

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

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

AGREEMENT

This Agreement is made and entered into by and between the **CITY OF RAPID CITY**, a municipal corporation, hereafter called the "City," and **PATRICK TLUSTOS**, of 3700 Sheridan Lake Road, Rapid City, South Dakota, 57702, hereafter called "Tlustos."

Recitals

WHEREAS, Tlustos owns Tract B of the Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$) and the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$), less the North 40 Feet; the South 260.6 Feet of Tract C of the Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$); and the South 80 Feet of the North 730 Feet of the Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$) and the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$) lying East of Sheridan Lake Road, Section Fifteen (15), Township 1 North, Range 7 East, Black Hills Meridian, Pennington County, South Dakota, consisting of 12.290 acres more or less; and

WHEREAS, the City plans to construct the "Sheridan Lake Road and Sunset Vista Road Watermain Extension" Project No. W00-947 which is a water transmission main along Sheridan Lake Road and Sunset Vista Road which in turn fronts some or all of the above-described property. The water transmission main will connect the Broadmoor area to the southwest pressure zone. This connection will provide service to approximately thirty-two (32) new or recently developed lots off of Huntington Lane, Minnewasta Road, and Harney Drive. In addition, it will provide the City an opportunity to increase the water pressure for approximately

forty-three (43) existing customers that frequently experience water pressures less than 40 psi.

In addition to providing better water pressure, the line will also provide better fire protection for approximately sixty-five (65) existing customers plus the thirty-two (32) new or recently developed lots.

WHEREAS, it is understood that a permanent utility easement will be located along the front fifteen feet (15') of the Tlustos property. The easement will be fifteen feet (15') in width and will run along the west property line fronting Sheridan Lake Road as shown on Exhibit "A" attached; and

WHEREAS, the City will hire a consultant to design the proposed water transmission main, and will expend money in doing so.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions herein set forth, it is agreed as follows:

1. Tlustos shall grant to the City a permanent utility easement for the above-described project.
2. The water main is anticipated to be constructed during the fall of 2004 and the spring of 2005, and construction is anticipated to be completed by the 30th day of September, 2005.
3. The easement will be for a permanent installation of a water main and will be so noted on the easement exhibit.
4. The easement width will not exceed fifteen (15) feet in width along Sheridan Lake Road.

5. The existing rail fence will be removed and reset in its current location to meet the highest standards possible. In this regard, the fence shall be reset in as good or better condition and new materials installed as necessary to meet these results.

6. All areas disturbed (construction and temporary easements) will be reseeded with a native grass and wildflower mix. The seeded areas will be watered at a rate of 2" per week. If the seeding is completed in April, the weekly watering shall be accomplished using three (3) separate waterings per week, i.e. Mon. 2/3", Wed. 2/3", and Fri. 2/3". The watering shall be done by the City for a minimum of one (1) month after which time the landowner will be responsible. If seeding is completed after April, then the City's watering responsibility shall be extended to two (2) months after which time the landowner will be responsible.

7. If necessary, the City will reconnect the Tlustos water service line.

8. No assessment, impact fee, or connection fee associated with this project will be charged to Tlustos to connect his existing home to the new water main.

9. Access to Tlustos' home will be maintained at all times. Asphalt drive shall be replaced full width and a minimum of four inches (4") of asphalt concrete.

10. Tlustos will be afforded the opportunity to review the construction plans at both the 65 and 95 percent completion stage.

11. Tlustos recognizes the need for and agrees to sign a temporary construction easement in addition to the permanent water main easement. In general, the temporary construction easement is subject to the location to trees and will be an additional fifteen feet (15') beyond the permanent easement width. Said temporary construction easement will expire by September 2005.

12. The City shall perform all work in a workmanlike manner and as nearly as reasonably possible return the surface of the ground to the condition as it existed prior to the granting of this Agreement. This Agreement shall include the right to do those things reasonably necessary to effectuate its purpose.

13. This Agreement shall run with the subject property and shall be binding on the heirs, devisees, and assigns of each party.

DATED: _____, 2004.

DATED: _____, 2004.

CITY OF RAPID CITY, a municipal
Corporation

TLUSTOS:

By _____
Jim Shaw, Mayor

Patrick Tlustos

ATTEST:

James F. Preston, Finance Officer

(SEAL)

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

ON THIS DAY, _____, 2004, before me, the undersigned officer, personally appeared Jim Shaw 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 to do so, executed the foregoing instrument 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

My Commission Expires:

(SEAL)

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

ON THIS DAY, _____, 2004, before me, the undersigned officer, personally appeared Patrick Tlustos, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

Notary Public

My Commission Expires:

(SEAL)