

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND DISCOVERY CIRCLE,  
LLC FOR FORCE MAIN CASING OVERSIZE 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 DISCOVERY CIRCLE, LLC, a South Dakota limited liability company, of 2504 West Main Street, Rapid City, South Dakota, 57702, hereinafter referred to as the "Developer."

WHEREAS, the CITY has requested Developer to construct two 30-inch force main casings for the future construction of two force mains from the Elk Vale Lift Station, planned to be located under Discovery Circle, generally located in the southwest quadrant of the East Mall Drive and North Elk Vale Road intersection in Section 28, Township 2 North, Range 8 East, Rapid City, South Dakota; and

WHEREAS, the Developer's property is located within the City of Rapid City; and

WHEREAS, the City and the Developer agree to construct two-30 inch pipe casings. The two-30 inch pipe casing will allow for future force main crossing under Discovery Circle, per the City's master plan for the Elk Vale Lift Station.

WHEREAS, it is in the City's interest to have the Developer construct the two-30 inch pipe casings; and

WHEREAS, the Developer has submitted cost estimates for the construction of the requested pipe casings and City staff has reviewed and concurs with the costs, and

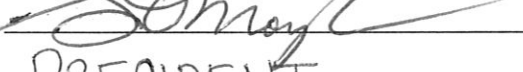
NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein set forth, it is agreed by the parties as follows:

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 a maximum of \$41,620.80 for two 30-inch force main casings oversize. This maximum dollar amount is based upon lengths, quantities and costs provided in Exhibit A attached hereto and incorporated herein by this reference. If actual lengths, quantities, and costs are less than specified in Exhibit A, the amount of reimbursement shall be adjusted accordingly. The Developer shall provide certified costs.
3. 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 of the two-30 inch force mains project/improvement 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.

4. The City shall make payment to the Developer within 45 calendar days of the project being completed, tested, as-builts submitted, costs verified, and project acceptance. Acceptance will be documented by issuance of an acceptance letter from the City.
5. 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).
6. 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.
7. 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 25<sup>TH</sup> day of SEPTEMBER, 2014

**DISCOVERY CIRCLE, LLC**

By   
 Its PRESIDENT

STATE OF SOUTH DAKOTA )  
 )ss.  
 COUNTY OF PENNINGTON )

On this 25<sup>TH</sup> day of SEPTEMBER, 2014, before me, the undersigned officer, personally appeared GILBERT D. MOYLE, who acknowledged him/herself to be the PRESIDENT of DISCOVERY, 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 DISCOVERY CIRCLE, LLC.

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

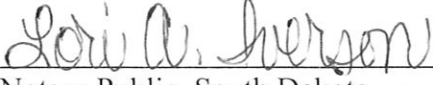
  
 Notary Public, South Dakota  
 My Commission Expires: 6/2/17





EXHIBIT A

Oversize Request for : 30" RCP Casings - For Future Force Mains

Project: Discovery Subdivision

Location: Proposed Discovery Circle

Entity Requesting Oversizing: Discovery Circle, LLC

Date: 9/18/2014

City File #: DEV12-1113

BID ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST
1	30" RCP Casings	LF	480	\$86.71	\$41,620.80
				TOTAL	\$41,620.80

OVERSIZE COST ESTIMATE	\$41,620.80
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