

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

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
LARRY STEVENS AND MARY STEVENS FOR PURCHASE OF H-LOT**

This Agreement is made this 2nd day of June, 2014, 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 **LARRY STEVENS AND MARY STEVENS**, (hereinafter collectively "Stevens"), of 4784 Enchanted Pines Dr., Rapid City, SD 57701.

WHEREAS, Stevens own certain real property located at 4784 Enchanted Pines Drive; and

WHEREAS, the City wishes to acquire public right-of-way in the form of an H-lot over a portion of this property for purposes of constructing and installing a sewer main; and

WHEREAS, Owner has agreed to execute appropriate documents conveying an H-lot 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. H Lot. Stevens will convey to the City by highway use deed an H-lot over the following property:

W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, T1N, R7E of the BHM, Pennington County, South Dakota, to be designated Lot H-1, as shown on Exhibit A, attached hereto and incorporated herein by this reference.

Lot H-1 is estimated to be 17,922 square feet and shall be used as public right-of-way.

3. Monetary Consideration. The City agrees to provide compensation of Twenty-five Thousand Five Hundred Dollars (\$25,500) in exchange for the deeding of the H-lot described above.

4. Other Consideration. The parties acknowledge that the City would normally calculate a construction fee based upon the cost of constructing the sewer main, and that fee would be assessed and collected prior to Stevens being allowed to connect a service line to the sewer main. The City agrees to waive this fee for the Stevens property and provide one service line connection to the sewer main being constructed within the H-lot without assessing or collecting a construction fee related to the sewer main being constructed within the H-lot. This Agreement does not waive the construction fee that has already been attributed to the property described above. Any further development or subdivision of the property may result in a construction fee, related to the sewer main constructed within the right-of-way, being charged for future connections.

5. Warranties of City.

a. City agrees to direct and require its contractors to maintain, at all times, reasonable access to the property. Such condition shall be made part of the construction contract between City and its contractor.

b. City agrees to comply with all applicable statutes, ordinances, rules, regulations and other laws in construction of the sewer main in the right-of-way.

c. All work by City shall be done in a workmanlike manner.

6. Costs of Recording. All recording fees shall be paid by City.

7. Recording this Agreement. Either party may record this Agreement at its option and expense.

8. 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 easement documents contemplated by this Agreement.

9. 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 Stevens' breach of this Agreement, including the right to specific performance.

10. 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.

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

12. Effect of Agreement. This Agreement shall be binding in all respects upon and shall inure to the benefit of City and Stevens and their respective successors and assigns.

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

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

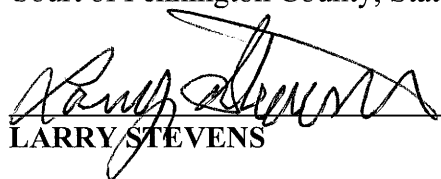
15. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

16. 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.

17. 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.

18. 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.

19. 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.


LARRY STEVENS



MARY STEVENS

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

On this the 2 day of June, 2014, before me, the undersigned officer personally appeared **LARRY STEVENS** and **MARY STEVENS**, 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.

(SEAL)


Notary Public - South Dakota
My Commission Expires 12/26/14

CITY OF RAPID CITY

Mayor

ATTEST

Finance Officer

(seal)

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

On this the ____ day of _____, 2014, 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 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.

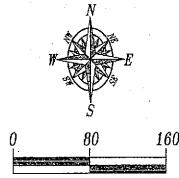
(seal)

Notary Public - South Dakota
My Commission Expires _____

PLAT OF LOT H-1

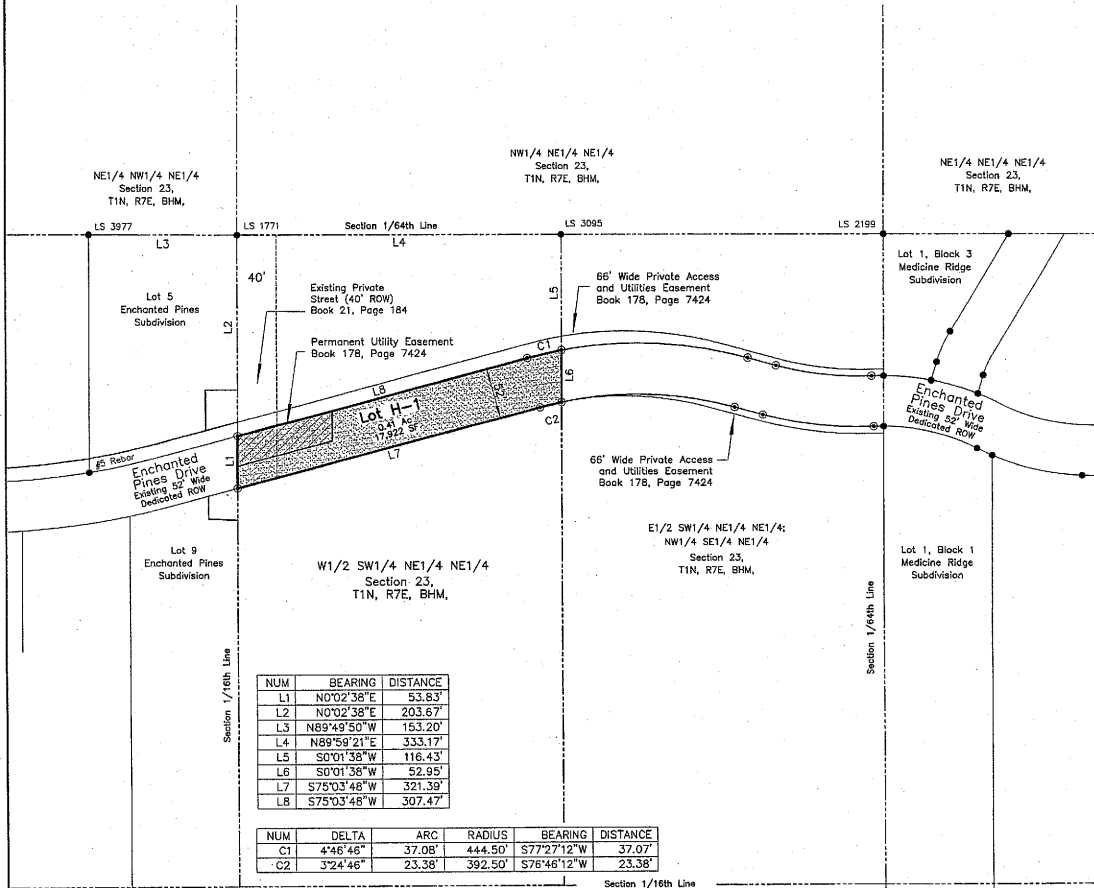
Showing a tract of land to be dedicated for highway purposes
in the W1/2 SW1/4 NE1/4 NE1/4 of Section 23, T1N, R7E, B.H.M.
Rapid City, Pennington County, South Dakota

Scale: 1" = 80'



January 30, 2012
Rev. March 31, 2014

- = Found Survey Monument marked "LS5225" or as noted
- ⊙ = Set Rebar with cap marked "RW Fisk 6565"



SURVEYOR'S CERTIFICATE

I, Ronald W. Fisk, Registered Land Surveyor in the State of South Dakota, do hereby state that at the direction of the City of Rapid City this 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 1st day of April, 2014

Ronald W. Fisk

Ronald W. Fisk
Registered Land Surveyor
Registration No. 6565

Fisk Land Surveying and Consulting Engineers, Inc.
P.O. Box 8154
Rapid City, SD 57709
(605) 348-1538

OFFICE OF REGISTER OF DEEDS

State of South Dakota
County of Pennington

Filed for record this ___ day of ___, at ___ m., and recorded
as Document # _____

Register of Deeds

by

Deputy