

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

WEN
6-19-14

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND CLIFFORD A. FOSTER
AND KELLY G. FOSTER 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 **CLIFFORD A. FOSTER AND KELLY G. FOSTER**, individually and doing business as Foster Enterprises and/or Olson Towing, (hereinafter the "Owner"), of 1329 Seger Drive, Rapid City, South Dakota, 57701.

WHEREAS, Owner owns certain real property at 2285 Seger Drive; and

WHEREAS, the City wishes to acquire an H lot and 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 a temporary construction easement over the below described property, as shown on Exhibit A. The temporary construction easement is estimated to be 17,860 square feet.
3. H Lot. Owner will also convey to the City by quitclaim deed an H lot over the following property:

A portion of Lot A of the Northwest Quarter of the Northeast Quarter (NW¼NE¼) of Section 29, Township 2 North, Range 8 East of the Black Hills Meridian, Pennington County, South Dakota, to be designated Lot H-1, as shown on Exhibit B, attached hereto and incorporated herein by this reference.

Lot H-1 is estimated to be 36,026 square feet and shall be used for highway purposes.

4. Consideration. The City agrees to provide the following compensation, totaling Sixty Six Thousand Two Hundred Ten Dollars and Sixteen Cents (\$66,210.16):

- a. \$893.00 for the temporary construction easement, which is \$0.05 per square foot multiplied by the easement area of 17,860 square feet.
- b. \$23,777.16 for the H-Lot, which is \$0.66 per square foot multiplied by the easement area of 36,026 square feet; and
- c. \$41,540.00 for the replacement of a screening fence, which is \$37.00 per linear foot multiplied by 920 feet.
- d. The City will have a boundary survey prepared for Lot A. Property Corners will be set at appropriate locations.

5. Warranties of City.

- a. City agrees to direct and require its contractors to maintain, at all times, reasonable access for the business located at 2285 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.

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

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

8. 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.

9. 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.

10. 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.

11. 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.

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

13. 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.

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

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

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

CLIFFORD A. FOSTER

KELLY G. FOSTER

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

On this the ____ day of _____, 2014, before me, the undersigned officer personally appeared Clifford A. Foster and Kelly G. Foster, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that 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.

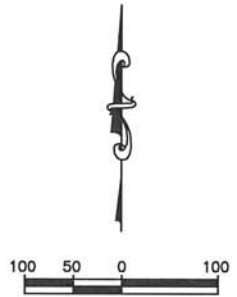
(seal)

Notary Public - South Dakota
My Commission Expires _____






TEMPORARY CONSTRUCTION EASEMENT

LOT A OF NW1/4NE1/4
SECTION 29, T2N, R8E OF THE BHM
PENNINGTON COUNTY, SOUTH DAKOTA

OWNER: CLIFFORD A. FOSTER, DBA FOSTER
ENTERPRISES/OLSON TOWING



LEGEND

-  TEMPORARY CONSTRUCTION EASEMENT
-  FOUND PROPERTY MONUMENT
-  PROPERTY AS DESCRIBED
-  PROPERTY LINE
-  EXISTING EASEMENT

REBAR
N=660765.59
E=1220594.01

SECTION 20
SECTION 29

52+00

56+00

60+00

SEGER DRIVE

ROW 40' +/-

L2

L8

L7

L6

L5

L4

LINE TABLE		
LINE #	DIRECTION	L (FT)
L1	N01°49'00"E	20.00
L2	S88°11'00"E	828.80
L3	S01°50'22"W	20.00
L4	N88°11'00"W	338.87
L5	S46°49'00"W	28.28
L6	N88°11'00"W	40.00
L7	N43°11'00"W	28.28
L8	N88°11'00"W	409.92

ROW VARIES
TISH BLVD.

TEMPORARY CONSTRUCTION
EASEMENT (THIS EXHIBIT)
CONTAINING 0.41 AC +/-

2285 SEGER DRIVE

NOTE:
BEARINGS REFERENCED TO SOUTH DAKOTA
STATE PLANE, SOUTH ZONE, NAD83(96).

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EXHIBIT A

PROJECT NO.
J11-110
FIGURE NO.
1 OF 1

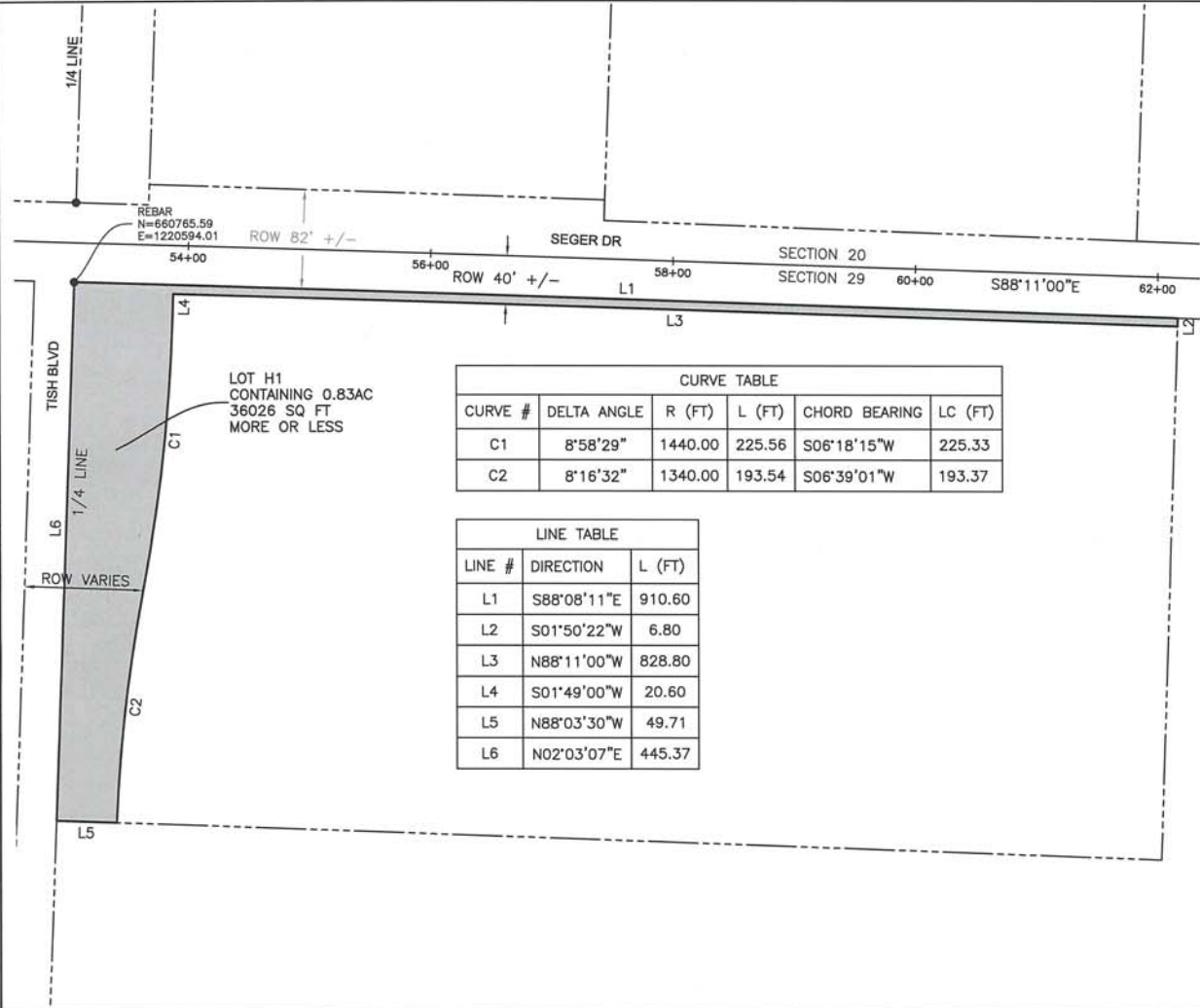
PARCEL NO. 17

PLAT OF LOT H1

SHOWING A PARCEL OF LAND TO BE ACQUIRED FOR HIGHWAY PURPOSES IN
 LOT A OF NW1/4NE1/4
 SECTION 29, T2N, R8E OF THE BHM
 FOR CONSTRUCTION OF RAPID CITY PROJECT NO. 11-1947 CIP # 50277.1-3
 PENNINGTON COUNTY, SOUTH DAKOTA



- LEGEND**
- FOUND SURVEY MONUMENT
 - ROW PLATTED THIS PLAT



LOT H1
 CONTAINING 0.83AC
 36026 SQ FT
 MORE OR LESS

CURVE TABLE					
CURVE #	DELTA ANGLE	R (FT)	L (FT)	CHORD BEARING	LC (FT)
C1	8°58'29"	1440.00	225.56	S06°18'15"W	225.33
C2	8°16'32"	1340.00	193.54	S06°39'01"W	193.37

LINE TABLE		
LINE #	DIRECTION	L (FT)
L1	S88°08'11"E	910.60
L2	S01°50'22"W	6.80
L3	N88°11'00"W	828.80
L4	S01°49'00"W	20.60
L5	N88°03'30"W	49.71
L6	N02°03'07"E	445.37

NOTE:
 THE COORDINATES, DISTANCES, AND AREAS SHOWN ON
 THIS PLAT ARE BASED ON THE SOUTH DAKOTA STATE
 PLANE COORDINATE SYSTEM SOUTH ZONE NAD83(96)
 SF=0.9997964782

DRAWN BY BRAD HIGBEE DATE 05-20-14
 CHECKED BY LINDA FOSTER DATE 05-20-14

SURVEYOR'S CERTIFICATE

I, LINDA M. FOSTER, REGISTERED LAND SURVEYOR, NO. 11311 IN AND FOR THE STATE OF SOUTH DAKOTA, DO HEREBY CERTIFY THAT AS ORDERED BY THE CITY OF RAPID CITY THE TRACT OF LAND AS SHOWN ON THIS PLAT HAS BEEN SURVEYED AT MY DIRECTION AND UNDER MY CONTROL, AND SUCH TRACT OF LAND SHALL BE HEREAFTER KNOWN BY THE LOT NUMBER DESIGNATED THEREON. THE LOCATION AND DIMENSIONS OF THE TRACT ARE SHOWN ON THIS PLAT.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 20th DAY OF May A.D., 20 14



OFFICE OF REGISTER OF DEEDS

STATE OF SOUTH DAKOTA
 COUNTY OF PENNINGTON : SS

FILED FOR RECORD THIS _____ DAY OF _____ A.D., 20 _____, AT _____ .M. DOCUMENT NUMBER _____

REGISTER OF DEEDS _____ BY _____ DEPUTY

05-20-14 P:\11-110\AutoCAD\Plat\VI-LOTS\2129200001-JH-LDT.dwg