



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

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PLANNING DEPARTMENT  
300 Sixth Street

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LF040203-07

## MEMORANDUM

TO: Rapid City Council

FROM: Vicki L. Fisher, Planner III

DATE: March 26, 2003

RE: Authorization for Mayor and Finance Officer to sign a waiver of right to protest a future assessment for street improvements.

Legal Description: Tract 1 of SW1/4 NW1/4, Section 23, T1N, R7E, BHM and Lot B of Lot 1 of NE1/4, Section 22, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota

An 11-6-19 SDCL Review has been submitted to allow a driveway to be constructed within the section line highway located on the above legally described property. A stipulation of approval of the 11-6-19 SDCL Review requires that the applicant, Marcia Beshara, sign a waiver of right to protest a future assessment for the installation of curb, gutter, sidewalk, street light conduit, sewer, water and paving for the driveway within the section line highway. The document also requires the signature of the Mayor and the Finance Officer.

**Staff Recommendation: Authorize the Mayor and Finance Officer to sign the waiver of right to protest a future assessment for the installation of curb, gutter, sidewalk, street light conduit, sewer, water and paving for the driveway within the section line highway located on the above legally described property.**



EQUAL OPPORTUNITY EMPLOYER

AGREEMENT WAIVING RIGHT TO PROTEST  
(SDCL 9-45-26; 9-47-13; 9-48-18; 9-48-42)

THIS AGREEMENT IS MADE and entered into this 27<sup>th</sup>  
day of March, 2003, by and for Marcia Beshara, hereinafter called  
"Owner," and the City of Rapid City, a municipal corporation of the State of South  
Dakota, hereinafter called the "City."

WHEREAS the Owner has proposed to construct a road within a public right-of-  
way to be located and developed according to conditions of an 11-6-19 SDCL Review to  
allow for the construction of a road within a public right-of-way as approved by the Rapid  
City Planning Commission on \_\_\_\_\_, 2003; and

WHEREAS it is the intended purpose of the Owner to obtain final approval for this  
11-6-19 SDCL Review; and

WHEREAS the City of Rapid City's subdivision regulations require construction and  
extension of curb, gutter, sidewalk, street light conduit, sewer, water and pavement  
where the property abuts a section line highway which in this instance would require the  
owner to construct and build curb, gutter, sidewalk, street light conduit, sewer, water  
and pavement along that portion of the section line highway abutting Tract 1 of SW1/4  
NW1/4, Section 23, T1N, R7E, BHM, R7E, BHM, Rapid City, Pennington County, South  
Dakota; and

WHEREAS it is the intent and purpose of both the Owner and the City to enter  
into an agreement whereby the Owner will consent to a future assessed project for the  
construction of curb, gutter, sidewalk, street light conduit, sewer, water and pavement  
where the property abuts a section line highway which in this instance would require the  
Owner to construct and build curb, gutter, sidewalk, street light conduit, sewer, water  
and pavement along a section line highway abutting Tract 1 of SW1/4 NW1/4, Section  
23, T1N, R7E, BHM, R7E, BHM, Rapid City, Pennington County, South Dakota, in  
accordance with City Street Design Standards;

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

1. This agreement pertains to, and includes those properties which are  
designated and identified as follows:

That portion of a section line highway abutting Tract 1 of SW1/4 NW1/4, Section 23,  
T1N, R7E, BHM, R7E, BHM, Rapid City, Pennington County, South Dakota, in  
accordance with City Street Design Standards.

2. This agreement specifically references the design and construction of  
curb, gutter, sidewalk, street light conduit, sewer, water and pavement along a section  
line highway abutting Tract 1 of SW1/4 NW1/4, Section 23, T1N, R7E, BHM, R7E, BHM,  
Rapid City, Pennington County, South Dakota, in accordance with City Street Design  
Standards.

3. The Owner acknowledges the City has the power to make assessments  
for local improvements on property adjoining or benefited thereby, to collect same in the

manner provided by law, and to fix, determine and collect penalties for nonpayment of any special assessments. The Owner agrees that if at any time in the future the City determines it is necessary or desirous to design and construct the curb, gutter, sidewalk, street light conduit, sewer, water and pavement along a section line highway abutting Tract 1 of SW1/4 NW1/4, Section 23, T1N, R7E, BHM, R7E, BHM, Rapid City, Pennington County, South Dakota, in accordance with City Street Design Standards, through an assessed project, Owner or her heirs, assigns, or successors in interest, waive any right to object to such an assessed project as allowed under state law in consideration for the final approval of the subdivision plat without the immediate design and construction of curb, gutter, sidewalk, street light conduit, sewer, water and pavement along a section line highway abutting said property. It is understood by the Owner that the City of Rapid City's primary consideration for the granting of the approval for an 11-6-19 SDCL Review on the herein described property and forbearance from requiring Owner to design and construct curb, gutter, sidewalk, street light conduit, sewer, water and pavement where the property abuts a section line highway which in this instance would require the Owner to construct and build curb, gutter, sidewalk, street light conduit, sewer, water and pavement along a section line highway abutting Tract 1 of SW1/4 NW1/4, Section 23, T1N, R7E, BHM, R7E, BHM, Rapid City, Pennington County, South Dakota, in accordance with City Street Design Standards, is the Owner's covenant and promise to waive any right to object to the assessed project and her consent to the assessed project.

4. Owner further covenants and agrees for herself, her heirs, assigns, and successors in interest, that should she or any of her heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, the immediate design and construction of curb, gutter, sidewalk, street light conduit, sewer, water and pavement where the property a section line highway which in this instance would require the Owner to construct and build curb, gutter, sidewalk, street light conduit, sewer, water and pavement along a section line highway abutting Tract 1 of SW1/4 NW1/4, Section 23, T1N, R7E, BHM, R7E, BHM, Rapid City, Pennington County, South Dakota, in accordance with the City Street Design Standards, which will be required within 90 days of the objection in order to comply with the City of Rapid City's Street Design Standards. Should the weather prevent immediate construction of these subdivision improvements, the City Council may accept a surety bond in an amount equal to the estimated cost of installation of the improvements, whereby the improvements will be made and utilities installed without cost to the City in the event of default of the Owner.

5. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of the Owner, 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 any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of this agreement recorded with the Pennington County Register of Deeds' Office pursuant to the provisions of South Dakota statutes.

6. 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, the undersigned, heirs, assigns or successors in interest agree the City may recover from the of said property its reasonable expenses, including attorney's fees incurred with respect to such action.

7. If any section(s), or provision of this application is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this application if they can be given effect without the invalid section(s) or provisions.

8. This agreement shall be construed according to the laws of the State of South Dakota. No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

9. If the Owner is a corporation, it has the power to enter into this agreement and its officers signing for it have full power and authority to do so.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

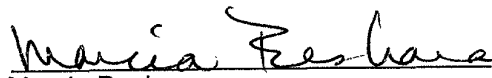
CITY OF RAPID CITY

\_\_\_\_\_  
Jerry Munson, Mayor

ATTEST:

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

(SEAL)

  
\_\_\_\_\_  
Marcia Beshara

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

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me, the undersigned officer, personally appeared Jerry Munson and James F. 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 Agreement Consenting to Assessed Project 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)

State of South Dakota            )  
  SS.  
County of Pennington            )

On this the 27th day of March, 2003, before me, the undersigned officer personally appeared, Marcia Beshona, who acknowledged herself to be the Owner, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

Karen Jones  
\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires: July 11, 2008

(SEAL)

JEG 3-26-03  
Prepared By: CITY ATTORNEY'S OFFICE