

AGREEMENT BETWEEN THE CITY OF RAPID CITY AND THE EVANGELICAL LUTHERAN GOOD SAMARITAN SOCIETY REGARDING THE DESIGN, CONSTRUCTION AND DEDICATION OF LAND FOR A WATER RESERVOIR, WATER TRANSMISSION MAIN AND BOOSTER STATION.

This agreement (the "Agreement") is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation located at 300 Sixth Street, Rapid City, SD 57701 (herein after referred to as the "City") and THE EVANGELICAL LUTHERAN GOOD SAMARITAN SOCIETY, located at 4800 West 57th Street, Sioux Falls, SD 57117 (herein after referred to as the "Developer").

WHEREAS, the Developer has proposed constructing a large residential development (the "Project") on land formerly owned by the Benedictine Convent of St. Martins which is generally located north of the terminus of City Springs Road, to the west of Sturgis Road and to the south and east of St. Martins Drive; and

WHEREAS, the City currently has inadequate water infrastructure in this area to support the Project; and

WHEREAS, to be feasible, the Project will require the City to move forward with construction of a water reservoir; and

WHEREAS, the City has previously identified this area as the site of a future water reservoir; and

WHEREAS, the cost of constructing a water reservoir is normally a City expense; and

WHEREAS, if the City agrees to build the reservoir now, the Developer has offered to design the water reservoir along with its supporting infrastructure at its own expense, as well as donate the land on which it will be located in the form of a utility lot or permanent easment; and

WHEREAS, this reservoir will benefit the entire Pinedale Pressure Zone by providing increased water pressure, improved fire protection, and the ability to provide water service to additional areas outside the Project; and

WHEREAS, based on the benefits to the City's water system, the City is willing to commit \$1,000,000 from the City's .16 Fund to construct the water reservoir and other supporting infrastructure.

NOW THEREFORE, in consideration of the mutual promises made herein the parties hereby agree as follows:

1. The Developer shall retain a professional engineering firm (the "Consultant") to design a 750,000 gallon water reservoir, telemetry to allow integration with City's SCADA system, a 12" water main from St. Martins Drive to the reservoir, and a booster station if needed, based on design criteria and capacity requirements furnished by the City. The design of the reservoir will

be such that it meets the needs of the City water system within the Pinedale Pressure Zone. In conjunction with the design services, the Consultant shall prepare a report for the City's review and concurrence demonstrating that the proposed reservoir will in fact meet the City's needs based on the design criteria and capacity requirements which the City has furnished. The Consultant's report shall specifically include an analysis of whether a booster station will be needed. All expenses incurred by the Consultant in preparing the report and designing the water reservoir and any appurtenant facilities shall be the sole responsibility of the Developer.

2. The Developer will provide sufficient land on which to locate the water reservoir, the 12" water main, the booster station (if needed) and any other related appurtenant facilities in the form of a permanent utility easement or utility lot acceptable to the City. Such easements, shall be in a form acceptable to the City Attorney's Office and will be provided to the City prior to the advertising of bids for construction of the public improvements contemplated in this Agreement. Acquisition of any land from other landowners, if necessary, is the sole responsibility of the Developer and will be accomplished solely at the Developer's expense. If the Developer is unable to acquire the land required under this paragraph, the parties are released from all of their respective obligations to be performed under this Agreement.

3. The City will contribute up to \$1,000,000 from the City's .16 Fund to construct the water reservoir, the telemetry, the 12" water main, and the booster station. The cost of any other infrastructure is the sole responsibility of the Developer. The City will work with the Developer, through the Consultant, to coordinate construction of the reservoir, main and booster station so they will be completed in time to serve the Project.

4. The water reservoir, water main and booster station will need to be constructed in compliance with State bid law. The Consultant will provide the City bid letting and construction services, including but not necessarily limited to, preparation of bid documents for the City's review and approval, award recommendation once bids are received, and construction inspection services. The Consultant will provide recommendations to, and follow the direction given it by the City's Public Works Dept. on all aspects of constructing the water reservoir, water main and booster station. Upon the preparation of the bid documents by the Consultant and acceptance of the documents by Public Works Staff the project will be bid by the City. Per State bid law, the City Council shall be responsible for approving the City's bid authority and awarding the construction contract to the lowest responsible bidder. The City Council will also need to approve any payment requests and change orders. Preparation of payment requests and change orders will be the responsibility of the Consultant.

5. The parties acknowledge that \$1,000,000 is the total amount the City has available to construct the infrastructure contemplated in this Agreement. Should the bids for construction exceed \$1,000,000, additional funds will need to be identified prior to the bid being awarded. Should the Developer choose to provide the funds necessary to cover any shortfall between the \$1,000,000 the City has agreed to provide and the amount of the lowest responsible bid, the Developer understands the City cannot legally award the contract until the funds sufficient to cover the amount of the lowest responsible bid are actually in the City's possession. The City may, but is under no obligation to provide any additional funds. If the bids exceed \$1,000,000 and no additional funds are identified or in the City's possession by the expiration of the period

allowed for awarding the bid, the City may reject all bids and is under no further obligation to proceed with its obligation to construct the water reservoir, the 12" inch main, the booster station or any other related appurtenant facilities. The City is also under no obligation to provide the Developer with any compensation for the services rendered by the Consultant. If the amount of the lowest responsible bid is less than \$1,000,000 the City agrees it will award the construction contract.

6. Upon completion of the water reservoir, 12" water main, booster station and any appurtenant facilities and their acceptance by the City, the water reservoir, 12" water main, booster station, and any appurtenant facilities shall belong to the City and any future maintenance and needed expansion shall be the responsibility of the City.

7. The parties shall indemnify and hold each other harmless from their own negligent acts or omissions in the construction, operation and maintenance of the water reservoir, 12" water main, booster station and any appurtenant facilities and shall carry appropriate liability insurance to cover such legal liability.

8. 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.

9. 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 application if they can be given effect without the invalid section(s) or provisions.

10. This Agreement is the entire agreement of the parties with respect to the design, construction and donation of land for the water reservoir, 12" water main and booster station. No other writings or negotiations are part of this document. This Agreement may only be modified by mutual agreement of both parties. Any modifications or addendums to this Agreement must be in writing.

11. This Agreement shall be construed according to the laws of the State of South Dakota. Any action concerning this agreement shall be venued in Rapid City, South Dakota in the Circuit Court for the Seventh Judicial Circuit.

12. If the Landowner is a corporation, it has the power to enter into this agreement and its officers signing for it have full power and authority to do so.

Dated this ____ day of _____, 2008.

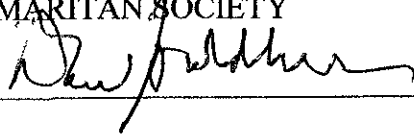
CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

THE EVANGELICAL LUTHERAN GOOD
SAMARITAN SOCIETY



By: Dan Holdhusen
Vice President,

Its: Operational Support Services & Public Affairs

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2008, before me, the undersigned officer, personally appeared Allan 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 Minnehaha)

On this 21st day of July, 2008, before me, the undersigned officer, personally appeared Dan Holdhusen, who acknowledged himself to be the Vice President of The Evangelical Lutheran Good Samaritan Society 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.

Mary K. Sandbulte
Notary Public, South Dakota
My Commission Expires: 2-17-2014

