CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

Growth Management Department

300 Sixth Street

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MEMORANDUM

TO: Rapid City Council

FROM: Vicki L. Fisher, Planner III

DATE: April 11, 2006

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

Legal Description: Lot 1 of Neff's Subdivision No. 3 and the unplatted portion of the SW1/4 SW1/4, Section 34, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota

A Variance to the Subdivision Regulations to waive the requirement to install curb gutter, sidewalk and street light conduit along Elk Vale Road as it abuts the subject property has been submitted in conjunction with a Preliminary Plat to subdivide the subject property creating a 7.725 acre 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 assessements 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 curb gutter, sidewalk and street light conduit along Elk Vale Road as it abuts the subject property.

(File #06SV006)

PREPARED BY: City's Attorney Office
JPC 300 Sixth Street
3-29-06 Rapid City, SD 57701
(605) 394-4140

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 30th day of March, 2006, by and for WEST RIVER ASSOCIATION, INC. and [redacted]G & G INVESTMENTS, LLP, hereinafter called "Developers," and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter called the "City."

WHEREAS, the Developers have submitted a proposed subdivision plat; and

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

WHEREAS, the City of Rapid City's subdivision regulations require installation of curb, gutter, sidewalk and street light conduit, which in this instance would require the Developers to install curb, gutter, sidewalk, and street light conduit along Elk Vale Road as it abuts Lot 1 of Neff's Subdivision No. 3 and the unplatted portion of the SW¼SW¼, Section 34, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota; and

WHEREAS, it is the intent and purpose of both the Developers and the City to enter into an agreement whereby the Developers will consent to a future assessed project for the installation of curb, gutter, sidewalk, and street light conduit along Elk Vale Road as it abuts the above described property in exchange for the City not requiring immediate installation of the improvements as required by Rapid City's 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:

Lot 1 of Neff's Subdivision No. 3 and the unplatted portion of the SW¼SW¼, Section 34, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota.

2. This agreement specifically references the installation of curb, gutter, sidewalk, and street light conduit along Elk Vale Road as it abuts the above described property.

3. The Developers acknowledge 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 Developers agree that if at any time in the future the City determines it is necessary or desirous to install curb, gutter, sidewalk, and street light conduit along Elk Vale Road as it abuts the above described property through an assessed project, the Developers or their 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 installation of curb, gutter, sidewalk, and street light conduit. It is understood by the Developers that the City of Rapid City's primary consideration for granting approval of the subdivision plat on the herein described property and its forbearance from requiring Developers to immediately install curb, gutter, sidewalk, and street light conduit along Elk Vale Road, is the Developers' covenant and promise to waive any right to object to the assessed project and their consent to the assessed project.

4. Developers further covenant and agree for themselves, their heirs, assigns, and successors in interest, that should they or any of their heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, the immediate installation of curb, gutter, sidewalk, and street light conduit along Elk Vale Road as it abuts the above described property 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 Developers.

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 Developers, 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)

WEST RIVER ASSOCIATION, INC.

By: James Pahl

GIG & G INVESTMENTS, LLP

By: James Ginsbach

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 30th day of March, 2006, before me, the undersigned officer personally appeared James J Park, who acknowledged themself to be the CEO of WEST RIVER ASSOCIATION, INC., and that as such, being duly authorized to do so, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained.

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

Leila Marie Johnson
Notary Public, South Dakota

My Commission Expires:

LEILA MARIE JOHNSON
NOTARY PUBLIC
State of South Dakota
SEAL

My Commission Expires
March 2, 2007

(SEAL)

State of South Dakota)
ss.
County of Pennington)

On this the 3rd day of April, 2006, before me, the undersigned officer personally appeared James Ginsbach, who acknowledged himself to be the General Partner of G & G INVESTMENTS, LLP, and that as such, being duly authorized to do so, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained.

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

Karlene Erson
Notary Public, South Dakota

My Commission Expires: 3-25-2012

(SEAL)