AGREEMENT

This Agreement is entered into by and among the city of Rapid City, South Dakota, referred to in this Agreement as the “CITY”; Holiday Stationstores, Inc., a Minnesota corporation, referred to in this Agreement as “HOLIDAY”; and the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the “STATE.”

BACKGROUND:

1. Omaha Street in Rapid City, South Dakota, is a state trunk highway and within the jurisdiction of the STATE. CITY utilities, including sewer mains, are located beneath and within Omaha Street.

2. HOLIDAY owns a parcel of land at 15 Omaha Street located at the corner of Omaha Street and East Boulevard, referred to in this Agreement as “the Property.” HOLIDAY is constructing a commercial building on the Property that will include the installation of sanitary sewer services (Building Permit CIBP 16-0511). The Property is legally described as follows:

   Lots 1 through 32, both inclusive, in Block 70 of the Original Townsite to the City of Rapid City, Pennington County, South Dakota; together with the alley in said Block 70 which was vacated by a Resolution recorded May 18, 1978 in Book 9, Page 1790; and also together with that portion of vacated Rapid Street lying adjacent to and south of Lots 17 through 34 of said Block 70, which reverted by law pursuant to the Resolution of Vacation recorded September 26, 1988, in Book 35, Page 3112; and also together with that portion of vacated East Boulevard lying adjacent to and east of Lots 1 and 32, the vacated alley lying between said Lots, and the vacated portion of Rapid Street lying south of said Lot 32, which reverted by law pursuant to the Resolution of Vacation dated November 21, 1988, recorded January 29, 1993, in Book 48, page 7728.

3. At the present time, at least four sewer service lines connect the Property to one of the CITY’S main sewer lines within Omaha Street.

4. The CITY requires that unused sanitary service lines be abandoned at the sewer main.
5. The STATE anticipates that it will reconstruct the intersection of Omaha Street and East Boulevard adjacent to the Property in 2018. Until the reconstruction, the STATE wishes to minimize disruption of the Omaha Street right-of-way, including disruptions caused by property owners altering connections to CITY utilities within Omaha Street.

6. The parties wish to enter into this Agreement to allow HOLIDAY to complete its construction project on the Property and to delay HOLIDAY’S full and complete abandonment of the sanitary sewer lines until such time as the STATE reconstructs the intersection of Omaha Street and East Boulevard.

THE CITY, HOLIDAY, AND THE STATE MUTUALLY AGREE AS FOLLOWS:

1. HOLIDAY agrees, as part of Building Permit CIBP16-0511, to partially abandon all unused sanitary sewer lines by cutting and capping all unused sanitary sewer lines where HOLIDAY’S property line meets the Omaha Street right-of-way. At the time of entering into this Agreement, the parties are aware of four such unused sanitary sewer lines, but if more are discovered HOLIDAY agrees that it will also cut and cap the additional unused sanitary sewer lines where HOLIDAY’S property line meets the Omaha Street right-of-way.

2. Upon this partial abandonment, HOLIDAY will provide the CITY with as-built drawings that reflect the locations where the service lines were cut and capped and all other relevant information regarding the partially abandoned unused sanitary sewer lines.

3. The CITY and HOLIDAY agree that HOLIDAY will not be required to fully and completely abandon the unused sanitary sewer lines between the Property and the CITY’S sanitary sewer main in Omaha Street as part of Building Permit CIBP16-0511.

4. The parties agree that the STATE will notify HOLIDAY in writing when the sanitary sewer main(s) in Omaha Street will be accessible to HOLIDAY for completion of the abandonment of unused sanitary sewer lines to the Property. The parties anticipate that this accessibility will occur in conjunction with a STATE project to make street improvements to the intersection of Omaha Street and East Boulevard, estimated to occur in 2018. The STATE will send written notice to proceed to Joel D. Geil, Manager of Construction, Holiday Stationstores, Inc., 4567 American Boulevard West, Minneapolis, Minnesota 55437. Upon receipt of the written notice to proceed, HOLIDAY agrees to perform all work needed to abandon any unused sanitary sewer lines at the sewer main in compliance with the applicable CITY design criteria concerning unused sanitary sewer lines (“the Work”). HOLIDAY will fully and completely abandon all sanitary sewer lines that are unused within 60 days of receipt of the written notice, or in such manner and within such time as the written notice provides, but in no event will the notice to proceed require HOLIDAY to complete the work in less than 60 days.

5. The parties agree that HOLIDAY will be responsible for any and all costs for the Work and for full performance of the Work. HOLIDAY will perform the Work in compliance with all
city and state ordinances, regulations, and design criteria applicable during the time the Work is performed.

6. Upon completion of the Work, HOLIDAY will provide the CITY with as-built drawings that reflect the locations where the service lines were abandoned and all other relevant information regarding the abandoned sanitary sewer lines.

7. The CITY'S consent to allow HOLIDAY to delay compliance with the CITY'S design criteria by delaying the abandonment of the unused sanitary sewer lines is made in consideration of the promises, covenants, and agreements contained in paragraphs 4 and 5 of this Agreement.

8. All of the terms and conditions set forth in this Agreement will extend to and be binding upon the heirs, assigns, or successors in interest of HOLIDAY, and be considered as a covenant running with the Property. Furthermore, it is agreed that, in accepting title to the above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of this Agreement recorded with the Pennington County Register of Deeds' Office pursuant to provisions of South Dakota statutes.

9. Should HOLIDAY fail to perform the work to fully and completely abandon the unused sanitary sewer lines, as discussed in paragraphs 4 and 5, the CITY shall have all legal and equitable remedies provided by law to perform the work and assess the amount to the Property. The CITY reserves the right to refuse to issue any future building permits to the Property if HOLIDAY fails to fulfill the obligations in this Agreement. In the event the CITY is forced to perform the work discussed in paragraphs 4 and 5, HOLIDAY will be responsible for all costs of performance, including reasonable attorneys' fees, costs, and court costs incurred to collect the CITY'S cost to perform the Work.

10. HOLIDAY will indemnify the STATE, the CITY, and their officers, agents, and employees against any and all actions, suits, damages, liability, or other proceedings that may arise as the result of performing services under this Agreement. This section does not require HOLIDAY to be responsible for or defend against claims or damages arising from errors or omissions of the STATE or the CITY, their officers, agents, or employees.

11. The CITY and the STATE recognize the sovereign capacity of the other and the immunities inherent with such sovereignty. Nothing in this Agreement will be construed by the CITY or the STATE as an indemnification by the CITY or the STATE for liabilities of each other or third persons, arising out of and during this Agreement. Liability for actions from the conduct or omissions of the CITY or the STATE will be determined according to applicable law, subject to all available defenses and immunities.

12. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter. This Agreement may only be amended by a written document duly executed by all parties.

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DOT Legal: ________
13. This Agreement is for the sole benefit of the parties to this Agreement and their respective successors and permitted assigns. Nothing in this Agreement will give or be construed to give any person or entity, other than the parties to this Agreement, their respective successors, and permitted assigns, any legal or equitable rights under this Agreement.

14. The rights and remedies under this Agreement are in addition to and not exclusive of any other rights, remedies, powers, and privileges, whether at law or in equity, under this Agreement or otherwise, that any party may have against another.

15. 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 will not be construed to limit or deprive a party of the benefits of any grace or use period provided for in this Agreement.

16. No party will 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 will be extended on a day-to-day basis for the time period equal to the period of the excusable delay.

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

18. The parties covenant and agree that each will execute and deliver such further instruments or documents as are necessary or convenient to effectuate the purposes contemplated by this Agreement. Upon HOLIDAY'S completion of the Work in accordance with this Agreement and to the satisfaction of the CITY and the STATE; the CITY, the STATE and HOLIDAY will enter into a recordable mutually-agreeable termination of this Agreement.

19. The invalidity of all or any part of any section of this Agreement will 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 will be modified rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible.

20. This Agreement will be governed by 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 of this Agreement, whether sounding in contract, tort, or otherwise, will likewise be governed by the laws of the state of South Dakota, without regard for its choice-of-law principles.
21. The parties to this Agreement 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 of this Agreement, whether sounding in contract, tort, or otherwise, will be decided solely and exclusively by the Circuit Court located in Rapid City, South Dakota.

SIGNATURE PAGES FOLLOW
This Agreement is binding upon the signatories not as individuals, but solely in their capacities as officials of their respective organizations and acknowledges proper action of the STATE, the CITY, and HOLIDAY to enter into the same.

HOLIDAY STATIONSTORES, INC.

By: [Signature]

Its: James R. Hupp, Assistant Secretary

Date: November 1, 2016

(Corporate Seal)

STATE OF MINNESOTA  )
  )ss.
COUNTY OF HENNEPIN  )

On this the 1st day of November 2016, before me, Shelly Schilling, the undersigned officer, personally appeared James R. Hupp, who acknowledged himself to be the Assistant Secretary of Holiday Stationstores, Inc., a corporation, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

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

(Notary Seal)

Notary Public, State of Minnesota

My Commission Expires: 1-31-21
This Agreement is binding upon the signatories not as individuals, but solely in their capacities as officials of their respective organizations and acknowledges proper action of the STATE, the CITY, and HOLIDAY to enter into the same.

CITY OF RAPID CITY, SOUTH DAKOTA

______________________________
Mayor Steve Allender

ATTEST:

______________________________
Finance Officer

(City seal)

State of South Dakota )

ss.

County of Pennington )

On this the ______ day of ____________, 2016, 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 duly authorized to do so, executed the foregoing instrument for the purposes herein 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.

______________________________
Notary Public, South Dakota

My Commission Expires: ________________

(NOTARY SEAL)
This Agreement is binding upon the signatories not as individuals, but solely in their capacities as officials of their respective organizations and acknowledges proper action of the STATE, the CITY, and HOLIDAY to enter into the same.

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

By: ______________________________

Its: Secretary

Date: ______________________________

Approved as to Form:

_______________________________
Special Assistance Attorney General

State of South Dakota )
ss.

County of Hughes )

On this the _____ day of ______________, 2016, before me __________________________, the undersigned officer, personally appeared Darin P. Bergquist, who acknowledged himself/herself to be the Secretary of the State of South Dakota, Department of Transportation, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged to me that he executed the same in the capacity therein stated and for the purposes therein contained.

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

_______________________________
Notary Public

My Commission Expires: ______________

(NOTARY SEAL)