

AGREEMENT BETWEEN THE CITY OF RAPID CITY AND SMITH LAND CORPORATION REGARDING THE PAYMENT OF A PLANNED DEVELOPMENT FEE FOR PROPERTY LOCATED AT 2904 CACTUS DRIVE.

This Agreement is made and entered into by and between the City of Rapid City, a Municipal Corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the "City" and Smith Land Corp., P.O. Box 486, Pierre, South Dakota 57501, herein after referred to as the "Applicant."

WHEREAS, the Applicant paid a planned development fee for property generally located at 2904 Cactus Drive in Rapid City; and

WHEREAS, the above property was annexed into the City in 2009; and

WHEREAS, the property was zoned mobile home residential with a planned development overlay; and

WHEREAS, the addition of the planned development overlay required the residents of the area to pay additional fees they otherwise would not have paid if the overlay was not in place; and

WHEREAS, the City Council has determined that the planned development overlay was not needed and should not have been placed on the properties at the time they were annexed into the City; and

WHEREAS, various landowners, including the Applicant, paid the planned development fee prior to the City Council's decision to remove the planned development overlay; and

WHEREAS, the landowners who have paid the planned development fee, including the applicant, have claimed that the fee was improperly paid; and

WHEREAS, the City Council has decided it is in the best interests of the City to settle any claims the landowners may bring to recover these fees.

NOW THEREFORE, the parties mutually agree as follows:

1. The City will pay the Applicant \$250.
2. In exchange for the payment described in paragraph 1 of this Agreement, the Applicant agrees to release, discharge and otherwise hold harmless the City and/or any of its officers and employees from any and all demands, damages, actions, causes of action, costs, expenses and compensation that the Applicant may now have or hereafter have, whether currently known or unknown, whether anticipated or unanticipated, arising in any way out of the payment of the planned development fee for the property located at 2904 Cactus Drive, Lot 40, Melody Acres #2 Subdivision. It is the intent of the parties that this Agreement shall release and discharge all claims that could have been brought by the Applicant related to these fees. It is not the intent of this Agreement to release any claims, demands, damages or causes of action for acts or omissions unrelated to the payment of these fees or that arise after the date of this Agreement.

3. By agreeing to make the payment contemplated in paragraph 1 of this Agreement, the City is in no way admitting it has any liability to the Applicant for payment of the planned development fees.
4. The Applicant acknowledges that in the absence of his promise to release any claims that he may have against the City, the City would not agree to make the payment described in paragraph 1 of this Agreement. The Applicant further acknowledges that the City's promise to make the payment described in paragraph 1 of this Agreement is good and sufficient consideration for the promise he has made herein.
5. If any section(s), or provision of this Agreement are 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.
6. This Agreement can only be amended in writing by the consent of all the parties hereto.
7. 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.

Dated this ___ day of _____, 2011.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

Smith Land Corp by Don Smith

Smith Land Corporation
Don Smith, President

STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF Hughes)

On this 29th day of December, 2011, before me, the undersigned officer, personally appeared Don Smith, who acknowledged himself to be the President of Smith Land Corp. and 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.



Jaci Keller

Notary Public, State of South Dakota
My Commission Expires: _____

Jaci Keller
My Commission Expires
November 2, 2016