

**AN AGREEMENT BETWEEN THE CITY OF RAPID CITY AND WEST RIVER
ELECTRIC ASSOCIATION, INC. FOR THE ACQUISITION OF A SANITARY SEWER
EASEMENT ON PROPERTY NEAR THE INTERSECTION OF SOUTH DAKOTA
HWY. 44 AND TWILIGHT 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 West River Electric Assoc., Inc., a South Dakota corporation, located at 1200 W. Fourth Ave, PO BOX 412, Wall, SD 57790, herein after referred to as “West River.”

WHEREAS, the City intends to build a sanitary sewer main along property located north of South Dakota Hwy 44 near the intersection of Twilight Drive; and

WHEREAS, the City would like to acquire permanent utility easements across property owned by West River in which to locate this sanitary sewer; and

WHEREAS, West River is willing to grant the City the necessary easements; and

WHEREAS, it is the intent of the parties to specifically enumerate under what terms and conditions the grant of these easements shall occur.

NOW THEREFORE, the parties hereby agree as follows:

1. West River agrees to grant the City a twenty (20) foot wide permanent utility easement in which to place a sanitary sewer on its property generally located at 3250 E. Hwy. 44 and 3454 Twilight Dr. and legally described as:

Lot 1, WREA Subdivision, T1N, R8E, Section 9, BHM, Rapid City, Pennington County, State of South Dakota; and

Lot 2, WREA Subdivision, T1N, R8E, Section 9, BHM, Rapid City, Pennington County, State of South Dakota;

The easement will be centered on the utility. The City will cause an exhibit to be prepared showing the exact location of the easement.

2. West River agrees to also grant a twenty (20) foot wide temporary construction easement adjacent to the permanent utility easement to facilitate the City’s construction of the sanitary sewer on Lot 1. West River agrees to grant the City a temporary construction easement over all of Lot 2 so the City may construct the berm contemplated in this Agreement. These easements shall expire upon completion of the sewer project and its acceptance by the City.

3. The City agrees that the easement will be used solely for placing a sanitary sewer line. West River agrees to keep the easement area free of all encroachments. Notwithstanding this provision, two documents which have been provided to the City which show the location of

proposed encroachments into the easement area. They are the City's stamped plans for the Elk Vale Road Sanitary Sewer Extension Project SS07-1658, dated September 25, 2008, and the Landscape Plan prepared by Geiger Architecture and dated March 28, 2008 (Sheet L1 in the planned industrial development application City Growth Management file #08-PD-012). Any encroachments shown in either document are acceptable to the City and may be located within the easement without any further approval. In addition to the encroachments shown on the plans, it is understood that there will be signage located within areas designated on the actual easement exhibit (which do not necessarily match the location shown on the City's plans). The areas designated for signage have been removed from the easement and as such are not encroaching on the City's easement. The parties acknowledge there may be future encroachments into the easement area in addition to those on the final site plan. Any additional encroachments shall only be allowed if expressly authorized by the Director of Public works or their authorized designee. Such consent will not be unreasonably withheld by the City. All encroachments shall be placed a minimum of five (5) feet from the City's sanitary sewer line. If the City enters into the easement area to do any work, the City agrees to repair, replace or generally return the easement area, with the exception of any improvements for which were not shown on the site plan and were placed without the express consent of the Director of Public Works or their designee, to the condition in which it existed prior to the City work. This work will be done at the City's sole expense. The City agrees to provide West River reasonable access to its property off of Twilight Drive if it enters the easement area to maintain or repair the sanitary sewer line.

4. The sanitary sewer will be designed and constructed such that West River can construct its proposed project per the designs and plans prepared by Geiger Architecture and its sub-consultants. West River agrees to provide the City, its agents or subcontractors with any designs and plans prepared by Geiger, and or its consultants, so the City can confirm the design of the sanitary sewer is consistent with any such designs and plans.

5. Ferber Engineering's initial design for the sanitary sewer showed manholes located in West River's entrance driveways along Twilight Drive. West River has requested the manholes be located just outside the entrance driveways. The City agrees to move manhole #6 and manhole #7 outside of the paved driveway area. The City further agrees to allow the storm sewer inlets and piping at the north entrance to the storage yard to encroach into the easement area. The remaining manholes will be constructed so that they conform to the proposed grading plans prepared by FMG.

6. Structures will need to be cleared from the easement area for the City to use it. The City agrees to pay West River \$46,477.63 as compensation for damage to its property.

7. The parties acknowledge that the City cannot fully construct this project until the school buildings located on West River's property have been removed. The City agrees not to hold West River liable for any delay cause by failure to remove the buildings. However, in order to protect the City's interest, the City will not award the construction contract for the sewer project until West River has entered into the contract for demolition of the structures. West River acknowledges that if it does not enter into the contract for demolition of the structures prior to November 1, 2008, the City will be forced to reject all bids and re-advertise this contract. If the City rejects all bids, this will delay final completion of the sewer project. If the City is able to

award the contract for construction of the sanitary sewer on November 3, 2008, the project shall be substantially completed by March 1, 2009. If the City is forced to reject all bids, the portion of the project on West River's property will be completed within four (4) months of the City entering into the construction contract for the sewer. The parties anticipate that it may take longer to finish final restoration of the area and seeding.

8. The City agrees to construct a berm on the south side of Lot 2 per the plans prepared by FMG. The City further agrees to plant on the berm an appropriate grass cover once construction has been completed. The City will be responsible for obtaining any necessary permits or approvals for said work, in particular a flood plain development permit should it be required. Once the berm is constructed, West River will be responsible for the repair, replacement and maintenance of the berm.

9. The City agrees to reconstruct any sidewalks, including bike paths, on Lot 1 which are removed or damaged as a result of constructing the sanitary sewer and reconstruct them per the plans prepared by FMG. This work will be done as part of the sanitary sewer construction project on Lot 1.

10. The City agrees to reconstruct any sidewalks on Lot 2 which are removed or damaged as a result of constructing the sanitary sewer or berm. This work will be done as part of the sanitary sewer construction project on Lot 2.

11. The replacement sidewalks shall conform to the layout shown on the FMG plans and shall include construction of both drainage structures under the sidewalk which consists of a drainage pipe for the metering dam and culvert under the sidewalk at the intersection of Twilight Drive and Highway 44.

12. Construction of the sanitary sewer shall be managed so that West River has reasonable access to its property from Twilight Drive.

13. 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.

14. 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.

15. This Agreement is the entire agreement of the parties with respect to the design, construction and donation of land for the construction of a sanitary sewer main on the above property. 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.

State of South Dakota)
)ss.
County of _____)

On this ____ day of _____, 2008, before me, the undersigned officer, personally appeared _____, who acknowledged themselves to be the _____ of West River Electric Assoc., Inc. 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.

Notary Public, South Dakota
My Commission Expires:

SEAL

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

STATE OF SOUTH DAKOTA)
) SS. TEMPORARY CONSTRUCTION
COUNTY OF PENNINGTON) EASEMENT

FOR AND IN CONSIDERATION of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, WEST RIVER ELECTRIC ASSOC., INC. of P.O. Box 412, Wall, South Dakota, 57790, Grantor, hereby grants to the CITY OF RAPID CITY, 300 Sixth Street, Rapid City, South Dakota, 57701, its agents, employees, and contractors, a temporary construction easement over and across the following described real property:

A strip of land twenty (20) feet in width, immediately adjacent to the permanent utility easement in, over and across Lot 1 of WREA Subdivision, located in the Northeast Quarter of the Northwest Quarter T1N, R8E, Section 9 of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, as shown on Exhibit "A", which has been attached hereto and incorporated herein by this reference..

This easement shall include the right to enter upon the easement property for the purpose of constructing the project entitled, "Elk Vale Road Sanitary Trunk Sewer Extension Project No. ss07-1658."

The City shall perform all work in a workmanlike manner and shall leave the property in as good condition as existed prior to entry thereon. This Temporary Easement shall be effective from the date of signing until the above project is completed. Upon completion of the project and its acceptance by the City the easement shall expire.

Notwithstanding the foregoing, this easement shall be subject to the terms and conditions of the agreement entered into between the parties and titled "AN AGREEMENT BETWEEN THE CITY OF RAPID CITY AND WEST RIVER ELECTRIC ASSOCIATION, INC. FOR THE ACQUISITION OF A SANITARY SEWER EASEMENT ON PROPERTY NEAR THE INTERSECTION OF SOUTH DAKOTA HWY. 44 AND TWILIGHT DRIVE."

Dated this _____ day of _____, 2008.

WEST RIVER ELECTRIC ASSOC., INC.

By: _____

Its: _____

State of South Dakota)
)ss.
County of _____)

On this ____ day of _____, 2008, before me, the undersigned officer, personally appeared _____, who acknowledged themselves to be the _____ of West River Electric Assoc., Inc. 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.

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PREPARED BY: City Attorney's Office
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All of Lot Two (2) of WREA Subdivision, located in the Northeast Quarter of the Northwest Quarter T1N, R8E, Section 9 of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, as shown on Exhibit "A", which has been attached hereto and incorporated herein by this reference..

This easement shall include the right to enter upon the easement property for the purpose of constructing the project entitled, "Elk Vale Road Sanitary Trunk Sewer Extension Project No. ss07-1658."

The City shall perform all work in a workmanlike manner and shall leave the property in as good condition as existed prior to entry thereon. This Temporary Easement shall be effective from the date of signing until the above project is completed. Upon completion of the project and its acceptance by the City the easement shall expire.

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Dated this _____ day of _____, 2008.

WEST RIVER ELECTRIC ASSOC., INC.

By: _____

Its: _____

State of South Dakota)
)ss.
County of _____)

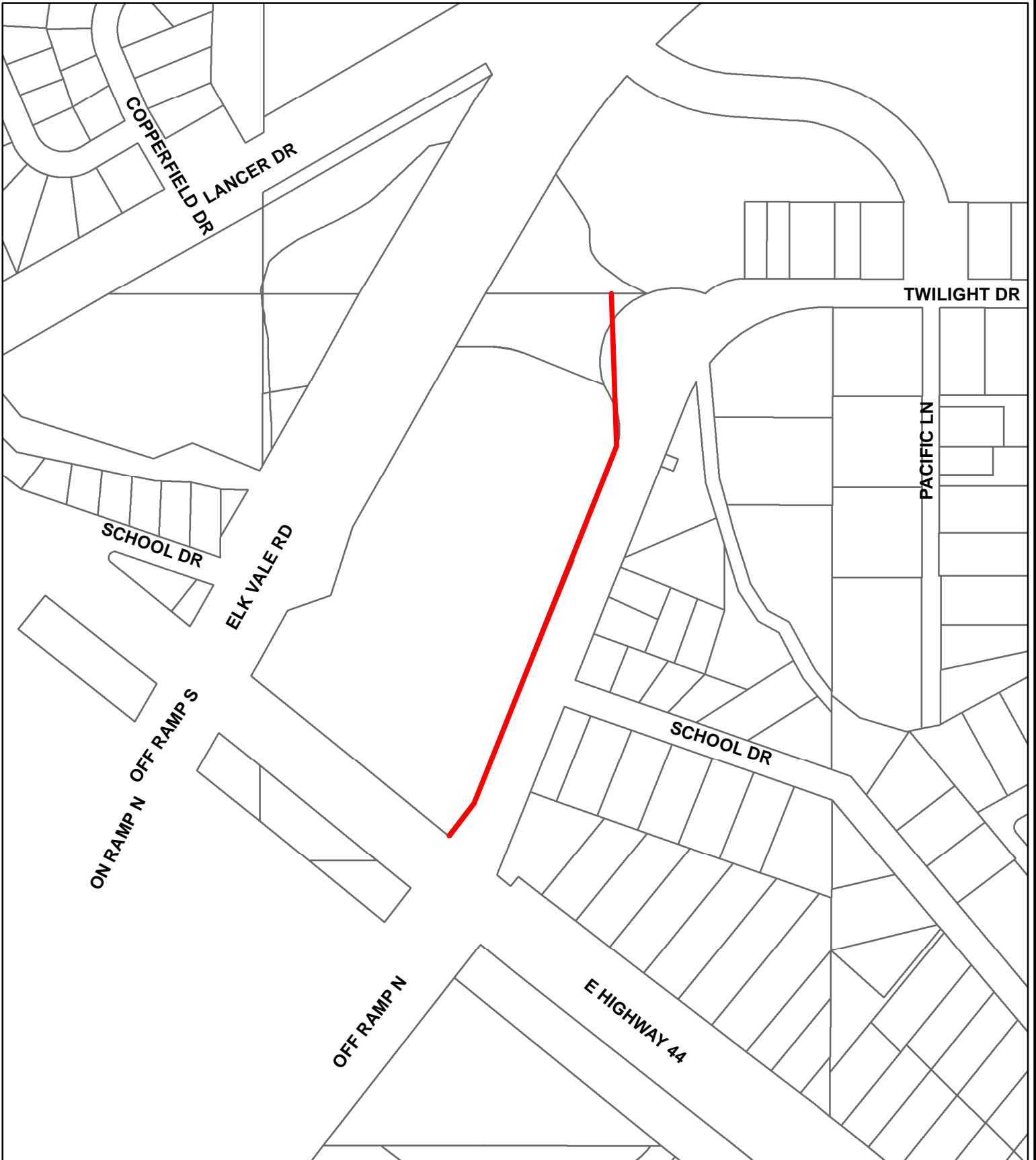
On this ____ day of _____, 2008, before me, the undersigned officer, personally appeared _____, who acknowledged themselves to be the _____ of West River Electric Assoc., Inc. and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

Notary Public, South Dakota
My Commission Expires:

SEAL

EXHIBIT "A"



**WEST RIVER ELECTRIC ASSOCIATION
EASEMENT FOR
ELK VALE ROAD SEWER PROJECT NO. SS07-1658**