



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-5035

## Growth Management Department

300 Sixth Street

Karley Halsted, PE, Project Manager  
Growth Management Department  
city web: [www.rcgov.org](http://www.rcgov.org)

Phone: 605-394-4157  
Fax: 605-394-6636  
e-mail: [karley.halsted@rcgov.org](mailto:karley.halsted@rcgov.org)

TO: Rapid City Council

FROM: Karley Halsted, P.E., Engineering Project Manager

DATE: June 15, 2010

RE: Authorization for Mayor and Finance Officer to sign a waiver of right to protest a future assessment for the installation of sidewalk

Legal Description: Lot 2, Block 2, Dunham Estates, located in Section 16, T1N, R7E, Pennington County, South Dakota

Public Works Item PW060110-16 to waive the requirement to install sidewalk along Meadowbrook Drive as it abuts the property was submitted in conjunction with a building permit. A stipulation of the approval of the request requires that the applicant sign a waiver of right to protest any future assessment for the improvements. The document also requires the signature of the Mayor and Finance Officer.

The waiver of right to protest is a correction to the original waiver of right to protest that was approved by City Council June 7, 2010. Upon further review of the original document it was noted there was an error in the language that needed to be corrected. Specifically, the description of the request was corrected from "subdivision plat" to "building permit application".

**Staff Recommendation: Authorize the Mayor and Finance Officer to sign the waiver of right to protest a future assessment for the installation of sidewalk along Meadowbrook Drive as it abuts the legally described property.**

**(Building Permit)**



EQUAL HOUSING  
OPPORTUNITY

EQUAL OPPORTUNITY EMPLOYER

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

10/16/10 MCS

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 17<sup>th</sup> day of June, 2010, by and for BRAD J. MORIARTY and GINA MORIARTY, 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 building permit application; and

WHEREAS it is the intended purpose of the Developers to obtain an exception to waive the requirement to install sidewalks along Meadowbrook Drive; and

WHEREAS the City of Rapid City's regulations require installation of sidewalk, which in this instance would require the Developers to install sidewalk along Meadowbrook Drive as it abuts Lot 2 of Block 2, Dunham Estates Subdivision, located in Section 16, T1N, R7E, 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 sidewalk along Meadowbrook Drive as it abuts the subject property in exchange for the City not requiring immediate installation of the improvements as required by Rapid City Municipal Code;

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 2 of Block 2, Dunham Estates Subdivision, located in Section 16, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota.

2. This agreement specifically references the installation of sidewalk along Meadowbrook Drive as it abuts the subject 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 sidewalk along Meadowbrook Drive as it abuts the subject property through an assessed project, 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 sidewalk. It is understood by the Developers that the City of Rapid City's primary consideration for the granting of the exception on the herein described property and forbearance from requiring Developers to immediately install sidewalk along Meadowbrook Drive 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 sidewalk along Meadowbrook Drive as it abuts the subject property, which is required in the Rapid City Municipal Code, will be required within 90 days of the objection in order to comply with the Rapid City Municipal Code. 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 17<sup>th</sup> day of June, 2010.  
CITY OF RAPID CITY

\_\_\_\_\_  
Alan Hanks, Mayor

ATTEST:

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

(SEAL)

Brad J. Moriarty  
Brad J. Moriarty

Gina Moriarty  
Gina Moriarty

State of South Dakota        )  
  ss.  
County of Pennington        )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned officer, personally appeared Alan Hanks 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

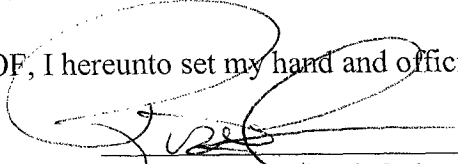
My Commission Expires:

(SEAL)

State of South Dakota        )  
  ss.  
County of Pennington        )

On this the 17<sup>th</sup> day of JUNE, 2010, before me, the undersigned officer personally appeared Brad J. Moriarty and Gina Moriarty, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

  
\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires: 11/10/15

(SEAL)