

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

WGA
2/3-15

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND GEROLD H. WAGNER
AND SANDRA K. WAGNER 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 GEROLD H. WAGNER and SANDRA K. WAGNER**, husband and wife, (hereinafter the "Owner"), of P.O. Box 7105, Rapid City, South Dakota, 57709.

WHEREAS, Owner owns certain real property on Dyess Drive; and

WHEREAS, the City wishes to acquire two H lots and a 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. H-Lots. Owner will convey to the City two (2) H-Lots over the following property:

The South One Hundred Twenty Feet (S 120') of the North Three Hundred Thirty Feet (N 330') of the Northwest Quarter of the Southwest Quarter of the Northwest Quarter (NW¹/₄SW¹/₄NW¹/₄) of Section Twenty-eight (28),

**Township Two (2) North, Range Eight (8) East of the Black Hills Meridian,
in the City of Rapid City, Pennington County, South Dakota.**

Lot H4 is estimated to be 2,055 square feet and shall be used for highway purposes.

Lot H7 is estimated to be 45,441 square feet and shall be used for drainage purposes.

3. Temporary Construction Easement. Owner will also convey to the City a temporary construction easement over the above described property, as shown on Exhibit A. The temporary construction easement is estimated to be 28,749.6 square feet.

4. Consideration. The City agrees to provide the following compensation, totaling One Hundred Thirty-two Thousand Eight Hundred Four Dollars and Forty-seven Cents (\$132,804.47):

- a. \$5,137.50 for Lot H4, which is \$2.50 per square foot multiplied by the easement area of 2,055 square feet; and
- b. \$113,602.50 for Lot H7, which is \$2.50 per square foot multiplied by the easement area of 45,441 square feet; and
- c. \$1,437.48 for the temporary construction easement, which is \$0.05 per square foot multiplied by the easement area of 28,749.6 square feet; and
- d. \$12,626.99 for additional necessary security fencing.

5. Warranties of City.

- a. City agrees to comply with all applicable statutes, ordinances, rules, regulations and other laws in construction of the street in the easement area.
- b. All work by City shall be done in a workmanlike manner.
- c. 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. Closing. The closing of this transaction shall occur on September 9, 2015, or as soon thereafter as the parties can agree.

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. Indemnification. City agrees to indemnify and hold Owner harmless from any and all claims relating to excessive water runoff or failure to confine soils to the site during construction of the water main and for a period of 2 years after construction has been completed.

11. 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.

12. 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.

13. 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.

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

15. 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.

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

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

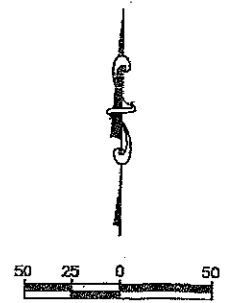
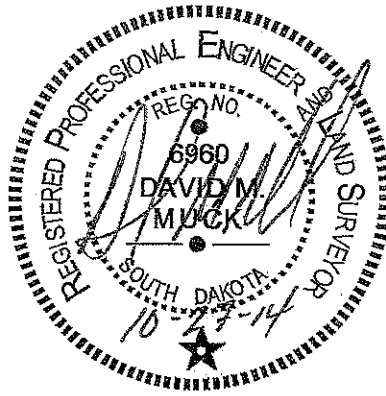
18. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

19. 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.






20. 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.

TEMPORARY CONSTRUCTION EASEMENT
SOUTH 120' OF THE NORTH 330'
OF NW1/4SW1/4NW1/4
SECTION 28, T2N, R8E OF THE BHM
RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

OWNER: GEROLD H AND SANDRA K WAGNER



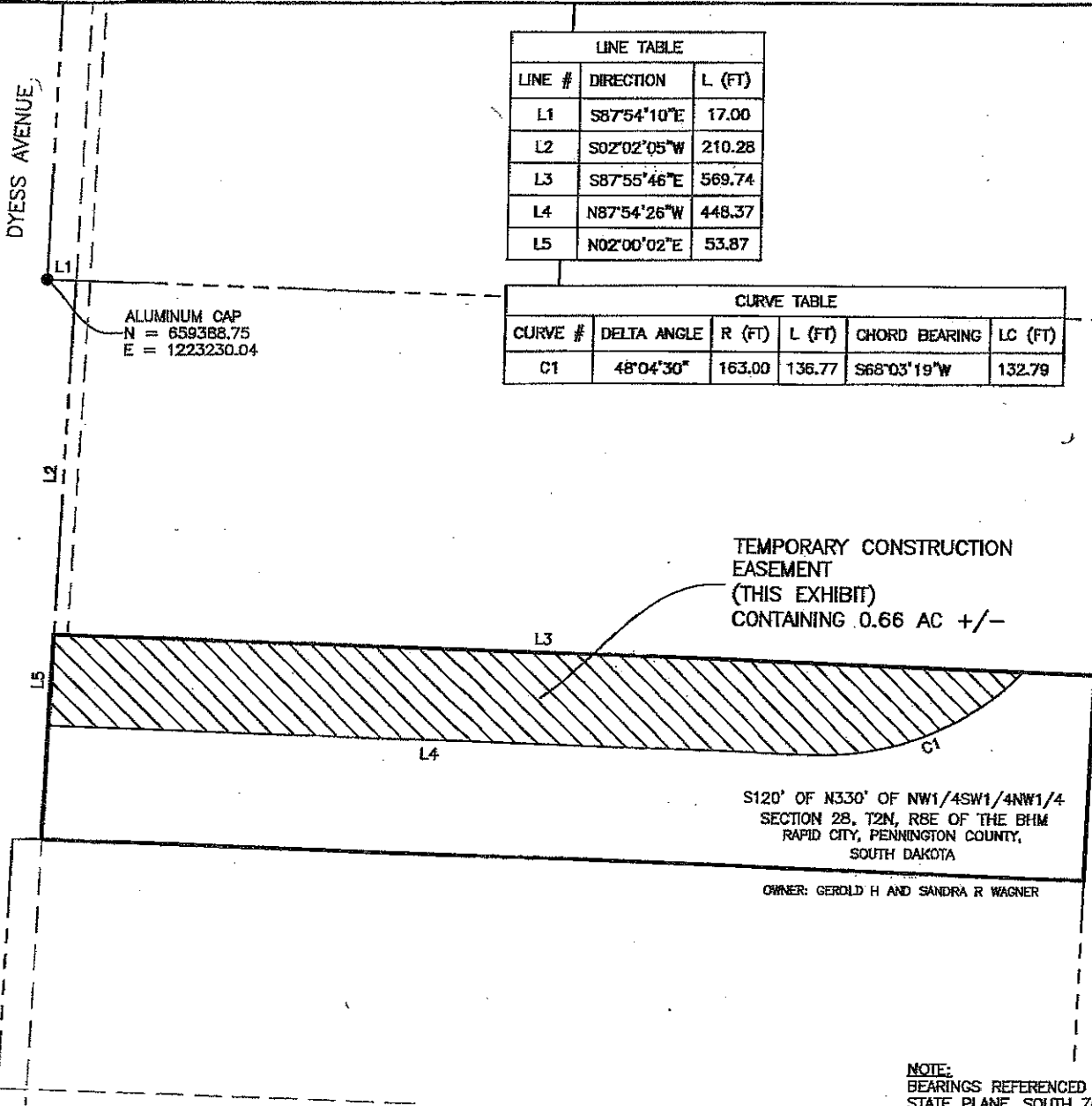
LEGEND

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

| LINE TABLE | | |
|------------|-------------|--------|
| LINE # | DIRECTION | L (FT) |
| L1 | S87°54'10"E | 17.00 |
| L2 | S02°02'05"W | 210.28 |
| L3 | S87°55'46"E | 569.74 |
| L4 | N87°54'26"W | 448.37 |
| L5 | N02°00'02"E | 53.87 |

| CURVE TABLE | | | | | |
|-------------|-------------|--------|--------|---------------|---------|
| CURVE # | DELTA ANGLE | R (FT) | L (FT) | CHORD BEARING | LC (FT) |
| C1 | 48°04'30" | 163.00 | 136.77 | S68°03'19"W | 132.79 |

ALUMINUM CAP
 N = 659368.75
 E = 1223230.04



TEMPORARY CONSTRUCTION EASEMENT (THIS EXHIBIT) CONTAINING 0.66 AC +/-

S120' OF N330' OF NW1/4SW1/4NW1/4
 SECTION 28, T2N, R8E OF THE BHM
 RAPID CITY, PENNINGTON COUNTY,
 SOUTH DAKOTA

OWNER: GEROLD H AND SANDRA R WAGNER

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

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EXHIBIT A

PROJECT NO.
 J12-122
 FIGURE NO.
 1 OF 1