

Prepared by: Ellsworth AFB, SD, Real Estate Office
 Address: 2116 Scott Drive, Ellsworth AFB SD 57706
 Telephone Number: (605) 385-4804

**DEPARTMENT OF THE AIR FORCE
 AIR COMBAT COMMAND
 ELLSWORTH AIR FORCE BASE, SOUTH DAKOTA (EAFB)
 CONSENT TO CROSS NUMBER -- USAF-ACC-FXBM-9-07-617
 CONSENT TO CROSS A U.S. GOVERNMENT EASEMENT
 FOR USE BY THE CITY OF RAPID CITY TO CORSS A WATERLINE EASEMENT**

KNOW ALL MEN BY THESE PRESENTS:

That the consent of the **UNITED STATES OF AMERICA** is hereby granted to the **CITY OF RAPID CITY**, with its principal office at Engineering Division, 300 6th Street, Rapid City SD 57701-2724; hereinafter designated as “**Grantee**”, to construct, use, maintain, control, operate, and repair a sixteen inch (16-inch) waterline over the Ellsworth Air Force Base (EAFB) sixteen inch (16-inch) waterline easement, located at East Mall Drive just north of Country Inn and Suites, as depicted on attached drawings for, hereinafter referred to as “structures”, across and over the lands where the United States of America has acquired a perpetual easement (right-of-way) by the stated grantor on the date shown, designated as the following acquisition tract:

<u>TRACT NO:</u>	<u>NAME OF GRANTOR:</u>	<u>DATE ACQUIRED:</u>
401E-1	S.R. Halley Estate	28 May 1954

The rights-of-way for said structures for the purpose of this consent are specifically identified as shown on Exhibit A, which is from the preliminary construction drawing of the Mall Drive Water Transmission Main Extension Borehole Location Plan, City of Rapid City Project No. W04-1260, City of Rapid City Public Works Department, Engineering Division, attached hereto and made a part hereof and described as follows: The permanent water line easement is a strip of land 50.00 feet in width situated in the West Half of Section Thirty (30), Township Two (2) North, Range Eight (8) East of the Black Hills Meridian, Pennington County, South Dakota, and lying 25.00 feet on each side of the following described center line: Beginning at a point on the South line of said Section 30, said point being 21.51 feet South 89°58’30” East of the Southwest corner of said Section 30; thence North 0°13’45” East for a distance of 219.56 feet; thence North 32°31’15” East, a distance of 3416.22 feet; thence North 12°19’52” East, a distance of 2027.87 feet; thence North 56°25’52” East for a distance of 365.10 feet to a point on the center line on the North South Quarter Section line of said Section 30, said point being located South 0°8’58” East, a distance of 17.70 feet from the North Quarter Corner of said Section 30 containing 6.94 acres more or less.

This consent is granted subject to the following conditions:

1. The City of Rapid City will use a vacuum machine to pot hole and locate the EAFB 16-inch waterline before any digging commences. The City of Rapid City 14-inch waterline will be 18 inches below the bottom of the EAFB 16-inch waterline. The EAFB 16-inch waterline will be supported during excavation to install the City of Rapid City 14-inch waterline. The City of Rapid City will use a flowable fill between the City of Rapid City 14-inch waterline and the

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EAFB 16-inch waterline to support the EAFB 16-inch waterline when it is compacted. Existing contours will be reestablished to have six feet of fill over the EAFB 16-inch waterline. EAFB will be given a five (5) day notice prior to construction and will be offered the opportunity to verify the construction process. The City of Rapid City will provide final construction plans and specifications to EAFB prior to awarding the project for construction and will be shown as Exhibit B attached hereto and made a part hereof.

2. It is understood that this consent is effective only insofar as to the property rights of the United States are concerned in the land to be occupied, and that it does not relieve the Grantee from the necessity of obtaining grants from the owners of the fee and/or other interests herein.
3. The proposed construction authorized herein shall not be commenced until appropriate rights have been obtained by the Grantee from the record owners and encumbrances of the fee title to the lands involved.
4. The exercise of the privileges hereby consented to shall be without cost or expense to the Department of the Air Force, under the general supervision and subject to the approval of the officer having immediate jurisdiction over the property, hereinafter referred to as "Installation Commander", and subject to such regulations as may be prescribed by the said officer, from time to time.
5. The Grantee shall supervise and maintain the said structures and cause them to be inspected at reasonable intervals, and shall immediately repair any damage found therein as a result of such inspection, or when requested by said officer to repair any defects. Upon completion of the installation of said structures or the making of any repairs thereto, the premises shall be restored immediately by the Grantee, at the Grantee's own expense, to the same condition as that in which they existed prior to the commencement of such work, to the satisfaction of said officer.
6. Any property of the United States damaged or destroyed by the Grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Grantee to the satisfaction of the said officer, or in lieu of such repair or replacement, the Grantee shall, if so required by the said officer and at his option, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States by reason or damage to or destruction of Government property.
7. The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Grantee, or for damages to the property or injuries to the person of the Grantee, or the persons of Grantee's officers, agents, servants, or employees or others who may be on said premises at their invitation or the invitation of one arising from governmental activities on or in the vicinity of the said premises, and the Grantee shall hold the United States harmless from any and all such claims.
8. This consent is effective only as to the following rights of the United States in the lands hereinabove described:

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“The estate taken for said public uses is (a) “perpetual and assignable easement and right of way in, under, on, over and across 6.94 acres of land, more or less, described as Tract No. 401E-1, etc., for the location, construction, operation, and maintenance of a water pipe line.”

9. The United States shall in no case be liable for any damage or injuries to the construction here authorized which may be caused by any action of the Government, under the rights obtained in its easement, either hidden or known, or that may result from future operations undertaken by the Government and no claim or right to compensation shall accrue from such damage or injury, and if further operations of the United States require the alteration or removal of the structure herein authorized, the Grantee shall, upon due notice from the Installation Commander, alter or remove said structure without expense to the Government and subject to the supervision and approval of the officer having jurisdiction over the property and no claim for damages shall be made against the United States on account of such alterations or removal.

10. The construction and/or maintenance and use of said structures incident to the exercise of the privileges hereby granted shall be in such a manner as not to conflict with the rights of the government, nor to interfere with the operations by the Government under such rights, nor to endanger lives and safety of the public.

11. This consent may be terminated by the Installation Commander upon reasonable notice to the Grantee if the Installation Commander shall determine that installation to which consent is hereby granted interferes with the use of said land or any part thereof by the United States, and this consent may be annulled and forfeited by the declaration of the Installation Commander for failure to comply with any and all of the provisions and conditions of this consent, or for nonuse for a period of two years, or for abandonment.

12. Upon the relinquishment, termination, revocation, forfeiture or annulment of the consent herein granted, the Grantee shall vacate the premises, remove all property of the Grantee therefrom, and restore the premises to a condition satisfactory to the officers having immediate jurisdiction over the property. If the Grantee shall fail or neglect to remove said property and so restore the premises, then, at the option of the Installation Commander, the said property shall either become the property of the United States without compensation therefore, or the Installation Commander may cause it to be removed and the premises to be so restored at the expense of the Grantee, and no claim for damages against the United States, or expense of the Grantee, and no claim for damages against the United States, or its officers or agents, shall be created by or made on account of such removal and restoration.

13. The terms and conditions of this consent shall extend to and be binding upon the heirs, successors and assigns of the Grantee.

14. The Grantee within the limits of his respective legal powers shall comply with all Federal, interstate, state and/or local governmental regulations, conditions or instructions for the protection of the environment and all other matters as they relate to real property interests granted herein.

15. The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, vestiges, remains or

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objects of antiquity. In the event such items are discovered on the premises, the Grantee shall immediately notify the said officer, and the site and the material shall be protected by the Grantee from further disturbance until a professional examination of them can be made or until clearance to proceed is authorized by the Installation Commander.

16. An Environmental Baseline Survey (EBS) has been waived. The EBS waiver along with the AF Form 813 categorical exclusion for environmental impact analysis, is shown on Exhibit C attached hereto and made a part hereof.

17. Structure crossings are restricted to the established and coordinate points of intersection. A utility sign shall be placed at each WAIVED point of intersection with the Government right-of-way.

18. The Grantee shall contact the Installation Real Estate Officer, 28th Civil Engineer Squadron, 2116 Scott Drive, Ellsworth Air Force Base, South Dakota 57706-4709; telephone number (605) 385-4804, a minimum of five (5) days prior to any excavation, construction, or maintenance within the Government easement area. All correspondence relating to this Consent shall be addressed to the above address.

19. Except as otherwise specifically provided, any reference herein to "Installation Commander" or "said officer" shall include their duly authorized representatives. Any reference to "Grantee" shall include assignees, transferees and their duly authorized representatives.

This consent is not subject to Title 10, United States Code, Section 2662.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2007.

UNITED STATES AIR FORCE

SCOTT A. VANDER HAMM, Colonel, USAF
Commander, 28th Bomb Wing

The above License Number USAF-ACC-FXBM-9-07-617 together with all its conditions and provisions thereof, is hereby accepted this _____ day of _____ 2007.

ATTEST: CITY OF RAPID CITY

JAMES PRESTON, Finance Officer

ALAN HANKS, Mayor

(SEAL)

