

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 ____, 2007, 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 Mr. Daniel Wegner, 6137 Wildwood Drive, Rapid City, SD 57702, hereinafter referred to as "Wegner".

WHEREAS, the Wegner wishes to connect to the water system of the City, and the City desires to provide such water service; and

WHEREAS, the total cost of the Water Improvements was determined to be \$31,964.35; and

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

1. The Citizen hereby covenants and agrees to construct and pay for approximately 444 lineal feet of 8 inch (8") PVC water main along Wildwood Drive.
2. The City hereby covenants and agrees to identify property, hereinafter referred to as the "Benefiting Area" shown on Exhibit A attached hereto and incorporated herein, that may benefit from the above-described water system improvements.

3. The City hereby covenants and agrees to present a proposed Water Utility Construction Fee Resolution to its Common Council that would establish the fees to be levied against the identified benefiting property in the Benefiting Area at such time as said property or a division thereof requests to connect to the above-described water main.
4. The proposed Water Utility Construction Fee shall be based on the total calculated costs of the offsite water improvement, which include engineering and construction costs.
5. The proposed Water Utility Construction Fee for properties within the Benefiting Area and serviced by the water main shall be established by dividing the total costs of the water main extension of \$31,964.35 with the entire amount to be paid by landowners within the Benefiting area, including Wegner's property. Thus, the proposed Water Construction Fee may be established at \$5,327.39 per lot for the property identified within the benefiting area.
6. In the event that the Water Utility Construction Fee Resolution is established by the Common Council, the Water Construction Fee shall be paid by each parcel in the Benefiting Area currently described or by any future subdivided properties within the Benefiting Area requiring water service and obtaining a water connection directly from the above-described water main. In the event the parcel in the benefiting area is subdivided, the subdivided properties must pay its proportional share which shall be calculated by dividing the number of parcels within the benefiting area by the established water construction fee.
7. In the event that the Water 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 water main.
8. In the event the that Water Utility Construction Fee Resolution is established by the Common Council, the City hereby covenants and agrees to reimburse Wegner all of the water construction fees collected on an annual basis. In no case will Wegner be reimbursed in excess of the total calculated costs of construction less Wegner's proportional share. Payments to Wegner will cease if and when the benefiting properties of the project have connected to City water.
9. Wegner 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 Water Utility Construction Fee will be in addition to any existing connection fees established for this benefiting area.

11. This Agreement does not bind the City to reimburse Wegner for the water extension project. Rather, by this Agreement the option of imposing water construction fees upon the identified benefiting properties will be presented to the Common Council for consideration.
12. Wegner 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 water service as herein provided.
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, Wegner, his 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 Daniel Wegner, 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 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.

Dated this _____ day of _____, 2007.

Daniel Wegner

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

On this the _____ day of _____, 2007, before me, the undersigned officer, personally appeared _____, known to me or satisfactorily proven to be the person whose name is subscribed within instrument and acknowledged that they executed the same for the purposes therein contained and that they had the authority to do so.

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

Notary Public, South Dakota
My Commission Expires:

(SEAL)

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

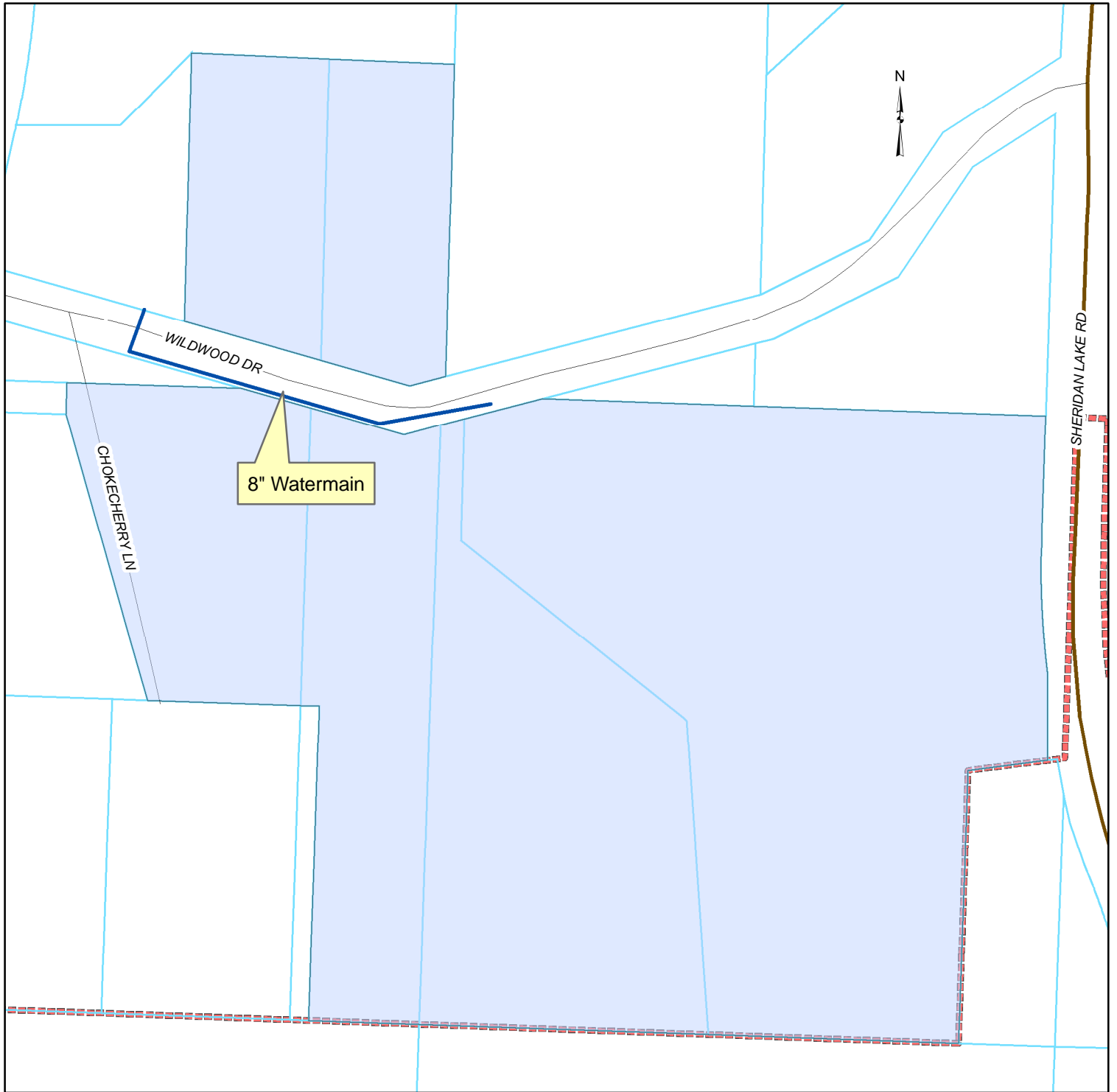
STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

On this the _____ day of _____, 2007, before me, the undersigned officer, personally appeared Mayor 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)



WILDWOOD DRIVE WATER CONSTRUCTION FEE BENEFITING AREA

Legend

- Oversized Utility
- Benefiting Properties
- Parcels
- Rapid City Limits

