AGREEMENT BETWEEN THE CITY OF RAPID CITY AND FREELAND MEADOWS, LLC FOR CONSTRUCTION OF WATER MAIN IN COUNTRY ROAD

This Agreement is made this ____ day of _____________, 2017, by and between the 
CITY OF RAPID CITY, a South Dakota municipal corporation of 300 Sixth Street, Rapid City, SD 57701 ("City"), and FREELAND MEADOWS, LLC, a South Dakota limited liability company of 801 Mount Rushmore Road, Rapid City, SD 57701 ("Developer").

The parties hereby agree as follows:

1. Purpose. This Agreement is made to outline the terms and conditions for the Developer’s share in the cost to construct the future water main in Country Road as described in an exception request (City File 16EX014) approved by the City’s Public Works Department, and Community Planning and Development Services Department.

2. Property. This Agreement is made as a condition of approval for the plat of property to be legally described as follows:

Lots 32 through 34 of Block 1, Lots 3 through 18 of Block 3, and Lots 16 through 26 of Block 4, Prairie Meadows Subdivision, Rapid City, Pennington County, South Dakota.

3. Consideration. The parties agree that the City’s approval of the plat of the Property, the Developer’s payment, and the mutual promises and understandings contained herein are good and sufficient consideration.

4. Deferral of Construction. The parties agree that construction of the water main as described above shall be deferred upon the terms and conditions contained in the City’s file and this Agreement.

5. Payment by Developer. Developer shall pay $32,825.00 to City prior to approval of the final plat for the Property. This amount represents one-half of the estimated cost to construct approximately 1180 linear feet of 8” water main within the Country Road right-of-way between West Nike Road and Marino Drive.

6. Sole Contribution by Developer. Payment of the sum provided above shall constitute full and complete payment by the Developer of the one-half of the water main, which is attributable to development of the Property. City agrees that it will not require additional funds from Developer related to its role as developer of the Property. City makes no guarantees or warranties that it will not seek additional funds from property owners adjacent to, served by, or benefitted by the water main, whether by special assessment, surcharge, fee or otherwise.

7. Disposition of Payment. The payment will be deposited in the City’s water enterprise fund. Nothing in this Agreement shall require the City to build the water main described above. The funds may be used by the City for any lawful purpose.
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. This Agreement may only be amended by a written document duly executed by all parties.

9. **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.

10. **Waivers.** No waiver of any term or provision of this Agreement shall be binding unless executed in writing by the party waiving such term or provision.

11. **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.

12. **Further Action.** The parties covenant and agree that each shall execute and deliver such further instruments or documents as shall be necessary or convenient to effectuate the purposes contemplated by this Agreement.

13. **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.

14. **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.

15. **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.

[Signature page follows]
CITY OF RAPID CITY

Attest

_____________________________  ______________________________
Mayor

Finance Officer

(seal)

State of South Dakota  )
  ) ss.
County of Pennington  )

On this the ___ 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, being authorized so to do, executed the foregoing Agreement for the purposes therein contained.

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

(seal)  Notary Public – South Dakota
My Commission Expires ____________________

FREELAND MEADOWS, LLC

By ____________________________

Its ____________________________

State of South Dakota  )
  ) ss.
County of Pennington  )

On this the 1st day of June ____________, 2017, before me, the undersigned officer, personally appeared Bret Estes, who acknowledged himself to be the Member __________, of Freeland Meadows, LLC, a limited liability company, and that he, being authorized so to do, executed the foregoing Agreement for the purposes therein contained.

WITNESS WHEREOF I hereunto set my hand and official seal.

______________________________
Notary Public – South Dakota
My Commission Expires 2-4-21