AGREEMENT FOR CONSTRUCTION OF PUBLIC WATER BETWEEN THE CITY OF RAPID CITY AND UNITED STATES OF AMERICA AND FOR OVERRSIZE 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, SD 57701, hereinafter referred to as the “City,” and UNITED STATES OF AMERICA, acting through the Department of Health and Human Services (HHS) by the Director of Indian Health Services, 5600 Fishers Lane, Mailstop 10N14-C, Rockville, MD, 20857, concerning property located at 3200 Canyon Lake Dr., Rapid City, South Dakota, 57702 hereinafter referred to as the “Developer.”

WHEREAS, the Developer desires to construct approximately 750 linear feet of 12-inch diameter water main to provide water service for the Developer’s property, located at 3200 Canyon Lake Drive, Rapid City, South Dakota, and legally described as:

THE SE1/4NE1/4 OF SECTION 4, T1N, R7E, BHM, LESS LOT 1R OF LOT 1 AND THAT PORTION OF ADJACENT VACATED WEST SOUTH STREET IN SE 1/4NE1/4 OF SECTION 4 LESS LOTS 1 AND 2 OF LOT AR OF LOT 1 AND THAT PORTION OF ADJACENT VACATED WEST SOUTH STREET LESS LOT 4 OF THE SE1/4NE1/4 LESS TRACT A OF THE SE1/4NE1/4 LESS LOT A OF LOT 3 AND LOT B OF LOT 3 AND LOT 2R OF THE SE1/4NE1/4 LESS RIGHTS-OF-WAY; AND, NE1/4SE1/4 OF SECTION 4, T1N, R7E, BHM, LESS TRACT B OF THE NE1/4SE1/4 OF SECTION 4 AND LESS TRACT A OF THE NE1/4SE1/4 OF SECTION 4 LESS RIGHTS-OF-WAY; AND, THE SW1/4NW1/4 OF SECTION 3, T1N, R7E, BHM, LESS LOT 2A IN THE S1/2NW1/4 AND LESS TRACT 1 OF CANYON LAKE SENIOR CITIZEN CENTER LESS RIGHT-OF-WAY; AND, THE NW1/4SW1/4 OF SECTION 3, T1N, R7E, BHM, LESS TRACT 8 OF RAPID CITY GREENWAY TRACTS AND LESS RIGHT-OF-WAY, ALL LOCATED WITHIN THE CITY OF RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA.;

and

WHEREAS, Developer plans to construct the 12-inch water main within Soo San Drive right-of-way; and

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

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

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

WHEREAS, the City has requested the Developer construct a 12-inch water main rather than a 10-inch water main, which is the minimum size required to meet the Developer’s needs; and
WHEREAS, City desires to increase the size of the proposed water main from 10-inch to 12-inch for approximately 750 linear feet within the Soo San Drive right-of-way; 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-inch 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. Recitals. 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. Design. The Developer hereby agrees to contract with a professional engineer to design the water main. The water main 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.

3. Construction Observation. The Developer hereby agrees to contract with a professional engineer to provide construction observation services for the water main construction. The City reserves the right to observe and inspect all construction activities within the public right-of-way or public water main easements.

4. Pre-Construction Meeting. The Developer shall conduct a pre-construction meeting prior to commencing construction of the 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.

5. Water Main Easements. The Developer agrees to secure all necessary easements including permanent water easements and temporary construction easements. Developer shall provide such easement prior to City’s acceptance of the project.

6. Permits. The Developer agrees to obtain all applicable permits prior to construction.

7. Construction. The Developer agrees to construct a 12-inch water main according to the approved plans. No changes or variances from the plans shall be allowed unless approved by the City in writing. Developer shall be responsible for all construction costs associated with the 12-inch water main. The City’s participation shall be by reimbursement of amounts expended by the Developer for oversize construction as noted in Section 8.

8. Oversize Reimbursement. The City agrees to reimburse Developer for the construction of the 12-inch water main oversize construction for a total maximum dollar amount not to exceed
$10,969.30. This maximum dollar amount is based upon quantities and costs provided in Exhibit C attached hereto and incorporated herein by this reference. If actual quantities and costs are less than specified in Exhibit C, 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 determine the accuracy of the invoice.

Payment to Developer shall be conditioned on a timely request for reimbursement submitted within 90 days of City’s acceptance of work pursuant to Section 10. 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.

The City does not anticipate recouping any oversize costs because of the operational nature of Developer’s improvements.

9. Warranty. 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 construction cost of the 12-inch water main shall be provided to the City to secure the warranty for a period of two years. This obligation may be met by Developer supplying an equivalent warranty bond from their contractor for the project. The surety shall be in a form acceptable to the City Attorney. The warranty shall also meet the requirements of the City’s Standard Specifications for Public Works Construction, Section 7.65.

10. City Acceptance of Work. Acceptance of the project by the City will not be considered until all construction and testing is completed, as-built plans 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.


A. 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).

B. 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.

C. Entire Agreement. 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 ____________________, 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 8th day of July, 2020.

By ______________________, Its designated representative

STATE OF ______________________ )
COUNTY OF ______________________ )ss.

On this the 8th day of July, 2020, before me, the undersigned officer, personally appeared ______________________, who acknowledged himself/herself to be the Project Manager of Indian Health Service, and that he/she as such said instrument, 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.

(seal)

Notary Public, State of Washington
My Commission Expires: 9/23/2021

Indian Health Services – Rapid City Health Center
Infill and Oversize Agreement

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