

**AGREEMENT FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS BETWEEN  
THE CITY OF RAPID CITY AND ELITE CUSTOM HOMES, 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 (“City”), and ELITE CUSTOM HOMES, LLC, of 429 Stumer Rd. Rapid city, South Dakota, 57701 (“Developer”).

WHEREAS, Developer owns property located within Rapid City on Kyle Street, legally described as follows:

Lots 4 and 5 of Block 5, Tyler Knue Subdivision to the City of Rapid City, Pennington County, South Dakota

(“Developer’s Property”); and

WHEREAS, the Developer desires to construct drainage improvements consisting of approximately 87 linear feet of 18-inch diameter public storm sewer pipe and associated improvements (“the Public Improvements”) to allow for redevelopment of Developer’s Property; and

WHEREAS, the Developer plans to construct the Public Improvements within the existing Kyle Street Major Drainage Easement; 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 Kyle Street and the existing drainage easement.

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

1. Design. 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. Construction Observation. Developer hereby agrees to contract with a professional engineer to provide construction observation services for the construction of the Public Improvements. City reserves the right to observe and inspect all construction activities of the public and private portions of the project.
3. Construction. Principle components of the Public Improvements include installation of approximately 87 linear feet of 18-inch diameter public storm sewer pipe and associated improvements within the Kyle Street right of way. 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 City in writing. Developer shall be responsible for all costs associated with the construction of the Public Improvements.

4. Pre-Construction Meeting. Developer shall conduct a pre-construction meeting prior to commencing construction of the Public Improvements. Developer shall notify City and all affected private and public utilities of the meeting date and time a minimum of five working days prior to the meeting. Developer, Developer's professional engineer, and Developer's construction contractor shall attend the pre-construction meeting.

5. Permits. Developer agrees to obtain all applicable permits prior to construction.

6. Warranty. 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. Prior to project acceptance by 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 City to secure the warranty for a period of two years. The surety shall be in a form acceptable to the City Attorney.

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

8. Severability. 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).

9. 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.

10. Entire Agreement and Amendments. 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.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF RAPID CITY**

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

ATTEST:

\_\_\_\_\_  
Finance Officer Pauline Sumption

(seal)

State of South Dakota )

ss.

County of Pennington )

On this the \_\_\_\_ 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: \_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 2019.

**ELITE CUSTOM HOMES, LLC**

*By* \_\_\_\_\_

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

STATE OF OKLAHOMA )

)ss.

COUNTY OF TULSA )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged him/herself to be the \_\_\_\_\_ of **ELITE CUSTOM HOMES, 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.

(seal)

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_