



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

## OFFICE OF THE CITY ATTORNEY


300 Sixth Street

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### MEMORANDUM

TO: Mayor Sam Kooiker  
Common Council  
Pauline Sumption, Finance Officer

FROM: Allison Marsland, Assistant City Attorney 

DATE: August 22, 2012

RE: Authorizing the Mayor and Finance Officer to sign Declaration of Taking

The Public Works Department's Project No. BRO 8052(56) (the "Project") requires that certain real property in the area of the Creek Drive bridge be taken by exercising the City's eminent domain power in order to make repairs to the right of way and to reconstruct the bridge. The City has been unable to locate one of the property owners, Mr. Jay L. Roberts. As such, it has become necessary to file a condemnation action in Circuit Court in order to take the property.

The attached "Declaration of Taking" will allow the City to request the Court to grant an "immediate taking" pursuant to SDCL § 31-19-23, which will significantly speed up the process and allow the Public Works Department to move forward with the Project. The condemnation action was filed with the Court today, and the City Attorney's Office will file the Declaration of Taking once it has been signed.

Staff recommendation is to authorize the Mayor and Finance Officer to sign the Declaration of Taking.

STATE OF SOUTH DAKOTA    )  
   ) ss.  
 COUNTY OF PENNINGTON    )

IN THE CIRCUIT COURT  
 SEVENTH JUDICIAL CIRCUIT

**CITY OF RAPID CITY,**  
 a municipal corporation,  
   Petitioner,

vs.

**JAY L. ROBERTS**  
   Respondent.

Civ. No. 12-\_\_\_\_\_

**DECLARATION OF TAKING**

The City of Rapid City hereby declares the real property described in paragraph 2 below to be taken for use by the municipality for the purpose of constructing streets and other uses directly associated with the construction of streets in accordance with SDCL 31-19-23.

1. The authority for this taking is a Resolution of Necessity approved by the Rapid City Common Council, a copy of which is attached hereto as Exhibit "C", and incorporated herein by reference. The authority for the Resolution of Necessity includes but is not limited to SDCL §§ 31-19-23 et. seq., 9-12-1(2), 9-27-1. The public use for which the lands described herein are taken is the reconstruction of an existing city street (Creek Drive) and reconstruction of a bridge.

2. The legal description of the lands subject to this taking is:

**A tract of land to be designated as Lot H1 of Lot La of Lot L, located in the NE¼SW¼ of Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, consisting of approximately 12,388 square feet, more or less, as shown on Exhibit "A," attached hereto and incorporated herein by reference; and**

**A permanent major drainage easement over, under and across Lot PE1 of Lot La of Lot L, located in the NE¼SW¼ of Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, consisting of approximately 5,123 square feet, more or less, as shown on Exhibit "B," attached hereto and incorporated herein by reference.**

3. The estate or interest taken in the lands described herein is described in paragraph two, above.

4. The owners of the real property described herein are the City of Rapid City and Jay L. Roberts as tenants in common.

5. The estimated sum of money necessary to acquire the land described herein is Six Thousand Two Hundred Ninety Dollars (\$6,290.00), as determined by an appraisal of the land prepared at the direction of the City of Rapid City. One-half of that amount is Three Thousand One Hundred Forty-five Dollars (\$3,145.00), and would compensate Jay L. Roberts for his interest therein.

6. A description of the plans for the construction is included in the appraisal attached to the petition as Exhibit "D" filed concurrently with this Declaration of Taking.

7. The appraisal is attached to the petition as Exhibit "D", filed concurrently with this Declaration of Taking.

Dated this \_\_\_\_\_ day of August, 2012.

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor Sam Kooiker

ATTEST:

\_\_\_\_\_  
Finance Officer

(SEAL)

STATE OF SOUTH DAKOTA       )  
  )ss.  
COUNTY OF PENNINGTON       )

On this the \_\_\_\_\_ day of August, 2012, before me the undersigned officers, personally appeared Sam Kooiker 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)

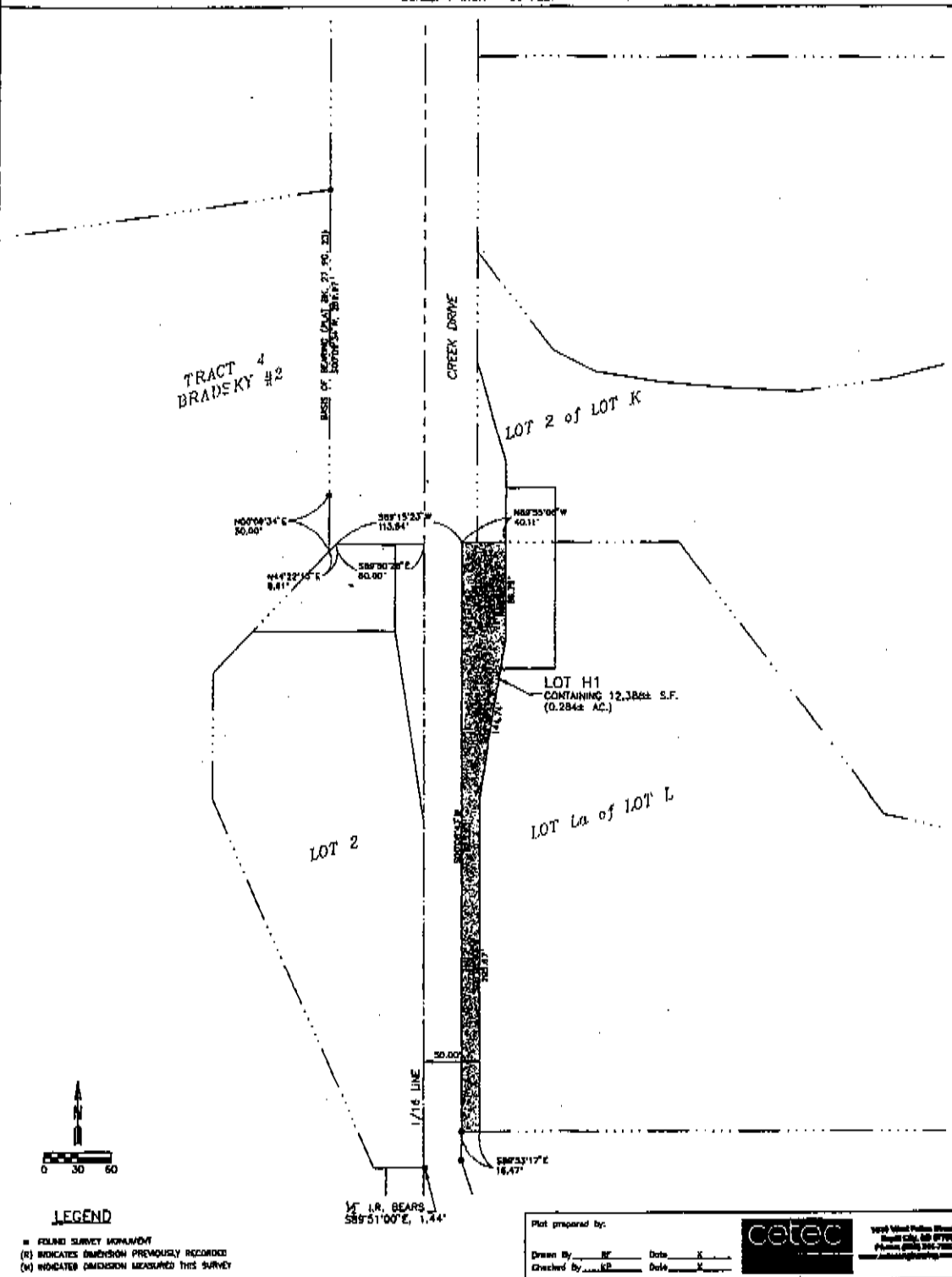
\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires: \_\_\_\_\_

PLAT OF LOT H1 OF LOT L OF LOT L  
 SHOWING A PARCEL OF LAND TO BE ACQUIRED FOR HIGHWAY AND UTILITY PURPOSES IN  
 L OF LOT L OF NE1/4 SW1/4 SECTION 5, T1N, R8E, B1  
 FOR CONSTRUCTION OF PROJECT BRO 8052(56)  
 RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

PW082812-38

SCALE: 1 INCH = 60 FEET

PAGE 1 OF 1



SURVEYOR'S CERTIFICATE

I, Keith S. Peterson, Registered Land Surveyor, in and for the State of South Dakota, do hereby certify that as ordered by the South Dakota State Transportation Commission the tract of land as shown on this plat has been surveyed at my direction and under my control and such tract of land shall be hereafter known by the lot number designated herein. The location and dimensions of the tract are shown on this plat.

In witness whereof, I have set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 20\_\_\_\_

Registered Land Surveyor  
 Registration No. 4723

OFFICE OF REGISTER OF DEEDS

State of South Dakota

County of Pennington as

Filed for record the \_\_\_\_\_ day of \_\_\_\_\_ A.D., 20\_\_\_\_, at \_\_\_\_\_ and recorded in Books of Plats \_\_\_\_\_ on Page \_\_\_\_\_ therein.

Register of Deeds

by

Deputy

H100

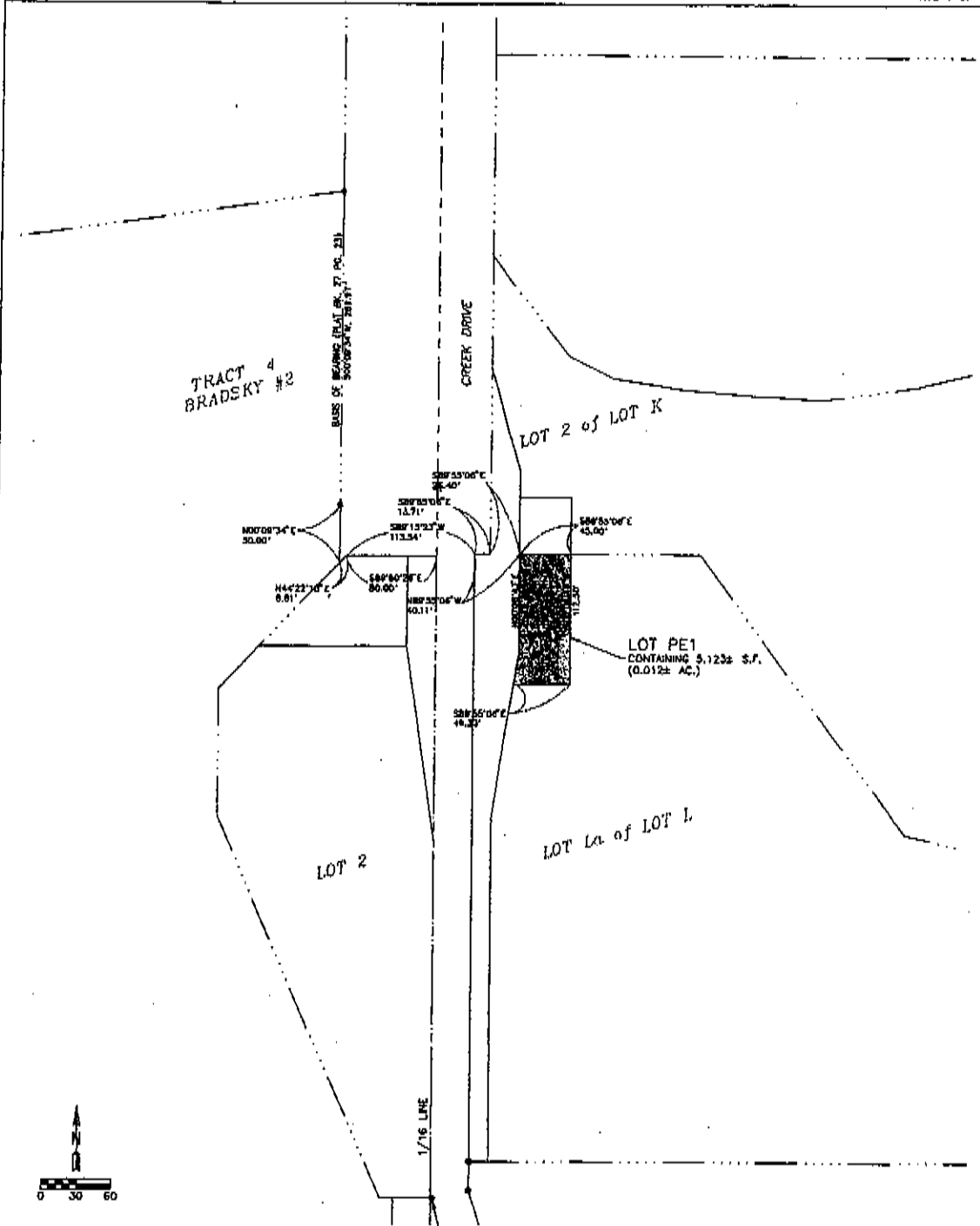
EXHIBIT A

PLAT OF LOT PE1 OF LOT L OF LOT L  
 SHOWING A PARCEL OF LAND TO BE ACQUIRED FOR DRAINAGE PURPOSES IN  
 LOT L OF LOT L OF NE1/4 SW1/4 SECTION 5, 11N, R8E, L  
 FOR CONSTRUCTION OF PROJECT BRO 8032(36)  
 RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

PW082812-38

SCALE: 1 INCH = 60 FEET

PAGE 1 OF 1



**LEGEND**  
 = FOUND SURVEY MONUMENT  
 (R) INDICATES DIMENSION PREVIOUSLY RECORDED  
 (M) INDICATES DIMENSION MEASURED THIS SURVEY

Plot prepared by: **cotec**  
 Drawn By: RE Date: Y  
 Checked By: KP Date: N  
1997 Third Edition Surveying and Mapping Fundamentals, 10th Edition, 1997

**SURVEYOR'S CERTIFICATE**

I, Keith S. Peterson, Registered Land Surveyor, in and for the State of South Dakota, do hereby certify that as ordered by the South Dakota State Transportation Commission the tract of land as shown on this plat has been surveyed at my direction and under my control and such tract of land shall be hereafter known by the lot number designated herein. The location and dimensions of the tract are shown on this plat.

In witness whereof, I have set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 20\_\_\_\_.

Registered Land Surveyor  
 Registration No. 4725

**OFFICE OF REGISTER OF DEEDS**

State of South Dakota

County of Pennington ss

Filed for record the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_, at \_\_\_\_\_, and recorded in Book of Plots \_\_\_\_\_ on Page \_\_\_\_\_ therein.

Register of Deeds

by

Deputy

**RESOLUTION NO. 2010-037****RESOLUTION OF NECESSITY FOR THE ACQUISITION  
OF PRIVATE PROPERTY TO BE USED AS PUBLIC RIGHT OF WAY  
AND AS A PERMANENT DRAINAGE EASEMENT FOR CREEK DRIVE  
THROUGH THE EXERCISE OF EMINENT DOMAIN**

WHEREAS, the City of Rapid City has determined that it is necessary to reconstruct a portion of Creek Drive, including replacement of a bridge over Rapid Creek, in order to facilitate public travel and development; and

WHEREAS, the City of Rapid City has determined that the acquisition of additional land on which Creek Drive shall be reconstructed for public use is necessary before the reconstruction can occur; and

WHEREAS, the City of Rapid City has attempted to negotiate acquisition of the right of way and has been unable to secure said real property under agreeable arrangements; and

WHEREAS, the City of Rapid City is authorized to appropriate or damage private property for public purposes upon the payment of just compensation as set forth in various provisions of state law including but not limited to SDCL §§ 9-12-1(2), 9-27-1, 31-19-23.

NOW, THEREFORE, BE IT RESOLVED by the City of Rapid City that the City finds it necessary to take for public purposes the following described real property:

**A tract of land to be designated as Lot H1 of Lot La of Lot L, located in the NE¼SW¼ of Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, consisting of approximately 12,388 square feet, more or less, as shown on Exhibit "A," attached hereto and incorporated herein by reference; and**

**A permanent major drainage easement over, under and across Lot La of Lot L, located in the NE¼SW¼ of Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, consisting of approximately 5,123 square feet, more or less, as shown on Exhibit "B," attached hereto and incorporated herein by reference; and**

BE IT FURTHER RESOLVED that said real property be and hereby is condemned and taken for public purposes.

BE IT FURTHER RESOLVED that the City of Rapid City hereby authorizes and directs the City Attorney to undertake legal proceedings to implement this Resolution of Necessity and to determine just compensation to be paid.

EXHIBIT C

Dated this 5 day of April, 2010.

CITY OF RAPID CITY

By: [Signature]  
Alan Hanks, Mayor

ATTEST:

[Signature]  
Finance Officer

(SEAL)

STATE OF SOUTH DAKOTA )  
COUNTY OF PENNINGTON ) ss  
CITY OF RAPID CITY )

I, Pauline Sumption, the duly appointed, qualified and acting Assistant Finance Officer of the City of Rapid City, South Dakota do hereby certify that the foregoing is a true, correct and complete copy of a

Resolution

and that this same was adopted at the regular meeting of the Common Council on April 5, 2010 or appears upon the files in my office.

Dated at Rapid City, South Dakota, this 3 day of June, 2010.

(Seal)

Asst. Finance Officer of the City of  
Rapid City, South Dakota

[Signature]