AGREEMENT FOR CONSTRUCTION OF STREET EXTENSION BETWEEN THE CITY OF RAPID CITY AND DAKOTA HEARTLAND, INC.

THIS AGREEMENT is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation, of 300 Sixth Street, Rapid City, SD 57701, hereinafter referred to as the “City,” and DAKOTA HEARTLAND, INC., a South Dakota corporation, of P.O. Box 330, Rapid City, SD 57709, hereinafter referred to as the “Developer.”

WHEREAS, the Developer desires to construct approximately 211 linear feet of street within dedicated right of way adjacent to Developer’s property (“the Property”), legally described as:

Lot B of Lots 7, 8, 9 and 12 of Forkner Addition Less Lots H1, H2, H3 and H4 in the City of Rapid City, Pennington County, South Dakota, and

Lot A of Lots 7 and 12 of Forkner Addition in the City of Rapid City, Pennington County, South Dakota; and

WHEREAS, the Developer has submitted preliminary drawings for the requested street extension; and

WHEREAS, the Developer plans to construct the street extension within the East North Street right of way to provide access to the Property through the East North Street Frontage Road; and

WHEREAS, the street extension is intended to serve the Property only and will not provide access to any other properties and is not required or needed as part of the City’s street network; and

WHEREAS, due to an existing retaining wall adjacent to the Property that encroaches into the East North Street right of way, the proposed street extension is not in a standard parallel street alignment according to City regulations and design criteria; and

WHEREAS, a Cambell Street corridor study that is underway includes a review of the East North Street / Cambell Street intersection and may recommend improvements to the intersection and/or the adjacent streets that could interfere with the street extension once it is constructed by Developer; and

WHEREAS, the City has agreed to accept ownership of the street upon its completion according to the terms of this Agreement; and

WHEREAS, in exchange for the provisions in this Agreement, the City is willing to permit the construction of the street extension within the East North Street right of way under the following terms and conditions.

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

1a. The Developer hereby agrees to contract with a professional engineer to design the street extension. The street extension shall be designed in accordance with the City’s Infrastructure Design Criteria and the City’s Standard Specifications for Public Works Construction. All plans shall be approved by the City prior to starting construction.

1b. The Developer hereby agrees to contract with a professional engineer to provide construction observation services for the street construction. The City reserves the right to observe and inspect all construction activities within the public right-of-way.

1c. The Developer agrees to construct the street according to the approved plans. No changes or variances from the plans shall be allowed unless approved by the City in writing.

1d. The Developer shall be responsible for all construction costs associated with the street extension, including replacement of a storm sewer manhole lid with a grate and casting. Principal components of the Developer’s construction responsibilities are approximately 417 linear feet of curb and gutter, 4,700 square feet of minimum 5-inch thick asphalt paving, 116 cubic yards of aggregate base course, traffic controls and signage, site grading, site storm drainage improvements, site restoration and stabilization and related erosion and sediment controls.

1e. The Developer shall conduct a pre-construction meeting prior to commencing construction of the street extension. The Developer shall notify the City and all affected private and public utilities affected by the project of the meeting date and time a minimum of five working days prior to the meeting. The Developer, the Developer’s professional engineer, and the Developer’s construction contractor shall attend the pre-construction meeting.

1f. The Developer agrees to obtain all applicable permits prior to construction.

1g. The Developer agrees to provide a two-year warranty that all materials furnished and installed and work completed pursuant to this Agreement will be new, and shall be of good quality, free from defects, and in conformance with the approved plans and specifications. The warranty shall also meet the requirements of the City’s Standard Specifications for Public Works Construction, Section 7.65.

1h. Prior to project acceptance by the City, Developer shall provide a warranty bond, or other equivalent surety, in an amount equivalent to ten percent (10%) of the total cost of the street extension 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.
1. **City Obligations.**

2a. Acceptance of the project by the City will not be considered until Developer has completed all construction and testing and submitted as-built plans. Upon the City's approval of the same, acceptance will be documented by issuance of an acceptance letter by the City.

2b. The parties agree that upon the City's acceptance of the street extension, the City will maintain the street extension as constructed by Developer. The parties agree that City is not responsible for any maintenance of other pavement or parking lots on the Property that encroach into the rights of way but are not part of the street improvements constructed by Developer and accepted by the City pursuant to this Agreement.

2. The parties agree that encroachments, including retaining wall(s) and a paved parking lot, are located within the East North Street right of way which were constructed by Developer or by previous owners and which are currently used by Developer, its tenants, and/or visitors to the Property. The parties also agree that this Agreement does not authorize or permit any of such encroachments into the right of way.

3. The parties acknowledge that City's consent to Developer's street extension within the East North Street right of way is granted in exchange for Developer's promises in this Agreement and Developer's consent to waive and release City from any future takings, condemnation, inverse condemnation, or damages claims that may occur as a result of future conduct to reduce, vacate, move, remove, or otherwise change the right of way adjacent to this Property in a way that affects access to the Property or the East North Street Frontage Road constructed by Developer pursuant to this Agreement. Accordingly, Developer agrees to execute a *Waiver and Release of Future Condemnation Claims* in conjunction with this Agreement that will be recorded at the Pennington County Register of Deeds and which will apply to Developer and to its successors in interest of this Property.

4. 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).

5. 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 the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

6. The parties agree that this writing constitutes the entire Agreement between them 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.
Dated this ___ day of __________________, 2018.

CITY OF RAPID CITY

______________________________
Mayor

ATTEST:

______________________________
Finance Officer

(seal)
State of South Dakota ) s.s.
County of Pennington )

On this the ____ day of ____________, 2018, 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: ________________
Dated this 25th day of January, 2018.

DAKOTA HEARTLAND, INC.

By

Its

STATE OF SOUTH DAKOTA

COUNTY OF PENNINGTON

On this 25th day of January, 2018, before me, the undersigned officer, personally appeared Doyle Estes, who acknowledged himself to be the president of DAKOTA HEARTLAND, INC., and that as such president, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

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

(seal)

BRENDA HAFNER
NOTARY PUBLIC
STATE OF SOUTH DAKOTA

Notary Public, South Dakota
My Commission Expires: March 13, 2021

Dakota Heartland, Inc. Infill Agreement