AGREEMENT BETWEEN THE CITY OF RAPID CITY AND GREG WHALEN
FOR 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 (“City”), and GREG WHALEN, of P.O. Box 746, Rapid City, South Dakota, 57709 (“Developer”).

WHEREAS, Developer owns property located within the City of Rapid City on Krebs Drive; and

WHEREAS, Developer desires to construct approximately 768 linear feet of 10” diameter water main within the Krebs Drive right-of-way to provide water service and fire protection for the Developer’s property located at Lot 6 of Tract 1 of NW1/4 of SE1/4 and a Tract of Land 50’ x 198.12’ in the NW1/4 of SE1/4 lying South of Lot 6 of Tract 1, all in Section 34, T2N, R7E; and

WHEREAS, the construction of this water main within Krebs Drive will provide water service and fire protection for 450 Krebs Drive; and

WHEREAS, the City has requested the Developer construct a 10” water main rather than an 8” water main, which is the minimum size required to meet the Developer’s needs; and

WHEREAS, The Developer’s engineer has demonstrated a 10” water main is not required to meet the needs of the development, however, it has been determined by the City that a 10” main is needed to meet the needs of the City in this area and will benefit this development and surrounding area; and

WHEREAS, the Developer has contracted with a professional engineer to prepare the design plans, contract documents and detailed specifications for the design of the 10” water main, as well as cost estimates for the construction; and

WHEREAS, the plans have been reviewed by the City, and the City concurs with the Developer’s cost estimates.

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 10” water main as described above in accordance with the plans approved by the City and in accordance with any other contractual obligations Developer has to the City with regard to this construction.
3. The Developer shall be responsible for all construction costs associated with the 10” water main. The City’s participation shall be by reimbursement of amounts expended by the Developer for construction except as noted in item 4.

4. The total maximum dollar amount to be reimbursed to the Developer for the construction of the 10” water main oversize construction shall not exceed $14,305.00. 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.

5. Payment to Developer shall be conditioned on a timely request for reimbursement. The oversize costs payable by the City will be recouped by charging construction fees to benefiting properties, which includes properties within this development, identified in Exhibit B. A construction fee resolution will be placed on the next available City Council agenda upon receipt of a request for reimbursement by the Developer. Any fees for benefiting properties within this development having connected to City water prior to the reimbursement request shall be deducted from the total reimbursement amount.

6. 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.

7. 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.

8. 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.

9. 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).

10. 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 7 day of MAY, 2018

DEVELOPER

GREG WHALEN

STATE OF SOUTH DAKOTA )
COUNTY OF PENNINGTON )ss.

On this 7 day of MAY, 2018, before me, the undersigned officer, personally appeared GREG WHALEN, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

SUSAN DONALD
Notary Public, South Dakota
My Commission Expires: September 9, 2023
CITY OF RAPID CITY

Mayor

ATTEST:

Finace Officer
(seal)

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

On this _____ day of ____________________, 2018, 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:
EXHIBIT A

Oversize Request for: **WATER MAIN**
Project: **Krebs Drive Water Main Extension Project**
Location: **Krebs Drive**
Entity Requesting Oversizing: **Greg Whalen**
Date: **5/3/2018**
City File #: **18-2446**

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**OVERSIZE COST ESTIMATE** $14,305.00
Exhibit B

Krebb's Drive Water Extension
Oversize Benefiting Area

Legend
- Proposed 10" Main
- Existing Watermain
- Project Location
- Benefiting Area

Scale: 0 125 250 500 Feet