AGREEMENT BETWEEN THE CITY OF RAPID CITY AND YASMEEN DREAM, L.L.C. FOR CONSTRUCTION OF PUBLIC WATER MAIN

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 ("City"), and YASMEEN DREAM, L.L.C., a South Dakota limited liability company, located at 520 Kansas City Street, Suite 101, Rapid City, South Dakota 57701, herein after referred to as ("Developer").

WHEREAS, Developer owns property located within the City of Rapid City East Saint Patrick street and South Dakota State HWY 44, legally described as follows: Lot C, Lot D, Lot E Revised, Lot F Revised and Tract A of the Johnson Ranch Subdivision in Section 9, T1N, R8E, B.H.M., Rapid City, Pennington County, South Dakota ("Developer’s Property"); and

WHEREAS, the Developer desires to construct approximately 1,450 linear feet of 16" water main adjacent to Developer’s Property (the Public Improvements); and

WHEREAS, the Developer plans to construct the Public Improvement within the East Saint Patrick Street right of way and the Railroad right of way adjacent to SD Highway 44; and

WHEREAS, the Developer has submitted preliminary drawings for the requested Public Improvements; and

WHEREAS, upon its completion according to the terms of this Agreement, the City has agreed to accept ownership of the Public Improvements that Developer will construct.

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

1. Design. Developer hereby agrees to contract with a professional engineer to design the Public Improvements. The plans shall be designed in accordance with the City’s Infrastructure Design Criteria Manual and the City’s Standard Specifications for Public Works Construction. All plans shall be approved by the City prior to starting construction.

2. Construction Observation. Developer hereby agrees to contract with a professional engineer to provide construction observation services for the construction of the Public Improvements. City reserves the right to observe and inspect all construction activities of the public and private portions of the project.

3. Construction. Principle components of the Public Improvements that Developer promises to construct include the installation of approximately 1,450 linear feet of 16" water main, two 16" valves, two fire hydrants, 16" bends and the abandonment of existing 14" water main. Developer agrees to construct the Public Improvements according to the approved plans. No changes or variances from the plans shall be allowed unless approved by City in writing. Developer shall be responsible for all costs associated with the construction of the Public Improvements.

4. Pre-Construction Meeting. Developer shall conduct a pre-construction meeting prior to commencing construction of the Public Improvements. Developer shall notify City and all affected private and public utilities of the meeting date and time a minimum of five working
days prior to the meeting. Developer, Developer’s professional engineer, and Developer’s
construction contractor shall attend the pre-construction meeting.

5. Permits. Developer will prepare applications for and pay costs of necessary permits for the
work. City as owner of the line will promptly execute applications for and as applicable sign and
issue all necessary permits for the work including City permits, SDDOT permits, SD Railroad
permits, and Corp of Engineer permits.

6. Warranty. Developer agrees to provide a two-year warranty that all materials furnished
and installed and work completed pursuant to this contract will be new, and shall be of good
quality, free from defects, and in conformance with the approved plans and specifications. The
warranty shall also meet the requirements of the City’s Standard Specifications for Public Works
Construction, Section 7.65. Prior to project acceptance by City, a warranty bond, or other
equivalent surety, in an amount equivalent to ten percent (10%) of the total cost of the Public
Improvements shall be provided to City to secure the warranty for a period of two years. The
surety shall be in a form acceptable to the City Attorney.

7. Project Acceptance. Acceptance of the project by City will not be considered until all
construction and testing is completed and as-built plans submitted. Upon City’s approval of
the same, acceptance will be documented by issuance of an acceptance letter by City.

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. Governing Law and Venue. 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 the State of South Dakota, Seventh
Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

10. Entire Agreement and Amendments. 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. The parties agree that
this Agreement is not intended to amend, supersede, or have any legal effect upon the
Settlement Agreement Between the City of Rapid City and Yasmeen Dream, L.L.C. dated
January 6, 2020. No modification or amendment to this Agreement shall be valid, unless
evidenced by a writing signed by the parties hereto.

11. Incorporation of Railroad License Agreement. The parties incorporate the relevant
provisions of the Railroad Pipeline License WL1130 entered into by the City and the South
Dakota Department of Transportation on or before the execution of this Agreement. Developer
agrees to be bound by the relevant terms of the Railroad Pipeline License WL1130, including but
not limited to Sections 11(b), 18, 19, 22, 24(d), and 24(e)(ix). Further, Developer agrees that, to
the fullest extent permitted by law, Developer will release, indemnify, and defend the State and
any permitted users, and their successors and assigns (collectively, "indemnitees") against any and all claims of any nature arising directly or indirectly out of (in whole or in part):

a. this Railroad Pipeline License WL1130 ("License"), including, without limitation, its environmental provisions;
b. any rights or interests granted pursuant to this License;
c. the Licensee's occupation and use of the Premises;
d. the environmental condition and status of the Premises caused by or contributed to by the Licensee; and,
e. any act or omission of the Licensee or the Licensee's officers, agents, invitees, employees, or contractors, or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over;

even if such liabilities arise from or are attributed to, in whole or in part, any negligence of any indemnitee. The only liabilities with respect to which the Licensee's Developer's obligation to indemnify the indemnitees does not apply are liabilities to the extent proximately cause by the gross negligence or willful misconduct of an indemnitee.

To the fullest extent permitted by law, notwithstanding the limitation described above, the Developer will, now and forever waive any and all claims, regardless whether based on the strict liability, negligence, or otherwise, that an indemnitee is an “owner,” “operator,” “arranger,” or “transporter” with respect to the Pipeline for the purposes of CERCLA or other environmental laws.

To the fullest extent permitted by law, the Developer agrees, regardless of any negligence or alleged negligence of any indemnitee, to indemnify the indemnitees against and assume the defense of any liabilities asserted against or suffered by any indemnitee under or related to the Federal Employers' Liability Act (FELA) whenever employees of the Developer or any of the Developer’s agents, invitees, or contractors claim or allege that they are employees of any indemnitee or otherwise. This indemnity will also extend on the same basis to FELA claims based on actual or alleged violations of any federal, state, or local laws or regulations, including but not limited to the Safety Appliance Act, the Boiler Inspection Act, the Occupational Health and Safety Act, the Resource Conservation and Recovery Act, or any similar state or federal statute.

[SIGNATURE PAGES FOLLOW]
Dated this ____ day of ____________________, 2020.

CITY OF RAPID CITY

______________________________
Mayor Steve Allender

ATTEST:

Finance Officer Pauline Sumption
(seal)

State of South Dakota)
County of Pennington)
ss.

On this the ____ day of _________________, 2020, 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.

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

(seal)

Yasmeen Dream, L.L.C Infill Agreement
Johnson Ranch 16" Water Main
YASMEEN DREAM, L.L.C.

By ____________________________

Its ____________________________

STATE OF SOUTH DAKOTA

COUNTY OF PENNINGTON

On this 24th day of March, 2020, before me, the undersigned officer, personally appeared [Name], who acknowledged him/herself to be the ___________ of YASMEEN DREAM, L.L.C., and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

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

Notary Public
My Commission Expires: 10/28/2021

[Seal]
VICINITY MAP

E SAINT PATRICK STREET
16-INCH WATERMAIN INTERCEPTOR
PROJECT NO. 20-2577