

Prepared by City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
COPPER RIDGE, LLC REGARDING THE DESIGN AND CONSTRUCTION OF
WATER MAIN IMPROVEMENTS WITHIN THE GOLDEN EAGLE (FUTURE)
RIGHT OF WAY**

This Agreement (the "Agreement") is made and entered into by and between the **CITY OF RAPID CITY**, a municipal corporation of 300 Sixth Street, Rapid City, SD 57701 (herein after referred to as the "City") and **COPPER RIDGE, LLC** of 5007 W. Equestrian Place, Sioux Falls, SD 57106 (herein after referred to as the "Landowner").

WHEREAS, the Landowner has proposed constructing a residential development (the "Development") which is generally located west and adjacent to Promise Rd., and north of future Golden Eagle Dr., west of US Highway 16; and

WHEREAS, the City's ordinances relating to the subdivision of property require the dedication of right of way and the construction of street and utility improvements; and

WHEREAS, the City previously dedicated the north half of Golden Eagle Drive as public right of way when the City platted Lots 4 and 5 of Owen Hibbard Subdivision; and

WHEREAS, the City acknowledges that it is responsible for paying for one half of the water main improvements adjacent to Lots 4 and 5 of Owen Hibbard Subdivision; and

WHEREAS, the Landowner is willing to design and construct the water main only within the future Golden Eagle right of way if the City agrees to pay one half of all necessary design, competitive bidding, construction, and construction administration costs adjacent to Lots 4 and 5 of Owen Hibbard Subdivision up to a maximum estimated amount of \$70,000.

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

1. Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. Property. The land which is subject to this agreement is generally located adjacent to the Promise Road right of way west of US Highway 16, north of Golden Eagle Drive and east of the terminus of Vineyard Lane, legally described as

S495' OF NE¹/₄SE¹/₄ LESS LOT 1 and the SE¹/₄SE¹/₄ of Section 22, TIN, R7E, BHM, Rapid City, Pennington County, South Dakota.

3. Covenant Running with the Land. Landowner acknowledges that this Agreement is made for the direct benefit of the real property noted above. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, and successors in interest of the Landowner, and shall be considered as a covenant running with the above described property. Furthermore, it is agreed that, in accepting title to the above described property, any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of this Agreement recorded in the office of the Pennington County Register of Deeds.

4. Design and Construction. The Landowner agrees to design the water main and commonly related elements and construct the water main only. The City shall review the design, and no water main construction may commence until the City has approved the design plans.

5. Bidding Requirement. Upon design approval, the Landowner shall publicly bid the improvements in compliance with SDCL Chapters 5-18A through 5-18D and any other applicable state bid law requirements.

6. Award of Bid. Prior to entering into a contract for construction of the water main, the Landowner shall submit to the City sufficient information necessary to verify that the improvements were bid in compliance with State Bid Law. The City's Public Works Director or his designee shall ascertain bid compliance, and such person is hereby designated by the City as its representative for purposes of approval of the bid award. The City may, but shall not be required to, approve a bid that is in excess of the estimated amount contained in paragraph 8. If the parties do not agree on the lowest responsible bid, then both parties to this Agreement will be released from their respective obligations to construct and pay for water main improvements, but not from any of their other contractual or legal obligations regarding subdividing property.

7. Total Cost. Upon agreement of the parties on the lowest responsible bid under paragraph 6, but prior to award of the contract, the Public Works Director or his designee will acknowledge the bid amount of the water main construction adjacent to Lots 4 and 5 of Owen Hibbard Subdivision on behalf of the City. Upon agreement by Landowner of the bid amount, the contract shall be awarded.

8. City's Share of Costs. Upon completion of the work, the City agrees to pay the Landowner one-half of the total cost for the design, competitive bidding, construction and construction administration for the water main in Golden Eagle Dr., adjacent to Lots 4 and 5 of Owen Hibbard Subdivision. The City's share is estimated to be Seventy Thousand Dollars (\$70,000). The parties understand and acknowledge that \$140,000 is the estimated maximum amount for the entire project. This amount, and the City's share, may be lower or higher depending upon bids received.

9. City Acceptance of Work. Once construction of the water main is completed, the City shall inspect the work to ensure compliance with City's ordinances and other requirements for construction of public improvements. Any deficiencies shall be corrected prior to City's acceptance of the improvements. Acceptance of improvements shall comply with the City's Standard Specifications for Public Works Construction.

10. City's Payment. Upon written acceptance of improvements by the City, the Landowner will submit an invoice to the City's Public Works Department for payment of the City's share of the costs. The invoice will contain sufficient information for the City to review the total cost and determine the accuracy of the invoice. Upon acceptance of the amount by the City, the City shall remit payment to the Landowner within forty-five (45) days.

11. Relationship between the Parties. This Agreement does not create an employment or agency relationship between the City and Landowner or Landowner's officers, directors, agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between Landowner and the City. No agent of Landowner shall be the agent of the City, and Landowner covenants that it will not take any action in the name of, or by holding itself out as the agent of, the City.

12. Landowner Authority. Landowner warrants that is a corporation duly organized and validly existing under the laws of the State of South Dakota, and it has the right, power and authority to enter into this Agreement.

13. Remedies. 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. Integration. This Agreement is the entire agreement of the parties and supersedes all prior negotiations, agreements and understandings, whether oral or written.

15. Amendments. This Agreement may only be modified by mutual agreement of both parties. Any modifications or addendums to this Agreement must be in writing signed by both parties.

16. Severability. If any section, 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 application if they can be given effect without the invalid section or provisions.

17. Governing Law and Venue. This Agreement shall be construed according to the laws of the State of South Dakota without regard for any choice of law provisions. Any action concerning this agreement shall be venued in the Pennington County Circuit Court.

[Signature pages follow]

Dated this _____ day of _____, 2013.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(seal)

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

On this the ____ day of _____, 2013, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, 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 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.

(seal)

Notary Public, South Dakota
My Commission Expires _____

COPPER RIDGE, LLC

By: _____

Its: _____

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

On this ____ day of _____, 2013, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of COPPER RIDGE, LLC 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.

(seal)

Notary Public, South Dakota
My Commission Expires _____