AGREEMENT BETWEEN THE CITY OF RAPID CITY AND MUTH HOLDINGS, LLC FOR SANITARY SEWER AND WATER IMPROVEMENTS AND OVERT SIZE 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 MUTH HOLDINGS, LLC, 2700 W. Main Street, Rapid City, South Dakota 57702, hereinafter referred to as the “Developer”.

WHEREAS, the Developer desires to construct approximately 1,050 linear feet of 8” diameter water main within Haines Avenue right-of-way to provide water service and fire protection for the Developer’s proposed apartment project on Lot 3 of Madisons 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 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 City reserves the right to observe and inspect all construction activities within the public right-of-way.

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 a lump sum amount as determined in attachment “A”.
4. The total lump sum amount for the 12” water main oversize construction shall be $42,780.00. No additional connection fees associated with “Public Utility Extension for Lot 3 of Madisons Subdivision” will be applied to Lot 3 of Madisons Subdivision.

5. Prior to project acceptance by the City, a warranty bond, or other equivalent surety, in an amount equivalent to ten percent (10%) of the total cost for the public water and sewer mains shall be provided to the City to secure the warranty for a period of two years. The surety shall be in a form acceptable to the City Attorney.

6. 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.

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 ___ day of June, 2017

MUTH HOLDINGS, LLC

By

Its member
STATE OF SOUTH DAKOTA  
COUNTY OF PENNINGTON  

On this 2\textsuperscript{nd} day of JUNE, 2017, before me, the undersigned officer, personally appeared JOE MUTH, who acknowledged him/herself to be the MEMBER of MUTH HOLDINGS, 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 MUTH HOLDINGS, LLC.

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

[Signature]

JANELLE L. FINCK
NOTARY PUBLIC
State of South Dakota

Notary Public, South Dakota
My Commission Expires: 9-18-2018
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

6-1-17
Date
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<tbody>
<tr>
<td><strong>WATER MAIN 12” vs. 8” OVERSIZING COMPARISON TABLE</strong></td>
<td>12” Unit</td>
<td>12” Total</td>
<td>8” Unit</td>
<td>8” Total</td>
<td>Difference</td>
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<td>18</td>
<td>12” vs. 8” PVC Water Main C-900, DR18</td>
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