

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 SPF PROPERTIES, LLC, REGARDING THE CONSTRUCTION OF A LIFT STATION TO SERVE THE FREELAND MEADOWS PROJECT.

This Covenant Agreement is made and entered into between the City of Rapid City, herein after referred to as the “City,” and Freeland Meadows, LLC, herein after referred to as the “Developer.”

WHEREAS, the Developer is the owner of property that is generally located east of West Nike Rd. and north of Country Rd. and is legally described as:

Government Lot 4, Less ROW and the unplatted balance of the SE ¼ of the SW ¼ and the unplatted balance of the S ½ of the SE ¼ all located in Section 18 of T2N, R8E of the Black Hills Meridian, Rapid City, Pennington County, State of South Dakota; and

WHEREAS, the Developer proposes to construct a residential subdivision on its property; and

WHEREAS, a lift station will need to be constructed to handle the sewage generated by the Developer’s proposed project; and

WHEREAS, the City is in the process of replacing its existing Mall Ridge Lift Station, which is located generally about ¼ mile west of the Developer’s property, due to inadequate capacity based on the existing service areas; and

WHEREAS, by locating the new lift station in the vicinity of the intersection of Country Road and the future Lacrosse Street it could provide gravity sewer service to the majority of Developer’s property as well as the portions of the City that are already served; and

WHEREAS, based on the Developer’s promise to pay the City upfront for any additional costs that will be incurred by the City as a result of moving the lift station’s

location, the City is willing to locate the replacement of the Mall Ridge Lift Station so that service can be provided to the Developer's project area; and

WHEREAS, the parties wish to memorialize what actions are expected by the parties to facilitate the construction of a new lift station that can serve the Developer's property.

NOW THEREFORE, the parties agree as follows:

1. The City agrees to situate the new lift station on property to be provided by the Developer in the vicinity of the intersection of Country Road and the future Lacrosse Street, as shown on the City's Major Street Plan. The location of the lift station will be the location previously agreed on by the parties as shown on the draft exhibit which has been attached hereto as Exhibit "A" and incorporated herein by this reference.

2. The City will design and construct the lift station at the proposed site. The lift station shall have adequate capacity to handle flows from the area of the Freeland Meadows Development. The parties acknowledge that gravity sewer flow to the new lift station site from all areas of the Developer's property may not be physically possible.

3. The City will be responsible for operating all portions of the municipal wastewater collection system above the intersection of W. Nike Rd. and Cobalt Dr., including any costs to pump or haul sewage flows from the upstream areas, until the lift station and Freeland Meadows gravity and force main are in place, but in no event later than January 1, 2007.

4. The City will be responsible for the design and construction of gravity sewers and force mains near the intersection of W. Nike Rd. and Cobalt Drive to the existing Mall Ridge Lift Station site. The City will also provide connections between these improvements and the existing gravity sewers and force mains in the Northbrook or Mall Ridge Subdivisions.

5. The City will be responsible for reclamation of the existing Mall Ridge Lift Station site once the new lift station is operational. This will include removal of existing components to be abandoned, grading of the site to provide for new facilities and proper drainage, site access, and revegetation or stabilization.

6. In exchange for the City agreeing to construct the lift station at the location previously agreed upon by the parties, the Developer agrees to do the following:

- a. Create a lot for the lift station to be located as described above, and prepare a deed or permanent easement, which will be granted to the City free of charge prior to the City advertising for bids on the lift station; and
- b. Construct a 10-inch diameter force main sewer from the existing terminus of the Brookfield force main across its property from the vicinity of the intersection of W. Nike Rd. and Cobalt Drive to the site of the new lift

station. The Developer will coordinate with City staff to connect the force main to the City's sewer system at the appropriate points. The Developer will fund the cost of design and construction of the force main sewer. It is anticipated that the Developer will be compensated for these costs through the proceeds from Tax Increment District # 55; and

- c. Construct a 15-inch diameter sanitary gravity sewer from the existing terminus of the Brookfield gravity line near the intersection of W. Nike Rd. and Cobalt Drive to the new lift station site. The Developer will coordinate with City staff to connect the gravity main to the City's sewer system at the appropriate points. The Developer will fund the oversize costs (the difference between the cost of an 8 inch line and the 15 inch line). It is anticipated that the Developer will be compensated for the oversize costs through the proceeds from Tax Increment District # 55; and
- d. The design and construction of the sewers shall conform to the standards or requirements of Title 16, Subdivisions, of the Rapid City Municipal Code, and the City of Rapid City Standard Specifications for Public Works Construction. All sewers shall be located within street right-of-way to the maximum extent possible. Where location in easements is necessary and approved by the City, use of the easements shall be restricted to the sewerage activities. Permanent easements or streets to accommodate the sewers shall be created and recorded prior to the completion of the lift station construction. The location and alignment of all sewer lines shall be subject to approval by the City; and
- e. The Developer will be responsible for obtaining all necessary permits from regulatory agencies, such as floodplain development permits, or 404 permits to fill or dredge wetlands from the Army Corps. of Engineers, for the gravity and force main across its property; and
- f. The Developer agrees to coordinate the bidding and construction of the gravity and force main sewers through the Freeland Meadows area with the City's bidding for the construction of the lift station; and .
- g. The Developer agrees to complete construction of the gravity and force main sewers through the Freeland Meadows area prior to January 1, 2007; and
- h. The Developer shall retain engineering services from a competent licensed engineering consultant to provide design and construction phase services. Construction phase services shall include review of construction activities and certification, upon completion, that the improvements have been constructed to the best of their knowledge in substantial conformance with the plans and specifications, except for any variations or deficiencies noted in accordance with SDCL § 36-18A-46.

7. The Developer acknowledges that it understands that with respect to the gravity and force mains that time is of the essence to the City. If the gravity and force main are not in place by the time that the lift station is constructed, the lift station will be useless and the City will have to continue to pump the sewage from the Brookfield Subdivision. The Developer acknowledges that a significant consideration for the City in

agreeing to locate the lift station as described herein to serve the Developer's property, is the Developer's promise to have the gravity and force main constructed concurrently with the the lift station such that the operation of the lift station, upon completion, will not be delayed.

8. The parties agree that the anticipated costs for the improvements will be divided between the parties as follows:

a. Anticipated City Costs:

1. Lift Station - \$784,892.50
2. Financing Interest - \$ 484,100.95
3. Lift Station Design and Construction Supervision - \$110,261.00
4. Brookfield Force Main Design - \$7,500.00
5. Brookfield Force Main Construction - \$83,346.00
6. Holding Tank for Sewer Operation during Construction-\$4,000.00
7. Other Necessary and Convenient Costs - \$233,537.23

TOTAL CITY COSTS: \$ 1,707,637.68

b. Anticipated Developer Costs:

1. Lift Station - \$150,707.50 (balance of lift station construction costs based on engineer's estimate of \$900,600.00 less city share)
2. Financing interest - \$ 788,220.32
3. Freeland Meadows force main - \$473,230.00
4. Freeland Meadows gravity sewer - \$ 275,620.00
5. Other Necessary and Convenient Costs - \$ 215,400.00

TOTAL DEVELOPER'S COSTS: \$ 1,903,177.82

9. The Developer shall pay the City its share of the cost of the lift station in the anticipated amount of \$150,707.50. The Developer understands that it is responsible for any additional lift station costs above the \$784,892.50 the City has agreed to pay. At any time after construction of the lift station has reached 75% completion, as determined by payments requested by the contractor, the City shall make a final estimate of the total costs and provide an invoice to the Developer for payment. The Developer shall pay the invoice within 45 days of receipt. It is understood that the Developer is only required to pay the actual difference between the City's share of the lift station cost and the total cost of constructing the lift station even if that amount is less than \$150,707.50.

10. The parties agree that if the Developer breaches its obligation to construct the gravity and force main in accordance with this agreement, the City will be entitled to recover, in addition to any other damages it is entitled to recover, the cost of pumping sewage (including hauling, pretreatment, or other handling of the sewage) for any

property that would not require pumping if the Freeland Meadows gravity and force mains were in place. The City Council may, at its discretion, waive any costs incurred under this paragraph that are the result of delays in the Developer's obligation to complete the sewer caused by weather or other reasons beyond the Developer's control.

11. If the Developer cannot or does not pay the cost of pumping, then the obligation shall become a lien on the Developer's above described property.

12. 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.

13. This document, along with the Developer's Agreement for Tax Increment District #55, represents the entire agreement of the parties. No other writing is a part of this agreement. All other prior representations, writings, oral statements or negotiations have been merged into this document and are either included herein or intentionally excluded.

14. 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, South Dakota.

DATED this _____ day of _____, 2006.

CITY OF RAPID CITY

Jim Shaw, Mayor

ATTEST:

Finance Officer

(SEAL)

FREELAND MEADOWS, LLC.

By: _____

Its: _____

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 _____ day of _____, 2006, before me, the undersigned officer, personally appeared _____, who acknowledged themselves to be the _____ of Freeland Meadows, LLC, and that as such, being duly authorized so to do, executed the foregoing instrument for the purposes herein contained.

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

[SEAL]

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