AGREEMENT BETWEEN THE CITY OF RAPID CITY AND B2 RAPID CITY LLC
FOR DEDICATION OF TEMPORARY CONSTRUCTION EASEMENTS AND
PERMANENT SANITARY SEWER EASEMENTS

This Agreement is made this 13 day of April, 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 B2 RAPID CITY LLC, (hereinafter the “Owner”), of
8700 Triad Drive, Greensboro, North Carolina 27235.

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

WHEREAS, the City wishes to acquire a temporary construction easement and
permanent sanitary sewer easement over a portion of this property for purposes of constructing
and installing a 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 a temporary construction
easement and a sanitary sewer easement over the following property as shown as Exhibits A:

   Lot 2R of Block One (1) of I-90 Heartland Business Park, City of
   Rapid City, as shown by the Plat Recorded as Document Number
   A201415802 in the Office of the Register of Deeds, Pennington
   County, South Dakota.

3. Consideration. The parties agree that the estimated temporary easement area is
23,900 square feet and the permanent easement area is 8,194 square feet. The City agrees to
provide the following compensation, totaling $29,465.00, in exchange for
Owner’s grant of the easements. City agrees to provide payment within 45 days of Owner’s
execution of the easements.
4. **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.

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

6. **Recording this Agreement.** Either party may record this Agreement at its option and expense.

7. **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.

8. **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.

9. **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.

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

11. **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.

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

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

14. **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.
15. **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.

16. **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.

17. **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.

18. **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 17th day of April, 2021.

**B2 RAPID CITY LLC**

By: [Signature]

Its: [Signature]

State of North Carolina

County of Guilford

On this the 13th day of April, 2021, before me, the undersigned officer, personally appeared [Signature] who acknowledged himself/herself to be the Manager of B2 RAPID CITY LLC, a North Carolina limited liability company, and that as such Manager, 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) [Signature]

Notary Public - Scott M. Hunt
North Carolina
Randolph County
My Commission Expires: 9-29-2023
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 2R OF BLOCK 1 OF
I-90 HEARTLAND BUSINESS PARK SUBDIVISION,
E1/2 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

PERMANENT 24' WIDE
SANITARY SEWER EASEMENT
8,194.27 SQ. FT.
0.188 AC±

EXISTING 40'x40'
COMMON UTILITY
EASEMENT

LOT 2R, BLOCK 1, I-90 HEARTLAND
BUSINESS PARK
SECTION 28, T2N, R8E, BHM

LOT 1, 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

AES
EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT
LOCATED IN LOT 2R OF BLOCK 1 OF
I-90 HEARTLAND BUSINESS PARK SUBDIVISION,
E1/2 NE1/4 OF SECTION 28, T2N, R8E, BHM
RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

20' TEMPORARY CONSTRUCTION EASEMENT
6,828.73 SQ. FT.
0.157 AC±

EXISTING 24' WIDE GAS PIPELINE EASEMENT

341.44'

341.43'

341.43'

NORTH ELK VALE ROAD

EXISTING 20' WIDE WATER MAIN & UTILITY EASEMENT

50' TEMPORARY CONSTRUCTION EASEMENT
17,070.82 SQ. FT.
0.392 AC±

EXISTING 40'x40'
COMMON ACCESS EASEMENT

50.00'

341.41'

20.00'

40.00'

0 20 40

SCALE 1" = 80'

LOT 3R, HEARTLAND
BUSINESS PARK
SECTION 28, T2N, R8E, BHM
REG. NO.
4725
KEITH S.
PETERSON
SOUTH
DAKOTA

LOT 2R, BLOCK 1, I-90 HEARTLAND
BUSINESS PARK
SECTION 28, T2N, R8E, BHM

FIND MONUMENT

1560 Concourse Dr.
Rapid City, SD 57703
Phone: (605) 341-7860
www.aes2a.com
Date: 10/26/20