AGREEMENT BETWEEN THE CITY OF RAPID CITY AND BY-PASS DEVELOPMENT, LLC, FOR TEMPORARY CONSTRUCTION EASEMENTS AND PERMANENT SANITARY SEWER EASEMENTS

This Agreement is made this 19th day of February, 2021, by and between the CITY OF RAPID CITY, a South Dakota municipal corporation (hereinafter the “City”), of 300 Sixth Street, Rapid City, SD 57701, and BY-PASS DEVELOPMENT, LLC, (hereinafter the “Owner”), of 35 S. 4th Street, Custer, South Dakota, 57730-1916.

WHEREAS, Owner owns certain real properties described below along the route of a sanitary sewer main extension; and

WHEREAS, the City wishes to acquire temporary construction easements and permanent sanitary sewer easements over a portion of this property for purposes of constructing and installing a City sanitary sewer main; and

WHEREAS, Owner has agreed to execute appropriate documents conveying said interests in favor of the City under certain terms and conditions which the City has agreed to accept; and

WHEREAS, the parties desire to enter into this Agreement to reduce their mutual agreements to writing.

NOW THEREFORE, the parties hereby agree as follows:

1. Incorporation of 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. Easements. Owner will also convey to the City temporary construction easements and sanitary sewer easements over the following properties as shown as Exhibits A:

   Tract 1 of Discovery Subdivision, Rapid City, Pennington County, South Dakota;

   Tract 2 of Discovery Subdivision, Rapid City, Pennington County, South Dakota;
Lot 1 of Block 1 of I-90 Heartland Business Park Subdivision, Rapid City, Pennington County, South Dakota;

Lot 4 of Block 1 of I-90 Heartland Business Park Subdivision, Rapid City, Pennington County, South Dakota;

and

Lot 5 of Block 1 of I-90 Heartland Business Park Subdivision, Rapid City, Pennington County, South Dakota.

3. Easement for Existing Utilities. Owner also agrees to convey to the City a utility easement over the following property, as shown on Exhibit A, such easement to include and protect utilities in existence at the time of execution of this Agreement:

Tract 2 of Discovery Subdivision, Rapid City, Pennington County, South Dakota.

4. Consideration. The parties agree that the estimated temporary easement area is 103,702 square feet and the permanent easement area is 46,673 square feet. Owner agrees to transfer the permanent utility easement described in Section 3, an area of 4,700 square feet, to City at no cost.

In exchange for the easements described in Section 2, the City shall provide the following compensation, totaling $136,160.00 in exchange for Owner's grant of the remaining easements.

5. Warranties of City.

   a. City agrees to comply with all applicable statutes, ordinances, rules, regulations and other laws in construction of the sewer main in the easement area.

   b. All work by City shall be done in a workmanlike manner.

   c. Following construction, City shall leave the property in as good a condition as it finds it, including but not limited to adequate grass cover and drainage unchanged from its natural drainage ways.

6. Costs of Recording. All recording fees for the easements contemplated herein shall be paid by City.

7. Recording this Agreement. Either party may record this Agreement at its option and expense.
8. **Survival of Representations and Warranties.** All of the representations and warranties of the parties contained in this Agreement shall survive the date of this Agreement and the execution of the easement documents contemplated by this Agreement.

9. **Default.** City shall have the right to maintain and exercise all legal and equitable rights available to it under the laws of the State of South Dakota for Owner’s breach of this Agreement, including the right to specific performance.

10. **Waivers.** The failure by one party to require performance of any provision herein shall not affect that party’s right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

11. **Time.** Time is of the essence of this Agreement.

12. **Effect of Agreement.** This Agreement shall be binding in all respects upon and shall inure to the benefit of City and Owner and their respective successors and assigns.

13. **Integration.** This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

14. **Amendments.** This Agreement may only be amended by a written document duly executed by all parties.

15. **Counterparts.** This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

16. **Severability.** If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

17. **Construction.** This Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

18. **Headings.** The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

19. **Governing Law and Venue.** This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the Circuit Court of Pennington County, State of South Dakota.
DATED this 19th day of February, 2021.

BY-PASS DEVELOPMENT, LLC

By: ____________________________

Its: ____________________________

State of South Dakota )

) ss.

County of Custer )

On this the 19th day of February, 2021, before me, the undersigned officer, personally appeared ____________________________, who acknowledged himself/herself to be the ____________________________ of BY-PASS DEVELOPMENT, LLC, a South Dakota limited liability company, and that as such ____________________________, 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)

Notary Public - South Dakota
My Commission Expires: 1/15/2027

DATED this _____ day of __________________________, 2021.

CITY OF RAPID CITY

By ____________________________

Steve Allender, Mayor

Attest

_____________________________
Pauline Sumption, Finance Director

(seal)
EXHIBIT "A"
SANITARY SEWER EASEMENT
LOCATED IN LOT 5 OF BLOCK 1 OF
I–90 HEARTLAND BUSINESS PARK SUBDIVISION,
NE1/4 OF SECTION 28, T2N, R8E, BHM
RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

NORTH ELK VALE ROAD
EXISTING 24' WIDE
GAS PIPELINE EASEMENT

EXISTING 20' WIDE WATER
MAIN & UTILITY EASEMENT

S87°59'50"E
20.00'
S87°59'50"E
24.00'

PERMANENT 24' WIDE
SANITARY SEWER EASEMENT
6,647.26 SQ. FT.
0.153 AC±

EXISTING 20' WIDE MAJOR
DRAINAGE EASEMENT

SEGER DRIVE

LOT 5, BLOCK 1, I–90 HEARTLAND
BUSINESS PARK
SECTION 28, T2N, R8E, BHM

REGISTERED LAND SURVEYOR
REG. NO.
4725
KEITH S.
PETERSON
SOUTH
DAKOTA

10-27-2020

FOUND MONUMENT
EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT
LOCATED IN LOT 5 OF BLOCK 1 OF
1-90 HEARTLAND BUSINESS PARK SUBDIVISION,
NE1/4 OF SECTION 28, T2N, R8E, BHM
RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

NORTH ELK VALE ROAD

20' TEMPORARY
CONSTRUCTION EASEMENT
5,539.22 SQ. FT.
0.127 AC.±

EXISTING 24' WIDE
GAS PIPELINE EASEMENT

EXISTING 20' WIDE WATER
MAIN & UTILITY EASEMENT

276.96'

50.00'

276.96'

276.96'

50.00'

277.05'

50' TEMPORARY
CONSTRUCTION EASEMENT
13,850.19 SQ. FT.
0.318 AC.±

EXISTING 20' WIDE MAJOR
DRAINAGE EASEMENT

LOT 5, BLOCK 1, I-90 HEARTLAND
BUSINESS PARK
SECTION 28, T2N, R8E, BHM

FOUND MONUMENT

AES
EXHIBIT "A"

SANITARY SEWER EASEMENT

LOCATED IN LOT 4 OF BLOCK 1 OF
I-90 HEARTLAND BUSINESS PARK SUBDIVISION,
NE 1/4 OF SECTION 28, T2N, R8E, BHM
RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

NORTH ELK VALE ROAD

EXISTING 24' WIDE
GAS PIPELINE EASEMENT

EXISTING 20' WIDE WATER
MAIN & UTILITY EASEMENT

PERMANENT 24' WIDE
SANITARY SEWER EASEMENT
6,639.34 SQ. FT.
0.152 AC±

EXISTING 20' WIDE MAJOR
DRAINAGE EASEMENT

EXISTING 40'x40'
COMMON ACCESS
EASEMENT

LOT 4, BLOCK 1, I-90 HEARTLAND
BUSINESS PARK
SECTION 28, T2N, R8E, BHM

LOT 5, BLOCK 1, I-90 HEARTLAND
BUSINESS PARK
SECTION 26, T2N, R8E, BHM

REG. NO.
4725
KEITH S.
PETERSON
SOUTH
DAKOTA

10-27-2020

FOUND MONUMENT
EXHIBIT "A"

TEMPORARY CONSTRUCTION EASEMENT

LOCATED IN LOT 4 OF BLOCK 1 OF
I-90 HEARTLAND BUSINESS PARK SUBDIVISION,
NE1/4 OF SECTION 28, T2N, R8E, BHM
RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

20' TEMPORARY CONSTRUCTION EASEMENT
5,532.78 SQ. FT.
0.127 AC±

NORTH ELK VALE ROAD

EXISTING 24' WIDE GAS PIPELINE EASEMENT

EXISTING 20' WIDE WATER MAIN & UTILITY EASEMENT

276.64'

20.00'

50.00'

50.00'

276.64'

276.64'

50.00'

50.00'

276.64'

50' TEMPORARY CONSTRUCTION EASEMENT
13,831.96 SQ. FT.
0.318 AC±

EXISTING 40'x40'
COMMON ACCESS EASEMENT

EXISTING 20' WIDE MAJOR DRAINAGE EASEMENT

LOT 4, BLOCK 1, I-90 HEARTLAND BUSINESS PARK
SECTION 28, T2N, R8E, BHM

FOUND MONUMENT

REGISTERED LAND SURVEYOR
KEITH PETERSON
10-27-2020

AES
1960 Concourse Dr.
Rapid City, SD 57703
Phone: (605) 341-7800
www.aes2a.com
Date: 10/28/20
EXHIBIT "A"

SANITARY SEWER EASEMENT

LOCATED IN LOT 1 OF BLOCK 1 OF
I-90 HEARTLAND BUSINESS PARK SUBDIVISION,
NE1/4 OF SECTION 28, T2N, R8E, BHM
RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

NORTH ELK VALE ROAD

EXISTING 24' WIDE
GAS PIPELINE EASEMENT

EXISTING 20' WIDE WATER
MAIN & UTILITY EASEMENT

N87°59'50"W
20.00'

S87°59'50"E
20.00'

E87°59'50"W
24.00'

S87°59'50"E
40.00'

S01°08"W
154.98'

S01°08"W
106.65'

S49°10'00"W
21.82'

PERMANENT SANITARY
SEWER EASEMENT
8,460.40 SQ. FT.
0.194 AC.±

LOT 1, BLOCK 1, I-90 HEARTLAND
BUSINESS PARK
SECTION 28, T2N, R8E, BHM

TRACT 2 OF DISCOVERY SUBDIVISION
SECTION 28, T2N, R8E, BHM

REGISTERED LAND SURVEYOR

KEITH S.
PETERSON
SOUTH
DAKOTA

FOUND MONUMENT
EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT
LOCATED IN LOT 1 OF BLOCK 1 OF
I-90 HEARTLAND BUSINESS PARK SUBDIVISION,
NE1/4 OF SECTION 28, T2N, R8E, BHM
RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

NORTH ELK VALE ROAD

EXISTING 24' WIDE
GAS PIPELINE EASEMENT

EXISTING 20' WIDE WATER
MAIN & UTILITY EASEMENT

20' TEMPORARY
CONSTRUCTION EASEMENT
5,529.41 SQ. FT.
0.127 AC±

20.00' 50.00' 106.65'
154.98' 276.47' 106.65'
201.35'

50' TEMPORARY
CONSTRUCTION EASEMENT
13,081.50 SQ. FT.
0.300 AC±

EXISTING 40'x40'
COMMON ACCESS EASEMENT

LOT 1, BLOCK 1, I-90 HEARTLAND
BUSINESS PARK
SECTION 28, T2N, R8E, BHM

REG. NO. 4725
KEITH S.
PETERSON
SOUTH
DAKOTA

10-27-2020

FOUND MONUMENT

AE S
EXHIBIT "A"
SANITARY SEWER EASEMENT
LOCATED IN TRACT 1 OF
DISCOVERY SUBDIVISION, S1/2 SE1/4 NE1/4
OF SECTION 28, T2N, R8E, BHM
RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

TAGGART ROAD

PERMANENT SANITARY
SEWER EASEMENT
737.34 SQ. FT.
0.017 ACRES

S8°51'33"E
49.15'

S2°04'21"W
15.00'

N8°56'51"W
28.90'

L=20.27, R=1025.00'

TRACT 1 OF DISCOVERY SUBDIVISION
SECTION 28, T2N, R8E, BHM

★ FOUND MONUMENT

REGISTERED LAND SURVEYOR
KEITH S.
PETEINER
SOUTH DAKOTA
10-27-2020
EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT
LOCATED IN TRACT 1 OF DISCOVERY SUBDIVISION,
S1/2 SE1/4 NE1/4 OF SECTION 28, T2N, R8E, BHM
RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

50' TEMPORARY CONSTRUCTION EASEMENT
5,285.53 SQ. FT.
0.121 AC.±

TRAJECT OF DISCOVERY SUBDIVISION
SECTION 28, T2N, R8E, BHM

TAGGART ROAD

DISCOVERY CIRCLE

EAST MALL DRIVE

REG. NO.
4725
KEITH S.
PETERSON
SOUTH
DAKOTA

10-27-2020

1560 Concourse Dr.
Rapid City, SD 57703
Phone: (605) 341-7800
www. aes2.com
Date: 10/28/20