

AN AGREEMENT BETWEEN THE CITY OF RAPID CITY AND DAVID AND CARA WISE FOR THE ACQUISITION OF A PERMANENT UTILITY EASEMENT AND H LOT.

This Agreement is made and entered into by and between the CITY OF RAPID CITY, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the "City," and DAVID and CARA WISE, 21415 Pine View Ct., Piedmont, South Dakota 57769, herein after referred to as the "WISES."

RECITALS

WHEREAS, the Wises are the owners of real property generally located along Creek Drive within the City; and

WHEREAS, the City has plans to construct a drainage improvement project adjacent to the Wises property; and

WHEREAS, as part of this project the City will be rerouting the Hawthorne Drainage Ditch around the Wises property; and

WHEREAS, once the ditch has been rerouted around the Wises property the old channel will be abandoned; and

WHEREAS, abandonment of the old channel will benefit the Wises property; and

WHEREAS, in order to actually construct the project the City needs to acquire a permanent drainage easement and H Lot from the Wises; and

WHEREAS, the Wises have agreed to donate the permanent drainage easement and H Lot to the City under certain terms and conditions.

NOW THEREFORE, the parties hereby agree as follows:

1. The Wises agree to grant the City a permanent drainage easement thirty (30) feet in width along the southern property line of Tract 2 of Bradsky Subdivision No. 2. They further agree to transfer to the City a permanent right-of-way, designated as an H Lot, located in the northeast corner of Tract 1 of Bradsky Subdivision No. 2. The exact location and dimensions of the permanent drainage easement and H Lot are shown on Exhibit 1 which has been attached hereto and incorporated herein by this reference. The easement documents shall be in a form acceptable to the City Attorney's Office.
2. The Wises shall also grant the City a temporary construction easement over all of Tracts 1 and 2. The easement will be used to construct the City portion of the project, to deposit and grade the excess dirt being deposited on these tracts and will also enable the City to fill and grade the Hawthorne Ditch channel being abandoned. Such temporary construction easement shall

expire and be released at the time the drainage improvements contemplated in this Agreement have been completed and accepted by the City.

3. In exchange for the grant of the permanent easements, the City agrees to deposit the waste dirt from the project on the balance of Tract 1 and 2 outside the easement. The dirt will be used to fill in the current Hawthorne Ditch channel which bisects the property. Any dirt beyond what is needed to fill the Hawthorne channel will be deposited on the balance of Tracts 1 and 2 and graded. The City will grade Tracts 1 and 2 in a manner consistent with the contours shown on Exhibit 1. The City will also seed and fertilize any areas within the balance of Tract 1 and 2 which it disturbs in constructing the project. The City further agrees to grade an access off Creek Drive. This access will be located between Tracts 1 and 2 over the location of an 11' x 7' box culvert. The approximate location of the box culvert is shown on Exhibit 1. The City will backfill dirt over the culvert which will let the Wises construct a permanent approach in the future.

4. The parties acknowledge the City's promise to deposit and grade the excess dirt from the project on the balance of Tracts 1 and 2 and install and backfill the box culvert is good and sufficient consideration for the Wises' promises made herein.

5. The parties may undertake any legal or equitable action available to enforce the provisions of this Agreement in addition to any other remedies provided herein.

6. If any section(s), or provision of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this application if they can be given effect without the invalid section(s) or provisions.

7. This Agreement shall be construed according to the laws of the State of South Dakota. Any action concerning this agreement shall be venued in Rapid City, South Dakota in State Circuit Court. No modification or amendment to this Agreement shall be valid, unless evidenced by a writing signed by the parties hereto.


Dated this ____ day of _____, 2009.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer


David Wise

Cara Wise
Cara Wise

State of South Dakota)
 ss.
County of Pennington)

On this the ___ day of _____, 2009, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, 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 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]

State of South Dakota)
 ss.
County of Pennington)

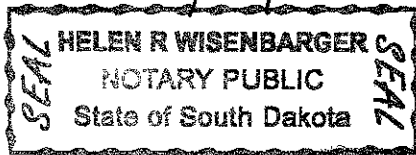
On this the 9 day of June, 2009, before me, the undersigned officer personally appeared David Wise, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

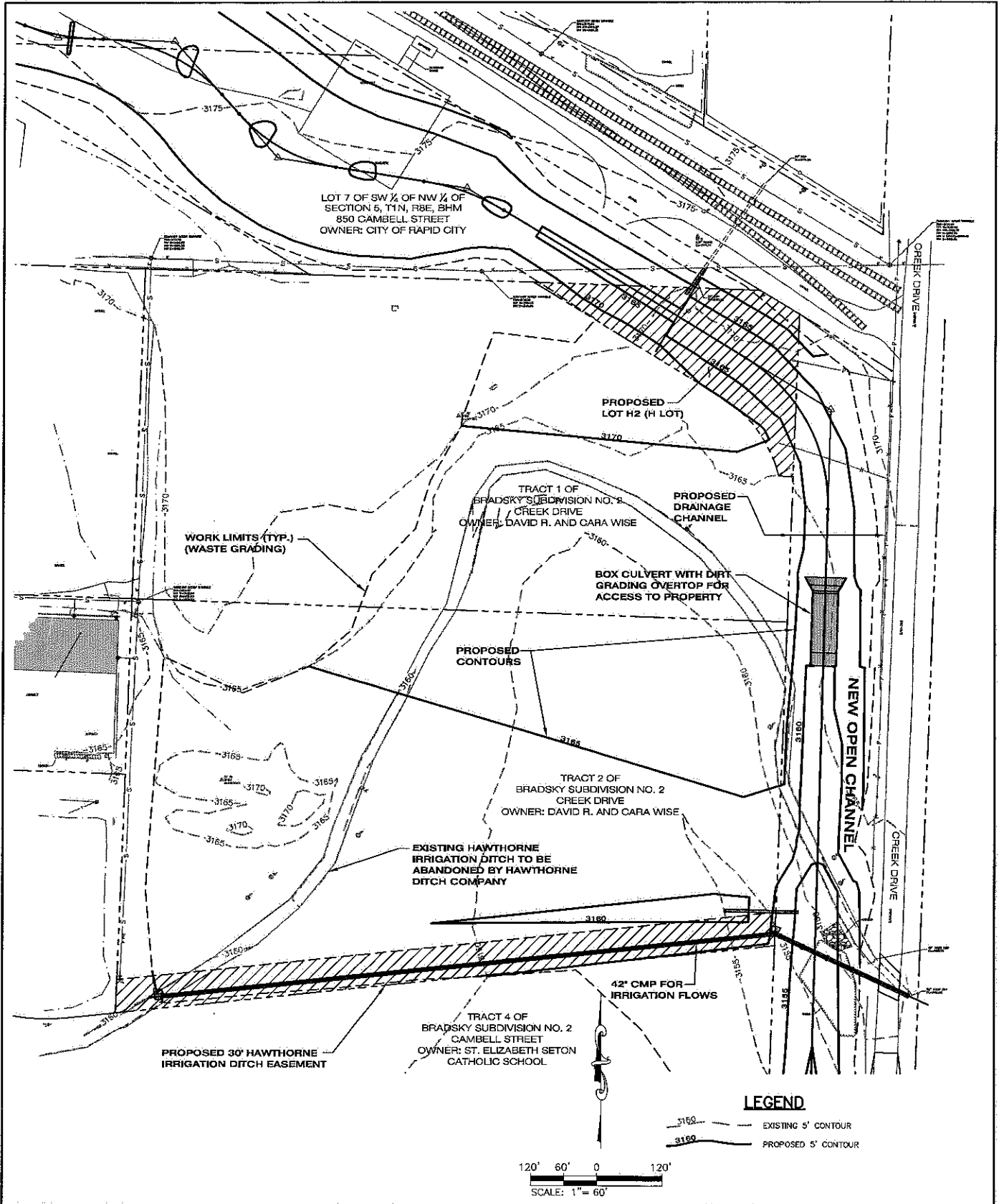
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Helen R. Wisenbarger
Notary Public, South Dakota

My Commission Expires: 5/31/2011

(SEAL)





**KNOLLWOOD DRAINAGE
OUTFALL**
ELEMENTS 2 AND 20
RAPID CITY, SD

NOVEMBER 2008

Sheet Title: EXHIBIT #1	Surveyed By: Date:
Location:	Designed By: RAS Drawn By: JRK Checked By: RAS
	File Number: 8990



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