AGREEMENT FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS BETWEEN
THE CITY OF RAPID CITY AND BALLISTA, LLC

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 BALLISTA, LLC, of 4802 Edgewood Drive, Rapid City, South Dakota, 57702 hereinafter referred to as the “Developer.”

WHEREAS, the Developer desires to construct street improvements and approximately 280 linear feet of 8-inch diameter public water main and 300 linear feet of 8-inch diameter public sewer main to provide service and access for the Developer’s property located along Beckman Drive, Rapid City, South Dakota; and

WHEREAS, the Developer plans to construct the public improvements within the Beckman Drive right-of-way within the limits of the City of Rapid City; and

WHEREAS, the Developer has submitted preliminary drawings for the requested public improvements; and

WHEREAS, upon its completion according to the terms of this Agreement, the City has agreed to accept ownership of the public improvements that will be located within Beckman Drive.

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

1. The Developer hereby agrees to contract with a professional engineer to design the public improvements. The plans shall be designed in accordance with the City’s Infrastructure Design Criteria Manual and the City’s Standard Specifications for Public Works Construction. All plans shall be approved by the City prior to starting construction.

2. The Developer hereby agrees to contract with a professional engineer to provide construction observation services for the public improvement construction. The City reserves the right to observe and inspect all construction activities of the public and private portions of the project.

3. The Developer agrees to construct the public improvements according to the approved plans. No changes or variances from the plans shall be allowed unless approved by the City in writing.

4. The Developer shall be responsible for all construction costs associated with the public improvements. Principle components of the public improvements include street improvements at the Beckman Drive and 38th Street intersection, sidewalk improvements that meet Public Rights-of-Way Accessibility Guidelines (PROWAG), 280 linear feet of public water main and associated appurtenances, and 300 linear feet of public sewer main and associated appurtenances.

5. The Developer shall conduct a pre-construction meeting prior to commencing construction of the public improvements. The Developer shall notify the City and all affected private and public utilities of the meeting date and time a minimum of five working days prior to the meeting. The Developer, the Developer’s professional engineer, and the Developer’s construction contractor shall attend the pre-construction meeting.
6. The Developer agrees to obtain all applicable permits prior to construction.

7. The Developer acknowledges that the proposed public improvement project is within the construction limits of a City bid construction project, City Project No. 15-2232 38th Street Reconstruction Clifton Street to Range Road, currently under construction at the time of this Agreement. It is anticipated that the City project and Developer's project will be under construction at the same time. Developer agrees that neither it nor its contractor will interfere with, impede, or do anything to delay the work of City's contractor on the City project. The Developer agrees that its contractor shall not interfere with the progress of the City's contractor, and that the City project shall be the principal project in the area and that Developer's project shall be secondary to the work of the City's contractor. As the City's construction project timeline was established before the Developer brought his project to the City, the City, at its discretion, can issue a stop work order to the Developer's contractor if the Developer's contractor interferes with the progress of the City's contractor.

8. The Developer agrees to provide a two-year warranty that all materials furnished and installed and work completed pursuant to this contract will be new, and shall be of good quality, free from defects, and in conformance with the approved plans and specifications. The warranty shall also meet the requirements of the City's Standard Specifications for Public Works Construction, Section 7.65.

9. 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 public improvements shall be provided to the City to secure the warranty for a period of two years. The surety shall be in a form acceptable to the City Attorney.

10. Acceptance of the project by the City will not be considered until all construction and testing is completed and as-built plans submitted. Upon the City's approval of the same, acceptance will be documented by issuance of an acceptance letter by the City.

11. 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).

12. 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.

13. 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.
CITY OF RAPID CITY

Mayor Steve Allender

ATTEST:

__________________________
Finance Officer Pauline Sumpion

(seal)

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 Sumpion, 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: _______________
BALLISTA, LLC

By ______________________________

Its President

STATE OF SOUTH DAKOTA )
COUNTY OF PENNINGTON )

On this 12th day of October, 2018, before me, the undersigned officer, personally appeared Tyler Schad, who acknowledged him/herself to be the President of BALLISTA, LLC, and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

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

Kelly A. Heil
Notary Public
My Commission Expires: 10/05/2022