

PREPARED BY: City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

STATE OF SOUTH DAKOTA)
) SS. **COVENANT AGREEMENT**
COUNTY OF PENNINGTON)

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
COPPERFIELD LAND COMPANY, LLC AND COPPERFIELD VISTAS, LLLP
REGARDING PAYMENT OF THE SEWER CONSTRUCTION FEES FOR
EXPANSION OF SEWER SERVICE IN THE ELK VALE AREA (PHASE 1B)**

This declaration of covenant and agreement (“Agreement”) is entered into this _____ day of _____, 2008, by and between the City of Rapid City, a municipal corporation organized under the laws of the State of South Dakota, of 300 Sixth Street, Rapid City, South Dakota, 57701, hereinafter referred to as the “City”, Copperfield Land Company, LLC, a limited liability company organized under the laws of the State of South Dakota, of 2700 West Main Street, Rapid City, South Dakota, 57702, and Copperfield Vistas, LLLP, a limited liability company organized under the laws of the State of South Dakota, of 2700 West Main Street, Rapid City, South Dakota, 57702, hereinafter referred to as the “Developers”.

WHEREAS, the City has proposed improvements to the Elk Vale Area Sewer System to be funded by the City; and

WHEREAS, Section 13.08.365 of the Rapid City Municipal Code and Section 9-48-15 of the South Dakota Codified Laws allows the Common Council to impose sewer construction fees for connection to the sanitary sewer in certain areas; and

WHEREAS, the Developers wish to construct Copperfield Vistas Subdivision Phase 1B located within the city jurisdictional limits, and further wish to connect to the sanitary sewer system of the City, and the City desires to provide such sanitary sewer service; and

WHEREAS, the Developers are required by Sections 16.16.010 and 16.16.050 of the Rapid City Municipal Code to pay for the cost of providing adequate sanitary sewer service for Phase 1B of the Copperfield Vistas Subdivision; and

WHEREAS, the cost of the offsite sewer improvements benefiting Phase 1B of the Copperfield Vistas Subdivision is estimated to be \$1,410,000.00, which amount does not include the cost of constructing sanitary sewer mains within the Developers' property; and

WHEREAS, the Developers desire to have approval of the final plat for Phase 1B of the Copperfield Vistas Subdivision; and

WHEREAS, the City will not approve Developers' final plat for Phase 1B of the Copperfield Vistas Subdivision until there is an agreement in place that ensures that the subdivision will have adequate sanitary sewer service.

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

1. The property included in Phase 1B of the Copperfield Vistas Subdivision is more fully described as follows:

A tract of land located in the Southeast One-Quarter of the Northwest One-Quarter (SE ¼ NW ¼) and the Northeast One-Quarter of the Southwest One-Quarter (NE ¼ SW ¼) of Section Four (4) in Township One North (T1N), Range Eight East (R8E) of the Black Hills Meridian (BHM), Pennington County, South Dakota, more fully described as follows: Commencing at the northeast corner of Lot Twenty-Eight (28) in Block One (1) of Copperfield Subdivision, as shown on the plat recorded in Book 22 of Plats on Page 195, said corner being marked by a rebar with survey cap "LS 6251"; thence, westerly along the north line of said Lot Twenty-Eight (28) in Block One (1) of Copperfield Subdivision, South 89 degrees 59 minutes 08 seconds West, a distance of 109.97 feet more or less to the northwest corner of said Lot Twenty-Eight (28), said corner being marked by a 5/8 inch rebar; thence, southwesterly along the northerly edge of Copperfield Drive right-of-way, South 71 degrees 30 minutes 56 seconds West, a distance of 4.23 feet more or less; thence, North 00 degrees 00 minutes 00 seconds West, a distance of 124.86 feet more or less; thence, curving northeasterly to the right on a curve with a radius of 774.00 feet, a delta of 3 degrees 34 minutes 48 seconds, an arc length of 48.36 feet, and a chord bearing of North 01 degrees 47 minutes 24 seconds East and chord distance of 48.36 feet more or less; thence, continuing northeasterly to the right on the same curve with a radius of 774.00 feet, a delta of 5 degrees 26 minutes 19 seconds, an arc length of

73.47 feet, and a chord bearing of North 06 degrees 17 minutes 58 seconds East and chord distance of 73.44 feet more or less *to the point of beginning*; thence, continuing northeasterly to the right on the same curve with a radius of 774.00 feet, a delta of 04 degrees 45 minutes 28 seconds, an arc length of 64.27 feet, and a chord bearing of North 11 degrees 23 minutes 52 seconds East and a chord distance of 64.25 feet more or less; thence, North 13 degrees 46 minutes 36 seconds East, a distance of 40.75 feet more or less; thence, curving northeasterly to the left on a curve with a radius of 826.00 feet, a delta of 13 degrees 46 minutes 36 seconds, an arc length of 198.61 feet, and a chord bearing of North 06 degrees 53 minutes 18 seconds East and chord distance of 198.13 feet more or less; thence, North 00 degrees 00 minutes 00 seconds West, a distance of 828.74 feet more or less; thence, North 45 degrees 00 minutes 00 seconds East, a distance of 14.14 feet more or less; thence, North 90 degrees 00 minutes 00 seconds East, a distance of 92.81 feet more or less; thence, South 00 degrees 05 minutes 16 seconds East, a distance of 865.17 feet more or less; thence, South 00 degrees 05 minutes 03 seconds East, a distance of 272.84 feet more or less; thence, South 90 degrees 00 minutes 00 seconds West, a distance of 150.70 feet more or less, to the point of beginning. Said tract of land represents proposed Lots 1 through 17 inclusive of Block 1 of Copperfield Vistas Subdivision and contains 2.83 acres or 123,155 square feet, more or less.

2. The City hereby covenants and agrees to identify that property depicted in yellow on the attached Exhibit “A” as the “Benefitting Area” for the sewer main to be constructed from Copperfield Vista to Elk Vale and further covenants and agrees to identify that property depicted in yellow as the “Benefitting Area” for the sewer main to be constructed from Elk Vale to Highway 44, which Exhibits “A” and “B” are attached hereto and incorporated herein. Furthermore, Phase 1B of Copperfield Vistas Subdivision is depicted in Exhibit “C”, attached hereto and incorporated herein.

3. The City hereby covenants and agrees to present a proposed Sanitary Sewer Utility Construction Fee Resolution to its Common Council pursuant to Section 13.08.365 of the Rapid City Municipal Code that establishes the sewer construction fees to be imposed against the owners of those properties in the Benefitting Areas being added to said sewer system for their proportionate share of the cost of constructing those portions of the Elk Vale Area Sewer System that benefit said properties.

4. The Sewer Utility Construction Fee shall, in each instance, be based on the total actual cost of construction of that portion of the Elk Vale Area Sewer System that benefits the properties against which such fee is being levied.

5. Pending certification of actual construction costs for that portion of the Elk Vale Area Sewer System that benefits Phase 1B of the Copperfield Vistas Subdivision,

the Developer agrees to pay, and the City agrees to accept payment of, an estimated Sewer Utility Construction Fee for the property in Phase 1B of the Copperfield Vistas Subdivision. It is further agreed, based upon the figures and calculations set forth in Table 1, Table 2, and Figure 1, all of which are attached hereto and incorporated herein by reference, that this estimated Sewer Utility Construction Fee for Phase 1B of the Copperfield Vistas Subdivision will be \$2141.00 per acre.

6. The estimated Sewer Utility Construction Fee for each platted lot in Phase 1B of the Copperfield Vistas Subdivision shall be calculated at the rate of \$2141.00 per acre based upon the actual square footage of each such platted lot and the proportion that the square footage for each lot bears to the number of square feet in one acre. This estimated Sewer Utility Construction Fee shall be paid on each lot prior to the issuance of a building permit for the improvements on that lot. The estimated Sewer Utility Construction Fee shall be in addition to the ordinary tap fees imposed by the City of Rapid City pursuant to its ordinances.

7. After the actual costs of the Sewer Utility Construction that benefits Phase 1B of the Copperfield Vistas Subdivision are certified and after the Common Council establishes the Sewer Utility Construction Fee for said Phase 1B of Copperfield Vistas Subdivision based on those actual construction costs, if final Sewer Utility Construction Fee established by the Common Council of the City of Rapid City is higher than the estimated cost of \$2141.00 per acre set forth herein, the entities and individuals who are owners of record of the platted lots in Phase 1B of the Copperfield Vistas Subdivision on the dates of such certification shall be responsible to pay to the City an amount equal to their proportionate share the difference between the estimated Sewer Utility Construction Fee of \$2141.00 per acre and the Sewer Utility Construction Fee established upon actual costs.

8. If, based upon the actual costs, the Sewer Utility Construction Fee established by the Common Council for the City of Rapid City for Phase 1B of the Copperfield Vistas Subdivision is lower than the estimated cost of \$2141.00 per acre, the City will reimburse the entities and individuals who are owners of record of the platted lots in Phase 1B of the Copperfield Vistas Subdivision on the date of such certification an amount equal to their proportionate share of the difference between the estimated Sewer Utility Construction Fee of \$2141.00 per acre and the Sewer Utility Construction Fee established upon actual costs.

9. All parties to this Covenant Agreement acknowledge that the City does not have a duty to grant final approval of Developers' plat for Phase 1B prior to the completion of the Sewer Utility Construction and that allowing final plat approval prior to the completion of the Sewer Utility Construction is sufficient consideration for this Covenant Agreement.

10. The city hereby agrees to provide sanitary sewer service to the developers for Phase 1B of the Copperfield Vistas Subdivision no later than October 1, 2008. In the event the sewer lines to be constructed by the city to serve Phase 1B of the Copperfield Vistas Subdivision are not constructed and fully operational by October 1, 2008, the City hereby agrees that it will be responsible for pumping and transporting sewage from Phase 1B of the Copperfield Vistas Subdivision, and to otherwise be responsible to pay for all costs of pumping and transporting sewage from Phase 1B of the Copperfield Vistas Subdivision, including the costs of construction and demolition of any facilities necessary to accommodate such pumping and transportation activities, from October 1, 2008, until such time as the sewer lines servicing Phase 1B of Copperfield Vistas Subdivision are constructed and fully operational. The city agrees to indemnify and hold Developers harmless from such costs of pumping and transporting sewage, from costs of construction and demolition of any facilities necessary to accommodate such pumping and transportation activities, and from any and all claims, demands, suits, actions, injuries or damage arising out of the city's performance or non-performance of its obligations pursuant to this paragraph of this Agreement.

11. This Agreement constitutes the entire agreement of the parties. No other writings or negotiations are part of this agreement.

12. Each potential user within any part of the Benefitting Areas identified on either Exhibit "A" or Exhibit "B" shall establish there is adequate remaining capacity prior to connection to the sewer main.

13. Either the City or the Developers 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 any party to this Agreement is required to undertake any action to enforce the terms of this Agreement and prevails upon such claim or cause of action, that party shall be entitled to recover from the party against whom such action is directed its reasonable costs, disbursements, expenses, expert witness fees, consulting expert fees, and attorneys' fees, with respect to such action.

14. All of the terms and conditions herein set forth herein, including without limitation, the provisions of Paragraph 13, shall extend to, and be binding upon, the heirs, beneficiaries, assignees, or successors in interest of Copperfield Land Company, LLC and Copperfield Vistas, LLLP, including successive owners of platted lots within Phase 1B of the Copperfield Vistas Subdivision, and be considered as a covenant running with the above-described property. Furthermore, it is agreed that in accepting title to the above-described property, or to any platted lot within Phase 1B of the Copperfield Vistas Subdivision, any grantee, beneficiary, heir, assignee, or successor in interest to the Developers in ownership of such property or lot expressly agrees to be bound by terms of this Agreement, which will be recorded with the Pennington County Register of Deeds' Office pursuant to the provisions of South Dakota Codified Law.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)

Dated this _____ day of _____, 2008.

COPPERFIELD LAND COMPANY, LLC

By:_____

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2008, before me, the undersigned officer personally appeared _____, who acknowledged himself to be the _____ of COPPERFIELD LAND COMPANY, LLC, and that he, as such _____, being authorized so to do, executed the foregoing for the purposes therein contained by signing the name of COPPERFIELD LAND COMPANY, LLC by himself as _____.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)

Dated this _____ day of _____, 2008.

COPPERFIELD VISTAS, LLLP

By:_____

State of South Dakota)
 ss.
County of Pennington)

On this the ____ day of _____, 2008, before me, the undersigned officer personally appeared _____, who acknowledged himself to be the _____ of COPPERFIELD VISTAS, LLLP, and that he, as such _____, being authorized so to do, executed the foregoing for the purposes therein contained by signing the name of COPPERFIELD VISTAS, LLLP, by himself as _____.

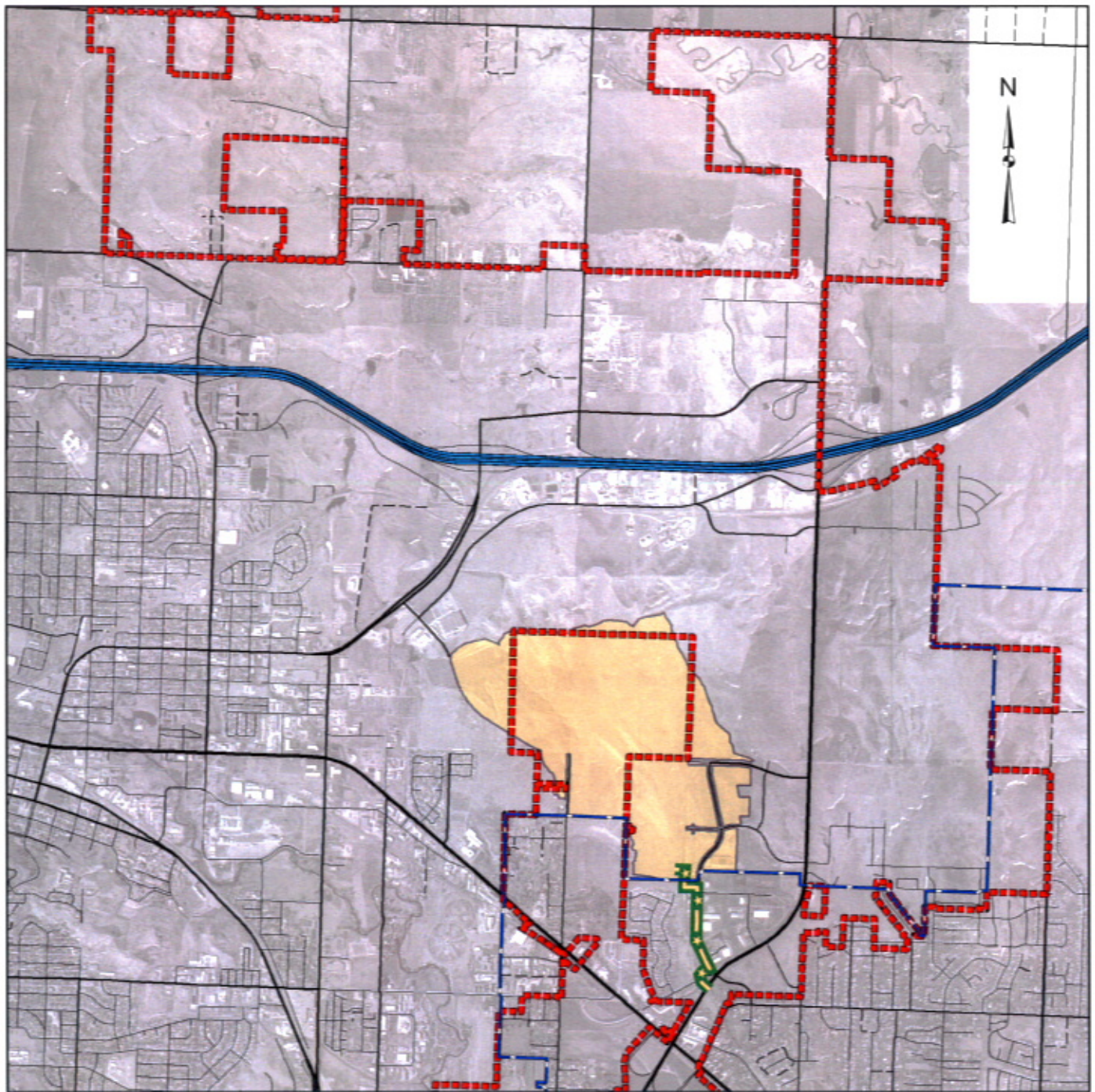
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, South Dakota

My Commission Expires:

(SEAL)

Exhibit A



Elk Vale Sewer Phase 1 (Copperfield Vista to Elk Vale) Preliminary Sewer Construction Fee Benefiting Area

Elk Vale Sewer Phase 1 (Copperfield Vista to Elk Vale)	
Preliminary Benefiting Area	500 ac
Reduced Preliminary Benefiting Area	425 ac
Estimate of Probable Cost	\$800,000
Preliminary Estimate of Construction Fee	\$1,882 /ac

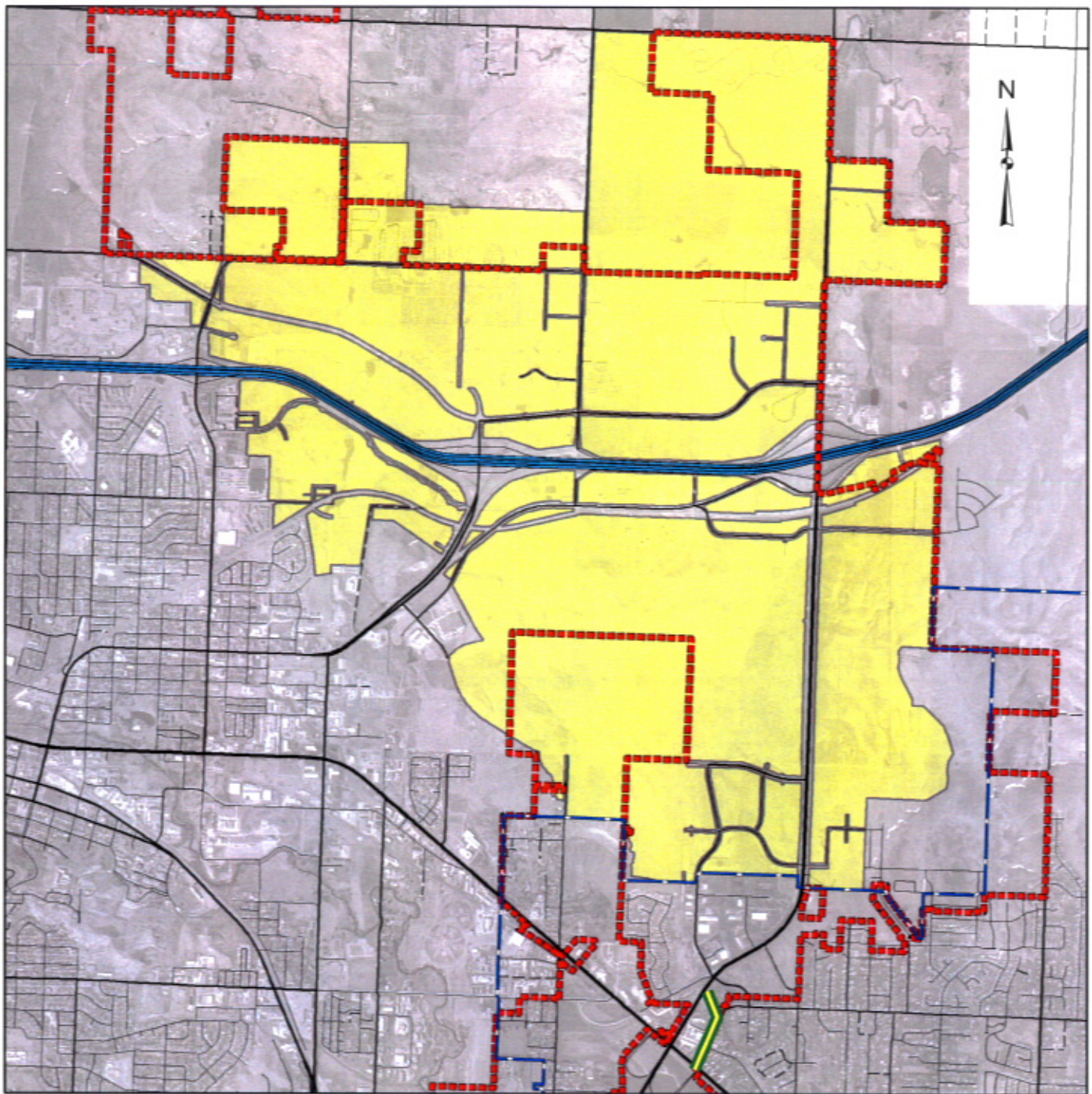
Legend

- Rapid Valley Sanitary District
- - - Rapid City Limits
- Proposed Sewer
- Preliminary Benefiting Area

0 0.3 0.6 1.2

1 inch equals 0.6 miles

Exhibit B



Elk Vale Sewer Phase 1 (Elk Vale to HWY 44) Preliminary Sewer Construction Fee Benefiting Area

Elk Vale Sewer Phase 1 (Elk Vale to HWY 44)	
Preliminary Benefiting Area	4,045 ac
Reduced Preliminary Benefiting Area	2,355 ac
Estimate of Probable Cost	\$610,000
Preliminary Estimate of Construction Fee	\$259 /ac

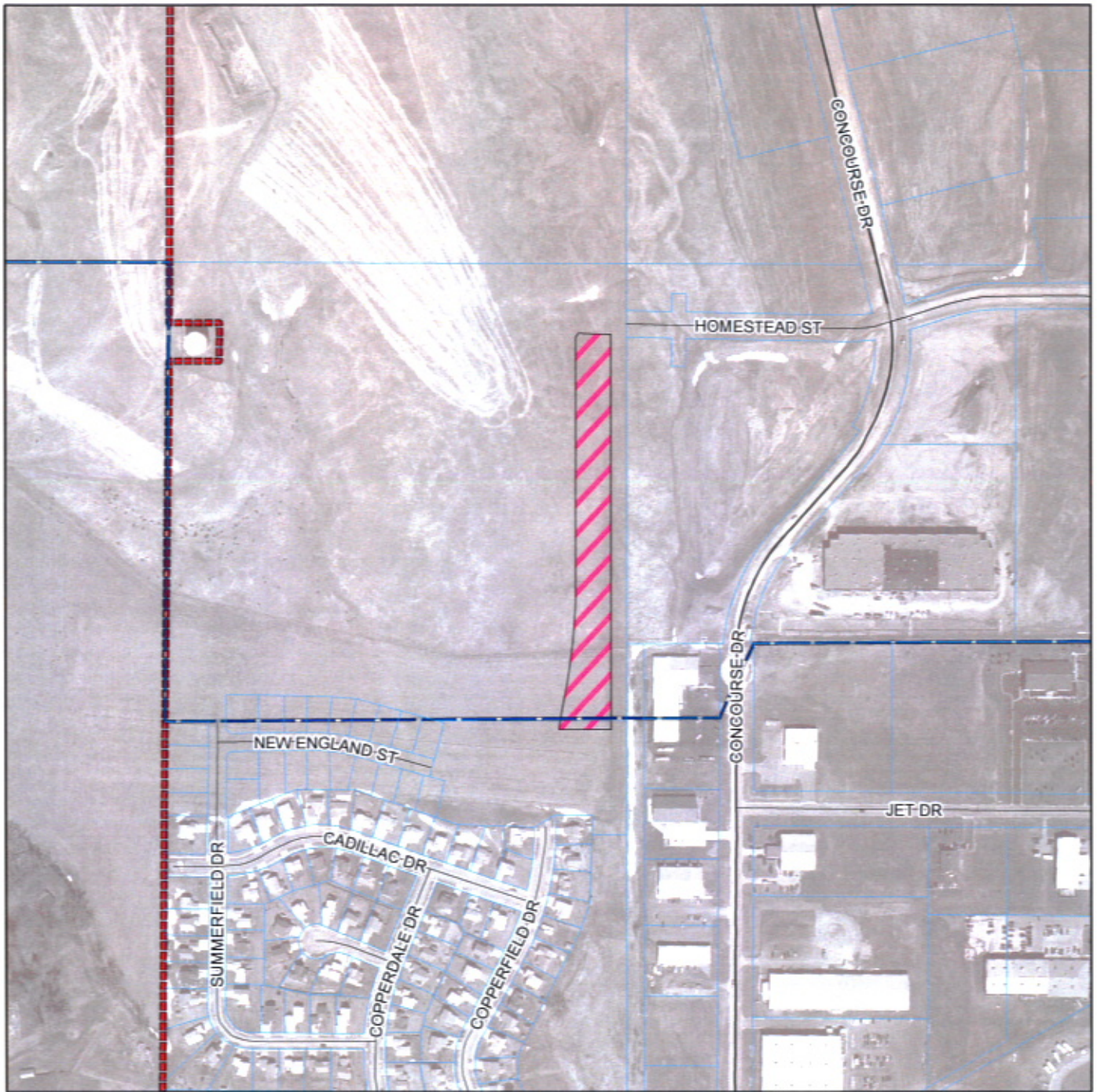
Legend

- Rapid Valley Sanitary District
- Rapid City Limits
- Proposed Sewer
- Preliminary Benefiting Area

0 0.3 0.6 1.2

1 inch equals 0.6 miles

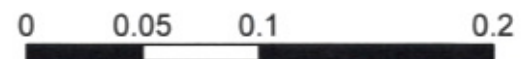
Exhibit C



Copperfield Vista Phase 1B Construction Fee Area

Legend

- Rapid Valley Sanitary District
- Rapid City Limits
- Copperfield Vista Phase 1B



1 inch = 0.1 miles

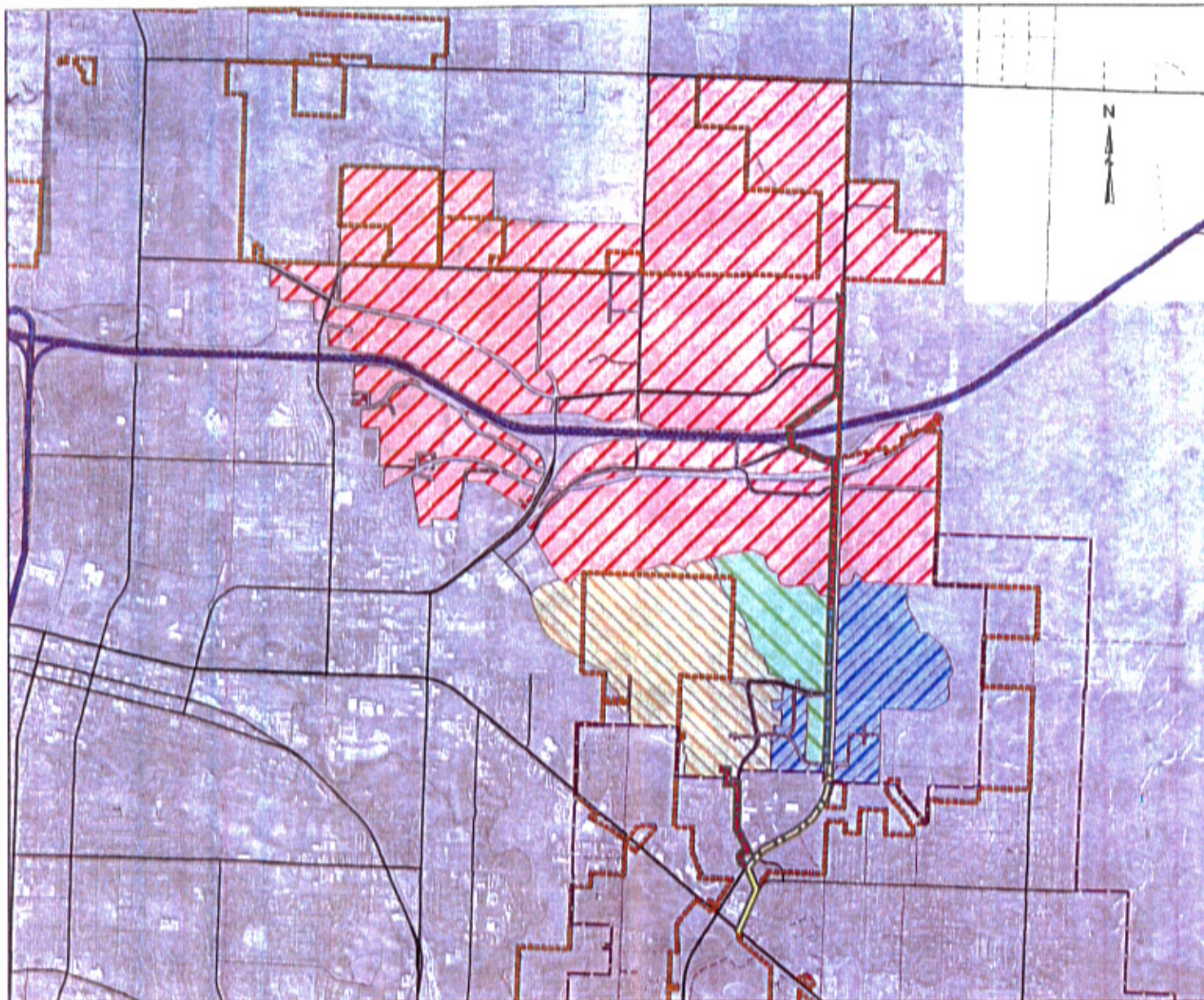


Figure 1
Elk Vale Summary
Preliminary Sewer
Construction Fee
Benefiting Areas

Preliminary Fee Benefiting Areas	Preliminary Estimate of Probable Fee
Area A	
Elk Vale Sewer Phase 1 (Elk Vale to HWY 44)	\$259 /ac
Elk Vale Sewer Phase 2 (Homestead to Concourse)	\$364 /ac
Elk Vale Gravity Sewer (FM Outfall to Homestead)	\$356 /ac
Elk Vale Lift Station / Force Main	\$2,406 /ac
Total Fees for Area A	\$3,385 /ac
Area B	
Elk Vale Sewer Phase 1 (Elk Vale to HWY 44)	\$259 /ac
Elk Vale Sewer Phase 2 (Homestead to Concourse)	\$364 /ac
Elk Vale Gravity Sewer (FM Outfall to Homestead)	\$356 /ac
Total Fees for Area B	\$979 /ac
Area C	
Elk Vale Sewer Phase 1 (Elk Vale to HWY 44)	\$259 /ac
Elk Vale Sewer Phase 2 (Homestead to Concourse)	\$364 /ac
Total Fees for Area C	\$623 /ac
Area D	
Elk Vale Sewer Phase 1 (Elk Vale to HWY 44)	\$259 /ac
Elk Vale Sewer Phase 1 (Copperfield Vista to Elk Vale)	\$1,882 /ac
Total Fees for Area D	\$2,141 /ac

Legend

Rapid Valley Sanitary District	Rapid City Limits
Proposed Elk Vale Sewer Improvements	Fee Summary Areas
Phase 1 (Elk Vale to HWY 44)	Area B
Phase 1 (Copperfield Vista to Elk Vale)	Area C
Phase 2 (Homestead to Concourse)	Area D
Gravity Sewer (FM Outfall to Homestead)	
Lift Station / Force Main	

0 0.25 0.5 1
1 inch equals 0.5 miles

Table 1: Preliminary Elk Vale Area Sewer Construction Fees

Preliminary Elk Vale Area Sewer Construction Fees	Total Preliminary Benefiting Area	Area Reduction Factor*	Area Reduction Factor**	Reduced Preliminary Benefiting Area	Total Cost Estimate	Preliminary Cost per Acre
Elk Vale Sewer Phase 1 (Copperfield Vista to Elk Vale)	500 ac	50%	85%	425 ac	\$800,000	\$1,882 /ac
Elk Vale Sewer Phase 1 (Elk Vale to HWY 44)	4045 ac	50%	85%	2355 ac	\$610,000	\$259 /ac
Elk Vale Sewer Phase 2 (Homestead to Concourse)	3540 ac	50%	85%	1925 ac	\$700,000	\$364 /ac
Elk Vale Gravity Sewer (FM Outfall to Homestead)	3260 ac	50%	85%	1685 ac	\$600,000	\$356 /ac
Elk Vale Lift Station / Force Main	3090 ac	50%	85%	1545 ac	\$3,718,000	\$2,406 /ac
Total Cost for Proposed Elk Vale Sewer Improvements:						\$6,428,000

Note: The preliminary benefiting area for the Elk Vale Lift Station and Force Main is designed for a 50% build-out condition therefore the area was reduced. The preliminary cost per acre was determined using this reduced area. Also, this 50% reduction was applied to the benefiting areas associated with the Elk Vale Lift Station service area for downstream projects.

*Reduction Factor applied to the area associated with the Elk Vale Lift Station service area

**Reduction Factor applied to the area not associated with the Elk Vale Lift Station service area

Table 2: Preliminary Construction Fee Summary (see Figure 1)

Preliminary Fee Benefiting Areas	Preliminary Cost Per Acre
Area A	
Elk Vale Sewer Phase 1 (Elk Vale to HWY 44)	\$259 /ac
Elk Vale Sewer Phase 2 (Homestead to Concourse)	\$363 /ac
Elk Vale Gravity Sewer (FM Outfall to Homestead)	\$355 /ac
Elk Vale Lift Station / Force Main	\$2,406 /ac
Total Fees for Area A	\$3,383 /ac
Area B	
Elk Vale Sewer Phase 1 (Elk Vale to HWY 44)	\$259 /ac
Elk Vale Sewer Phase 2 (Homestead to Concourse)	\$363 /ac
Elk Vale Gravity Sewer (FM Outfall to Homestead)	\$355 /ac
Total Fees for Area B	\$977 /ac
Area C	
Elk Vale Sewer Phase 1 (Elk Vale to HWY 44)	\$259 /ac
Elk Vale Sewer Phase 2 (Homestead to Concourse)	\$363 /ac
Total Fees for Area C	\$622 /ac
Area D	
Elk Vale Sewer Phase 1 (Elk Vale to HWY 44)	\$259 /ac
Elk Vale Sewer Phase 1 (Copperfield Vista to Elk Vale)	\$1,882 /ac
Total Fees for Area D	\$2,141 /ac