

**AGREEMENT FOR CONSTRUCTION OF PUBLIC SEWER BETWEEN THE CITY OF
RAPID CITY AND SSST, LLC
AND FOR OVERSIZE SEWER 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, SD 57701, hereinafter referred to as the “City,” and SSST, LLC, of PO Box 1940, Rapid City, South Dakota, 57709 hereinafter referred to as the “Developer.”

WHEREAS, Developer owns property located within the City of Rapid City south of E. Minnesota Street that it intends to develop as Elks Crossing Subdivision; and

WHEREAS, Developer has requested that the City reimburse it for the additional costs to construct 2,131 lineal feet of 18 inch sanitary sewer main instead of an 8 inch and 10 inch sanitary sewer main from approximately 190 feet west of the East Minnesota Street and Vinecliff Drive intersection, along the alignment of the future extension of East Minnesota Street to the existing 10 inch sewer main at Jolly Lane and future East Minnesota Street intersection within a previously dedicated H-lot, in order for Developer to address limited capacity in the existing sanitary sewer downstream from its property; and

WHEREAS, Developer has submitted preliminary drawings for the requested sewer main; and

WHEREAS, the City has agreed to accept ownership of the sewer main upon its completion according to the terms of this Agreement; and

WHEREAS, The Developer’s engineer has demonstrated a 18 inch sewer main is not required to meet the needs of its development, however, it has been determined by the City that a 18 inch main is needed to meet the needs of the City; and

WHEREAS, the City has requested the Developer construct a 18 inch sewer main rather than a 8 inch and 10 inch sewer main, which is the minimum size required to meet the Developer’s needs; and

WHEREAS, City desires to increase the size of the proposed sewer main from 8 inch and 10 inch to 18 inch for approximately 2,131 linear feet within the future East Minnesota Street right-of-way; 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 18 inch sewer 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. 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. Design. The Developer hereby agrees to contract with a professional engineer to design the sewer main. The sewer main 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.

3. Construction Observation. The Developer hereby agrees to contract with a professional engineer to provide construction observation services for the sewer main construction. The City reserves the right to observe and inspect all construction activities within the public right-of-way or public sewer main easements.

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

5. Sewer Main Easements. The Developer agrees to secure all necessary easements including permanent sewer easements and temporary construction easements, as needed to construction the project. Developer shall provide such easement(s) prior to City's acceptance of the project.

6. Permits. The Developer agrees to obtain all applicable permits prior to construction.

7. Construction. The Developer agrees to construct an 18 inch sewer main according to the approved plans. No changes or variances from the plans shall be allowed unless approved by the City in writing. Developer shall be responsible for all construction costs associated with the 18 inch sewer main. The City's participation shall be by reimbursement of amounts expended by the Developer for oversize construction as noted in Section 8.

8. Oversize Reimbursement. The City agrees to reimburse Developer for the construction of the 18 inch sewer main oversize construction for a total maximum dollar amount not to exceed \$72,784.00. 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 which contain sufficient information for the City to review Developer's actual oversize construction costs and determine the accuracy of the invoice.

Payment to Developer shall be conditioned on a timely request for reimbursement submitted within 90 days of City's acceptance of work pursuant to Section 10. 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.

The parties agree that 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 sanitary sewer prior to the reimbursement request shall be deducted from the total reimbursement amount.

9. Warranty. Prior to project acceptance by the City, a warranty bond, or other equivalent surety, in an amount equivalent to ten percent (10%) of the total construction cost of the 18 inch sewer main shall be provided to the City to secure the warranty for a period of two years. This obligation may be met by Developer supplying an equivalent warranty bond from their contractor for the project. The surety shall be in a form acceptable to the City Attorney. The warranty shall also meet the requirements of the City's Standard Specifications for Public Works Construction, Section 7.65.

10. City Acceptance of Work. Acceptance of the project by the City will not be considered until all construction and testing is completed, as-built plans 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.

11. Additional Provisions.

- A. *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).
- B. *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.
- C. *Entire Agreement*. 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.

[SIGNATURE PAGES FOLLOW]

Dated this _____ day of _____, 2020.

CITY OF RAPID CITY

Mayor Steve Allender

ATTEST:

Pauline Sumption, Finance Director

(seal)

State of South Dakota)

ss.

County of Pennington)

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 Director, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Director, 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 Director.

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

(seal)

Notary Public, South Dakota

My Commission Expires: _____

EXHIBIT A

Oversize Request for : **SEWER MAIN**
 Project: **E. Minnesota St. Sanitary Sewer Extension**
 Location: **Future East Minnesota St, east of Vincliff Drive**
 Entity Requesting Oversizing: **SSST, LLC**
 Date: **9/28/2020**
 City File #:

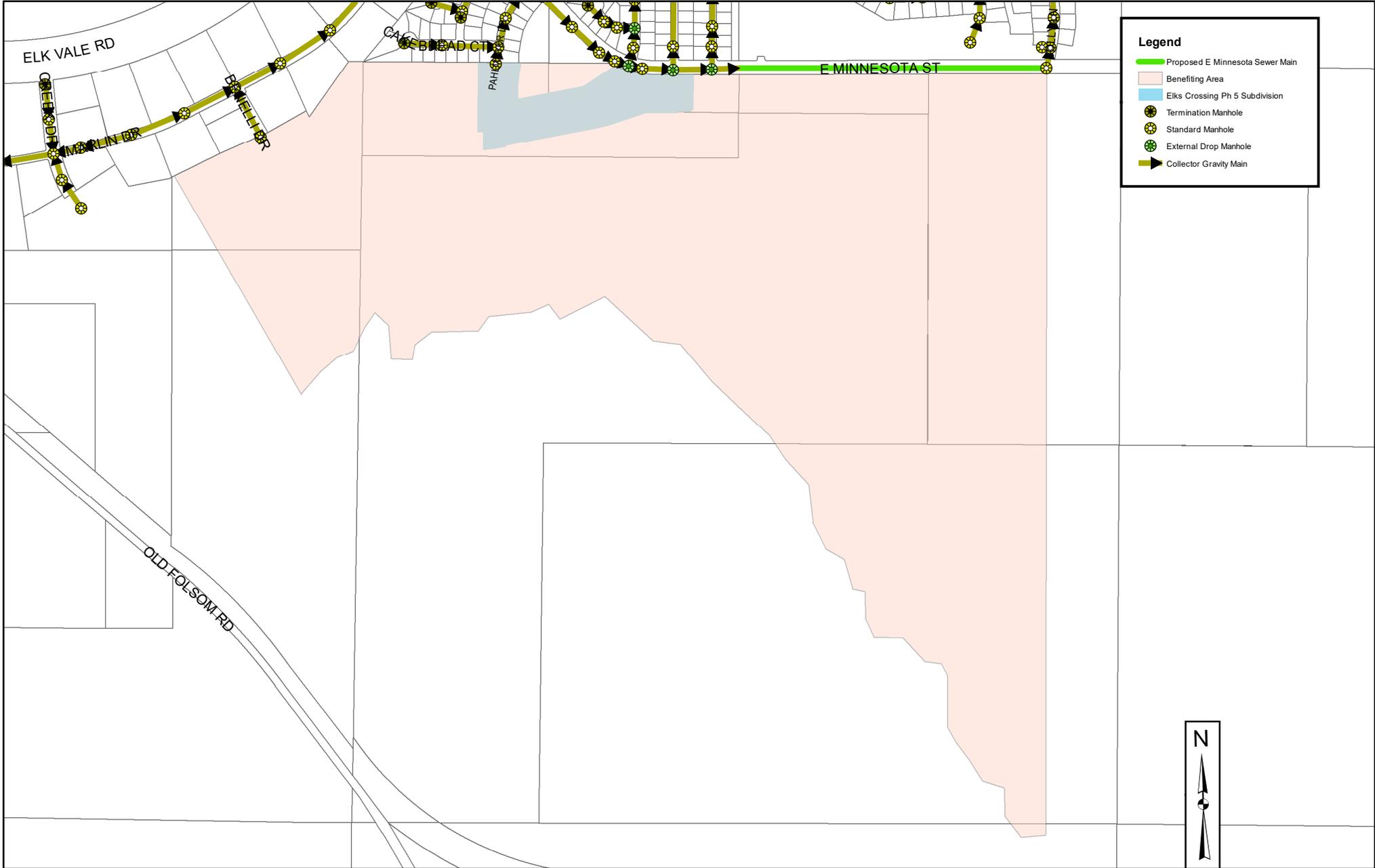
= Input Cells
 = Calculation Cells

Base Size =	8" and 10"	inches
Oversize =	18"	inches

BID ITEM	DESCRIPTION	UNIT	18" SEWER MAIN OVERSIZE			8" and 10" SEWER MAIN BASE SIZE		
			QUANTITY	UNIT COST	TOTAL COST	QUANTITY	UNIT COST	TOTAL COST
1	PVC Sanitary Sewer Main 8" to 18"	LF	1864	\$98.00	\$182,672.00	1864	\$64.00	\$119,296.00
2	PVC Sanitary Sewer Main 10" to 18"	LF	267	\$98.00	\$26,166.00	267	\$74.00	\$19,758.00
3	Sanitary Sewer Manhole, 48" to 60"	EA	1	\$8,500.00	\$8,500.00	1	\$5,500.00	\$5,500.00
				TOTAL	\$217,338.00		TOTAL	\$144,554.00

OVERSIZE COST ESTIMATE	\$72,784.00
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Exhibit B



Legend

- Proposed E Minnesota Sewer Main
- Benefiting Area
- Elks Crossing Ph 5 Subdivision
- Termination Manhole
- Standard Manhole
- External Drop Manhole
- Collector Gravity Main



EAST MINNESOTA SANITARY SEWER EXTENSION OVERSIZE BENEFITING AREA