

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND RUSHMORE
HOCKEY & SKATING ASSOCIATION, LLC.**

THIS AGREEMENT is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation, hereinafter referred to as the "City," and RUSHMORE HOCKEY & SKATING ASSOCIATION, LLC, PO Box 832, Rapid City, South Dakota, 57709, hereinafter referred to as the "Association".

WHEREAS, the Association desires to construct approximately 2,955 linear feet of 12" diameter water transmission main to provide water service and fire protection for the Association's facility located at 5611 Old Folsom Road, Rapid City, South Dakota 57703; and

WHEREAS, the Association's property resides outside the City of Rapid City; and

WHEREAS, Resolution No. 2014-092 was adopted by Council on October 4, 2014; and

WHEREAS, the Association requested provision of utility service outside City limits; and

WHEREAS, the City Council authorized the provision of utility service outside City limits to the Association on May 18, 2015; and

WHEREAS, a 12" water transmission main is the minimum size required to meet the Association's needs; and

WHEREAS, the City desires to have the Association construct the 12" water transmission main; and

WHEREAS, at its May 18, 2015 meeting, the City Council approved a funding request from the Association in the amount of \$200,000.00 to aid in the construction of the water transmission main; and

WHEREAS, the City will own and maintain the 12" water transmission main after it has been constructed, tested and deemed accepted by the City.

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

1. The Association hereby agrees to contract with a professional engineer to design the water transmission main for the Association. The water transmission main plans shall be approved by the City prior to starting construction.
2. The Association hereby agrees to contract with a professional engineer to provide construction observation services for the construction of the project.

3. The Association hereby agrees to prepare all contract documents and detailed specifications for the water transmission main.
4. The Association hereby agrees to publicly bid the project in accordance with State of South Dakota bid law.
5. The Association shall be responsible for all construction costs associated with the water transmission main. Principle components are approximately 2,955 feet of 12-inch water transmission main, fire hydrants, gate valves, and associated appurtenances.
6. The City shall reimburse the Association two hundred thousand dollars and no cents (\$200,000.00) of the total 12" water transmission main construction cost. If the total construction cost is less than \$200,000.000, then the City shall reimburse the actual construction cost.
7. The City's total cost share obligation for the project shall not exceed \$200,000.00 in total.
8. The City shall remit a payment of the above-identified costs to the Association within 45 calendar days of City acceptance of the 12" water transmission main project and with receipt of documentation of Association payment of project components and certification that the project was constructed in accordance with this Agreement.
9. The Association agrees to construct the 12" water transmission main and have all identified permanent utility easement or access easements recorded at the Register of Deeds Office for the water transmission main prior to City acceptance of the 12" water transmission main.
10. 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).
11. 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 the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.
12. 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

