

**RIGHT OF WAY AGREEMENT**

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

This AGREEMENT for highway right of way with X without \_\_\_\_\_ control of access 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 by Law; and;

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

- 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.  
 Lot H5 contains 0.25 acre, more or less.

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

(1) This AGREEMENT shall remain in full force and effect until such time as the above described real property is no longer needed for highway purposes and is disposed of in accordance with Law; 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 N/A fence will be provided; and;

(4) The STATE will pay for crop damage within the right of way area caused by the STATE, its agents, representatives and assigns or any Contractor employed by the STATE only when such crop has been planted prior to the date the GRANTOR signs this AGREEMENT 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: N/A

\_\_\_\_\_ ; and;  
 (5) Conditions relating to temporary easement areas on GRANTOR'S property are contained in a separate Temporary Easement Agreement; and;

(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 this AGREEMENT:

\* The City of Rapid City will be paid \$ 24,085.<sup>00</sup>

\* The SD National Guard will be paid \$ 220,000.00.

(8) The GRANTOR relinquishes all of his right of access, light, air and view between the portions of the above described real property where the right of way is designated to have control of access except in those specific locations as may be designated now or in the future by the STATE; and;

(9) The payment provided for under this Agreement includes compensation for any and all damage to or decrease in value of GRANTOR'S remaining property, including severance damages, attributable to the above-referenced project.

(10) The GRANTOR grants possession of the above described real property to the STATE and 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;

(11) The GRANTOR understands and agrees that if there are liens, mortgages or other encumbrances against the above-described real property, the holder of such lien, mortgage or encumbrance may be named as co-payee on any payment to be made pursuant to this Agreement.

(12) 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.

NOW, THEREFORE, BE IT AGREED, that total consideration is \$ \* 244,085.00, it is understood and agreed will be paid as soon as all required documents and releases are properly signed and received by the STATE and a voucher processed for payment as follows:

- \$ \* 244,085.00 for land conveyed, temporary easement, improvements and damages
- less \$ 0.00 for retained salvage
- less \$ 0.00 to be withheld until improvements are removed
- less \$ 0.00 to be withheld until keys are delivered and a final inspection is made;

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

City of Rapid City \_\_\_\_\_  
 By: \_\_\_\_\_ By: \_\_\_\_\_  
 Its: \_\_\_\_\_ Its: \_\_\_\_\_

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

**RIGHT OF WAY AGREEMENT**

Project No. NH 0235(01)0 PCEMS No. 3151 Parcel No. CA1, CA5  
 County Pennington

This AGREEMENT for highway right of way with x without \_\_\_\_\_ control of access 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 by Law; and;

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

To purchase control of access to and from Tract A of Wasteland Subdivision, in the City of Rapid City, Pennington County, South Dakota.

To purchase control of access to and from the SE1/4 NE1/4 of Section 19, Township 1 North, Range 8 East of the B.H.M., less MJK Subdivision and Lot H3, City of Rapid City, Pennington County, South Dakota.

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

(1) This AGREEMENT shall remain in full force and effect until such time as the above described real property is no longer needed for highway purposes and is disposed of in accordance with Law; 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 STATE will pay for crop damage within the right of way area caused by the STATE, its agents, representatives and assigns or any Contractor employed by the STATE only when such crop has been planted prior to the date the GRANTOR signs this AGREEMENT 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;  
 (5) Conditions relating to temporary easement areas on GRANTOR'S property are contained in a separate Temporary Easement Agreement; and;

(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 this AGREEMENT:

\*The owner(s) were advised of their rights as stated in the donation agreement. Accordingly, the owner(s) hereby agreed to donate the Control of Access and, in effect, waive the appraisal process. The owner(s) have agreed to donate the Control of Access for \$1.00 consideration.

\*The total consideration is \$1.00 for Parcels CA1, CA5 and A4 which includes Control of Access and Temporary Easement.

(8) The GRANTOR relinquishes all of his right of access, light, air and view between the portions of the above described real property where the right of way is designated to have control of access except in those specific locations as may be designated now or in the future by the STATE; and;

(9) The portion provided for under this Agreement includes compensation for any and all damage to or decrease in value of GRANTOR'S remaining property, including severance damages, attributable to the above-referenced project.

(10) The GRANTOR grants possession of the above described real property to the STATE and 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;

(11) The GRANTOR understands and agrees that if there are liens, mortgages or other encumbrances against the above-described real property, the holder of such lien, mortgage or encumbrance may be named as co-payee on any payment to be made pursuant to this Agreement.

NOW, THEREFORE, BE IT AGREED, that for a total consideration of \$ \*\$1.00, consisting of \$ \*\$1.00 for land conveyed, temporary easement, improvements and damages less \$ 0.00 for retained salvage, which it is understood and agreed will be paid as soon as all required documents and releases are properly signed and received by the STATE and a voucher processed for payment; the above and foregoing AGREEMENT is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and in the witness whereof the GRANTOR hereunto subscribes by signature.

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

CITY OF RAPID CITY \_\_\_\_\_
BY: \_\_\_\_\_ BY: \_\_\_\_\_
ITS; \_\_\_\_\_ ITS; \_\_\_\_\_

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