

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

WEN
3-25-15

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND HAROLD F. FLACK
AND ARLENE M. FLACK FOR H LOT AND TEMPORARY
CONSTRUCTION EASEMENT**

This Agreement is made this ____ day of _____, 20 ____, 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 **HAROLD F. FLACK and ARLENE M. FLACK**, husband and wife, (hereinafter the "Owner"), of 2858 Flack Lane, Rapid City, South Dakota, 57701.

WHEREAS, Owner owns certain real property on Dyess Drive; and

WHEREAS, the City wishes to acquire an H lot and a temporary construction easement over a portion of this property for purposes of constructing and installing a street; and

WHEREAS, Owner has agreed to execute appropriate documents conveying said interests in favor of 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. Owner will convey to the City an H-Lot over the following property:

The West Half of the Northeast Quarter of the Southwest Quarter of the Northwest Quarter (W½NE¼SW¼NW¼) in Section Twenty-eight (28), Township Two (2) North, Range Eight (8) East of the Black Hills Meridian, Pennington County, South Dakota.

Lot H9 is estimated to be 26,619.79 square feet and shall be used for drainage purposes.

3. Temporary Construction Easement. Owner will also convey to the City a temporary construction easement over the above described property, as shown on Exhibit A.

4. Consideration. The City agrees to provide the following compensation, totaling Twenty-four Thousand Three Hundred Thirty-five Dollars and Twenty-three Cents (\$24,335.23):

- a. \$21,562.03 for Lot H9, which is \$0.81 per square foot multiplied by the easement area of 26,619.79 square feet; and
- b. \$2,773.20 for the temporary construction easement.

5. Warranties of City.

- a. City agrees to comply with all applicable statutes, ordinances, rules, regulations and other laws in construction of the street in the easement area.
- b. All work by City shall be done in a workmanlike manner.
- c. Following construction, City shall leave the property in as good a condition as it finds it, including but not limited to adequate grass cover and drainage unchanged from its natural drainage ways.

6. Closing. The closing of this transaction shall occur on September 9, 2015, or as soon thereafter as the parties can agree.

7. Costs of Recording. All recording fees for the easements contemplated herein shall be paid by City.

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

9. Authority. This Agreement is made and entered into by the Director of Public Works pursuant to the authority granted by SDCL 9-1-5 and Section 3.04.090 of the Rapid City Municipal Code.

10. Indemnification. City agrees to indemnify and hold Owner harmless from any and all claims relating to excessive water runoff or failure to confine soils to the site during construction of the water main and for a period of 2 years after construction has been completed.

11. 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.

12. 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 Owner's breach of this Agreement, including the right to specific performance.

13. 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.

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

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

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

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

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.



Harold F. Flack

State of South Dakota)

SS.

County of Pennington)

On this the _____ day of _____, ²⁰¹⁵~~2014~~, before me, the undersigned officer, personally appeared *Steve Attender* 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 Consenting to Assessed Project 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.

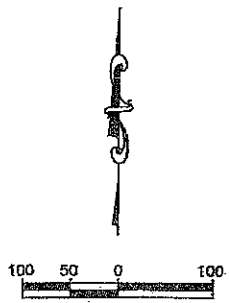
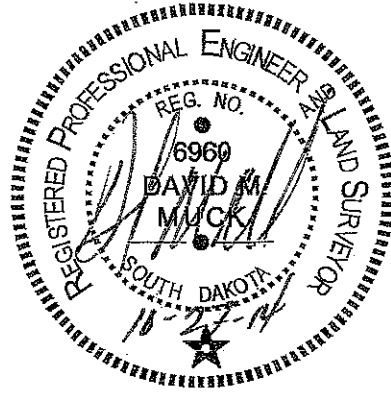
Notary Public, South Dakota

My Commission Expires:






(SEAL)

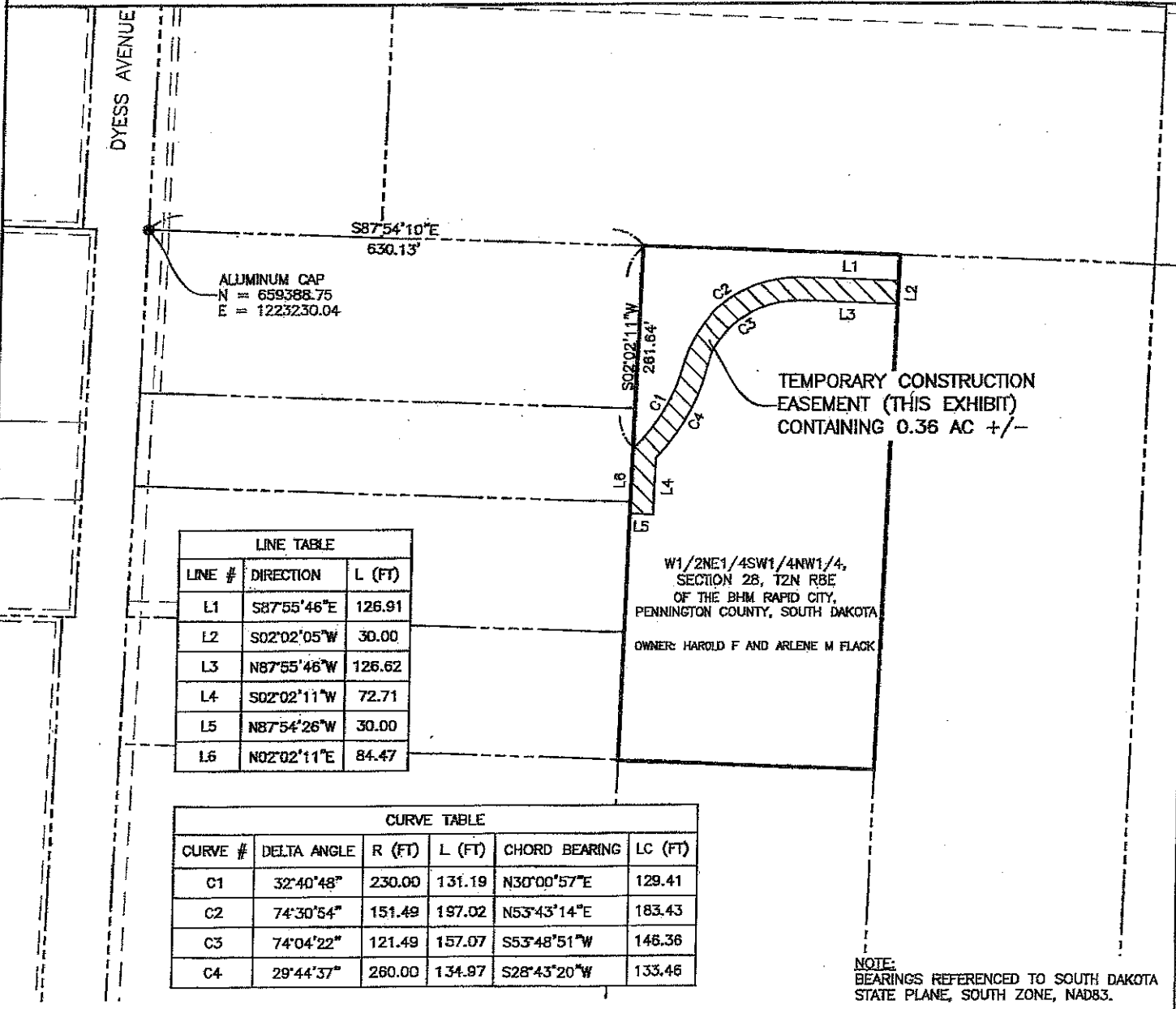
TEMPORARY CONSTRUCTION EASEMENT
W1/2NE1/4SW1/4NW1/4,
SECTION 28, T2N R8E
OF THE BHM RAPID CITY,
PENNINGTON COUNTY, SOUTH DAKOTA

OWNER: HAROLD F AND ARLENE M FLACK



LEGEND

-  PERMANENT DRAINAGE EASEMENT
-  FOUND PROPERTY MONUMENT
-  PROPERTY AS DESCRIBED
-  PROPERTY LINE
-  EXISTING EASEMENT



ALUMINUM CAP
 N = 659388.75
 E = 1223230.04

LINE TABLE		
LINE #	DIRECTION	L (FT)
L1	S87°55'46"E	126.91
L2	S02°02'05"W	30.00
L3	N87°55'46"W	126.62
L4	S02°02'11"W	72.71
L5	N87°54'26"W	30.00
L6	N02°02'11"E	84.47

CURVE TABLE					
CURVE #	DELTA ANGLE	R (FT)	L (FT)	CHORD BEARING	LC (FT)
C1	32°40'48"	230.00	131.19	N30°00'57"E	129.41
C2	74°30'54"	151.49	197.02	N53°43'14"E	183.43
C3	74°04'22"	121.49	157.07	S53°48'51"W	146.36
C4	29°44'37"	260.00	134.97	S28°43'20"W	133.46

NOTE:
 BEARINGS REFERENCED TO SOUTH DAKOTA
 STATE PLANE, SOUTH ZONE, NAD83.

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EXHIBIT A

PROJECT NO.
 J12-122
 FIGURE NO.
 1 OF 1