

RIGHT OF WAY AGREEMENT

PROJECT NO: P 1648(02)/EM 1648 (01) CITY: Rapid City PARCEL NO: 3  
OWNER: Dwyer Royalties LLC, Jeffery Ahlers, Scott Ahlers and Michael Ahlers  
ADDRESS: P.O. Box 716, Palmer Lake, CO 80133; and 1301 South 8<sup>th</sup> Street,  
#304D, Colorado Springs, CO 80905.

THIS AGREEMENT for highway right of way and facilities entered into this  
day of \_\_\_\_\_, 20\_\_ by the undersigned, hereinafter referred  
to as Grantor, to the City of Rapid City, acting by and through its City  
Council, hereinafter referred to as Grantee, witnesseth:

WHEREAS, Rapid City, South Dakota plans the construction, operation and  
maintenance of a city street as described by resolution on file in the City  
Finance Office, designated by the above project no., and

WHEREAS, a portion of the right of way for such highway is located over  
and across the real property hereinafter described: Tract A and the East Half  
of the vacated Cherry Avenue of the Northeast Quarter of Section 31, Township  
Two North (T2N), Range Eight East (R8E), Black Hills Meridian, Rapid City,  
Pennington County, State of South Dakota.

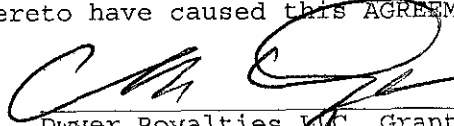
WHEREAS, the Grantor has this date executed and delivered a Quit Claim  
Deed conveying the above described real property to Rapid City for a total of  
\$ 152,938.38 for land conveyed, temporary easement and damages.

NOW THEREFORE, the parties hereto agree and understand as follows:

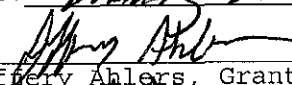


1. This AGREEMENT shall be in full force and effect until such highway  
is abandoned by the Rapid City Council.
2. The following special agreements mutually agreed upon by and between  
the parties hereto are made a binding part of this AGREEMENT:
  - a. See Attached Exhibit A
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
3. That the Grantor by deliverance herewith of the properly executed  
deed conveying the above described property to the Grantee and upon  
receipt of payment of the above amount by the Grantor from the  
Grantee, less any deductions necessary to satisfy any liens or  
encumbrances necessary to guarantee a good and sufficient title to  
the Grantee, the Grantee shall be released from any claims or  
damages accruing or alleging to accrue to the adjacent property of  
the Grantor, his successors or assigns, by virtue of the  
construction, operation and maintenance of said highway.
4. That Grantor, his heirs, successors or assigns, shall not interfere  
with or disturb any of such above described highway facility or  
portion thereof without express approval of the City of Rapid City  
Commission/Council and then only under the conditions as designated  
by the Rapid City Council.
5. The Grantor grants permission to the Grantee to enter upon the  
above described property to commence construction upon approval of  
this agreement with the understanding payment will be made as soon  
as all required documents and releases are properly signed and  
received by the Grantee and a voucher processed for payment.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be  
executed.

By: \_\_\_\_\_  
Mayor

  
Dwyer Royalties LLC, Grantor  
By: Clark Dwyer  
Its: Manager

Attest: \_\_\_\_\_  
City Finance Officer

  
Jeffery Ahlers, Grantor  
  
Scott Ahlers, Grantor  
  
Michael Ahlers, Grantor

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

On this the \_\_\_ day of \_\_\_\_\_, 2009, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, 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 duly authorized to do so, executed the foregoing Agreement for the purposes therein contained by signing the name of the City of Rapid City by themselves as its Mayor and Finance Officer.

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

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires:

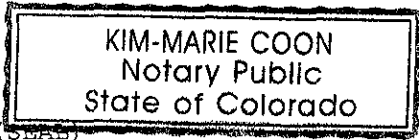
(SEAL)

State of Colorado )  
 ) ss. ACKNOWLEDGMENT  
County of El Paso )

On this 2nd day of July, 2009, before me, the undersigned officer, personally appeared Mark Dwyer, who acknowledged himself to be the Manager of Dwyer Royalties LLC and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

Kim Marie Coon  
Notary Public  
My Commission Expires: **My Commission Expires 2/17/13**

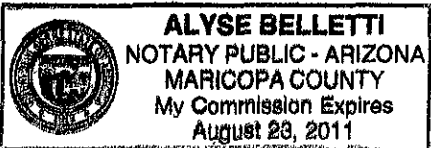


(SEAL)

State of ARIZONA )  
 ) ss. ACKNOWLEDGMENT  
County of MARICOPA )

On this the 9 day of JUN, 2009, before me, the undersigned officer, personally appeared Jeffery Ahlers, known to me, or satisfactorily proven, to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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



(SEAL)

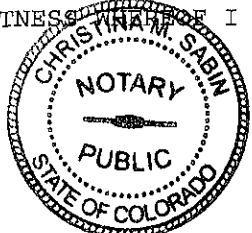
Alyse Belletti  
Notary Public  
My Commission Expires: 8/23/2011

State of Colorado )  
County of El Paso ) ss.

ACKNOWLEDGMENT

On this the 14th day of July, 2009, before me, the undersigned officer, personally appeared Scott Ahlers, known to me, or satisfactorily proven, to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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



Christina M. Sabn  
Notary Public  
My Commission Expires:

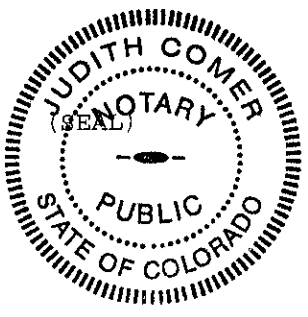
(SEAL) My Commission Expires 05/12/2013

State of Colorado )  
County of El Paso ) ss.

ACKNOWLEDGMENT

On this the 15th day of July, 2009, before me, the undersigned officer, personally appeared Michael Ahlers, known to me, or satisfactorily proven, to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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



Judith Comer  
Notary Public  
My Commission Expires: **My Commission Expires 04-04-11**

## EXHIBIT A

### TO RIGHT-OF-WAY AGREEMENT BETWEEN THE CITY OF RAPID CITY, DWYER ROYALTIES LLC., JEFFERY AHLERS, SCOTT AHLERS AND MICHAEL AHLERS REGARDING ACQUISITION OF CERTAIN PROPERTY FOR THE CONSTRUCTION OF EAST ANAMOSA STREET.

1. The Grantors agree to sign easements transferring to the Grantee a Forty (40') foot permanent water main easement, an Eight (8') foot wide permanent utility easement, a Forty (40') wide permanent drainage easement and a Temporary Construction Easement over, under and across the property described in the Right of Way Agreement. The compensation for the acquisition of these easements was included in the appraisal and is reflected in the just compensation amount the Grantee is paying the Grantor. The Grantee will be responsible for preparing any and documents and/or exhibits necessary to execute the transfers. The Grantors agree there are no encumbrances on the property and that if any encumbrances exist, the just compensation paid by the City will first be applied to satisfy the encumbrances. The Grantee will also be responsible for any costs or fees necessary to complete the transfers. The Grantors will execute these documents upon approval of this Agreement and return them to the Grantee for recording. The Grantors will be responsible for all taxes and assessments on the property prior to recording of the deed and easements.

2. Upon receiving the executed documents, the Grantee will distribute to the Grantors the \$152,938.38 as follows:

Dwyer Royalties LLC - \$76,469.19  
Jeffery Ahlers - \$25,489.73  
Scott Ahlers - \$25,489.73  
Michael Ahlers - \$25,489.73

3. In exchange for the promises described in this Agreement, the Grantors agree to release and discharge the Grantees and/or any of its officers and employees from any and all demands, damages, actions, causes of action, costs, expenses and compensation that Grantors may now have or hereafter have, whether currently known or unknown, whether anticipated or unanticipated, arising in any way out of the Grantee's acquisition of the property interests covered in this Agreement. It is the intent of the parties that this Agreement shall release and discharge all claims that the Grantors could have been brought, in relation to the acquisition of the right-of-way and easements. It is not the intent of this Agreement to release any claims, demands, damages or causes of action for acts or omissions that occur after the date of this Agreement.

4. The parties warrant that they understand fully the terms, conditions and consequences of this Agreement and that they completely understand and voluntarily accept all of the terms and conditions contained in this Agreement.

5. The parties acknowledge that no representations or inducements have been made other than those expressed herein; that this agreement supersedes any and all prior memoranda,

correspondence, conversations, negotiations and agreements pertaining to the matters herein expressed; and that this Agreement constitutes the entire agreement between them.

6. The parties' rights and obligations under this Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this Agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.