

AGREEMENT BETWEEN THE CITY OF RAPID CITY, RAPID VALLEY SANITARY DISTRICT, AND YASMEEN DREAM, LLC FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF ORCHARD MEADOWS LIFT STATION

This Agreement is made by and between the **CITY OF RAPID CITY**, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, SD 57701 (the “City”), **RAPID VALLEY SANITARY DISTRICT**, a South Dakota public corporation, of 4611 Teak Drive, Rapid City, SD 57703 (“RVSD”), and **YASMEEN DREAM, LLC**, a South Dakota limited liability company, of 520 Kansas City Street, Ste. 101, Rapid City, SD 57701 (the “Developer”).

WHEREAS, the City of Rapid City has created Tax Increment District Number 82 to finance the construction of public improvements within the District; and

WHEREAS, one of the public improvements within the District is a lift station to serve the Rapid Valley Sanitary District’s sewer service system; and

WHEREAS, one of the stipulations of approval of the use of tax increment financing dollars for construction of the RVSD lift station was the agreement by RVSD to accept, own, and operate the lift station; and

WHEREAS, the parties desire to enter into this Agreement to reduce their mutual agreements and understandings to writing.

NOW THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein, it is agreed between the parties 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 as agreements of the parties.

2. Lift Station. The subject of this Agreement is the lift station to be built as contemplated by that certain Contract for Construction of Public Improvements by Private Developer for Tax Increment District Number Eighty-Two between the City and Developer dated August 5, 2020.

3. Lift Station Design. RVSD shall have approval authority for the design of the lift station. The Developer agrees to submit all engineered drawings, plans, and other documents necessary and required by RVSD to allow RVSD to approve the design of the lift station.

4. Lift Station Construction. Developer shall construct the lift station according to the plans approved by RVSD. Any changes to the design must be approved by RVSD.

5. Lift Station Acceptance. Upon completion of construction, RVSD, with the aid of Developer, shall utilize its standard processes and procedures for acceptance of Developer-constructed infrastructure. Developer shall submit all necessary forms, documents, fees, inspection and testing results, and bonds or other sureties as required by RVSD ordinances and policies to gain acceptance. RVSD, upon satisfactory submission by Developer of the foregoing, agrees to accept ownership of the lift station.

6. TIF Reimbursement. The parties agree that the City's reimbursement for the design and construction of the lift station shall in all respects comply with the Agreement between the City and the Developer. The City will not reimburse Developer unless and until the lift station has been accepted by RVSD.

7. Notices. All notices and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when either (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid) or (b) placed in the mail, first class postage prepaid, in each case to the addresses provided above (or such other address as a party may designate by notice to the other parties).

8. Relationship between the Parties. The relationship of the parties is that of independent contractors. The parties are not, by virtue of this Agreement or otherwise, in an employer-employee, principal-agent, joint venture or partnership relationship with each other, and each party agrees not to represent to any other person, or to assert in any form or forum to the contrary. Neither party is authorized to act as an agent for, or legal representative of, the other party and neither party shall have the authority to assume or create any obligation on behalf of, in the name of, or binding upon the other party.

9. 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.

10. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

11. 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.

12. Waivers. No waiver of any term or provision of this Agreement shall be binding unless executed in writing by the party waiving such term or provision.

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. Further Action. The parties covenant and agree that each shall execute and deliver such further instruments or documents as shall be necessary or convenient to effectuate the purposes contemplated by this Agreement.

15. Interpretation. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision. The parties agree that each party has reviewed this Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

16. Severability. The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement or the remainder of such section. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible.

17. Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the state of South Dakota, without regard for its choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the state of South Dakota, without regard for its choice-of-law principles.

18. 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 _____, 2020.

CITY OF RAPID CITY

By _____
Steve Allender, Mayor

Attest

Pauline Sumption, Finance Officer

(seal)

RAPID VALLEY SANITARY DISTRICT

By *AS*
(signature)

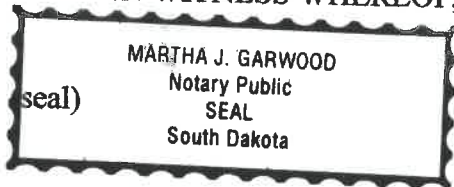
Rusty Schmidt
(printed name)

Its manager
(title)

State of South Dakota)
) ss.
County of Pennington)

On this the 17 day of September, 2020, before me, the undersigned officer personally appeared Rusty Schmidt who acknowledged himself to be the manager of RAPID VALLEY SANITARY DISTRICT, and that as such _____, being duly authorized to do so, executed the foregoing for the purposes therein contained.

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



Martha J. Garwood
Notary Public
My Commission Expires April 26, 2022

YASMEEN DREAM, LLC

By 
Hani Shafai, Manager

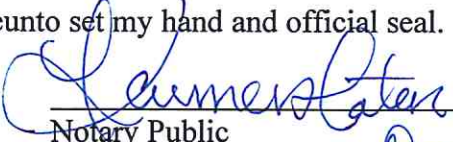
State of South Dakota)
) ss.
County of Pennington)

On this the 5th day of October, 2020, before me, the undersigned officer personally appeared Hani Shafai, who acknowledged himself to be the Manager of YASMEEN DREAM, LLC and that as such Manager, being duly authorized to do so, executed the foregoing for the purposes therein contained.

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

(seal)




Notary Public
My Commission Expires October 25, 2024