# 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 N:\DOCS\Nyberg\Public Works\Agreements\Lazy p6 Oversize Agreement 5th St REVISED 9.24.13.docx

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ABA 3005 10-7-13 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 NW1/4SW1/4 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 NE¼SE¼ 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  $\P$  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

ATTEST:

Mayor

Finance Officer

(seal)

LAZY P6 LAND CO, INC.

By

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complete and in place.  Construction Costs  Off-Site Sewer Costs: 8+44 R1 to NE Pr		COST SHARE ESTIMATE		TE	<u>CITY</u>	Lazy P6	ESTIMATE DATE: Sep 19, 2013 2 Pages Ref 08/2012 Rapid City estimating guide	
							Comments	
Off Cita Corner Conta. 0: 44 D1 4c NIE D.	Quantity	Unit	Unit Cost	Extended				
	rop corner.			Sheet 5,6				
Mobilization	1	LS	7,500.00	7,500	3,750	-,	Catron Blvd Influence	
Strip, stockpile, 6" topsoil	450	CY	5.00	2,250		2,250		
Replace 6" topsoil, prep for seeding	450	CY	5.00	2,250		2,250		
Remove, Dispose 8 FT AC Shoulder	285		10.00	2,850	1,425	1,425	Catron Blvd Influence	
Remove, Replace Catron ROW Fence.	50	LF	20.00	1,000	500	500		
Connect to Ex 10" SS @ Ex MH 0+00: CS	5 1	LS	5,000.00	5,000	2,500	2,500	11	"
10" PVC sewer 15' to 20'	300	LF	90.00	27,000	13,500	13,500		
10" PVC sewer 8' to 15'	521	LF	55.00	28,655	14,327	14,327		
48" Std Manholes 15' to 20'	1	EA	9,000.00	9,000	4,500	4,500		
48" Std Manholes 8' to 15'	2	EA	3,000.00	6,000	3,000	3,000		
12 Ft Gravel Access Rd.; Turnaround	675	SY	50.00	33,750	16,875	16,875		
8' Type E-1 6"AC shoulder; 6" Gravel	285	SY	75.00	21,375	10,688	10,688	"	II .
Traffic Control Plan	1	LS	2,500.00	2,500	1,250	1,250		
Traffic Control- Misc	1	LS	2,500.00	2,500	1,250	1,250	II .	н
Traffic Control: Lane Closures	1	LS	5,000.00	5,000	2,500	2,500		
Digital Warning Message Board	2	EA	5,000.00	10,000	5,000	5,000		
Flaggers	1	LS	2,500.00	2,500	1,250	1,250	"	"
Sediment Barrier	900	LF	3.00	2,700		2,700		
Erosion Control Blankets Cat 3	4,100	SY	3.50	14,350		14,350		
Erosion Control	1	LS	1,000.00	1,000		1,000		
Seed, Fertilize, Mulch	1	AC	3,500.00	3,500		3,500		
2 Year Warranty Bond	1	LS	2,500.00	2,500		2,500		
ESTIMATED Cost Offsite Sewer				193,180	82,315	110,865		193,180
R1 Utility Costs  Mobilization: Remove, Reset Security Fence, Lights	1 650	LS LF	3,000.00	Sheet 7,8 3,000	<b>CITY</b> 0	Lazy P6	Standard Development Costs	
Remove, Reset Gates	50	LF						
Remove, Reset 4 Strand Wire Fence	100		0.00	<del>-</del>				
	100	LF	0.00	-				
Replace - regrade existing surfacing	1	EA	0.00	-				
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Replace - regrade existing surfacing Reset Mail Boxes  10" PVC sewer 8' to 12'  8" PVC sewer 8' to 15'  48" Std Manholes 8' to 15'  60" Std Manholes 8' to 15'  6" PVC sewer service  6 in C905 PVC Water Main  6 in gate valve w/ box.  10 in C905 PVC Water Main  10 in gate valve w/ box.  10x10 Tee  Hydrants w/ aux. Valve  24" Common Utility Trench  2" Sch 40 Conduit  4" Sch 40 Conduit  4" Sch 80 Conduit  4" Sch 80 Conduit  4" Sch 80 Conduit  Temporary Access To Ex Units  Traffic Control Plan  Permanent Signing  Sediment Barrier  Erosion Control  Sediment Barrier  Seed, Fertilize, Mulch	1   1   1     1	EA LF LF EA LF EA LF EA EA EA LF LF LF LF LF LS LS LS LS LS	0.00 0.00 300.00 45.00 35.00 3,000.00 5,000.00 35.00 30.00 1,100.00 45.00 2,100.00 600.00 850.00 5,000.00 6.00 7.00 8.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00				Standard Development Costs	
Replace - regrade existing surfacing Reset Mail Boxes  10" PVC sewer 8' to 12'  8" PVC sewer 8' to 15'  48" Std Manholes 8' to 15'  60" Std Manholes 8' to 15'  6" PVC sewer service  6 in C905 PVC Water Main  6 in gate valve w/ box.  10 in C905 PVC Water Main  10 in gate valve w/ box.  10x6 Tee  10x10 Tee  Hydrants w/ aux. Valve  24" Common Utility Trench  2" Sch 40 Conduit  4" Sch 40 Conduit  4" Sch 80 Conduit  4" Sch 80 Conduit  4" Sch 80 Conduit  4" Sch 80 Conduit  Temporary Access To Ex Units  Traffic Control Plan  Permanent Signing  Sediment Barrier  Erosion Control  Sediment Barrier	1 1 1 500 262 2 2 1 1 335 290 9 1,015 5 11 2 2 2 1 25 125 125 500 1 500 500 500 265 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	EA LF EA LF	0.00 0.00 300.00 45.00 35.00 3,000.00 5,000.00 35.00 30.00 1,100.00 45.00 2,100.00 600.00 850.00 5,100.00 6.00 5,000.00		0		Standard Development Costs	
Replace - regrade existing surfacing Reset Mail Boxes  10" PVC sewer 8' to 12'  8" PVC sewer 8' to 15'  48" Std Manholes 8' to 15'  60" Std Manholes 8' to 15'  6" PVC sewer service  6 in C905 PVC Water Main  6 in gate valve w/ box.  10 in C905 PVC Water Main  10 in gate valve w/ box.  10x10 Tee  Hydrants w/ aux. Valve  24" Common Utility Trench  2" Sch 40 Conduit  4" Sch 40 Conduit  4" Sch 80 Conduit  4" Sch 80 Conduit  4" Sch 80 Conduit  Temporary Access To Ex Units  Traffic Control Plan  Permanent Signing  Sediment Barrier  Erosion Control  Sediment Barrier  Seed, Fertilize, Mulch	1   1   1     1	EA LF LF LF LF LS LS LS LF AC	0.00 0.00 300.00 45.00 35.00 3,000.00 5,000.00 35.00 30.00 1,100.00 45.00 2,100.00 600.00 850.00 5,000.00 6.00 7.00 8.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00		0	182,595	Standard Development Costs	
Replace - regrade existing surfacing Reset Mail Boxes  10" PVC sewer 8' to 12' 8" PVC sewer 8' to 15' 48" Std Manholes 8' to 15' 60" Std Manholes 8' to 15' 6" PVC sewer service 6 in C905 PVC Water Main 6 in gate valve w/ box. 10 in C905 PVC Water Main 10 in gate valve w/ box. 10 in C905 PVC Water Main 20 in gate valve w/ box. 10x6 Tee Hydrants w/ aux. Valve 24" Common Utility Trench 2" Sch 40 Conduit 4" Sch 40 Conduit 4" Sch 80 Conduit 4" Sch 80 Conduit Temporary Access To Ex Units Traffic Control Plan Permanent Signing Sediment Barrier Erosion Control Sediment Barrier Seed, Fertilize, Mulch 2 Year Warranty Bond	1   1   1     1	EA LF LF LF LF LS LS LS LF AC	0.00 0.00 300.00 45.00 35.00 3,000.00 5,000.00 35.00 30.00 1,100.00 45.00 2,100.00 600.00 850.00 5,000.00 6.00 7.00 8.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00 5,000.00			182,595	Standard Development Costs	Page 1

Project: Lazy P-6 Phase 6A-2							
5th St 0+00 to 6+10							
16" water, 15" Sewer; utility trench					CITY	Lazy P6	
Mobilization	1	LS	5,000.00	5,000	2,500	2,500	
Remove, Dispose Catron PCC Surface	186.3		15.00	2,795	2,795	,	NOT done with city SS project: 5th & Catron
Remove, Reset Security Fence, Lights	650	LF	0.00	+			
Remove, Reset Gates	50	LF	0.00	-			
Replace - regrade existing surfacing	1	EA	0.00	-			
6 in C905 PVC water main	42	LF	40.00	1,680		1,680	
6 in gate valve w/ box.	1	EA	1,100.00	1,100		1,100	
10 in C905 PVC Water Main	76	LF	45.00	3,420	3,420		City required dual water main
10 in gate valve w/ box.	1	EA	2,100.00	2,100	2,100	7.500	
12 in C905 PVC Water Main 12 in gate valve w/ box.	125	LF EA	60.00 2,800.00	7,500 2,800		7,500 2,800	
16 in C905 PVC Water Main	480	LF	85.00	40,800	12,000	28,800	P6 12" Required.
16 in gate valve w/ box.	3	EA	7,500.00	22,500	14,100	8,400	
Connect to Ex 16" Water Main	1	EA	2,500.00	2,500	1,250	1,250	1 0 12 Roquirous
12x10 Reducer	1	EA	600.00	600	,	600	
12x6 Tee	1	EA	900.00	900		900	
16x6 Tee	2	EA	1,500.00	3,000	1,200	1,800	P6 12" Required.
12x10 Tee	1	EA	1,200.00	1,200		1,200	
16x12 Cross	1	EA	2,400.00	2,400	1,200	1,200	P6 12" Required.
12 x11 1/4 Bends	2	EA	800.00	1,600		1,600	DO 4011 Do 1
16 x 11 1/4 Bends	4	EA	2,000.00	8,000	4,800	3,200	P6 12" Required.
16 x 45 Bends	2	EA	1,600.00	3,200	1,600	1,600	
Hydrants w/ aux. Valve	2	EA	5,100.00	10,200		10,200	
15" PVC Sewer Main 8' to 10'	498	LF	60.00	29,880	4,980	24,900	P6 12" Required. MINUS off-site demand
8" PVC Sewer Main 8' to 10'	2	LF	35.00	70		70	1107 1 11 11 00 1 1 71 00
84 " Manholes	1	EA	10,000.00	10,000	9,000		NOT done with city SS project: 5th & Catron
48" Manholes Remove, Dispose Ex 72" Manhole	1	EA EA	3,500.00 7,500.00	3,500 7,500	7,500	3,500	NOT done with city SS project: 5th & Catron
Common Utility Trench	500	LF	6.00	3,000	7,500	3,000	
4" Schedule 40 Conduit	250	LF	6.00	1,500		1,500	
4" Schedule 80 Conduit	250	LF	7.00	1,750		1,750	
Replace Catron PCC Pavement Complete	186.3	SY	100.00	18,630	18,630		
Temporary Access	180.3	LS	3,500.00	3,500	10,030	3,500	
Traffic Control Plan	1	LS	2,500.00	2,500	2500	3,300	NOT done with city SS project: 5th & Catron
Traffic Control- Misc	1	LS	2,500.00	2,500	2500		The state of the s
Traffic Control: Lane Closures	1	LS	3,500.00	3,500	3500		
Sediment Barrier	300	LF	5.00	1,500		1,500	
Erosion Control	1	LS	1,000.00	1,000		1,000	
Seed, Fertilize, Mulch	1	AC	2,500.00	2,500		2,500	
2 Year Warranty Bond	1	LS	3,500.00	3,500	1,750	1,750	0.000
EST Cost 5th St Water, Sewer	4	E.4	2.500.00	219,625	97,325	122,300	219,625
ASBUILTS PROPERTY CORNERS	1	EA	2,500.00 1,000.00	2,400	1200	1,200	
PROPERTY CORNERS	1	EA	1,000.00	1,000		1,000	
		ļ					
Inspection Fee					3,000	3,000	
Sub T: AsBuilts- Prop Corners, Insp Fee					4,200	5,200	
Y 10 1 N 2 GO GO TO					(0.1.000		
Initial P6 COST ESTIMATE				103.040	604,800		
EST 5th, R1, Offsite Utilities: City				183,840	(183,840)		
FINAL P6 COST ESTIMATE					420,960		
FINAL PO COST ESTIMATE					420,900		
							CENTERLINE
							2040 W Main St Suite 211 Rapid City, SD 57702
							Ph: 341.3193 Fx: 341.3358 centrline@aol.com
							D 0
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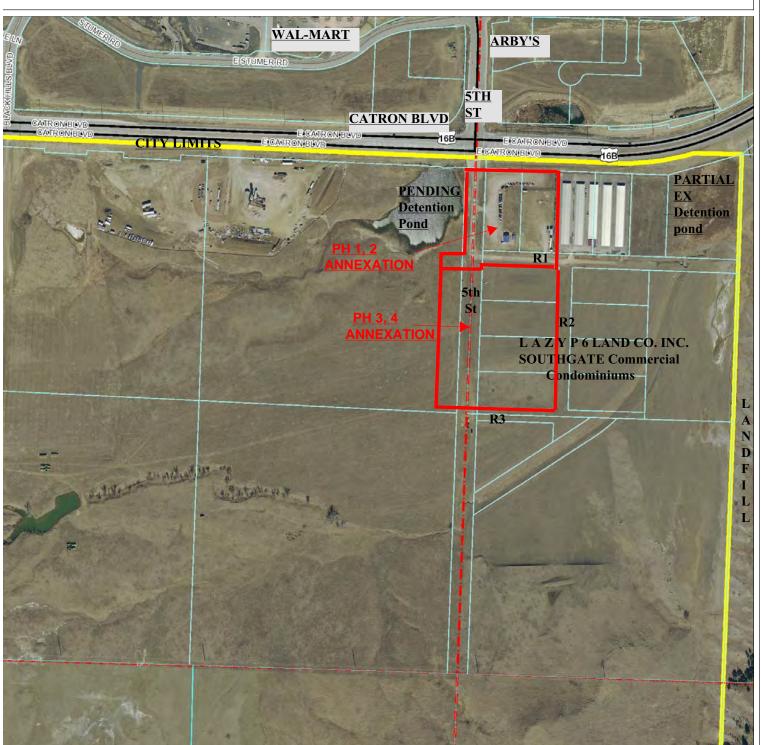
## EXHIBIT B: PHASING & ANNEXATION SCHEDULE FOR 2 Pages

## AN AGREEMENT BETWEEN THE CITY OF RAPID CITY AND LAZY P6 LAND COMPANY, INC FOR OVERSIZE STREET IMPROVEMENTS, DRAINAGE STRUCTURES, WATER MAIN, AND SEWER MAIN FOR OVERSIZE PROJECTS

### SOUTHGATE COMMERCIAL CONDOMINIUMS AND SOUTHGATE CONDOMINIUMS, PHASE II

REIMBURSABLE PHASE ID	MAP CODE
1: UTILITY EXTENSION; 5 <sup>TH</sup> ST TO R1; NE SEWER	Ph 1
2: PAVING; 5 <sup>TH</sup> ST TO R1	Ph 2
3: UTILITY EXTENSION 5 <sup>TH</sup> ST R1 TO R3	Ph 3
4: PAVING: 5 <sup>TH</sup> ST R1 TO R3	Ph 4

#### **Rapid City-Pennington County GIS** 15AN002



#### Legend

- County highway
- Minor arterial

### FS Highway Airport Runway Not yet coded

#### Lot Lines

- Lot Line
- Township/Section Lines
- □ County Line

**EXHIBIT B OVERSIZE** AGREEMENT Page 2 of 2



Scale 1: 4,800