

**Agreement Between City of Rapid City and McCarthy Properties LLC for the
Extension of Water and Sanitary Sewer Mains on Deadwood Avenue**

This Agreement is made and entered into 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 McCarthy Properties LLC, 2834 Jackson Blvd., Suite 202, Rapid City, SD 57702, herein after referred to as the "Developer".

WHEREAS, the Developer is proposing to redevelop the property legally described as Lot S in the Northwest Quarter of the Southwest Quarter (NW ¼ SW ¼) of Section 27 in Township 2 North of Range 7 East of the Black Hills Meridian in the City of Rapid City, Pennington County, South Dakota; and

WHEREAS, the described property is not currently served by City water or sewer; and

WHEREAS, the Developer desires to sell or otherwise make reasonable use of the property;
and

WHEREAS, the City .16 Committee has recently recommended funding the cost of extending water and sewer mains approximately 1130 feet to the north of the existing utility mains along Deadwood Avenue to provide service to the properties legally described as follows:

Lot S in the Northwest Quarter of the Southwest Quarter (NW ¼ SW ¼) of Section 27 in Township 2 North, Range 7 East of the Black Hills Meridian in the City of Rapid City, Pennington County, South Dakota; and

Lot 1-R of Lot B of the Northwest Quarter of the Southwest Quarter (NW ¼ SW ¼) and of the Southwest Quarter of the Northwest Quarter (SW ¼ NW ¼) of Section 27, Township 2 North, Range 7 East of the Black Hills Meridian in the City of Rapid City, Pennington County, South Dakota ; and

Lot 2-R of Lot 2 of Lot B in the Northwest Quarter of the Southwest Quarter (NW ¼ SW ¼) of Section 27 in Township 2 North of Range 7 East of the Black Hills Meridian in the City of Rapid City, Pennington County, South Dakota; and

Lot 3 of Lot B in the Northwest Quarter of the Southwest Quarter (NW ¼ SW ¼) of Section 27, Township 2 North, Range 7 East of the Black Hills Meridian in the City of Rapid City, Pennington County, South Dakota; and

Lot 4 of Lot B in the Northwest Quarter of the Southwest Quarter (NW ¼ SW ¼) of Section 27, Township 2 North, Range 7 East of the Black Hills Meridian in the City of Rapid City, Pennington County, South Dakota; and

WHEREAS, the City is willing to participate in this project utilizing \$520,000 from the utility facility funds to design and construct the project and recoup the utility facility funds through the adoption of construction fees which will be collected at the time any benefiting properties connect to the new water and sewer mains;

NOW THEREFORE, the parties hereby agree as follows:

1. The City agrees to design the water and sewer mains to be extended in and adjacent to Deadwood Avenue in accordance with all current City standards and requirements.
2. If the City Council agrees to fund the project in accordance with the recommendation of the .16 Committee, the City will by resolution, place a construction fee on all benefiting properties based on the final construction costs.
3. The Developer agrees to pay 100% of the construction fee for their property as determined by the final project costs. If the Developer connects to the water and/or sanitary sewer main(s) prior to the approval of the resolution, the Developer will be required to pay the fee within 30 days of the construction fee resolution for this project being approved by the City Council. If the Developer connects to the water and/or sanitary sewer main(s) after the approval of the construction fee resolution, the fee will be paid at the time the service lines from the property are connected to the mains. The Developer, or their heirs, assigns and successors in interest will also need to pay the normal tapping fees at the time service lines from the property are connected to the mains.
4. The City agrees to allow the Developer to utilize the existing shared well and shared onsite wastewater system until such time as the construction of the new infrastructure is complete. The City shall issue a temporary Certificate of Occupancy following redevelopment of the property on the condition that all improvements are inspected and approved by the building official and the fire department. The City will not require a temporary connection from the fire suppression system to the existing well, however the fire suppression system connecting to the City water main shall be incorporated into the site redevelopment and connection to the City water main shall be made when the City infrastructure is available for connection. The temporary Certificate of Occupancy shall expire after one year.
5. The Developer acknowledges that the City is under no legal obligation to expend funds to extend City water and sewer to serve their property and that the City's promise to publicly bid and participate in the cost of extending the water and sewer mains is good and sufficient consideration for the promises they have made herein.
6. The parties may undertake any legal or equitable action available to enforce the provisions of this agreement in addition to any other remedies provided herein.
7. Failure of a party to insist upon adherence to any term of this agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon adherence to that term, or any other term of this agreement.

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. If any section(s), or provisions of this agreement are declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this application if they can be given effect without the invalid section(s) or provisions.

10. This agreement shall be construed according to the laws of the State of South Dakota. Any action concerning this agreement shall be venued in Rapid City, South Dakota in the Circuit Court for the Seventh Judicial Circuit.

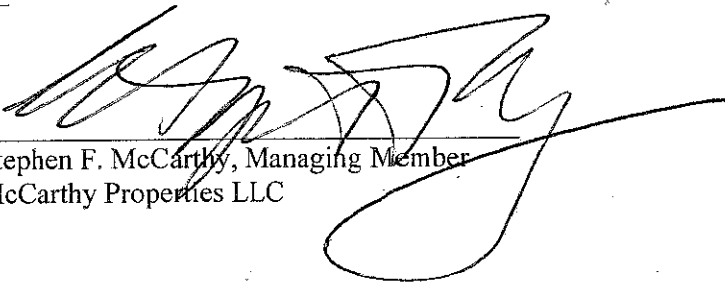
Dated this 9 day of August, 2011.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer



Stephen F. McCarthy, Managing Member
McCarthy Properties LLC

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2011, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, 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 Agreement Consenting to Assessed Project 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.

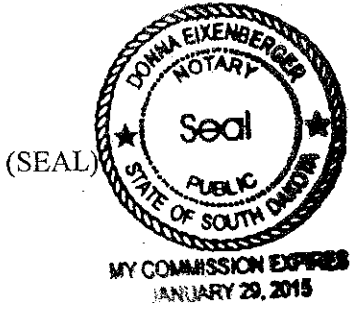
(SEAL)

Notary Public, South Dakota
My Commission Expires:

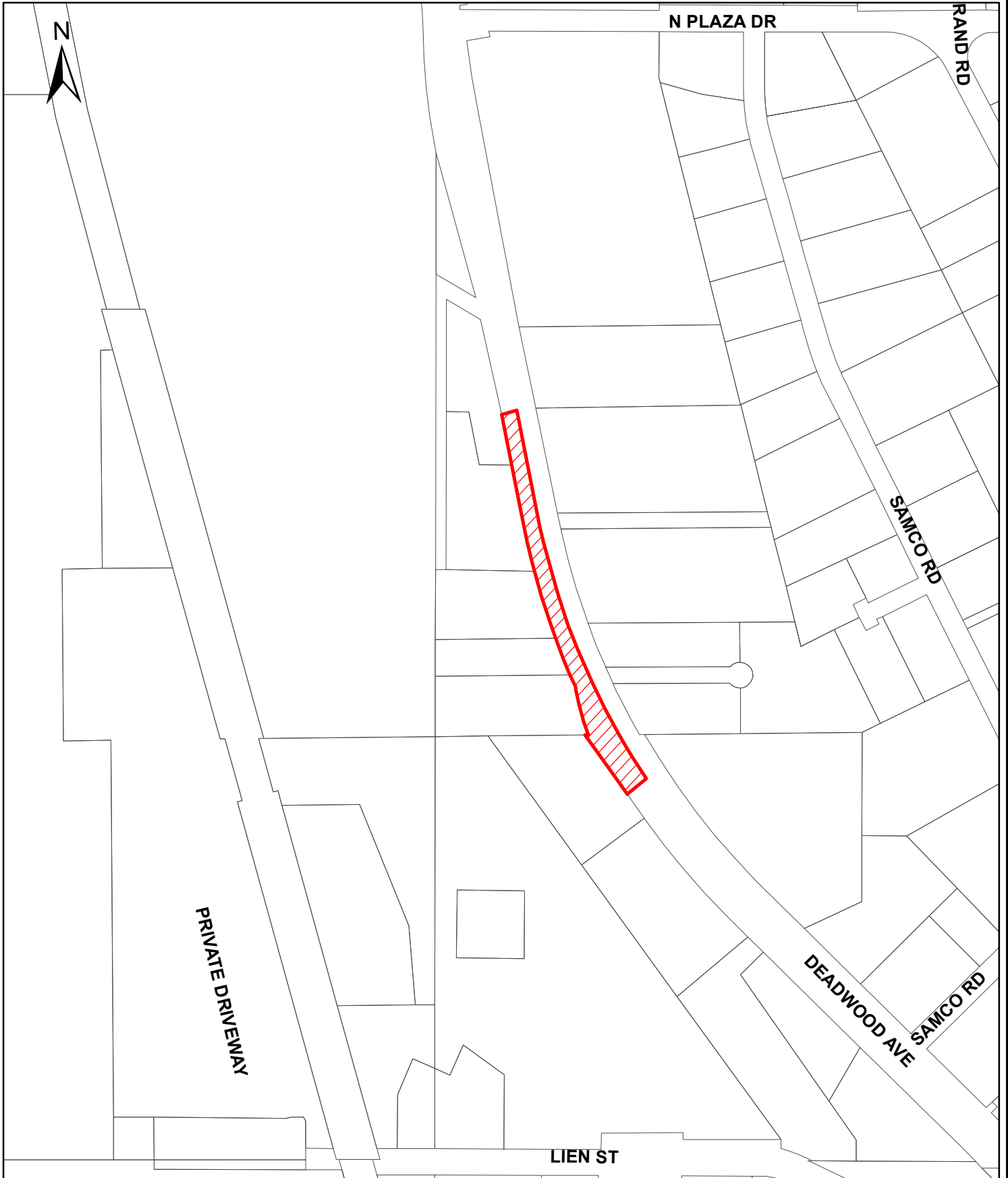
State of South Dakota)
) ss.
County of Pennington)

On this the 9th day of August, 2011, before me, the undersigned officer,
personally appeared Stephen F. McCarthy, known to me or satisfactorily proven to be the persons
whose names are subscribed to the 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.



Donna Eixemberger
Notary Public, South Dakota
My Commission Expires:



**MCCARTHY AGREEMENT DEADWOOD AVENUE
PROJECT AREA**