



**Department of Transportation**  
**Office of Legal Counsel**  
700 East Broadway Avenue  
Pierre, South Dakota 57501-2586 605/773-3262  
FAX: 605/773-3921

**RECEIVED**

**AUG - 3 2005**

**Rapid City Growth  
Management Department**

August 2, 2005

Marcia Elkins  
Director  
Growth Management Dept.  
300 6<sup>th</sup> Street  
Rapid City, SD 57701

RE: Plum Creek Development

Dear Marcia:

I have enclosed a copy of the Right of Way Agreement executed by Double E, LLC, Managing Partner, Owen Emme, in connection with the construction of the Southeast Connector.

The amount included total compensation for the land, temporary easements, improvements, damages, and haul road across the property. The damages were primarily due to the loss of the required second access road, and were based, in part, on the cost to landowners of constructing a replacement access road meeting required standards to connect at Minnesota Street. That cost was based on an all-inclusive itemized estimate prepared by Lawrence Kostaneski during the course of negotiations.

Let me know if I can be of further assistance.

Best regards.

Very truly yours,

William J. Nevin  
Assistant Attorney General

WJN/jm

DOTRW-56 (9-97)

### RIGHT OF WAY AGREEMENT

Project No. NH 0235(01)0 PCEMS No. 3151 Parcel No. 24, CA8  
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 H1 Amending the Original Plat of Lot H1 as Recorded in Book 9 Hwy of Plats - Page 50 - Dated January 5, 1998 in the NW1/4 SW1/4 of Section 16, Township 1 North, Range 8 East of the B.H.M., Pennington County, South Dakota.

Said Lot H1 contains 9.11 acres, more or less.

To purchase control of access to and from the SW1/4 SW1/4 of Section 16, Township 1 North, Range 8 East of the B.H.M., 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: **N/A**

(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: **N/A**

; and;

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

The total compensation recited herein includes all compensation that might otherwise be due for the haul road across GRANTOR'S property. State of S.D. shall install (2) twelve inch utility sleeves under the Highway at such locations as owner will determine.

(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 GRANTOR, by deliverance herewith of a properly executed deed conveying the above described real property to the STATE, and upon payment by the STATE of the agreed to compensation, shall thereby release the STATE from any claims or damages accruing or alleging to accrue to the adjacent property of the GRANTOR, his heirs or assigns by virtue of the construction, operation or maintenance of said highway; and;

(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;

NOW, THEREFORE, BE IT AGREED, that for a total consideration of \$1,431,000.00, consisting of \$1,431,000.00 for land conveyed, temporary easement, improvements and damages less \$0 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 4th day of January March, 2002, and in the witness whereof the GRANTOR hereunto subscribes by signature.

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

Double E, L.L.C.
By: Owen Emme, Managing Partner

ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA )
)SS
COUNTY OF PENNINGTON )

On this 4th day of March, in the year 2002, before me, a Notary Public within and for said County and State, has personally appeared Owen Emme, Managing Partner of Double E, L.L.C., 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.

Karlene Eyrson
Notary Public
My Commission Expires: 3/25/2006

(SEAL)

The above and foregoing AGREEMENT approved this 18th day of January March, 2002.

Core R Chambers
Right of Way Authorized Representative