AGREEMENT BETWEEN THE CITY OF RAPID CITY AND BUFFALO EAST, LLC FOR OVERSIZE WATER MAIN COST REIMBURSEMENT

THIS AGREEMENT is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation, of 300 Sixth Street, Rapid City, South Dakota, 57701 ("City"), and BUFFALO EAST, LLC, of 1935 Samco Road Suite 102, Rapid City, South Dakota, 57702 ("Developer").

WHEREAS, Developer owns property located within the City of Rapid City east of the termination of Addison Avenue; and

WHEREAS, City desires to increase the size of the proposed water main from 8" to 12" for approximately 678 linear feet within the Addison Avenue right-of-way to provide a supply to future reservoir site east of Developer’s property located in the unplatted balance of the NE1/4SW1/4, located in Section 26, T1N, R7E; and

WHEREAS, the construction of this water main within Addison Avenue will provide water service and fire protection for Developer’s property east of Healing Way; and

WHEREAS, the City has requested the Developer construct a 12” water main rather than an 8” water main, which is the minimum size required to meet the Developer’s needs; and

WHEREAS, The Developer’s engineer has demonstrated a 12” water main is not required to meet the needs of the development; however, it has been determined by the City that a 12” main is needed to meet the needs of the City; and

WHEREAS, the Developer has contracted with a professional engineer to prepare the design plans, contract documents and detailed specifications for the design of the 12” water main, as well as cost estimates for the construction; and

WHEREAS, the plans have been reviewed by the City, and the City concurs with the Developer’s cost estimates.

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 a 12” water main as described above in accordance with the plans approved by the City and in accordance with any other contractual obligations Developer has to the City with regard to this construction.
3. The Developer shall be responsible for all construction costs associated with the 12” water main. The City’s participation shall be by reimbursement of amounts expended by the Developer for construction except as noted in item 4.

4. The total maximum dollar amount to be reimbursed to the Developer for the construction of the 12” water main oversize construction shall not exceed $27,255.00. This maximum dollar amount is based upon quantities and costs provided in Exhibit A attached hereto and incorporated herein by this reference. If actual quantities and costs are less than specified in Exhibit A, the amount of reimbursement shall be adjusted accordingly. The Developer shall provide certified costs which contain sufficient information for the City to review Developer’s actual oversize construction costs and to determine the accuracy of the invoice.

5. Payment to Developer shall be conditioned on a timely request for reimbursement.

6. Acceptance of the project by the City will not be considered until all testing is completed, as-buils submitted, and costs verified. Upon the City’s approval of the same, acceptance will be documented by issuance of an acceptance letter by the City.

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

8. The parties agree that this writing constitutes the entire agreement between them related to the oversize and improvement reimbursements discussed herein 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 2nd day of April, 2019

BUFFALO EAST, LLC

By: 

Its: Authorized Member

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

On this the 2nd day of April, 2019, before me, the undersigned officer personally appeared Ham Shafai, known to me or satisfactorily proven to be the Authorized Member of Buffalo East, LLC, a South Dakota limited liability company, and that he/she, as such Ham Shafai being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

(seal)

KARMEN HORTON
Notary Public, South Dakota
My Commission Expires: 08/25/2024
CITY OF RAPID CITY

Mayor

ATTEST:

__________________________________________
Finance Officer

(seal)

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

On this ______ day of ______________________, 2019, 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:
# Engineer's Estimate of Probable Construction Cost

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Exhibit 'A'