

PREPARED BY: City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

AGREEMENT BETWEEN THE CITY OF RAPID CITY AND TRIPLE Z REAL ESTATE DEVELOPMENT, LLLP, REGARDING THE USE OF .16 FUNDS FOR THE CONSTRUCTION OF THE JOLLY LANE LIFT STATION EXPANSION

This agreement is entered into on this ___ day of _____, 2009, by and between the CITY OF RAPID CITY, a municipal corporation, located at 300 Sixth Street, Rapid City, SD 57701, hereinafter referred to as the “City” and TRIPLE Z REAL ESTATE DEVELOPMENT, LLLP, a South Dakota limited liability limited partnership, of 818 St. Joseph Street, Rapid City, SD, 57701, hereinafter referred to as the “Developer”.

WHEREAS, the Developer has proposed constructing a large residential development on land which is generally located east of Elk Vale Road and north of Minnesota Street; and

WHEREAS, the Jolly Lane Lift Station currently serves this area; and

WHEREAS, the Jolly Lane Lift Station currently serves approximately 190 dwelling units or the equivalent thereof, and is at capacity; and

WHEREAS, significant expansion of the Jolly Lane Lift Station will be needed in order for any further development to take place in this area; and

WHEREAS, the Developer has requested that the City provide \$424,000 in funds to assist with constructing the improvements to the Jolly Lane Lift Station which are necessary for further development in this area; and

WHEREAS, the City has approved \$424,000 in .16 Fund money to help construct the Jolly Lane Lift Station improvements; and

WHEREAS, it is the Developer’s responsibility to construct the Jolly Lane Lift Station expansion; and

WHEREAS, the parties desire to establish their respective obligations, including payment of funds, in relation to the Jolly Lane Lift Station expansion.

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

1. The parties acknowledge that the actual increase in capacity of the Jolly Lane Lift Station following the expansion will not be known until it is complete. It is further understood by the parties that the Developer is not guaranteed any of the increased capacity of the lift station to serve its development. The increased capacity of the Jolly Lane Lift Station will be utilized on a first-come, first-served basis
2. Developer shall provide copies of all recorded permanent and temporary easements as required for the Jolly Lane Lift Station expansion per the approved construction plans prior to construction of the lift station expansion.
3. The Developer has retained a professional engineering firm (the "Consultant") to design the expansion of the Jolly Lane Lift Station based on design criteria and capacity requirements furnished by the City. The plans have been submitted to and approved by the City as of March 18, 2009. All of the improvements made during the expansion shall be designed and built in conformity with the approved plans, the City's Standard Specifications for Public Works Construction, Design Criteria Manuals, and any other laws, ordinances, policies or resolutions which may be applicable. The Developer shall provide consultant services to include construction inspection, operation and maintenance manuals, start up and testing services, and shop drawing submittal and review.
4. The City will contribute up to \$424,000 from the City's .16 Fund for the design and construction of the lift station expansion. If the actual cost of the construction is less than \$424,000, the City will pay only the actual cost. Of the \$424,000, up to \$50,000 may be used to reimburse the Developer for design and construction administration costs. Any design and construction administration cost above \$50,000 is the sole responsibility of the Developer. The Developer shall obtain a performance bond from the contractor and provide it to the City. The construction of the Jolly Lane Lift Station expansion is the responsibility of the Developer.
5. The Parties acknowledge that \$424,000 is the total amount the City has available to construct the Jolly Lane Lift Station expansion. The City will make up to three (3) payments totaling up to 75% of the cost of the project to the Developer upon documentation that the Developer has paid the contractor and upon certification from the Consultant that the work has been completed. Such certification shall include a copy of the invoice and a copy of the check to the contractor. Payment will be made within forty-five (45) days of said certification. The final payment will not be made until the lift station expansion improvements have been accepted by the City and lien waivers from the contractor have been submitted
6. The Developer shall be responsible for the selection of contractors for the construction of the Jolly Lane Lift Station expansion. Selection of contractors for the construction of the Jolly Lane Lift Station expansion project shall comply with all provisions of South Dakota law regarding the expenditure of public funds contained in Chapter 5-18 of the South Dakota Codified Laws. Prior to the City making any payments pursuant to this agreement, the Developer shall provide City with documentation demonstrating compliance with applicable State law requirements.

7. The City shall perform construction observation to ensure compliance with the approved plans and all applicable requirements as set forth in Paragraph 3.
8. Upon completion of the lift station expansion improvements and their acceptance by the City, the lift station expansion improvements shall belong to the City and any future maintenance and needed expansion shall be the responsibility of the City.
9. The Developer acknowledges that the City may establish a Construction Fee Resolution upon the certification of the final construction costs and that the City may collect construction fees upon the issuance of building permits within the service area.
10. The parties shall indemnify and hold each other harmless from their own negligent acts or omissions in the construction, operation and maintenance of the lift station expansion improvements and shall carry appropriate liability insurance to cover such legal liability.
11. The parties may undertake any legal or equitable action available to enforce the provisions of this Agreement in addition to any other remedies herein.
12. 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 or provision of this Agreement if they can be given effect without the invalid section or provision.
13. This Agreement is the entire agreement of the parties with respect to the allocation of .16 Funds for the construction of the Jolly Lane Lift Station expansion. No other writings or negotiations are part of this Agreement. This Agreement may only be modified by mutual agreement of both parties. Any modifications or addendums to this Agreement must be in writing.
14. 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.
15. If the Developer is a corporation, it has the power to enter into this Agreement and its officers signing for it have the full power and authority to do so.

DATED this _____ day of _____, 2009.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2009, 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 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.

Notary Public, South Dakota

My Commission Expires:

(SEAL)

TRIPLE Z REAL ESTATE
DEVELOPMENT, LLLP

By: _____

Its: _____

