

# **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 **LARRY D. HENDERSON, GAYLE R. BUNN, DAVID L. HENDERSON, and ELDENE K. HENDERSON, TRUSTEE OF THE ELDENE K. HENDERSON REVOCABLE TRUST**, hereafter called “Landowners.”

## 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 Landowners, and shall hereinafter be referred to as the “loan”; and

**WHEREAS**, Landowners are the owners of certain real property known as Disk Drive Extension (hereafter called the “Development”) located generally north of the Haines Station Shopping Center in the northern portion of the City of Rapid City and more particularly described as follows:

Lot Two (2), Block One (1), Section Twenty-five (25), Tires Plus Addition, Township Two North (T2N), Range Seven East (R7E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota;

**WHEREAS**, Landowners have made application for the use of Infrastructure Development Partnership funds in connection with the development of the real property above described for construction of the Disk Drive extension and;

**WHEREAS**, the Rapid City Infrastructure Development Partnership Review Committee has recommended approval of the application for a loan to Landowners of \$211,818.33 from the Fund; and

**WHEREAS**, the parties hereto desire to enter into this Agreement to set forth the terms and conditions under which Landowners will borrow \$211,818.33 from the Fund and the terms and conditions under which the public improvements will be constructed;

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

**1. IDPF Loan and Agreed Interest Rate.** The City shall loan to Landowners and Landowners shall borrow from the Fund the principal sum of Two Hundred Eleven Thousand Eight Hundred Eighteen Dollars and Thirty-Three Cents (\$211,818.33). The principal sum of Two Hundred Eleven Thousand Eight Hundred Eighteen Dollars and Thirty-Three Cents

(\$211,818.33) shall be interest-free for a period of five years from the date of substantial completion of the project. "Substantially complete" shall mean when all components of the project are available for public use and accepted by the City. 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 Wall Street Journal Prime Rate determined as of the date interest commences.

**2. Repayment.** Landowners shall repay the unpaid balance of the loan in full upon approval by the City of a final plat to divide the Development and the remainder of the unplatted portion of the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 25, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, located south of the proposed relocated Williston Basin Interstate Pipeline Company gas pipeline fee interest, into one or more saleable commercial lots (such subdivision of the Development and such unplatted real property hereinafter the "Development Project"); provided, that the unpaid balance of the loan in all events shall be due and payable no later than the end of the tenth year following substantial completion of the public improvements. The parties agree that the obligation to repay the loan shall not be accelerated upon approval by the City of a final plat for the relocation of the proposed Williston Basin Interstate Pipeline Company gas pipeline fee interest or upon approval by the City of a final plat to divide the unplatted portion of the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 25, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, located north of the proposed relocated Williston Basin Interstate Pipeline Company gas pipeline fee interest, into one or more saleable commercial lots.

**3. Security for Loan Repayment.** At the election of the Landowners, the repayment of the loan shall be secured by either:

- (a) A bank letter of credit in the amount of the original principal balance of the loan issued in a form acceptable to the City. The letter of credit will be issued before the loan proceeds will be distributed; or
- (b) A secured bank deposit in the amount of the original principal balance of the loan, with the Landowners entitled to retain all interest earned thereon prior to a default. The security interest granted in the bank deposit will be in a form acceptable to the City. The secured deposit will be made before the loan proceeds will be distributed.

**4. Promissory Note.** The loan as herein provided shall be evidenced by a Promissory Note in the form shown on the attached Exhibit A. The Promissory Note shall permit prepayment without penalty or premium.

**5. Street Construction Project.** The parties shall construct the project in accordance with applicable City construction standards and shall follow all bid laws applicable to municipalities. The parties have estimated the costs of the separate constituent parts of the entire construction projection, inclusive of design fees, and have agreed as to the apportionment of the costs between the City and Landowners. The following is the agreed division of the respective costs of the street construction:

### FUNDING ALLOCATION FOR DISK DRIVE CONSTRUCTION

PROJECT COMPONENT	EST. COST	STATE	CITY	LANDOWNERS
Disk Drive Extension	\$	\$	\$	\$
Drainage Basin Fee				0
Sanitary Sewer Connection Fee				0
Water Connection Fee				0
<b>TOTAL</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

**6. Cost 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 and the City in the exact proportion 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.

**7. Easements and Rights of Way.** In order for the City to accomplish the construction project, Landowners shall dedicate or obtain and provide to City, at no cost to the City, such easements and rights of way over, under and across all private property, both permanent and for construction purposes, as may be necessary to construct and permanently locate, repair and maintain the street right of way, public water line, waste water lines and storm drainage detention facilities as depicted on the attached Exhibit B.

**8. Project Improvements.** All infrastructure project improvements constructed by the City under this Agreement shall be public in character and shall be conveyed to the City together with all easements and rights of way related thereto, upon substantial completion thereof. All such improvements and related 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. Failure to execute the necessary conveyance documents within 30 days of substantial completion of the project shall result in all amounts due under the Promissory Note described in Paragraph 4 becoming immediately due and payable.

**9. Connection Fees.** The parties agree that applicable connection fees based on final project costs for water, sewer, and drainage construction shall be paid prior to the issuance of the building permit.

**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. Time.** This Agreement shall be valid if and only if the project is awarded by \_\_\_\_\_, 2003. Failure of any party to meet these deadlines shall result in the invalidation of this Agreement, and no party hereto shall have recourse against any other party for damages of any nature arising out of any such failure.

**14. Landowners as Singular.** The landowners shall be treated as one party under this agreement. Any modification of the terms or termination of this Agreement shall require the concurrence of all of the Landowners.

**15. Loan Assumption.** The obligations of the Landowners under the loan shall be assumable by a buyer of the Development, subject to credit approval by the City, which shall not be unreasonably withheld; provided, that the Development is sold prior to final approval by the City of the plat for the Development Project. The obligations of the Landowners under the loan shall be fully released in the event the loan is assumed by a qualified buyer.

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

**DATED:** \_\_\_\_\_, 2003.

CITY OF RAPID CITY

ATTEST:

\_\_\_\_\_  
Mayor

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

(SEAL)

\_\_\_\_\_  
Larry D. Henderson

\_\_\_\_\_  
Gayle R. Bunn

\_\_\_\_\_  
David L. Henderson

\_\_\_\_\_  
Eldene K. Henderson, Trustee of the  
Eldene K. Henderson Trust

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

**ON THIS DAY**, \_\_\_\_\_, 2003, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, who acknowledged themselves to be Mayor and Finance Officer, respectively, of the **CITY OF RAPID CITY**, a municipal corporation, and that 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**, \_\_\_\_\_, 2003, before me, the undersigned officer, personally appeared Larry D. Henderson, 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**, \_\_\_\_\_, 2003, before me, the undersigned officer, personally appeared Gayle R. Bunn, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she 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**, \_\_\_\_\_, 2003, before me, the undersigned officer, personally appeared David L. Henderson, 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**, \_\_\_\_\_, 2003, before me, the undersigned officer, personally appeared Eldene K. Henderson, Trustee of the Eldene K. Henderson Revocable Trust, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she 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: \_\_\_\_\_

Prepared By: CITY ATTORNEY'S OFFICE

**PROMISSORY NOTE*****US \$211,818.33******Rapid City, SD***  
***(Date)***

FOR VALUE RECEIVED, \_\_\_\_\_ of Rapid City, SD (Borrower) promises to pay to the City of Rapid City, Rapid City, South Dakota, (Lender) the principal sum of Two Hundred Eleven Thousand Eight Hundred Eighteen Dollars and Thirty-Three Cents (\$211,818.33) plus accrued interest. The principal 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 Wall Street Journal Prime Rate determined as of the date interest commences.

Lender hereby accepts that the principal sum represents repayment of an Infrastructure Development Partnership Fund Loan (Loan) to assist in providing adequate public improvements in an area known as the Disk Drive Extension more specifically described in the Loan and Infrastructure Development Agreement (Agreement) authorized by the Rapid City Council on \_\_\_\_\_.

Borrower shall repay the loan upon the earlier of either (a) approval by the City of a final plat of Borrower's Development Project or (b) ten years from the date of substantial completion of the infrastructure construction project. In the event final platting of Borrower's development is accomplished in separate phases, then repayment of the principal and accrued interest shall be prorated in accordance with the formula established in Section 2 of the Agreement. Borrower is obligated to repay the City the entire balance of the Loan including accrued interest when the final plat is approved for the last phase of this project.

Payments shall be made to: City of Rapid City Finance Office  
300 Sixth Street  
Rapid City, SD 57701

Attn: James F. Preston, Finance Officer

If any installment under this note is not paid when due and remains unpaid after a date specified by notice to Borrower, the entire principal amount outstanding and accrued interest thereon shall at once become due and payable at the option of the note holder. The date specified shall not be less than thirty (30) days from the date such notice is mailed. The note holder may exercise its option to accelerate during any default by



Borrower regardless of any prior forbearance. In the event of default, if costs are incurred to collect this note, the note holder shall be entitled to collect all reasonable costs and expenses of collection allowed by law, including reasonable attorney's fees.

Borrower shall have the right to prepay without penalty all or any portion of the remaining balance of this note at any time after date of execution with interest, if any, computed to the date of such prepayment.

All makers, sureties, guarantors, and endorsers hereby waive presentment, notice of dishonor, and protest hereof. This note shall be the joint and several obligation of all makers, sureties, guarantors, and endorsers, and shall be binding upon them and their successors and assigns.

Any notice to Borrower provided for in this note shall be given by mailing such notice to Borrower at an address designated by written notice from Borrower.

The indebtedness evidenced by this Note is secured by a (Bank Letter of Credit) / (Secured Bank Deposit) in accordance with the terms of the Agreement. A copy of this security is herein incorporated by reference as if fully set forth in this document.

This Note has been issued pursuant to, and shall be subject to, the terms, conditions, covenants and agreements set forth in the Agreement.

All documents and agreements between the parties hereto shall be governed by and construed in accordance with the laws of the State of South Dakota.

This agreement shall be binding upon the parties hereto, their heirs, successors, and assigns.

IN WITNESS WHEREOF, the undersigned sets its hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

ACKNOWLEDGEMENT

BORROWER

City of Rapid City

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

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

(SEAL)