

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND DKEA, L.L.C.**

This agreement ("Agreement") is entered into this 25<sup>th</sup> day of Sept, 2007, 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 DKEA, L.L.C., a limited liability company organized under the laws of the State of South Dakota, hereinafter referred to as the "Developer".

WHEREAS, the Developer wishes to construct Red Rock Meadows Subdivision located within the City jurisdictional limits, and further wishes to connect to the water system of the City, and the City desires to provide such water service; and

WHEREAS, the Developer is required by the Subdivision Ordinances of the City to pay for the cost of providing adequate water service; and

WHEREAS, the cost of the Offsite Water Improvements associated with the 8 inch base size cost was determined to be \$140,796.31, which does not include the cost of constructing water mains within the Developer's property.

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 a 16 inch (16") – 8 inch (8") base size - PVC water main along Dunsmore Road as per plans prepared by Dream Design International Inc. titled, "Red Rock Meadows Phase I" filed with the City under City Development Files No. Dev05-736.
2. The City hereby agrees to identify property, hereinafter referred to as the "Benefiting Frontage" shown on Exhibit A attached hereto and incorporated herein, that may benefit from the above-described water system improvements.
3. The City hereby agrees to present a proposed Water Utility Construction Fee Resolution to its Common Council which would establish the fees to be levied against the identified benefiting properties in the Benefiting Frontage at such time as said properties request to connect to the above-described water main.
4. The proposed Water Utility Construction Fee shall be based on the total calculated costs, which includes construction costs.
5. The proposed Water Utility Construction Fee for properties within the Benefiting Frontage and serviced by the water main from Sheridan Lake Road to Portrush Road of the construction plans and not within the Red Rock Meadows Subdivision shall be established by dividing the total calculated base size costs of the water main extension from Sheridan Lake Road to Portrush Road which equals \$140,796.31 (as determined from

contractor invoicing), by the 2941.05 lineal feet of Benefiting Frontage as shown in Exhibit A. Thus, the proposed Water Construction Fee may be established at \$47.87 per frontage foot.

6. In the event that the Water Utility Construction Fee Resolution is established by the Common Council, the Water Construction Fee shall be paid by each parcel in the Benefiting Frontage currently described and any future subdivided properties within the Benefiting Frontage requiring water service and obtaining a water connection serviced directly by the above-described water main.
7. In the event that the Water Utility 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 water main.
8. In the event that the Water Utility Construction Fee Resolution is established by the Common Council, the City hereby agrees to reimburse the Developer the water 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 of construction are reimbursed.
9. 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.
10. The proposed Water Utility Construction Fee will be in addition to the existing connection fees established for this area.
11. This Agreement does not bind the City to reimburse Developer for the water extension project. Rather, by this Agreement the option of imposing water construction fees upon the identified benefiting properties will be presented to the Common Council for consideration.
12. 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 service as herein provided. The Benefiting Frontage is established on current or anticipated land use within the service area. Each potential user within the Benefiting Frontage shall establish there is adequate remaining capacity prior to connection to the water main.
13. 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, DKEA, L.L.C., 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.

14. 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 DKEA, L.L.C.
15. 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).
16. 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.
17. 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.

Dated this 25<sup>th</sup> day of September, 2007.

DKEA, LLC

By: Kevin J. Buntrock

Its: MEMBER/MANAGER

By: Don Ward

Its: Member

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

On this the 25<sup>th</sup> day of September, 2007, before me, the undersigned officer, personally appeared Kevin Buntrock and Don Ward, known to me or satisfactorily proven to be the person whose name is subscribed within instrument and acknowledged that they executed the same for the purposes therein contained and that they had the authority to do so in the name of DKEA, LLC, as its Member/Manager and Member/Manager.

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



Morgan Meissner  
Notary Public, South Dakota  
My Commission Expires: Dec 31 2008

APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE

Kevin A. [Signature] 9/12/07  
Attorney Date

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:

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

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

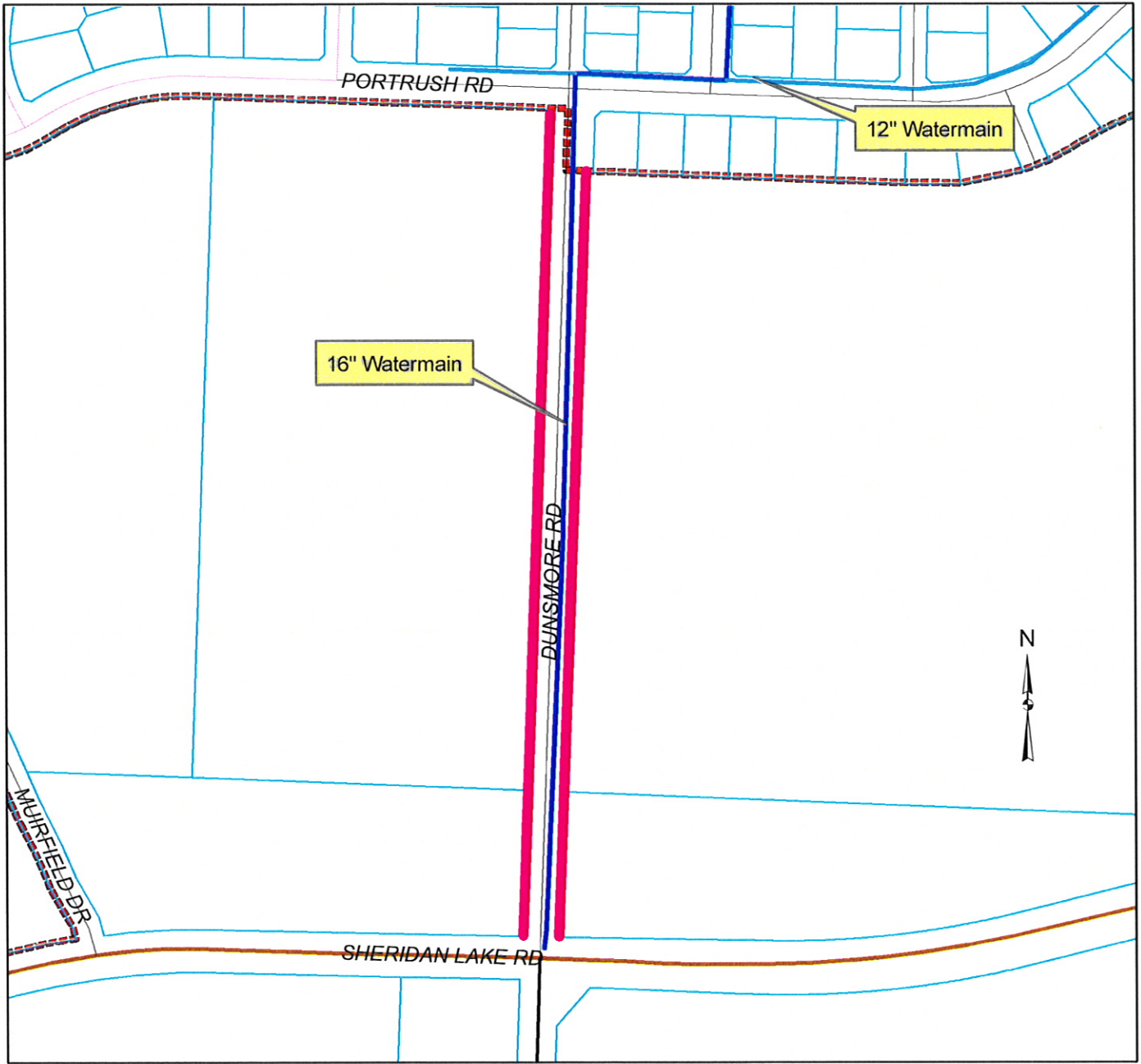
On this the \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned officer, personally appeared Alan Hanks and James Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance 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 MEADOWS - DUNSMORE ROAD WATER CONSTRUCTION FEE BENEFITING FRONTAGE

### Legend

- 12" Watermain
- 16" Watermain
- Benefiting Frontage
- Parcels
- Rapid City Limits

