



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 1A of the Copperfield Vistas Subdivision; and

WHEREAS, the cost of the offsite sewer improvements benefiting Phase 1A 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 City and the Developers previously entered into a Covenant and 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; and

WHEREAS, the City has approved Developer's final plat for Phase 1A of the Copperfield Vistas Subdivision; and

WHEREAS, a portion of the land that is platted for Phase 1A of the Copperfield Vistas Subdivision is included in the sewer service area for the City of Rapid City and a portion of that land is not included in the sewer service area for the City of Rapid City; and

WHEREAS, it was the Parties' original intent to include only that portion of the lands from Phase 1A of the Copperfield Vistas Subdivision in the Covenant and Agreement Regarding Payment of the Sewer Construction Fees for Expansion of Sewer Service in the Elk Vale Area that is actually going to benefit from the expansion of sewer service in the Elk Vale area such that it is necessary to amend said Agreement to correct the legal description contained therein;

WHEREAS, it is the intent of the Parties that this Amended Covenant and Agreement shall be a substitute for, and supersede, the previous Covenant and Agreement between the Parties that was recorded with the Pennington County Register of Deeds on July 14, 2008, at 10:40 a.m. in Book 181, Page 7550 respecting the following described real property:

A tract of land located in the SE $\frac{1}{4}$  NW $\frac{1}{4}$  and the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 4, T1N, R8E, BHM, Pennington County, South Dakota, more fully described as follows: Commencing at the northwest corner of Lot 28 in Block 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; thence, southwesterly along the northerly edge of Copperfield Drive right-of-way, S71°30'56"W, a distance of 4.23 feet more or less, to the point of beginning; thence, continuing southwesterly along the northerly edge of Copperfield Drive right-of-way, S71°30'56"W, a distance of 59.06 feet

more or less, to the northeast corner of Lot 1 in Block 7 of Copperfield Subdivision, as shown on the plat recorded in Book 22 of Plats on Page 195, said corner being marked by a 5/8 inch rebar; thence, northwesterly along the north line of said Lot 1 in Block 7 of Copperfield Subdivision, N88°29'49"W, a distance of 98.69 feet more or less, to the northwest corner of said Lot 1, said corner being coincident with the northeast corner of Lot 3 in Block 7 of Copperfield Subdivision as shown on the plat recorded in Book 22 of Plats on Page 195, and said corner being marked by a rebar with survey cap; thence, northwesterly along the north line of said Lot 3 in Block 7 of Copperfield Subdivision, N88°42'16"W, a distance of 51.73 feet more or less, to the northwest corner of said Lot 3, said point being coincident with the northeast corner of Lot 4 in Block 7 of Copperfield Subdivision, as shown on the plat recorded in Book 22 of Plats on Page 195, and said corner being marked by a rebar with survey cap "LS 2652"; thence, northwesterly along the north line of said Lot 4 in Block 7 of Copperfield Subdivision, N88°18'11"W, a distance of 76.36 feet more or less, to the northwest corner of said Lot 4, said point being coincident with the northeast corner of Lot 5 in Block 7 of Copperfield Subdivision, as shown on the plat recorded in Book 22 of Plats on Page 195, said corner being marked by a 5/8 inch rebar; thence, northwesterly along the north line of said Lot 5 in Block 7 of Copperfield Subdivision, N71°45'04"W, a distance of 68.75 feet more or less; thence, N15°55'14"E, a distance of 104.91 feet more or less; thence, N74°04'46"W, a distance of 45.00 feet more or less; thence, N15°55'14"E, a distance of 160.58 feet more or less; thence, S76°13'24"E, a distance of 120.24 feet more or less; thence, S78°04'22"E, a distance of 59.02 feet more or less; thence, N13°46'36"E, a distance of 98.10 feet more or less; thence, N76°13'24"W, a distance of 13.77 feet more or less; thence, N13°46'36"E, a distance of 52.00 feet more or less; thence, S76°13'24"East, a distance of 5.67 feet more or less; thence, N13°46'36"E, a distance of 80.12 feet more or less; thence, N00°35'05"E, a distance of 68.76 feet more or less; thence, N00°00'00"W, a distance of 83.80 feet more or less; thence, S90°00'00"W, a distance of 0.65 feet more or less; thence, N00°00'00"W, a distance of 52.00 feet more or less; thence, N90°00'00"E, a distance of 18.65 feet more or less; thence, N00°00'00"W, a distance of 200.26 feet more or less; thence, S90°00'00"W, a distance of 20.17 feet more or less; thence, N00°00'00"W, a distance of 52.00 feet more or less; thence, N90°00'00"E, a distance of 2.17 feet more or less; thence, N00°00'00"W, a distance of 455.50 feet more or less; thence, curving to southwest to the left on a curve with a radius of 562.00 feet, a delta of 01°25'51", an arc length of 14.03 feet, and a chord bearing of S78°05'02"W and chord distance of 14.03 feet; thence, N12°37'53"W, a distance of 76.00 feet more or less; thence, curving to the northeast to the right on a curve with a radius of 638.00 feet, a delta of 10°54'37", an arc length of 121.49 feet,

and a chord bearing of N82°49'25"E and chord distance of 121.30 feet; thence, N44°21'49"E, a distance of 14.30 feet more or less; thence, N00°00'00"W, a distance of 15.20 feet more or less; thence, N90°00'00"E, a distance of 52.00 feet more or less; thence, S00°00'00"E, a distance of 15.13 feet more or less; thence, S45°00'00"E, a distance of 14.14 feet more or less; thence, N90°00'00"E, a distance of 142.69 feet more or less, to a point on the north/south one-quarter (1/4) section line of Section 4, T1N, R8E, BHM, Pennington County, South Dakota; thence, southerly along said one-quarter (1/4) section line, S00°05'16"E, a distance of 76.00 feet more or less; thence, S90°00'00"W, a distance of 142.81 feet more or less; thence, S45°00'00"W, a distance of 14.14 feet more or less; thence, S00°00'00"E, a distance of 828.74 feet more or less; thence, curving southwesterly to the right on a curve with a radius of 826.00 feet, a delta of 13°46'36", an arc length of 198.61 feet, and a chord bearing of S06°53'18"W and chord distance of 198.13 feet more or less; thence, S13°46'36"W, a distance of 40.75 feet more or less; thence, curving southwesterly to the left on a curve with a radius of 774.00 feet, a delta of 13°46'36", an arc length of 186.11 feet, and a chord bearing of South 06 degrees 53 minutes 18 seconds West and chord distance of 185.66 feet more or less; thence S00°00'00"E, a distance of 124.86 feet more or less, to the point of beginning

such that the previous Covenant and Agreement filed at said book and page shall be, and hereby is declared to be, of no more force and effect, but rather that this Amended Covenant and Agreement shall hereafter be the agreement of the parties;

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

1. The property description for the property that is included in Phase 1A of the Copperfield Vistas Subdivision that is also part of the sewer service area that will benefit from the Elk Vale Area sewer service expansion is more fully described as follows:

Lots One through Six (1-6), inclusive, of Block Six (6), Lots One (1) and Two (2) of Block Five (5), Lots One through Three (1-3), inclusive, of Block Four (4), and Lot One (1) of Block Three (3) of the Copperfield Vistas Subdivision as depicted on the Plat of Copperfield Vistas Subdivision including Lot 1 through 4 of Block 2, Lots 1 through 5 of Block 3, Lots 1 through 3 of Block 4, Lots 1 & 2 of Block 5, and Lots 1 through 6 of Block 6 and Dedicated Right-of-Way located in (and formerly portions of) the E1/2 NW1/4, and the NE ¼ SW1/4, Section 4, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, which Plat is recorded at the Office of the Pennington County Register of Deeds at Book 35 of Plats, Page 55.

These lands described in this Paragraph 1 shall hereinafter be referred to as "the Benefitting Area in Phase 1A of the Copperfield Vistas Subdivision."

2. The Parties agree that this Amended Covenant and Agreement shall not apply to the following described portions of the Phase 1A of the Copperfield Vistas Subdivision:

Lots Two through Five (2-5), inclusive, of Block 4 and Lot One (1) of Block Three (3) of the Copperfield Vistas Subdivision as depicted on the Plat of Copperfield Vistas Subdivision including Lot 1 through 4 of Block 2, Lots 1 through 5 of Block 3, Lots 1 through 3 of Block 4, Lots 1 & 2 of Block 5, and Lots 1 through 6 of Block 6 and Dedicated Right-of-Way located in (and formerly portions of) the E1/2 NW1/4, and the NE ¼ SW1/4, Section 4, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, which Plat is recorded at the Office of the Pennington County Register of Deeds at Book 35 of Plats, Page 55.

The lands described in this Paragraph 2 are not part of the Benefitting Area in Phase 1A of the Copperfield Vistas Subdivision and are not subject to the terms of this Amended Covenant and Agreement.

3. 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 on the attached Exhibit "B" 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.

4. 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.

5. 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.

6. Pending certification of actual construction costs for that portion of the Elk Vale Area Sewer System that benefits Phase 1A 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 Benefitting Area for Phase 1A 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 the Benefitting Area of Phase 1A of the Copperfield Vistas Subdivision will be \$2141.00 per acre.

7. The estimated Sewer Utility Construction Fee for each platted lot in the Benefitting Area of Phase 1A of the Copperfield Vistas Subdivision shall be calculated at the rate of \$2141.00 per acre based upon the actual square footage of each platted lot in the Benefitting Area of Phase 1A of the Copperfield Vistas Subdivision 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 such 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.

8. After the actual costs of the Sewer Utility Construction that benefits the Benefitting Area of Phase 1A of the Copperfield Vistas Subdivision are certified and after the Common Council establishes the Sewer Utility Construction Fee for said the Benefitting Area of Phase 1A 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 the Benefitting Area of Phase 1A 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.

9. If, based upon the actual costs, the Sewer Utility Construction Fee established by the Common Council for the City of Rapid City for the Benefitting Area of Phase 1A 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 the Benefitting Area of Phase 1A 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.

10. All parties to this Covenant Agreement acknowledge that the City does not have a duty to grant final approval of Developers' plat for the Benefitting Area of Phase 1A 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 Amended Covenant Agreement.

11. The city hereby agrees to provide sanitary sewer service to the developers for the Benefitting Area of Phase 1A 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 the Benefitting Area of Phase 1A 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 the Benefitting Area of Phase 1A of the Copperfield Vistas Subdivision, and to otherwise be responsible to pay for all costs of pumping and transporting sewage from the Benefitting Area of Phase 1A 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 the Benefitting Area of Phase 1A 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.

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

13. 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.

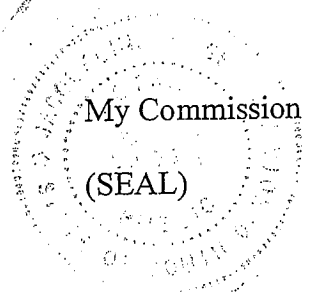
14. Either the City or the Developers may undertake any legal or equitable action available to enforce the provisions of this Agreement in addition to any remedy provided herein. In the event any party to this Agreement is required to undertake any action to enforce the terms of this Agreement and prevails 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.

15. 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 1A of the Copperfield Vistas Subdivision, and be considered as a covenant running with the property described above in Paragraph 1 hereof and referred to throughout as the Benefitting Area of Phase 1A of the Copperfield Vistas Subdivision. Furthermore, it is agreed that in accepting title to any platted lot within the Benefitting Area of Phase 1A 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.

*Donna M. Mayer*  
\_\_\_\_\_  
Notary Public, South Dakota



My Commission Expires: 7-15-2012

(SEAL)

Dated this 26<sup>th</sup> day of September, 2008.

COPPERFIELD LAND COMPANY, LLC

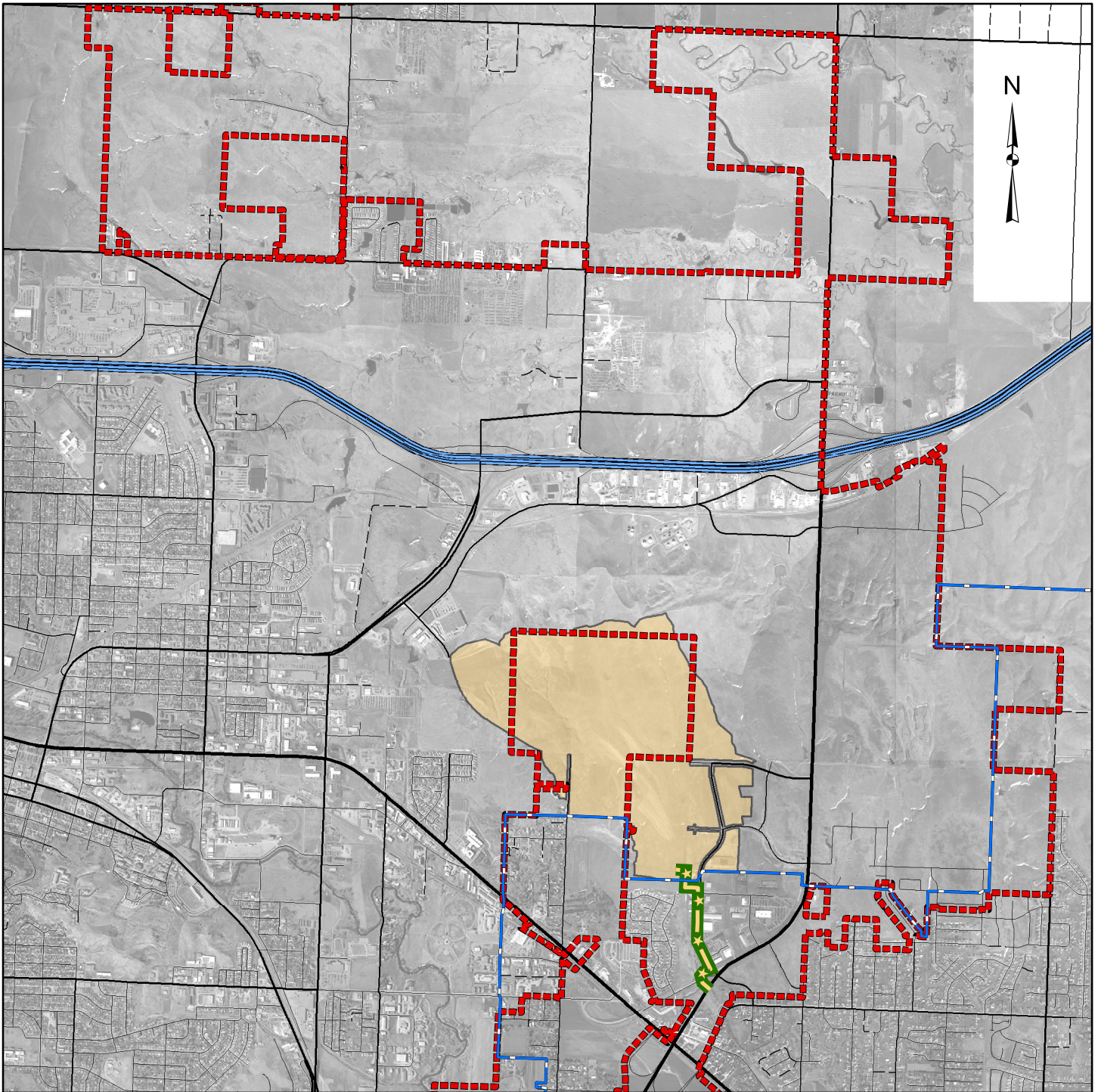
By: *Robert F. Drew*  
\_\_\_\_\_  
Robert F. Drew, President of Land Rush Properties, Inc., the General Partner of Copperfield Vistas, LLLP, the sole Member of Copperfield Land Company, LLC

State of South Dakota        )  
  ss.  
County of Pennington        )

On this the 26<sup>th</sup> day of September, 2008, before me, the undersigned officer personally appeared Robert F. Drew, who is known to me or satisfactorily proven to be the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he is the President of Land Rush Properties, Inc., a South Dakota corporation, which corporation is the General Partner of Copperfield Vistas, LLLP, a South Dakota limited liability limited partnership, which limited liability limited partnership is, in turn, the sole Member of Copperfield Land Company, LLC, a South Dakota limited liability company, and that, as President of Land Rush Properties, Inc., he was authorized to execute the foregoing instrument on behalf of said entities for the purposes therein contained.



# Exhibit A

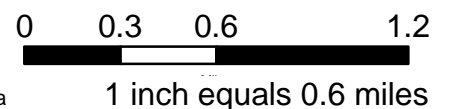


## Elk Vale Sewer Phase 1 (Copperfield Vista to Elk Vale) Preliminary Sewer Construction Fee Benefiting Area

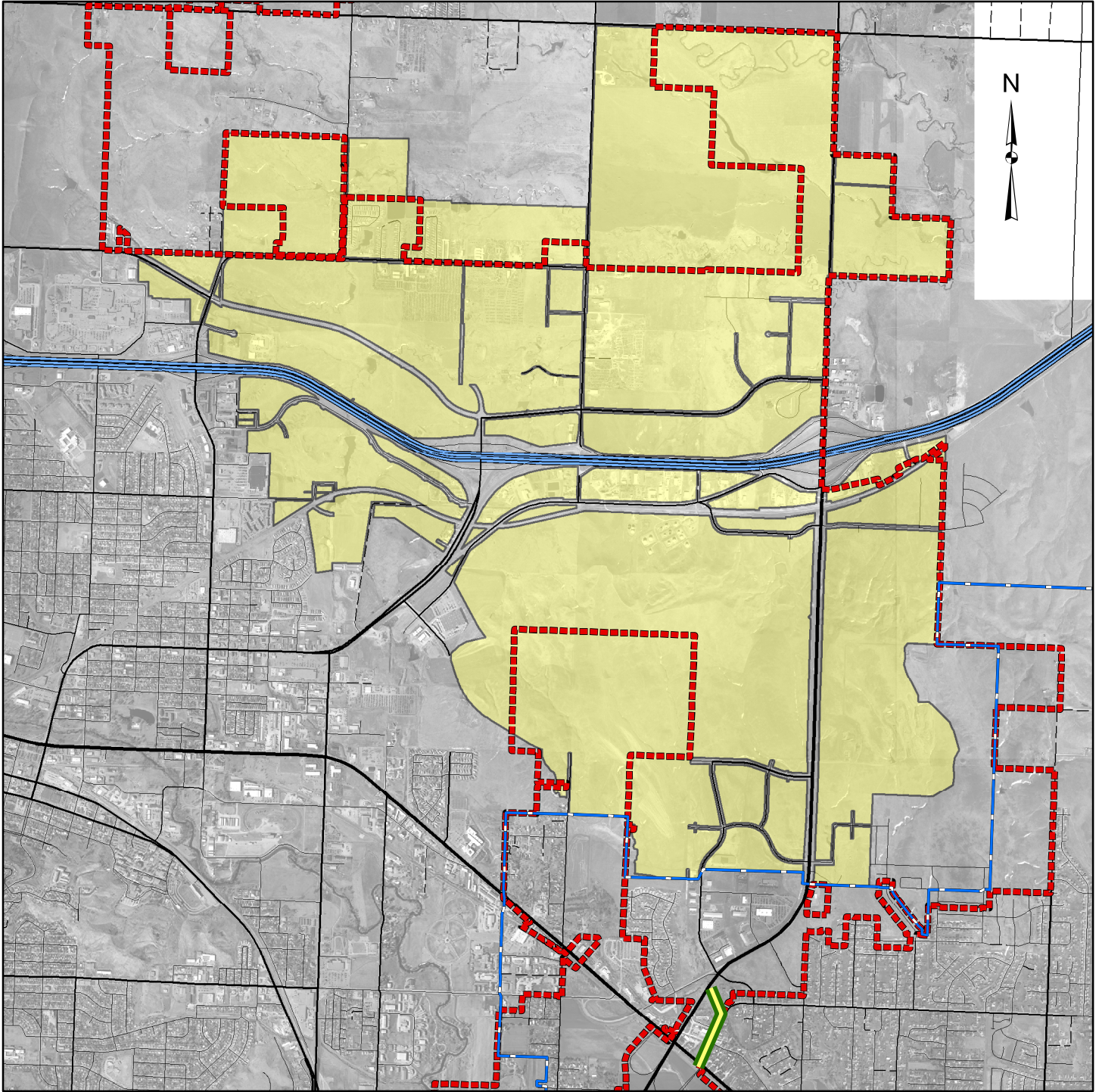
Elk Vale Sewer Phase 1 (Copperfield Vista to Elk Vale)	
Preliminary Benefiting Area	500 ac
Reduced Preliminary Benefiting Area	425 ac
Estimate of Probable Cost	\$800,000
Preliminary Estimate of Construction Fee	\$1,882 /ac

### Legend

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







# Exhibit B

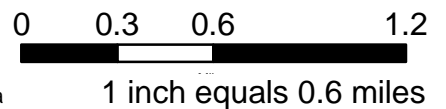


## Elk Vale Sewer Phase 1 (Elk Vale to HWY 44) Preliminary Sewer Construction Fee Benefiting Area

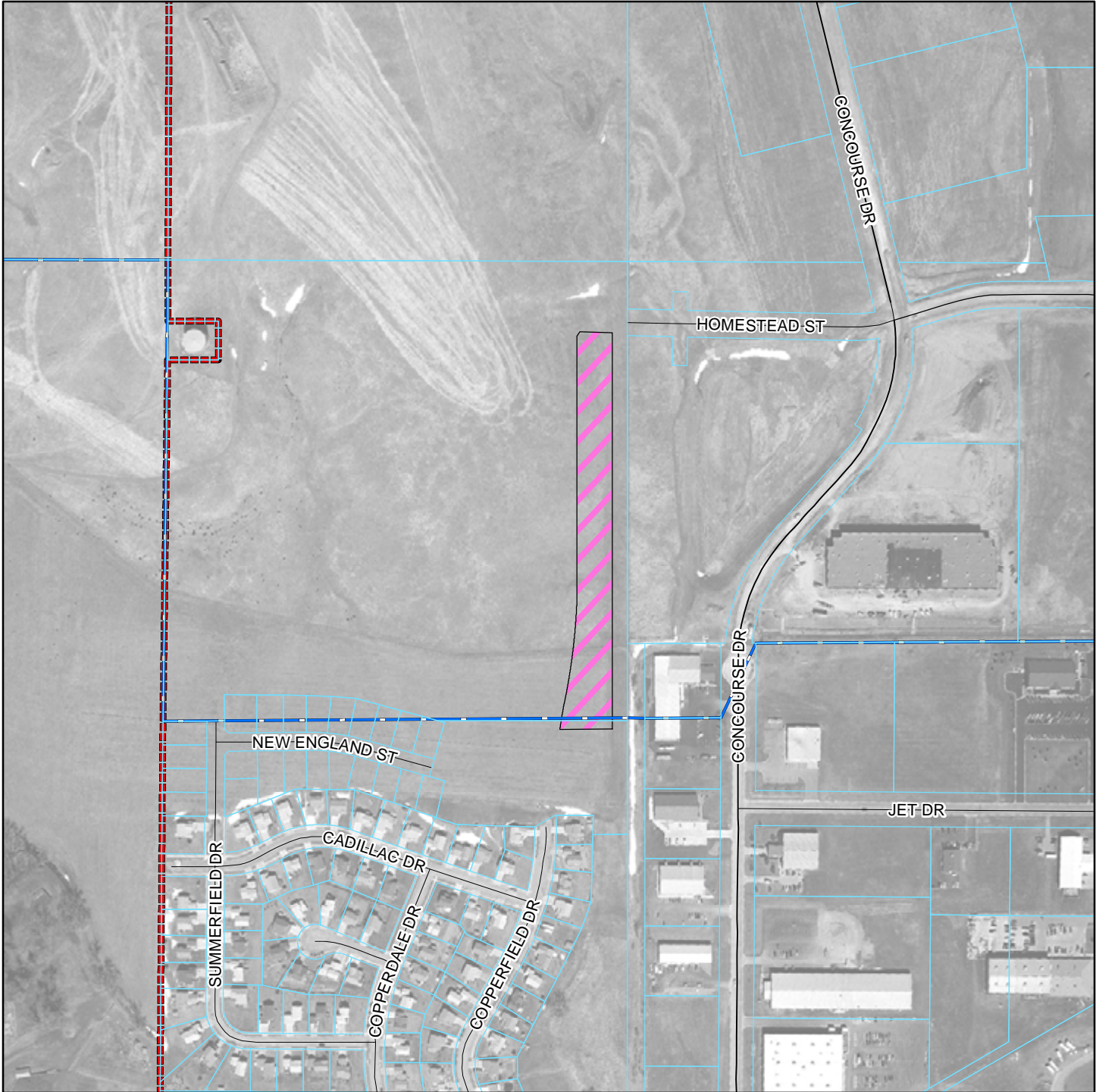
Elk Vale Sewer Phase 1 (Elk Vale to HWY 44)	
Preliminary Benefiting Area	4,045 ac
Reduced Preliminary Benefiting Area	2,355 ac
Estimate of Probable Cost	\$610,000
Preliminary Estimate of Construction Fee	\$259 /ac

### Legend

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




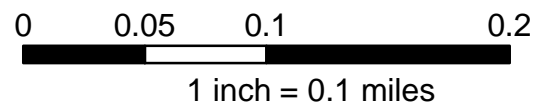
# Exhibit C



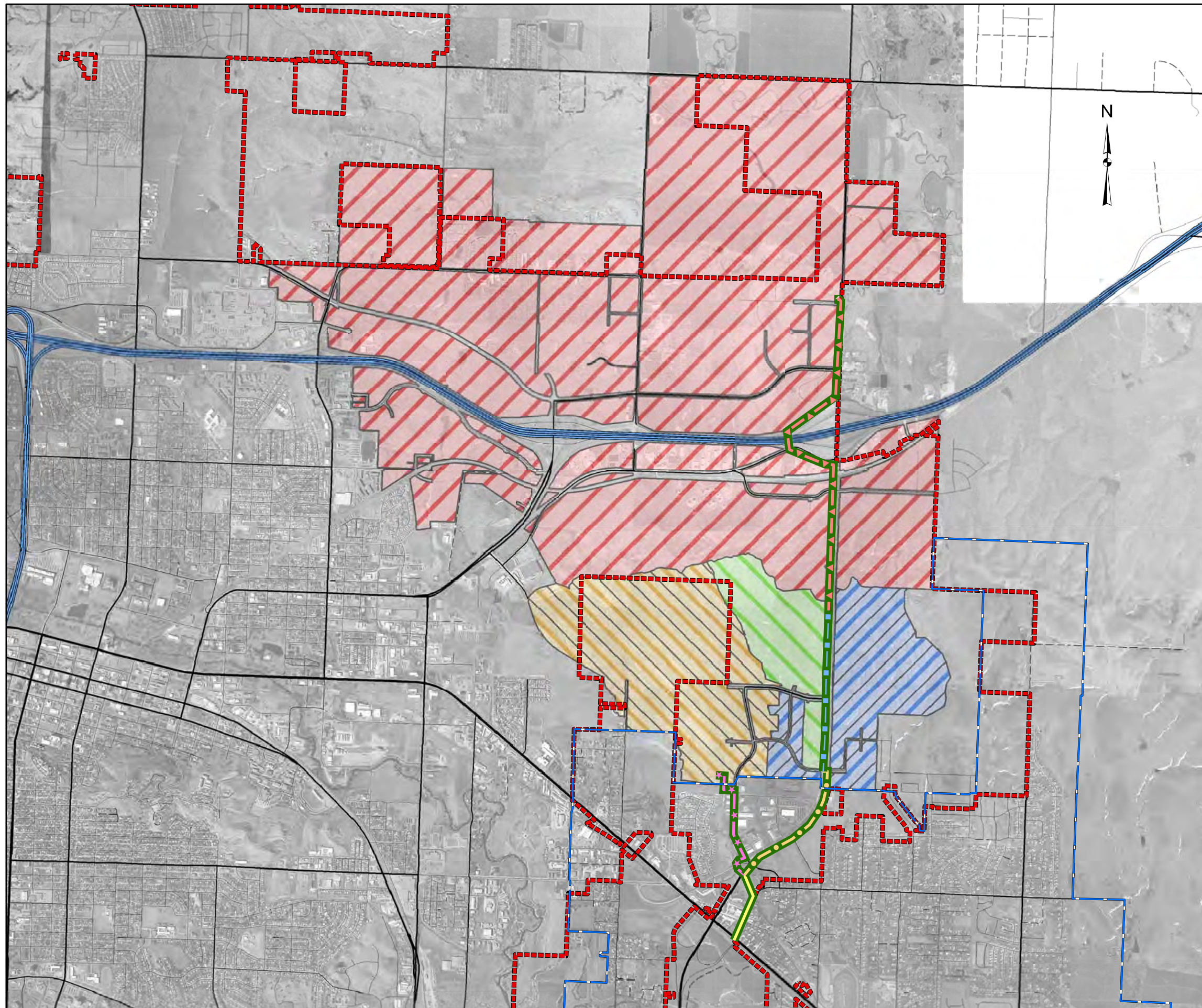
## Copperfield Vista Phase 1B Construction Fee Area





### Legend












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



# Figure 1 Elk Vale Summary Preliminary Sewer Construction Fee Benefiting Areas



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

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

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
<b>Total Cost for Proposed Elk Vale Sewer Improvements:</b>					<b>\$6,428,000</b>	

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
<b>Area A</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
Elk Vale Lift Station / Force Main	\$2,406 /ac
<b>Total Fees for Area A</b>	<b>\$3,383 /ac</b>
<b>Area B</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
<b>Total Fees for Area B</b>	<b>\$977 /ac</b>
<b>Area C</b>	
Elk Vale Sewer Phase 1 (Elk Vale to HWY 44)	\$259 /ac
Elk Vale Sewer Phase 2 (Homestead to Concourse)	\$363 /ac
<b>Total Fees for Area C</b>	<b>\$622 /ac</b>
<b>Area D</b>	
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
<b>Total Fees for Area D</b>	<b>\$2,141 /ac</b>

