

**LOAN AND INFRASTRUCTURE  
DEVELOPMENT AGREEMENT**

This Agreement is made and entered into by and between the **CITY OF RAPID CITY**, a municipal corporation, hereafter called the “City,” and **HAROLD L. BIES, HENRY A. CRAIG,** and **LAZY P6 LAND CO., INC.** hereafter called collectively the “Developers.”

Recitals

**WHEREAS**, the City has established an Infrastructure Development Partnership Fund (hereafter called the “Fund”) to assist in providing adequate public improvements in areas of new development by financing the development of public improvements where such costs shall be repaid by the Developers, and shall hereinafter be referred to as the “loan”; and

**WHEREAS**, Harold L. Bies is the owner and developer of certain real property more particularly described as follows:

Tract A and Tract B of Parcel C of MJK Subdivision, Rapid City,  
Pennington County, South Dakota;  
and

**WHEREAS**, Henry A. Craig is the owner and developer of certain real property more particularly described as follows:

Lot B of the North Half (N½) of Government Lot Four (4), Section  
Eighteen (18), Township One North (T1N), Range Eight East (R8E)  
of the Black Hills Meridian, Pennington County, South Dakota;  
and

**WHEREAS**, Lazy P6 Land Co., Inc. is the owner and developer of certain real property more particularly described as follows:

Government Lot One (1), Section Nineteen (19), Township One  
North (T1N), Range Eight East (R8E) of the Black Hills  
Meridian, Pennington County, South Dakota;  
and

**WHEREAS**, Developers have made application for the use of Infrastructure Development Partnership funds in connection with the development of the real property above described and, in particular, for the Elm Avenue Street Extension to East Catron Boulevard; and

**WHEREAS**, the Rapid City Infrastructure Development Partnership Review Committee has recommended approval of the application for a loan to the Developers of \$1,073,424 from the Fund; and

**WHEREAS**, the parties hereto desire to enter into this Agreement to set forth the terms and conditions under which the Developers will borrow \$1,073,424 from the Fund and the terms and conditions under which the public improvements will be constructed by the City;

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

1. The City shall loan to Developers and Developers shall borrow from the Fund the principal sum of \$1,073,424. The principal sum of \$1,073,424 shall be interest-free for a period of five years from the date of substantial completion of the public improvements to be constructed from the loan proceeds. Thereafter and commencing at the beginning of the sixth year following substantial completion of the public improvements, interest shall accrue on the unpaid balance at an annual rate of 1% above the Prime Rate determined as of the date interest commences.

2. **Repayment.** The Developers shall repay their individual loans prior to final plat approval by the City. In the event final platting of the Development is accomplished in separate phases, then repayment of the principal and accrued interest shall be prorated based upon the number of lots then receiving final plat approval in relation to the total number of lots to be platted in the entire Development, expressed by the following formula:

$$\frac{\text{number of lots receiving final plat approval}}{\text{total number of lots in Development}} \times \begin{matrix} \text{principal and accrued} \\ \text{interest as of date of} \\ \text{plat approval} \end{matrix} = \begin{matrix} \text{loan} \\ \text{repayment} \\ \text{amount} \end{matrix}$$

Notwithstanding the above formula, Developers shall be obligated to repay the City the entire balance of the loan when the final plat is approved for the last phase of this project.

3. **Loan Guaranty and Security for Repayment.** In order to assure to the City repayment of the principal and all accrued interest as herein provided, each Developer shall provide the City with a bank secured letter of credit. Each Developer shall provide a letter of credit to cover the costs of his or its share of the funding allocation responsibilities as set forth in paragraph 5. The letter of credit will be provided before loan proceeds are distributed.

4. **Promissory Note.** The loans as herein provided shall be evidenced by a Promissory Note in the form shown on the attached Exhibit A.

5. **Elm Avenue Extension Project.** The City will construct in accordance with applicable City construction standards and requirements certain public improvements which will service the above-described developed properties and which may in the future service other developments in

the area. The project will include asphalt pavement, curb and gutter, water main, sewer main, storm sewer, box culvert, and the other items included, but not necessarily limited to those on the attached Engineer's estimate marked as Exhibit B. The parties have estimated the constituent parts of the entire construction and have agreed as to the apportionment of the costs between the Developers. The City will pay oversize costs on a 16" water line extension and the price will be based on this difference between bid prices for 8" and 16" water main. Loan responsibilities for each Developer will be based on linear footage of property fronting on the project. Each of the Developers is responsible for his/her apportioned share of the improvements. The following is the parties agreed division of costs for this project.

### **LANDOWNER REPAYMENT PLAN FOR STREET CONSTRUCTION**

<u>LANDOWNER</u>	<u>LEGAL DESCRIPTION</u>	<u>APPROXIMATE FRONT FOOTAGE</u>	<u>%</u>
Harold L. Bies	Tract B of Parcel C, MJK Subdivision	3,840 Lineal Feet	61.4%
Harold L. Bies	Tract A of Parcel C, MJK Subdivision	260 Lineal Feet	4.2%
Henry A. Craig	Lot B of the North 1/2 of Government Lot 4, Section 18, T1N, R8E, B.H.M.	1,320 Lineal Feet	21.1%
Lazy P6 Land Co., Inc.	Government Lot 1, Section 19, T1N, R8E, B.H.M	830 Lineal Feet	13.3%
<b>TOTAL</b>		<b>6,250</b>	

**TOTAL PROJECT COST = \$1,100,424**

**WATER OVERSIZE COST = 27,000**

**LOAN AMOUNT = \$1,073,424**

The design and construction contracting for this project will be provided by the City.

**6. Sidewalk Construction.** Project shall include a bike path on one side of Elm Street. The City will pay oversize costs for the bike path based on bid prices and the difference between a standard width sidewalk and the width of the bike path. The Developers shall construct in accordance with applicable City construction standards and requirements sidewalks on the other side of Elm Street which will service the developed projects. Developers will install the sidewalk at their own cost and will construct the sidewalk at the time of platting.

7. **Costs Variations**. In the event the actual construction costs vary from the above construction costs estimates, the parties agree that any actual costs will be paid by the developer in proportion to the percentages described above unless otherwise agreed to by the parties. Any agreements by the parties regarding actual costs shall be confirmed in writing and approved by the Rapid City Council.

8. **Easements and Rights of Way**. In order for the City to accomplish the construction project, Developers shall dedicate or obtain and provide to City, at no cost to the City, such easements and rights of way over, under and across private property, both permanent and for construction purposes, as may be necessary to construct and permanently locate, repair and maintain the streets as depicted on the attached Exhibit C. All easements and rights of way shall be conveyed and assigned to the City by deed or other appropriate conveyance, free and clear of all liens and encumbrances. Easements and rights of way shall be dedicated or provided to the City not later than April 15, 2001.

9. **Project Improvements**. The parties agree that all infrastructure project improvements constructed by the City pursuant to this Agreement are public improvements required pursuant to City ordinances.

10. **Further Assurances**. The parties agree to execute such other and further documents and instruments, not inconsistent herewith, as may be reasonably necessary to accomplish the intent and purpose of this Agreement.

11. **Modification**. This Agreement may be amended only by written agreement of the parties hereto.

12. **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

**DATED:** \_\_\_\_\_, 2001.

**CITY:**

**DEVELOPERS:**

**CITY OF RAPID CITY**, a municipal corporation

By \_\_\_\_\_  
Jim Shaw, Mayor

\_\_\_\_\_  
Harold L. Bies

**ATTEST:**

\_\_\_\_\_  
Henry A. Craig

\_\_\_\_\_  
James F. Preston, Finance Officer

(SEAL)

By: \_\_\_\_\_  
Its: \_\_\_\_\_

State of South Dakota,                 )  
  ) ss.  
County of Pennington                 )

ON THIS DAY, \_\_\_\_\_, 2001, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, who acknowledged himself to be Mayor and Finance Officer 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 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.

(SEAL)

Notary Public  
My Comm. Expires:\_\_\_\_\_

State of South Dakota, )  
 ) ss.  
County of Pennington )

**ON THIS DAY**, \_\_\_\_\_, 2001, before me, the undersigned officer, personally appeared Harold L. Bies, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

(SEAL)

Notary Public  
My Comm. Expires: \_\_\_\_\_

State of South Dakota, )

) SS.

County of Pennington

**ON THIS DAY, \_\_\_\_\_, 2001, before me, the undersigned officer, personally appeared Henry A. Craig, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.**

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

(SEAL)

Notary Public

My Comm. Expires:\_\_\_\_\_

State of South Dakota, )

) SS.

County of Pennington

**ON THIS DAY,** \_\_\_\_\_, 2001, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the \_\_\_\_\_ of **LAZY P6 LAND CO., INC.**, a corporation, and that he/she, as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself as such \_\_\_\_\_.

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

(SEAL)

Notary Public

My Comm. Expires:\_\_\_\_\_

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