

AGREEMENT BETWEEN THE CITY OF RAPID CITY AND RED ROCK DEVELOPMENT LLC. FOR REIMBURSEMENT OF SEWER CONSTRUCTION FEES FOR RED ROCK ESTATES LIFT STATION (PROJECT No. SS01-1086).

This Agreement ("Agreement") is entered into this ____ day of ____, 2010, 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," located at 300 Sixth Street, Rapid City, South Dakota 57701 and Red Rock Development LLC (a/k/a Buntrock-Graziano-Ward Development Co.), a limited liability company organized under the laws of the State of South Dakota, located at 6520 Birkdale Dr., Rapid City, South Dakota 57702, hereinafter referred to as the "Developer."

WHEREAS, the Developer was required to install a sanitary sewer lift station in order to serve a residential development it constructed; and

WHEREAS, in order to accommodate future growth in the area, the City required the Developer to construct the lift station with a larger capacity than the Developer would have otherwise been required to construct to serve its project; and

WHEREAS, the total cost of the sanitary sewer lift station constructed by the Developer was determined to be \$406,950.22; and

WHEREAS, the City's engineering staff has reviewed the costs associated with constructing the lift station and has determined that \$286,866.54 represents the excess cost to the Developer for constructing the lift station to serve the areas outside its project; and

WHEREAS, the City has agreed to reimburse the Developer for the oversize costs associated with constructing the lift station by establishing a sewer construction fee.

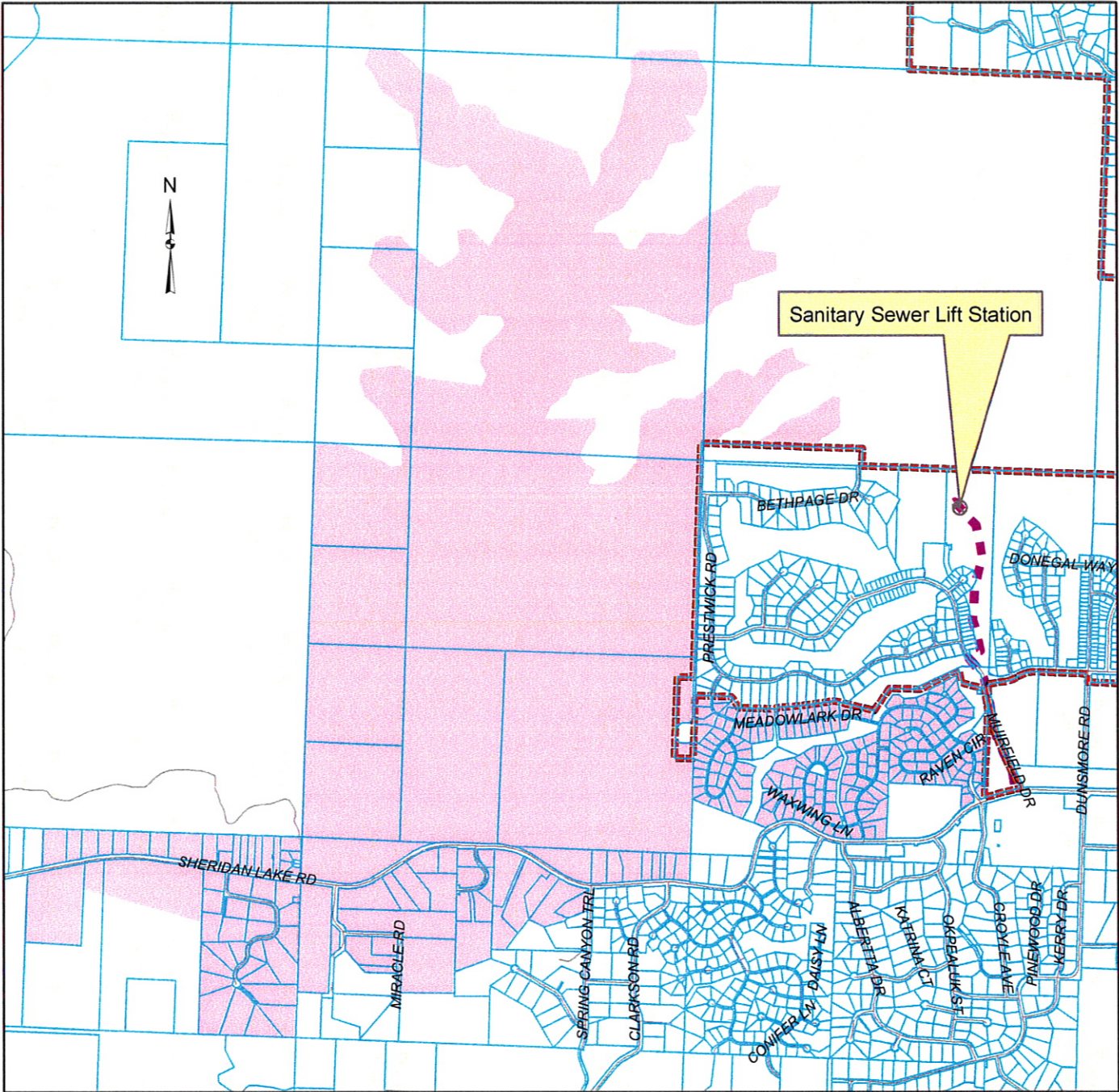
NOW THEREFORE, in consideration of the mutual promises and conditions contained herein it is agreed as follows:

1. The City engineering staff has identified an area that will benefit from the Red Rock Estates lift station (Project No. SS01-1086) which was previously constructed by the Developer. The benefiting area is shown on Exhibit A, which has been attached hereto and is incorporated herein. The City agrees to establish and collect a sewer construction fee within the area benefited by the lift station which will be paid to the Developer to reimburse it for the excess cost of constructing the lift station to serve areas outside its development. The construction fee will be established at \$242.95 per acre. The construction fee is based on the excess cost to the Developer of \$286,866.54 divided by a benefiting area of 1180.75 acres. The City will collect the fees established in the resolution at such time as any of the properties within the benefiting area request to connect to the City's sanitary sewer system. The fees collected will be paid to the Developer to reimburse it for the expense of constructing this lift station. In no case will the Developer be reimbursed in excess of the total calculated costs of construction. The maximum amount the Developer may be reimbursed from the construction fees is

\$286,866.54. Once the Developer has been fully reimbursed, the construction fee will be abolished.

2. Upon establishing the construction fee, the City agrees to reimburse the Developer the sewer construction fees collected in each year within forty-five (45) days of the end of each calendar year. All fees contemplated in this Agreement will be in addition to those which have previously been established or may otherwise exist.
3. By entering into this Agreement, the City is not obligating itself to reimburse the Developer for the full cost of constructing the lift station referred to in paragraph 1. The City is only obligating itself to establish a construction fee and pay the Developer the amounts actually collected up to the maximum established in paragraph 1. The City's obligation is limited to the amounts actually collected and the City makes no claim that the amount of fees actually collected will be sufficient to pay the entire \$286,866.54.
4. So long as the City pays over the amounts actually collected, the Developer agrees to release the City from any and all claims related to the collection and distribution of the construction fees. The Developer acknowledges that the establishment and collection of the fees is to its benefit and but for its agreement to release the City from any and all claims related to collection and distribution of the construction fees, the City would not agree to establish the fees. Upon approval of this Agreement and the construction fee resolution, the Developer agrees to continue making payments on its Infrastructure Development Partnership Fund Loan.
5. The Developer acknowledges that the benefiting area identified by the City is based on current or anticipated land use within the lift station service area. Nothing in this Agreement shall be construed as requiring the City to allow any potential sewer user within the benefiting area to connect to the City sewer system. Each potential user within the benefiting area will be required to establish that there is adequate remaining capacity within the City sewer system to adequately serve their development prior to connecting to the City's sewer system. Furthermore, the parties acknowledge that portions of the benefiting area are currently outside the City limits and may be developed without first connecting to the City's sewer system. The Developer, its heirs, assigns and successors in interest agree to waive, release or otherwise hold the City harmless from any and all claims based on the City failing to require, or refusing to allow, any user within the benefiting area to connect to the City sewer system.
6. 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, LLC.
7. 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).

Exhibit A



RED ROCK ESTATES LIFT STATION SEWER CONSTRUCTION FEE BENEFITING AREA

Legend

- Pressurized Sewer Main
- Parcels
- Benefiting Area
- Rapid City Limits

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Feet Item #13