

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND RED ROCK  
DEVELOPMENT COMPANY, LLC**

This agreement ("Agreement") is entered into this 29<sup>th</sup> day of Aug, 2008, by and between the City of Rapid City, a municipal corporation organized under the laws of the State of South Dakota, hereinafter referred to as the "City", and Red Rock Development Company, LLC, a limited liability company organized under the laws of the State of South Dakota, hereinafter referred to as the "Developer".

WHEREAS, the Developer has extended the water and sewer systems of the City in order to provide service to Red Rock Estates Phase V located within the City jurisdictional limits, and the City desires to provide such service; and

WHEREAS, the Developer has constructed approximately 1324 lineal feet of 12 inch water main and 800 lineal feet of 8 inch sewer main along Portrush Road in order to extend the City's water and sewer systems. The base cost (8" equivalent) associated with the 12 inch water main was determined to be \$47,086.65 and the cost associated with the 8 inch sewer main was determined to be \$39,200.00.

NOW THEREFORE, in consideration of the mutual promises and conditions herein contained, it is agreed as follows:

1. The Developer hereby agrees it has constructed approximately 1324 lineal feet of 12 inch (12") water main and approximately 800 lineal feet of 8 inch (8") sewer main.
2. The City hereby agrees to identify property, hereinafter referred to as the "Benefiting Frontage" shown on Exhibit A and Exhibit B attached hereto and incorporated herein, that may benefit from the above described water and sewer system improvements.
3. The City hereby agrees to present a proposed Water Construction Fee Resolution and a proposed Sewer Construction Fee Resolution to its Common Council, which would establish the fees to be levied against the identified benefiting properties in the Benefiting Area at such time as said properties request to connect to the above described water or sewer main.
4. The proposed Construction Fees shall be based on the total calculated costs, which includes construction costs.
5. The proposed Water Construction Fee for properties within the Benefiting Frontage and serviced by the water main along Portrush Road shall be established by dividing the calculated base size (8" equivalent) costs of the 12 inch water main which equals \$47,086.65, by the 2557.66 feet of Benefiting Frontage as shown in Exhibit A. Thus, the proposed Water Construction Fee may be established at \$18.41 per frontage foot.

6. In the event that the Water Construction Fee Resolution is established by the Common Council, the Water Construction Fee shall be paid by each parcel along the Benefiting Frontage currently described and any future subdivided properties along the Benefiting Frontage requiring water service and obtaining a water connection serviced directly by the above-described water main.
7. The proposed Sewer Construction Fee for properties within the Benefiting Frontage and serviced by the sewer main along Portrush Road shall be established by dividing the total calculated costs of the sewer main extension which equals \$39,200.00, by the 1879.38 feet of Benefiting Frontage as shown in Exhibit B. Thus, the proposed Sewer Construction Fee may be established at \$20.86 per foot.
8. In the event that the Sewer Construction Fee Resolution is established by the Common Council, the Sewer Construction Fee shall be paid by each parcel along the Benefiting Frontage currently described and any future subdivided properties along the Benefiting Frontage requiring sewer service and obtaining a sewer connection serviced directly by the above-described sewer main.
9. In the event that the Water Construction Fee Resolution or the Sewer Construction Fee Resolution is established by the Common Council, the City hereby agrees to collect the construction fees from the identified properties at the time said properties request to connect to the above-described utilities.
10. In the event the that Water Construction Fee Resolution or the Sewer Construction Fee Resolution is established by the Common Council, the City hereby agrees to reimburse the Developer the construction fees received per calendar year within 45 days of the end of each calendar year. In no case will the Developer be reimbursed in excess of the total calculated costs of construction. Payments to the Developer will cease if and when the total costs identified to be collected in the resolutions are reimbursed.
11. The Developer hereby agrees to furnish the City Finance Office with a current mailing address and update that address as is needed in order to facilitate disbursement of collected construction fees.
12. The proposed Construction Fees will be in addition to any existing connection fees established for this area.
13. This Agreement does not bind the City to reimburse Developer for the construction of the water and sewer extension projects. Rather, by this Agreement the option of imposing water and sewer construction fees upon

the identified benefiting properties will be presented to the Common Council for consideration.

14. Developer shall indemnify, defend, and hold the City, harmless from any and all damages, claims, suits, demands, or asserted obligations for injuries or damages arising out of the omission of, or inability of the City to furnish water or sewer service as herein provided. The Benefiting Areas are established on current or anticipated land use within the service areas. Each potential user within the Benefiting Areas shall establish that there is adequate remaining capacity prior to connection to the water or sewer main.
15. The City may undertake any legal or equitable action available to enforce the provisions of this Agreement in addition to any remedy provided herein. In the event the City is required to undertake any action to enforce the terms of this Agreement or its subdivision regulations in connection with this agreement, Red Rock Development Company, its heirs, beneficiaries, assignees, or successors in interest agree the City may recover from them its reasonable expenses, including attorney's fees incurred with respect to such action.
16. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, beneficiaries, assignees, or successors in interest of Red Rock Development Company.
17. 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).
18. 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.
19. 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

ATTEST:

\_\_\_\_\_  
Finance Officer

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

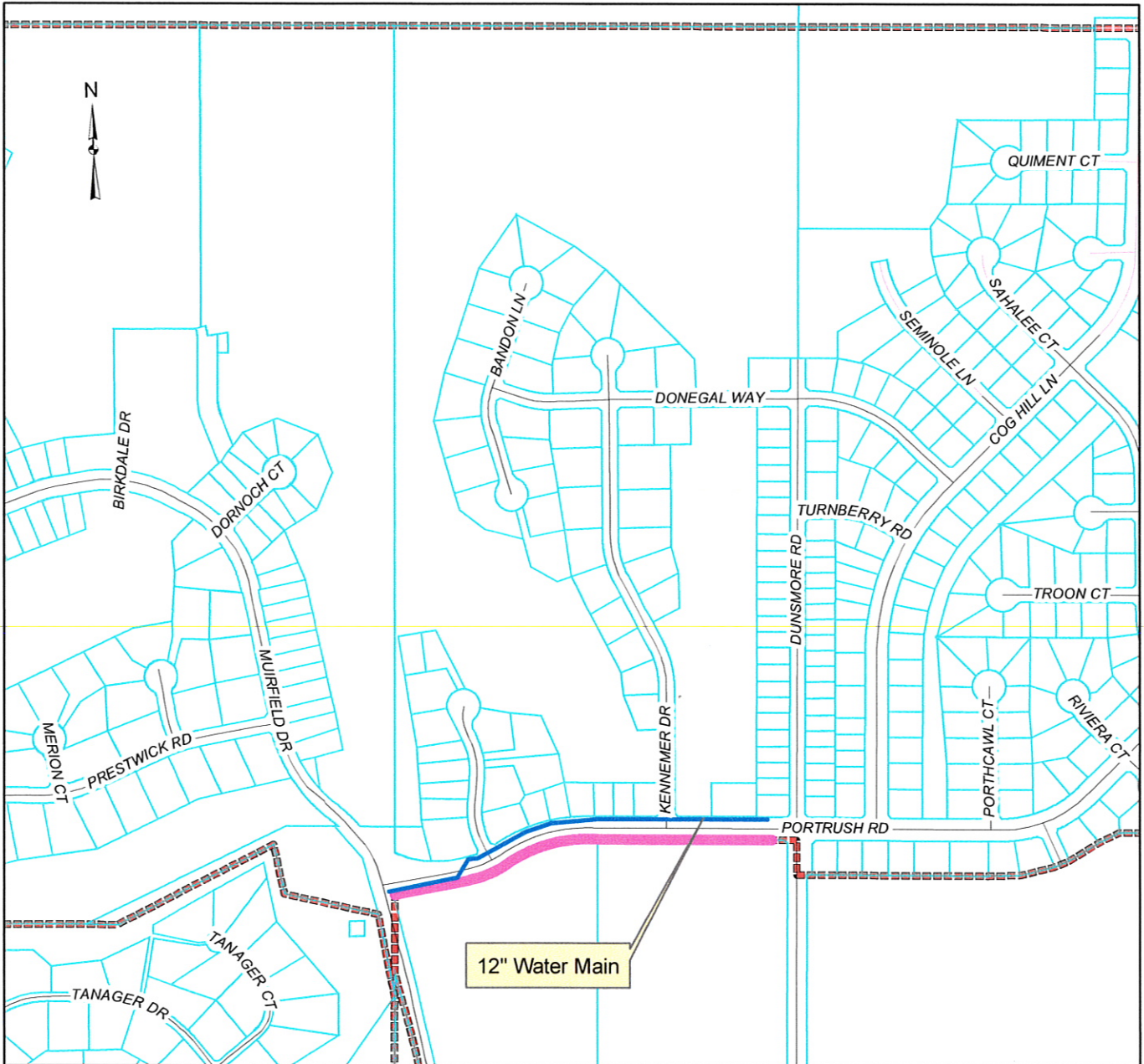
On this the \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned officer, personally appeared Alan Hanks and James Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument 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.

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires:





(SEAL)

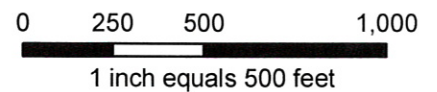
# Exhibit A



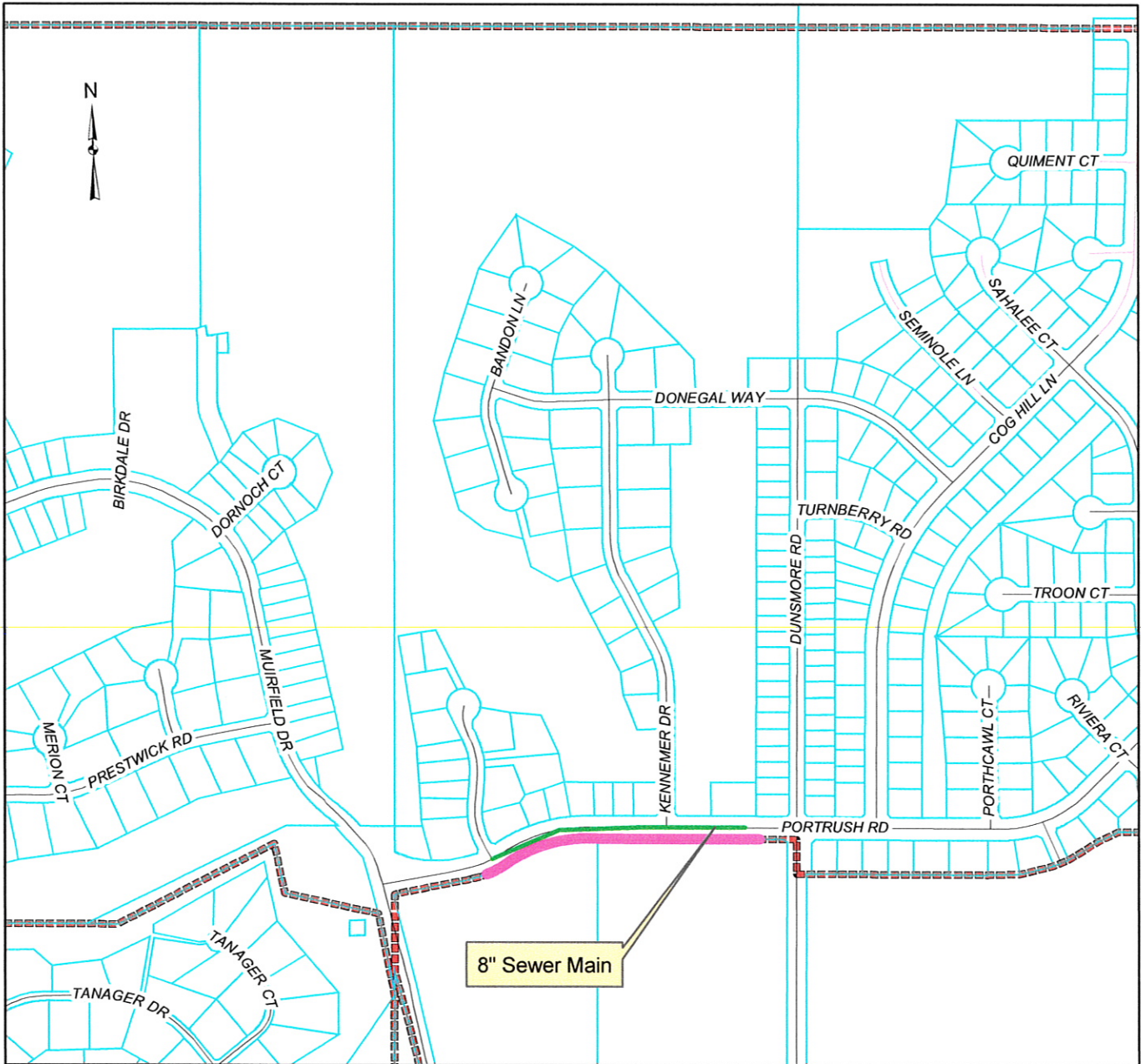
## RED ROCK ESTATES, PHASE V WATER CONSTRUCTION FEE BENEFITING FRONTAGE

### Legend

-  Benefiting Frontage
-  12" Water Main
-  Parcels
-  Rapid City Limits







# Exhibit B



## RED ROCK ESTATES, PHASE V SEWER CONSTRUCTION FEE BENEFITING FRONTAGE

### Legend

-  Benefiting Frontage
-  8" Sanitary Sewer Main
-  Parcels
-  Rapid City Limits

