OVERSIZE AGREEMENT BETWEEN THE CITY OF RAPID CITY AND PINK CABIN, LLC FOR OVERSIZE DRAINAGE IMPROVEMENTS

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, hereinafter referred to as the “City,” and PINK CABIN, LLC, a South Dakota limited liability company, of P.O. Box 763, Rapid City, SD 57709, hereinafter referred to as the “Developer.”

WHEREAS, the Developer owns property legally described as:

Lots 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 in Block 11 of C.D. Rounds Subdivision in the City of Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 4, Page 151.

WHEREAS, the Developer’s property is located within the City of Rapid City; and

WHEREAS, Sturgis Road right-of-way adjacent to Developer’s property is within the jurisdiction of the South Dakota Department of Transportation, hereinafter referred to as the “SDDOT.”

WHEREAS, the SDDOT desires to have the Developer construct curb and gutter in Sturgis Road adjacent to Developer’s property and intends to reimburse Developer for such improvements.

WHEREAS, the SDDOT has contracted with a professional engineer to prepare the design plans, cost estimate, and detailed specifications for the improvements in Sturgis Road right-of-way; and

WHEREAS, the plans have been reviewed and approved by the City and the SDDOT; and

WHEREAS, the SDDOT’s engineer has demonstrated that the addition of curb and gutter in Sturgis Road meets SDDOT drainage criteria without any additional drainage improvements; and

WHEREAS, the SDDOT’s engineer has demonstrated that in order to meet City street drainage criteria the addition of drainage improvements to accompany the curb and gutter installation is required; and

WHEREAS, the City has requested the Developer construct an 18” storm sewer pipe and inlets in Sturgis Road right-of-way so that the drainage within Sturgis Road will meet City drainage criteria; and

WHEREAS, the City agrees that drainage improvements are an oversize cost; and

WHEREAS, it is in the City’s interest to have the Developer construct drainage improvements; and
WHEREAS, the SDDOT’s engineer has submitted cost estimates for the construction of
the drainage improvements and City staff has reviewed and concurs with the costs, and

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

1. 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. The Developer agrees to construct the drainage improvements as described above in
accordance with the plans approved by the City and the SDDOT. The Developer shall be
responsible for all construction costs associated with the improvements, subject to reimbursement
by the City as provided in Paragraph 3.

3. The City shall reimburse the Developer a maximum of $24,926.00 for the construction
and installation of the drainage oversize improvements. This maximum dollar amount is based
upon lengths, quantities and costs provided in Exhibit A. If actual yardages, quantities, and costs
are less than specified in Exhibit A, the amount of reimbursement shall be adjusted accordingly.

4. Prior to project acceptance the Developer shall submit documentation certifying actual
costs incurred. If actual lengths, quantities, and costs are less than specified in Exhibit A, the
amount of reimbursement shall be adjusted accordingly.

5. Prior to project acceptance by the City, a warranty bond, or other equivalent surety, in an
amount equivalent to ten percent (10%) of the total cost of the drainage improvements shall be
provided to the City. The bond shall secure the warranty, as provided in the City’s Standard
Specifications for Public Works Construction (current edition) for a period of two years.

6. Acceptance of the project by the City will not be considered until the project has been
completed, tested, as-builts submitted, and costs verified. Acceptance will be documented by
issuance of an acceptance letter from the City.

7. The Developer may request reimbursement by the City following project acceptance. The
City shall make payment to the Developer within 45 calendar days of request, provided the project
has been accepted.

8. The parties agree that this writing constitutes the entire agreement between them and that
there are no other oral or collateral agreements or understandings of any kind or character except
those contained herein. No modification or amendment to this Agreement shall be valid, unless
evidenced by a writing signed by the parties hereto.

9. In the event that any section(s), or provision(s) of this Agreement is declared invalid for
any reason whatsoever by any competent court, such invalidity shall not affect any other section(s)
or provision(s) of this Agreement if it can be given effect without the invalid section(s) or
provision(s).
10. 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 Pennington County, South Dakota.

    Dated this ____ day of ________________, 2018.

    CITY OF RAPID CITY

    ________________________________
    Mayor

    ATTEST:

    ________________________________
    Finance Officer

    (seal)

    STATE OF SOUTH DAKOTA  )
    ss.
    COUNTY OF PENNINGTON  )
    (s)

    On this ____ 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 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: ____________________
PINK CABIN, LLC.

By

(signature)

ANDREW J. SCULL

(printed name)

Its

(printed name)

(title)

STATE OF SOUTH DAKOTA  )
COUNTY OF PENNINGTON   )ss.

On this 17th day of April, 2018, before me, the undersigned officer, personally appeared Andrew J. Scull, who acknowledged him/herself to be the Managing Member of PINK CABIN, LLC, a limited liability company, and that as such, being duly authorized so to do, s/he executed the foregoing instrument for the purposes therein contained.

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

(Seal)

Notary Public, South Dakota
My Commission Expires: 10/18/23
EXHIBIT A

Oversize Request for: DRAINAGE
Project: Black Hills Sports Complex
Location: 3645 Sturgis Road
Entity Requesting Oversizing: PINK CABIN, LLC
Date: 4/9/2018
City File #: DEV18-1434, CIP 51201

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**DRAINAGE OVERSIZE COSTS**

$24,926.00