

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND PLM DEVELOPMENT,  
LLC FOR THE PAYMENT OF OVERSIZE COSTS FOR PUBLIC WATER  
MAINS AND PUBLIC SEWER MAINS.**

This Agreement is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota, 57701, herein after referred to as the "City", and PLM DEVELOPMENT, LLC, a South Dakota limited liability company, located at 35 South 4<sup>th</sup> Street, Custer, South Dakota, 57730, herein after referred to as the "Developer."

WHEREAS, the Developer has constructed a residential development known as PLM Subdivision in an area generally located west of Fifth Street and north of Stumer Road; and

WHEREAS, the developer was required by the City Code to install public water and sewer mains to serve its development; and

WHEREAS, in order to meet the needs of future development in this area, the City requested that the Developer install public water and sewer mains larger than what is necessary to serve the needs of its development; and

WHEREAS, the City is required to pay the Developer for the additional cost of the oversize water and sewer mains; and

WHEREAS, it is the intent of this Agreement to establish the terms of the City's payment for the oversize public water and sewer mains; and

WHEREAS, the oversize costs for PLM Subdivision Phase 1A were Two Thousand Nine Hundred Sixty-Two Dollars (\$2,962.00) for sewer and Three Thousand Two Hundred Sixty Dollars (\$3,260.00) for water for a total for this phase of Six Thousand Two Hundred Twenty-Two Dollars (\$6,222.00); and

WHEREAS, the oversize costs for PLM Subdivision Phase 1B were Nine Thousand Eight Hundred Ninety-Four Dollars (\$9,894.00) for water; and

WHEREAS, the oversize costs for PLM Subdivision Phase 2A were One Hundred Thirteen Thousand One Hundred Thirty-Three Dollars (\$113,133.00) for water; and

WHEREAS, the total oversize costs for the subdivision were One Hundred Twenty-Nine Thousand Two Hundred Forty-Nine Dollars (\$129,249.00); and

WHEREAS, the Public Works Department of the City has analyzed the oversize request amount and finds that it is reasonable.

NOW THEREFORE, the parties hereby agree as follows:

1. Developer shall provide documentation to the City of the actual quantities of materials installed. Such documentation shall be in a form acceptable to Public Works Director.
2. Developer shall provide certification of payments made to the contractors. Such certification shall include copies of checks and invoices, and shall be of sufficient specificity to satisfy the Finance Director of the City that the payments were made to the contractors in relation to the water and sewer mains in the PLM Subdivision.
3. Developer shall provide proof to the City that lien waivers between the Developer and the contractors have been filed.
4. Developer shall provide proof that the project was completed in accordance with the City's standards and the approved plans and specifications.
5. The City shall certify that the sewer and water oversize components of PLM Subdivision Phases 1A, 1B, and 2A have been tested, approved for use, and accepted by the City of Rapid City.
6. Upon completion and certification of each parties' responsibilities contained in paragraphs 1-5 above, the Public Works Department of the City will prepare a purchase order for an amount not to exceed One Hundred Twenty-Nine Thousand Two Hundred Forty-Nine Dollars (\$129,249.00) for the payment to Developer of the City's obligation for oversize costs.
7. The parties' obligations under this Agreement are contingent upon full performance of their respective obligations contained herein.
8. The parties may undertake any legal or equitable action available to enforce the provisions of this Agreement in addition to any remedies provided herein.
9. If 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 they can be given effect without the invalid section(s) or provision(s).
10. This Agreement may only be modified by mutual agreement of both parties. Any modifications or addendums to this Agreement must be in writing.
11. This Agreement shall be construed according to the laws of the State of South Dakota. Any action concerning this Agreement shall be venued in the Circuit Court for the Seventh Judicial Circuit located in Pennington County, South Dakota.
12. If the Developer is a corporation, it has the power to enter into this Agreement and its officer signing for it has full power and authority to do so.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2009.

CITY OF RAPID CITY

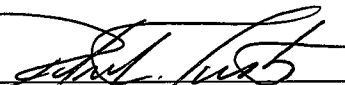
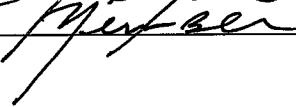
\_\_\_\_\_  
Mayor

ATTEST:

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

(SEAL)

PLM DEVELOPMENT, LLC.

BY:   
ITS: 

State of South Dakota        )  
  ss.  
County of Pennington        )

On this \_\_\_\_ day of \_\_\_\_\_, 2009, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that he, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

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

\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires:

(SEAL)

State of South Dakota      )  
  ) ss.  
County of Pennington      )

On this the 8th day of July, 2009, before me, the undersigned officer, personally appeared Pat Tlustos, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged himself to be the member of PLM DEVELOPMENT, LLC and as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

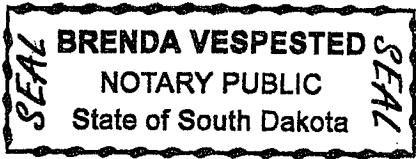
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires:

**My Commission Expires**  
**March 13, 2015**

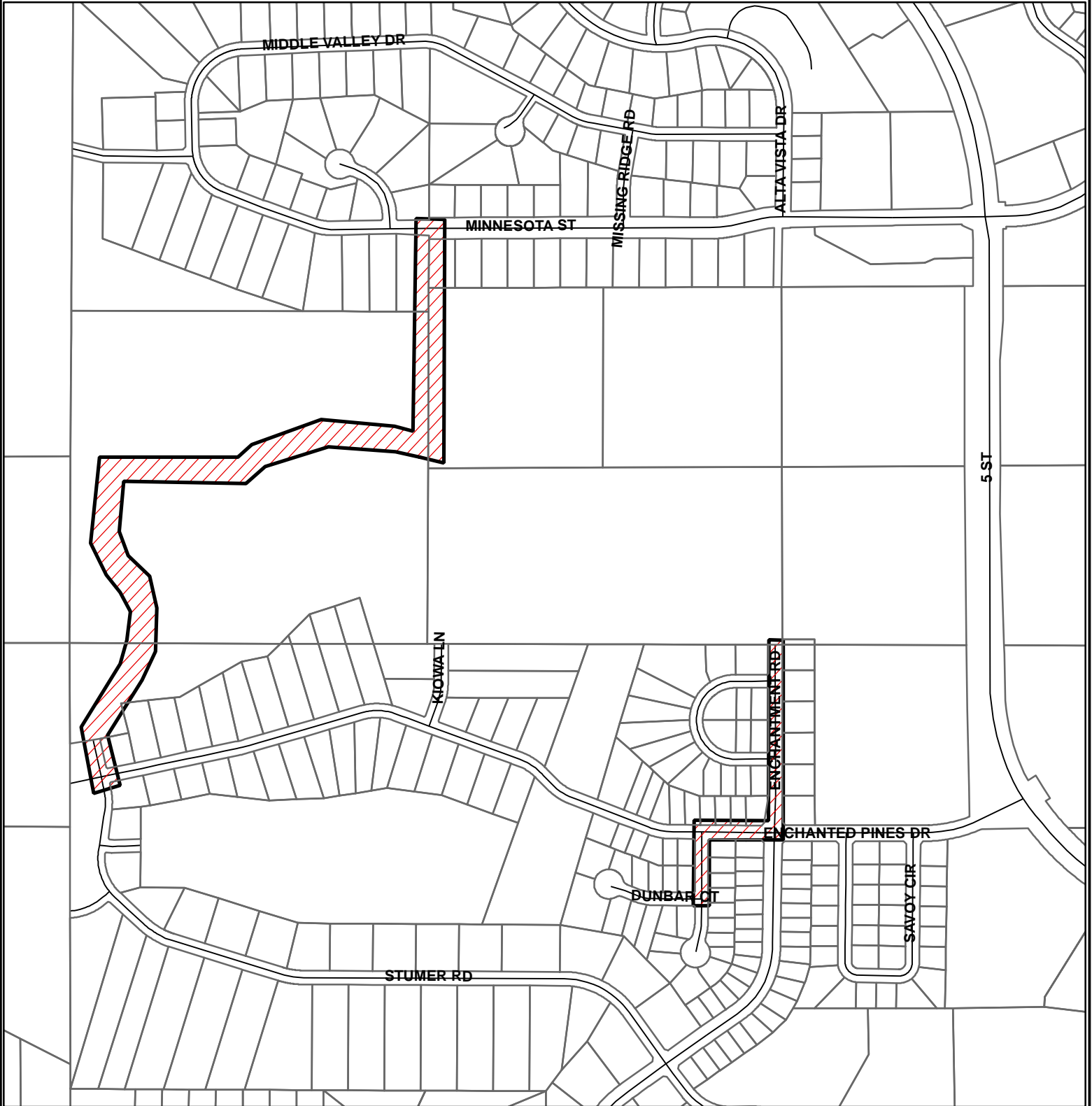
(SEAL)



# EXHIBIT "A"

PW071409-06

SCALE 1" = 500'



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