

Irrigation Well Location Agreement

THIS AGREEMENT is made this ___ day of August 2021 between MEADE SCHOOL DISTRICT 46-1, whose address is 1230 Douglas Street, Sturgis, S.D. 57785, hereinafter referred to as DISTRICT, and the City of Sturgis whose address is 1040 Harley Davidson Way, Sturgis, SD 57785 hereinafter referred to as CITY.

NOW, THEREFORE, in consideration of the mutual covenants and terms set out herein, the parties hereto agree as follows:

1. PUBLIC PURPOSE:

The parties to this agreement acknowledge that they share a mutuality of interest in having reasonable improvements made to the recreational fields used regularly for outdoor practice at the District's athletic fields. In addition, CITY has received notification from the Sturgis Municipal Utility Board that the Board finds that a legitimate public interest is served by permitting DISTRICT to operate a well, operated in compliance with all state laws and regulations, to provide non-potable water for irrigation purposes only. Based upon that finding of real public benefit, the Board has also agreed to waive the penalties authorized under Water Regulation 4.17, to allow an approved irrigation well for the term of this Agreement.

2. APPROVAL OF IRRIGATION WELL:

DISTRICT agrees that it has terminated the use of all other wells it has located upon or serving the subject property, removed all pumps and related equipment, and de-commission those older wells in full compliance with all state laws and regulations.

3. CONSIDERATION:

Neither party shall pay any fee to the other as consideration for this Agreement, but the parties specifically acknowledge that the accomplishment of the public purposes set forth above shall be the consideration received by CITY for the duration of this Agreement.

4. TERM:

This Agreement shall commence upon signature by both parties and shall continue until the irrigation well shall cease to be functional. At no time shall the well be used for non-irrigation purposes or for purposes other than the irrigation at the Sturgis Brown High School.

5. NOTIFICATION:

Notification required pursuant to this Agreement shall be made in writing and mailed by regular U.S. mail, postage prepaid, to the following addresses. Such notification shall be deemed complete upon mailing.

IF SENT TO THE DISTRICT:

Meade School District 46-1
Superintendent's Office
12 30 Douglas Street
Sturgis, SD 57785

IF SENT TO THE CITY:

City of Sturgis
Attn: City Manager and Finance Office
1040 Harley Davidson Way
Sturgis, SD 57785

6. INSURANCE:

District shall maintain insurance specified below, which insurance shall be issued by a recognized, reputable insurance company. The insurance specified in this section may be in a policy or policies of insurance, primary or excess. Certificates of all required insurance shall be provided to the CITY in a timely manner following a written request for a copy.

- a. General liability insurance providing occurrence basis coverage for any claim arising from a loss

on the subject property, or for any claim arising from the activities of the errors, omissions, failure to render a service, or the negligent rendering of the service by District in the amount of \$1,000,000 each occurrence and \$1,000,000 annual aggregate.

- b. DISTRICT shall provide CITY with at least thirty (30) days' written notice of an insurer's intent to cancel or not renew any of the insurance coverage.

7. NO THIRD-PARTY BENEFICIARY RIGHTS:

Except as otherwise specifically provided herein, this Agreement is not intended to create, nor shall it in any way be interpreted or construed to create any third-party beneficiary rights in any person not a party hereto.

8. INDEPENDENT DUTIES:

The parties agree that DISTRICT operates as independent school district, and that with this Agreement it will develop a new irrigation well for its athletic fields according to its own methods, without being subject to the control of CITY. The relationship between DISTRICT and CITY is and shall remain that as between independent public entities, each having an obligation to follow the separate duties imposed upon it by South Dakota law. Nothing in this Agreement shall be construed as creating an employer-employee relationship between DISTRICT and CITY. Neither party shall have the authority or right legally to bind the other in contract, debt or otherwise, and neither party shall be liable for any obligation acquired or incurred by the other.

9. NON-WAIVER:

No waiver by either party of any breach or default hereunder will constitute a waiver of any preceding or subsequent breach or default.

10. MUTUAL WARRANTIES:

Each Party (as the "Warranting Party") warrants and represents to the other Party that:

- a. Authorization. The Warranting Party duly and validly executed and delivered this Agreement.
- b. Enforceability. This Agreement constitutes the valid and binding obligation of the Warranting Party and is enforceable against the Warranting Party in accordance with its terms
- c. No Conflict. The Warranting Party's performance under this Agreement in a timely and complete manner will not violate, or be materially or adversely impaired by, any of the following: (i) any other contract or agreement binding on the Warranting Party; (ii) any law, regulation, or order of any court or government or governmental agency or instrumentality binding on or affecting the Warranting Party; or (iii) any pending or threatened litigation or administrative proceeding.

The only additional warranties by a Party are those specifically set forth in this Agreement and such limited warranties are in place of any and all other warranties, express or implied.

11. NONCOMPLIANCE:

The parties acknowledge and agrees that if the pre-existing irrigation wells used by district are not decommissioned as set forth above, CITY shall have the right to terminate all municipal utility services then being provided to the District at the subject property.

12. DEFAULT:

The occurrence of any of the following shall constitute a default ("Default") under this Agreement:

- a. The violation of or failure to perform the elements of this Agreement or any other material provision or requirement of this Agreement that is not corrected within fifteen (15) calendar days after written notice of the violation or failure to perform is given.
- b. The violation of or failure to perform any of the Warranties of this Agreement.
- c. The insolvency or bankruptcy of either Party, or the subjection of any property of either Party to any levy, seizure, assignment, application or sale for or by any creditor or government agency.

13. LIMITATION OF DAMAGES:

In no event shall either Party be liable to the other for any Special, Direct, Indirect or Consequential damages, including but not limited to lost profits, lost revenue, economic loss however measured, nor for any damage or injury to any property of such Party nor any of its officers, employees, agents or contractors, however claimed

to be attributable to or related to accident, theft, fire, or any other cause whatsoever, regardless of whether the parties have knowledge of the possibility of such claimed loss or damages.

14. TERMINATION:

This Agreement may be terminated for Cause, and either Party may immediately terminate this Agreement after giving written notice of termination to the other, upon the occurrence of any of the following events:

- a. A party breaches any of its material obligations or Warranties under this Agreement and does not cure the breach within thirty (30) calendar days after the non-breaching Party gives written notice describing the breach in reasonable detail.
- b. A party dissolves or liquidates or otherwise discontinues substantially all of its business operations, or any property of a Party becomes subject to any levy, seizure, assignment, application or sale for or by any creditor or government agency.

15. JURISDICTION:

All controversies, disputes and claims arising out of or connected with this Agreement, including a determination of the alleged breach of or enforcement of any of its terms or conditions, or any other dispute over the validity, performance, or enforcement of this Agreement shall be governed by the laws of the State of South Dakota Jurisdiction and venue of any legal proceeding involving the parties in connection with this Agreement will lie exclusively with the state court located in Sturgis, South Dakota. Consistent with the requirements of SDCL 9-14-17 the original of this Agreement shall be filed in the Sturgis City Finance office.

16. VOLUNTARY AGREEMENT:

The parties acknowledge that they have entered into this Agreement freely and voluntarily, that they have had an opportunity to be represented and advised by counsel in the negotiation of this Agreement, that they have given due consideration to the provisions contained herein, and that they thoroughly understand and consent to all provisions herein.

17. MODIFICATION:

Any changes, modifications, or revisions to the terms of this Agreement shall be in writing and signed by both parties.

18. ENTIRE AGREEMENT:

This instrument contains the complete entire Agreement between the parties and replaces and supersedes all prior agreements, negotiations, and representations, written and oral, relating to the subject matter hereof. No statements, promises, or inducements made by either party or agent of either party that are not contained in this written Agreement are valid or binding. This Agreement may not be enlarged, modified, or altered except in writing signed by the parties and endorsed hereon.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of August, 2021.

CITY OF STURGIS

By: Daniel Ainslie, City Manager
City of Sturgis

MEADE SCHOOL DISTRICT 46-1

By: Don Kirkegaard
Meade School District 46-1