



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

OFFICE OF THE CITY ATTORNEY

300 Sixth Street

Joel P. Landeen, Assistant City Attorney
City web: www.rcgov.org

Phone: 605-394-4140
Fax: 605-394-6633
e-mail: Joel.Landeen@rcgov.org

MEMORANDUM

TO: City Council

FROM: Joel P. Landeen, Assistant City Attorney

DATE: 12/22/09

RE: Approval Of Agreements with State for Catron Blvd. Project

The attached agreements are related to the State project to reconstruct Highway 16B (Catron Blvd). The City has previously deeded an H Lot along the south side of Hwy 16B, but the State needs a signed right-of-way agreement to comply with Federal Highway requirements. This is the land that was used in the land swap with the State for the property on the corner of 5th and Omaha Street. There is also a Quit Claim Deed, which will limit access onto the highway from the City property to a specific point, as well as temporary construction easement.

RIGHT OF WAY AGREEMENT

Project No. NH 2016(17)64 PCN No. 6875 Parcel No. 21, CA28
 County Pennington

This AGREEMENT for highway right of way with X without _____ control of access entered into by the undersigned, hereinafter referred to as the GRANTOR, and the STATE OF SOUTH DAKOTA acting by and through its Department of Transportation, hereinafter referred to as the STATE, witnesseth;

WHEREAS, the STATE contemplates the construction, operation and maintenance of highway facilities on the above described project as provided by Law; and;

WHEREAS, a portion of the highway right of way necessary for the proper completion of such highway facilities, as designated by plans on file at the Department of Transportation, is located over and across the real property hereinafter described as:

Lot H2 in the E1/2 NW1/4 of Section 19, Township 1 North, Range 8 East of the B.H.M., less the MJK Subdivision in the City of Rapid city, Pennington County, South Dakota, contains 2.51 acres (109,509 sq. ft.), more or less.

To purchase and transfer the control of access to and from US Highway 16B in the NE1/4 of Section 19, Township 1 North, Range 8 East of the B.H.M., less the MJK Subdivision in the City of Rapid City, Pennington County, South Dakota.

NOW, THEREFORE, it is expressly agreed and understood by the parties hereto that:

(1) This AGREEMENT shall remain in full force and effect until such time as the above described real property is no longer needed for highway purposes and is disposed of in accordance with Law; and;

(2) All fences existing within the right of way area shall become the property of and shall be disposed of by the STATE if not salvaged by the GRANTOR prior to the ____ day of _____, 20__ and prior to being cleared by the STATE. A temporary fence will be provided where necessary to retain livestock when the GRANTOR elects to have the fence replaced with new fence. This fence is the property of the Contractor and he will remove it after the permanent fence has been placed. Permanent fence constructed within Interstate Highway right of way will remain the property of and will be maintained by the STATE whereas all other permanent fence becomes the property of and is to be maintained by the GRANTOR; and; **N/A**

(3) The GRANTOR has elected to have any existing fence so removed be replaced by the GRANTEE with one of its standard fences that conforms as nearly as possible to the existing fence. Any fence provided will be no less than a four strand barb wire fence. Type 4 fence will be provided; and;

(4) The STATE will pay for crop damage with the temporary easement area caused by the STATE, its agents, representatives and assigns or any Contractor employed by the STATE only when such crop has been planted prior to the date the GRANTOR signs this AGREEMENT except that crop damage will not be paid for alfalfa or other perennial grass being used for pasture. The amount of crop damage to be paid will be based on the area damaged, percent of damage, average yield on adjoining fields and market price at the time of harvest less a predetermined harvesting cost. Type and location of crops planted prior to the signing date are: **N/A**

; and;

(5) Conditions relating to temporary easement areas on GRANTOR'S property are contained in a separate Temporary Easement Agreement; and;

(6) The GRANTOR is allowed to retain for their salvage value, the following buildings or improvements which are considered to be part of the real property, including fixtures, removable building equipment and any trade fixtures, provided they are removed from the above described real property by the _____ day of _____, _____ unless a removal date extension is granted in writing by the STATE. Items being retained and their salvage value are: **N/A**

DOTRW-56.1 (8-06)

(7) The following mutually agreed upon special conditions are made a binding part of this AGREEMENT: Parcel 21 (Lot H2) was previously transferred to the State of South Dakota, Department of Transportation by Quit Claim Deed recorded on 7-9-08 in Book 181, Page 6505. Payment for Parcel 21 including 326,617 sq. ft. of temporary easement was previously paid by a land trade agreement with the City of Rapid City.

* The additional 2,243 sq. ft. of temporary easement needed for this project by the Department of Transportation will be compensated at 0.10/sq. ft. or \$224.30--rounded to \$250.00.
; and;

(8) The GRANTOR relinquishes all of his right of access, light, air and view between the portions of the above described real property where the right of way is designated to have control of access except in those specific locations as may be designated now or in the future by the STATE; and;

(9) The payment provided for under this Agreement includes compensation for any and all damage to or decrease in value of GRANTOR'S remaining property, including severance damages, attributable to the above-referenced project.

(10) The GRANTOR grants possession of the above described real property to the STATE and all foregoing conditions are binding upon the STATE only upon approval of this AGREEMENT by the STATE'S authorized representative and in the event said approval is not obtained, this AGREEMENT is null and void and of no force or effect; and;

(11) The GRANTOR understands and agrees that if there are liens, mortgages or other encumbrances against the above-described real property, the holder of such lien, mortgage or encumbrance may be named as co-payee on any payment to be made pursuant to this Agreement.

(12) Upon receipt of possession of the subject property, STATE and/or its agents and contractors shall be entitled to enter upon the property for purposes of inspecting, surveying, flagging and other preliminary activities incident to the construction project. STATE may so enter upon the property for such purposes even though GRANTOR may still be occupying the property by agreement with STATE. In the event GRANTOR continues to occupy the property subsequent to granting STATE possession, STATE and/or its agents or contractors shall not enter upon the property for any purposes without first providing reasonable prior notice to GRANTOR.

NOW, THEREFORE, BE IT AGREED, that total consideration is \$ *250.00, it is understood and agreed will be paid as soon as all required documents and releases are properly signed and received by the STATE and a voucher processed for payment as follows:

- \$ *250.00 for land conveyed, temporary easement, improvements and damages
- less \$ 0.00 for retained salvage
- less \$ 0.00 to be withheld until improvements are removed
- less \$ 0.00 to be withheld until keys are delivered and a final inspection is made;

The above and foregoing AGREEMENT is entered into on the _____ day of _____, _____, and in the witness whereof the GRANTOR hereunto subscribes by signature. Receipt of an identical copy of this AGREEMENT is hereby acknowledged.

CITY OF RAPID CITY

BY:

ITS: Mayor

BY:

Attest: Finance Officer

ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, in the year _____, before me, a Notary Public within and for said County and State, has personally appeared _____, known to me to be the person who _____ described in, and who executed the within instrument and acknowledged to me that _____ he _____ executed the same.

(SEAL)

Notary Public

My Commission Expires: _____

The above and foregoing AGREEMENT approved this _____ day of _____, _____.

Right of Way Authorized Representative
Item #18

DOTRW-83 (8-06)

QUIT CLAIM DEED - BY CORPORATION

Project No. NH 2016(17)64 PCN No. 6875 Parcel No. 21, CA28
 County Pennington

CITY OF RAPID CITY

300 Sixth Street, Rapid City

Grantor , of Pennington County, State of South Dakota
 for and in consideration of one dollar and other valuable considerations
 DOLLARS CONVEYS AND QUITCLAIMS to South Dakota Department of Transportation,
 Grantee, of 700 E. Broadway Avenue, Pierre, Hughes County, South Dakota
 57501-2586, the following described Control of Access in the County of
Pennington in the State of South Dakota:

To Purchase Control of Access to and from the E1/2 NW1/4 of Section 19,
 Township 1 North, Range 8 East of the B.H.M., less the MJK Subdivision in the
 City of Rapid city, Pennington County, South Dakota.

To purchase and transfer the CONTROL OF ACCESS in accordance with the
 authority granted the South Dakota Transportation Commission. To construct
 and maintain controlled access facilities pursuant to SDCL 31-8. No access is
 permitted to and from US Highway 16B, except for an approach at station 147+75
 right.

To Purchase Control of Access to and from the NE1/4 of section 19, Township 1
 North, Range 8 East of the B.H.M., less the MJK Subdivision in the City of
 Rapid City, Pennington County, South Dakota.

To purchase and transfer the CONTROL OF ACCESS in accordance with the
 authority granted the South Dakota Transportation Commission. To construct
 and maintain controlled access facilities pursuant to SDCL 31-8. No access is
 permitted to or from US Highway 16B.

DOTRW-83.1 (8-06)

Dated this _____ day of _____, _____.

We do X do not _____ require our name(s) on the state warrant.

In Testimony Whereof, The said corporation has caused these presents to be executed in its corporate name by its Mayor and Finance Officer and its corporate seal to be hereunto affixed the day and the year first above written.

CITY of RAPID CITY

By _____

By _____

Its MayorAttest Finance Officer

By _____

By _____

Its _____

Its _____

ACKNOWLEDGMENT

STATE OF _____)
) SS
 COUNTY OF _____)

On this _____ day of _____, in the year _____, before me a Notary Public within and for said County and State, has personally appeared _____, who, being by me first duly sworn declared that _____ he _____ is the _____ of _____ that _____ he _____ signed the foregoing document as officer of the corporation, and the statements therein contained are true.

(SEAL)

 Notary Public
 My Commission Expires: _____

DOTRW-69 (8-06)

TEMPORARY EASEMENT AGREEMENT

Project No. NH 2016(17)64 PCN No. 6875 Parcel No. 21, CA28
County Pennington

This AGREEMENT for temporary easement rights entered into by the undersigned, hereinafter referred to as the GRANTOR, and the STATE OF SOUTH DAKOTA acting by and through its Department of Transportation, hereinafter referred to as the STATE, Witnesseth;

WHEREAS, the STATE contemplates the construction, operation and maintenance of highway facilities on the above described project as provided for by the Law; and;

WHEREAS, a portion of the temporary easement necessary for the proper completion of such highway facilities, as designated by plans on file at the Department of Transportation, is located over and across the real property hereinafter described as:

E1/2 NW1/4 of Section 19, Township 1 North, Range 8 East of the B.H.M. less the MJK Subdivision in the City of Rapid City, Pennington County, South Dakota.

The NE1/4 of Section 19, Township 1 North, Range 8 East of the B.H.M., less the MJK Subdivision in the City of Rapid City, Pennington County, South Dakota.

DOTRW-69.1 (8-06)

NOW, THEREFORE, it is expressly agreed and understood by the parties hereto that:

(1) The GRANTOR grants permission to the STATE, its agents, representatives and assigns or any Contractor employed by the STATE to enter upon the above described property and to use all designated temporary easement areas for detour, cutslope, fillslope, temporary utility facilities or drainage channel purposes upon approval of this AGREEMENT with the understanding that such permission for entry shall terminate one year after the construction of the project has been completed. The temporary easement area is estimated to be:

326,617 acres/sq. ft. at \$ 0.10 per acre/sq. ft.

2,243 acres/sq. ft. at \$ 0.10 per acre/sq. ft.

_____ acres/sq. ft. at \$ _____ per acre/sq. ft.

_____ acres/sq. ft. at \$ _____ per acre/sq. ft.

It is further agreed and understood by the GRANTOR that any additional temporary easement area necessary for the proper completion of the facility may also be so used and the additional area will be measured and paid for separately at the same rate herein stated. It is agreed and understood that all areas used will be sloped and graded as smooth as practicable and left in a neat and workmanlike manner; and;

(2) All fences existing within the temporary easement area shall become the property of and shall be disposed of by the STATE if not salvaged by the GRANTOR prior to being cleared by the STATE. The STATE will not be responsible for retention of livestock when the GRANTOR salvages the fence. A temporary fence will be provided where necessary to retain livestock when the Contractor clears the existing fence. This fence is the property of the Contractor and he will remove it after the permanent fence has been placed. Permanent fence constructed within interstate highway right of way will remain the property of and will be maintained by the STATE whereas all other permanent fence constructed becomes the property of and is to be maintained by the Grantor; and; **N/A**

(3) Any existing fence so removed will ✓ will not _____ N/A _____ be replaced by the STATE with one of its standard fences that conforms as nearly as possible to the existing fence. Any fence provided will be no less than a four strand barb wire fence. Type 1 fence will be provided; and;

(4) The STATE will pay for crop damage within the temporary easement area caused by the STATE, its agents, representatives and assigns or any Contractor employed by the STATE only when such crop has been planted prior to the date the GRANTOR signs this AGREEMENT except that crop damage will not be paid for alfalfa or other perennial grass being used for pasture. The amount of crop damage to be paid will be based on the area damaged, percent of damage, average yield on adjoining fields and market price at the time of harvest less a predetermined harvesting cost. Type and location of crops planted prior to the signing date are: **N/A**

; and;

DOTRW-69.2 (4-02)

(5) The GRANTOR is allowed to retain for their salvage value, the following buildings or improvements which are considered to be part of the real property, including fixtures, removable building equipment and any trade fixtures, provided they are removed from the above described real property by the _____ day of _____, _____ unless a removal date extension is granted in writing by the STATE. Items being retained and their salvage value are: **N/A**

(6) The following mutually agreed upon special conditions are made a binding part of this AGREEMENT:

* The payment for the of temporary easement is included on the Right of Way Agreement. (See the Right of Way Agreement).

; and;

DOTRW-69.3 (5-02)

(7) The GRANTOR, his heirs or assigns shall not interfere with nor disturb the facilities constructed upon the temporary easement area without the written approval of the STATE; and;

(8) All foregoing conditions are binding upon the STATE only upon approval of this AGREEMENT by the STATE'S authorized representative and in the event said approval is not obtained, this AGREEMENT is null and void and of no force or effect; and;

(9) The GRANTOR understands and agrees that if there are liens, mortgages or other encumbrances against the above-described real property, the holder of such lien, mortgage or encumbrance may be named as co-payee on any payment to be made pursuant to this Agreement.

NOW, THEREFORE, BE IT AGREED, that for a total consideration of \$ * for temporary easement, improvements and damages, which it is understood and agreed will be paid as soon as all required documents and releases are properly signed and received by the STATE and a voucher processed for payment, the above and foregoing AGREEMENT is entered into on this _____ day of _____, _____, and in the witness whereof the GRANTOR hereunto subscribes by signature.

Receipt of an identical copy of the AGREEMENT is hereby acknowledged.

CITY OF RAPID CITY

BY: _____

BY: _____

ITS: Mayor _____

Attest: Finance Officer _____

ACKNOWLEDGMENT

STATE OF)
) SS
COUNTY OF)

On this _____ day of _____, in the year _____, before me, a Notary Public within and for said County and State, has personally appeared _____, known to me to be the person _____ who _____ described in, and who executed the within instrument and acknowledged to me that _____ he _____ executed the same.

(SEAL)

Notary Public

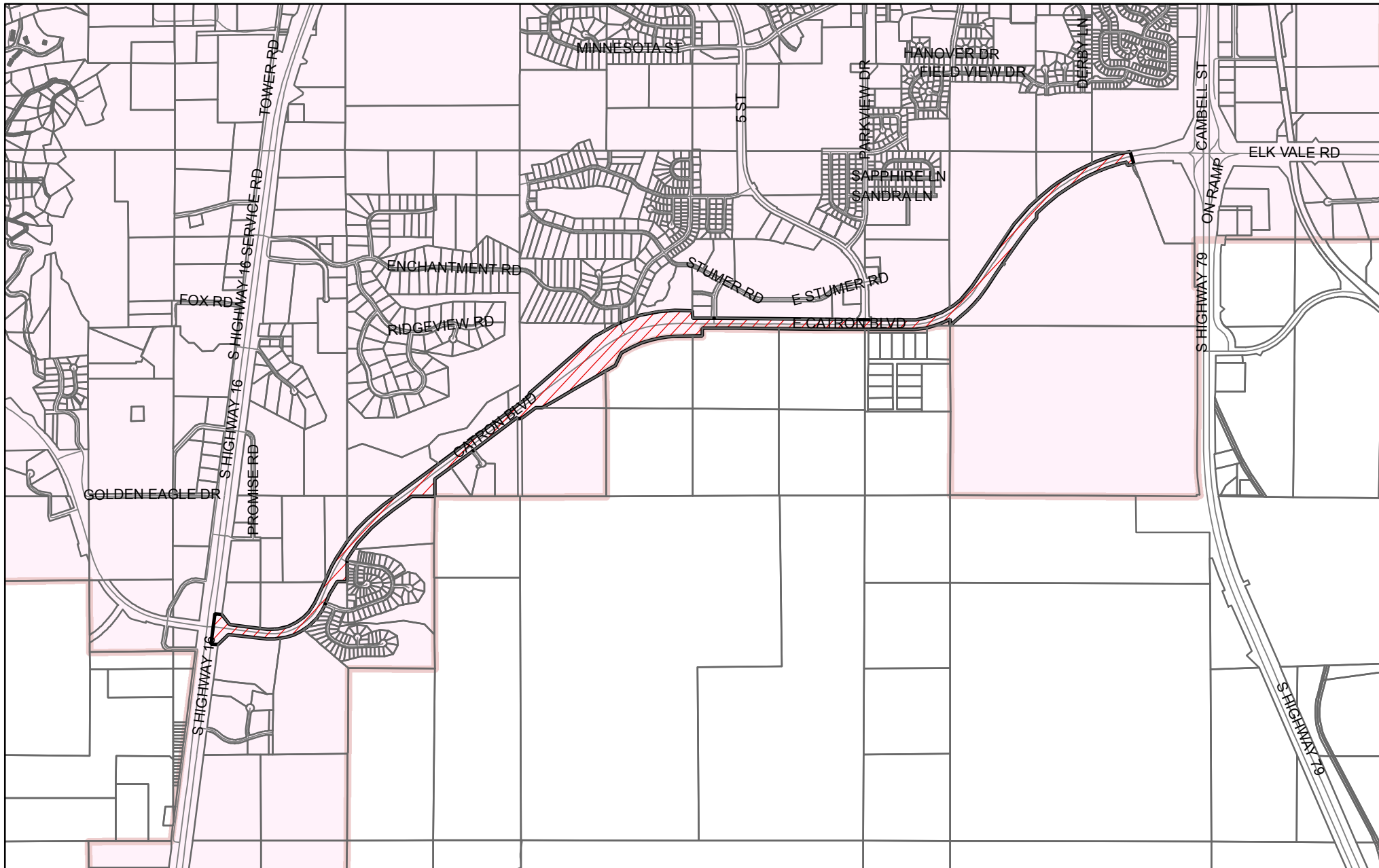
My Commission Expires: _____

The above and foregoing AGREEMENT approved this _____ day of _____, _____.

Right of Way Authorized Representative

EXHIBIT "A"

PW122909-17



**CATRON BOULEVARD (U.S. HIGHWAY 16B) RECONSTRUCTION
UTILITY RELOCATION & MODIFICATION
PROJECT NO. SSW09-1819 CIP # 50396**

Item #18