

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND FREELAND MEADOWS,
LLC FOR SANITARY SEWER IMPROVEMENTS AND OVERSIZE WATER MAIN
COST REIMBURSEMENT**

THIS AGREEMENT is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation, of 300 Sixth Street, Rapid City, South Dakota, 57701, hereinafter referred to as the "City," and Freeland Meadows, LLC, 801 Mt. Rushmore Rd., Ste. 100, Rapid City, South Dakota 57701, hereinafter referred to as the "Developer".

WHEREAS, the City has requested Developer to construct a force main access manhole in conjunction with a sewer force main being relocated by the Developer on Eli Drive, within the proposed Prairie Meadows Subdivision, Phase 3, generally located in the southeast quarter of Section 18, Township 2 North, Range 8 East, Rapid City, South Dakota; and

WHEREAS, the Developer desires to construct approximately 1,250 linear feet of 12" diameter water main within proposed Giants Drive and proposed Marino Drive to provide water service and fire protection for the proposed Prairie Meadows Subdivision, Phase 3; and

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

WHEREAS, the City has requested the Developer construct a 12" water main rather than an 8" water main, which is the minimum size required to meet the Developer's needs. The 12" water main will complete the connection between the North Rapid Operational Pressure Zone and the Low Level Operational Pressure Zone which is needed by the City; and

WHEREAS, the Developer has contracted with a professional engineer to prepare the design plans, contract documents and detailed specifications for the subdivision which include the design of the 12" water main and the force main access manhole; and

WHEREAS, the plans have been reviewed and approved by the City; and

WHEREAS, the Developer has submitted cost estimates for the construction of the access manhole and the 12" water main, and City staff has reviewed and concurs with the costs.

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 Developer agrees to construct a force main access manhole in accordance with the plans approved by the City. The Developer also agrees to construct a 12" water main as described above in accordance with the plans approved by the City. The Developer agrees to dedicate right-of-way to the City of Rapid City as identified in the preliminary plat for the Prairie Meadows Subdivision, Phase 3.

3. The Developer hereby agrees to solicit a minimum of three quotes for the project as well as manage the construction components of the 12" water main and force main access manhole. The City shall have the opportunity to approve quote selected and the construction contract for the 12" water main and force main access manhole project before it is awarded.

4. The Developer shall be responsible for all construction costs associated with the 12" water main and force main access manhole. The City's participation shall be by reimbursement of amounts expended by the Developer for construction.

5. The total maximum dollar amount to be reimbursed to the Developer for the construction of the sanitary sewer force main access manhole and the 12" water main oversize construction shall not exceed \$33,135.50. That total is allotted as follows:

- a. A maximum of \$15,699.50 for the force main access manhole.
- b. A maximum of \$17,436.00 for the oversize costs of 1246 feet of water main.

This maximum dollar amount is based upon quantities and costs provided in Exhibit A attached hereto and incorporated herein by this reference. If actual quantities, and costs are less than specified in Exhibit A, the amount of reimbursement shall be adjusted accordingly. The Developer shall provide certified costs.

6. 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 of the force main access manhole 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.

7. Acceptance of the project by the City will not be considered until all testing is completed, as-builts submitted, and costs verified. Upon the City's approval of the same, acceptance will be documented by issuance of an acceptance letter by the City.

8. The Developer may request reimbursement by the City only following acceptance of the project. The City shall make payment to the Developer within 45 calendar days of receipt of the reimbursement request, provided the project has been accepted.

9. If the Developer chooses not to move forward with the development contemplated in this Agreement, it shall have no obligation to build the sewer force main as required in this Agreement. The obligation to construct water main improvements, as contained in that certain Covenant Agreement between the parties dated July 16, 2014, and recorded in the Office of the Pennington County Register of Deeds as document number A201409027, shall continue in full force and effect.

10. The parties agree that this writing constitutes the entire agreement between them related to the oversize and improvement reimbursements discussed herein 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.

11. 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).

12. 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.

Dated this 24TH day of MAY, 2016

FREELAND MEADOWS, LLC

By 

Its MEMBER

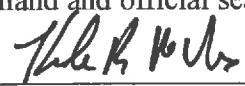
STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF PENNINGTON)

On this 24th day of May, 2016, before me, the undersigned officer, personally appeared Bret H. Estes, who acknowledged him/herself to be the Member of FREELAND MEADOWS, 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 FREELAND MEADOWS, LLC.

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

(seal)




Notary Public, South Dakota

My Commission Expires: 2-1-21

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(seal)

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

On this _____ day of _____, 2016, before me, the undersigned officer, personally appeared Steve Allender 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: