

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND YASMEEN DREAM,
LLC FOR STORMWATER DETENTION BASIN IMPROVEMENTS**

THIS AGREEMENT is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation, hereinafter referred to as the “City,” and Yasmeen Dream LLC, 528 Kansas City Street, Rapid City, SD, 57701, hereinafter referred to as the “Developer.”

WHEREAS, the Developer desires to construct stormwater detention improvements to serve the Developer’s North Valley Park Subdivision Project generally located in the Northeast Quarter (NE1/4) of Section 32, T2N, R8E of the Black Hills Meridian, Rapid City, Pennington County, South Dakota; and

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

WHEREAS, the City and the Developer agree that Developer shall increase the size of the stormwater detention capacity, water quality and metering improvements on Developer’s property, as indicated in attached Exhibit A; and

WHEREAS, the construction of the identified oversize improvements on Exhibit A will increase the capacity of the detention pond in general accordance with the City’s Box Elder Drainage Basin Plan, Pond S819, as well as provide stormwater detention and water quality treatment for the Developer’s subdivision improvements; and

WHEREAS, the Developer has contracted with a professional engineer to design the stormwater detention pond and submitted final design plans for the stormwater detention pond to the City Rapid City which reviewed and approved the design plans as part of the North Valley Park Subdivision; and

WHEREAS, it is in the City’s interest to ensure that the Developer dedicates necessary easements and constructs stormwater detention and water quality improvements to accommodate the entire basin as per the plans approved by the City of Rapid City; and

WHEREAS, the Developer has submitted cost estimates to oversize the requested stormwater detention and water quality improvements, and the parties have agreed to the City’s share of the drainage improvements which will be paid as oversize.

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. If Developer constructs the stormwater detention pond and outfall piping oversize improvements as per the approved design plans (“the Drainage Improvements”), then the City shall pay the Developer a lump sum of One Hundred Eighty-Four Thousand Seven Hundred Seventy Five Dollars and No Cents (\$184,775.00) as reimbursement for its cost for the Drainage

Improvements as well as for Developer's dedication of a major drainage easement to the City's benefit containing the Drainage Improvements. This maximum dollar amount is based upon Exhibit A.

3. Prior to project acceptance the Developer shall submit to the City documentation certifying actual costs incurred to construct the Drainage Improvements. Acceptance will be documented by issuance of an acceptance letter from the City.

4. The parties agree that the drainage pond is intended to serve the drainage basin described in Exhibit B, and that part of the City's consideration for entering into this Agreement is Developer's promise that the drainage improvements will be designed to serve and will actually serve a drainage basin larger than Developer's property that includes property owned by other individuals and entities at the time of execution of this Agreement. Developer agrees that it will ensure that the property within the drainage basin described in Exhibit B can access and utilize the regional drainage improvements for drainage purposes. The parties agree that Developer's failure to perform this duty may result in the City demanding repayment of some or all of the payment City made for the drainage pond pursuant to Section 2.

5. The oversize costs payable by the City may be recouped by charging fees to benefiting properties as identified in Exhibit B.

6. Within 30 days of the Developer's request to inspect the detention pond, the City shall inspect and accept the detention pond if constructed in accordance with the City approved plans for the detention pond.

7. Within 60 calendar days of the project being completed, as-builts submitted, and project acceptance, City shall make payment to the Developer in the amount of One Hundred Forty Thousand Dollars (\$140,000). The City shall pay the balance of the payment required in Section 2 in January, 2020.

8. 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).

9. 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.

10. 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.

