

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND YASMEEN DREAM, LLC  
FOR OVERSIZE STORMWATER DRAINAGE CHANNEL IMPROVEMENTS**

THIS AGREEMENT is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation, of 300 Sixth Street, Rapid City, SD 57701, hereinafter referred to as the "City," and YASMEEN DREAM, LLC, a South Dakota limited liability company, of 528 Kansas City Street, Rapid City, SD 57701, hereinafter referred to as the "Developer."

WHEREAS, the Developer desires to construct a regional drainage channel as recommended within the Unnamed Tributary Drainage Basin Design Plan to convey regional drainage through the Developer's Orchard Meadows project, located in Section 9, T1N, R8E, and generally in the southeast quadrant of the intersection of Elk Vale Road and Highway 44, in Rapid City, South Dakota.

WHEREAS, the Developer's property is located within the City of Rapid City; and

WHEREAS, the City and the Developer agree to construct a regional stormwater drainage channel, to convey a flow rate of regional runoff as determined by the Unnamed Tributary Drainage Basin through the Developer's Orchard Meadows development site.

WHEREAS, it is in the City's interest to have the Developer construct Element #8 of the Unnamed Tributary Drainage Basin Design Plan; and

WHEREAS, the Developer has submitted cost estimates to oversize the Stormwater drainage channel and City staff has reviewed and concurs with the costs, and

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

1. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.
2. The City shall reimburse the Developer a maximum of **\$433,805** for construction of Unnamed Tributary Drainage Basin Element #8 oversize. This maximum dollar amount is based upon lengths, quantities and costs provided in Exhibit A attached hereto and incorporated herein by this reference. If actual lengths, quantities, and costs are less than specified in Exhibit A, the amount of reimbursement shall be adjusted accordingly. The contingency amount from Exhibit A shall be used only for the construction line items listed in Exhibit A. The Developer shall provide certified costs.

In addition to the reimbursement for construction, the City shall reimburse the Developer a maximum of **\$28,920** for the design of Unnamed Tributary Drainage Basin Design Plan Element #8 oversize. In no event shall total reimbursement exceed **\$462,726**.

3. The Developer shall submit plans to the Federal Emergency Management Agency (FEMA) requesting a Conditional Letter of Map Revision (CLOMR). Once the CLOMR is obtained, the Developer shall submit plans to the City for construction approval and agree to construct the Unnamed Tributary Drainage Basin Design Plan Element #8 in accordance with approved plans.

4. Prior to project acceptance by the City, a warranty bond, or other equivalent surety, in an amount equivalent to ten percent (10%) of the total cost for construction of Unnamed Tributary Drainage Basin Design Plan Element #8 project/improvement shall be provided to the City to secure the warranty for a period of two years. The surety shall be in a form acceptable to the City Attorney. In lieu of the Developer providing the warranty surety, the City will accept warranty surety from the Developer's Contractor in favor of the City.

5. The City shall make the first payment in the amount equal to fifty percent (50%) of the total verified reimbursable cost to the Developer within 45 calendar days of the project being completed, tested, as-builts submitted, costs verified, Letter of Map Revision (LOMR) received and project acceptance. Acceptance will be documented by issuance of an acceptance letter from the City. The parties agree that due to funding constraints, the first payment shall be made no sooner than January 1, 2016. The remaining fifty percent (50%) of the verified reimbursable cost shall be paid by the City to the Developer no sooner than January 1, 2017. Payment in full shall be made by the City to the Developer if the conditions for the first payment are met after January 1, 2017.

6. 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).

7. 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 Pennington County, South Dakota.

8. 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 amendment to this Agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

YASMEEN DREAM, LLC

By Hani Shahidi

Its Managing member

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

On this 6<sup>th</sup> day of August, 2014, before me, the undersigned officer, personally appeared personally, who acknowledged him/herself to be the managing member of YASMEEN DREAM, LLC, and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of YASMEEN DREAM, LLC.

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



*Jennifer M. Leberknight*  
 Notary Public, South Dakota  
 My Commission Expires: 7/21/20

CITY OF RAPID CITY

\_\_\_\_\_  
 Mayor

ATTEST:

\_\_\_\_\_  
 Finance Officer

(seal)

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

On this \_\_\_\_ day of \_\_\_\_\_, 2014, 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 to do so, executed the foregoing agreement 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: \_\_\_\_\_

## Exhibit A

EXHIBIT A - UNNAMED TRIBUTARY DRAINAGE BASIN  
CONVEYANCE #8 ENGINEERS ESTIMATE

PROJECT: ORCHARD MEADOWS  
DDI PROJECT NO. 12-0654  
DATE: 6/17/2014

BID ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST	DEVELOPER	CITY OF RAPID CITY
	<b>STORM</b>						
	<b>DRAINAGE CHANNEL</b>						
	7'X3' DOUBLE BOX CULVERT	LF	225	\$ 1,500.00	\$337,500.00	\$337,500.00	
	TYPE II RIP RAP W/ FILTER FABRIC	TON	150	\$ 66.98	\$10,047.00	\$10,047.00	
	<b>IRRIGATION DITCH CROSSING</b>						
	36" CIRCULAR RCP, CLASS II	LF	206	\$ 145.00	\$29,870.00		\$29,870.00
	36" CIRCULAR RCP FLARED END SECTION	EA	2	\$ 1,500.00	\$3,000.00		\$3,000.00
	36" CIRCULAR RCP BENDS	EA	2	\$ 2,400.00	\$4,800.00		\$4,800.00
	TYPE II RIP RAP W/ FILTER FABRIC	TON	185	\$ 66.98	\$12,391.30		\$12,391.30
	PERMANENT TRM	SY	49	\$ 7.00	\$343.00		\$343.00
	SUGAR ROCK	TON	200	\$ 50.00	\$10,000.00		\$10,000.00
	<b>GRADING</b>						
	UNCLASSIFIED EXCAVATION	CY	56000	\$ 2.25	\$126,000.00		\$126,000.00
	TOPSOIL, STOCKPILE & REPLACE (6")	CY	21400	\$ 4.25	\$90,950.00		\$90,950.00
	SEEDING, FERTILIZING & MULCHING	AC	26.5	\$ 1,100.00	\$29,150.00		\$29,150.00
	CLEARING AND GRUBBING	LS	1	\$ 25,000.00	\$25,000.00		\$25,000.00
	<b>EROSION CONTROL</b>						
	EROSION CONTROL LUMP SUM	LS	1	\$ 30,000.00	\$30,000.00		\$30,000.00
				CONTINGENCY 20%	\$ 141,810.26	\$ 69,509.40	\$ 72,300.86
				DESIGN FEES 8%	\$ 56,724.10	\$ 27,803.76	\$ 28,920.34
				<b>TOTAL</b>	<b>\$907,585.66</b>	<b>\$444,860.16</b>	<b>\$462,725.50</b>