

**AGREEMENT BETWEEN THE CITY OF RAPID CITY
AND ACTION DEVELOPMENT FOR STREET AND UTILITY
IMPROVEMENTS TO EAST ANAMOSA**

THIS AGREEMENT is made and entered into on this ___ day of _____, 2007, by and between THE CITY OF RAPID CITY, of 300 Sixth St., Rapid City, South Dakota, 57701, herein after referred to as the "City," and Action Development LLC, 4213 S Bedford Avenue, Sioux Falls, South Dakota 57103, herein after referred to as the "Developer."

WHEREAS, the Developer herein agrees to make street and utility improvements to East Anamosa Street between approximately Century Road and East North Street in accordance with the E. Anamosa Street construction plans associated with plat number 07PL081 and in accordance with the City's Subdivision Process; and

WHEREAS, the improvements will include, among other things, the installation of PCCP surfacing, dual water mains and respective appurtenances, sanitary sewer, storm drainage inlets and pipes, sidewalk, curb, gutter, roadway lighting conduit, traffic loops, and pavement markings; and

WHEREAS, the estimated cost of the above-described improvements is \$2,048,909; and

WHEREAS, the Developer is the legal owner in fee of land adjacent to the East Anamosa Street improvements legally described as:

Tract 1 less lot H1 Century "21", 65.37 acres more or less all
located in Section 32, T2N, R8E, BHM Rapid City, Pennington
County, State of South Dakota; and

WHEREAS, the above-described land owned by the Developer will directly benefit from the East Anamosa Street improvements and therefore, the Developer herein agrees to pay forty-eight percent (48%) of any and all improvement costs to construct said East Anamosa Street; and

WHEREAS, the City will also directly benefit from the East Anamosa Street improvements and therefore, the City agrees to pay fifty-two percent (52%) of any and all improvement costs to construct said East Anamosa Street not to exceed \$1,300,000.

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions herein contained, it is agreed as follows:

1. The Developer hereby agrees to let for bid the East Anamosa Street improvement project in accordance with the approved E. Anamosa Street construction plans associated with plat number 07PL081.

2. The Developer hereby agrees to let the project in accordance with all applicable state bidding laws and agrees to award the construction of the project to the lowest responsive and responsible bidder.
3. The Developer hereby agrees to prepare payment estimates with City concurrence and make regular payments directly to the contractor, after City verification, for successfully completed work and then provide proof of such payment to the City so the City may reimburse the Developer at the agreed upon rate of fifty-two percent (52%) of any and all improvements not to exceed \$1,300,000. City reimbursement to Developer shall be made within 45 days of proof of payment being provided to City.
4. The Developer agrees to require construction of the project in accordance with the City of Rapid City Standard Specifications for Public Works Construction; 2007 Edition.
5. The Developer hereby agrees no Change Order for the improvement project can be authorized without approval of the Rapid City Common Council.
6. The Developer hereby agrees to obtain a warranty bond or other equivalent surety to secure a two year warranty period for the public improvements to begin upon final acceptance of the project by the City. The warranty bond or other surety shall name the City of Rapid City as the beneficiary and shall be for an amount equal to 10% of the final construction contract price.
7. The Developer hereby agrees it has the power to enter into this Agreement and that its officer(s) signing for it have full power and authority to do so.
8. This Agreement constitutes the entire agreement of the parties. No other writings or negotiations are part of this document. This agreement may only be modified by mutual agreement of both parties. Any modifications or addendums to this agreement must be in writing.
9. The parties' rights and obligations under this Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this Agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, State of South Dakota

DATED this _____ day of _____, 2007.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

Action Development LLC

By: _____

Its: _____

By: _____

Its: _____

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

On this ____ day of _____, 2007, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

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

[SEAL]

Notary Public, State of South Dakota
My Commission Expires: _____

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

On this ____ day of _____, 2007, before me, the undersigned officer, personally appeared _____, who acknowledged them self

to be the _____ of Action Development LLC, and that as such, being duly authorized so to do, executed the foregoing instrument.

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

[SEAL]

Notary Public, State of South Dakota
My Commission Expires: _____

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

On this _____ day of _____, 2007, before me, the undersigned officer, personally appeared _____, who acknowledged them self to be the _____ of Action Development LLC, and that as such, being duly authorized so to do, executed the foregoing instrument.

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

[SEAL]

Notary Public, State of South Dakota
My Commission Expires: _____