

PREPARED BY: City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

STATE OF SOUTH DAKOTA)
) SS. **COVENANT AGREEMENT**
COUNTY OF PENNINGTON)

**COVENANT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND BY
PASS DEVELOPMENT FOR PAYMENT OF ADJACENT LANDOWNER'S
SHARE OF CONSTRUCTION COSTS FOR PHASE 1 OF THE NORTHEAST
AREA SANITARY SEWER INTERCEPTOR PROJECT**

This Covenant Agreement is made and entered into on this ____ day of _____, 2006, by and between THE CITY OF RAPID CITY, of 300 Sixth St., Rapid City, South Dakota, 57701, herein after referred to as the "City" and BY PASS DEVELOPMENT, LLC., of 325 Mt. Rushmore Rd., Custer, South Dakota, 57730, herein after referred to as the "Developer."

WHEREAS, the City constructed Phase I of the Northeast Area Sanitary Sewer Interceptor Project (Project Number SS03-1250); and

WHEREAS, Phase I of this project consisted of constructing a 24 inch sanitary sewer line; and

WHEREAS, the cost of constructing this sewer line was \$183,375.84; and

WHEREAS, the Developer is owner of land legally described as:

The W1/2 of the NE1/4, less I-90 Heartland Business Park, less right of way, all located in Section 28, T2N, R8E, BHM and Lots 1-9 of I-90 Heartland Business Park, all located in Section 28, T2N, R8E, BHM, Rapid City, Pennington County, State of South Dakota; and

WHEREAS, the above described land will be served by this sewer and under the City's subdivision ordinances would have been required to install an 8 inch sanitary sewer line that was rendered unnecessary by the 24 inch sewer line installed by the City; and

WHEREAS, construction of the 8 inch sewer line would have cost the Developer \$94,599.00; and

WHEREAS, the Developer acknowledges that it is responsible for reimbursing the City for the amount that it would have been required to spend to install the sewer to service its property; and

WHEREAS, the City is willing to forego immediate payment of the entire amount if the Developer agrees to certain conditions.

NOW THEREFORE, the City and Developer agree as follows:

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

The W1/2 of the NE1/4, less I-90 Heartland Business Park, less right of way, all located in Section 28, T2N, R8E, BHM and Lots 1-9 of I-90 Heartland Business Park, all located in Section 28, T2N, R8E, BHM, Rapid City, Pennington County, State of South Dakota

2. Developer will pay to the City \$51,955.00 for its share of the sewer line adjacent to its property that was installed by the City within 30 days of this agreement being approved.

3. The Developer will pay the City the remaining \$42,644.00 within 30 days of platting any portion of the remaining unplatted portion of the W 1/2 of the NE 1/4 of Section 28, T2N, R8E, BHM.

4. The Developer acknowledges that it is responsible for payment of this amount and that the benefit that it is receiving by not being required to immediately reimburse the City for its share of the sewer's construction cost is sufficient consideration for this agreement.

5. The City will not file this covenant agreement on Lots 1-9 of the I-90 Heartland Business Park as long as the amount called for in Paragraph 2 is paid to the City within 30 days after approval of the agreement. The City agrees to release this covenant on the unplatted balance of the W1/2 of the NE1/4 as soon as the City is paid for the amount called for in Paragraph 3 of this agreement.

6. 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 Developer, 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.

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

8. If the Developer 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.

9. This Agreement constitutes the entire agreement of the parties. No other writings or negotiations are part of this document. This agreement may only be modified by mutual agreement of both parties. Any modifications or addendums to this agreement must be in writing.

10. The parties rights and obligations under this Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this Agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, State of South Dakota

DATED this _____ day of _____, 2005.

CITY OF RAPID CITY

Jim Shaw, Mayor

ATTEST:

Finance Officer

(SEAL)

BY PASS DEVELOPMENT, LLC.

By: [Signature]

Its: Member

By: [Signature]

Its: Member

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

On this _____ day of _____, 2006, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City 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 as such Mayor and Finance Officer of the City of Rapid City.


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

[SEAL] _____
Notary Public, State of South Dakota
My Commission Expires: _____

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

On this 2nd day of January, 2006, before me, the undersigned officer, personally appeared Pat Tlustos, who acknowledged himself to be the MEMBER of By Pass Development, LLC, and that as such, being duly authorized so to do, executed the foregoing instrument.

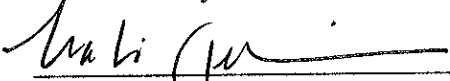
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]  _____
Notary Public, State of South Dakota
My Commission Expires: September 30, 2010

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

On this 2nd day of January, 2006, before me, the undersigned officer, personally appeared MIKE TENNYSON, who acknowledged himself to be the MEMBER of By Pass Development, LLC, and that as such, being duly authorized so to do, executed the foregoing instrument.

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



Notary Public, State of South Dakota
My Commission Expires: _____

My Commission Expires
September 30, 2010

