

**This document prepared by:
Office of School and Public Lands
500 East Capitol Avenue
Pierre, South Dakota 57501-5070
(605)773-3303**

DRAINAGE EASEMENT

FOR AND IN CONSIDERATION OF THE SUM OF One (\$1.00) dollar, the receipt of which is hereby acknowledged, the Office of School and Public Lands on behalf of the State of South Dakota Board of Regents, (SDBR) hereinafter referred to as Grantor, does hereby grant and convey unto the City of Rapid City, a municipal corporation, Grantee, of 300 Sixth Street, Rapid City, South Dakota, 57701, a permanent major drainage easement, subject to the conditions hereinafter set forth, in, on, over, under, and across the following described property:

A strip of land eighty feet (80') in width in the Southeast Quarter of the Southwest Quarter (SE1/4SW1/4) of Section Twenty-seven (27) and in the Northeast Quarter of the Northwest Quarter (NE1/4NW1/4) of Section Thirty-four (34), all in Township Two North (T2N), Range Eight East (R8E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota, as more fully shown on Exhibit "A" attached hereto and incorporated herein by reference.

This grant is to ratify and reaffirm an easement granted by the State through the Governor and Commissioner of School and Public Lands originally signed April 20th, 2010. This grant is subject to the following conditions:

1. Such easement shall include the right to construct, operate, maintain, inspect, and repair drainage installations or structures upon said property. Grantor agrees that the rights contained herein are intended to benefit the Grantee, the subtenants of Grantee, and any sub-subtenants, including their successors or assigns.
2. Grantor agrees that this easement may not be modified or revised in a manner that would diminish the rights of any subtenants or sub-subtenants of Grantee, including their successors or assigns.
3. This easement is granted subject to all existing rights of way and easements over and upon the Property.
4. Grantor reserves the right to utilize the Property for all purposes not inconsistent with the easement rights herein conveyed. Grantor and / or Grantee may enter upon

the above described property for the purposes of effectuating the grant of and reserved rights in this easement.

5. This drainage installation or structure shall be constructed in a good and workmanlike manner, and all disturbed area shall be restored to a finished grade, per plans and specifications.

6. The Grantee will be responsible for all costs and liabilities regarding the installation, maintenance and use of the drainage installation or structure and above-described easement area. For any claims arising out of the Grantee's installation, maintenance and use of the drainage installation or structure and above-described easement area, Grantee agrees to indemnify, defend and hold Grantor harmless. Nothing in this agreement shall be read to waive Grantor's sovereign immunity.

7. The Grantee shall maintain the surface area of the easement following construction. The property which is the subject of this easement shall be kept free of all obstructions including but not limited to buildings, walls, fences, debris, trees, shrubs, or landscaping if such use is incompatible with the easement.

8. Should the above-described real property granted by this Easement cease to be used for the purpose stated herein for two consecutive years, this Easement and Right-of-Way reverts to the State of South Dakota or its successors or assigns.

9. The Grantor has and retains the right to lease, sell, or otherwise convey the property or any party thereof, subject to the terms of this easement, provided, however, that this easement shall remain in full force and effect until the expiration of the terms hereof notwithstanding such a lease, sale or conveyance. This easement is also subject to reservations and rights relating to deposits of coal, ores, metals and other minerals, asphaltum, oil, gas and other like substances provided by the South Dakota Constitution Art. VIII, §19, South Dakota Codified Law 5-7-3 to 5-7-6, inclusive, and South Dakota Codified Law § 5-2-12, and any law of the State of South Dakota reserving any rights of any kind in said State or any of its departments, institutions, subdivisions, funds or accounts.

10. Notwithstanding paragraphs 6 and 7. Grantor has and retains the option of replacing the open channel with a culvert in the future. The culvert must be sized by proper engineering. Grantor will then be allowed to construct parking structures upon said property. The method, manner, and type of construction will be determined by Grantor.

11. Notwithstanding paragraph 10, Grantor shall be given the option of locating the underground culvert within the eastern thirty feet (30') of the one hundred foot (100') wide sanitary sewer easement in the future. The culvert must be sized by proper engineering. If Grantor exercises this option, this major drainage easement will be abandoned and all rights will be returned to the Grantor.

12. This agreement and attachments shall constitute the entire agreement between Grantor and Grantee. This agreement supersedes any other written or oral agreements between Grantor and Grantee. This agreement can be modified only in writing and signed by the Grantor and Grantee or their respective heirs, representatives, executors, administrators, successors and assigns.

13. This easement shall be binding upon the heirs, executors, administrators, assigns, and successors in interest of the parties hereto.

14. This easement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

(Signature page to follow)

