

Prepared by:  
City Attorney's Office and  
Public Works Department  
300 Sixth Street  
Rapid City, SD 57701

## AGREEMENT TO SHARE SEWER MAIN CONSTRUCTION COSTS

THIS AGREEMENT is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation, hereinafter referred to as the "City," and HARLEY F. TAYLOR, of 3144 Broadmoor Circle, Rapid City, South Dakota, 57702, hereinafter referred to as the "Developer".

WHEREAS, the Developer desires to construct a sewer main that is only sufficient to serve its property consisting of 43.0 acres more or less and legally described as:

the NE1/4 of the SW1/4 less Wildwood Subdivision and the E1/2 of the NE 1/4 of the NW 1/4 of the SW 1/4., Section 21, T1N, R7E Rapid City, South Dakota 57701; and

WHEREAS, the City has requested the Developer to construct the sewer main in such a manner and location to facilitate future extension to the north surrounding area; and

WHEREAS, the Developer does have the option to construct the sewer main in a manner and location that would provide sufficient service to the Developer's above-described property and said option would cost less than the manner and location requested by the City to facilitate future extension to the north; and

WHEREAS, it is in the City's best interest to have the Developer construct the sewer main as requested by the City; and

WHEREAS, the Developer has submitted a preliminary drawing and a corresponding cost estimate for the requested sewer main. Said drawing and estimate shall be the basis of this Agreement and is attached hereto and incorporated herein as Exhibit A; and

WHEREAS, the construction project is comprised of two discernable segments. Segment One beginning at the Developer's eastern property line where the sewer main connects to the public sewer main and extends west approximately 491 feet to MH #3 (Sta 4+91). Segment Two beginning where Segment One ends and extends to the west and then north approximately 522 feet (Sta 10+13) just past MH #5, generally described as the existing termination of Carriage Hills Drive. See Exhibit A.

WHEREAS, Segment One as above-described shall be the Developer's responsibility; and

WHEREAS, in consideration of the increased cost of designing and constructing the sewer main in the manner and location the City has requested, the parties hereby agree to share the cost of designing and constructing Segment Two of the sewer main as provided by this Agreement; and

WHEREAS, the location and depth of the Segment Two sewer main as proposed encompasses construction techniques and issues not frequently encountered thus, the Engineer of

Record shall provide construction observations services as necessary to certify that the installation of Segment Two is in accordance with the approved plans and specifications; and

WHEREAS, additional engineering costs for the design and construction observation of Segment Two have been established at \$5,000. See Exhibit B; and

WHEREAS, the estimated City share of the cost associated with constructing Segment Two of the sewer main in the manner and location requested by the City is Eighty Thousand Dollars (\$80,000).

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein set forth, it is agreed by the parties as follows:

1. The Developer hereby agrees to contract with a professional engineer to design and prepare plans for the sewer main project. Said plans shall be reviewed and approved by the City.
2. The Developer hereby agrees to prepare all contract documents and detailed specifications for the project.
3. The Developer hereby agrees to separate the project into project Segment One and project Segment Two as above-described in order to better establish the City's and Developer's costs for the improvements.
4. The Developer hereby agrees to solicit a minimum of three quotes for the Segment Two project as well as manage the construction components of the Segment Two project.
5. The additional engineering cost, including construction observation shall be paid by the City in an amount not to exceed Five Thousand Dollars (\$5,000). See Exhibit B.
6. The Developer shall be responsible for all construction costs associated with Segment One. Principle components of Segment One are approximately 491 feet of sewer main, three manholes, surface restoration and associated appurtenances.
7. The project construction costs associated with Segment Two shall be divided between the Developer and the City. Principle components of Segment Two are approximately 522 feet of sewer main, two manholes and associated appurtenances. The City's cost share for Segment Two is limited to the actual sewer main, two manholes, and rock excavation from the proposed street subgrade to three inches (3") below the sewer pipe invert. Segment Two costs associated with sewer service line installation, rock excavation above the street subgrade, and surface restorations etcetera, shall be one hundred percent (100%) the Developer's responsibility.
8. The City shall reimburse the Developer an amount not to exceed Twenty-Two Thousand One Hundred Dollars (\$22,100) for the Segment Two sewer main construction and shall reimburse the Developer for rock excavation. See Exhibit C. Rock Excavation will be based

on measured quantities and actual costs. The Developer shall be responsible for the remaining Segment Two project costs. The Developer shall be responsible for all excavation costs from the existing surface down to the proposed street subgrade including rock excavation.

9. The City shall approve the award of the construction contract for Segment Two and said approval shall be contingent on the cost of the rock excavation not exceeding \$57,900. The Developer's engineer shall establish a rock excavation quantity based on the best information available and as defined under provisions 7 and 8, and use this quantity as the basis for establishing the Rock Excavation quantity for Segment Two. This does not imply that adjustments to the rock excavation quantity and cost will not occur during construction, as the final rock excavation cost will be based on measured quantities.

10. An estimate of the City's cost share of the project shall not exceed the following:

|          |   |
|----------|---|
| \$ 5,000 | agreed to Engineering cost (Provision 5)  |
| \$22,100 | agreed to City's share of Segment Two sewer main construction (Provision 8)   |
| \$57,900 | City's estimated rock excavation costs (\$55,000 + \$2,900 contingency = \$57,900) (Provisions 7, 8, & 9) (see Exhibit C) |
| \$85,000 | Total   |

11. The City shall remit a partial payment of  $(\$5,000 + \$22,100 = \$27,100)$  Twenty- Seven Thousand one Hundred Dollars to the Developer upon award of the construction contract for Segment Two. The Developer may make monthly payment requests for work completed pertaining to the City's Rock Excavation cost share. Requests shall be submitted by Friday of the second week of the month. The City will retain 10% of the amount requested until the project has been completed and accepted by the City. After the City has received verification of the final City Rock Excavation Quantities and costs, the City shall then release any payments retained and make final payment to the Developer.

12. The City shall make payment to the Developer within 30 calendar days of receipt of documentation for payment and in accordance with this Agreement.

13. All payments to the Developer are contingent upon the Developer having executed an agreement to construct Segment One and having permanent utility easements and Right of Way recorded at the Register of Deeds Office for the Segment One and Two sewer mains.

14. In the event the Developer has not executed an agreement for the construction of the sewer main by December 1, 2006, this Agreement shall be considered null and void.

15. In the event that any section(s), or provision(s) of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other

section(s) or provision(s) of this Agreement if it can be given effect without the invalid section(s) or provision(s).

16. The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

17. The parties agree that this writing constitutes the entire agreement between them and that there are no other oral or collateral agreements or understandings of any kind or character except those contained herein. No modification or amendment to this Agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:

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

HARLEY F. TAYLOR

\_\_\_\_\_  
BY: \_\_\_\_\_

ITS: \_\_\_\_\_

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 to do so, 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 \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me, the undersigned officer,  
personally appeared \_\_\_\_\_, who acknowledged themselves to be the  
\_\_\_\_\_ of HARLEY F. TAYLOR, and that as such, being duly authorized to do so,  
executed the foregoing instrument by signing the name of HARLEY F. TAYLOR.

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

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires:

(SEAL)

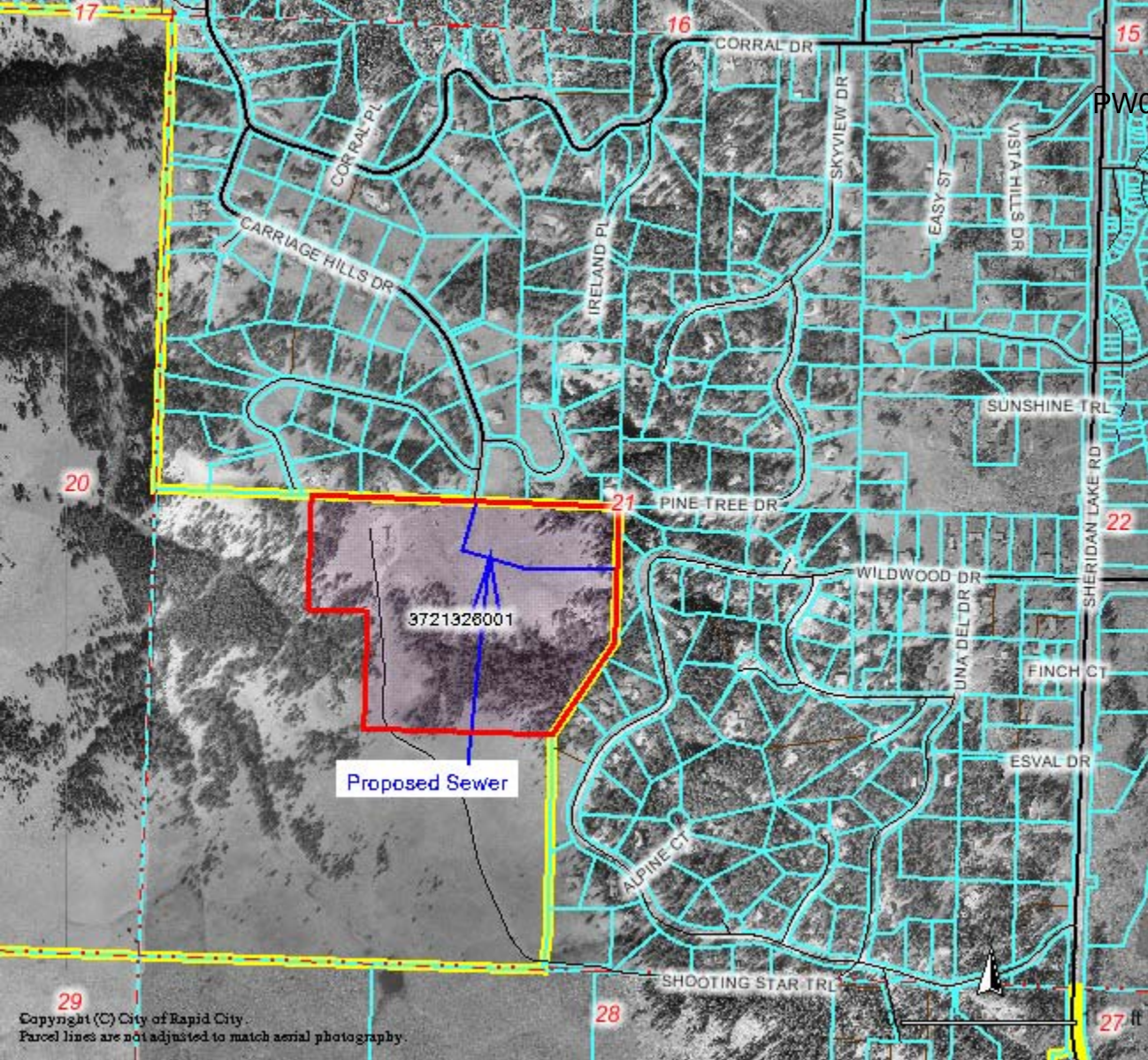
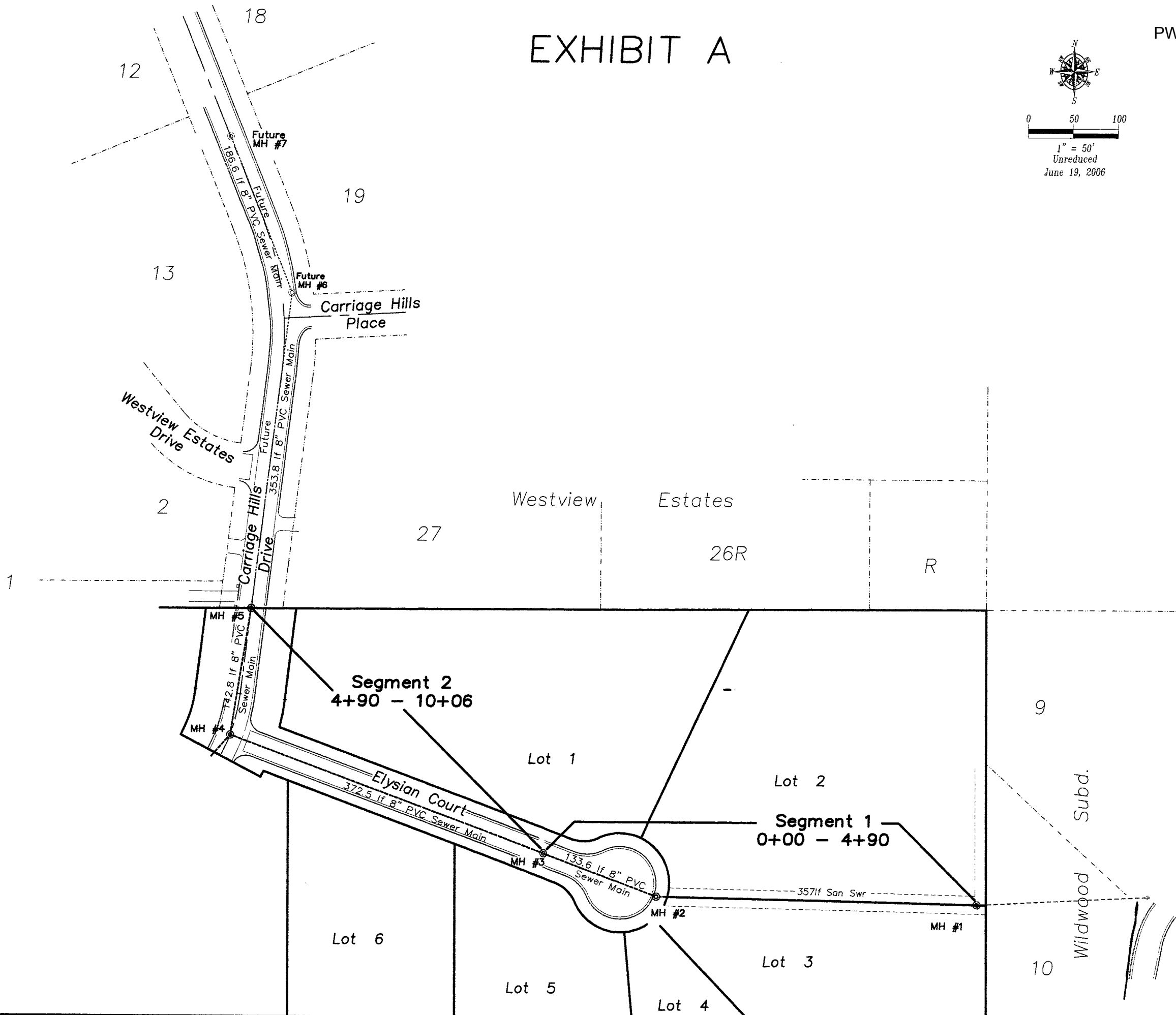
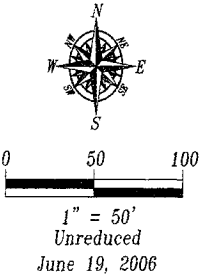


EXHIBIT A

PW080106-19



Proposed Sewer Extension Control Diagram  
Carriage Hills Drive - Elysian Court  
Lots 1 - 6 of Elysian Heights  
Harley Taylor  
Rapid City, Pennington County, South Dakota

1022 Main Street  
P.O. Box 8154  
Rapid City, South Dakota  
57709  
(605) 348-1538  
(605) 341-1112 (fx)

Fisk Land Surveying  
& Consulting  
Engineers, Inc.

Surveyed by: BL,ML  
Date: 4/11/08  
Drawn by: RWF  
Date: 6/19/08  
Checked by: WF  
Revisions

Project No.  
96-10-02

Sheet  
2  
of  
6





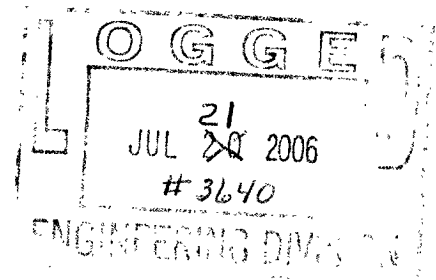
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**FISK LAND SURVEYING & CONSULTING ENGINEERS, INC.**  
1022 Main Street • P.O. Box 8154 • Rapid City, SD 57709  
Phone (605) 348-1538 • Fax (605) 341-1112 • E-mail: fiskls@midconetwork.com

## EXHIBIT B

July 20, 2006

Stacey Titus, PE  
Public Works  
City of Rapid City  
300 Sixth Street  
Rapid City, SD 57701



RE: Harley Taylor – Elysian Heights  
Over-Depth Sewer Design Estimates

Stacey:

As Mr. Taylor's engineer on the referenced project, our fee is based upon hourly rates and may vary considerably. As you are probably aware, Mr. Taylor's plans have been revised several times since this project was first envisioned. It is very possible that our total fee may exceed the \$15,000 that you have estimated. That amount, however, is reasonable for a project of this magnitude.

Regarding the additional work that has been done and is yet to be completed in terms of design alteration and construction observation, we are comfortable with the \$5,000 that you have estimated. I believe that it is fair compensation to Mr. Taylor for the additional surveying and design work required for the extra depth sewer.

Sincerely,  
FISK LAND SURVEYING & CONSULTING ENGINEERS, INC.

Warren L. Fisk, PE, LS  
Senior Engineer





PW080106-19

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## EXHIBIT C

### ELYSIAN SUBDIVISION

7/26/2006

***If the Developer builds to serve his own project and provide force main to the north boundary:***

|                           |               |         |              |           |                  |
|---------------------------|---------------|---------|--------------|-----------|------------------|
| 4+90 to 5+00              | No change     |         |              |           |                  |
| 5+00 to 5+50              | Average depth | 7.5'@   | 26.00 x 50'  | \$        | 1,300.00         |
| 5+50 to 6+00              | " " "         | 9.0'@   | 30.00 x 50'  | \$        | 1,500.00         |
| 6+00 to 6+50              | " " "         | 8.6'@   | 29.00 x 50'  | \$        | 1,450.00         |
| 6+50 to 7+00              | " " "         | 10.7'@  | 31.00 x 50'  | \$        | 1,550.00         |
| 7+00 to 7+50              | " " "         | 11.55'@ | 32.00 x 50'  | \$        | 1,600.00         |
| 7+50 to 8+00              | " " "         | 10.8'@  | 30.00 x 50'  | \$        | 1,500.00         |
| 8+00 to 8+62              | " " "         | 8.4'@   | 29.00 x 62'  | \$        | 1,800.00         |
| 140 LF 4" Force Main - 6' |               |         | 25.00 x 140' | \$        | 3,500.00         |
| 1 Force Main Terminal     |               |         |              | \$        | 200.00           |
|                           |               |         |              | <b>\$</b> | <b>14,400.00</b> |

***If sewer is built to gravity serve Carriage Hills:***

|   |               |        |       |           |                  |
|---|---------------|--------|-------|-----------|------------------|
| 5+00 to 5+50                                | Average Depth | 9.0'@  | 30x50 | \$        | 1,500.00         |
| 5+50 to 6+00                                | " " "         | 13.6'@ | 32x50 | \$        | 1,600.00         |
| 6+00 to 6+50                                | " " "         | 18.2'@ | 35x50 | \$        | 1,750.00         |
| 6+50 to 7+00                                | " " "         | 22.3'@ | 58x50 | \$        | 2,900.00         |
| 7+00 to 7+50                                | " " "         | 25.0'@ | 75x50 | \$        | 3,750.00         |
| 7+50 to 8+00                                | " " "         | 26.0'@ | 75x50 | \$        | 3,750.00         |
| 8+00 to 8+50                                | " " "         | 25.9'@ | 75x50 | \$        | 3,750.00         |
| 8+50 to 9+00                                | " " "         | 24.0'@ | 75x50 | \$        | 3,750.00         |
| 9+00 to 9+50                                | " " "         | 21.0'@ | 55x50 | \$        | 2,750.00         |
| 9+50 to 10+06-                              | " " "         | 18.0'@ | 35x56 | \$        | 1,960.00         |
| MH 25.3' 2300 + (17.3x170) ( ) = overdepth  |               |        |       | \$        | 5,240.00         |
| MH 16.8' 2300 + (8.8 x 170) ( ) = overdepth |               |        |       | \$        | 3,800.00         |
|   |               |        |       | <b>\$</b> | <b>36,500.00</b> |

***Rock Excavation:***

|   |          |          |           |                  |
|---|----------|----------|-----------|------------------|
| Extra Depth Rock Excavation                         | 1100 cy@ | \$ 50.00 | \$        | 55,000.00        |
| 5.27% Contingency for actual quantity determination |          |          | \$        | 2,900.00         |
|   |          |          | <b>\$</b> | <b>57,900.00</b> |