

No. 1572
FIVE-YEAR-LEASE

THIS LEASE made this ____ day of _____, 20____, between STATE OF SOUTH DAKOTA, Department of Transportation (formerly the Division of Railroads) hereinafter called "LESSOR", and **City of Rapid City**, whose post office address is 300 Sixth Street, Rapid City, South Dakota 57701, hereinafter called "LESSEE".

WITNESSETH:

In consideration of the covenants hereinafter contained to be kept and performed by LESSEE, LESSOR hereby leases to LESSEE upon the terms and conditions hereinafter set forth the following described premises situate in the City of **Rapid City**, Pennington County, State of South Dakota.

ALL THAT PART of the premises of said LESSOR's station ground property containing **4.92 acres**, more or less, as shown in red on the plat dated August 4, 2005, attached hereto and made a part hereof.

TO HAVE AND TO HOLD subject to the provisions following for the term of five (5) years commencing **August 1, 2005**, and ending **July 31, 2010**, subject, however, to the right of either party to terminate this Lease by giving the other ninety (90) days written notice of its desire to do so.

1. (a) LESSEE shall occupy and continue to use said premises during the term for the exclusive purpose of a site for **City facilities**.

(b) If a building or buildings are to be constructed on said premises, LESSEE shall, within six (6) months of the effective date of this Lease, begin the construction and complete within eighteen (18) months of said date, a building or buildings according to plans and specifications submitted to and approved by LESSOR in advance of construction. In event of destruction thereof in whole or in part LESSEE shall within three (3) months thereafter commence the work of repairing or rebuilding and complete the same within twelve (12) months after the date of said destruction.
2. As annual rental LESSEE shall pay annually in advance the sum of **Six Thousand Sixty-five Dollars (\$6,065.00)**).
3. (a) LESSEE shall pay all taxes, license fees and other charges (see paragraph 3(b) below for payment of special assessments for public improvements) which may become due or which may be assessed against said premises, against LESSEE, against the business conducted on said premises or against any and all improvements placed thereon during or for the period of the actual term hereof, even though such taxes, license fees or other charges may not become due and payable until after expiration or cancellation of this Lease. LESSEE shall reimburse LESSOR for any such taxes, license fees or other charges which may be paid by LESSOR promptly upon the presentation by LESSOR of bills for the amount thereof, and in

default of such reimbursement, all sums so paid by LESSOR shall be deemed to be and shall be treated as additional rental and recoverable as such hereunder.

(b) In the event the premises hereby demised, or any part thereof, shall be subject to any special assessment for any public improvement or improvements and said assessment is in the amount of Five Hundred Dollars (\$500.00) or less, LESSEE shall reimburse LESSOR in full, promptly upon the presentation by LESSOR of bills for the amount thereof. In the event the amount of said assessment exceeds Five Hundred Dollars (\$500.00), the rental herein reserved and stipulated to be paid by LESSEE shall be automatically increased by an amount equal to ten percent (10%) per annum of the total amount of said assessment.

(c) In case of nonpayment of rental, taxes, license fees, or other charges, the same shall, until paid, constitute a lien upon any buildings or other property owned by LESSEE located upon said premises, and the lien may be foreclosed according to law. LESSEE shall not remove said buildings or other property until said rental, taxes, license fees, or other charges have been paid unless directed to do so by LESSOR.

4. Without the consent and approval of the LESSOR, no structure shall be erected on said premises by LESSEE. Preferably, all structures shall be erected parallel to the adjacent track. LESSEE shall paint and keep painted, satisfactory to LESSOR, any frame building located upon said premises. LESSEE shall not place or permit to be placed any advertising matter upon any part of said premises or upon any improvements thereon except such as is necessary to advertise LESSEE's own business.
5. LESSOR reserves the right at any time to change the grade of its tracks without compensation to LESSEE, and in the event such change is made, or the grade of any highway in proximity to said premises is changed, LESSEE shall bear all expense necessary to adapt said premises and improvements thereon to the changed conditions.
6. (a) LESSEE shall not place, or permit to be placed, or to remain, any material, structure, pole or other obstruction within 8-1/2 feet laterally of the centerline or within 23 feet vertically from the top of the rail of any track; provided that if by statute or order of competent public authority greater clearances shall be required than those provided for in this paragraph 6, then LESSEE shall strictly comply with such statute or order. However, vertical or lateral clearances which are less than those hereinbefore required to be observed but are in compliance with statutory requirements will not be or be deemed to be a violation of this clause. LESSEE agrees to indemnify and hold harmless LESSOR and/or LESSOR's Operator from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of any breach of the foregoing or any other covenant contained in this Lease.

(b) Should either or both the lateral and vertical clearances hereinbefore required to be observed be permitted to be reduced by order of competent public authority, LESSEE

hereby agrees to strictly comply with the terms of any such order and indemnify and hold harmless LESSOR and LESSOR's Operator from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of or as a result of any such reduced clearance.

(c) LESSOR's and/or LESSOR's Operator operations over the track with knowledge of an unauthorized reduced clearance shall not be or be deemed to be a waiver of the foregoing covenants of LESSEE contained in this clause or of LESSOR's and/or LESSOR's Operator right to recover for such damages to property or injury to or death of persons that may result therefrom.

7. LESSEE, at LESSEE's sole cost and expense, shall install and maintain adequate facilities for fire protection in all buildings and structures upon said premises. LESSEE also, at LESSEE's sole cost and expense, shall observe and comply with all the rules, regulations and orders of any duly constituted authority and of any board of fire underwriters having jurisdiction of said premises and all provisions of any fire insurance policy covering said premises.
8. LESSEE shall not permit the existence of any nuisance or noxious weeds on said premises; shall maintain and keep the same in proper, clean, safe and sanitary condition and free and clear of any explosive, flammable or combustible material which would increase or tend to increase the risk of fire, except for such material as may be necessary to LESSEE's business; and further, LESSEE shall keep, observe and comply with all federal, state and local regulations, ordinances and laws, and with the regulations of any duly constituted legal authority having jurisdiction of the premises, and at LESSEE's sole cost shall make any and all improvements, alterations, repairs and additions and install all appliances required on said premises by or under any such regulations, ordinances or laws. If, as a result of LESSEE's occupancy of the premises and its operations hereunder, any such regulation, ordinance or law is violated, LESSEE shall protect, save harmless, defend and indemnify LESSOR and/or LESSOR's Operator from and against any penalties, fines, costs and expenses, including legal fees and court costs incurred by LESSOR and/or LESSOR's Operator caused by, resulting from, or connected with such violation or violations.
9. LESSEE shall comply with all applicable laws and ordinances and all rules, regulations and requirements of any governmental authority promulgated thereunder controlling environmental standards and conditions on the premises. If, as a result of LESSEE's occupancy of the premises and its operations hereunder, any such law, ordinance, rule, regulation or requirement is violated, LESSEE shall protect, save harmless, defend and indemnify LESSOR and/or LESSOR's Operator from and against any penalties, fines, costs and expenses, including legal fees and court costs incurred by LESSOR and/or LESSOR's Operator, caused by, resulting from or connected with such violation or violations.

10. (a) LESSEE hereby agrees to indemnify and hold harmless LESSOR and/or LESSOR's Operator, its officers, agents, employees and licensees, from any liability whatsoever resulting from contamination of the leased premises by petroleum and other substances. LESSEE further agrees to be responsible for all costs necessary to resolve and remedy any and all petroleum contamination on said premises.
- (b) Upon termination of this lease, all State and federal laws, rules and regulations relative to storage tanks, fertilizers and pesticides shall be satisfied.
11. LESSEE, at LESSEE's sole cost and expense, shall keep the premises hereby demised in good condition and shall make all repairs and renewals that from time to time may be necessary to keep any improvements which may be located thereon in good condition and repair and ready and fit for occupancy.
12. (a) It is understood by the parties that said premises are in dangerous proximity to the tracks of LESSOR and that property on said premises will be in danger of injury or destruction by fire incident to the operation, maintenance or improvement of the railway, and LESSEE accepts this Lease subject to such dangers. It is therefore agreed, as one of the material considerations of this Lease without which the same would not be granted, that LESSEE assumes all risk of loss, damage or destruction by fire to buildings or contents or to any other property brought upon or in proximity to said premises by LESSEE, or by any other person with the consent or knowledge of LESSEE, without regard to whether such fire be the result of negligence or misconduct of any person in the employ or service of LESSOR or LESSOR's Operator or of defective appliances, engines or machinery, except to the premises of LESSOR and to rolling stock belonging to LESSOR's Operator or to others, and to shipments of third parties in the course of transportation. LESSEE hereby indemnifies and agrees to protect LESSOR and/or LESSOR's Operator from all such loss, damage or destruction to property, including claims and causes of action asserted against LESSOR and/or LESSOR's Operator by any insurer of said property.
- (b) LESSEE also agrees to indemnify and hold harmless LESSOR and/or LESSOR's Operator for loss, damage, injury or death from any act or omission of LESSEE, LESSEE's invitees, licensees, employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation while on or near said premises; and if any claim or liability, other than from fire, shall arise from the joint or concurring negligence of LESSEE and LESSOR's Operator, it shall be borne by them equally.
13. It is agreed that the provisions of paragraphs 6 and 11 are for the equal protection of any other railroad company or companies, heretofore or hereafter granted the joint use of LESSOR's property, of which said premises are a part.
14. If LESSEE shall default in any covenant or agreement herein assumed, and such default shall not be remedied or corrected within thirty (30) days after written notice by LESSOR to

LESSEE of such default, this Lease shall terminate without further notice. Any waiver by LESSOR of any default shall not be construed as a waiver of any subsequent default. While such default continues LESSEE shall not remove from said premises any building or other property owned by LESSEE unless directed to do so by LESSOR.

15. (a) Before said Lease expires LESSEE shall, at its own sole cost and expense, remove or cause to be removed all buildings, structures, foundations, footings, materials, signs or signboards, debris or other articles or facilities owned or used by LESSEE or placed on, above or below the surface of the premises by LESSEE or by any person, firm or corporation or former lessee. LESSEE agrees to restore and level the premises to a condition satisfactory to LESSOR.

(b) It is expressly understood by LESSEE that until such time as the premises are surrendered to LESSOR free and clear of all buildings, structures, foundations, footings, materials, signs or signboards, debris or other articles or facilities not belonging to LESSOR and the premises are restored to a neat and orderly condition satisfactory to LESSOR, LESSEE shall be liable to LESSOR for such rental, including taxes, as LESSOR may from time to time determine. LESSEE shall also be liable to LESSOR for any and all losses and/or damages which LESSOR may sustain or become liable for resulting from the failure of LESSEE to restore the premises to a neat and orderly condition. LESSOR may at its own sole election appropriate any property or improvements remaining on the demised premises for its own use without compensation to LESSEE, or may dispose of any such property or improvements without any liability whatsoever to LESSEE and charge LESSEE for all cost and expense incidental to such removal.
16. (a) Without the written consent of LESSOR, LESSEE shall not assign this Lease or any interest therein, or sublet, and no heir, executor, administrator, receiver, master, sheriff, trustee in bankruptcy, or other assignee by operation of law shall assign or sublet without such written consent.

(b) In the event of assignment of this Lease, LESSOR, having no advice to the contrary, shall at such time credit all unearned rental hereunder to the assignee. Any other disposition of unearned rental will be made by LESSOR only upon the joint written request of both LESSEE and LESSEE's assignee at the time of submitting said assignment to LESSOR for its consent.
17. LESSEE shall pay all charges for the use on said premises of water, heat, gas, electricity, telephone, and any other public utility and shall save harmless LESSOR, leased premises and the improvements thereon from any and all liens attaching thereto by reason of nonpayment of any such charges.
18. LESSEE shall not permit any railroad company or any company or person engaged in any type of transportation, other than LESSOR or LESSOR's Operator, to use any track which is

now or may hereafter be constructed upon the demised premises without express permission from LESSOR in writing.

19. If, because of any act or omission of LESSEE, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against LESSOR or any portion of the demised premises, LESSEE shall, at its own cost and expense, cause the same to be discharged of record within thirty (30) days after written notice from LESSOR to LESSEE of the filing thereof; and LESSEE shall indemnify and save harmless LESSOR against and from all costs, liabilities, suits, penalties, claims and demands, including legal fees and court costs, resulting therefrom.
20. All notices hereunder to be given by LESSOR to LESSEE may be effectually given by letter from LESSOR or its agent or attorney forwarded by Certified Mail-Return Receipt Requested, postage prepaid, addressed to LESSEE at LESSEE's post office address above stated or at such address as LESSEE may later give LESSOR in writing.
21. All notices hereunder to be given by LESSEE to LESSOR may be effectually given by letter from LESSEE or LESSEE's agent or attorney forwarded by Certified Mail-Return Receipt Requested, postage prepaid, addressed to Property Management-Railroads, Office of Railroads, 700 East Broadway Avenue, Pierre, South Dakota 57501-2586.
22. Nothing herein contained shall imply or import a covenant on the part of LESSOR for quiet enjoyment.
23. LESSEE accepts the leased premises subject to any and all existing permits, licenses, leases, easements, railroad facilities, pipelines, telephone, telegraph, communication, power and signal lines or any other similar facilities, together with any future installations thereof provided such future installations do not unreasonably interfere with LESSEE's use of the leased premises.
24. The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision.
25. LESSEE shall have the first right of refusal to purchase leased premises from LESSOR subject to a determination by the Director, Division of Fiscal and Public Assistance that such premises are excess to the needs of the State and are not necessary for railroad operations.
26. This Lease is subject to approval by the LESSOR's Operator.

Subject to the foregoing provisions, this Lease and all of the covenants and promises thereof shall inure to the benefit of and be binding upon the parties hereto and their executors, administrators, successors and assigns.

The parties have executed this Lease, in duplicate, the day and year first hereinabove written.

STATE OF SOUTH DAKOTA

BY _____
Program Manager, Office of Railroads

CITY OF RAPID CITY

By _____

ACKNOWLEDGEMENT

STATE OF)
 : SS
COUNTY OF)

On this ___ day of _____, 20___, before me, a Notary Public within and for said County and State, personally appeared _____, known to me to be the person who executed the above document and acknowledged to me that he did sign the foregoing document for the purposes herein stated.

NOTARY PUBLIC
My Commission Expires: _____

(S E A L)

ACKNOWLEDGEMENT

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF HUGHES)

On this ___ day of _____, 20___, before me, a Notary Public within and for said County and State, personally appeared BRUCE E LINDHOLM, PROGRAM MANAGER, OFFICE OF RAILROADS, known to me to be the person who is described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same freely.

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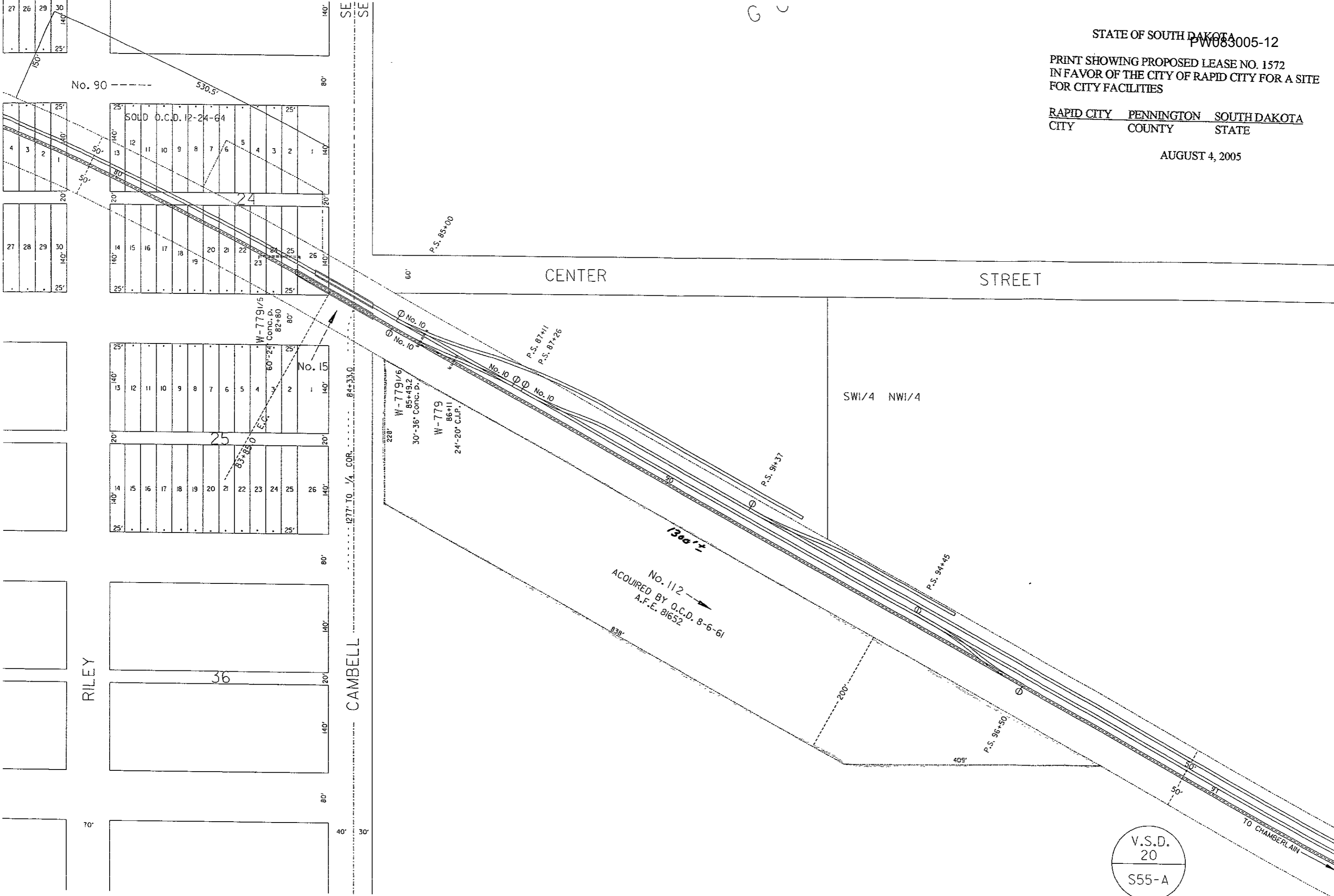
NOTARY PUBLIC
My Commission Expires: _____

(S E A L)

PRINT SHOWING PROPOSED LEASE NO. 1572
IN FAVOR OF THE CITY OF RAPID CITY FOR A SITE
FOR CITY FACILITIES

RAPID CITY PENNINGTON SOUTH DAKOTA
CITY COUNTY STATE

AUGUST 4, 2005



V.S.D.
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