AGREEMENT BETWEEN THE CITY OF RAPID CITY AND RAPID CITY AREA SCHOOL DISTRICT FOR OVERSIZE STORM SEWER 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, South Dakota, 57701, hereinafter referred to as the “City,” and Rapid City Area School District, 625 9th Street, Rapid City, South Dakota 57701, hereinafter referred to as the “Developer”.

WHEREAS, the Developer owns property located within the City of Rapid City that it intends to develop as South Middle School; and

WHEREAS, City desires to increase the size of the proposed storm sewer from 36” to 42” for approximately 332 linear feet within the proposed storm sewer easement between Indiana Street and the existing 72” storm sewer; and

WHEREAS, the City has requested the Developer construct a 42” storm sewer rather than an 36” storm sewer, which is the minimum size required to meet the Developer’s needs. The 42” storm sewer will convey upstream runoff from Oakland Avenue without creating a bottleneck in the storm sewer system; and

WHEREAS, The Developer’s engineer has demonstrated a 42” storm sewer is not required to meet the needs of the development, however, it has been determined by the City that a 42” storm sewer is needed to meet the needs of the City in this area, and as such, will benefit this development and surrounding area.

WHEREAS, the Developer has contracted with a professional engineer to prepare the design plans, contract documents and detailed specifications for the subdivision which include the design of the 42” storm sewer; and

WHEREAS, the plans have been reviewed and approved by the City; and

WHEREAS, the Developer has submitted cost estimates for the construction of the 42” storm sewer, and City staff has reviewed and concurs with the costs.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein set forth, it is agreed by the parties as follows:

1. 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. The Developer agrees to construct a 42” storm sewer as described above in accordance with the plans approved by the City and in accordance with any other contractual obligations Developer has to the City with regard to this construction. The Developer agrees to dedicate a storm sewer easement to the City of Rapid City for this storm sewer.
3. The Developer shall be responsible for all construction costs associated with the 42” storm sewer. The City’s participation shall be by reimbursement of amounts expended by the Developer for construction except as noted in item 4.

4. The total maximum dollar amount to be reimbursed to the Developer for the construction of the 42” storm sewer oversize construction shall not exceed $38,252.52. This maximum dollar amount is based upon quantities and costs provided in Exhibit A attached hereto and incorporated herein by this reference. If actual quantities, and costs are less than specified in Exhibit A, 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 to determine the accuracy of the invoice.

5. Acceptance of the project by the City will not be considered until all testing is completed, as-builts 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.

6. 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.

7. The parties agree that this writing constitutes the entire agreement between them related to the oversize and improvement reimbursements discussed herein 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.

8. 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).

9. 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 Pennington County, South Dakota.

10. The Developer declares that it has been authorized to do business in the State of South Dakota, and by signature below the undersigned certifies that he/she has the authority to enter into this Agreement on behalf of the Developer.
Dated this 19th day of April, 2022

RAPID CITY AREA SCHOOL DISTRICT

By

Its

STATE OF SOUTH DAKOTA )

) ss.
COUNTY OF PENNINGTON )

On this 19th day of April, 2022, before me, the undersigned officer, personally appeared Kate Thomas, who acknowledged him/herself to be the RCAS BOE President of Rapid City Area School District, and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of Rapid City Area School District.

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

Notary Public, South Dakota
My Commission Expires: 6/3/2026
Dated this _____ day of ________________, 2022

CITY OF RAPID CITY

______________________________
Mayor Steve Allender

ATTEST:

______________________________
Pauline Sumption, Finance Director

(seal)

STATE OF SOUTH DAKOTA   )
                         )ss.
COUNTY OF PENNINGTON     )

On this _____ day of ________________, 2022, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Director, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Director, 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 Director.

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

(seal)  
Notary Public, South Dakota
My Commission Expires:
# Exhibit A

## South Middle School

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<th>No.</th>
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**Total Project Costs**

- **$99,834.00**
- **$64,415.00**

**Oversize Cost increase for 42" Storm Sewer**

- Design Fee (8% of cost increase)
  - $35,419.00
  - $2,833.52
- **TOTAL COST INCREASE**
  - $38,252.52

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*Engineer Signature*