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(Lazy P-6 2-3-03

Fifth St Ext ~~Plat~~  
~~Agreement~~

**AGREEMENT**

WHEREAS, the City of Rapid City has adopted a comprehensive plan for development including a major street plan; and,

WHEREAS the City of Rapid City has recorded its comprehensive plan for development and major street plan in the office of the Pennington County Register of Deeds; and,

WHEREAS, Lazy P-6 Land Company, Incorporated, owns land within the platting jurisdiction of the City of Rapid City located south of Catron Boulevard; and,

WHEREAS, Lazy P-6 Land Company, Incorporated, has requested the Rapid City Planning Commission review pursuant to SDCL § 11-6-19 of a public road previously opened on its property located in the section line right of way between Section 19, Township One North, Range Eight East, BHM, Pennington County, South Dakota and Section 24, Township One North, Range Seven East, BHM, Pennington County, South Dakota; and,

WHEREAS, the Rapid City Planning Commission has disapproved of the location and extent of the public road located in the section line right of way on the property of Lazy P-6 Land Company, Incorporated; and,

WHEREAS, Lazy P-6 Land Company, Incorporated desires to have the Rapid City Common Council overrule the Rapid City Planning Commission's disapproval of the public road on its property pursuant to SDCL § 11-6-20;

NOW, THEREFORE, the parties to this agreement, the City of Rapid City, a South Dakota Municipal Corporation, (hereafter 'City') and Lazy P-6 Land Company, Incorporated, a South Dakota Corporation, (hereafter 'Lazy P-6') hereby agree as follows:

1. City agrees to overrule the Rapid City Planning Commission's disapproval of the road located in the section line. If the City fails to overrule the Planning Commission, the obligations of Lazy P-6 under this agreement are null and void.
2. Lazy P-6 will be permitted to develop additional uses on its property and to use the section line road for access provided a hard surface road of new or recycled materials is constructed prior to any new construction or initiation of new uses. In case such a road is constructed, Lazy P-6 agrees to maintain said road until such time as the construction described in paragraph 4 of this agreement has begun.
3. Lazy P-6 agrees to conform to City subdivision standards when they plat any parcel.

4. When the City physically installs water and sewer service to the south side of Catron Blvd., within 600 ft. of its intersection with 5<sup>th</sup> Street, Lazy P-6 will construct 600 feet of 5<sup>th</sup> Street. This construction will occur regardless of the development triggers described above. Construction of 5<sup>th</sup> Street means a multi-lane concrete street with all relevant infrastructure elements included, built to arterial classification standards, with the City paying the oversize cost of the street and related infrastructure elements. The farthest south property line of the developed parcel will determine the south limit of construction. Lazy P-6 acknowledges that internal roadways, collector class and below, are the responsibility of Lazy P-6.

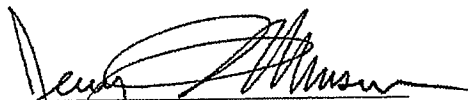
5. Lazy P-6 agrees the City's action to overrule the Rapid City Planning Commission's disapproval constitutes sufficient good and valuable consideration and that the obligations of Lazy P-6 under this agreement are specifically enforceable.

6. This written document contains the entire agreement of the parties. Any prior discussions between the parties are merged hereto. No other promises or consideration are a part of this agreement.


7. Nothing herein shall be construed to allow Lazy P-6 Land Company, Inc. to transfer real property in violation of any current applicable state, local, or federal laws.

Dated this 3<sup>rd</sup> day of February, 2003.

THE CITY OF RAPID CITY

  
\_\_\_\_\_  
Mayor

ATTEST

  
\_\_\_\_\_  
Finance Officer

(SEAL)

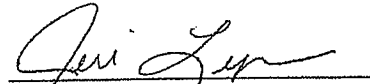
LAZY P-6 LAND COMPANY, INC.

BY:   
ITS: pres

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

On this the 3rd day of Feb, 2003, before me, the undersigned officer, personally appeared Jerry Munson 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 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.

  
\_\_\_\_\_  
Notary Public, South Dakota

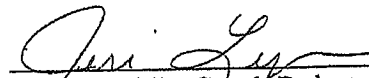
My Commission Expires: 9/3/08

(SEAL)

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

On this the 3 day of February, 2003, before me, the undersigned officer, personally appeared Orville Davis, who acknowledged himself to be the President of Lazy P-6 Land Company, Inc., a South Dakota Corporation, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President.

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

  
\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires: 9/3/08

(SEAL)

**Ordinance 3907** (No. LF012903-14) entitled An Ordinance Amending Section 9.28.050 of Chapter 9.28 of the Rapid City Municipal Code to Allow Discharge of Firearms in the General Agricultural Zoning District, was introduced. Upon motion made by Hadley, seconded by Kroeger and carried, Ordinance 3907 was placed upon its first reading and the title was fully and distinctly read, and second reading set for Monday, February 17, 2003.

**Ordinance 3908** (No. LF012903-15) entitled An Ordinance Amending Section 15.40.090 of Chapter 15.40 of the Rapid City Municipal Code to Allow Electrified Fences in the General Agricultural Zoning District, was introduced. Upon motion made by Hadley, seconded by Johnson and carried, Ordinance 3908 was placed upon its first reading and the title was fully and distinctly read, and second reading set for Monday, February 17, 2003.

**Ordinance 3911** (No. 03RZ003) a request by J. Scull Construction Service for Jim Scull, Jr. for a **Rezoning from Medium Density Residential District and Office Commercial District to General Commercial District** on Lot 10A, Block 1, Owen Mann Subdivision; and Lots 12 thru 16 less Lot H-2 and H-3, Block 1, Owen Mann Subdivision, Section 33, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, located east of Federal Avenue along Kinney Avenue, was introduced. Upon motion made by Hadley, seconded by Dreyer and carried, Ordinance 3911 was placed upon its first reading and the title was fully and distinctly read. The Finance Officer was authorized and directed to publish notice of hearing thereon, said hearing to be Monday, February 17, 2003.

#### ***Legal & Finance Committee Items***

Motion was made by Hadley and seconded by Waugh to authorize the Mayor and Finance Officer to **sign an Agreement** with Enck Resources for training to be conducted on March 5, 2003, in an amount not to exceed \$2,500 (No. LF012903-03). Upon vote being taken, the motion carried with Kooiker voting no.

Motion was made by Hadley, seconded by Kroeger and carried to approve the **Request by Herman Jones for a Variance** from the Sign Code to place lights on a billboard located at 4110 Highway 16 West (No. LF012903-13).

Motion was made by Dreyer and seconded by Kroeger to authorize Mayor and Finance Officer to **sign Agreement** between City of Rapid City and Lazy P-6 Land Company (No. LF011503-19). Asst. City Attorney Green stated that he will be requesting an executive session to discuss this issue. Substitute motion was made by Rodriguez and seconded by Hanks to move Items No. 99 and 100 to the end of the agenda so that they can be discussed in executive session. Kriebel stated that he doesn't feel there is anything in this agreement that needs to be discussed in executive session. Dreyer concurred. Roll call vote was taken on the motion to defer. AYE: Johnson, Waugh, Kroeger, Murphy and Rodriguez; NO: Hadley, Kooiker, Kriebel, Dreyer and Hanks. Motion failed due to the tie vote. Substitute motion was made by Rodriguez and seconded by Waugh to go into executive session to discuss this contractual matter. Roll call vote was taken: AYE: Johnson, Waugh, Kroeger, Murphy and Rodriguez; NO: Hadley, Kooiker, Kriebel, Dreyer and Hanks. Munson voted AYE to break the tie and the motion to go into executive session carried, 6-5.

The Council reconvened at 9:15 with all members present. (Kooiker requested that the record stipulate that he, Kriebel and Hadley did not participate in the executive session.) Motion was made by Kroeger and seconded by Rodriguez to approve the revised Agreement between the City of Rapid City and Lazy P-6 Land Company. Regina Jarr expressed concern that the city is setting the stage for piece meal development on this property which will be a gateway into Rapid City. She urged the council to pro-actively seek to enhance the quality of life in this area (economic, aesthetics, access and recreation). Mike Hahn encouraged the Council to annex these properties for the long term benefit of the City of Rapid City. Asst. City Attorney Jason Green explained that the agreement has been modified so that no additional structures

can be constructed under the present conditions. If the property owner wants to construct additional storage units, a hard surface must be put on the existing gravel road. The road will need to be built to city standards in the following scenarios: 1) the property is platted; or 2) water and sewer are extended to within 600' of Catron Boulevard/5th Street Intersection. At that time, the property owner would construct a portion of 5th Street, south of Catron Boulevard, to city standards. Either the platting trigger or the water/sewer trigger would require that Lazy P-6 Land Company fund the construction to city standards. However, in the interim, they would only be required to use an asphalt mat as a hard surface. The agreement also stipulates that Lazy P-6 would be required to maintain the interim road. Rodriguez called the question and there were no objections. Roll call vote was taken: AYE: Johnson, Waugh, Kroeger, Dreyer, Hanks, Murphy and Rodriguez; NO: Hadley, Kooiker and Kriebel. Motion carried, 7-3.

The next item before the Council was No. 02SR013 - Review of the **Planning Commission's Action** on an 11-6-19 SDCL Review to Construct a Street Within a Section Line Highway requested by Centerline, Inc. for Lazy P-6 Properties. Motion was made by Rodriguez and seconded by Kroeger to override the Planning Commission's action relative to File No. 02SR013. Roll call vote was taken: AYE: Rodriguez, Murphy, Hanks, Dreyer, Kroeger, Waugh and Johnson; NO: Kriebel, Kooiker and Hadley. Motion carried, 7-3.

### **Public Works Committee Items**

The Mayor presented No. PW012803-02 – Approve **Change Order No. 02** for WRF01-1132, Water Reclamation Facility Improvements – Administration Building Project to Scull Construction Services, Inc. for an increase of \$22,369; contingent upon approval of the South Dakota Department of Environment and Natural Resources. Motion was made by Rodriguez and seconded by Murphy to approve the Change Order. Upon vote being taken, the motion carried with Kooiker voting no.

The Mayor presented No. PW012803-03 – Approve **Change Order No. 02** for SWO02-1168, Co-compost Facility Construction Project to RCS Construction, Inc. for an increase of \$33,140; contingent upon approval of the South Dakota Department of Environment and Natural Resources. Motion was made by Rodriguez and seconded by Murphy to approve the Change Order. Upon vote being taken, the motion carried with Kooiker voting no.

The next item discussed by the Council was No. PW012803-13, a **Resolution of Vacation of Easement** on Lot 2, Block 3 of Nielsen Subdivision located in the SE1/4 of the NW1/4 and the NE1/4 of the SW1/4 of Section 18, T1N, R7E of the BHM, Pennington County, South Dakota. Motion was made by Rodriguez, seconded by Kroeger and carried to continue this item until March 3, 2003.

Motion was made by Waugh and seconded by Dreyer to authorize Mayor and Finance Officer to sign an **Easement** with Montana Dakota Utilities for a gas main right-of-way through Founders Park. Kooiker asked if this item required an 11-6-19 Review. Elkins stated that it does. Substitute motion was made by Waugh, seconded by Kooiker and carried to refer this item to the Planning Commission for review.

The next item before the Council was appointment of a committee of three Council members to review the **alignment for utilities along Catron Boulevard**. (Council President Kroeger appointed Dreyer, Johnson and himself to the Committee.) Mel Dreyer explained that this committee met last week and their recommendations will be submitted in the near future with recommendations on other aspects of development in this area. Motion was made by Hanks, seconded by and carried to approve appointment of the committee.