

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

WHEREAS, an annexation agreement (“Agreement”) was entered into on September 2, 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; and

WHEREAS, on November 3, 2014, the Common Council approved a petition request to annex all of Countryside Subdivision and an adjacent property; and

WHEREAS, Section 5.B of the Annexation Agreement provided that the City agreed to construct certain improvements within one year of the City’s annexation of Countryside Subdivision; and

WHEREAS, Section 5.C of that Agreement provided that the City agreed to construct other improvements within two years of the City’s annexation of Countryside Subdivision; and

WHEREAS, with Association’s consent, City staff requested authorization to seek bids to construct all of the improvements discussed in both Section 5.B and 5.C. of the Agreement within a single City project;

WHEREAS, consequently, on June 15, 2015 the Common Council authorized staff to advertise for bids for Countryside Subdivision Water System Conversion, Project No. 15-2257 / CIP No. 51086; and

WHEREAS, the parties are concerned that the one-year timeframe for the Section 5.B improvements and other time restrictions in Section 5 will result in the bids being much higher than they would be if the contractors had additional time to complete these improvements; and

WHEREAS, the parties believe that an amendment to the Agreement to extend the timeframe for City to construct the improvements in Section 5.B will decrease the bid amounts for the project; and

WHEREAS, because a portion of the costs of the Section 5.B improvements will be assessed to the residents of the annexed area pursuant to the Agreement, Association and City are seeking to lower the costs of the project by extending the timeframe for the Section 5.B improvements; and

WHEREAS, the Agreement obligates the City to disconnect the wells from the water system and to take the steps to abandon the wells; and

WHEREAS, Association wishes to maintain control and ownership of those wells after the City disconnects them from the water system; and

WHEREAS, the parties agree that Section 5.C of the Agreement should be amended to remove the obligation of the City to abandon those wells; and

WHEREAS, the parties therefore seek to amend the Agreement accordingly concerning certain obligations of the City.

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

1. Incorporation of Recitals. The aforementioned recitals are incorporated herein by reference as if more fully set forth hereinafter.
2. Amendments to City Obligations.

### **Section 5.B**

Section 5.B of the Agreement shall be deleted and replaced in its entirety with the following:

B. By June 1, 2016, 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 3 and 4 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.

### **Section 5.C**

Section 5.C of the Agreement shall be amended to delete the reference to abandonment of the existing water wells. City will disconnect the wells from the mains pursuant to Section 5.B, whereupon the wells become the sole responsibility and obligation of the Association.

### **Section 5.I**

Section 5.I will be added to the Agreement and provide as follows:

I. The City Public Works Department upon mutual written consent of the Association may extend any deadlines in this Section if both deem the extension beneficial for proper construction or cost reduction. The City Public Works Department shall provide the Association notice of the bid opening, preconstruction meeting and any significant change orders and allow the Association to comment on any concerns it may have regarding the project's impact on the subdivision or costs involved.

3. Balance of Agreement Terms Remain. All other terms of the Agreement shall remain unchanged, and in full force and effect. In the case of conflict of another portion of the Agreement not amended hereby with the amended sections above, the amended sections, and the intent those amended sections, shall control.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2015.

COUNTRYSIDE HOMEOWNERS ASSOCIATION, INC.

\_\_\_\_\_  
Mark Meissner, President

State of South Dakota            )  
  )ss.  
County of \_\_\_\_\_            )

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned officer, personally appeared Mark Meissner, who acknowledged himself to be the President of Countryside Homeowners Association, Inc., and as such President, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of Countryside Homeowners Association, Inc., by himself/herself as President.

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

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 2015.

CITY OF RAPID CITY

\_\_\_\_\_  
Steve Allender, Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer  
(SEAL)

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

On this the \_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned officer, personally appeared Steve Allender 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: \_\_\_\_\_