

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND LAZY P6 LAND COMPANY, INC FOR REIMBURSEMENT OF OVERSIZE COSTS ASSOCIATED WITH THE EXTENSION OF 5TH STREET SOUTH OF CATRON BOULEVARD**

This Agreement (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the CITY OF RAPID CITY (“City”), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701, and LAZY P6 LAND CO, INC., (“Developer”), of 505 Catron Boulevard, Rapid City, SD 57701.

WHEREAS, the Developer desires to construct public improvements to provide access, drainage, water and sewer service to property owned by the developer which is generally located south of Catron Boulevard, within and east of the future 5th Street right-of-way, Rapid City, South Dakota; and

WHEREAS, the Developer’s property is located immediately adjacent to the City of Rapid City; and

WHEREAS, the City has required that the Developer construct 16” water mains rather than the minimum size required to meet the Developer’s needs; and

WHEREAS, the City has required that the Developer construct 15” sewer mains rather than the minimum size required to meet the Developer’s needs; and

WHEREAS, the City has required that the Developer construct 5th Street as a five-lane arterial, including associated improvements, rather than a three-lane collector; and

WHEREAS, the public improvements required will allow future development for City service areas; and

WHEREAS, it is in the City’s interest to have the Developer construct the oversize improvements; and

WHEREAS, the Developer has submitted quantity and cost estimates to oversize the required public improvements, and City staff has reviewed and concurs with those quantities and costs; and

WHEREAS, SDCL 5-18C-4 authorizes the City to reimburse the Developer for the oversize costs of the public improvements contemplated in this Agreement.

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 City shall reimburse the Developer an amount estimated to be Six Hundred Five Thousand Dollars (\$605,000) for all oversize improvements. This dollar amount is based upon lengths, quantities and costs provided in Exhibit A. If actual lengths, quantities and costs are

different than specified in Exhibit A, the amount of reimbursement shall be adjusted accordingly. The City Council shall rule on any unresolved disputes between the Public Works Director and the Developer related to oversize eligibility, quantity or costs. The City reserves the right to approve all bids accepted by the Developer prior to construction. The City's Public Works Director shall have the authority to approve bids, and Developer may commence construction upon receipt of the Public Works Director's written approval. The Public Works Director or his designee shall concur in the accepted bid within 3 business days of notification by Developer.

3. The Developer hereby agrees to construct 5th Street as a five-lane arterial with associated required improvements pursuant to the plans approved by the City's Engineering Division.

4. The Developer hereby agrees to construct a 16" water main including required appurtenances in 5th Street pursuant to the plans approved by the City's Engineering Division.

5. The Developer hereby agrees to construct a 15" sewer main including required appurtenances in 5th Street pursuant to the plans approved by the City's Engineering Division.

6. The City agrees that the public improvements to be constructed according to this Agreement may be completed in phases declared by the Developer, as identified in Exhibit B. Reimbursements for oversize shall only be made for phases completed as provided herein. Additionally, Developer's obligation to petition for annexation shall only apply to such property and right-of-way as matches the extent of reimbursable (oversize) public improvements completed in the Developer's selected phase, as identified in Exhibit B.

7. Developer agrees to petition for annexation of the following property:

**SOUTHGATE Commercial Condominiums located in the NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> Section 19, T1N, R8E, B.H.M., Pennington County, South Dakota; and**

**A 60-foot-wide strip of land located along the east side of Unit I of SOUTHGATE Condominiums, Phase II, located in the NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub> of Section 24, T1N, R7E, B.H.M., Pennington County South Dakota, which encompasses the area to become the 5th Street right-of-way.**

The areas of the above property to be annexed may be phased to coincide with the phases of construction as provided in ¶ 6, and as identified in Exhibit B.

8. Prior to project phase acceptance, the Developer shall submit to the City a warranty bond, or other surety in a form acceptable to the City Attorney, in an amount equivalent to ten percent (10%) of the total cost of the public improvements constructed to secure the warranty for a period of two years.

9. Project phase acceptance shall be documented by issuance of an acceptance letter from the City to the Developer. The project phase acceptance letter shall be issued upon completion of the following: all construction identified in the selected phase as shown on the approved plans, testing in accordance with the approved plans, and submission of as-built drawings. City agrees to inspect any public improvements within fifteen (15) business days of receipt of a request for inspection and to issue a report within 5 business days after having accomplished the inspection.

The City will perform any follow up certification or warranty inspections within the same time frames.

10. Constructed public improvements eligible for city oversize participation will be accepted when the City Engineer or designee acknowledges in writing that the items identified for correction in the Final Inspection Letter are complete. Reimbursement for oversize items of the selected phase shall be processed by the City within 45 days of Developer's submission of certified costs documentation and filing a petition for annexation as required in Paragraphs 6 & 7. The City shall hold the eligible reimbursement funds until the required area is annexed.

11. 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). Notwithstanding the foregoing, the Agreement dated February 3, 2003, referred to in ¶ 13 herein, shall continue in full force and effect, and all the provisions thereof shall continue to remain valid and are not modified in any way by this Agreement.

12. 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.

13. The parties agree that the Agreement dated Feb. 3, 2003 filed in Book 121 Page 3656 *et. seq.* at the Pennington County Register of Deeds and 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. This Agreement is not valid unless all signatures are attached hereto.

**CITY OF RAPID CITY**

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

(seal)

**LAZY P6 LAND CO, INC.**

By \_\_\_\_\_

Its \_\_\_\_\_