

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



**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
LEGACY LAND COMPANY REGARDING THE DESIGN AND
CONSTRUCTION OF WATER MAIN IMPROVEMENTS WITHIN THE
HANOVER DRIVE (FUTURE) RIGHT OF WAY**

This 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 (“City”), and **LEGACY LAND COMPANY**, of 748 Fox Run Drive, Rapid City, SD 57701 (“Landowner”).

WHEREAS, Landowner is the owner of certain real property legally described as the unplatted portion of the E1/2NE1/4SW1/4 less the west 270 feet of north 610 feet of NE1/4NE1/4SW1/4 and a portion of the balance of Parcel B less the Meadows Subdivision less Lot H1 and Lot H2 and less ROW, Section 18, T1N, R8E of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, which is commonly known as being generally located south of Minnesota Street, east of Elm Street, and west of Derby Lane in the City of Rapid City, South Dakota (the “Property”); and

WHEREAS, Landowner intends to sell the Property to a willing buyer for the purpose of constructing a residential development, which requires the Property be subdivided through platting as the Property falls within the municipal boundary of Rapid City and consists of less than 40 acres; and

WHEREAS, the City has determined that any future residential development on the Property requires water main improvements to the infrastructure that would serve any future residential development on the Property, specifically such improvements being necessary along the future Hanover Drive right-of-way (“ROW”) located west of the Property across the Balance of Tract A, Block 19, Robbinsdale No. 10 and the Balance of Tract A, Block 9, Robbinsdale No. 10, both located in S18, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota; and

WHEREAS, in order to facilitate the transfer and/or development of the Property, Landowner is willing to design and construct the water main improvements within the future Hanover Drive ROW if the City agrees to pay all necessary design, competitive bidding, construction, and construction administration costs associated with these upgrades, up to a maximum estimated amount of \$80,029.50.

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 here by reference as if fully set forth herein.

2. Design and Construction. Landowner agrees to it perform or otherwise facilitate the design of the water main and any commonly related elements thereof, including but not limited to obtaining all necessary easements in favor of the City, and Landowner agrees to construct or otherwise facilitate the construction of the water main. The parties agree the City shall have the right to review the design once completed and no construction of the water main will commence without City approval of the design plans.

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

4. Award of Bid. Prior to entering into a contract for construction of the water main, 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 6. If the parties do not agree on the lowest responsible bid, 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.

5. Total Cost. Upon agreement of the parties on the lowest responsible bid under paragraph 4, but prior to award of the contract, the Public Works Director or his designee will acknowledge the bid amount for construction of the water main along the future Hanover Drive ROW across the Balance of Tract A, Block 19, Robbinsdale No. 10 and the Balance of Tract A, Block 9, Robbinsdale No. 10 on behalf of the City. Upon agreement by Landowner of the bid amount, the contract shall be awarded.

6. City's Responsibility for Costs. Upon completion of the work, the City agrees to pay the Landowner the total cost for the design, competitive bidding, construction and construction administration for the water main along the future Hanover Drive ROW across the Balance of Tract A, Block 19, Robbinsdale No. 10 and the Balance of Tract A, Block 9, Robbinsdale No. 10. The estimated costs for the proposed work to be performed is **Eighty Thousand Twenty Nine Dollars and Five Cents (\$80,029.05)**. The parties understand and acknowledge that \$80,029.05 is the estimated maximum amount for the entire project. This amount may be lower or higher depending upon bids received.

7. 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.

8. City's Payment. Upon written acceptance of the improvements by the City, the Landowner will submit an invoice to the City's Public Works Department for payment of the City's 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.

9. Relationship of 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 agrees it will not take any action in the name of the City, or hold itself out as the agent of the City.

10. Landowner Authority. Landowner warrants it 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.

11. 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.

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

13. 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.

14. 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.

15. 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.

Dated this _____ day of _____, 2014.

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 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 _____

LEGACY LAND COMPANY

By: _____
Its: _____

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

On this _____ day of _____, 2014, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of LEGACY LAND COMPANY 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 _____