

**AMENDMENT NUMBER 1
TO
MAINTENANCE AND FINANCIAL AGREEMENT
FOR
EM 0902(39)61 PCN 1939**

WHEREAS, on December 12, 2006, the State of South Dakota, acting by and through its Department of Transportation, hereinafter referred to as "STATE" and City of Rapid City, South Dakota, hereafter referred to as "CITY", entered into a financial agreement, along with the City of Box Elder, South Dakota, for traffic signals, roadway lighting, waterline, and landscaping at I90 Exit 61 and USB16B (Elk Vale Road), which agreement, hereinafter referred to as "AGREEMENT", was signed by representatives of each party and assigned agreement number 713311 by the STATE; and,

WHEREAS, STATE and CITY wish to amend the AGREEMENT to perform grading work on the RAPID CITY PROJECT;

NOW, THEREFORE, it is mutually agreed between the parties that Paragraphs 5 and 6 are hereby added to the AGREEMENT, as follows:

RAPID CITY PROJECT

5. CITY desires the STATE to include with PROJECT the following type of improvement: grading work to widen shoulders on Elk Vale Road to develop a three lane roadway section from the end of the PROJECT north approximately 770 feet. The type of improvement is asphalt concrete surfacing with Reinforced Concrete Pipe replacement (RCP), steel encasement pipe installation and pavement marking. The CITY'S cost is estimated at \$180,000.00. Actual cost will be based upon bids and final quantities. CITY will reimburse the STATE for the actual cost of the CITY Project.
6. CITY agrees to pay the STATE as required in Agreement Number 713311 within thirty (30) days of receipt of billings from the STATE.

CITY and STATE agree that all other terms of the original AGREEMENT shall remain in full force and effect.

This Amendment is binding upon the signatories hereto not as individuals, but solely in their capacities as officials of their respective organizations and acknowledges proper action of STATE and CITY to enter into the same.

Dated this _____ day of _____, 2008.

CITY OF RAPID CITY

DEPARTMENT OF TRANSPORTATION

MAYOR

Project Development Engineer

Attest:

Approved as to Form:

City Auditor/Clerk



Assistant Attorney General

(SEAL)

CITY OF BOX ELDER


Mayor

Attest:

City Auditor/Clerk

(SEAL)

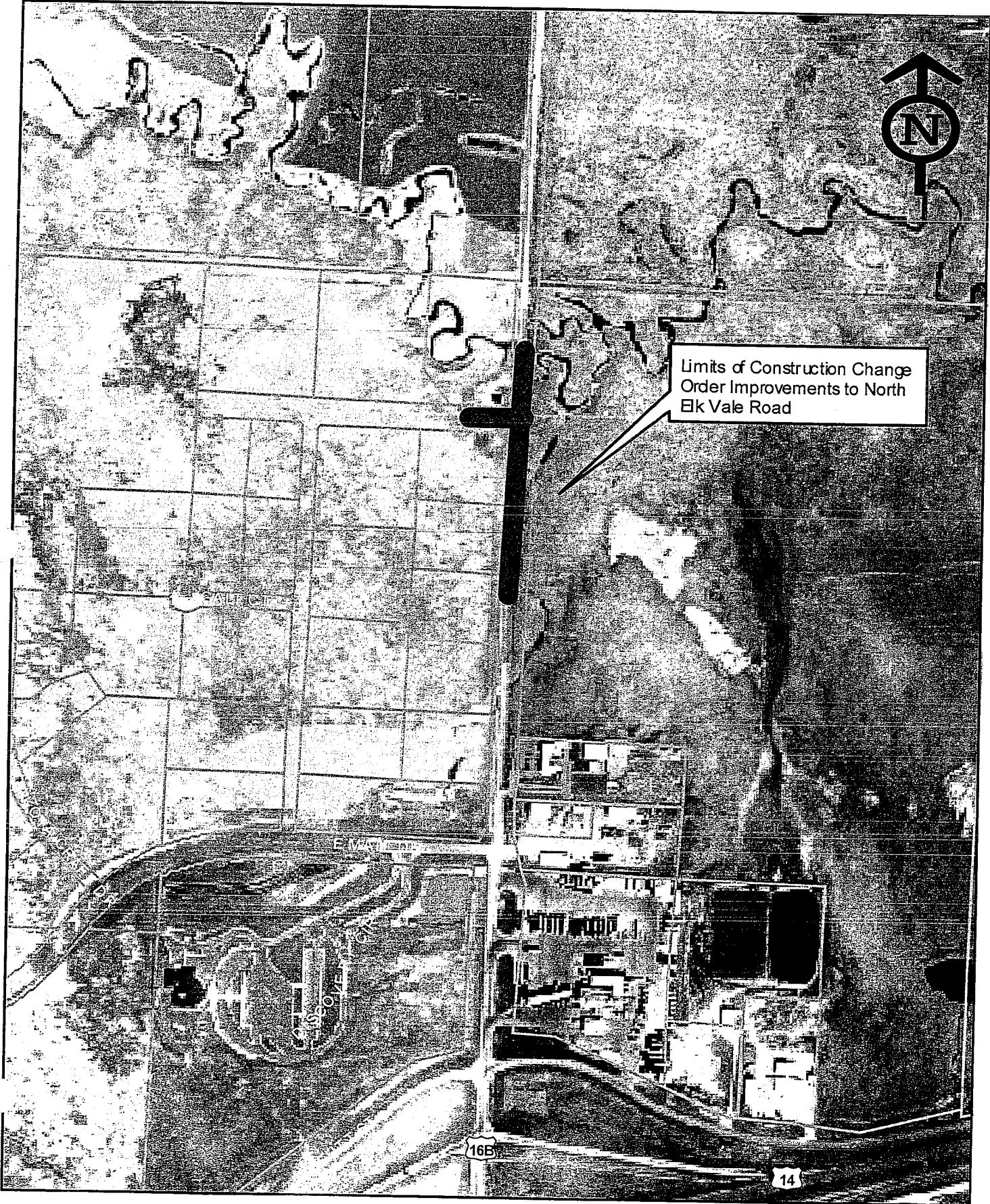
**APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE**



Attorney

8-20-08
Date

Exhibit A



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 is made and entered into on this 3 day of JANUARY, 2007, by and between THE CITY OF RAPID CITY, of 300 Sixth St., Rapid City, South Dakota, 57701, herein after referred to as the "City," and BY-PASS DEVELOPMENT, LLC., of 325 Mt. Rushmore Rd., Custer, South Dakota, 57730, herein after referred to as the "Developer."

WHEREAS, the City will be making improvements to North Elk Vale Road (Project Number 50143-1502) in the vicinity of East Mall Drive and Seger Drive; and

WHEREAS, the improvements to North Elk Vale Road will be completed through a Contract Change Order to the existing contract between the South Dakota Department of Transportation and Stanley J. Johnson Concrete Constructors, Inc. dated December 12, 2006.

WHEREAS, the North Elk Vale Road improvements in the Contract Change Order will include, among other things, the removal and replacement of approximately 850 feet of the existing roadway surface in the vicinity of East Mall Drive and Seger Drive as shown on Exhibit A, widening of the roadway from a two lane rural typical section to a three lane rural typical section, installation of one water line sleeve, installation of one sewer line sleeve; and

WHEREAS, the estimated cost of the above-described improvement is \$340,000 and the design of the Construction Change Order will be completed by the South Dakota Department of Transportation; and

WHEREAS, the Developer is the legal owner in fee of land adjacent to the North Elk Vale Road improvements legally described as:

The W1/2 of the NE1/4, less I-90 Heartland Business Park, less right of way, all located in Section 28, T2N, R8E, BHM and Lots 1-5, 6a, 6b and 7-9 of Block 1 of I-90 Heartland Business Park, all located in Section 28, T2N, R8E, BHM, Rapid City, Pennington County, State of South Dakota; and

WHEREAS, the above-described land owned by the Developer will directly benefit from the Elk Vale Road improvements and therefore, the Developer has agreed to pay one-third (1/3) of the total costs of the North Elk Vale Road improvements not to exceed \$100,000.

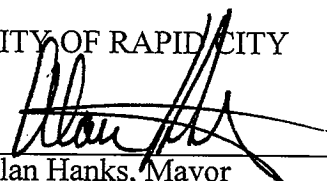
NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions herein contained, it is agreed as follows:

1. The Developer hereby covenants and agrees to pay the City one-third (1/3) of the total costs of the Contract Change Order for the proposed North Elk Vale Road improvements (Project number 50143-1502, Project EM 0902(39)61 PCN 1939-Exit 61, Elk Vale Road) up to an amount not to exceed \$100,000 within 30 days of the approval of a Contract Change Order initiating this roadway improvement work relating to the agreement between the South Dakota Department of Transportation and Stanley J. Johnson Concrete Constructors, Inc. dated December 12, 2006.
3. 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.
4. 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.
5. The Developer hereby covenants and agrees it has the power to enter into this Agreement and that its officer(s) signing for it have full power and authority to do so.

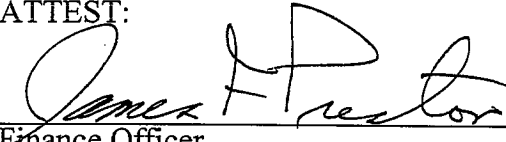
6. This Agreement does not obligate nor imply the desire of the City to provide water and sewer service to areas not annexed within the corporate limits of Rapid City.
7. This Agreement constitutes the entire agreement of the parties. No other writings or negotiations are part of this document. This agreement may only be modified by mutual agreement of both parties. Any modifications or addendums to this agreement must be in writing.
8. 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, State of South Dakota

DATED this 3rd day of FEBRUARY, 2007.

CITY OF RAPID CITY


 Alan Hanks, Mayor

ATTEST:


 Finance Officer

(SEAL)

BY-PASS DEVELOPMENT, LLC.

By: 

Its: Member

By: 

Its: Member

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

On this 6 day of December, 2007, 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 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.

Josephine M. Gurrey
Notary Public, State of South Dakota
My Commission Expires: 7-15-2012

[SEAL]

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

On this 6th day of November, 2007, before me, the undersigned officer, personally appeared PATRICK A FLUSTOS, who acknowledged them self to be the MEMBER of By-Pass Development, LLC, and that as such, being duly authorized so to do, executed the foregoing instrument.

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

Kati Jenkins
Notary Public, State of South Dakota
My Commission Expires: My Commission Expires September 30, 2010

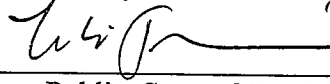


STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF PENNINGTON)

On this 6th day of November, 2007, before me, the undersigned officer, personally appeared MICHAEL TENNYSON, who acknowledged them self

to be the MEMBER of By-Pass Development, LLC, and that as such, being duly authorized so to do, executed the foregoing instrument.

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



Notary Public, State of South Dakota

My Commission Expires: _____
My Commission Expires
September 30, 2010

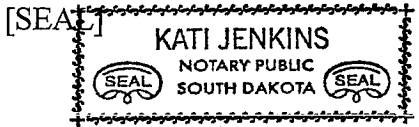
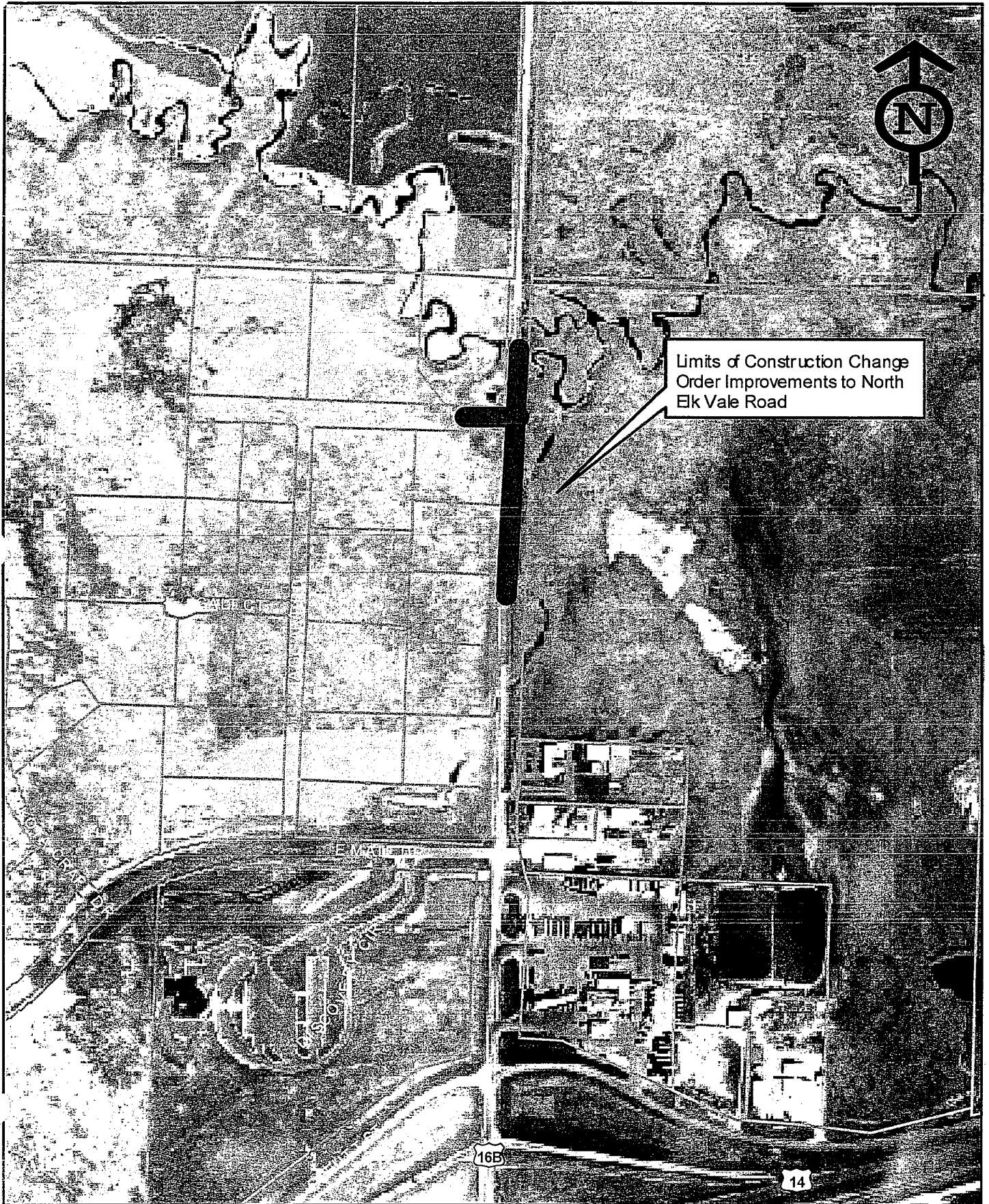


Exhibit A



Limits of Construction Change Order Improvements to North Elk Vale Road



165

14

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

STATE OF SOUTH DAKOTA)
COUNTY OF PENNINGTON)

SS.

COVENANT AGREEMENT

This declaration of covenant and agreement is made and entered into on this 3 day of DECEMBER, 2007, by and between THE CITY OF RAPID CITY, of 300 Sixth St., Rapid City, South Dakota, 57701, herein after referred to as the "City," and WAL-EAST DEVELOPMENT, INC., of 927 Main Street, Rapid City, South Dakota, 57701, herein after referred to as the "Developer."

WHEREAS, the City will be making improvements to North Elk Vale Road (Project Number 50143-1502) in the vicinity of East Mall Drive and Seger Drive; and

WHEREAS, the improvements to North Elk Vale Road will be completed through a Contract Change Order to the existing contract between the South Dakota Department of Transportation and Stanley J. Johnson Concrete Constructors, Inc. dated December 12, 2006.

WHEREAS, the North Elk Vale Road improvements in the Contract Change Order will include, among other things, the removal and replacement of approximately 850 feet of the existing roadway surface in the vicinity of East Mall Drive and Seger Drive as shown on Exhibit A, widening of the roadway from a two lane rural typical section to a three lane rural typical section, installation of one water line sleeve, installation of one sewer line sleeve; and

WHEREAS, the Developer, at its own cost, must provide design information necessary for the proper installation of the water and sewer line sleeves; and

WHEREAS, the estimated cost of the above-described improvement is \$340,000 and the design of the Contract Change Order will be completed by the South Dakota Department of Transportation; and

WHEREAS, the Developer is the legal owner in fee of land adjacent to the North Elk Vale Road improvements legally described as:

That portion of the North Half of the Northwest Quarter (N1/2NW1/4) of Section 26 in Township 2 North of Range 8 East of the Black Hills Meridian, in the City of Box Elder, Pennington County, South Dakota, lying north of the following: highway right of way, as shown on the plat filed in Highway Plat Book 1, Page 20, and as conveyed to Pennington County in Deed recorded August 11, 1926, in Deed Book 48, Page 421; Lot H1 of the NW1/4NW1/4 and Lot H2 of the NE1/4NW1/4, as shown on the plats filed in Highway Plat Book 2, Pages 120 and 121, and as conveyed to Pennington County in instrument recorded January 4, 1936, in Deed Book 56, Page 481; Lot H2 of the NW1/4, as shown on the plat filed in Highway Plat Book 2, Page 271, and as conveyed to the State of South Dakota in instrument recorded July 17, 1952, in Deed Book 96, Page 153; and Lot H3 of the N1/2NW1/4, as shown on the plat filed in Highway Plat Book 3, Page 239, and as conveyed to the State of South Dakota in instrument recorded September 2, 1961, in Deed Book 133, Page 196; EXCEPTING therefrom right of way for highway purposes through NW1/4NW1/4, as shown on the plat filed in Highway Plat Book 2, Page 12, and as conveyed to Pennington County in instrument recorded April 25, 1932, in Deed Book 53, Page 506; EXCEPTING therefrom Lot H2 in the NW1/4, as shown on the plat filed in Highway Plat Book 11, Page 51, and as conveyed to the City of Box Elder in instruments recorded January 11, 2007, in Book 165, Page 5306 and February 5, 2007, in Book 166, Page 2275. and The North Half of the Northeast Quarter (N1/2NE1/4) of Section 27 in Township 2 North of Range 8 East of the Black Hills Meridian, in the City of Box Elder, Pennington County, South Dakota; EXCEPTING therefrom Lot H1, as shown on the plat filed in Highway Plat Book 2, Page 271; and EXCEPTING therefrom Lot H2, as shown on the plat filed in Highway Plat Book 3, Page 240; and Tract A in the Southeast Quarter of the Northeast Quarter (SE1/4NE1/4) of Section 27 in Township 2 North of Range 8 East of the Black Hills Meridian, in the City of Box Elder, Pennington County, South Dakota, as shown on the plat filed in Plat Book 3, Page 216; EXCEPTING therefrom Lot H1, as shown on the plat filed in Highway Plat Book 2, Page 118; and EXCEPTING therefrom Lot H2, as shown on the plat filed in Highway Plat Book 3, Page 240; and The Northwest Quarter (NW1/4) of Section 27 in Township 2 North of Range 8 East of the Black Hills Meridian, in the City of Box Elder, Pennington County, South Dakota; EXCEPTING therefrom Tract C in the E1/2W1/2, as shown on the plat filed in Plat Book 3, Page 216; and EXCEPTING therefrom Lot H1 in the SW1/4NW1/4, as shown on the plat filed in Highway Plat Book 4, Page 96; and EXCEPTING therefrom that portion of Tract H lying in the SW1/4NW1/4, as shown on the plat filed in Plat Book 9, Page 208; and EXCEPTING therefrom Tract K in the SW1/4NW1/4, as shown on the plat filed in Plat Book 13, Page 201; and EXCEPTING therefrom Tract L in the SW1/4NW1/4, as shown on the plat filed in Plat Book 17, Page 5; and EXCEPTING therefrom that portion of Tract J-Revised lying in the SW1/4NW1/4, as shown on the plat filed in Plat Book 21, Page 39; and That portion of the North Half of the Southwest Quarter

(N1/2SW1/4) of Section 27 in Township 2 North of Range 8 East of the Black Hills Meridian, in the City of Box Elder, Pennington County, South Dakota, lying north of Lots H1, H2, H3 and H4, as shown on the plats filed in Highway Plat Book 2, Page 272, in Highway Plat Book 3, Page 241 and in Highway Plat Book 4, Page 97; EXCEPTING therefrom that portion of Tract C lying in NE1/4SW1/4, as shown on the plat filed in Plat Book 3, Page 216; and EXCEPTING therefrom Lot H3, as shown on the plat filed in Highway Plat Book 4, Page 97; and EXCEPTING therefrom that portion of Tract H lying in the NW1/4SW1/4, as shown on the plat filed in Plat Book 9, Page 208; and EXCEPTING therefrom Lot 1 of Tract J in the NW1/4SW1/4, as shown on the plat filed in Plat Book 15, Page 220; and EXCEPTING therefrom that portion of Tract J-Revised lying in the NW1/4SW1/4, as shown on the plat filed in Plat Book 21, Page 39; and

WHEREAS, the above-described land owned by the Developer will directly benefit from the Elk Vale Road improvements and therefore, the Developer has agreed to pay one-third (1/3) of the total costs of the North Elk Vale Road improvements not to exceed \$100,000.

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

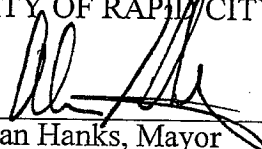
1. The Developer hereby covenants and agrees to pay the City one-third (1/3) of the total costs of the Contract Change Order for the proposed North Elk Vale Road improvements (Project number 50143-1502, Project EM 0902(39)61 PCN 1939-Exit 61, Elk Vale Road) up to an amount not to exceed \$100,000 within 30 days of the approval of a Contract Change Order initiating this roadway improvement work relating to the agreement between the South Dakota Department of Transportation and Stanley J. Johnson Concrete Constructors, Inc. dated December 12, 2006.
3. 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.
4. 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.

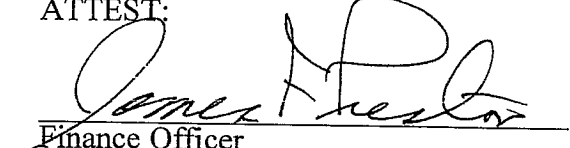
5. The Developer hereby covenants and agrees it has the power to enter into this Agreement and that its officer(s) signing for it have full power and authority to do so.
6. This Agreement does not obligate nor imply the desire of the City to provide water and sewer service to areas not annexed within the corporate limits of Rapid City.
7. This Agreement constitutes the entire agreement of the parties. No other writings or negotiations are part of this document. This agreement may only be modified by mutual agreement of both parties. Any modifications or addendums to this agreement must be in writing.
8. 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, State of South Dakota

DATED this 3rd day of DECEMBER, 2007.

CITY OF RAPID CITY


Alan Hanks, Mayor

ATTEST:


Finance Officer

(SEAL)

WAL-EAST DEVELOPMENT, INC.

By: 

Its: Vice Pres.

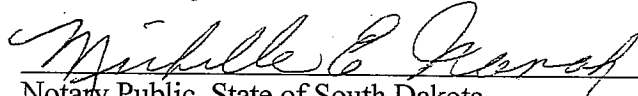
By: 

Its: Pres.

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

On this 11 day of November, 2007, before me, the undersigned officer, personally appeared Richard M. Bradsky, who acknowledged them self to be the President of Wal-East Development, Inc., and that as such, being duly authorized so to do, executed the foregoing instrument.

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



Notary Public, State of South Dakota
My Commission Expires: November 25, 2011

[SEAL]