AGREEMENT BETWEEN THE CITY OF RAPID CITY AND RIMFLOW, INC.
FOR PARKVIEW SWIMMING POOL
COPING REPAIR, PROJECT NUMBER PR18-6164

This Agreement is entered into by and between the CITY OF RAPID CITY, 300 Sixth Street, Rapid City, SD 57701, a municipal corporation organized under the laws of the state of South Dakota, hereinafter referred to as the “City,” and RIMFLOW, Inc., a corporation organized under the laws of the State of New York, of 140 Commodore Circle, Port Jeff Station, New York 11776, hereinafter referred to as the “Contractor.”

1. Work. Contractor agrees to perform the work described in the Detailed Specifications for Parkview Swimming Pool Coping Repair, Project No. PR18-6164. Specifically, Contractor agrees to perform the following (hereinafter referred to as “Work”):

   A. Remove 580 lineal feet of existing RIMFLOW coping around pool.
   B. Clean and remove existing mortar off walls to bare condition where possible.
   C. Apply 2 coats waterproofing membrane to trench
   D. Reset all coping with new grout/mortar
   E. Application of epoxy coating and fine silica sand

The parties agree that Contractor intends to begin Work on April 13, 2018, but that Contractor can begin sooner if arrangements are made with the City. City shall provide Contractor with access to the site on weekends as needed, and Contractor shall timely notify the City when such access is needed so that City can make necessary arrangements. Contractor shall have the Work completed by May 16, 2018.

The City shall provide scaffolding as necessary for Contractor to perform the Work. Contractor agrees to attempt to set from the trench wherever possible. City agrees to provide for adequate equipment, such as a dumpster, for Contractor to dispose of construction debris from the Work.

2. Warranty. Contractor agrees to provide a 5-year installer warranty for the waterproofing membrane, which shall begin upon acceptance of the Work by City.

3. Payment. Contractor agrees to perform the Work for an amount not to exceed $64,500. Contractor will only be paid for Work actually performed. Payment for the Work will be made to the Contractor by check within 45 days after receipt of a signed voucher. Progress payments may be made at the City’s discretion based on work completed to the satisfaction of City.

4. Indemnification and Hold Harmless. Contractor agrees to indemnify, defend and hold City harmless against all liability, loss, damage, costs, and expenses including, but not limited to, costs of defense and reasonable attorney’s fees, which the City may hereafter suffer itself or pay to another party by reason of any claim, action, or right of action, at law or in equity, arising out of willful misconduct, error, omission or negligent act of the Contractor and resulting in injury (including death) to any person or damage to any property to the extent such are caused by or are alleged to be caused by the Contractor or its employees, any subcontractor or its employees, or any person, firm, partnership, or corporation employed or engaged by the Contractor.
5. **Insurance.** Contractor shall obtain and maintain at its expense the following minimum limits of occurrence-based insurance coverage for the duration of this Agreement.

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<thead>
<tr>
<th>Type of Coverage</th>
<th>Minimum Limits of Coverage</th>
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<tbody>
<tr>
<td>A. Workers’ Compensation</td>
<td>Statutory</td>
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<td>Employer’s Liability</td>
<td>$500,000/$500,000/$500,000</td>
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<td>B. Comprehensive General Liability</td>
<td>$1,000,000 each occurrence</td>
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<td>(Including Contractual Liability</td>
<td>General Aggregate $2,000,000</td>
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<td>and Completed Operations)</td>
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<td>Bodily Injury and Property Damage</td>
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<td>C. Commercial Automobile Liability,</td>
<td>$1,000,000 combined single limit</td>
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<td>which may be provided through Hired and Non-</td>
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<td>Owned Auto coverage as part of the Comprehensive General Liability policy listed in Section B.</td>
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Such insurance policies shall name the City of Rapid City as an additional insured with respect to all activities arising out of the performance of the work and/or services under this Agreement. Acceptable Certificates of Insurance and Endorsements confirming the above coverage shall be filed with the City before commencing any work and/or services. Such Certificates shall afford the City thirty (30) days written notice of cancellation or of a material change in coverage. The City’s failure to obtain from the Contractor a Certificate of Insurance conforming to the foregoing requirements shall not be deemed a waiver of any of the foregoing requirements. This paragraph shall in no way limit the provisions of the Section 4 of this Agreement.

6. **Independent Contractor.** Contractor is an independent contractor of the City. This Agreement does not create an employment relationship between City and Contractor or its agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between Contractor and the City of Rapid City. No agent of Contractor shall be the agent of the City, and Contractor covenants that it will not take any action in the name of, or by holding itself out as the agent of, the City of Rapid City.

7. **Entire Agreement.** This Agreement along with attached Proposal constitutes the entire agreement between the City and Contractor and supersedes all prior written or oral communications. In the event any terms of this agreement conflict with the attached quote, this agreement shall control.

8. **Authority.** This Agreement is made and entered into by the Director of Parks and Recreation, pursuant to the authority granted by SDCL 9-1-5 and Section 3.04.090.A of the Rapid City Municipal Code.
9. **Venue and Jurisdiction.** 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.

10. **Severability.** The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of the other provisions hereof. If any portion of this Agreement is unenforceable for any reason whatsoever, such provision shall be appropriately limited and given effect to the extent that it may be enforceable.

Signed this ________ day of ______________________, 2018.

CITY OF RAPID CITY

______________________________
Steve Allender, Mayor

ATTEST:

_______________________________
Finance Officer
(SEAL)

State of South Dakota )
SS.
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 so to do, executed the foregoing instrument 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.

______________________________
Notary Public, South Dakota

My Commission Expires:
(SEAL)
Signed this ___ day of __________________, 2018.

RIMFLOW, INC.

By ________________________________
Its ________________________________

STATE OF SOUTH DAKOTA )
COUNTY OF PENNINGTON )

On this the ___ day of __________________, 2018, before me the undersigned officer, personally appeared __________________, who acknowledged himself/herself to be the ___ __________________ of RIMFLOW, Inc., and as such __________________, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of Rimflow, Inc.

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

(SEAL) ____________________________________
Notary Public, State of South Dakota
My Commission Expires: ________________