respectively and incorporated into this Agreement and to perform the following work:

- Install an 8 inch PVC connection at Meadowlark Drive;

- Install an 8 inch PVC connection from the Muirfield Drive/Portrush Road intersection to Tanager Drive;
- Install an 8 inch PVC connection from Meadowlark Drive to Crossbill Circle.
- Disconnect the connection to the wells from the 4 inch mains.
- Install isolation valves in the Association distribution system at two locations where the City's pressure zone separation will be established, on Meadowlark Drive and Tanager Drive at the proposed zone separation.

In any event, the work will include a minimum of two connections to each service zone.

C. Water Utility. The parties recognize that portions of the water utility within Subdivision that City will obtain if annexation occurs are aging, damaged and/or in need of an upgrade in order to be able to meet City standards. The CETEC Report attached to this Agreement as Exhibit 2 identifies possible water loss, areas that are aging, damaged, and/or defective within the water utility and recommends various alternatives and improvements; the parties have reviewed the CETEC report and agree with its recommendations. Within two years of adoption of the Annexation Resolution, City agrees to complete the improvements to the water system as recommended in the CETEC report with Exhibit 3 revised Figure 10 (3-17-14), other than those improvements discussed in Paragraph 4, which are the duty of the Association, and Paragraph 5A, B, D, E, F, G, and H, which City will complete under the time line in those paragraphs. These improvements are described in Exhibit 2 Section V. "Alternatives Considered" subsection B.2. "City of Rapid City", shown in Exhibit 3 revised Figure 10 (3-17-14) of the CETEC report, and further described in Exhibit 2 Section VII "Proposed Project – Recommended Alternative" subsection 2. "Connect to Regional Water System – City of Rapid City (page 50) and generally include the following:

- 8" Water Main Connection, Tanager Drive to Muirfield Drive adjacent to Sheridan Lake Road.
- 8" Water Main Loop Raven Circle to Tanager.
- Abandon existing water wells if Association has no other use for the wells.
- 16" PVC Water Main from the existing Red Rocks Tank location south to the existing 8" water location.
- Abandon remaining 8" water main to the existing Countryside water storage tank.

D. City agrees to construct the pump upgrades to the Red Rocks booster on the City's water system discussed in the CETEC report by December 31, 2018.

E. The parties agree that the City's work on the water system may be changed to another system of connections that is mutually agreeable to the City's Public Works Director and the Association through action of approval by the Association's board.

F. Contemporaneously with the passage of the Annexation Resolution, the City shall zone the Property to Low Density Residential. No action needs to be taken by Association to cause the property to zoned as set forth once the Property is annexed to the City.

G. City at its cost agrees to provide Association with meters and radio boxes as necessary to bring Subdivision properties into compliance with City requirements and to permit property owners to switch over to City water services and billing as provided in Section 6. The parties agree that Association will be responsible for installation of the meters and radio boxes, as well as for all costs associated with installation of the same. The Association shall have the right to pass on these costs to the Property owners and its members. The City agrees to provide meter readings to Association during such time as meters and radio boxes are installed but prior to transfer of the system pursuant to Section 6.

H. It is understood that the current wells and water permits owned by the Association will remain Association property unless the Association gives written notice to the City within one hundred eighty days of completed annexation that the Association elects to have the City abandon one or more wells pursuant to State law upon completion of the work described in Paragraph B above. The parties agree that the wells will be disconnected from the water system pursuant to Section 5B.

6. Transfer of Water System. Within ninety days of the completion of the connections described in Subsection 5B, the parties agree that Association shall transfer and City shall accept ownership and control of the water system. The parties agree to coordinate the exact date and time of transfer, including but not limited to giving appropriate notice to water users, reading of all meters, opening and closing of appropriate valves, and flushing of water lines.

7. Assessment of City costs to Annexed Properties. The parties agree that to pay for the improvements to be constructed pursuant to Section 5, the City will impose a special assessment against all properties within the annexed areas as discussed in SDCL Chapter 9-47 and in the draft *Resolution of Necessity* (attached as Exhibit 4). The Resolution of Necessity will be based on the projected costs of system upgrades discussed in Section 5B and 5C, reduced by the applicable funds to be paid into escrow under Section 14.

Upon execution of this Agreement, Association agrees to promptly notify property owners of the City's intention to conduct such special assessments when and if the Annexation Resolution is adopted. Association also agrees to notify property owners via U.S. Mail of the date and time of Council's consideration of the annexation petition at which they may offer public comment concerning the annexation and/or the proposed assessments. If the Annexation Resolution is adopted, Association agrees that will not object to or protest in any way the City's levy or collection of the special assessments against property owners.

The parties agree that the anticipated 16" PVC water main in the Selador Zone from the existing Red Rocks Tank location south to the existing 8" water location is a larger water main than would be necessary to provide service to the Subdivision alone. The parties agree that the assessment to the annexed properties will include 100 percent of the construction cost of an 8" water main and appurtenances. The parties agree that increasing of line size provides additional benefit to the annexed Property. Therefore, the assessment for this item will include 10 percent of the difference between the construction cost for the 16" PVC water main and appurtenances and the construction cost for an equivalent length of 8" PVC water main and appurtenances once unit bid prices are established upon project bid letting. The remainder of any oversize costs will

be paid by City or by other property owners. The estimated length of need for this connection is 700 feet.

City shall have the right to oversize any of the pipe sizes identified on Exhibit 3 Figure 10 (Rev. 3-17-14) should the City deem it appropriate. The cost for any such oversize may be assessed to the annexed properties using the same ratio discussed in the paragraph above.

8. Road Maintenance Damage Waiver. Association agrees that it waives any right it may possess to sue the City for damage to its person or property, or for damage to its individual members' persons or property, due to City's actions to maintain roads in Subdivision, including damage which may result from City's application of salt or other substances to the road for maintenance purposes. Association agrees that it will not bring a suit against the City for the damage discussed in this paragraph, either on its own behalf or on behalf of damage suffered by its members.

9. Polybutylene Service Lines. For the first five years from the completion of the annexation of the Property, the property owners will be exempt from City policy that permits property owners to request City replace polybutylene water service lines installed pursuant to the policy. The parties agree that City does not intend to make any payments to Association or to property owners for replacement of polybutylene service lines nor does City intend to replace any polybutylene service lines within the Property pursuant to this policy. In the event City is required to replace polybutylene water services lines of property owners and/or makes any payments to property owners to replace polybutylene water service lines during the first five years after annexation, Association agrees to reimburse City in full for any costs City sustains to do so if the property owner does not do so. The parties agree that Association may replace any polybutylene service lines of Subdivision property owners at any time as it wishes, but it has no obligation pursuant to this Agreement to do so. If the Association replaces any lines or reimburses the City for replacing any lines, the Association shall not waive any right to seek reimbursement for the expense from the property owner or any other third party.

10. Association Common Areas and Park Areas. The City recognizes that the Association currently has Park Areas and Common Areas it maintains for the use and enjoyment of residents within the Subdivision. Association will maintain ownership of these areas. The City agrees that upon annexation and zoning, Association may continue to use these properties as they have been traditionally used, even if said use would be non-conforming under City ordinance. The Association acknowledges that should it change the type of use of the real property, such new use must conform with the zoning ordinance and other City ordinances. If these areas have irrigation or water service connected to the City water system Association agrees to install water meters and backflow prevention devices and to set up City water accounts for these properties. The parties agree that every service connection will have a City water account.

11. Dedication of Improvements. Upon the effective date of the Annexation Resolution, Association shall dedicate to the City its interest in the roadways, public improvements, utility easements, water lines, sanitary sewers, and storm sewers (but not including private service lines). The parties agree that City by execution of this Agreement does not accept any dedication of water service lines located between the water main and any residence and/or building.

Association agrees that if additional right of way, utility easements, access easements, and/or drainage easements are needed for City to construct the improvements in this agreement or to otherwise provide water service to the Property, it will obtain any such right of way and easements and will dedicate them to the City.

12. Other Improvements. Except for the assumption of water service by the City, the City shall not be obligated to provide any public services to Association or its members as a result of this Annexation, other than those imposed by law or voluntarily assumed by the City. City acknowledges the following as services the City will provide to the Property after the Annexation Resolution is approved: street maintenance, snow removal, the services of the Rapid City Police Department and the Rapid City Fire Department, and garbage services as discussed in Section 16. The parties further agree that this Agreement does not obligate City to construct curb, gutter, sidewalk, or street lights nor does it obligate City to upgrade the Subdivision streets to meet City standards and specifications.

The City agrees that neither Association nor property owners shall be obligated to upgrade or install any improvements as a result of the annexation other than those improvements required of Association in this Agreement. The parties agree that this Agreement does not obligate the City, the Association, or the property owners in the annexed area to make any improvements not explicitly discussed in this Agreement.

13. Association's Debts and Expenses. The parties agree that City will not be responsible for any Association debts or obligations incurred prior or subsequent to this Agreement or the annexation. The parties agree that nothing in this Agreement is meant to impose responsibility for any such debts or obligations of the Association or of the property owners in the Subdivision upon City as a result of the annexation.

Furthermore, nothing in this Agreement limits the Association's rights to collect dues or recover costs incurred from its members or property owners for the payment of any past debts or expenses currently existing or incurred in fulfilling the obligations undertaken in this Agreement or under other Association obligations.

14. Escrow Account. In compliance with Section 4F, the Association shall establish an account at a local financial institution that meets the approval of the City Attorney's Office where it will deposit the \$250,000.00 in funds to be paid to the City for future construction projects. From this account, the Association will pay to the City the following amounts in three phases: the amount of \$100,000 for improvements listed in Section 5B; the amount of \$75,000 for the improvements listed in Section 5C; and the amount of \$75,000 for pump station upgrades to the Red Rocks booster as discussed in Section 5D. The account will be opened in the name of the Association, and any interest derived from the account or costs associated with maintaining the account shall be the property or cost of the Association.

The parties agree to the following procedure for each phase as discussed above: The City will send Association notice of Council action to authorize staff to advertise for bids for the particular phase and request payment from Association within seven days of the Council's action. Association will pay City the amount corresponding to the project out of the escrow

account at least 14 days prior to the bid opening. If the City rejects all bids or otherwise elects not to pursue the project, the City shall return the money to the escrow account no later than 75 days after the date scheduled for the bid opening.

15. Water Service Line Responsibility. The parties agree that, upon adoption of the Annexation Resolution and assumption of responsibilities for water service in the Subdivision, the City will not assume responsibility for any water service lines between the water main and any residence and/or building. The parties agree that Association shall ensure that all service lines have functioning curb stops and City water accounts pursuant to Section 4. At such time as a water service line needs to be repaired or replaced, it shall be replaced in accordance with City requirements and eliminate the service as a permitted non-conforming. For the first five years from annexation, the parties agree that City is not obligated to participate in any City matching fund program to bring any properties into compliance with City requirements and at the conclusion of five years the City shall only be obligated to the extent required under applicable law for a City resident.

16. Connections Outside of the Property. The City acknowledges that Association's water service serves a location outside of the Subdivision (the Paulson lot).

A. The parties agree that the Paulson lot will be included in the annexation territory and the annexation petition. The parties agree that the Paulson lot will be considered as a permitted non-conforming property until such time as the service line needs to be repaired or replaced or the property is subdivided or redeveloped. At such time the City will require the Paulson lot be brought into compliance with City requirements, and all costs associated with becoming compliant shall be the responsibility of the property owner and not the City. The parties agree that neither City nor Association as part of this Agreement is obligated to construct water mains to service the Paulson lot.

B. Association agrees to inform the property owners of the Paulson lot of the terms of this Agreement within ten business days of its execution.

17. Garbage Collection. The parties agree upon termination of the garbage services contract between Association and Waste Connections, Inc., which is attached hereto as Exhibit 5, City will assume sole responsibility for garbage service pursuant to R.C.M.C. § 8.08.030. City will provide such garbage service beginning no later than May 1, 2016.

18. Taxation. It is understood by Association that upon annexation, the Property will become subject to the City's taxation.

19. Consideration. The parties agree that the City's primary consideration for agreeing to the annexation of the adjacent property is the addition of taxable property into the City.

20. Binding Upon Heirs, Assigns and Successors in Interest. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of Association, 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. The City may record this agreement with the Pennington County Register of Deeds' Office pursuant to the provisions of South Dakota statutes.

21. Enforcement. Either party may undertake any legal or equitable action available to enforce the provisions of this Agreement in addition to any remedy provided herein. In any such litigation, the prevailing party may recover its reasonable expenses, including attorney's fees incurred with respect to such action.

22. Severability. If any section(s), or provision 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 of this Agreement if they can be given effect without the invalid section(s) or provisions.

23. Entire Agreement and Modification of Agreement. This Agreement is the entire agreement of the parties. No modification or amendment to this Agreement shall be valid, unless evidenced by a writing signed by the parties hereto or their successors in interest with the exception that the City Public Works Department shall upon the Association showing good cause waive the Association's obligations under Section 4 Paragraphs B., C., D., and E. and Section 5 Paragraph F. for specific individual properties or users.

24. Counterparts / Effective Date. This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart. Furthermore, regardless of the actual day of execution, this Agreement shall be effective as of the date set forth above.

25. Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given, when received, if delivered by hand, and when deposited, if placed in the mails for delivery by air mail, postage prepaid, addressed to the appropriate party as specified on the first page of this Agreement. Addresses may be changed by written notice given pursuant to this Section, however any such notice shall not be effective, if mailed, until three (3) working days after depositing in the mails or when actually received, whichever occurs first.

The parties agree that City may satisfy its notice requirements under this Agreement by providing notice to Association at 5110 Waxwing, Rapid City, SD 57702 with copy to Talbot Wiczorek, Gunderson Palmer Nelson and Ashmore, P.O. Box 8045, Rapid City, SD 57709.

Association agrees to timely notify its members of the terms of this Agreement and to secure any necessary member approval prior to its execution of this Agreement, as may be required by its bylaws or governing documents.

26. Further Action. The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purpose of the Agreement.

Dated this ____ day of _____, 2014.

CITY OF RAPID CITY

Sam Kooiker, Mayor

ATTEST:

Finance Officer
(SEAL)

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

On this the ____ day of _____, 2014, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, 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 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, South Dakota
My Commission Expires: _____