

AGREEMENT BETWEEN THE CITY OF RAPID CITY AND DR. DUANE PANKRATZ

This agreement ("Agreement") is entered into this ____ day of ____, 2009, 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 Dr. Duane Pankratz, hereinafter referred to as the "Developer".

WHEREAS, the Developer wishes to develop property located within the City jurisdictional limits, and further wishes to connect to the sanitary sewer system of the City, and the City desires to provide such sanitary sewer service; and

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

WHEREAS, the cost of the Offsite Sewer Improvements associated with the 8-inch base size cost was determined to be \$62,298.90, which does not include the cost of constructing sanitary sewer 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 12-inch (12") -- 8 inch (8") base size - PVC sanitary sewer main along Lowery Lane and Eglin Street as per plans prepared by Dream Design International Inc. titled, "Eglin Street Realignment" filed with the City under City Development Files No. Dev06-825, P3230(00)43, DDI NO.05-0404.
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 sewer system improvements.
3. The City hereby agrees to present a proposed Sanitary Sewer 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 sanitary sewer main.
4. The proposed Sewer Utility Construction Fee shall be based on the total calculated costs, which includes construction costs.
5. The proposed Sewer Utility Construction Fee for properties within the Benefiting Frontage and serviced by the sanitary sewer main from Lowery Lane to Eglin Street and not within the Developer's Subdivision shall be established by dividing the total calculated costs of the sanitary sewer main extension from Lowery Lane to Eglin Street which equals

\$62,298.90 (as determined from contractor invoicing), by the 2,941.05 lineal feet of Benefiting Frontage as shown on Exhibit A. Thus, the proposed Sewer Construction Fee may be established at \$80.89 per lineal foot.

6. In the event that the Sanitary Sewer Utility Construction Fee Resolution is established by the Common Council, the Sanitary Sewer Construction Fee shall be paid by each parcel in the Benefiting Frontage currently described and any future subdivided properties within the Benefiting Frontage requiring sanitary sewer service and obtaining a sewer connection serviced directly by the above-described sanitary sewer main.
7. In the event that the Sewer 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 sanitary sewer main.
8. In the event the that the Sewer Utility Construction Fee Resolution is established by the Common Council, the City hereby agrees to reimburse the Developer the sewer 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 Sewer 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 sewer extension project. Rather, by this Agreement the option of imposing sewer 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 sanitary sewer 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 sewer 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, Dr. Duane Pankratz, 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 Dr. Duane Pankratz.
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 _____ day of _____, 2009.

Dr. Duane Pankratz

By: _____

Its: _____

By: _____

Its: _____

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

On this the _____ day of _____, 2009, before me, the undersigned, personally appeared Dr. Duane Pankratz, 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 Dr. Duane Pankratz, as its _____ and _____.

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

Notary Public, South Dakota
My Commission Expires:

(SEAL)

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

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

On this the _____ day of _____, 2009, 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)



CITY OF RAPID CITY

Public Works

300 Sixth Street

Rapid City, SD 57701-2724

Telephone: 605-394-4165

Fax: 605-355-3083

MEMORANDUM

PW021009-06

TO: City of Rapid City Council and Mayor Alan Hanks

PW021009-07

FROM: Robert Ellis, P.E.
Public Works Director

PW021009-08

PW021009-09

SUBJECT: Pankratz - SDDOT Eglin Street Realignment DEV 06-825, P
3230(00)43, DDI No. 05-0404

DATE: February 3, 2009

Dr. Duane Pankratz has requested City of Rapid City reimbursement for water and sewer main installation completed as part of the SDDOT Eglin St. construction project. The documentation submitted by Dream Design International on behalf of Dr. Pankratz has been reviewed and the following conclusions are offered:

1. A sanitary sewer oversize payment of \$15,085.22 appears to be reasonable and falls within the guidelines of the City oversize definition. After the P.O. has been issued staff will prepare a Construction Fee Resolution for Council consideration to potentially recoup this expense.
2. A request to be reimbursed \$71,887.21 for water main reconstruction associated with the new Eglin St./Lowery Lane intersection, which is located north of the DM&E Railroad and offsite of the Pankratz property, has been reviewed and appear reasonable. The costs to complete this work are reasonable and staff recommends Council authorization to prepare a Purchase Order for \$71,887.21 to Dr. Pankratz for water main reconstruction. Staff proposes funding the \$71,887.21 from the water enterprise fund 602/933/4381.
3. A request to present a Sewer Construction Fee Resolution for Council consideration on behalf of Dr. Pankratz has been reviewed and appears reasonable. This resolution is intended to reimburse Dr. Pankratz \$62,298.90 for offsite sewer main improvements north of the DM&E Railroad and offsite of the Pankratz property. The offsite sewer main construction was necessary in order for the Pankratz property to have City sewer service.



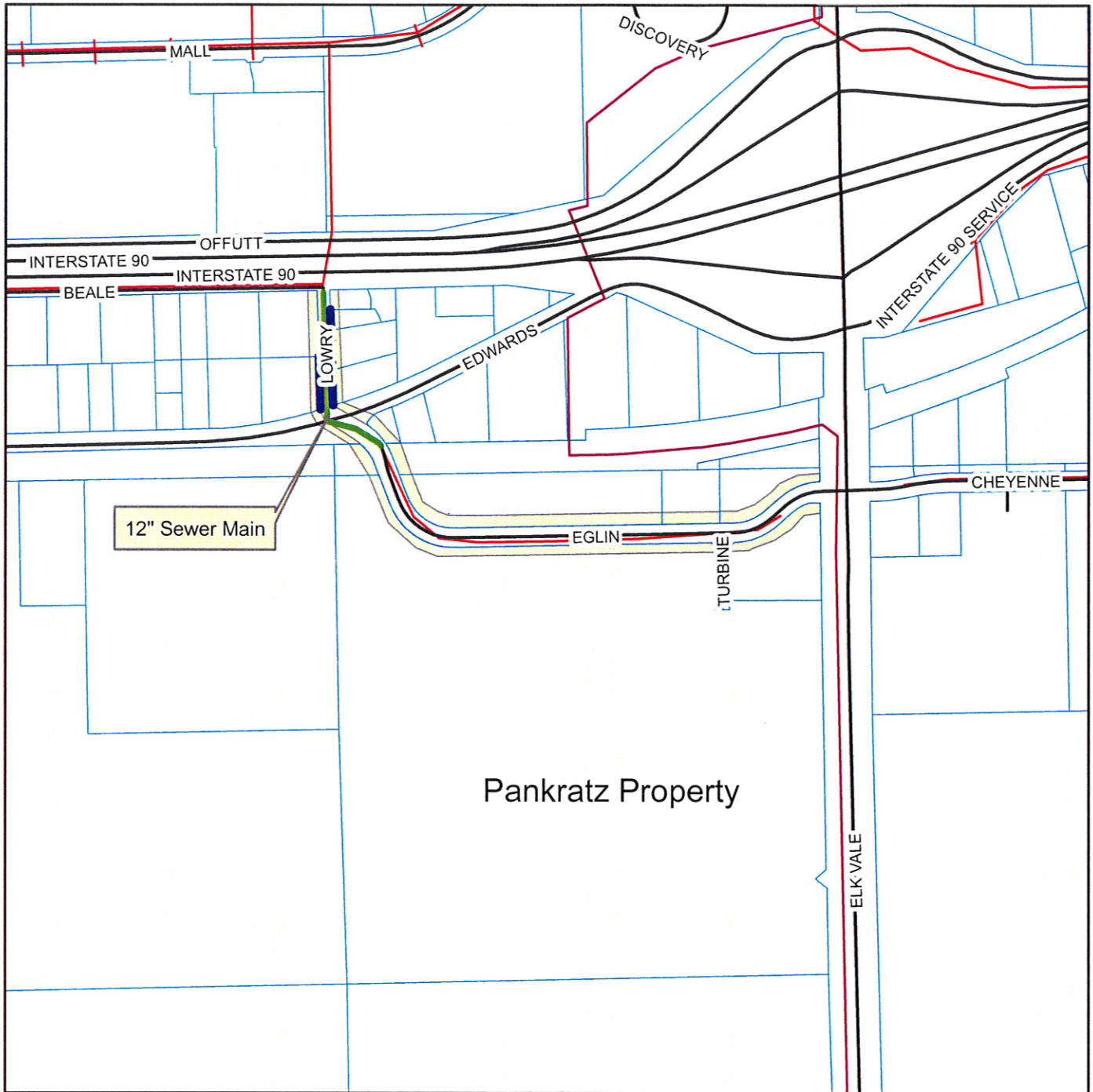
EQUAL OPPORTUNITY EMPLOYER

Exhibit A

PW021009-06





PW021009-08

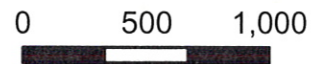
PW021009-09



PANKRATZ SEWER MAIN SEWER CONNECTION FEE BENEFITING AREA

Legend

-  Benefiting Frontage
-  12" Sewer Main
-  Existing Sewer Gravity Main
-  Existing Sewer Pressurized Main



1 inch = 750 feet

RECEIVED

JAN 07 2009

RAPID CITY
PUBLIC WORKS



DREAM DESIGN INTERNATIONAL, INC.

CIVIL ENGINEERING • LANDSCAPE ARCHITECTURE
LAND DEVELOPMENT • CONSTRUCTION ADMINISTRATION

January 6, 2009

Mr. Robert Ellis
Public Works Director
City of Rapid City
300 Sixth Street
Rapid City, SD 57701

PW021009-08

Re: Connection Fee Request for Lowry Lane

Dear Mr. Ellis:

Attached are the requested costs associated with the installation of an 8" sanitary sewer main along Lowry Lane.

The developer requests that the City establishes a connection fee to recover these costs from the fronting property owners as they connect to this new sanitary sewer line. The total costs to be recovered for this item from the fronting property owners as they connect to sanitary sewer are \$62,298.90

We included the spreadsheet for your file to reflect these costs.

We thank you for your help in this matter. Please contact us if you need any additional information.

Sincerely,
DREAM DESIGN INTERNATIONAL, INC.

Hani Shafai, PE
President

CC: Dale Tech, Engineering Division Manager

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SANITARY SEWER ALONG LOWRY LANE

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL
CCO	Base Course	Ton	300	\$ 12.00	\$ 3,600.00
CCO	Remove Asphalt	SY	340	\$ 6.00	\$ 2,040.00
CCO	Asphalt Patching	SF	2,800	\$ 3.45	\$ 9,660.00
CCO	Imported Fill	CY	146	\$ 16.50	\$ 2,409.00
28	8" PVC Sewer Pipe	LF	973	\$ 26.30	\$ 25,589.90
48	48" Manhole	EA	5	\$ 3,800.00	\$ 19,000.00
	Subtotal				\$ 62,298.90

Request

\$ 62,298.90