

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

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND SODAK
DEVELOPMENT, INC. FOR WATER MAIN EASEMENTS**

This Agreement is made this 4 day of March, 2013, 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 SODAK DEVELOPMENT COMPANY (hereinafter the "Sodak"), of 6150 Laredo Lane, Black Hawk, South Dakota 57718.

WHEREAS, Sodak owns certain real property between the current terminus of Homestead Street and Reservoir Road; and

WHEREAS, the City wishes to acquire an easement over a portion of this property for purposes of constructing and installing a water main; and

WHEREAS, Sodak has agreed to execute two 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. Sodak will convey to the City a permanent water main easement over the following property:

A portion of the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Three (3), Township One (1) North, Range Eight (8) East of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, as more particularly shown on Exhibit A attached hereto and incorporated herein by reference.

The permanent easement is estimated to be 21,475 square feet.

3. Temporary Construction Easement. Sodak will also convey to the City a temporary construction easement over the above described property, as shown on Exhibit A. The temporary construction easement is estimated to be 26,088 square feet.

4. Consideration. The City agrees to provide the following compensation, totaling Thirty-nine Thousand, Four Hundred Seventy Dollars (\$39,470.00):

- a. \$8,590.00 for the permanent easement, which is \$0.40 per square foot multiplied by the easement area of 21,475 square feet;
- b. \$1,304.40 for the temporary construction easement, which is \$0.05 per square foot multiplied by the easement area of 26,088 square feet;
- c. \$2,000.00 for reasonable attorneys' fees and expenses incurred by Sodak in completing this transaction; and
- d. \$27,575.60 in lieu of grading. It was contemplated by the parties that grading work in the easement area would be undertaken by the City following construction of the water main. As development of the area is not imminent, the parties have agreed that grading of the easement area will no longer occur. The City agrees to further compensate Sodak the amount of \$27,575.60 in lieu of rough grading for a future street and minor utility installation that was originally proposed to be constructed with the water main.

5. Geotechnical Reports. Sodak agrees to share its geotechnical reports and core sample drilling information from the subject property to assist City with its' engineering needs for the water main project.

6. Warranties of City.

- a. City agrees to direct and require its contractors to maintain, at all times, reasonable access for the occupants of the house located on SE 1/4 NE 1/4 of Section 3, who utilize part of the easement area for access to their residence. 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. Future Construction. City agrees to construct its water main at a depth sufficient to enable future development of Homestead Street according to the current concept plan.

8. Closing. The closing of this transaction shall occur on March 20, 2013, or as soon thereafter as the parties can agree.

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

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

11. Indemnification. City agrees to indemnify and hold Sodak harmless from any and all claims relating to excessive water runoff or failure to confine soils to the site during construction of the water main and for a period of 2 years after construction has been completed.

12. 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.

13. 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 Sodak's breach of this Agreement, including the right to specific performance.

14. 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.

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

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

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

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

19. 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.

20. 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.

21. 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

22. 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.

23. 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.

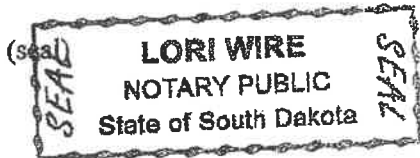
SODAK DEVELOPMENT COMPANY

By *Ronald L. Shape*
Ronald L. Shape, President

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

On this the 30th day of February, 2013, before me, the undersigned officer personally appeared RONALD L. SHAPE, who acknowledged himself to be the President of SODAK DEVELOPMENT COMPANY, and that as such, being duly authorized to do so, he executed the foregoing instrument for the purposes herein contained.

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



Lori Wire
Notary Public - South Dakota
My Commission Expires _____

My Commission Expires
July 30, 2015

CITY OF RAPID CITY

[Signature]
Mayor

ATTEST

[Signature]
Finance Officer

(seal)

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

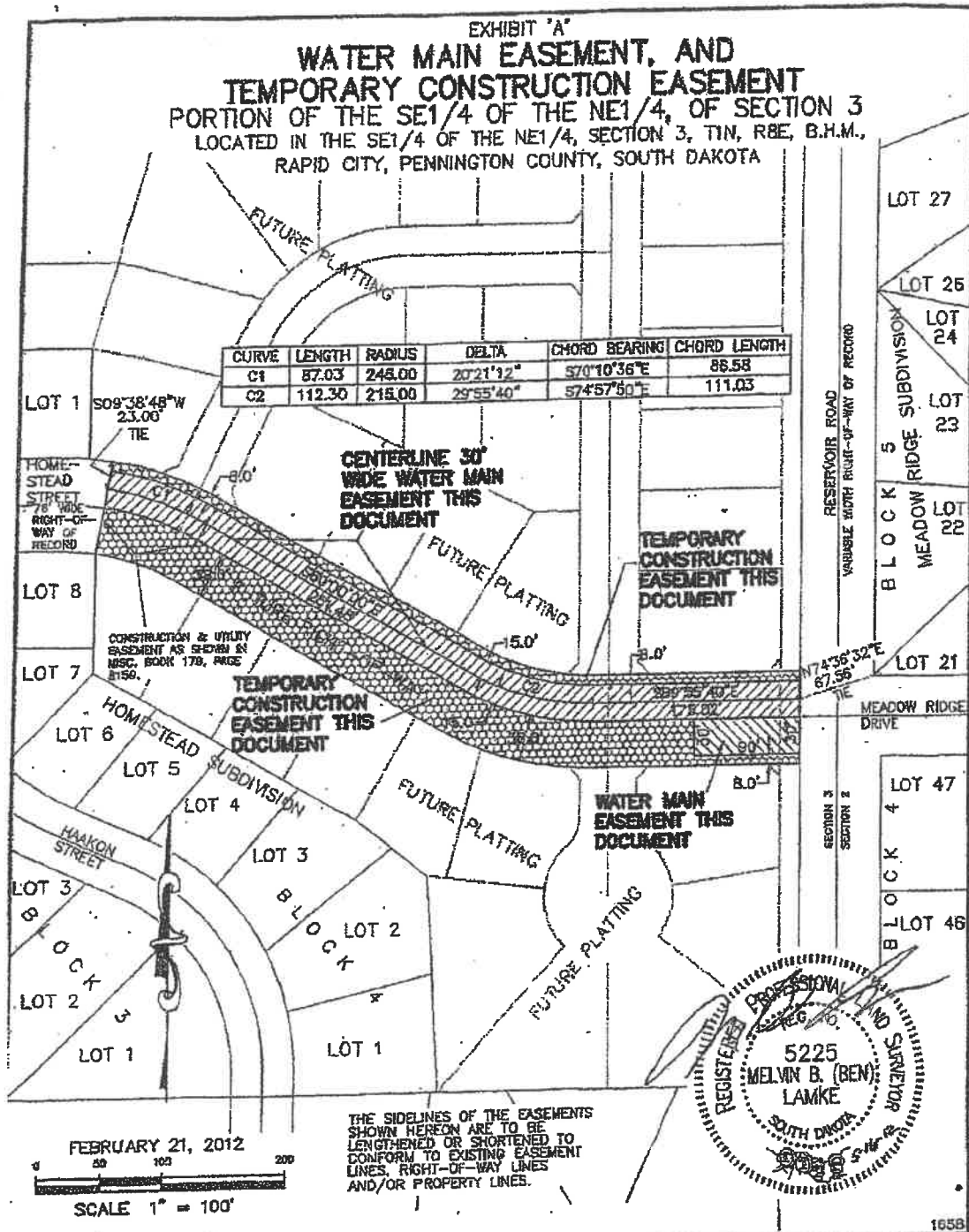
On this the 4 day of March, 2013, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing 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.



[Signature]
Notary Public - South Dakota
My Commission Expires 4-19-2017

EXHIBIT 'A'
WATER MAIN EASEMENT, AND
TEMPORARY CONSTRUCTION EASEMENT
 PORTION OF THE SE1/4 OF THE NE1/4, OF SECTION 3
 LOCATED IN THE SE1/4 OF THE NE1/4, SECTION 3, T1N, R8E, B.H.M.,
 RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA



FEBRUARY 21, 2012
 SCALE 1" = 100'

THE SIDELINES OF THE EASEMENTS SHOWN HEREON ARE TO BE LENGTHENED OR SHORTENED TO CONFORM TO EXISTING EASEMENT LINES, RIGHT-OF-WAY LINES AND/OR PROPERTY LINES.

