AGREEMENT BETWEEN THE CITY OF RAPID CITY AND WATERSHED DEVELOPMENT, LLC FOR OVERSIZE WATER MAIN 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 WATERSHED DEVELOPMENT, LLC, 803 Industrial Avenue, Rapid City, South Dakota 57702, hereinafter referred to as the "Developer".

WHEREAS, the Developer desires to construct approximately 950 linear feet of 12” diameter water main within proposed Poppy Trail to provide water service and fire protection for the proposed Highpointe Ranch Subdivision; and

WHEREAS, the Developer’s property is located within the City of Rapid City; and

WHEREAS, the City has requested the Developer construct a 12” water main rather than an 8” water main, which is the minimum size required to meet the Developer’s needs. The 12” water main will allow for future water main extension within the area in accordance with the City’s Utility System Master Plan; and

WHEREAS, The Developer’s engineer has demonstrated a 12” water main is not required to meet the needs of the development, however, it has been determined by the City that a 12” main 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 12” water main; 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 12” water main, 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 12” water main as described above in accordance with the plans approved by the City. The Developer agrees to dedicate right-of-way to the City of Rapid City as identified in the preliminary plat for the Highpointe Ranch Subdivision.
3. The Developer shall be responsible for all construction costs associated with the 12” water main. 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 12” water main oversize construction shall not exceed $43,450.00. 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.

5. Payment to Developer shall be conditioned on a timely request for reimbursement. The oversize costs payable by the City will be recouped by charging construction fees to benefitting properties, which includes properties within this development. A construction fee resolution will be placed on the next available City Council agenda upon receipt of a request for reimbursement by the Developer. Any fees for benefitting properties within this development having connected to City water prior to the reimbursement request, shall be deducted from the total reimbursement amount. The properties within this development that benefit from the oversize are shown in Exhibit B.

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

7. 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.

8. 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.

9. 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).

10. 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.

Dated this 25th day of January, 2017
WATERSHED DEVELOPMENT, LLC
By [Signature]
Its [Signature]

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

On this 31st day of May, 2017, before me, the undersigned officer, personally appeared Andrew Scull, who acknowledged him/herself to be the managing member of WATERSHED DEVELOPMENT, LLC, and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of WATERSHED DEVELOPMENT, LLC.

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

[Signature]
Notary Public, South Dakota
My Commission Expires: 10/28/2021
CITY OF RAPID CITY

Mayor

ATTEST:

______________________________
Finance Officer

(seal)

STATE OF SOUTH DAKOTA  

) ss.

COUNTY OF PENNINGTON  

On this ____ day of __________________, 2017, 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:

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

______________________________
Attorney  5/31/17

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EXHIBIT A

Oversize Request for: WATER MAIN
Project: Highpointe Ranch
Location: Dunsmore Rd and Poppy Tr
Entity Requesting Oversizing: Watershed Development, LLC
Date: 5/9/2017
City File #: DEV16-1303

| BID ITEM       | DESCRIPTION                | UNIT | QUANTITY | UNIT COST | TOTAL COST | TOTAL
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|               |                             |      | TOTAL    | $89,650.00|            |       |

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OVERSIZE COST ESTIMATE $43,450.00