AGREEMENT FOR CONSTRUCTION OF PUBLIC SANITARY SEWER BETWEEN THE CITY OF RAPID CITY AND BRADLEY CHARLES HERB AND ANNE ELIZABETH HERB

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 BRADLEY CHARLES HERB and ANNE ELIZABETH HERB, of 601 S. Berry Pine Rd., Rapid City, South Dakota, 57702 hereinafter referred to as the “Developers.”

WHEREAS, the Developers desire to construct approximately 100 linear feet of 8” diameter sanitary sewer main to provide sewer service for the Developers’ property, legally described as:

Lots 6, 7, and 8 of Government Lots 2 and 3 of Section 5, T1N, R7E, BHM, (commonly referred to as E.E. Taylor Tract) in the City of Rapid City, Pennington County, South Dakota

-AND-

Lot 1 of Lot A of Government Lot 2 of Section 5, T1N, R7E, BHM, (commonly referred to as E.E. Taylor Tract) in the City of Rapid City, Pennington County, South Dakota; and

WHEREAS, the Developers plan to construct the 8” sanitary sewer main within Edgewood Drive and South Berry Pine Road right-of-way; and

WHEREAS, the Developers have submitted preliminary drawings for the requested sanitary sewer main; and

WHEREAS, the City has agreed to accept ownership of the sanitary sewer 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 Developers hereby agree to contract with a professional engineer to design the sanitary sewer main. The sanitary sewer 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.

2. The Developers hereby agree to contract with a professional engineer to provide construction observation services for the sanitary sewer main construction. The City reserves the right to observe and inspect all construction activities within the public right-of-way.

3. The Developers agree to construct the sanitary sewer 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 Developers shall be responsible for all construction costs associated with the sanitary sewer main. Principal components are approximately 100 feet of 8-inch sanitary sewer main and one sanitary sewer manhole.

5. The Developers shall conduct a pre-construction meeting prior to commencing construction of the sanitary sewer main. The Developers 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 Developers, the Developers' professional engineer, and the Developers' construction contractor shall attend the pre-construction meeting.

6. The Developers agree to obtain all applicable permits prior to construction.

7. The Developers agree 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 8" sanitary sewer main 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.

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.
Dated this ___ day of ___________________, 2021.

CITY OF RAPID CITY

ATTEST:

Mayor

Finance Director

(seal)

State of South Dakota )

County of Pennington )

ss.

On this the ___ day of ___________________, 2021, 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 1st day of October, 2021.

DEVELOPERS

BRADLEY CHARLES HERB

ANNE ELIZABETH HERB

STATE OF SOUTH DAKOTA

COUNTY OF PENNINGTON

On this 1st day of October, 2021, before me, the undersigned officer, personally appeared BRADLEY CHARLES HERB and ANNE ELIZABETH HERB, known to me or satisfactorily proven to be the persons whose names subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

(seal)

Christine L. Williams
Notary Public, South Dakota
My Commission Expires: August 25, 2026