

This Instrument was Prepared by
and should be returned to:
Lindquist & Vennum P.L.L.P. (LLK)
4200 IDS Center
80 South 8th Street
Minneapolis, MN 55402

(Reserved for Recording Data)

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT is entered into by and between PENNINGTON COUNTY, SOUTH DAKOTA, a political subdivision of the State of South Dakota (“**Sublessor**”) and the CITY OF RAPID CITY, a municipal corporation under the laws of the State of South Dakota (“**Sublessee**”).

RECITALS

Sublessor is the tenant under that certain Lease-Purchase Agreement with U.S. BANK NATIONAL ASSOCIATION, as trustee, a national banking association (the “**Landlord**”), dated as of March 1, 2003, as amended and supplemented by the First Amendment to Lease-Purchase Agreement, dated as of March 1, 2008, and the Second Amendment to Lease-Purchase Agreement, dated as of December 1, 2010, as may be further amended and supplemented (collectively, the “**Main Lease**”) for the Land and Facilities, as defined in the Main Lease, located in Rapid City, South Dakota (the “**Main Lease Premises**”).

Sublessee desires to sublease from Sublessor, and Sublessor desires to sublease the Sublease Premises to Sublessee, consisting of those certain portions of the Main Lease Premises described as follows (collectively, the “**Sublease Premises**”):

a. Public Safety Building located in Rapid City, South Dakota, legally described on attached Exhibit A (the “**Public Safety Building**”), which houses the Rapid City Police Department, the Pennington County Sheriff’s office, and such other facilities as the Pennington County Commissioners and the City Council of Rapid City may mutually agree upon;

b. Law Enforcement Evidence Laboratory and Storage Facility located in Rapid City, South Dakota, legally described on attached Exhibit B (“collectively, the “**Evidence Lab**”);

c. Parking Ramp located in Rapid City, South Dakota, legally described on attached Exhibit C (the “**Parking Ramp**”); and

d. Energy Plant located in Rapid City, South Dakota, legally described on attached Exhibit D (the “**Energy Plant**”)

THEREFORE, in consideration of the mutual promises of the parties set forth in this Sublease Agreement and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sublessor and Sublessee agree as follows:

1. SUBLEASE PREMISES

Except as otherwise agreed, the Sublease Premises will be used in common by Sublessor and Sublessee, subject to and together with the benefit of the terms, covenants, conditions and provisions of this Sublease Agreement and the Main Lease, as may be applicable thereto. Sublessee also has the non-exclusive right to access and use common areas of the Main Lease Premises.

2. TERM

The term of this Sublease Agreement (the “**Term**”) shall commence effective as of the last date either party executes this Sublease Agreement and terminate on the earlier of December 1, 2040 or the date that the Pennington County Certificates of Participation Series 2010A, Series 2010B and Series 2010C are paid in full.

3. USE

Sublessee shall, at its expense, comply promptly with all applicable law, statutes, ordinances, rules, regulations, orders and requirements in effect during the term or any part of the term hereof regulating the use by Sublessee of the Sublease Premises.

4. RENT

The base rent shall be equal to Sublessee’s share of the construction costs for the Evidence Building and parking ramp (the “Construction Costs”), together with interest at the rate of 4.111%, with principal and interest amortized over a thirty (30) year period. At the present time, Sublessee’s estimated cost of construction for the parking ramp is approximately **\$486,514.00** and **\$3,840,714.00** for the evidence building. The parties agree that once they ascertain the final Construction Costs, the parties agree to confirm in writing the base rent amount. Sublessee shall pay, on an annual basis at the end of each calendar year of the Term (or earlier on the last day of the Term), the base rent. The base rent payments shall be credited first to accrued interest and the remainder to reduction of unpaid base rent. Sublessee may prepay the base rent at any time. Sublessee shall pay all rent herein provided without demand or without abatement, deduction or setoff.

5. COST ALLOCATION

For those portions of the Sublease Premises occupied solely by Sublessor, Sublessor is responsible for all insurance premiums, and maintenance, repair, and capital replacement expenses and costs; for those portions of the Sublease Premise occupied solely by Sublessee, Sublessee is responsible for all insurance premiums, and maintenance, repair, and capital replacement expenses and costs; for those areas that are subject to common use, the cost of all insurance premiums, janitorial, maintenance, repair, utilities (excluding computer and telephone costs) and capital replacement expenses and costs shall be borne as follows:

- A. Public Safety Building - Sublessor 56% and Sublessee 44% (which includes an equal split of 12% for the costs allocated to the Communications Center);
- B. Evidence Lab - Sublessor 39% and Sublessee 61%;
- C. Parking Ramp - Sublessor 90% and Sublessee 10%; and
- D. Energy Plant – Sublessor 100% and Sublessee 0%.

All expenditures for capital replacements and repairs of joint use areas are subject to the approval of each governmental body before the expense is incurred. For the purposes of this Sublease Agreement, “joint use areas” are those parts of the Sublease Premises used in common by the parties to this Sublease Agreement and includes, but is not limited to, the roof, exterior walls, corridors, mechanical, and other integral parts of the Sublease Premises.

The Sublessor shall be responsible for all necessary billings hereunder, and Sublessee shall pay its share of the allocated costs within the next payment cycle after billing by the Sublessor.

6. MAIN LEASE

A. The terms, provisions, covenants and conditions of the Main Lease are incorporated herein by reference in like manner as though the same were specifically set forth herein. It is agreed and understood between the parties hereto that the Sublessee obtains and is granted no more rights and privileges, as to the Sublease Premises, under this Sublease Agreement than Sublessor was granted as lessee under the Main Lease.

B. The obligations, conditions and covenants of the Landlord under the Main Lease shall remain the Landlord’s, and Sublessor shall not be required to perform the same in the event of a default by the Landlord but shall diligently enforce such obligations on behalf of Sublessee, subject to Sublessee reimbursing Sublessor for any costs and expenses, including but not limited to attorney fees, in pursuing such action.

C. Sublessor and Sublessee each agree not to do, suffer, or permit anything to be done which would result in a default under the Main Lease, or cause the Main Lease to be terminated or forfeited.

7. SUBLESSEE PERSONAL PROPERTY INSURANCE

Sublessee may, at its option, obtain such insurance coverage as it deems necessary for its personal property, equipment and trade fixtures. Sublessor shall have no obligation or responsibility for any loss, damage or claim relating to the Sublessee’s personal property, equipment or trade fixtures located in the Sublease Premises.

8. INDEMNIFICATION AND RESTRICTIONS

A. Sublessee agrees that it will indemnify and hold Sublessor harmless for any and all responsibility or liability which Sublessor may incur by virtue of this Sublease Agreement

arising out of any failure of Sublessee in any respect to comply with and perform the requirements and provisions of the Main Lease, or this Sublease Agreement. Sublessee waives all claims against Sublessor for damage to persons or property by reason of or arising out of Sublessee's use and occupancy of the Sublease Premises. Sublessee hereby assumes all risk of damage to persons or property in or about the Sublease Premises from any cause, and Sublessee hereby waives all claims in respect thereof against Sublessor, excepting where said damage arises out of the negligence of Sublessor. Sublessee hereby agrees that Sublessor shall not be liable for injury to Sublessee or any loss of income therefrom or from damage to the personal property, equipment or trade fixtures of Sublessee, Sublessee's employees, invitees, customers, or any other person in or about the Sublease Premises from any and all causes except the negligence of Sublessor.

B. Sublessor agrees that it will indemnify and hold Sublessee harmless for any and all responsibility or liability which Sublessee may incur by virtue of this Sublease Agreement arising out of any failure of Sublessor in any respect to comply with and perform the requirements and provisions of the Main Lease, or this Sublease Agreement. Sublessor waives all claims against Sublessee for damage to persons or property by reason of or arising out of Sublessor's use and occupancy of the Sublease Premises. Sublessor hereby assumes all risk of damage to persons or property in or about the Sublease Premises from any cause, and Sublessor hereby waives all claims in respect thereof against Sublessee, excepting where said damage arises out of the negligence of Sublessee. Sublessor hereby agrees that Sublessee shall not be liable for injury to Sublessor or any loss of income therefrom or from damage to the personal property, equipment or trade fixtures of Sublessor, Sublessor's employees, invitees, customers, or any other person in or about the Sublease Premises from any and all causes except the negligence of Sublessee.

9. ASSIGNMENT/TRANSFER

Sublessee shall not transfer, sell, assign or pledge this Sublease or further sublease the Sublease Premises, or any part thereof, without (i) complying with the requirements of the Main Lease relating thereto, and (ii) obtaining the prior written consent of the Sublessor and Landlord. Landlord and Sublessor have legitimate concerns regarding the compatibility of new or different occupants of the Sublease Premises, including concerns based upon the use to which such occupants may make of the Sublease Premises, and may therefore withhold their consent to any such transfer based upon any concern they or either of them may have regarding the use to which the proposed transferee may put the Sublease Premises or based upon other justifiable concerns related to possible lack of harmony between the use of the proposed transferee and other uses or occupants in the Sublease Premises. No transfer of any nature shall relieve Sublessee of primary liability to Sublessor hereunder unless Sublessor agrees in writing.

10. SUCCESSOR AND ASSIGNS

This Sublease Agreement and all covenants and agreements contained herein shall be binding upon, apply and inure to the benefit of the respective successors and assigns of the parties to this Sublease Agreement, subject to the restrictions imposed under this Sublease Agreement and the Main Lease, relating to assignment or further sublease by the Sublessee.

11. ALTERATIONS AND IMPROVEMENTS

Sublessee shall not make any alterations or improvements to the Sublease Premises without (i) complying with the terms of the Main Lease relating thereto, and (ii) obtaining the prior written consent of Sublessor and Landlord, which shall not be unreasonably withheld. Sublessee shall keep the Sublease Premises and all parts thereof at all times free of mechanic's liens and other liens for labor, services, supplies, equipment or material purchases or procured directly or indirectly by or for Sublessee.

12. SUBLESSEE DEFAULT/SUBLESSOR REMEDIES

A. If any one or more of the following events occurs, then Sublessee shall be deemed to be in default under this Sublease Agreement:

(i) Sublessee fails to pay, when due, its allocated share of the charges provided for under this Sublease Agreement within ten (10) days after written notice to Sublessee that the payment is past due;

(ii) Sublessee fails to keep, observe or perform any of the other terms, covenants and conditions herein to be kept, observed and performed by Sublessee under this Sublease Agreement (including but not limited to obligations or conditions under the Main Lease) for thirty (30) days after written notice is given to Sublessee specifying the nature of such default. Notwithstanding the foregoing, if the applicable grace period set forth in the Main Lease, shall be shorter than that provided herein, the grace period set forth in the Main Lease shall supersede the grace period set forth in this subparagraph;

B. If a default occurs, then Sublessor shall be entitled to exercise any and all of the rights and remedies available at law or in equity, including those provided to the Landlord under the Main Lease. Any remedies under this Sublease Agreement shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies available to Sublessor existing at law or in equity. Landlord shall be entitled to enforce the provisions of the Main Lease against Sublessee to the extent the same are violated by Sublessee.

13. SUBLESSOR DEFAULT / SUBLESSEE REMEDIES

Sublessor shall be deemed to be in default under this Sublease Agreement if Sublessor fails to keep, observe or perform any of the terms, covenants and conditions herein to be kept, observed and performed by Sublessor under this Sublease Agreement (including but not limited to obligations or conditions under the Main Lease) for thirty (30) days after written notice is given to Sublessor specifying the nature of such default. Notwithstanding the foregoing, if the applicable grace period set forth in the Main Lease, shall be shorter than that provided herein, the grace period set forth in the Main Lease shall supersede the grace period set forth in this subparagraph. If a default occurs, then Sublessee shall be entitled to cure Sublessor's default, if approved by the Landlord, and exercise any and all of the rights and remedies available at law or in equity. Any remedies under this Sublease Agreement shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies available to Sublessee existing at law or in equity.

14. CONSENTS

A. Wherever the consent of Landlord is required by the provisions of the Main Lease, the Sublessee must, in addition to securing such consent, also obtain the prior written consent of the Sublessor, which consent shall not be unreasonably withheld.

B. In no event shall Sublessee be entitled to any damages for any withholding or delay in either Sublessor or Landlord giving its consent and Sublessee understands and agrees that its remedies shall be limited to an action for an injunction or declaratory judgment.

15. NOTICES

A. Sublessor and/or Sublessee shall immediately forward to the other party all notices of default received by said party from Landlord under the Main Lease.

B. Any notice, demand, request or other communication which may be or is required to be given to the Landlord under the Main Lease shall be effective only if a copy of the notice to the Landlord is also either delivered personally or sent to the other party as provided under subparagraph C below.

C. Any notice which one party wishes or is required to give to the other party will be regarded as given and received if in writing and either delivered personally to such party or sent certified or registered mail, return receipt requested, postage prepaid, to the addresses below, or such other addresses as either party may, from time to time, designate by written notice to the other party:

Sublessor: Pennington County South Dakota
315 St. Joseph Street
Rapid City, SD 57701
Attn: County Auditor

Sublessee: City of Rapid City, South Dakota
300 6th Street
Rapid City, SD 57701
Attn: City Finance Officer

Landlord: U.S. Bank National Association
60 Livingston Avenue
St. Paul, MN 55107
Attn: Judith Foley

16. HOLDING OVER

If Sublessee holds over after the term hereof, with or without the express or implied consent of Sublessor, such tenancy shall be from month to month only, and not a renewal hereof or an extension for any further term and in such case Sublessee shall be liable for any other charges, fees or penalties assessed against Sublessor under the Main Lease for the period in

which Sublessee is holding over. Such month to month tenancy shall also be subject to every other term, covenant and agreement contained herein. Sublessee shall also agree to indemnify and hold Sublessor harmless from any action, rentals, costs and other claims which may arise by its holding over, including, but not limited to, an action by Landlord against Sublessor.

17. NON-WAIVER

Sublessor's failure to insist upon strict performance of any covenant in this Sublease Agreement or to exercise any option or right herein contained shall not be a waiver or relinquishment of such covenant, right or option, but the same shall remain in full force and effect. Sublessor is specifically authorized to accept a partial payment (no matter how such payment may be labeled or conditionally delivered) without such acceptance being deemed a waiver of the balance of the amount owed.

18. INVALIDITY

If any part of this Sublease Agreement or any part of any provision hereof shall be adjudicated to be void or invalid, then the remaining provisions hereof, not specifically so adjudicated to be invalid, shall be executed without reference to the part or portion so adjudicated as invalid, insofar as such remaining provisions are capable of execution.

19. CONDITIONS

This Sublease Agreement is dependent and conditioned upon the continuing existence of the Main Lease.

20. ADVISORY COMMITTEE

An Advisory Committee will be established composed of: the Pennington County Sheriff or his/her designee, the Rapid City Chief of Police or his/her designee, the Pennington County States Attorney or his/her designee, the City Attorney of Rapid City or his/her designee, and the Emergency Communication Center Director or his/her designee. This Committee will meet periodically for the purpose of resolving problems that may arise as to the operation and maintenance of the Sublease Premises. Members of the Advisory Committee shall report periodically to their respective Boards and shall prepare and submit to each governmental body those records or reports as may from time to time be requested concerning the operation of the Sublease Premises. When the purchase of new or replacement equipment becomes necessary, reports will be prepared to describe and document the need for the equipment in order that each governmental body may review such items for inclusion in its budget. The Sublessor will be the depository for all Advisory Committee official records.

21. OPTION TO PURCHASE

A. Grant of Option. Sublessor hereby grants to Sublessee the exclusive right and option (the "**Option**") to purchase the real property described on attached Exhibit E (the "**Option Property**"), upon the expiration of the Main Lease and the full and final payment of the Pennington County Certificates of Participation Series 2010A, Series 2010B, and Series 2010C pursuant to the following terms and conditions:

(i) Purchase Price. The purchase price for the Property (the “**Purchase Price**”) shall be \$1.00.

(ii) Exercise of Option. The Option may be exercised, if at all, by Sublessee delivering written notice of its intent to exercise the Option within thirty (30) days after Sublessor provides written notice to Sublessee that the Option is available to be exercised.

(iii) Closing. The Closing on the purchase of the Option Property will occur within sixty (60) days after the Purchase Price is determined as provided above and shall be upon normal and customary terms.

22. RESOLUTION

Before this Sublease Agreement may take effect, a Resolution must be passed by the Rapid City Common Council and by the Pennington County Board of Commissioners in accordance with South Dakota law. The Resolution, together with copies of this Sublease Agreement, shall be filed with and kept as a public record by the recording officers of each governmental unit, who are the County Auditor for Pennington County and the Finance Officer for the City of Rapid City.

23. APPLICABLE LAW

This Sublease Agreement shall be construed under the laws of the State of South Dakota.

24. ENTIRE AGREEMENT/AMENDMENTS

This Sublease Agreement and the Exhibits attached hereto set forth all of the covenants, promises, agreements, conditions and understanding between Sublessor and Sublessee concerning the Sublease Premises and there are no other covenants, promises, agreements, conditions or understandings, either oral or written, between them other than those which are set forth in this Sublease Agreement. Except as otherwise provided herein, no subsequent alteration, amendment, change or addition to this Sublease Agreement shall be binding upon Sublessor or Sublessee unless reduced to writing and signed by both parties.

25. TERMINATION OF PRIOR AGREEMENTS

Sublessor and Sublessee entered into the following agreements, which the parties hereby agree to terminate or agree are no longer in force or effect against the Sublease Premises:

- A. Agreement for Ownership, Operation, and Use of the City/County Public Safety Facility, dated July 24, 1979, recorded on July 25, 1979, with Pennington County Register of Deeds in Book 12, Page 4921 pertaining to Lots 1 – 32, including vacated alley and vacated Third Street in Block 98 and portions of Lots 31 and 32 in Block 97, Pennington County, South Dakota.
- B. Agreement for Ownership, Operation, and Use of the City/County Public Safety Facility, dated March 15, 1994, recorded on July 31, 2000, with Pennington

County Register of Deeds in Book 85, Page 1370 pertaining to Lots 1 – 9 and Lots 16 – 32, Block 98, including vacated alley in Block 98 and vacated Third Street adjacent to Block 98, Pennington County, South Dakota.

- C. Unrecorded Agreement for Ownership, Operation, and Use of the City/County Law Enforcement Evidence Laboratory and Storage Facility, dated September 5, 1995, pertaining to Lots 11 through 16 of Block 99 in the Original Townsite of the City of Rapid City, Pennington County, South Dakota.
- D. Agreement, dated December 16, 2002, recorded on January 14, 2003, with Pennington County Register of Deeds in Book 110, Page 792 pertaining to Lots 20 – 27, Block 98, Pennington County, South Dakota.
- E. Memorandum of Understanding, dated December 20, 2010, between Sublessee and Sublessor.

26. COUNTERPARTS

This Sublease Agreement may be separately executed as counterparts which shall be then read together and enforced.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease Agreement effective as of the last date either party executes this Sublease Agreement.

SUBLESSOR:

PENNINGTON COUNTY, SOUTH DAKOTA

Dated _____, 2011

By _____

Its: Chairman, Board of County Commissioners
of Pennington County

Attest: _____

Its: _____

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF PENNINGTON)

On this ____ day of _____, 2011, before me, a Notary Public within and for said County, personally appeared _____ and _____ to me personally known, who, being duly sworn, did say that they are the _____ and _____ of PENNINGTON COUNTY, SOUTH DAKOTA, a political subdivision of the State of South Dakota, the subdivision referred to in the foregoing instrument; that said instrument was signed and sealed in behalf of said political subdivision by authority of its Board of County commissioners; and said _____ and _____ acknowledged said instrument to be the free act and deed of said political subdivision.

Notary Public
Pennington County, South Dakota
My commission expires: _____

SUBLESSEE:

CITY OF RAPID CITY, SOUTH DAKOTA

Dated _____, 2011

By _____

Its: Mayor

Attest: _____

Its: _____

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF PENNINGTON)

On this ____ day of _____, 2011, before me, a Notary Public within and for said County, personally appeared _____ to me personally known, who, being duly sworn, did say that they are the _____ and _____ of the CITY OF RAPID CITY, a municipal corporation organized under the laws of the State of South Dakota, the municipal corporation referred to in the foregoing instrument; that said instrument was signed and sealed in behalf of said municipal corporation by authority of its Board of _____; and said _____ and _____ acknowledged said instrument to be the free act and deed of said municipal corporation.

Notary Public
Pennington County, South Dakota
My commission expires: _____

EXHIBIT A

Depiction of Public Safety Building

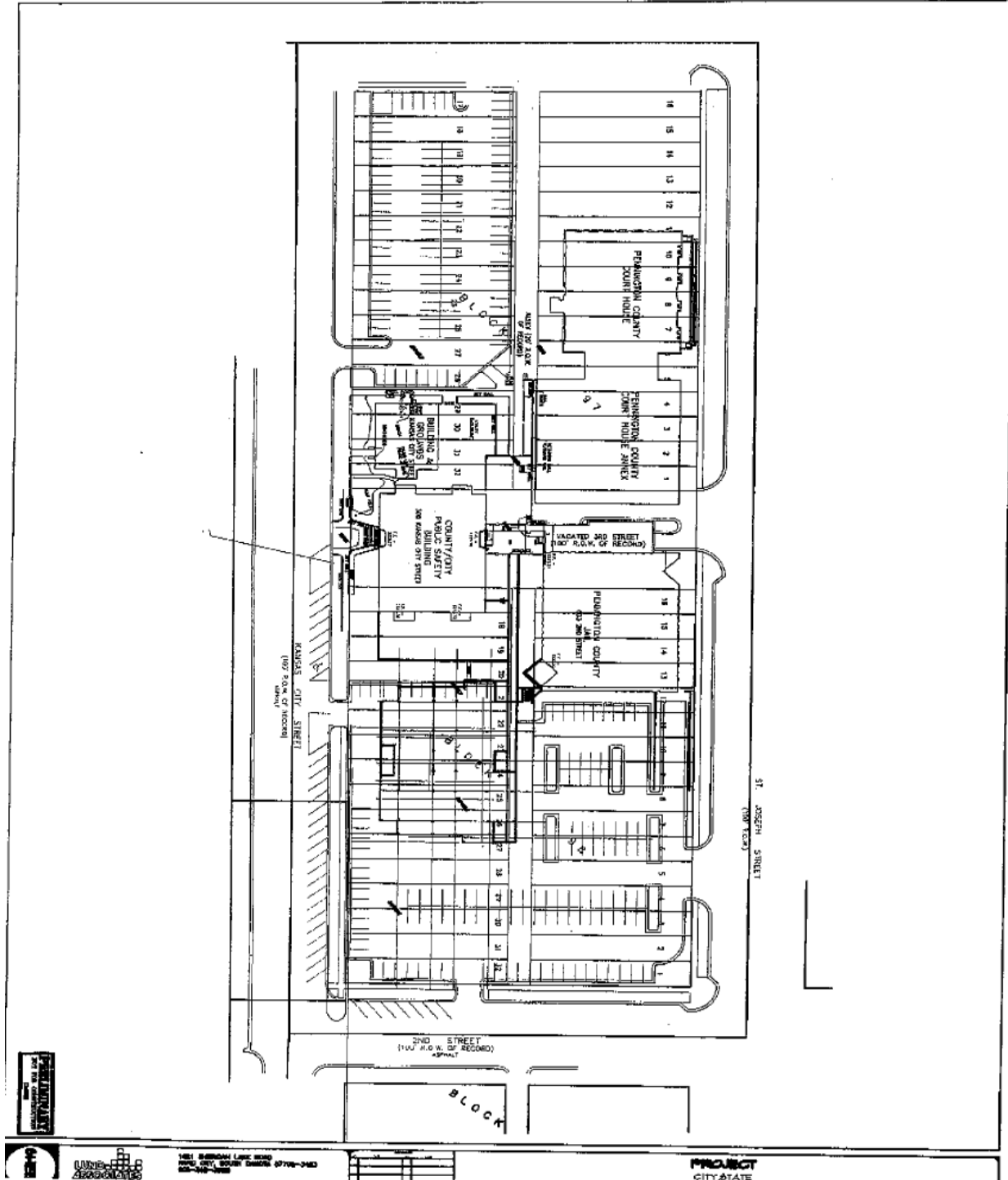


EXHIBIT B

Legal Description of Evidence Lab

Lots 11 through 16 of Block 99 in the Original Townsite of the City of Rapid City, South Dakota.

[NOTE: The parties intend to relocate the existing Evidence Lab from this location to a new facility that will be constructed in the future. Upon completion of the new Evidence Lab facilities, this Sublease Agreement will be amended to replace this Exhibit with the legal description for the new location of the Evidence Lab.]

EXHIBIT C

Legal Description of Parking Ramp

Lots One (1) through Five (5) and the N½ of vacated alley adjacent to said lots, and Lots Twenty-eight (28) through Thirty-two (32) and the S½ of vacated alley adjacent to said lots all in Block Ninety-eight (98) of the Original Townsite of Rapid City, South Dakota.

EXHIBIT D

Legal Description of Energy Plant

East Eight Feet (8') of Lot 25 and all of Lots 26, 27, 28, 29, 30, 31 & 32 in Block 99 of the Original Townsite of Rapid City, Pennington County, South Dakota.*

*Note: The legal description given above is the approximate location for the construction site of the new Evidence Lab w/attached Energy Plant. The Energy Plant will be located generally on the west end of the Evidence Lab. Upon completion of the new Evidence Lab facility (with attached Energy Plant), this Sublease Agreement will be amended to replace this Exhibit with a legal description of the Energy Plant.

EXHIBIT E

Legal Description of Option Property

Public Safety Building:

See Exhibit A.

Note: The March 15, 1994 “AGREEMENT FOR OWNERSHIP, OPERATION, AND USE OF THE CITY/COUNTY PUBLIC SAFETY FACILITY” provides that the above described (land and building) be jointly owned by the City & County. Upon the termination of this sublease, it is the parties’ intention to transfer the land and building to the City & County as joint owners consistent with the current Agreement. The relative responsibility for the operational and maintenance costs of the Public Safety Building will be determined by the parties based on the actual relative usage of the facility after the property is transferred into joint ownership.

Parking Lot/Ramp:

Lots One (1) through Nine (9) and the N1/2 of vacated alley adjacent to said lots, and Lots Twenty-eight (28) through Thirty-two (32) and the S1/2 of vacated alley adjacent to said lots all in Block Ninety-eight (98) of the Original Townsite of Rapid City, Pennington County, South Dakota.

Note: The March 15, 1994 “AGREEMENT FOR OWNERSHIP, OPERATION, AND USE OF THE CITY/COUNTY PUBLIC SAFETY FACILITY” provides that the above described property (land and building) be jointly owned by the City & County. Upon the termination of this sublease, it is the parties’ intention to transfer the land and building to the City & County as joint owners consistent with the current Agreement. The relative responsibility for the operational and maintenance costs of the parking lot/ramp will be determined by the parties based on the actual relative usage of the parking areas after the property is transferred into joint ownership.

Evidence Lab:

Lots Eleven (11) through Sixteen (16) in Block Ninety-Nine (99) of the Original Townsite of Rapid City, Pennington County, South Dakota.

Note: The September 5, 1995 “AGREEMENT FOR OWNERSHIP, OPERATION, AND USE OF THE CITY/COUNTY LAW ENFORCEMENT EVIDENCE LABORATORY AND STORAGE FACILITY” provides that the above described property (land and building) be jointly owned by the City & County. Upon the termination of this sublease, it is the parties’ intention to transfer the land and building to the City & County as joint owners consistent with the current Agreement. The relative responsibility for the operational and maintenance costs of the Evidence Lab and Energy Plant will be determined by the parties based on the actual relative usage of the facilities after the property is transferred into joint ownership.

Note: A new Evidence Lab with attached Energy Plant will be constructed in a new location in Block 99 (see, Exhibit D for approximate location). Upon completion of the new Evidence Lab facility this Sublease Agreement will be amended to replace this legal description with the legal description for the new location of the Evidence Lab.