

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND ROSS AND ANGIE HILL
FOR TRANSFER OF H-LOT FOR CLEGHORN CANYON ROAD**

This Agreement is made and entered into 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 ROSS EDWIN HILL and ANGIE HILL, husband and wife (hereinafter the "Hills"), of 18586 U.S. Highway 83, Onida, South Dakota 57564.

W I T N E S S E T H:

WHEREAS, the Hills own certain real property adjacent to Cleghorn Canyon Road; and

WHEREAS, the City wishes to acquire a portion of this property for highway purposes;
and

WHEREAS, the Hills have agreed to transfer a portion of the property to 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. Transfer of H-Lot. The Hills will convey to the City by quitclaim deed the following real property:

**Lot H-1 of Lots Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11),
Twelve (12), and Thirteen (13) of Block Three (3) of Cleghorn Canyon
No. 2 located in the Northeast Quarter of the Southwest Quarter
(NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section Eight (8), Township One North (T1N), Range
Seven East (R7E) of the Black Hills Meridian, Rapid City, Pennington
County, South Dakota, containing 0.08 acres, more or less.**

3. Construction of Sidewalk. In exchange for the transfer of the property described above, City agrees to be responsible for constructing a new sidewalk adjacent to Cleghorn Canyon Road. This sidewalk would otherwise be the responsibility of the adjoining property owner, which in relation to the above described property, is the Hills. The sidewalk shall meet all of the City's guidelines, requirements and standard specifications for sidewalks constructed within Rapid City. City agrees to construct the sidewalk when improvements are made to the adjacent portion of Cleghorn Canyon Road.

4. Transfer Fees and Costs of Recording. The transfer of the real property herein is exempt from transfer fees pursuant to SDCL 43-4-22(2). All recording fees shall be paid by City. Any attorneys fees shall be paid by the party incurring the same
5. 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 quitclaim deed contemplated by this Agreement.
6. 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 Hills' breach of this Agreement, including the right to specific performance.
7. 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.
8. Time. Time is of the essence of this Agreement.
9. Effect of Agreement. This Agreement shall be binding in all respects upon and shall inure to the benefit of City and Hills and their respective successors and assigns.
10. Integration. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.
11. Amendments. This Agreement may only be amended by a written document duly executed by all parties.
12. 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.
13. 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.
14. 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
15. 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.

16. 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.

CITY OF RAPID CITY

Mayor

ATTEST

Finance Officer

(seal)

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

On this the _____ day of _____, 2011, before me, the undersigned officer, personally appeared Alan Hanks 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 _____

Ross Hill

ROSS EDWIN HILL

Angie Hill

ANGIE HILL

State of South Dakota)
County of Pennington) ss.

On this the 11 day of May, 2011, before me, the undersigned officer personally appeared ROSS EDWIN HILL and ANGIE HILL, husband and wife, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

Patty McGee

(seal)

Notary Public - South Dakota

My Commission Expires NO COMMISSION

Seal of the County Auditor
Sully County, South Dakota
Patty McGee, Auditor
No Commission