

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

WEN
5-22-14

AGREEMENT BETWEEN THE CITY OF RAPID CITY AND U.S. BANK TRUST NATIONAL ASSOCIATION AS TRUSTEE OF THE GARLAND GLEN ENNEN FAMILY TRUST AND AS TRUSTEE OF THE LOUISE ALICE ENNEN TRUST FOR WATER MAIN EASEMENTS

This Agreement is made this 2nd day of June, 2014, by and between the **CITY OF RAPID CITY**, a municipal corporation of the State of South Dakota (hereinafter the "City"), of 300 Sixth Street, Rapid City, South Dakota 57701, and **U.S. BANK TRUST NATIONAL ASSOCIATION SD, AS TRUSTEE OF THE GARLAND GLEN ENNEN FAMILY TRUST** created under the provisions of the Garland Glen Ennen Living Trust dated January 21, 1999, and **U.S. BANK TRUST NATIONAL ASSOCIATION SD, AS TRUSTEE OF THE LOUISE ALICE ENNEN TRUST**, created under the provisions of the Garland Glen Ennen Living Trust dated January 21, 1999 (hereinafter collectively referred to as "Ennen Trusts"), of PO Box 90, Rapid City, SD 57709.

WHEREAS, Ennen Trusts own certain real property along the route of a water main extension proposed by the City; and

WHEREAS, the City wishes to acquire a permanent easement and a temporary construction easement over a portion of this property for purposes of constructing, installing, operating, and maintaining a water main; and

WHEREAS, Ennen Trusts have agreed to execute certain easement documents in favor of the City under certain terms and conditions which the City has agreed to accept; and

WHEREAS, the parties desire to enter into this Agreement to reduce their mutual agreements to writing.

NOW THEREFORE, the parties hereby agree as follows:

1. Incorporation of 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. Permanent Easement. Ennen Trusts will convey to the City a permanent water main easement over the following property:

The South Half of the Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$) and the East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 2, Township One (1) North, Range Eight (8) East of the Black Hills Meridian, Pennington County, South Dakota; excepting therefrom Meadow Ridge Subdivision and dedicated public right-of-way.

as more particularly shown on Exhibit A attached hereto and incorporated herein by reference (hereinafter the "Property"). The permanent easement over the Property is estimated to be 112,883 square feet; and

3. Temporary Construction Easement. Ennen Trusts will convey to the City a temporary construction easement over the following property:

The South Half of the Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$) and the East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 2, Township One (1) North, Range Eight (8) East of the Black Hills Meridian, Pennington County, South Dakota; excepting therefrom Meadow Ridge Subdivision and dedicated public right-of-way.

as more particularly shown on Exhibit A attached hereto and incorporated herein by reference. The temporary construction easement over the Property is estimated to be 101,201 square feet.

4. Monetary Consideration. The City agrees to provide the following compensation, totaling Twenty-seven Thousand Six Hundred Thirty-six Dollars and Sixty-five Cents (\$27,636.65):

- a. \$22,576.60 for the permanent easement across the Property, which is \$0.20 per square foot multiplied by the easement area of 112,883 square feet;
- b. \$5,060.05 for the temporary construction easement, which is \$0.05 per square foot multiplied by the easement area of 101,201 square feet;

5. Other Consideration. The City agrees to provide the following non-monetary consideration in addition to the above listed compensation in exchange for the granting of easements according to this Agreement:

- a. The property which the proposed easements are located is within the Rapid Valley Sanitary District (RVSD) Boundary and therefore is within their water service area. The City acknowledges that the City would be agreeable to providing water service for the property if the property were not in the RVSD boundary and there was capacity in the City system to provide service. In the event the City provides water service then the following would apply:
 - i. All use of water shall be pursuant to City ordinances relating to its water service system.

ii. All connections to the City water main shall be subject to City Construction Fees (connection fees) as established by resolution. Redevelopment of the property shall also be subject to City Construction Fees (connection fees) as established by resolution.

- b. City agrees to direct its consultant and contractor to meet with Ennen Trusts' representative prior to construction of the water main to discuss construction fencing. Ennen Trusts agree to provide direction to the consultant and contractor regarding their use of the Property so as to allow consultant and contractor to make a plan for construction fencing. City agrees to construct permanent and/or temporary fencing as is reasonably necessary to minimize disruption to Ennen Trusts' use of the Property. The City will coordinate with the Ennen Trusts regarding whether the temporary fencing shall be removed by the contractor or will remain in-place and become the property of the Ennen Trusts.
- c. City agrees to direct its consultant and contractor to meet with Ennen Trusts prior to construction of the water main to discuss construction of access trails for the purpose of constructing the water main. The City agrees to not construct any permanent access trails along the portion of the water main contained within these easements.

6. Warranties of City.

- a. City agrees to direct and require its contractors to maintain, at all times, reasonable access to the property. Such condition shall be made part of the construction contract between City and its contractor.
- b. City agrees to comply with all applicable statutes, ordinances, rules, regulations and other laws in construction of the water main in the easement area.
- c. All work by City shall be done in a workmanlike manner.
- d. Following construction, City shall leave the property in as good a condition as it finds it, including but not limited to adequate grass cover and drainage unchanged from its natural drainage ways.

7. Costs of Recording. All recording fees for the easements contemplated herein shall be paid by City.

8. Recording this Agreement. Either party may record this Agreement at its option and expense.

9. Survival of Representations and Warranties. All of the representations and warranties of the parties contained in this Agreement shall survive the date of this Agreement and the execution of the easement documents contemplated by this Agreement.

10. Default. City shall have the right to maintain and exercise all legal and equitable rights available to it under the laws of the State of South Dakota for Ennen Trusts' breach of this Agreement, including the right to specific performance.

11. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

12. Time. Time is of the essence of this Agreement.

13. Effect of Agreement. This Agreement shall be binding in all respects upon and shall inure to the benefit of City and Ennen Trusts and their respective successors and assigns.

14. Integration. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

15. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

16. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

17. Severability. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

18. Construction. This Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

19. Headings. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

20. Governing Law and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the Circuit Court of Pennington County, State of South Dakota.

U.S. BANK TRUST NATIONAL ASSOCIATION SD, as
Trustee of the Louise Alice Ennen Trust

By [Signature]
Jeffrey G. Denison, Vice President and Trust Manager

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

On this the 22nd day of May, 2014, before me, the undersigned officer,
personally appeared Jeffrey G. Denison, Vice President and Trust Manager of U.S. Bank Trust
National Association SD, the Trustee of the Louise Alice Ennen Trust, known to me or
satisfactorily proven to be the person described in the foregoing instrument, and acknowledged
that he executed the same in the capacity therein stated and for the purposes therein contained.
In witness whereof, I hereunto set my hand and official seal.

(seal)

[Signature]
Notary Public - South Dakota
My Commission Expires July 24, 2015

U.S. BANK TRUST NATIONAL ASSOCIATION SD, as
Trustee of the Garland Glen Ennen Family Trust

By [Signature]
Jeffrey G. Denison, Vice President and Trust Manager

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

On this the 22nd day of May, 2014, before me, the undersigned officer,
personally appeared Jeffrey G. Denison, Vice President and Trust Manager of U.S. Bank Trust
National Association SD, the Trustee of the Garland Glen Ennen Family Trust, known to me or
satisfactorily proven to be the person described in the foregoing instrument, and acknowledged
that he executed the same in the capacity therein stated and for the purposes therein contained.
In witness whereof, I hereunto set my hand and official seal.

(seal)

[Signature]
Notary Public - South Dakota
My Commission Expires July 24, 2015

CITY OF RAPID CITY

Mayor

ATTEST

Finance Officer

(seal)

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

On this the _____ day of _____, 2014, 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 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.

(seal)

Notary Public - South Dakota
My Commission Expires _____