

DOTRW-62 (4-02)

RIGHT OF ENTRY AGREEMENT

Project No. NH 0235(01)0 PCEMS No. 3151 Parcel No. 9A

County Pennington

This AGREEMENT for Right of Entry entered into by the undersigned, hereinafter referred to as the GRANTOR, and the State of South Dakota acting by and through its Department of Transportation, hereinafter referred to as the STATE, witnesseth;

WHEREAS, the State contemplates the construction, operation and maintenance of highway facilities on the above described project as provided for by Law; and;

WHEREAS, a portion of the project necessary for the proper completion of such highway facilities, as designed by plans on file at the Department of Transportation, is located over and across the hereinafter described real property:

Lot H5 Amending the Original Plat of Lot H5 as Recorded in Book of Hwy Plats 10 - Page 115 - Dated April 30, 2003 in the N1/2 NE1/4 of Section 19, Township 1 North, Range 8 East of the B.H.M., except MJK Subdivision and except Lot H3, Pennington County, South Dakota. Including control of access as shown on the plans.

Lot H5 contains 0.25 acre, more or less.

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NOW, THEREFORE, it is expressly agreed and understood by the parties hereto that:

(1) Upon approval of this AGREEMENT, the GRANTOR grants Right of Entry permission to the STATE, its agents, representatives and assigns or any Contractor employed by the STATE to enter upon and use the above described property and designated Temporary Easement areas for purposes of constructing a public highway. Such permission also includes the right to remove and/or dispose of any buildings or improvements as may be necessary, and;

(2) All fences existing within the right of way area shall become the property of and shall be disposed of by the STATE if not salvaged by the GRANTOR prior to being cleared by the STATE. The STATE will not be responsible for retention of livestock when the GRANTOR salvages the fence. A temporary fence will be provided where necessary to retain livestock when the Contractor clears the existing fence. This fence is the property of the Contractor and he will remove it after the permanent fence has been placed. Permanent fence constructed within Interstate Highway right of way will remain the property of and will be maintained by the STATE whereas all other permanent fence constructed becomes the property of and is to be maintained by the GRANTOR; and;

(3) Any existing fence so removed will _____ will not _____ be replaced by the STATE with one of its standard fences that conforms as nearly as possible to the existing fence. Any fence provided will be no less than a four strand barb wire fence. Type _____ fence will be provided; and;

(4) The temporary easement area is estimated to be:

- _____ 5448 ~~acres~~ sq. ft. at \$ _____ per acre/sq. ft.
- _____ 39,699 ~~acres~~ sq. ft. at \$ _____ per acre/sq. ft.
- _____ acres/sq. ft. at \$ _____ per acre/sq. ft.
- _____ acres/sq. ft. at \$ _____ per acre/sq. ft.

It is further agreed and understood by the GRANTOR that any additional Temporary Easement area necessary for the proper completion of the facility may also be so used and the additional area will be measured and paid for separately at the same rate herein stated. It is agreed and understood that all areas used will be sloped and graded as smooth as practicable and left in a neat and workmanlike manner; and;

(5) The STATE will pay for crop damage caused by the STATE, its agents, representatives and assigns or any Contractor employed by the STATE only when such crop has been planted on the above described property prior to the date the GRANTOR signs this AGREEMENT and when planted on the Temporary Easement areas prior to the time survey stakes are set to outline the Temporary Easement area except that crop damage will not be paid for alfalfa or other perennial grass being used for pasture. The amount of crop damage to be paid will be based on the area damaged, the percent of damage, the average yield on adjoining fields and the market price at the time of harvest less a predetermined harvesting cost. Type and location of crops planted prior to the signing date are:

; and;

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(6) The GRANTOR is allowed to retain, for their salvage value, the following buildings or improvements which are considered to be part of the real property, including fixtures, removable building equipment and any trade fixtures, provided they are removed from the above described real property by the _____ day of _____, _____, unless a removal date extension is granted in writing by the STATE. Items being retained and their salvage value are:

; and;

(7) The following mutually agreed upon special conditions are made a binding part of the AGREEMENT:

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- (A) State will appraise the property for the needed right of way, temporary easements, control of access, and resultant damages.
- (B) This right of entry will allow construction to take place and does not restrict the future negotiations of the City of Rapid City or the National Guard.
- (C) Eminent domain action will only be initiated after all negotiations have been exhausted.
- (D) It is further agreed and understood interest will only be paid for any settlement amount in excess of the appraised amount.

; and;

(8) The STATE will immediately commence processing a voucher for payment of \$ *1.00 _____, consisting of \$ *1.00 _____ which is the STATE'S estimate of market value for the above described property, improvements, temporary easements and damages less \$ -0- _____ for retained salvage. The warrant, made payable to all parties of interest, is to be delivered to _____
City of Rapid City, 300 6th Street, Rapid City, SD

It is agreed and understood that the amount of this payment cannot be introduced in court. It is further agreed and understood that the STATE will pay to the GRANTOR interest from the date this AGREEMENT is approved to the date final payment is made at the rate established by Law (SDCL 31-19-47) on the difference between the final settlement and any tendered payments for deposits with the understanding that no duplication of interest will be paid; and;

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(9) The Right of Entry permission being granted herein by the GRANTOR is not a waiver of any right of just compensation for property and/or damages or of any remedy authorized by Law, but it is a specific waiver of the right of establishment by the court of the date for possession of said property by the STATE; and;

(10) The GRANTOR is responsible for real estate taxes up to the date of the Right of Entry, at which time said property being acquired is tax exempt. This only applies to right of way, not temporary easements.

(11) Upon receipt of possession of the subject property, STATE and/or its agents and contractors shall be entitled to enter upon the property for purposes of inspecting, surveying, flagging and other preliminary activities incident to the construction project. STATE may so enter upon the property for such purposes even though GRANTOR may still be occupying the property by agreement with STATE. In the event GRANTOR continues to occupy the property subsequent to granting STATE possession, STATE and/or its agents or contractors shall not enter upon the property for any purposes without first providing reasonable prior notice to GRANTOR.

(12) All foregoing conditions are binding upon the STATE only upon approval of this AGREEMENT by the STATE'S Authorized Representative and in the event said approval is not obtained, this AGREEMENT is null and void and of no force or effect; and;

NOW, THEREFORE, BE IT AGREED, that on this _____ day of _____, _____, the above and foregoing AGREEMENT is entered into and is witness whereof the GRANTOR hereunto subscribes by signature.

Receipt of an identical copy of the AGREEMENT is hereby acknowledged.

ACKNOWLEDGMENT

STATE OF)
)SS
COUNTY OF)

On this _____ day of _____, in the year _____, before me, a Notary Public within and for said County and State, has personally appeared _____, known to me to be the person who _____ described in, and who executed the within instrument and acknowledged to me that _____ he _____ executed the same.

(SEAL)

Notary Public
My Commission Expires: _____

The above and foregoing AGREEMENT approved this _____ day of _____, _____.

Right of Way Authorized Representative