

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND CREEK DRIVE LLC  
FOR CONSTRUCTION OF PUBLIC WATER MAIN AND FOR OVERSIZE WATER  
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 CREEK DRIVE LLC, of 1812 Creek Drive, Rapid City, South Dakota, 57703 hereinafter referred to as the "Developer."

WHEREAS, Developer owns property located within the City of Rapid City on Creek Drive, legally described as follows:

Lot J of Lot 2 of the Southeast Quarter of the Southwest Quarter (SE1/4SW1/4) of Section 5 in Township 1 North of Range 8 East of the Black Hills Meridian, in the City of Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 7, Page 115; and

WHEREAS, Developer's Manager is also the Trustee of a Revocable Trust which owns property located within the City of Rapid City on Creek Drive, legally described as follows:

Lot H of Lot Two (2) of the Southeast Quarter of the Southwest Quarter (SE1/4SW1/4) of Section Five (5), Township One North (T1N), Range Eight East of the Black Hills Meridian (R8E BHM), City of Rapid City, As Shown By the Plat Recorded in Book 7 of Plats on Page 115 in the Office of the Register of Deeds, Pennington County, South Dakota; and

WHEREAS, Lot J described above is more commonly referred to as 1812 Creek Drive and Lot H described above is more commonly referred to as 1808 Creek Drive; and

WHEREAS, no public water main is currently located adjacent to Developer's property; and

WHEREAS, Developer desires to construct approximately 314 linear feet of 12 inch diameter water main, as shown in Exhibit A, to provide water service for Developer's property; and

WHEREAS, the City has requested the Developer construct an additional portion of 12 inch water main beyond Schedule A past the south property line of 1812 Creek Drive (Lot J described above) to tie into the existing water main in East Saint Patrick Street, which oversize portion is approximately 126 linear feet beyond the Developer's needed location, to be known as Schedule B, as shown in Exhibit A; and

WHEREAS, the City wishes for Developer to extend its water main an additional 126 linear feet to tie into the existing water main in East Saint Patrick Street to improve water service access and water main looping for existing parcels north of Developer's property, which are currently serviced by a dead end water main that does not meet City criteria; and

WHEREAS, the City has agreed to pay for the oversize cost of the 12 inch water main beyond the Developer's requested location, known as Schedule B; and

WHEREAS, the Developer is willing to design and construct the water main improvements to the East Saint Patrick Street water main if the City agrees to pay for the oversize costs of the water main improvements in Schedule A up to a maximum of \$15,000 and Schedule B up to a maximum of \$100,000.00; 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 12 inch water 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; and

WHEREAS, the City has agreed to accept ownership of the water main upon its completion according to the terms of this Agreement.

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 water main. The water 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 water main construction. The City reserves the right to observe and inspect all construction activities within the public right-of-way or public water main easements.
4. Pre-Construction Meeting. The Developer shall conduct a pre-construction meeting prior to commencing construction of the water 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. Water Main Easements. The Developer agrees to secure all necessary easements including permanent water easements and temporary construction easements. Developer shall provide such easement 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 a 12 inch water main the entire length of its property to the East Saint Patrick Street water main to the south of Developer's property, in accordance with 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 12 inch water main. The City's participation shall be by reimbursement of amounts expended by the Developer for oversize construction as noted in Item 8.

8. Oversize Reimbursement. The City agrees to reimburse Developer for the construction of the 12 inch water main oversize construction for a total maximum dollar amount not to exceed \$115,000.00. This maximum dollar amount is based upon quantities and estimated costs provided in Exhibit B, plus contingency, attached hereto and incorporated herein by this reference. If actual quantities and costs are less than specified in Exhibit B, 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.

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 cost of the 12" water 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.

**CITY OF RAPID CITY**

\_\_\_\_\_  
Mayor Steve Allender

ATTEST:

\_\_\_\_\_  
Tracy Davis, Interim Finance Director

(seal)

State of South Dakota )

ss.

County of Pennington )

On this the \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned officer, personally appeared Steve Allender and Tracy Davis, who acknowledged themselves to be the Mayor and Interim 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: \_\_\_\_\_

CREEK DRIVE LLC

By Jean Smith

Printed Name Jean Smith

Its Owner / Manager

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

On this 15 day of September, 2022, before me, the undersigned officer, personally appeared Jean Smith, known to me or satisfactorily proven to be the persons whose names subscribed to the within instrument and acknowledged that they executed the same who acknowledged him/herself to be the Owner of CREEK DRIVE LLC., 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.

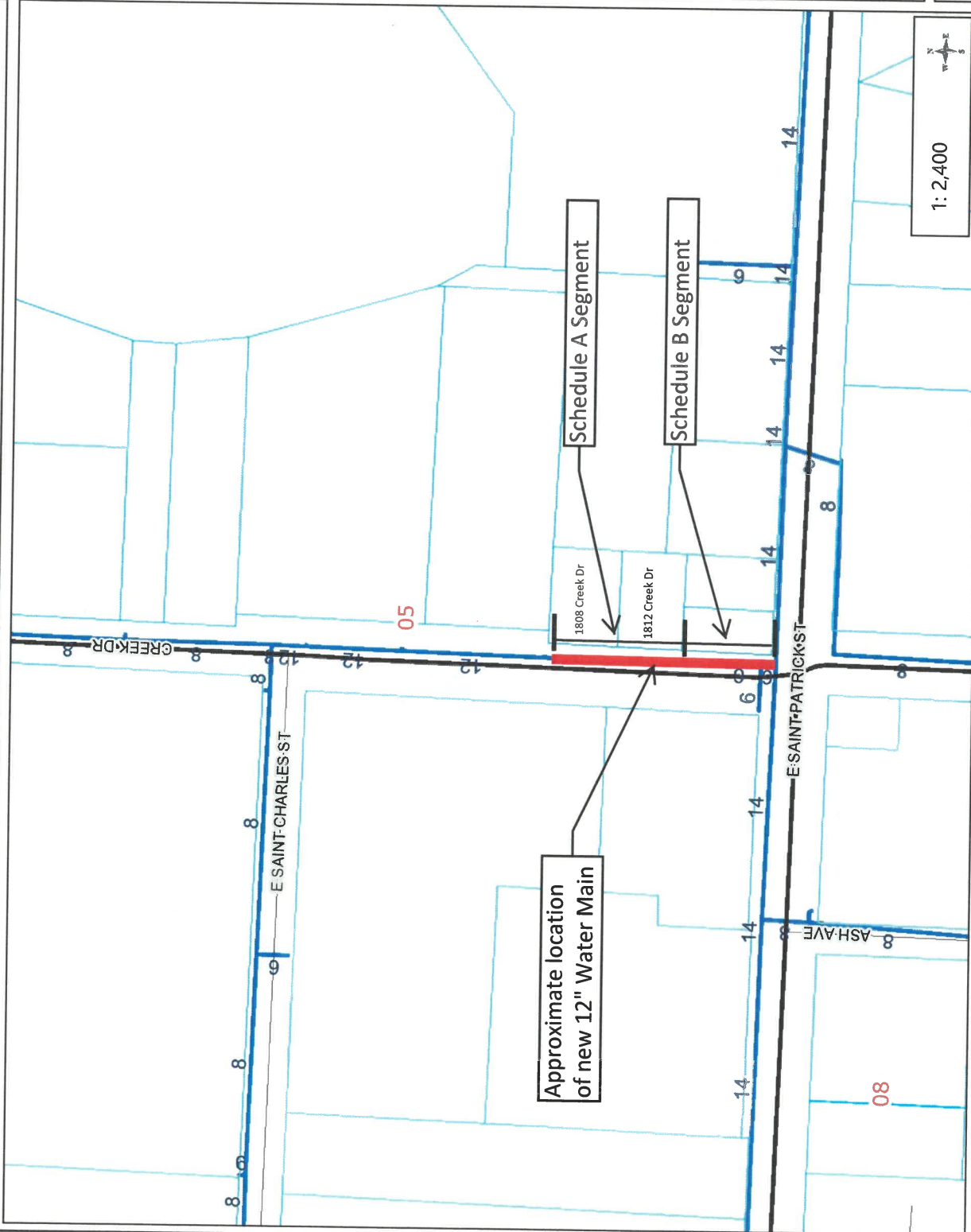
(seal)

Deborah Casey

Notary Public, South Dakota

My Commission Expires: 6/2/2027





1: 2,400



This map is a user generated static output from an internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

**THIS MAP IS NOT TO BE USED FOR NAVIGATION**

**Map Notes:**

Rapid City-Pennington County GIS

**Legend**



Permit Buffer

**Roads**

- Interstate
- US highway
- SD highway
- County highway
- Main road
- Minor arterial
- Collector
- Ramp
- Paved road
- Unpaved road
- Trail
- Driveway
- Alley
- Unimproved road
- Airport Runway
- Not yet coded

**Section Lines 0-25k**

Tax Parcels

Lot Lines

- <Null>
- Lot Line
- Parcel Line

**Water Storage**

- Water Tank
- Water Tower

**Water Pump Stations**

**Pressurized Water Mains**

- <all other values>
- No
- Yes

Exhibit B

9/14/2022

Project Items		12" Water Main (oversize)				8" Water Main (base)			
Item No.	Description	Unit	Estimated Quantity	Unit Cost	Item Cost	Estimated Quantity	Unit Cost	Item Cost	
<b>Water Main</b>									
1	12" PVC Water Main C-900 DR 18	LF	188	\$ 125.69	\$ 23,629.72			\$ -	
2	12"x1" Tapping Saddle	EA	2	\$ 787.03	\$ 1,574.06			\$ -	
3	12" HD Coupling	EA	2	\$ 1,417.66	\$ 2,835.32			\$ -	
4	8" PVC Water Main C-900 DR 18	LF	0		\$ -	188	\$ 107.58	\$ 20,225.04	
5	8"x1" Tapping Saddle	EA	0		\$ -	2	\$ 754.99	\$ 1,509.98	
6	8" HD Coupling	EA	0		\$ -	2	\$ 870.00	\$ 1,740.00	
Subtotal Project Cost					\$ 28,039.10			\$ 23,475.02	

Total Project Costs

\$ 28,039.10

\$ 23,475.02

Oversize Cost increase for 12" Water Main  
12" City Water Main Extension Project  
Total City Project Cost

\$4,564.08
\$75,934.23
\$80,498.31

*Sanjiv Singatani*  
Engineer Singatani 9-14-2022