



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

Growth Management Department

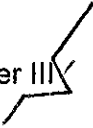
300 Sixth Street

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Growth Management Department
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MEMORANDUM

TO: Rapid City Council

FROM: Vicki L. Fisher, Urban Planner III 

DATE: February 15, 2006

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

Legal Description: That part of the SW1/4 of Section 22, T1N, R7E, of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, that lies within the following description: Commencing at a 5/8" rebar with survey cap marked "FMG Inc. LS SD 1019" at the Center-South-South 1/64 corner of Section 22; Thence S00°12'38"E a distance of 152.63', more or less, to a point; Thence N90°00'00"W a distance of 726.50', more or less, to a point; Thence N64°41'13"W a distance of 267.41', more or less, to a point; Thence Northwesterly, on a curve to the left, said curve having a radius of 226.00', a length of 64.26', a chord bearing of N44°48'37"W and a chord length of 64.04', more or less, to a point; Thence N52°57'20"W a distance of 189.40', more or less, to a point; Thence Northwesterly, on a curve to the right, said curve having a radius of 174.00', a length of 160.82', a chord bearing of N26°28'40"W and a chord length of 155.16', more or less, to a point; Thence N00°00'00"W a distance of 154.75', more or less, to a point; Thence N90°00'00"W a distance of 142.80', more or less, to a point; Thence N45°02'54"W a distance of 14.15', more or less, to a point; Thence N00°05'48"W a distance of 197.85', more or less, to a point; Thence Northeasterly on a curve to the right, said curve having a radius of 341.00', a length of 157.62', a chord bearing of N13°08'43"E and a chord length of 156.22', more or less, to a point; Thence N26°23'14"E a distance of 374.54', more or less, to a point; Thence S63°35'34"E a distance of 18.09', more or less, to a point, said point being a 5/8" rebar with survey cap marked "FMG Inc. LS SD 6119" on the south right of way line of Catron Boulevard; Thence S63°35'34"E, along the south right of way line of Catron Boulevard, a distance of 1047.40', more or less, to a point, said



EQUAL OPPORTUNITY EMPLOYER

point being a 5/8" rebar; Thence Southeasterly, along the south right of way line of Catron Boulevard, on a curve to the right, said curve having a radius of 2230.97' a length of 263.77', a chord bearing of S60°12'09"E and a chord length of 263.62', more or less, to a point, said point being a 5/8" rebar with survey cap marked "FMG Inc. LS SD 6119"; Thence S00°08'29"E, along the Section 1/4 Line, a distance of 505.50', more or less, to the point of beginning; all located within the SW1/4 of Section 22, T1N, R7E, of the Black Hills Meridian; said parcel containing 27.497 acres more or less.

A Variance to the Subdivision Regulations to waive the requirement to install sewer along a portion of Catron Boulevard as it abuts the subject property has been submitted in conjunction with a Preliminary Plat to subdivide the subject property creating a 27.497 acre residential lot. A stipulation of approval of the Variance to the Subdivision Regulations requires that the applicant sign a waiver of right to protest any future assessments for the improvement. 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 sewer along a portion of Catron Boulevard as it abuts the subject property.

(File #06SV002)

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

Jan
2-10-06

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 13th day of February, 2005, by and for RUSHMORE CAR WASH, INC., hereinafter called "Developer," and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter called the "City."

WHEREAS the Developer has submitted a proposed subdivision plat; and

WHEREAS it is the intended purpose of the Developer to obtain final approval for this subdivision plat; and

WHEREAS the City of Rapid City's subdivision regulations require installation of sewer, which in this instance would require the Developer to install sewer along Catron Boulevard as it abuts that part of the SW1/4 of Section 22, T1N, R7E, of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, that lies within the following description: Commencing at a 5/8" rebar with survey cap marked "FMG Inc. LS SD 1019" at the Center-South-South 1/64 corner of Section 22; Thence S00°12'38"E a distance of 152.63', more or less, to a point; Thence N90°00'00"W a distance of 726.50', more or less, to a point; Thence N64°41'13"W a distance of 267.41', more or less, to a point; Thence Northwesterly, on a curve to the left, said curve having a radius of 226.00', a length of 64.26', a chord bearing of N44°48'37"W and a chord length of 64.04', more or less, to a point; Thence N52°57'20"W a distance of 189.40', more or less, to a point; Thence Northwesterly, on a curve to the right, said curve having a radius of 174.00', a length of 160.82', a chord bearing of N26°28'40"W and a chord length of 155.16', more or less, to a point; Thence N00°00'00"W a distance of 154.75', more or less, to a point; Thence N90°00'00"W a distance of 142.80', more or less, to a point; Thence N45°02'54"W a distance of 14.15', more or less, to a point; Thence N00°05'48"W a distance of 197.85', more or less, to a point; Thence Northeasterly on a curve to the right, said curve having a radius of 341.00', a length of 157.62', a chord bearing of N13°08'43"E and a chord length of 156.22', more or less, to a point; Thence N26°23'14"E a distance of 374.54', more or less, to a point; Thence S63°35'34"E a distance of 18.09', more or less, to a point, said point being a 5/8" rebar with survey cap marked "FMG Inc. LS SD 6119" on the south right of way line of Catron Boulevard; Thence S63°35'34"E, along the south right of way line of Catron Boulevard, a distance of 1047.40', more or less, to a point, said point being a 5/8" rebar; Thence Southeasterly, along the

south right of way line of Catron Boulevard, on a curve to the right, said curve having a radius of 2230.97' a length of 263.77', a chord bearing of S60°12'09"E and a chord length of 263.62', more or less, to a point, said point being a 5/8" rebar with survey cap marked "FMG Inc. LS SD 6119"; Thence S00°08'29"E, along the Section 1/4 Line, a distance of 505.50', more or less, to the point of beginning; all located within the SW1/4 of Section 22, T1N, R7E, of the Black Hills Meridian; said parcel containing 27.497 acres more or less; and

WHEREAS it is the intent and purpose of both the Developer and the City to enter into an agreement whereby the Developer will consent to a future assessed project for the installation of sewer along Catron Boulevard as it abuts that part of the SW1/4 of Section 22, T1N, R7E, of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, that lies within the following description: Commencing at a 5/8" rebar with survey cap marked "FMG Inc. LS SD 1019" at the Center-South-South 1/64 corner of Section 22; Thence S00°12'38"E a distance of 152.63', more or less, to a point; Thence N90°00'00"W a distance of 726.50', more or less, to a point; Thence N64°41'13"W a distance of 267.41', more or less, to a point; Thence Northwesterly, on a curve to the left, said curve having a radius of 226.00', a length of 64.26', a chord bearing of N44°48'37"W and a chord length of 64.04', more or less, to a point; Thence N52°57'20"W a distance of 189.40', more or less, to a point; Thence Northwesterly, on a curve to the right, said curve having a radius of 174.00', a length of 160.82', a chord bearing of N26°28'40"W and a chord length of 155.16', more or less, to a point; Thence N00°00'00"W a distance of 154.75', more or less, to a point; Thence N90°00'00"W a distance of 142.80', more or less, to a point; Thence N45°02'54"W a distance of 14.15', more or less, to a point; Thence N00°05'48"W a distance of 197.85', more or less, to a point; Thence Northeasterly on a curve to the right, said curve having a radius of 341.00', a length of 157.62', a chord bearing of N13°08'43"E and a chord length of 156.22', more or less, to a point; Thence N26°23'14"E a distance of 374.54', more or less, to a point; Thence S63°35'34"E a distance of 18.09', more or less, to a point, said point being a 5/8" rebar with survey cap marked "FMG Inc. LS SD 6119" on the south right of way line of Catron Boulevard; Thence S63°35'34"E, along the south right of way line of Catron Boulevard, a distance of 1047.40', more or less, to a point, said point being a 5/8" rebar; Thence Southeasterly, along the south right of way line of Catron Boulevard, on a curve to the right, said curve having a radius of 2230.97' a length of 263.77', a chord bearing of S60°12'09"E and a chord length of 263.62', more or less, to a point, said point being a 5/8" rebar with survey cap marked "FMG Inc. LS SD 6119"; Thence S00°08'29"E, along the Section 1/4 Line, a distance of 505.50', more or less, to the point of beginning; all located within the SW1/4 of Section 22, T1N, R7E, of the Black Hills Meridian; said parcel containing 27.497 acres more or less, in exchange for the City not requiring immediate installation of the improvements as required by Rapid City Subdivision Regulations;

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 part of the SW1/4 of Section 22, T1N, R7E, of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, that lies within the following description: Commencing at a 5/8" rebar with survey cap marked "FMG Inc. LS SD 1019" at the Center-South-South 1/64 corner of Section 22; Thence S00°12'38"E a distance of 152.63', more or less, to a point; Thence N90°00'00"W a distance of 726.50', more or less, to a point; Thence N64°41'13"W a distance of 267.41', more or less, to a point; Thence Northwesterly, on a curve to the left, said curve having a radius of 226.00', a length of 64.26', a chord bearing of N44°48'37"W and a chord length of 64.04', more or less, to a point; Thence N52°57'20"W a distance of 189.40', more or less, to a point; Thence Northwesterly, on a curve to the right, said curve having a radius of 174.00', a length of 160.82', a chord bearing of N26°28'40"W and a chord length of 155.16', more or less, to a point; Thence N00°00'00"W a distance of 154.75', more or less, to a point; Thence N90°00'00"W a distance of 142.80', more or less, to a point; Thence N45°02'54"W a distance of 14.15', more or less, to a point; Thence N00°05'48"W a distance of 197.85', more or less, to a point; Thence Northeasterly on a curve to the right, said curve having a radius of 341.00', a length of 157.62', a chord bearing of N13°08'43"E and a chord length of 156.22', more or less, to a point; Thence N26°23'14"E a distance of 374.54', more or less, to a point; Thence S63°35'34"E a distance of 18.09', more or less, to a point, said point being a 5/8" rebar with survey cap marked "FMG Inc. LS SD 6119" on the south right of way line of Catron Boulevard; Thence S63°35'34"E, along the south right of way line of Catron Boulevard, a distance of 1047.40', more or less, to a point, said point being a 5/8" rebar; Thence Southeasterly, along the south right of way line of Catron Boulevard, on a curve to the right, said curve having a radius of 2230.97' a length of 263.77', a chord bearing of S60°12'09"E and a chord length of 263.62', more or less, to a point, said point being a 5/8" rebar with survey cap marked "FMG Inc. LS SD 6119"; Thence S00°08'29"E, along the Section 1/4 Line, a distance of 505.50', more or less, to the point of beginning; all located within the SW1/4 of Section 22, T1N, R7E, of the Black Hills Meridian; said parcel containing 27.497 acres more or less.

2. This agreement specifically references the installation of sewer along Catron Boulevard as it abuts that part of the SW1/4 of Section 22, T1N, R7E, of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, that lies within the following description: Commencing at a 5/8" rebar with survey cap marked "FMG Inc. LS SD 1019" at the Center-South-South 1/64 corner of Section 22; Thence S00°12'38"E a distance of 152.63', more or less, to a point; Thence N90°00'00"W a distance of 726.50', more or less, to a point; Thence N64°41'13"W a distance of 267.41', more or less, to a point; Thence Northwesterly, on a curve to the left, said curve having a radius of 226.00', a length of 64.26', a chord bearing of N44°48'37"W and a chord length of 64.04', more or less, to a point; Thence N52°57'20"W a distance of 189.40', more or less, to a point; Thence Northwesterly, on a curve to the right, said curve having a radius of 174.00', a length of 160.82', a chord bearing of N26°28'40"W and a chord length of 155.16', more or less,

to a point; Thence N00°00'00"W a distance of 154.75', more or less, to a point; Thence N90°00'00"W a distance of 142.80', more or less, to a point; Thence N45°02'54"W a distance of 14.15', more or less, to a point; Thence N00°05'48"W a distance of 197.85', more or less, to a point; Thence Northeasterly on a curve to the right, said curve having a radius of 341.00', a length of 157.62', a chord bearing of N13°08'43"E and a chord length of 156.22', more or less, to a point; Thence N26°23'14"E a distance of 374.54', more or less, to a point; Thence S63°35'34"E a distance of 18.09', more or less, to a point, said point being a 5/8" rebar with survey cap marked "FMG Inc. LS SD 6119" on the south right of way line of Catron Boulevard; Thence S63°35'34"E, along the south right of way line of Catron Boulevard, a distance of 1047.40', more or less, to a point, said point being a 5/8" rebar; Thence Southeasterly, along the south right of way line of Catron Boulevard, on a curve to the right, said curve having a radius of 2230.97' a length of 263.77', a chord bearing of S60°12'09"E and a chord length of 263.62', more or less, to a point, said point being a 5/8" rebar with survey cap marked "FMG Inc. LS SD 6119"; Thence S00°08'29"E, along the Section 1/4 Line, a distance of 505.50', more or less, to the point of beginning; all located within the SW1/4 of Section 22, T1N, R7E, of the Black Hills Meridian; said parcel containing 27.497 acres more or less.

3. The Developer 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 Developer agrees that if at any time in the future the City determines it is necessary or desirable to install sewer along Catron Boulevard as it abuts that part of the SW1/4 of Section 22, T1N, R7E, of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, that lies within the following description: Commencing at a 5/8" rebar with survey cap marked "FMG Inc. LS SD 1019" at the Center-South-South 1/64 corner of Section 22; Thence S00°12'38"E a distance of 152.63', more or less, to a point; Thence N90°00'00"W a distance of 726.50', more or less, to a point; Thence N64°41'13"W a distance of 267.41', more or less, to a point; Thence Northwesterly, on a curve to the left, said curve having a radius of 226.00', a length of 64.26', a chord bearing of N44°48'37"W and a chord length of 64.04', more or less, to a point; Thence N52°57'20"W a distance of 189.40', more or less, to a point; Thence Northwesterly, on a curve to the right, said curve having a radius of 174.00', a length of 160.82', a chord bearing of N26°28'40"W and a chord length of 155.16', more or less, to a point; Thence N00°00'00"W a distance of 154.75', more or less, to a point; Thence N90°00'00"W a distance of 142.80', more or less, to a point; Thence N45°02'54"W a distance of 14.15', more or less, to a point; Thence N00°05'48"W a distance of 197.85', more or less, to a point; Thence Northeasterly on a curve to the right, said curve having a radius of 341.00', a length of 157.62', a chord bearing of N13°08'43"E and a chord length of 156.22', more or less, to a point; Thence N26°23'14"E a distance of 374.54', more or less, to a point; Thence S63°35'34"E a distance of 18.09', more or less, to a point, said point being a 5/8" rebar with survey cap marked "FMG Inc. LS SD 6119" on the south right of way line of Catron Boulevard; Thence S63°35'34"E, along the south right of way line of Catron Boulevard, a distance of 1047.40', more or less, to a point, said point being a 5/8" rebar; Thence Southeasterly, along the south right of way line of Catron Boulevard, on a curve to the right, said curve having a radius of 2230.97' a length of 263.77', a chord bearing of

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4. Developer further covenants and agrees for itself, its heirs, assigns, and successors in interest, that should it or any of its heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, the immediate installation of sewer along Catron Boulevard as it abuts that part of the SW1/4 of Section 22, T1N, R7E, of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, that lies within the following description: Commencing at a 5/8" rebar with survey cap marked "FMG Inc. LS SD 1019" at the Center-South-South 1/64 corner of Section 22; Thence S00°12'38"E a distance of 152.63', more or less, to a point; Thence N90°00'00"W a distance of 726.50', more or less, to a point; Thence N64°41'13"W a distance of 267.41', more or less, to a point; Thence Northwesterly, on a curve to the left, said curve having a radius of 226.00', a length of 64.26', a chord bearing of N44°48'37"W and a chord length of 64.04', more or less, to a point; Thence N52°57'20"W a distance of 189.40', more or less, to a point; Thence Northwesterly, on a curve to the right, said curve having a radius of 174.00', a length of 160.82', a chord bearing of N26°28'40"W and a chord length of 155.16', more or less, to a point; Thence N00°00'00"W a distance of 154.75', more or less, to a point; Thence N90°00'00"W a distance of 142.80', more or less, to a point; Thence N45°02'54"W a distance of 14.15', more or less, to a point; Thence N00°05'48"W a distance of 197.85', more or less, to a point; Thence Northeasterly on a curve to the right, said curve having a radius of 341.00', a length of 157.62', a chord bearing of N13°08'43"E and a chord length of 156.22', more or less, to a point; Thence N26°23'14"E a distance of 374.54', more or less, to a point; Thence S63°35'34"E a distance of 18.09', more or less, to a point, said point being a 5/8" rebar with survey cap marked "FMG Inc. LS SD 6119" on the south right of way line of Catron Boulevard;

Thence S63°35'34"E, along the south right of way line of Catron Boulevard, a distance of 1047.40', more or less, to a point, said point being a 5/8" rebar; Thence Southeasterly, along the south right of way line of Catron Boulevard, on a curve to the right, said curve having a radius of 2230.97' a length of 263.77', a chord bearing of S60°12'09"E and a chord length of 263.62', more or less, to a point, said point being a 5/8" rebar with survey cap marked "FMG Inc. LS SD 6119"; Thence S00°08'29"E, along the Section 1/4 Line, a distance of 505.50', more or less, to the point of beginning; all located within the SW1/4 of Section 22, T1N, R7E, of the Black Hills Meridian; said parcel containing 27.497 acres more or less, which is required in the City subdivision regulations will be required within 90 days of the objection in order to comply with the City of Rapid City's subdivision regulations. Should the weather prevent immediate installation 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 Developer.

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 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.

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 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.

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 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.

DATED this _____ day of _____, 2006.

CITY OF RAPID CITY

Jim Shaw, Mayor

ATTEST:

Finance Officer

(SEAL)

RUSHMORE CAR WASH, INC.

By: Jeff L. Benoit
PRESIDENT

State of South Dakota)
 ss.
County of Pennington)

On this the / 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, 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 13th day of FEBRUARY, 2006, before me, the undersigned officer personally appeared JEFF BUNDE, who acknowledged himself to be the PRESIDENT of RUSHMORE CAR WASH, INC., and that he, as such PRESIDENT, being authorized so to do, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained by signing the name of RUSHMORE CAR WASH, INC. by himself as PRESIDENT.

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

Nancy M. Malone
Notary Public, South Dakota

My Commission Expires: 11-10-08

(SEAL)

