

PREPARED BY: City Attorney's Office  
300 Sixth Street  
Rapid City, SD 57701  
(605) 394-4140

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND BELLA VISTA LLC  
FOR INSTALLATION OF WATER AND SEWER SERVICE INFRASTRUCTURE  
AS PART OF THE CATRON BOULEVARD WIDENING PROJECT**

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 BELLA VISTA LLC, a South Dakota limited liability company, of 11501 Night Wind Ct. Rapid City, SD 57703 (“Developer”).

WHEREAS, the Developer is developing its property located northwest of the intersection of Haugo Drive and Catron Boulevard as Bella Vista Estates Subdivision (“the Development”) that will require subdivision of the property; and

WHEREAS, the current legal description for the Development is

Lot 2R of Potts Subdivision, Rapid City, Pennington County, South Dakota

; and

WHEREAS, the City’s ordinances relating to the subdivision of property will require Developer to construct a connection to the existing water main in Catron Boulevard and tie into the existing sewer main and manhole in Catron Boulevard in conjunction with the Development; and

WHEREAS, City has solicited bids to construct improvements to Catron Boulevard adjacent to Developer’s property as part of the Catron Boulevard Widening Project, Project No. 16-2343 / CIP No. 51115 (“Catron Boulevard Widening Project”); and

WHEREAS, as part of the Catron Boulevard Widening Project, the City is willing to construct these connections to existing sewer and water utilities within Catron Boulevard if Developer agrees to install off-site public improvements on Haugo Drive and Covenant Drive and to pay the City \$9,000 for a portion of the City’s cost to install the improvements in Catron Boulevard; and

WHEREAS, the City's installation of the improvements as part of the Catron Boulevard Widening Project will be beneficial for the City because it will avoid Developer's future need to tear up and reconstruct a portion of Catron Boulevard in order to complete the improvements at a future date; and

WHEREAS, the parties wish to enter into an agreement where the City constructs certain improvements as part of the Catron Boulevard Widening Project in exchange for Developer's payment of \$9,000 and Developer's installation of improvements in Haugo Drive and Covenant Drive; and

WHEREAS, the City and the Developer desire to reduce their mutual agreements and understandings to writing.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein set forth, it is agreed by the parties as follows:

1. 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 as agreements of the parties.

2. City's Obligations. The City shall include the following elements in the Catron Boulevard Widening Project ("City Improvements"):

- a. A manhole and connection between Developer's property and the existing sewer main within the Catron Boulevard right of way near to the northeastern boundary of Developer's property;
- b. A water main crossing the width of Catron Boulevard from the existing water main to Developer's property; and
- c. Extension of sewer main within Catron Boulevard right of way.

*See Exhibit A, attached hereto and incorporated by reference.* The parties agree that City has paid for the design of the City Improvements by a professional engineer, and City shall ensure that the City Improvements are constructed as part of the Catron Boulevard Widening Project.

3. Developer's Obligations.

a. *Developer Improvements*. Developer shall be responsible for the following improvements ("Developer Improvements"):

- i. Extend sanitary sewer the length of Haugo Drive and provide a sewer stub west of the intersection of Haugo Drive and Covenant Road to service the 32 acre parcel adjacent to that intersection, legally described as the West 1/2 of the North 1/2 of the Northeast 1/4 less Utility Subdivision, Less Lots H1, H2, and

H3 and less right of way, located in Section 27, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota (“Haugo Property”); and

- ii. Extend water main in Haugo Drive and Covenant Drive to provide service to Haugo Property and proposed Bella Vista Estates Subdivision.

Developer shall construct these Developer Improvements in accordance with plans approved by the City, and these improvements shall be completed and accepted by the City within two (2) years of execution of this Agreement. All improvements should be constructed within existing dedicated public right of way, and in no event shall the City purchase additional right of way for the Developer Improvements. The parties agree that these Developer Improvements are in addition to any other improvements required of the Developer by the City’s subdivision regulations.

- b. *Developer Payment.* Developer shall make payment to the City an amount of Nine Thousand Dollars and No Cents (\$9,000.00) within 45 days of execution of this Agreement. This amount is equivalent to the difference in price of the cost estimates for the City’s Improvements described in Section 2 and the Developer’s Improvements described in this Section. Payment shall be made to the Finance Office at 300 Sixth Street, Rapid City, South Dakota, 57701.

4. Construction Fee Resolution. The parties agree that if Developer does not complete all of the obligations described in Section 3 in the applicable timeframes, then City may, by resolution, place on Developer’s property a construction fee equivalent to the City’s cost for installing City’s Improvements. At the time of execution of this Agreement, those costs are estimated to be One Hundred and Two Thousand Dollars (\$102,000).

If City adopts a resolution placing a construction fee for the City’s Improvements, the property which shall be affected by this construction fee is legally described as follows:

Lot 2R of Potts Subdivision, Rapid City, Pennington County, South Dakota.

If some, but not all, of Developer’s obligations under Section 3 are fulfilled, City may reduce the amount of the construction fees placed upon the property proportionally to reflect any payment from Developer or acceptance of any Developer’s Improvements by the City.

5. Recording the Agreement. The parties agree that if the Developer Improvements are not constructed and accepted prior to final plat of some or all of the property, then City may record this Agreement at Pennington County Register of Deeds against the property to alert future owners of a possible construction fee resolution pursuant to Section 4. Developer agrees to notify any future buyer(s) of the terms of this Agreement at the time of entering into any purchase agreement with any such buyer(s), regardless of whether or not it has been recorded at the Pennington County Register of Deeds.

6. Consideration. The parties understand and agree that the Developer's obligations as discussed in Section 3 are good and sufficient consideration for the City's consent to construct the City Improvements as discussed in Section 2.

7. Rights-of-Way. The Developer agrees to dedicate all right of way and easements needed to construct the Improvements on land they own at no cost to the City. All plats or easements shall be recorded at the Register of Deeds Office prior to City acceptance of the project.

8. Additional Provisions.

- A. Relationship between the Parties. This agreement does not create an employment or agency relationship between the City and Developer or Developer's officers, directors, agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between Developer and the City. No agent of Developer shall be the agent of the City, and Developer covenants that it will not take any action in the name of, or by holding itself out as the agent of, the City.
- B. Developer Authority. Developer warrants that 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.
- C. 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.
- D. Integration. This Agreement is the entire agreement of the parties and supersedes all prior negotiations, agreements and understandings, whether oral or written.
- E. 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.
- F. Governing Law and Venue. The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor Steve Allender

ATTEST:

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

State of South Dakota )

ss.

County of Pennington )

On this the \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned officer, personally appeared Steve Allender 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 to do so, 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.

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires:

Dated this \_\_\_\_ day of \_\_\_\_\_, 2018.

BELLA VISTA, LLC

\_\_\_\_\_  
Floyd Simunek

*Its* \_\_\_\_\_

STATE OF SOUTH DAKOTA )

)ss.

COUNTY OF PENNINGTON )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned officer, personally appeared Floyd Simunek, who acknowledged himself to be the \_\_\_\_\_ of Bella Vista, LLC, 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.

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires:

(SEAL)