

Prepared by City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

WGN
6-19-14

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
DONALD W. GORMAN AND MARSHA MAE GORMAN FOR
H LOT AND TEMPORARY CONSTRUCTION EASEMENT**

This Agreement is made this ____ day of _____, 20 ____, by and between the **CITY OF RAPID CITY**, a municipal corporation of the State of South Dakota (hereinafter the "City"), of 300 Sixth Street, Rapid City, South Dakota 57701, and **DONALD W. GORMAN AND MARSHA MAE GORMAN**, (hereinafter the "Owner"), of 1525 Seger Drive, Rapid City, South Dakota, 57701.

WHEREAS, Owner owns certain real property at 1525 Seger Drive; and

WHEREAS, the City wishes to acquire temporary construction easement over a portion of this property for purposes of constructing and installing a street; and

WHEREAS, Owner has agreed to execute appropriate documents conveying said interests in favor of the City under certain terms and conditions which the City has agreed to accept; and

WHEREAS, the parties desire to enter into this Agreement to reduce their mutual agreements to writing.

NOW THEREFORE, the parties hereby agree as follows:

1. Incorporation of Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. Temporary Construction Easement. Owner will convey to the City temporary construction easements over the below described properties, as shown on Exhibit A. The temporary construction easements are estimated to be 15,898 square feet.

Parcel 1

Lot AR located in the North Half of the Northwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$) of Section Twenty-Nine (29), Township Two North, (T2N), Range Eight East (R8E), Black Hills Meridian, Pennington County, South Dakota, as shown on Exhibit A, attached hereto and incorporated herein by this reference; and

Parcel 2

The East Half of the Northwest Quarter of the Northeast Quarter of the Northwest Quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Twenty-Nine (29), Township Two (2) North, Range Eight (8) East, Black Hills Meridian, Pennington County, South Dakota, as shown on Exhibit A, attached hereto and incorporated herein by this reference; and

Parcel 3

The Northeast Quarter of the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Twenty-Nine (29), Township Two (2) North, Range Eight (8) East, Black Hills Meridian, Pennington County, South Dakota, as shown on Exhibit A, attached hereto and incorporated herein by this reference.

3. H Lot. Owner will convey to the City by quitclaim deed H lots over the following properties:

Parcel 2

The East Half of the Northwest Quarter of the Northeast Quarter of the Northwest Quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Twenty-Nine (29), Township Two (2) North, Range Eight (8) East, Black Hills Meridian, Pennington County, South Dakota, to be designated Lot H-1, as shown on Exhibit A, attached hereto and incorporated herein by this reference; and

Parcel 3

The Northeast Quarter of the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Twenty-Nine (29), Township Two (2) North, Range Eight (8) East, Black Hills Meridian, Pennington County, South Dakota, to be designated Lot H-1, as shown on Exhibit A, attached hereto and incorporated herein by this reference.

4. Permanent Drainage Easement. Owner will also convey to the City a drainage easement over Parcel 3, described above, as shown on Exhibit A.

5. Consideration. The City agrees to provide the following compensation, totaling One Hundred Seven Thousand Nine Hundred Thirty-five Dollars and Twenty-one Cents (\$107,935.21):

- a. \$6,027.65 for the H-Lots and permanent drainage easement; and
- b. \$794.90 for the temporary construction easement, which is \$0.05 per square foot multiplied by the easement area of 15,898 square feet; and
- c. \$101,112.66 for the replacement of a screening fence.

6. Warranties of City.

- a. City agrees to direct and require its contractors to maintain, at all times, reasonable access for the business located at 1525 Seger Drive. Such condition shall be made part of the construction contract between City and its contractor.
- b. City agrees to comply with all applicable statutes, ordinances, rules, regulations and other laws in construction of the street in the easement area.
- c. All work by City shall be done in a workmanlike manner.
- d. Following construction, City shall leave the property in as good a condition as it finds it, including but not limited to adequate grass cover and drainage unchanged from its natural drainage ways.

7. Costs of Recording. All recording fees for the easements contemplated herein shall be paid by City.

8. Recording this Agreement. Either party may record this Agreement at its option and expense.

9. Authority. This Agreement is made and entered into by the Director of Public Works pursuant to the authority granted by SDCL 9-1-5 and Section 3.04.090 of the Rapid City Municipal Code.

10. Survival of Representations and Warranties. All of the representations and warranties of the parties contained in this Agreement shall survive the date of this Agreement and the execution of the easement documents contemplated by this Agreement.

11. Default. City shall have the right to maintain and exercise all legal and equitable rights available to it under the laws of the State of South Dakota for Owner's breach of this Agreement, including the right to specific performance.

12. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver

of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

13. Time. Time is of the essence of this Agreement.

14. Effect of Agreement. This Agreement shall be binding in all respects upon and shall inure to the benefit of City and Owner and their respective successors and assigns.

15. Integration. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

16. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

17. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

18. Severability. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

19. Construction. This Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

20. Headings. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

21. Governing Law and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the Circuit Court of Pennington County, State of South Dakota.

DONALD W. GORMAN

MARSHA MAE GORMAN

State of South Dakota)
) ss.
County of Pennington)

On this the _____ day of _____, 2014, before me, the undersigned officer personally appeared Donald W. Gorman and Marsha Mae Gorman, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

Notary Public - South Dakota
My Commission Expires _____

CITY OF RAPID CITY

Mayor

ATTEST

Finance Officer

(seal)

State of South Dakota)
) ss.
County of Pennington)

On this the _____ day of _____, 2014, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

(seal)

Notary Public - South Dakota
My Commission Expires _____

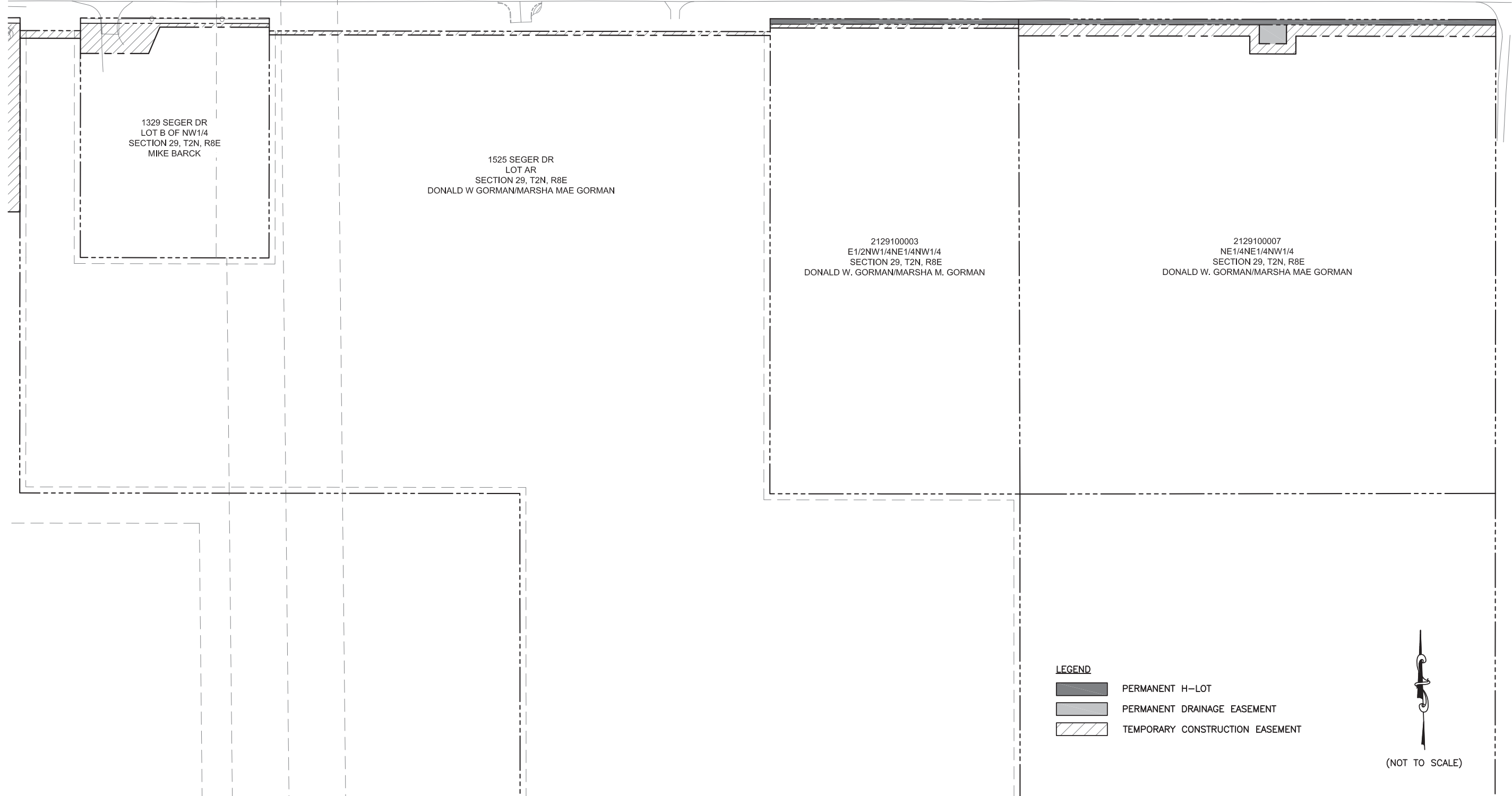
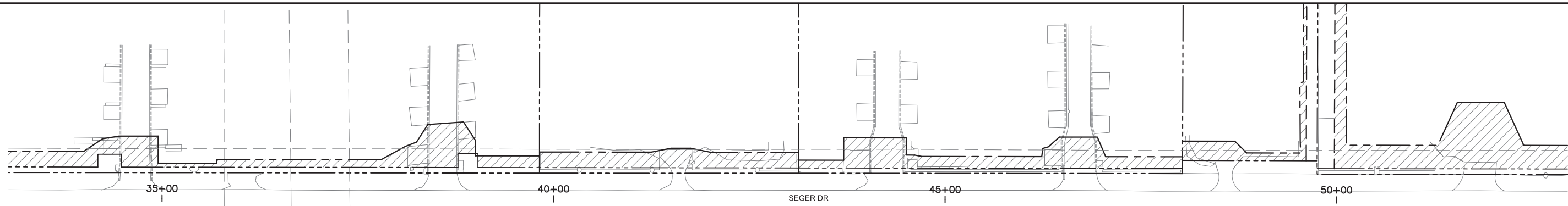


EXHIBIT A