

PREPARED BY:

City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

MAN
9-10-13

**PERMANENT UTILITY EASEMENT AND AGREEMENT
BETWEEN DTH, LLC, AND THE CITY OF RAPID CITY**

This PERMANENT UTILITY EASEMENT AND AGREEMENT (the "Easement Agreement") is made and entered into by and between **DTH, LLC**, a South Dakota limited liability company, Grantor, of P.O. Box 330, Rapid City, South Dakota, 57709, and the **CITY OF RAPID CITY**, a municipal corporation, Grantee, of 300 Sixth Street, Rapid City, South Dakota, 57701.

WHEREAS, Grantee desires to acquire an easement for the purpose of construction, installation and maintenance of utilities and appurtenant facilities, on and through the property more particularly described below and depicted in Exhibit A (the "Easement Area"); and

WHEREAS, Grantor is willing to grant an easement to Grantee for the aforesaid purposes on the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee do hereby covenant and agree as follows:

1. Grant of Easement. Grantor does hereby grant and convey unto Grantee, its successors, assigns, lessees, licensees and agents, a permanent utility easement in, on, over, under, across and through the Easement Area. Grantee shall also have the specific rights of ingress and egress, consistent with this Easement Agreement, for the construction, operation, inspection, repair, reconstruction, and maintenance of city-owned utilities, consistent with the easement provided herein. This easement grants to all public authorities the right to enter upon the hereindescribed real property and otherwise to do those things reasonably necessary to effectuate its purpose. Subject to the other terms and conditions of this Easement Agreement, Grantee shall also have the right to remove impediments to operation and maintenance of the Easement Area such as trees, asphalt and sidewalks.

2. Consideration. Grantor and Grantee agree that the covenants of Grantee herein constitute good and valuable consideration, and that no monetary consideration shall be exchanged for the grant of easement contained in this Easement Agreement.

3. Easement Area. The easement area shall be as depicted on Exhibit A, attached hereto and specifically incorporated herein by this reference, over and across the following property:

The East Half of the Southeast Quarter (E $\frac{1}{2}$ SE $\frac{1}{4}$) of Section Twenty-one (21), Township Two North (T2N), Range Eight East (R8E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, as more fully described on Exhibit "A", attached hereto and incorporated herein by reference.

4. Connections by Grantor. Grantor shall have the option to connect to City water mains running through the Easement Area without payment of construction or connection fees or assessments applicable to the base cost of the water main's construction. The City reserves the right to impose construction fees related to the oversize costs associated with any such water main running through the Easement Area. All general tapping and hook-up fees, which are not specific to this particular water main but are applicable to all new connections to city infrastructure, shall be paid prior to connection.

5. Obstructions. The property which is the subject of this easement shall be kept free of all obstructions including but not limited to buildings, walls, fences, hedges, trees, and shrubs. Any such obstruction may be removed by the Grantee at its option and expense. Upon notice of obstruction and demand for removal, Grantee may cause the removal of such obstruction at Grantor's expense if Grantor does not completely remove the obstruction within 10 days after notice is delivered.

6. Retained Rights. Grantor shall have all rights to the Easement Area not granted to Grantee by this Easement Agreement.

7. Equitable Rights of Enforcement. This Easement Agreement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to this Agreement, their successors or assigns; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

8. Binding Effect. The covenants and agreements contained in this Easement Agreement, except as otherwise expressly provided herein, are intended to run with the land and shall apply to, inure to the benefit of, and are binding upon the parties hereto and their respective successors administrators, executors, and assigns.

9. Integration. This Easement Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

10. Amendments. This Easement Agreement may only be amended by a written document duly executed by all parties.

11. 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 Easement Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

12. Notices. Any notice required or permitted under this Easement Agreement must be in writing. Notices shall be deemed to be delivered, whether actually received or not, when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the intended recipient at the its last known address. Notice may also be given by personal delivery, courier delivery, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

13. Counterparts. This Easement 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.

14. Time. Time is of the essence of this Agreement.

15. Further Action. The parties covenant and agree that each shall execute and deliver such further instruments as shall be necessary or convenient to effectuate the purposes contemplated by this Easement Agreement.

16. Construction. The language in all parts of this Easement Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. The headings and numbering of the different paragraphs of this Easement Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision. The parties agree that each party has reviewed this Easement Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Easement Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Easement Agreement.

17. Severability. The invalidity of all or any part of any section of this Easement Agreement shall not render invalid the remainder of this Agreement or the remainder of such section. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Easement Agreement to the extent possible.

18. Applicable Law and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota without regard to provisions on conflict of laws. All litigation under this Agreement shall be take place in the Circuit Court of Pennington County, South Dakota.

DTH, LLC

By: *Doyle Estes*
Its: MANAGER

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

On this the 10th day of September, 2013, before me, the undersigned officer, personally appeared Doyle Estes, who acknowledged himself to be the Manager of DTH, LLC, a South Dakota limited liability company, and that he, as such Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

(seal)



Wade Nyberg
Notary Public, South Dakota
My Commission Expires: 9-17-2016

CITY OF RAPID CITY

ATTEST

Mayor

Finance Officer

(SEAL)

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

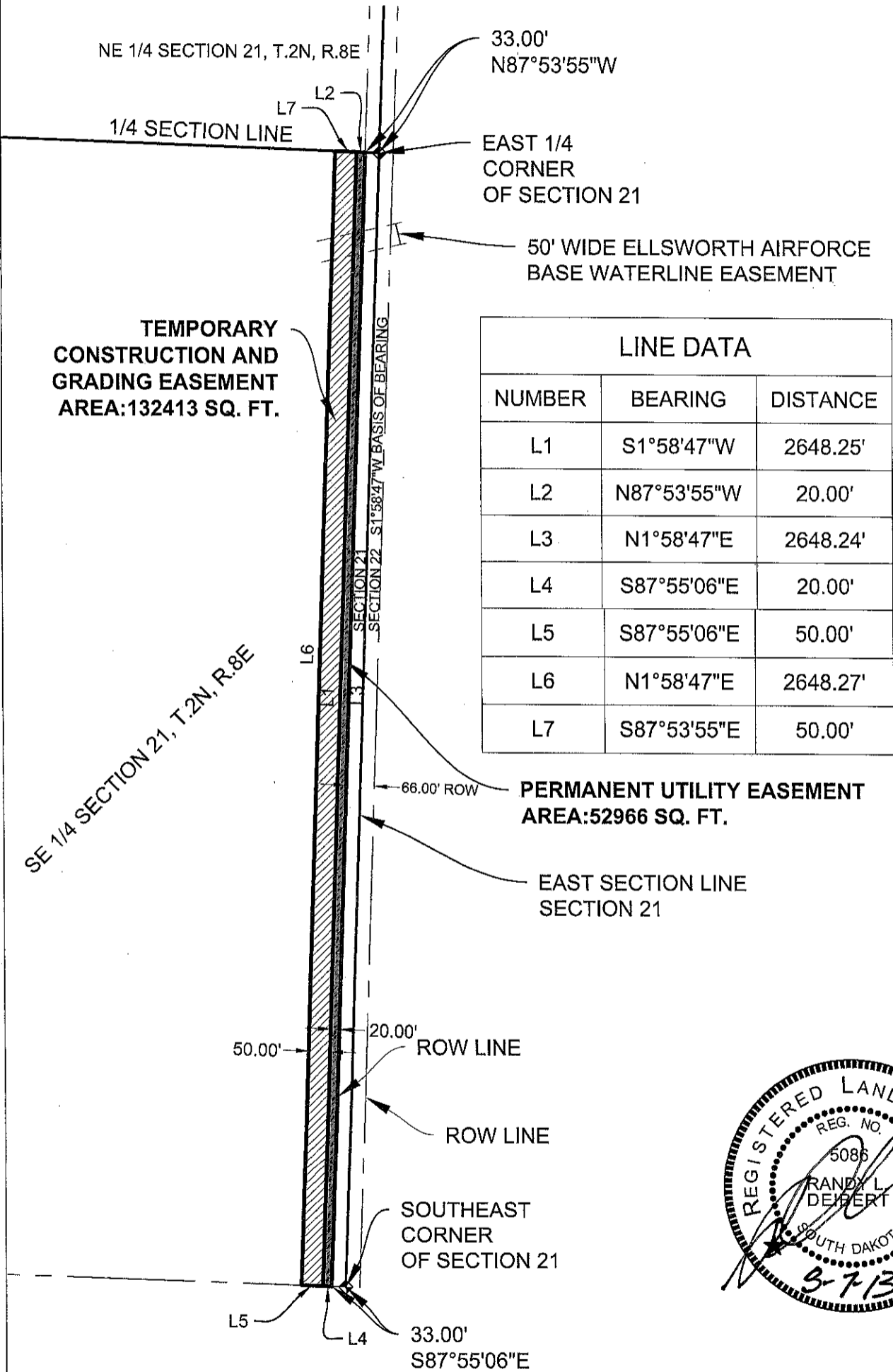
On this the _____ day of _____, 2013, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing Agreement 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.

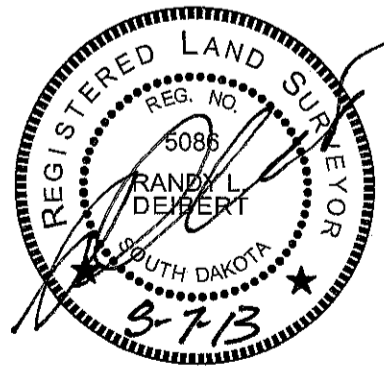
(seal)


Notary Public – South Dakota
My Commission Expires _____

EXHIBIT A
 SHOWING A PERMANENT UTILITY EASEMENT
 AND A TEMPORARY CONSTRUCTION AND GRADING EASEMENT
 LOCATED IN THE E 1/2 OF THE SE 1/4 OF SECTION 21, T.2N., R.8E., B.H.M.,
 CITY OF RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA.



LINE DATA		
NUMBER	BEARING	DISTANCE
L1	S1°58'47"W	2648.25'
L2	N87°53'55"W	20.00'
L3	N1°58'47"E	2648.24'
L4	S87°55'06"E	20.00'
L5	S87°55'06"E	50.00'
L6	N1°58'47"E	2648.27'
L7	S87°53'55"E	50.00'



Prepared by:

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ARCHITECTURE ENGINEERING GIS SURVEYING

