

THIS AGREEMENT is made this ____ day of _____, 2006, by and between the City of Rapid City, a municipal corporation organized under the laws of the State of South Dakota, hereinafter referred to as the "City," and Arlene (Ham) and Roy Burr of 1116 Crestridge Court, Rapid City, SD 57702, hereinafter referred to as the "Developers."

WHEREAS, water mains have been extended approximately 1,264 feet along Golden Eagle Drive beginning at its intersection with Catron Boulevard per City plans filed under City Project No. W01-1058, Golden Eagle Drive Water Main Extension and by Developers under DEV03-560; and

WHEREAS, Developers extended approximately 392 feet of an off-site 10" water main from the termination of the City project to the southwest corner of their property with the total costs incurred being \$15,662.68; and

WHEREAS, the adjacent property owner to the Developers' property would not grant an easement across his property for the DEV03-560 water main project until the Rapid City Common Council passed a resolution establishing a water construction fee; and

WHEREAS, usually water construction fees are not established by Council until actual construction costs are determined; and

WHEREAS, in order to satisfy the adjacent property owner, the Council established a resolution for the fee based on a construction quote; and

WHEREAS, the structure of the resolution was such that the cost of a base-size 8" water main was allocated on a percentage basis by acreage between the Developers (55.35%) and the adjacent property owner (44.65%); and

WHEREAS, because the Developers would upfront all the costs, the resolution placed a water construction fee on the adjacent property of Fifteen Thousand and Thirty Dollars (\$15,030); and

WHEREAS, the Developers has signed an agreement with the City dated April 21, 2003, that provides the Developers will be reimbursed for a portion of the cost of construction the water main, estimated reimbursement to be \$15,030.00 and not to exceed \$16,000; and

WHEREAS, after the above-described Agreement and Resolution were adopted by Council, the adjacent property owner declined to grant the utility easement; and

WHEREAS, as a result of the utility easement not being granted, the City allowed the Developer to modify the construction plans to terminate the 10" water main at the point where Golden Eagle Drive turns north and enters the adjacent property; and

WHEREAS, only 392 feet of the originally anticipated 1,128 feet of 10" water main was constructed by the Developers; and

WHEREAS, based on the actual 392 feet of 10" water main and appurtenances actually installed, the construction costs to be allocated to all benefiting property is approximately Fifteen Thousand Six Hundred Sixty-Two Dollar and Sixty-Eight Cents (\$15,662.68); and

WHEREAS, due to the above-described events, the City's previously adopted water construction fee resolution does not accurately depict the actual construction of the private development project DEV03-560 because the construction did not proceed as envisioned by the resolution; and

WHEREAS, the new resolution establishing the water construction fee corrects and addresses both projects, defines the appropriate water construction fee and establishes the benefiting area; and

WHEREAS, the water main oversize costs associated with the Golden Eagle Drive Water Main Extensions are apportioned according to the benefit each property receives on a per-acre basis; and

WHEREAS, the water connection fee resolution provides that the water main oversize and off-site construction costs totaling \$41,664.83 will be portioned to the properties identified in Exhibit A attached hereto and incorporated herein, according to the benefits to accrue to such property before such property shall be served with such facilities; and

WHEREAS, the property shown on Exhibit A as benefiting property shall pay \$762.26 per acre prior to connection to the City's water main (\$286.55 per acre for DEV03-560 and \$475.71 per acre for City Project W01-1058). This water construction fee established herein of \$726.26 is in addition to the existing fee of \$324.44 per acre for the existing Highway 16 Water Fee, City Object Code 3910-0009; and

WHEREAS, the water construction fee resulting from the City's W01-1058 benefits the Developers' property; and

WHEREAS, in regard to the water construction fee resulting from the City Project W01-1058 the water construction fee for the Developers' property is Seven Thousand One Hundred Fifty-Four Dollars and Sixty Eight Cents (15.04 acres at \$475.71 per acre); and

WHEREAS, the water construction fee attributable to the DEV03-560 project is \$286.55 per acre; and

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

1. The water construction fee shall be paid by each parcel in the Service Area identified in Exhibit A and any future subdivided properties within the Service Area requiring water utility service and obtaining a water connection.
2. The City hereby agrees to collect the construction fees from the identified properties at the time said properties request to connect to the above-described water main.
3. The City hereby agrees to reimburse the Developers their percentage of the water construction fees received per calendar year within 45 days of the end of each calendar year. In no case will the Developers be reimbursed in excess of the total calculated costs of construction. Payments to the Developers will cease if and when the total costs of construction are reimbursed.
4. The Developers hereby agrees to furnish the City Finance Office with a current mailing address and update that address as is needed in order to facilitate disbursement of collected construction fees.
5. Sixty-Two point Four Percent (62.4%) of the water construction fees collected as established shall accrue to the water utility enterprise fund and the balance to be reimbursed to Developers limited to an accumulated reimbursement limit of \$11,353.01.
6. The City shall reimburse the Developers their incurred construction cost for the 10" water main portion (\$15,662.68) less its proportional share based on acreage (\$4,209.67) for a net amount reimbursable not to exceed \$11,353.01. Said computation is not a reduction of the Developers' reimbursement by an amount equal to the water construction fee for City Project W01-1058, rather the Developers' parcel acreage is included in the computation and the recommended fees created by both projects are charged to any future subdivision and development of Developers' parcel (any lot created for the existing serviced building would not be subject to the fees). Thus, since the DEV 03-560 portion (\$285.55 per acre) of the combined water construction fee collected would be reimbursed to the Developers, there is not a doubling up of already allocated and paid fees by the Developers.
7. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of the other provisions hereof. If any portion of this Agreement is unenforceable for any reason whatsoever, such provision shall be appropriately limited and given effect to the extent that it may be enforceable.

8. 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.
9. This Agreement together with the attached Exhibit A identified above constitutes the entire agreement between the City of Rapid City and Arlene (Ham) Burr and Roy Burr and supersedes all prior written or oral understandings between the City of Rapid City and Arlene (Ham) Burr.

Dated this _____ day of _____, 2006.

Arlene (Ham) Burr

Roy Burr

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

On this the _____ day of _____, 2006, before me, the undersigned officer, personally appeared Arlene (Ham) Burr and Roy Burr, known to me or satisfactorily proven to be the persons whose names are subscribed within instrument and acknowledged that they executed the same for the purposes therein contained.

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

Notary Public, South Dakota
My Commission Expires:

(SEAL)

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

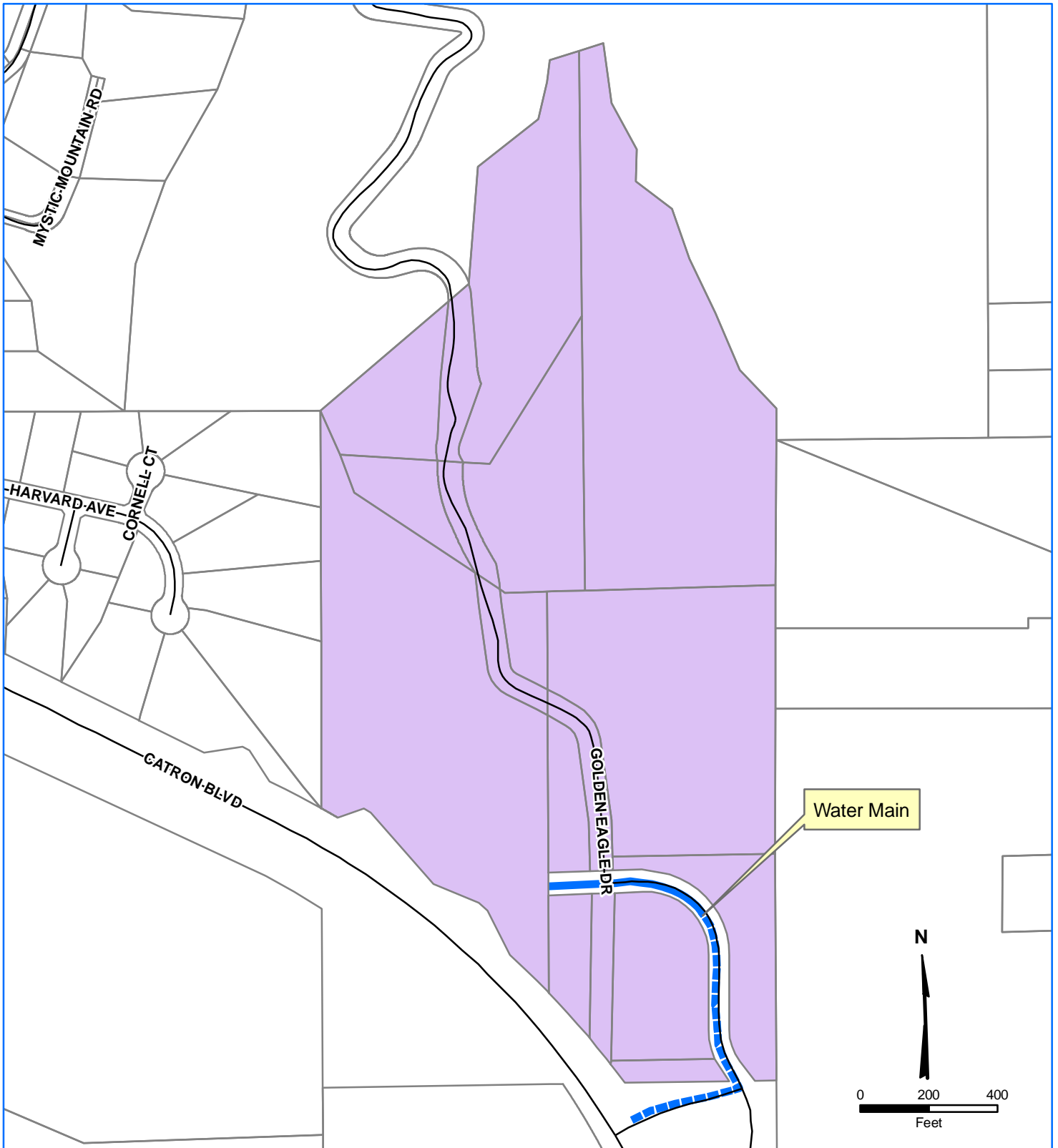
STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

On this the _____ day of _____, 2006, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, 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 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.

Notary Public, South Dakota
My Commission Expires:

(SEAL)



Legend

- City Project W01-1058 Water Main Extension
- DEV 03-560 Water Main Extension
- Benefiting Area

Golden Eagle Dr. Water Construction Fee Benefiting Area