

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)

This declaration of covenant and agreement (“Agreement”) is entered into this _____ day of _____, 2006, by and between the City of Rapid City, a municipal corporation organized under the laws of the State of South Dakota, hereinafter referred to as the “City”, and 16 Plus, L.L.P., a limited liability partnership organized under the laws of the State of South Dakota, hereinafter referred to as the “Developer”.

WHEREAS, the Developer wishes to construct Moon Ridge Subdivision located within the City jurisdictional limits, and further wishes to connect to the sanitary sewer system of the City, and the City desires to provide such sanitary sewer service; and

WHEREAS, the Developer is required by the Subdivision Ordinances of the City to pay for the cost of providing adequate sanitary sewer service; and

WHEREAS, the cost of the Offsite Sewer Improvements was determined to be \$229,959.48, which does not include the cost of constructing sanitary sewer mains within the Developer’s property.

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions herein contained, it is agreed as follows:

1. The Developer hereby covenants it has constructed approximately 3,257 lineal feet of off-site 8 inch (8”) PVC sanitary sewer main along Highway 16 as per plans prepared by Renner and Sperlich Engineering Co. titled, “Moon Ridge Sewer and Water Extension (DEV 02-534)”.

2. The City hereby covenants and agrees to identify property, hereinafter referred to as the "Service Area" shown on Exhibit A attached hereto and incorporated herein, that may benefit from the above-described sewer system improvements.
3. The City hereby covenants and agrees to present a proposed Sanitary Sewer Utility Construction Fee Resolution to its Common Council which would establish the fees to be levied against the identified benefiting properties in the Service Area at such time as said properties request to connect to the above-described sanitary sewer main.
4. The proposed Sewer Utility Construction Fee shall be based on the total calculated costs which includes construction costs.
5. The proposed Sewer Utility Construction Fee for properties within the Service Area and serviced by the sanitary sewer main from Sta. 1+4 to Sta. 34+01 of the construction plans and not within the Moon Ridge Subdivision shall be established by dividing the total calculated costs of the sanitary sewer main extension from Sta. 1+44 to Sta. 34+01 which equals \$229,959.48 (as determined from contractor invoicing), with the entire amount to be paid by landowners within the service area, excluding the Developer's property. Thus, the proposed Sewer Construction Fee may be established at \$7,377.71 per acre.
6. In the event that the Sanitary Sewer Utility Construction Fee Resolution is established by the Common Council, the Sanitary Sewer Construction Fee shall be paid by each parcel in the Service Area currently described and any future subdivided properties within the Service Area requiring sanitary sewer service and obtaining a sewer connection serviced directly by the above-described sanitary sewer main.
7. In the event that the Sewer Utility Construction Fee Resolution is established by the Common Council, the City hereby covenants and agrees to collect the construction fees from the identified properties at the time said properties request to connect to the above-described sanitary sewer main.
8. In the event the that Sewer Utility Construction Fee Resolution is established by the Common Council, the City hereby covenants and agrees to reimburse the Developer the sewer construction fees received per calendar year within 45 days of the end of each calendar year. In no case will the Developer be reimbursed in excess of the total calculated costs of construction. Payments to the Developer will cease if and when the total costs of construction are reimbursed.

9. The Developer hereby covenants and agrees to furnish the City Finance Office with a current mailing address and update that address as is needed in order to facilitate disbursement of collected construction fees.
10. The proposed Sanitary Utility Construction Fee will be in addition to the existing connection fees established for this area as part of the Highway 16 Lift Station Service Area, the Highway 79 Sanitary Sewer Construction Fee, and the various SE Area Sanitary Sewer Utility Construction Fees.
11. This Agreement does not bind the City to reimburse Developer for the sewer extension project. Rather, by this Agreement the option of imposing sewer construction fees upon the identified benefiting properties will be presented to the Common Council for consideration.
12. Developer shall indemnify, defend, and hold the City, harmless from any and all damages, claims, suits, demands, or asserted obligations for injuries or damages arising out of the omission of, or inability of the City to furnish sanitary sewer service as herein provided. The Service Area is established on current or anticipated land use within the Service Area. Each potential user within the Service Area shall establish there is adequate remaining capacity prior to connection to the sewer main.
13. 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, 16 Plus, L.L.P., its heirs, beneficiaries assignees, or successors in interest agree the City may recover from them its reasonable expenses, including attorney's fees incurred with respect to such action.
14. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, beneficiaries, assignees, or successors in interest of 16 Plus, L.L.P, 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, beneficiary, heir, assignee, 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 Codified Law.
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

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

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 instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

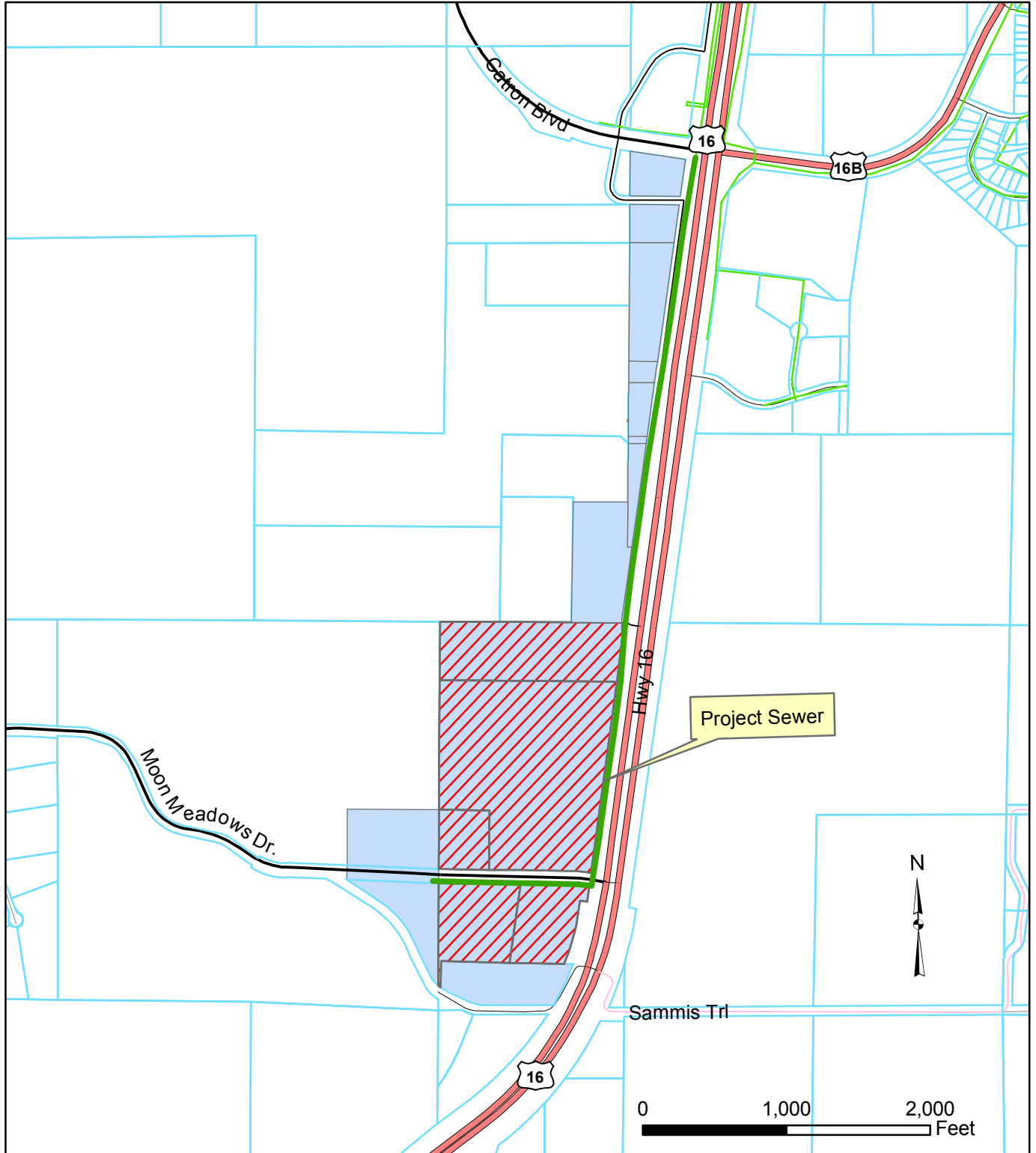
IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notary Public, South Dakota
My Commission Expires:

(SEAL)

Exhibit A

PW112806-08



Legend

- Parcels
- Existing Sanitary Sewer
- Project Sanitary Sewer
- Sanitary Sewer Service Area
- Developer's Property

Moon Ridge Offsite Sanitary Sewer Service Area