

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

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND RETA MCGOVERN
FOR UTILITY EASEMENTS**

This Agreement is made this 6 day of Dec., 2016, 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 **RETA MCGOVERN** (hereinafter the "Owner"), of 821 Flormann Street, Rapid City, South Dakota, 57701.

WHEREAS, Owner owns certain real properties along the route of a storm sewer and sanitary sewer main proposed by the City; and

WHEREAS, the City wishes to acquire easements over portions of the property for purposes of constructing and installing a storm sewer and sanitary sewer main; and

WHEREAS, Owner has agreed to execute easement documents 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. Permanent Easement. Owner will convey to the City a permanent utility easement over the following property:

**Lot One (1) in Block Two (2) of South Ridge No. 1, City of Rapid City,
Pennington County, South Dakota.**

as more particularly shown on Exhibit A, attached hereto and incorporated herein by reference.

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. No monetary consideration shall be exchanged by the parties. The City agrees to provide the following non-monetary compensation items:

- a. Geotechnical services to analyze subsurface conditions and recommendations for applicable building foundation underpinning, support and trench stabilization.
- b. Structural engineering services to provide design of foundation support modifications for the existing residence.
- c. Construction and construction administration services necessary to construct the structural modifications for the existing residence.

5. Representatives of the Parties. The City designates its Public Works Director to act on its behalf for purposes of carrying out its obligations and any agreements or consents described herein.

6. 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 storm sewer and sanitary sewer main in the easement area.
- c. All work by City shall be done in a workmanlike manner.
- d. Following construction, City shall leave the property in as good a condition as it finds it, including but not limited to adequate grass cover (sod), replacement of existing chain link fences and storage sheds.
- e. Standard two-year warranty period on structural modifications for the existing residence.

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. 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.

10. 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 breach of this Agreement, including the right to specific performance.

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

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

13. 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.

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

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

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.



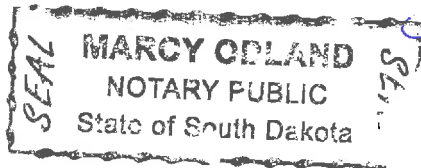
RETA MCGOVERN

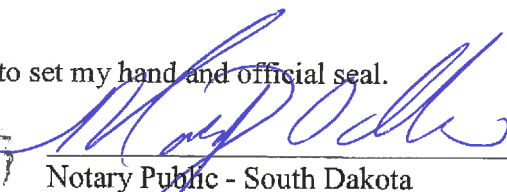
State of South Dakota)
) ss.
County of Pennington)

On this the 6 day of DEC, 2016, before me, the undersigned officer personally appeared RETA MCGOVERN, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she 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 _____

**My Commission Expires
August 29, 2017**

CITY OF RAPID CITY

By: _____
Steve Allender, Mayor

ATTEST:

Pauline Sumption, Finance Officer

(SEAL)

State of South Dakota)
 SS.
County of Pennington)

On this the _____ day of _____, 2016, before me, the undersigned officer, personally appeared Steve Allender 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 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)

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

TEMPORARY CONSTRUCTION EASEMENT

FOR AND IN CONSIDERATION of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, RETA F. MCGOVERN, of 821 Flormann Street, Rapid City, South Dakota, 57701, Grantor, hereby grants to the CITY OF RAPID CITY, a South Dakota municipality, of 300 Sixth Street, Rapid City, South Dakota, 57701, its agents, employees, and contractors, a temporary construction easement over and across the following described real property:

Lot One (1) in Block Two (2) of South Ridge No. 1, City of Rapid City, Pennington County, South Dakota, as more fully described on Exhibit "A", attached hereto and incorporated herein by reference.

This easement shall include the right to enter upon the easement property for the purpose of constructing the project entitled, "Meade/Hawthorne DBDP – Element 47, Project No. 15-2306, CIP No. 50758".

The City shall perform all work in a workmanlike manner and shall leave the property in as good condition as existed prior to entry thereon. However, the City will not be responsible for repairing or replacing any structures or improvements that are placed in the temporary easement after the effective date of the easement.

This Temporary Easement shall be effective from the date of signing to December 31, 2017.

Dated this 6 day of December 2016.

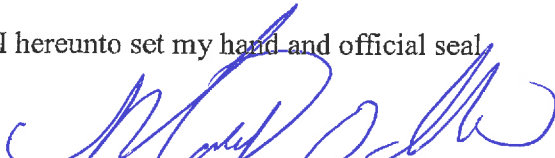


RETA F. MCGOVERN

State of South Dakota)
 SS.
County of Pennington)

On this the 6 day of Dec, 2016, before me, the undersigned officer, personally appeared RETA F. MCGOVERN, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

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



Notary Public, South Dakota

My Commission Expires:

(SEAL) My Commission Expires
August 29, 2017

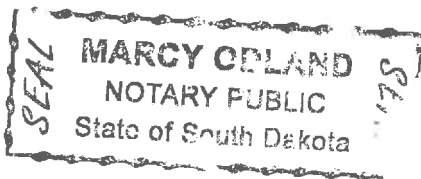


EXHIBIT "A"
PERMANENT UTILITY EASEMENT
AND TEMPORARY CONSTRUCTION EASEMENT
LOT 1 OF BLOCK 2 OF SOUTH RIDGE SUBDIVISION NO. 1
LOCATED IN THE NE1/4 OF SECTION 11, T1N, R7E, B.H.M.,
RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

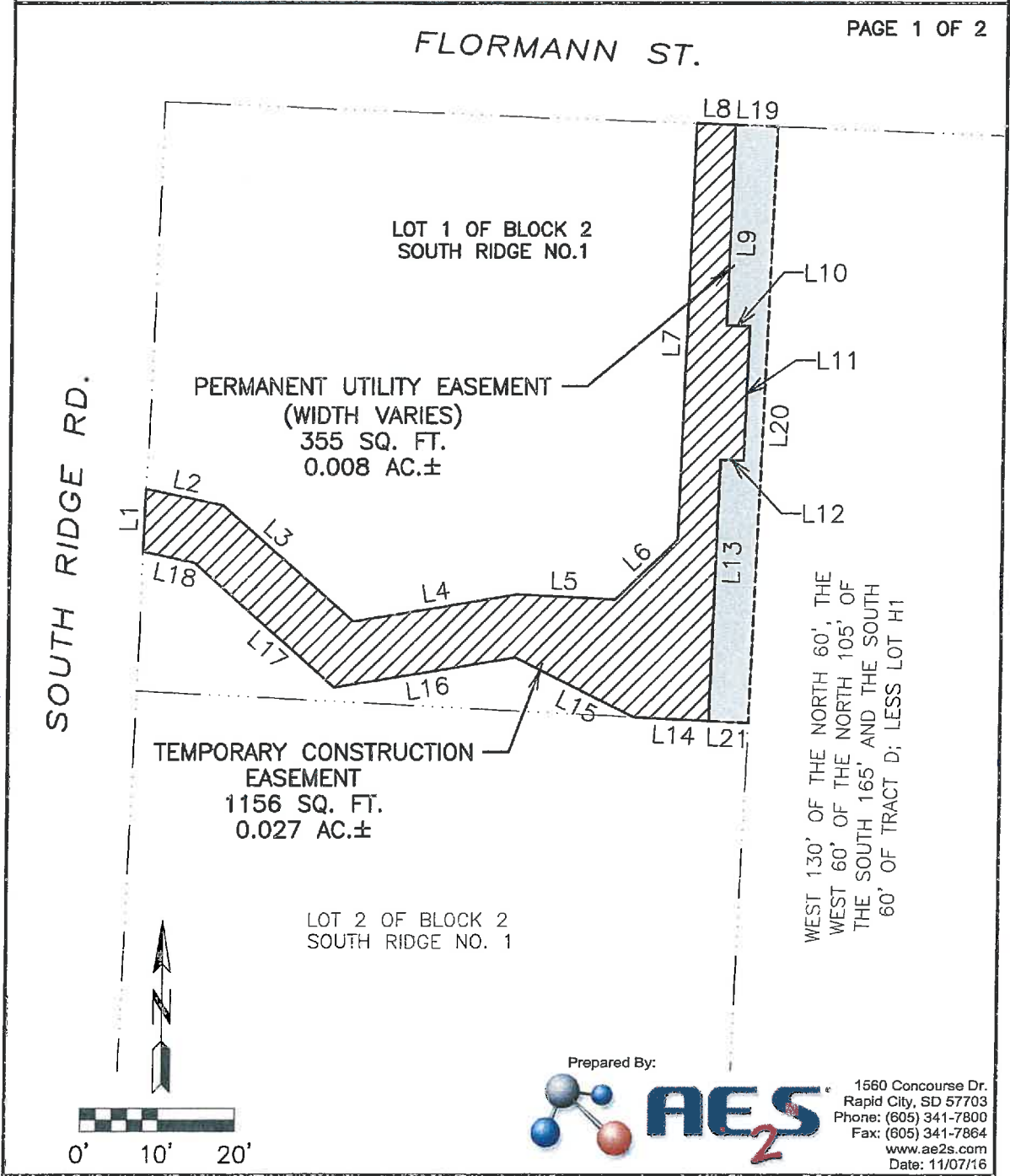


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RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

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Line Table		
Line #	Length	Direction
L1	8.12'	N02°17'44"E
L2	10.28'	S77°57'16"E
L3	22.65'	S48°42'46"E
L4	21.27'	N80°34'29"E
L5	12.74'	S86°59'45"E
L6	11.14'	N45°57'27"E
L7	53.72'	N02°01'52"E
L8	5.00'	S87°43'20"E
L9	25.86'	S02°01'52"W
L10	3.00'	S88°19'45"E
L11	17.38'	S02°01'52"W
L12	3.00'	N87°43'21"W
L13	33.73'	S02°01'31"W
L14	9.66'	N86°59'45"W
L15	17.20'	N63°26'43"W

Line Table		
Line #	Length	Direction
L16	23.60'	S80°34'29"W
L17	24.35'	N48°42'46"W
L18	6.82'	N77°57'16"W
L19	5.48'	S87°43'20"E
L20	77.00'	S02°18'30"W
L21	5.10'	N86°59'45"W



Prepared By:



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 Date: 11/07/16