

PREPARED BY: City's Attorney Office  
300 Sixth Street  
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 \_\_\_\_\_ day of \_\_\_\_\_, 2002, by and for Wendy's of Colorado Springs, 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 obtained a building permit for the construction of a building on Lot Three (3) of Shopko Addition to the City of Rapid City, located in the Southwest Quarter (SW1/4) of Section Twenty-five (25), Township Two North (T2N), Range Seven East (R7E) of the Black Hills Meridian; and

WHEREAS it is the intended purpose of the Developer to obtain a certificate of occupancy for the new building; and

WHEREAS necessary improvements to City streets and intersections to accommodate and regulate the increased traffic caused by commercial development are a responsibility of the Developer. The cumulative effect of current and future development in the Shopko Addition, including this project, is expected to warrant the installation of intersection and traffic signal improvements at access points onto Haines Avenue. Improvements may include a traffic impact study, signalization and reconstruction of the main Shopko Addition entrance to Haines Avenue at Wright Street, or restriction of access at the existing north approach to Haines Avenue.

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 construction of intersection and traffic signal improvement, which may including a traffic impact study, pavement removal, pavement construction, associated grading or utility work, curb and gutter, sidewalk, drainage facilities, traffic control signals, other traffic control devices, or similar improvements, to control or regulate access to the Shopko Addition from Haines Avenue along that portion of Haines Avenue abutting the Shopko Addition to the City of Rapid City;

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 portion of Lot Three (3) of Shopko Addition, located in the Southwest Quarter (SW1/4) of Section Twenty-five (25), Township Two North (T2N), Range Seven East (R7E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota.

2. This agreement specifically references the design and construction of intersection or traffic control improvements, which may include a traffic impact study or evaluation, pavement removal, pavement construction, associated grading or utility work, curb and gutter, sidewalk, drainage facilities, traffic control signals, other traffic control devices, or similar improvements, to control or regulate access from Haines Avenue to the Shopko Addition, located in the Southwest Quarter (SW1/4) of Section Twenty-five (25), Township Two North (T2N), Range Seven East (R7E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota.

3. The Developer acknowledges that 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 in the event that traffic warrants as established by the Manual of Uniform Traffic Control Devices, as recommended by the Institute of Traffic Engineering Handbook, show the need for intersection or traffic control signal improvements to control or regulate access from Haines Avenue to the Shopko Addition, located in the Southwest Quarter (SW1/4) of Section Twenty-five (25), Township Two North (T2N), Range Seven East (R7E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, which may include traffic impact studies, pavement removal or construction, associated grading or utility work, curb and gutter, sidewalk, drainage facilities, traffic control signals, other traffic control devices, or similar improvements to control or regulate access from Haines Avenue to the Shopko Addition, located in the Southwest Quarter (SW1/4) of Section Twenty-five (25), Township Two North (T2N), Range Seven East (R7E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, then and in that event the developer or its heirs, assigns, or successors in interest waive any right to object to such an assessed project as allowed under state law and will pay to the City the proportionate cost of said signal or improvement based on trip generations by the facilities, businesses, or operations on Lot 3 of the Shopko Addition, located in the Southwest Quarter (SW1/4) of Section Twenty-five (25), Township Two North (T2N), Range Seven East (R7E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, at the time that said warrants are found to be met. Trip generations for this proportionate cost will be as established by the Institute of Traffic Engineering, Trip Generation Informational Report.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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 \_\_\_\_\_, 2002.

CITY OF RAPID CITY

\_\_\_\_\_  
Jerry Munson, Mayor

ATTEST:

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

(SEAL)