

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

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
CHARLES C. McLAIN AND VICKI L. McLAIN FOR PERMANENT AND
TEMPORARY EASEMENTS**

This Agreement is made this ____ day of _____, 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 **CHARLES C. McLAIN AND VICKI L. McLAIN**, (hereinafter "McLains"), of, 23897 Sun Country Lane, Rapid City, South Dakota 57702.

WHEREAS, McLains own certain real property along the route of a water main extension, sanitary sewer main, storm sewer box culvert, and a sidewalk proposed by the City; and

WHEREAS, the City wishes to acquire permanent easements and a temporary construction easement over a portion of this property for purposes of constructing, installing, operating, and maintaining a water main, sanitary sewer main, storm sewer box culvert, and a sidewalk; and

WHEREAS, McLains 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. Easements. McLains will convey to the City a Permanent Access and Utility Easement, a Public Access Easement and a Temporary Construction Easement over the following property:

Care-Takers Lot, except the east 63 feet thereof, of the South Dakota District Council of Assemblies of God Subdivision of Lot Three (3) of the Northeast Quarter of the Northeast Quarter (NE¼NE¼) of Section 9 in Township 1 North of Range 7 East of the Black Hills Meridian, in the City of Rapid City, Pennington County, South Dakota, as shown on the plat filed in the office of the Register of Deeds of Pennington County in Book of Schambers, on Page 58,

as more particularly shown on Exhibit A attached hereto and incorporated herein by reference. The parcel noted above is referred to as the "Property" herein. The permanent easements over the Property are estimated to be 3416 square feet; and the temporary construction easement is estimated to be 589 square feet.

3. Monetary Consideration. In exchange for McLains' granting of the above-described easements, the City agrees to provide compensation totaling Thirty-two Thousand One Hundred Sixty Dollars (\$32,160.00).

4. 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 City will construct a six foot wide sidewalk located within the public access easement.
- b. The City will construct a two rail cedar fence to be located adjacent to the six-foot wide sidewalk. The City will allow the fence to be located within the utility easement as shown on Exhibit A. The fence shall extend the length of the six-foot sidewalk up to the west lot line, and extend north along the western lot line to replace the existing fence located there.
- c. When initial construction is completed, the disturbed area shall be sodded by the City.

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

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

7. Closing. The closing of this transaction shall occur at a mutually agreeable time and place on or after July 8, 2014. At closing, McLains shall deliver executed easements to the City, and the City shall provide to McLains the monetary consideration noted above. The non-monetary consideration shall be provided upon the project's completion.

8. 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.

9. Default. Either party 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 the other party's breach of this Agreement, including the right to specific performance.

10. 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.

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

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

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

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

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

Charles C. McLain

CHARLES C. McLAIN

Vicki L. McLain

VICKI L. McLAIN

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

On this the 9 day of June, 2014, before me, the undersigned officer, personally appeared **CHARLES C. McLAIN** and **VICKI L. McLAIN**, husband and wife, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they signed the same for the purposes therein contained.

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

Susan Donat

Notary Public - South Dakota

My Commission Expires September 9, 2017

(seal)



My Commission Expires
September 9, 2017

CITY OF RAPID CITY

By: _____
Sam Kooiker, Mayor

ATTEST:

Pauline Sumption, 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 _____