AGREEMENT FOR CONSTRUCTION OF PUBLIC SANITARY SEWER MAIN AND WATER MAIN BETWEEN THE CITY OF RAPID CITY AND TPH, 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 TPH, LLC, a South Dakota limited liability company, of 8240 Daisey Lane, Rapid City, South Dakota, 57702 hereinafter referred to as the “Developer.”

WHEREAS, the Developers desire to construct approximately 3,133 linear feet of sanitary sewer main and 4,392 linear feet of water main to provide sewer and water service for the Developer’s property, legally described as:

Lot 1, Block 2 of Shepherd Hills West Subdivision in the City of Rapid City, Pennington County, South Dakota;

and

WHEREAS, Developer plans to construct the sanitary sewer main and water main within a utility easement; and

WHEREAS, Developer has submitted preliminary drawings for the requested sanitary sewer main and water main; and

WHEREAS, the City has agreed to accept ownership of the sanitary sewer main and water main upon its completion according to the terms of this Agreement.

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 sanitary sewer main and water main. The sanitary sewer main and water main plans shall be designed in accordance with the City’s Infrastructure Design Criteria 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 sanitary sewer main and water main construction. The City reserves the right to observe and inspect all construction activities within the public right-of-way and utility easements.

3. The Developer agrees to construct the sanitary sewer main and water main 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 sanitary sewer main and water main.

5. The Developer shall conduct a pre-construction meeting prior to commencing construction of the sanitary sewer main and water main. The Developer shall notify the City and all affected private and public utilities affected by the project 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. Developer agrees to provide to the City a utility easement dedicated to the City that is sufficient to cover future maintenance, reconstruction, and repair of the utilities at the Developer’s cost.

7. 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.

8. 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 sanitary sewer main and water main project 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. Total estimated cost for the Project is $446,995.

9. 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.

10. 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).

11. 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.

12. 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.

[SIGNATURE PAGES FOLLOW]
Dated this _____ day of __________________, 2020.

CITY OF RAPID CITY

__________________________
Mayor Steve Allender

ATTEST:

__________________________
Pauline Sumption, Finance Officer

(seal)
State of South Dakota)

ss.
County of Pennington)

On this the _____ day of __________________, 2020, 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 29 day of April, 2020.

TPH, LLC

By Jeff Jasper
Its Member

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

On this the 29 day of April, 2020, before me, the undersigned officer, personally appeared Jeff Jasper, who acknowledged himself/herself to be the Member of TPH, LLC, a South Dakota limited liability company, and that he/she as such Member, being authorized to do so, executed the foregoing Agreement for the purposes therein contained.

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

(spear)

Notary Public, South Dakota
My Commission Expires: January 8, 2024