

**AN AGREEMENT BETWEEN THE CITY OF RAPID CITY AND LAZY P6 LAND CO.,
INC. TO RESOLVE ALL DISPUTES REGARDING THE CONSTRUCTION OF A
REGIONAL DETENTION POND ON LAZY P6 PROPERTY**

THIS AGREEMENT is made by and between, the **CITY OF RAPID CITY**, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, (hereinafter referred to as the “City”), and **LAZY P6 LAND CO., INC.**, a South Dakota corporation, located at 505 Catron Blvd., Rapid City, South Dakota 57701 (hereinafter referred to as “Lazy P6”).

WHEREAS, the City and Lazy P6 previously entered into a settlement agreement dated November 3, 2015, to resolve a lawsuit that had been filed by Lazy P6 against the City; and

WHEREAS, provisions in the settlement agreement related to the construction of a regional detention pond identified as MP 203 on a portion of land owned by Lazy P6; and

WHEREAS, the City constructed MP 203 in 2017 in part on land identified as Unit 6 of Southgate Commercial Condominiums which is owned by Lazy P6; and

WHEREAS, the parties are in disagreement about the terms of, and their respective obligations, under the terms of the previous settlement agreement as it relates to the construction of MP 203; and

WHEREAS, there exists no easement, or other similar document, allowing for detention of water on the property of Lazy P6; and

WHEREAS, rather than resort to litigation, it is the parties intent to resolve their dispute through a negotiated resolution.

NOW THEREFORE, the parties hereby agree 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 as agreements of the parties.

2. Transfer of Unit 6. In exchange for the City’s performance of the obligations of this Agreement, Lazy P6 will convey to the City all right, title, and interest in Unit 6 of Southgate Commercial Condominiums. The City will be responsible for preparing any documents and paying any costs or fees necessary to complete the transfer. Lazy P6 shall not be obligated to convey title to Unit 6 until the City has completed construction of the channel crossing, utilities, and any other physical improvements identified herein. In addition to constructing the improvements identified in Paragraph 3 of this Agreement, the City will remit an \$85,000 payment to Lazy P6 upon formal approval of this agreement by Lazy P6 and the City Council.

3. City Obligations. In addition to the payment provided above, the City agrees as follows:

- a. *Drainage Crossing.* The City shall engage a professional engineer to design a drainage crossing, which shall allow drainage flows to cross the proposed future street known as East Watts Lane, which is shown on Exhibit A, attached hereto and incorporated herein by this reference. The crossing shall be designed to carry the flows generated by a 100 year flood event, for fully developed upstream conditions as identified in the current, approved South Truck Route Drainage Basin Plan (DBDP). The existing flow in the DBDP is 898 cfs and the currently approved FEMA LOMR 100 year flow is 823 cfs. Thus the CLOMR shall be designed using the approved FEMA flows and the crossing design shall include a safety factor check using 898 cfs. The City shall cause the crossing to be constructed per the approved CLOMR, as referenced in Paragraph 5 below.
- b. *Water and Sewer.* The City shall design and construct an extension of water and sewer mains and in East Watts Lane from the western side of the drainage crossing to the eastern side. The water and sewer mains shall meet all applicable City standards. All work to be paid by the City.
- c. *Street Improvements.* The City shall also design and construct East Watts Lane over the crossing, from the current terminus on the western side of the crossing to the eastern side of the crossing. The street improvement and related infrastructure corridor design features shall include 36 ft asphalt street pavement, B66 curb and gutter and sidewalk, street light conduit, utilities, etc.; all within a 68 ft exclusive space with adjacent standard 8 ft utility and drainage easements. The entire scope of the construction shall extend 10 feet beyond the final LOMR approved 100 yr Flood Hazard Boundary. Any future extension of E Watts Lane shall be governed by the City's subdivision ordinances.
- d. *Private Utilities.* The City shall cause its consultant to design a shared trench for private utility extension within the project limits. The City shall also include excavation of the trench and backfilling, as applicable, in its construction contract. The City shall be responsible for costs of design, excavation, and backfilling and those materials commonly used to meet Utility Company standards, as applicable. Lazy P6 shall be responsible for costs of Service Extension fees, Deposits and similar costs required by the respective Private Utility Company. Should a private utility company not wish to locate within the project limits, Lazy P6 shall be responsible for all aspects of extension of the private utilities outside the project limits.
- e. *City Expense.* All design, regulatory submittals and approvals, final mapping and other required documentation, construction, construction administration, and construction observation for the drainage crossing, water and sewer mains, private utilities, and street construction shall be performed by the City, or its contractors and consultants, at City's sole expense.

4. Lazy P6 Obligations. Lazy P6, in addition to the transfer of Unit 6 described above, agrees to provide all information it possesses relating to the utilities and street construction in and around

the area of the Drainage Crossing, and it agrees to direct its engineers and consultants to do the same.

5. FEMA. The parties agree to coordinate and work cooperatively to obtain both a Conditional Letter of Map Revision (CLOMR) and Letter of Map Revision (LOMR). Both the CLOMR and LOMR applications and all supporting material shall be completed by the City at its cost. ANY expansion of the existing FHA shall be to the east of the existing drainage channel. Lazy P6 agrees to direct its consultants and contractors to cooperate and provide any information relevant to the CLOMR and LOMR applications. Any Field Data of existing features required shall be collected at the City's cost. The CLOMR shall be obtained prior to construction of the drainage crossing, water and sewer mains, private utilities, and street improvements.

6. Rights of Way. Lazy P6 agrees to provide such easements or dedicate such rights-of-way as necessary for the City to construct, operate, and maintain the drainage structure, street, and City and private utility improvements to be constructed pursuant to this Agreement. The City shall provide to Lazy P6, based on the design completed by its consultant, all proposed temporary construction easements, permanent easements, and H-lots required for the improvements described herein, including the width and elevation of adjacent easements required by private utilities. Any dispute over such easements or rights-of-way shall be resolved prior to construction. All documents required for completing this task at sole expense of City.

7. Other Development Agreements. The parties acknowledge that they have entered into other agreements for the construction and development of East Watts Lane and adjacent properties. Nothing in this Agreement shall operate to change the parties' respective obligations in those agreements.

8. Integration. This Agreement and the agreements and documents referred to herein (including any exhibits and schedules incorporated herein) contain the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter hereof.

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

10. Third Parties. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein shall give or be construed to give any person or entity, other than the parties hereto, their respective successors, and permitted assigns, any legal or equitable rights hereunder.

11. Waivers. No waiver of any term or provision of this Agreement shall be binding unless executed and accepted in writing, by both parties.

12. Timeline. Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period provided for in this

Agreement. City agrees to submit all required CLOMR documentation to FEMA and/or other Regulatory Agencies as required, No Later Than (NLT) 8 months after City Consultant Contract approved by the City Council. City also agrees to allow Lazy P6 to review Consultant's Scope of Work prior to Council submittal. Consultant shall provide monthly, detailed progress updates including percent complete estimate until the CLOMR is approved. If FEMA requests additional information during the CLOMR review process, the City will immediately notify Lazy P6 with an explanation of FEMA's request. City further agrees to bid, award and finish construction of the Project NLT 5 months after the approved CLOMR is received by City, which will be confirmed by FEMA's signed notification letter. Furthermore, the City will allow Lazy P6 a reasonable amount of time to review and/or comment on Plans and Companion Documents prior to CLOMR submittal and prior to Bidding. Any time taken by Lazy P6 to review and comment on plans and companion documents shall be added to the applicable time limits above for purposes of City completion of its obligations.

13. Force Majeure. Neither party shall be liable for any delay or failure in performance due to any reason or unforeseen circumstance beyond the affected party's reasonable control, including shortages or delays in obtaining materials from suppliers that cannot reasonably be cured by obtaining the needed materials from another source, work stoppages not involving employees of either party that cannot reasonably be overcome, fires, riots, rebellions, wars, acts of terrorism, accidents, explosions, floods, storms, acts of God, and similar occurrences. The obligations and rights of the excused party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay. City shall immediately notify Lazy P6 if a stoppage in progress occurs, and provide a detailed explanation for the stoppage.

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, within the timeframes described herein.

15. Further Action. The parties covenant and agree that each shall execute and deliver such further instruments or documents as shall be necessary to effectuate the purposes contemplated by this Agreement. If the City Council rejects any part of this Agreement, Lazy P6 reserves the right to reject the entire Agreement.

16. Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. 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. The parties agree that each party has reviewed this Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

17. Severability. The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement or the remainder of such section. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than

voided, when approved in writing by both parties, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible.

18. Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the state of South Dakota, without regard for its choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the state of South Dakota, without regard for its choice-of-law principles.

19. Jurisdiction and Venue. The parties hereto explicitly agree to submit to the personal jurisdiction of South Dakota state courts, and any dispute relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall be decided solely and exclusively by the Circuit Court located in Rapid City, South Dakota.

Dated this ____ day of _____, 2021.

CITY OF RAPID CITY

Steve Allender, Mayor

ATTEST:

Pauline Sumption, Finance Director

(SEAL)

LAZY P6 LAND CO., INC.

Orvil Davis, President

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2021, before me, the undersigned officer, personally appeared Orvil Davis, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged them self to be the President of LAZY P6 LAND CO., INC., and as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

Notary Public, South Dakota

My Commission Expires:
(SEAL)