

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 East Quarter of the Southwest Quarter (E $\frac{1}{4}$ SW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Twenty-eight (28), Township Two (2) North, Range Eight (8) East of the Black Hills Meridian.

Lot H11 is estimated to be 11,106.65 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 Twelve Thousand One Hundred Sixty-one Dollars and Twenty-nine Cents (\$12,161.29):

- a. \$6,663.99 for Lot H11, which is \$0.60 per square foot multiplied by the easement area of 11,106.65 square feet; and
- b. \$5,497.30 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

Arlene M. Flack
Arlene M. Flack

State of South Dakota)
 SS.
County of Pennington)

On this the 22nd day of April, 2015, before me, the undersigned officer, personally appeared HAROLD F. FLACK and ARLENE M. FLACK, 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.

Debby Heisinger
Notary Public, South Dakota

My Commission Expires: 2-3-2017

(SEAL)



CITY OF RAPID CITY

By: _____
~~Sam Kooiker, Mayor~~
Steve Allender,

ATTEST:

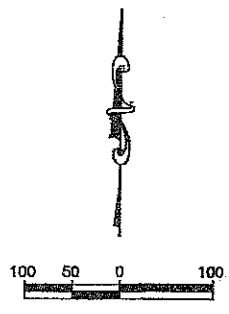
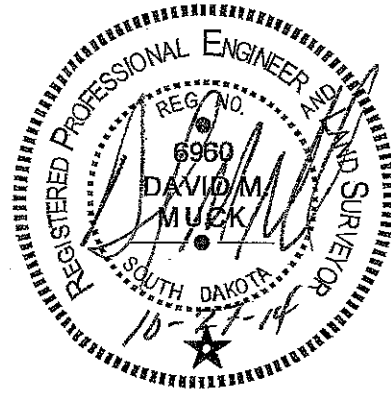
Pauline Sumption, Finance Officer

(SEAL)






TEMPORARY CONSTRUCTION EASEMENT

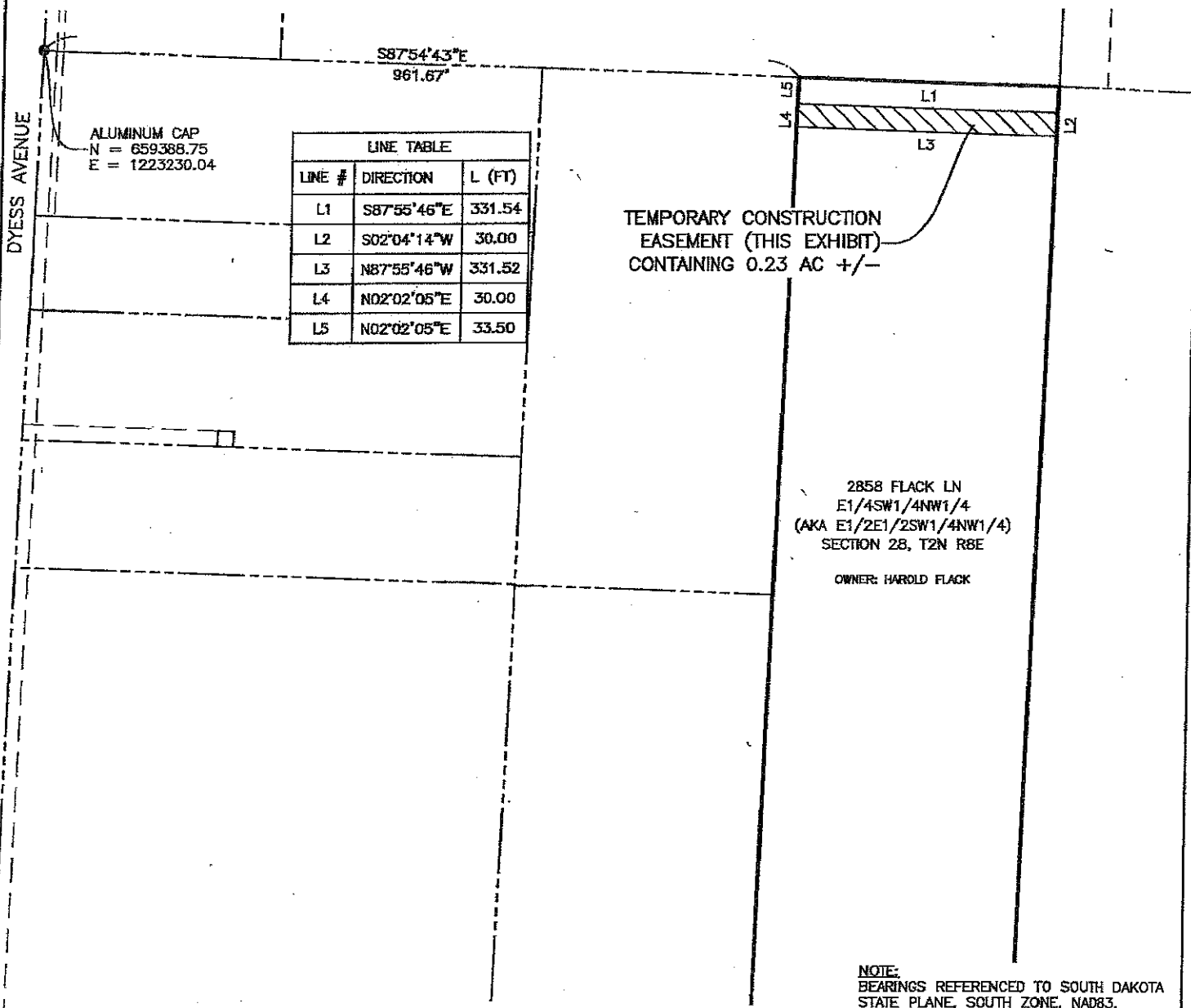
**E1/4SW1/4NW1/4
(AKA E1/2E1/2SW1/4NW1/4),
SECTION 28, T2N, R8E
OF THE BHM RAPID CITY,
PENNINGTON COUNTY, SOUTH DAKOTA**

OWNER: HAROLD F AND ARLENE M FLACK



LEGEND

-  TEMPORARY CONSTRUCTION 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	331.54
L2	S02°04'14"W	30.00
L3	N87°55'46"W	331.52
L4	N02°02'05"E	30.00
L5	N02°02'05"E	33.50


TEMPORARY CONSTRUCTION
EASEMENT (THIS EXHIBIT)
CONTAINING 0.23 AC +/-

2858 FLACK LN
E1/4SW1/4NW1/4
(AKA E1/2E1/2SW1/4NW1/4)
SECTION 28, T2N R8E
OWNER: HAROLD FLACK

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

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10-24-14



**Ferber
Engineering
Company, Inc.**
One Enterprise North Building - Rapid City, SD 57701 - Phone: (605) 343-5211
228 East Woodward, Rapid City, SD 57701 - Phone: (605) 343-5211

EXHIBIT A

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