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May 22, 2015

**VIA EMAIL**

Carla Cushman  
Office of the City Attorney  
300 Sixth Street  
Rapid City, SD 57701-2724

Re: Cyclone Ditch/ZCO, Inc.  
Our File No. 62364

Dear Carla,

Cyclone Irrigation Ditch Company has now had an opportunity to meet with its members and discuss the easement provision proposed in your May 5<sup>th</sup> email. Cyclone believes that its position is still not being fully understood and that an additional meeting is necessary. Specifically, Cyclone Ditch believes that the fact that Cyclone's existing right-of-way is being crossed as opposed to Cyclone crossing what will become a public right-of-way on acceptance, as would be the typical case for a utility. From Cyclone's viewpoint, the portion of the pipe under the proposed street is a part of the crossing being constructed just as a bridge or a culvert would be. While Cyclone appreciates the proposal, Cyclone does not have the financial ability to bear the expense of tearing up the road in order to replace the section of culvert that supports the road should the need arise. This is especially true since, as the City develops to the east, more and more similar requests to cross will no doubt be presented. Cyclone supports and does not wish to hinder the growth or public interest in developing Rapid City in the best way possible for the benefit of the public, including public safety, which would be enhanced in the case of the Zandstra development by placing a portion of the ditch underground. What Cyclone is striving for, with the support of the Murphy Ditch, Hawthorne Ditch and the Southside Ditch, is to establish a "standard easement" that would set out the requirements for ditch crossings so that developers and the City would know what was necessary and development could proceed on a timely basis without the time and expense of addressing each new development from scratch. Cyclone is hoping that the City will see the public benefit and assist in reaching that goal. What Cyclone is proposing is not something new as evidenced by the attached copy of Irrigation Ditch Easement and Right-of-Way Agreement entered into between the State of South Dakota and Cyclone Ditch regarding a crossing by the State of South Dakota of a portion of Cyclone Ditch in the construction of the southeast connector.

Please advise as to Cyclone's request for a further meeting. Thank you.

Sincerely,



Edward C. Carpenter

ECC:jb

Enclosure

cc w/enclosure:

Vicki Fisher (via email)  
Ted Johnson (via email)  
Mike Hickey (via email)  
David Lamb (via email)  
Andrea Andersen (via email)  
Lowell Pflieger (via email)  
Dale Schuelke (via email)  
Bill Kinghorn (via fax)

Prepared by:  
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## IRRIGATION DITCH EASEMENT AND RIGHT-OF-WAY AGREEMENT

This Irrigation Ditch Easement and Right-of-Way Agreement is made and entered into by and between Cyclone Irrigation Ditch Company of 5768 Sparrow Hawk Trail, Rapid City, SD 57703, a South Dakota corporation, (hereinafter called "Cyclone Ditch") and the State of South Dakota.

### Recitals

A. Cyclone Ditch was started in May, 1881 prior to South Dakota becoming a state and has operated continuously since that date. Cyclone Ditch was incorporated in 1890. Since its inception, Cyclone Ditch has held a prescriptive easement across the following described property for the operation of an irrigation ditch to convey water across the described property for irrigation purposes:

NW1/4 Sec. 16 Twp 1N R8E of BHM  
Pennington County, SD

B. On or about 2002 to 2004, the State of South Dakota, acting through the South Dakota Department of Transportation constructed Highway Project NH 0235(1)0, Pennington County, PEMS3151 (southeast connector) a portion of which highway crossed Cyclone's existing ditch and prescriptive easement.

C. The SDDOT project as constructed, relocated a portion of Cyclone's existing irrigation ditch, routed it under the highway through a concrete pipe culvert and relocated the ditch from the pipe culvert to a point at which the ditch meets and reenters the original ditch.

D. The purpose of this Agreement is to set forth the terms under which the State of South Dakota will (1) provide Cyclone with a permanent recordable easement and right-of-way for the relocated ditch and pipe culvert; (2) accept responsibility for the maintenance of the pipe culvert crossing under the road and the relocated and realigned ditch from the point where it leaves the prior existing ditch extending to a point where it reenters the prior existing ditch; (3) be responsible for compliance with highway safety requirements, including required protective structures, if any, such as guardrails, coverings for the structure crossing the road and any required warning signs, if any, to protect against personal injury and/or property damage arising from the relocation of the ditch and its

proximity to and crossing the southeast connector including, but not limited to, personal injury and/or property damage arising from vehicles leaving the roadway and encountering the ditch or flooding which may result from the new ditch configuration, including the under road crossing.

NOW THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties agree as follows:

1. The State of South Dakota will plat and record a permanent easement and right-of-way in favor of Cyclone Irrigation Ditch Company for the relocated and realigned portion of the ditch from the point where it leaves the prior existing ditch to and under the existing road and extending to the point where the ditch reenters the prior existing ditch. The permanent easement specifically includes the right of ingress and egress for access to the ditch to permit inspection, operation and maintenance of the ditch by Cyclone, provided it is expressly understood that the State shall be solely responsible for the maintenance of the pipe culvert.

2. The State of South Dakota shall be responsible for required protective structures, if any, such as guardrails, coverings for the pipe culvert crossing the road and any required warning signs, if any. Cyclone is relying on the expertise of the State of South Dakota acting through the SDDOT to comply with any applicable highway safety requirements and proper engineering to avoid flooding.

3. The State of South Dakota shall be responsible to physically maintain the relocated and realigned ditch from the point where it leaves the prior existing ditch extending to the point where it reenters the prior existing ditch, including specifically the pipe culvert crossing under the road in a sound, useable condition. The rip rap at the discharge end of the pipe culvert shall be maintained so as to avoid erosion. In addition, the State of South Dakota shall replace rip rap at the point where the relocated ditch reenters the prior existing ditch in a manner consistent with the onsite discussions on July 11, 2008, between Bill Kinghorn, President of Cyclone and Gary Engel of SDDOT. Cyclone shall be responsible for cleaning debris from the open portion of the ditch. The State of South Dakota shall be responsible for keeping the pipe culvert under the road free of debris and unplugged.

4. The State of South Dakota shall reimburse Cyclone for its attorneys fees incurred in dealing with the relocation of the ditch and the review and preparation of this Agreement and any related plats or documents.

Dated this 7<sup>th</sup> day of April, 2009.

STATE OF SOUTH DAKOTA  
DEPARTMENT OF  
TRANSPORTATION

BY: 

Its: SECRETARY



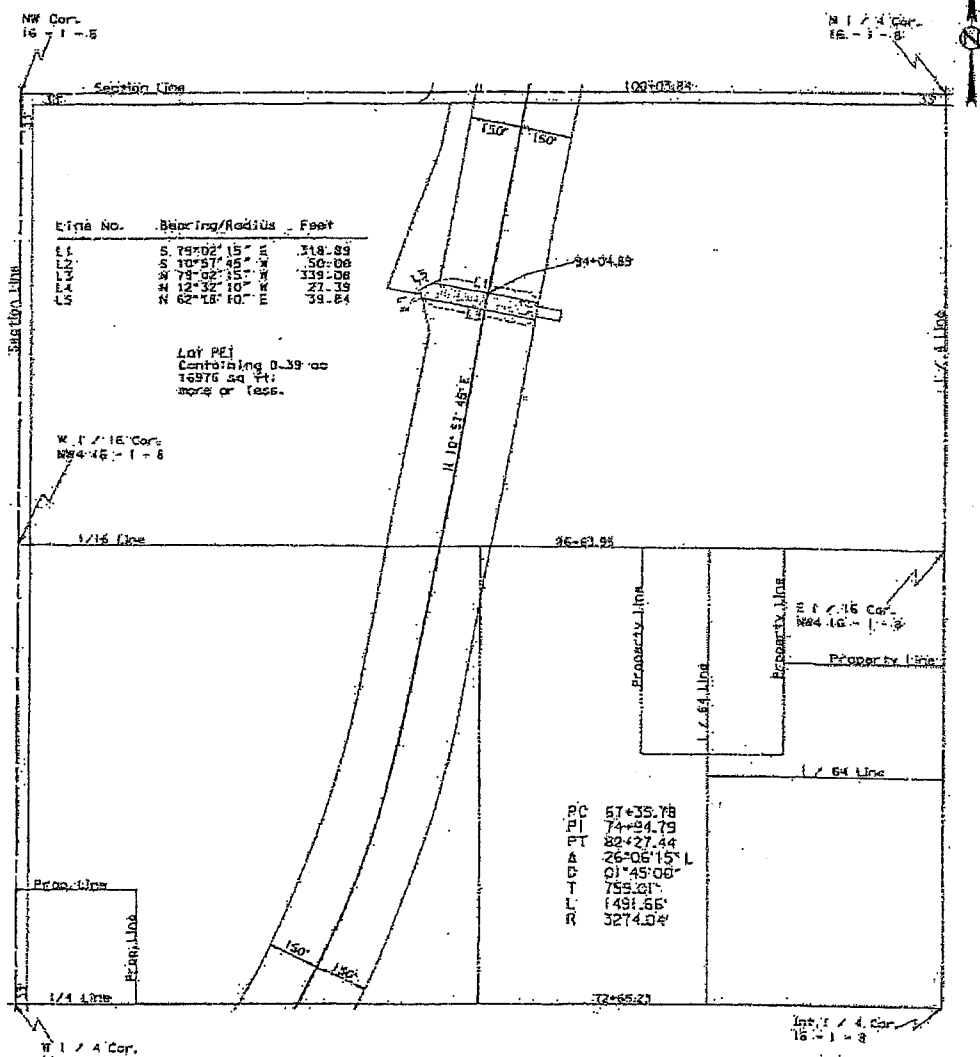


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 04/08/2009 12:45p 16.00  
 Pennington County, South Dakota  
 Donna M. Mayer Misc Real Est

Parcel 288

**PLAT OF LOT PE1**

Showing a permanent easement to be granted for irrigation placed in  
 Lot PE1 of N1/2 NW1/4 of Section 16 - Township 1 North -  
 Range 8 East of the 82nd E.  
 for construction of water No. N1 0235 50110  
 PENNINGTON COUNTY, SOUTH DAKOTA  
 Section 16 - 1 - 8



Drawn by: Donna M. Mayer Date: 03-23-09  
 Checked by: Michael Jordan Date: 03-23-09

**SURVEYOR'S CERTIFICATE**

I, Michael A. Jordan, Registered Land Surveyor, in and for the State of South Dakota, do hereby certify that  
 Dakota State Transportation Commission the tract of land as shown on this plat has been surveyed at my direction and  
 the tract of land shall be hereafter known by the lot number designated herein. The location and dimensions of the tract of land  
 as witness whereof, I have set my hand and seal this 19th day of November, A.D. 2008.  
 Registered Land Surveyor  
 Registration No. 393

State of South Dakota: Pennington County as #18413 & \$10.00  
 Filed for record the 19th day of Nov, A.D. 2008 at 11:02 AM M. this recorded in Book of Maps 11 of Page  
187 thereof.  
 Register of Deeds by Donna M. Mayer Deputy

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