

**SETTLEMENT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
HIGHMARK, INC.**

This Settlement Agreement (“Agreement”) is made and entered into on this ___ day of May, 2014, by and between the City of Rapid City, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the “City,” and Highmark Inc., a South Dakota corporation, located at 14667 139th Place, Piedmont, South Dakota 57769, herein after referred to as “Highmark.”

SECTION ONE: PURPOSE

This Agreement is made between the City and Highmark to memorialize the terms of a settlement reached between the parties for the complete and final disposition of their claims, differences, and causes of action arising out of *Highmark, Inc. v. Rapid City* filed in the Seventh Judicial Circuit and venued in Pennington County, South Dakota, Civil #12-566.

SECTION TWO: TERMS OF THE AGREEMENT

The City and Highmark wish to resolve all claims related to Highmark’s allegations that the City committed breach of contract, breached its duty of good faith and fair dealing, and was unjustly enriched by withholding approximately \$306,800 in liquidated damages. This settlement and release extends to the individual employees of the parties and the elected officials of the City. Each party specifically denies any liability whatsoever to each other on this claim.

Nothing in this Agreement should be construed as preventing or limiting Highmark’s litigation of any currently-existing claims in *Highmark, Inc. v. Northwest Pipe Company, et al*, Civ. 10-5089-JLV (“the federal action”). Highmark agrees that it will not seek to add the City or its employees as a party to the federal action. In the event the City and/or its employees are made a party to the federal action, both parties retain the right to assert any and all claims they may have against the other party, including those pled in *Highmark, Inc. v. Rapid City* Civil #12-566,

except for claims related to the withheld money of approximately \$306,800 for liquidated damages.

Both parties agree that unless and until the City and/or its employees are made a party to the federal action, neither party will file suit on any matters known or unknown, discovered or discoverable by the party, or which may be in controversy between the parties, nor will either party assert any claims which were made, or which could have been made, in the legal action described in Section One of this Agreement.

In consideration of the mutual covenants set forth herein, the City and Highmark agree as follows:

1. Highmark agrees to complete the installation of an impressed current system for that portion of the Jackson Springs Water Transmission Mains Project No. WTP09-1836 (the 'Project') that "LifeLast" coated pipe was installed prior to the stoppage of work in June, 2010 (approximately 4,000 lineal feet) at no cost to the City. The City intends to install an impressed current system along the entire length of the project and will negotiate with Highmark for an amendment to the contract or change order to complete the balance of the project (approximately 6,000 lineal feet) at a mutually agreeable price. If the parties are not able to negotiate a mutually acceptable price, the City may solicit bids to construct the balance of the project.
2. Engineering plans for the Project will be paid for by the City and furnished to Highmark for construction of the Project at no additional cost to Highmark. The parties' intent is for the project to be completed in 2014 subject to Highmark being provided the design plans and Project specifications within a reasonable amount of time. The parties will work together to develop a mutually agreeable timeframe for completion of the

Project. The parties recognize there needs to be some flexibility on when Highmark can construct the Project, given the fact that the City has various events that take place at Canyon Lake Park. Highmark will work with the City to perform the work at a mutually convenient time. It should be noted that any, or all, of the Project will be done at a time when the weather permits it.

3. The City will retain \$50,000 of the funds remaining to be paid under the original contract. This money is being withheld to reimburse the City for the additional engineering for the impressed current system and the additional engineering fees which occurred as a result of the alleged defective pipe. The City agrees to pay to Highmark the balance of the money owed on the original contract (approximately \$257,000).

4. The City agrees to acknowledge the expiration of the warranty period on the original contract and provide for the release of the bond on the original contract. Highmark agrees to provide the standard bonds and two year warranty on the installation of the impressed current system.

5. Highmark and the City will give their respective attorneys permission to sign a Stipulation for the Court to enter a Judgment of Dismissal of the claims they each have made against the other in the pending lawsuit.

SECTION THREE: EFFECT OF AGREEMENT

Highmark and the City agree and warrant that no promises, inducements, or representations have been made or offered except as herein set forth. The parties further agree that this Agreement is executed without reliance upon any statement or representation by any of the parties, their attorneys, or representatives, concerning the nature and extent of damages, or legal liability therefore, or the strength, weakness, or merit of any claims as part of this

settlement. Both parties and their attorneys have made their own determination as to the law and facts and assume any and all risk in that regard. The consideration identified in this Agreement is not a mere recital. All agreements and understandings between the parties are embodied and expressed in this Agreement or otherwise excluded.

Each entity executing this Agreement represents that it has full legal authority to do so. Each party assumes the risk of any mistake of fact, whether the fact, or facts, be present, past, or future, including the extent of any injuries, damages, or losses that may have been incurred or may be incurred in the future. This Agreement shall be binding on and inure to the benefit of Highmark and the City and their respective legal representatives, successors, and assigns. Highmark and the City hereby represent that they have carefully read the foregoing Agreement, have consulted with their attorneys, know the contents thereof, and sign this Agreement of their own volition.

CITY OF RAPID CITY

Sam Kooiker, Mayor

ATTEST:

Pauline Sumption, Finance Officer

HIGHMARK, INC.

Dale Scheulke, President

State of South Dakota)
 ss.
County of _____)

On this the ____ day of May, 2014 before me, the undersigned officer, personally appeared Dale Schuelke, who acknowledged himself to be the President of Highmark Inc., and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

Notary Public, _____

My Commission Expires:

(SEAL)