AGREEMENT BETWEEN THE CITY OF RAPID CITY
AND YASMEEN DREAM 111, LLC, FOR WATER MAIN CONVERSION
IN EAST ANAMOSA STREET

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 YASMEEN DREAM 111, LLC, a South Dakota limited liability corporation, of 520 Kansas
City Street, Rapid City, South Dakota, 57701 (“Developer”).

WHEREAS, Developer owns property located within the City of Rapid City southeast of
the termination of East Anamosa Street which it is subdividing and developing as Shepherd Hills
Subdivision; and

WHEREAS, the development of the Shepherd Hills Subdivision requires a high level
water main for water service, and this area is not currently served by a high level water main; and

WHEREAS, the City’s water utility includes a 12” low level water main located in East
Anamosa Street from East North Street to the terminus of East Anamosa Street; and

WHEREAS, Developer has requested to convert approximately 1543 linear feet of the
City’s existing 12” low level water main in East Anamosa Street to a high level water main in
order to provide service to the Shepherd Hills Subdivision; and

WHEREAS, the conversion of this low level water main to the City’s high level water
system would support future development for City high level service areas beyond Developer’s
Shepherd Hills Subdivision; and

WHEREAS, the Developer has agreed to make a payment toward the City’s costs to
replace the low level water main that will be converted to a high level water main and to contract
with a professional engineer to prepare the design plans, contract documents and detailed
specifications for a City project to replace the low level water main; and

WHEREAS, the parties have reached this understanding with regard to the conversion of
the 12” water main and wish to reduce their agreements to writing.

The parties hereby agree as follows:

1. **Recitals.** 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. **Purpose.** This Agreement is made to outline the terms and conditions for the Developer’s
conversion of a City water main in East Anamosa Street from the City’s low level water system
to its high level water system.
3. **Consideration.** The parties agree that the City’s permission for Developer to convert the 12” water main from the low level system to the high level system, the Developer’s payment and provision of construction plans, and the mutual promises and understandings contained herein are good and sufficient consideration.

4. **Developer Obligations.** Within 45 days of execution of this Agreement, Developer shall pay City One Hundred and Five Thousand Dollars and No Cents ($105,000.00). This amount is based upon the parties’ agreement about Developer’s share of the costs the City will incur to replace the converted 12” low level water main at a future date.

Within 90 days of execution of this Agreement, Developer shall provide City with 95% construction plans for the City project to construct a replacement low level water main from Developer’s engineer, KTM Design Solutions, Inc. All construction plans provided by Developer shall comply with the City’s Infrastructure Design Criteria Manual and Standard Specifications for Public Works Construction and are subject to the City’s review and approval. If City requires Developer’s engineer to perform additional work in order for the construction plans to be approved by the City, any such work shall be at Developer’s cost. Thereafter, Developer shall provide 100% design plans and associated reports and materials to the City to review and approve. Developer’s obligations in this paragraph are complete once the City approves the 100% construction plans.

5. **Conversion.** Upon completion of Developer’s obligations in Section 4, City shall timely convert approximately 1543 linear feet of the existing 12” low level water main in East Anamosa Street to the City’s high level water system. The City shall complete this conversion within 90 days of receipt of the construction plans and payment as required in Section 4, but this time may be extended by act of God or by mutual agreement of Developer and the Public Works Director. City shall be responsible for all contact with property owners currently connected to the low level water main, provision of pressure reducing valves as needed, and other work to convert the water main.

6. **Disposition of Payment.** The payment made under Section 4 will be deposited in the City’s water enterprise fund. The funds may be used by the City for any lawful purpose.

7. **Entire Agreement.** The parties agree that this writing constitutes the entire Agreement between them related to the conversion of the 12” water main 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.

8. **Severability.** 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. **Controlling Law.** 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. **Waivers.** The failure by one party to require performance of any provision herein shall not affect that party’s right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

11. **Time.** Time is of the essence of this Agreement.

12. **Effect of Agreement.** This Agreement shall be binding in all respects upon and shall inure to the benefit of City and Owner and their respective successors and assigns.

13. **Counterparts.** This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

14. **Integration.** This Agreement and the agreements and documents referred to herein (including any exhibits and schedules incorporated herein) contain the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter hereof. This Agreement may only be amended by a written document duly executed by all parties.

15. **Third Parties.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein shall give or be construed to give any person or entity, other than the parties hereto, their respective successors, and permitted assigns, any legal or equitable rights hereunder.

16. **Jurisdiction and Venue.** The parties hereto explicitly agree to submit to the personal jurisdiction of South Dakota state courts, and any dispute relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall be decided solely and exclusively by the Circuit Court located in Rapid City, South Dakota.
Dated this _____ day of _______________, 2019.

YASMEEN DREAM 111, LLC

By: ________________________________

Its: ________________________________

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

On this the _____ day of ______________, 2019, before me, the undersigned officer personally appeared ____________________, known to me or satisfactorily proven to be the ______________________ of YASMEEN DREAM 111, LLC, a South Dakota limited liability company, and that he/she, as such __________________ being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

(seal) Notary Public, South Dakota
My Commission Expires: ____________________
CITY OF RAPID CITY

Mayor Steve Allender

ATTEST:

Pauline Sumption, Finance Officer

(seal)

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

On this _____ day of ____________________, 2019, 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: