

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

AGREEMENT TO SHARE SANITARY SEWER AND
WATER MAIN CONSTRUCTION AND ENGINEERING COSTS
City Project No.: SSW06 - 1564

THIS AGREEMENT is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation, hereinafter referred to as "City," and Palo Verde Improvement, LLC, a Limited Liability Company organized under the laws of the State of South Dakota, hereinafter referred to as "Developer".

WHEREAS, the Developer desires to construct a sanitary sewer and water main and transfer said mains to the City as public infrastructure; and

WHEREAS, Developer's lots 1, 2, 3, 5, 6, 7, and 9 of Block 1, and Lot 1 of Block 2 (8 lots total) benefit from the sanitary sewer installation and are eligible for partial reimbursement of the cost of constructing the sewer main in accordance with the City's "Resolution Establishing Matching Funds For Replacing Privately-Owned Common Sewer and Water Service Lines With City Mains", attached hereto and incorporated herein, in an amount estimated at Thirty-Two Thousand Dollars (\$32,000); and

WHEREAS, Developer's lots 1, 2, 3, and 5 benefit from the water main installation and are eligible for partial reimbursement of the cost of constructing the water main in accordance with the City's "Resolution Establishing Matching Funds For Replacing Privately-Owned Common Sewer and Water Service Lines With City Mains" in an amount estimated at Sixteen Thousand Dollars (\$16,000); and

WHEREAS, the City has requested the Developer to complete minor sewer and water maintenance items in conjunction with this project that will benefit the City, and the City will reimburse the Developer for the reasonable costs of constructing the maintenance items; and

WHEREAS, the Common Council finds the sharing of sanitary sewer and water main construction and engineering costs are appropriate and in the best interests of the City, community, and the water and sewer utility.

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

1. The Developer hereby agrees to contract with a professional engineer to design and prepare plans for the sanitary sewer and water main project. Said plans shall be reviewed and approved by the City.

2. The Developer hereby agrees to prepare all contract documents and detailed specifications for the project.
3. The Developer hereby agrees to solicit proposals and select a Contractor to construct the project as well as manage the construction component of the project.
4. The Developer shall pay all costs associated with designing and constructing the sanitary sewer and water mains to all parties providing such services or material.
5. The City shall remit to the Developer the City's share in accordance with the City's "Resolution Establishing Matching Funds For Replacing Privately-Owned Common Sewer and Water Service Lines With City Mains" in an amount not to exceed Forty-Eight Thousand Dollars (\$48,000) within 45 calendar days of the project being completed and accepted by the City and the City receiving verification of the associated costs.
6. At the request of the City, the Developer shall complete some minor sewer and water maintenance items in conjunction with its project. Specifically developer shall replace the existing manhole at the end of the current sewer main and relocate the manhole to comply with current standards. The Developer shall also install a fire hydrant at the termination of the 6" cast iron water main adjacent to where the existing water services are to be abandoned.
7. The Developer shall pay all costs associated with construction and engineering of the above-described replacement and relocation of the manhole and the installation of the fire hydrant.
8. The City shall reimburse the Developer one hundred percent (100%) of the reasonable construction and engineering costs for the above-described replacement and relocation of the manhole and the installation of the fire hydrant in an amount estimated at and not to exceed Fourteen Thousand Five Hundred Seventeen Dollars and Thirty-Two Cents (\$14,517.32) within 45 calendar days of the project being completed and accepted by the City and the City receiving verification of the associated costs.
9. In the event that any section(s), or provision(s) 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(s) of this Agreement if it can be given effect without the invalid section(s) or provision(s).
10. The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.
11. The parties agree that this writing constitutes the entire agreement between them and that there are no other oral or collateral agreements or understandings of any kind or character

except those contained herein. No modification or amendment to this Agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

Palo Verde Improvement, LLC

BY: _____

ITS: _____

State of South Dakota)
 ss.
County of Pennington)

On this the ____ day of _____, 2006, 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 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)

COUNTY OF PENNINGTON)ss.
)

On this _____ day of _____, 2006, before me, the undersigned officer, personally appeared _____, who acknowledged themselves to be the _____ of Palo Verde Improvement, LLC, and that as such, being duly authorized to do so, executed the foregoing instrument by signing the name of Palo Verde Improvement, LLC.

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

Notary Public, South Dakota
My Commission Expires:

(SEAL)





A RESOLUTION ESTABLISHING MATCHING FUNDS FOR REPLACING
PRIVATELY-OWNED COMMON SEWER AND WATER SERVICE LINES
WITH CITY MAINS

WHEREAS individual parcels or combined building lots desiring sewer or water service from the City of Rapid City shall have a public sewer or water main fronting one hundred percent (100%) of their parcel or combined building lot (unless a lesser percentage is agreed to by the Public Works Director); and

WHEREAS there exists within the corporate limits of the City of Rapid City numerous sewer and water service lines which serve more than one dwelling (common service lines) or individual services that run across other private property and/or which are located in the public right of way and run parallel to the right of way center-line (long service lines); and

WHEREAS many of those common service lines or long services are in poor condition; and

WHEREAS the large number of sewer common service lines and long service lines in poor condition result in instances where raw sewage escapes to the ground surface or backs up into basements where it constitutes a health hazard to persons who may come into contact with it and causes damage to personal and/or public property; and

WHEREAS the large number of water common services and long services in poor condition result in instances where the water line breaks which constitutes a potential health hazard to persons and causes damage to personal and/or public property; and

WHEREAS the majority of common service lines or long service lines were constructed in the 1950's and 1960's, since which time the owners of these service lines have paid sewer or water use charges of which a portion is dedicated for reconstruction or replacement of sewer and/or water mains at the end of their useful life; and

WHEREAS the City Council adopted a resolution in July of 1995 establishing matching funds for replacement of privately-owned common sewer service lines with city mains; and

WHEREAS it is now the desire of the City Council to adopt a resolution dealing with both sewer and water service lines and to adjust the funding level as established in 1995 to reflect inflation.

NOW, THEREFORE, BE IT RESOLVED by the City of Rapid City that a Sewer Service Replacement Fund and a Water Service Replacement Fund be established to assist property owners in constructing sewer or water mains to serve their property and replace common lines or long sewer or water service lines located in public right of way and/or running parallel to centerline and/or that run across other private property. Said sewer or water matching funds shall be budgeted annually from the sewer and water enterprise funds, or as otherwise may be directed by the City Council. The amount budgeted for the sewer and water matching funds shall not exceed \$100,000 each annually without Council authorization.

BE IT FURTHER RESOLVED that the criteria for qualifying projects shall be as follows:

Funding level shall not exceed the lesser of forty percent (40%) of total project costs (engineering; construction, including service lines from new main to property line; and assessment and inspection fees) or Four Thousand Dollars (\$4,000.00) per parcel or combined building lots. The Four Thousand Dollar (\$4,000.00) funding level will be increased on April 1st of each year based upon the South Dakota Construction Index as of December 31st of the preceding year.

Qualifying projects shall serve only properties of which ~~eighty percent (80%)~~ are zoned ~~for residential use~~ located within the City and at least eighty percent (80%) of the parcels have active water and/or sewer accounts.

Occupied dwellings must exist on at least eighty percent (80%) of individual parcels or combined building lots benefiting from the project.

Petition from owners of benefiting properties which comprise at least sixty-five percent (65%) of the total benefiting area or front footage must be submitted to the Public Works Department if the remainder of project funding is to be provided through the assessment process.

BE IT FURTHER RESOLVED that the Director of Public Works, or his designee, shall be authorized to commit funds from the Sewer Service Replacement Fund and Water Service Replacement Fund to a project upon his determination that the proposed project meets the above criteria.

BE IT FURTHER RESOLVED that commitment of matching funds to individual projects shall be made in the order of receipt of request for funds, and only if matching funds from the current year's budget are available or Council authorizes expenditure of additional funds.

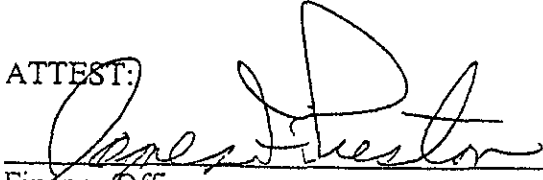
BE IT FURTHER RESOLVED that the provisions contained within this policy will not be effective until August 15, 2005.

Dated this 7 day of NOVEMBER, 2005.

CITY OF RAPID CITY


Mayor

ATTEST:


Finance Officer

(SEAL)