

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

**IRRIGATION DITCH EASEMENT AND RIGHT-OF-WAY AGREEMENT BETWEEN
THE CYCLONE IRRIGATION DITCH COMPANY AND CITY OF RAPID CITY**

This irrigation ditch easement and right-of-way agreement (“Agreement”) is entered into this ____ day of _____, 2015, by and between Cyclone Ditch Irrigation Company of 5768 Sparrow Hawk Trail, Rapid City, SD 57703, a South Dakota corporation (“Cyclone Ditch”), and the City of Rapid City (“City”), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, South Dakota, 57701.

WHEREAS, Cyclone Ditch holds a prescriptive easement across the following described property for the operation of a ditch to convey water across the property for irrigation purposes:

SE1/4 of the SE1/4 of Section 16, Township 1 North (T1N), Range 8 East (R8E), Black Hills Meridian, Rapid City, Pennington County, South Dakota

(“the Property”); and

WHEREAS, the current owner of the Property intends to develop the Property as a residential development and to construct one street to be called Ping Drive that will cross Cyclone Ditch’s prescriptive easement; and

WHEREAS, the property owner intends to enclose Cyclone Ditch’s irrigation ditch in an underground pipe to the extent that it will be located beneath Ping Drive; and

WHEREAS, the property owner intends to construct Ping Drive in accordance with City standards and thereafter to dedicate Ping Drive to the City of Rapid City as public right of way; and

WHEREAS, the City anticipates that it will accept the property owner’s dedication of Ping Drive as public right of way and as a City street; and

WHEREAS, the purpose of this Agreement is to set forth the terms governing the maintenance, repair, and replacement of Cyclone Ditch’s irrigation ditch to the extent that it is located within City right-of-way.

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

1. The City agrees to maintain, repair and replace Cyclone Ditch's irrigation ditch to the extent it is located within public right of way accepted by the City. This obligation includes maintaining underground pipe which contains the irrigation ditch in a sound, useable condition and keeping the enclosed irrigation ditch within the right of way free of debris and unplugged. City and its designees shall have the right to enter upon Cyclone Ditch's prescriptive easement area and take such actions as are necessary for maintenance, repair or replacement of the irrigation ditch located within the public right-of-way. City's maintenance, repair, or replacement of the irrigation ditch within the public right-of-way shall be at the City's sole cost. The City's costs shall include any costs to remove or replace the City street and/or utilities if such removal and/or replacement is necessary to maintain the irrigation ditch.

2. The parties agree that Cyclone Ditch has the right of ingress and egress for access to the ditch to permit inspection, operation and maintenance of the irrigation ditch by Cyclone. This right does not affect the City's maintenance obligations within Section 1.

3. The rights, privileges, responsibilities, and obligations within this Agreement will remain until such time as Cyclone Ditch or its successors in interest cease to use the underground pipe for irrigation purposes, or until Cyclone Ditch or its successors provide a writing to the City releasing, in whole or in part, the City from its obligations in this Agreement.

4. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of the parties.

5. The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the laws of the State of South Dakota shall be controlling without regard to the principles of conflict of laws. Any legal action arising out of or relating to this Agreement shall be brought only in the Circuit Court for the State of South Dakota, Seventh Judicial Circuit located in Rapid City, Pennington County, South Dakota.

6. If the landowner is a corporation, it has the power to enter into this Agreement and its officers signing for it have full power and authority to do so.

[The remainder of this page is intentionally blank.]

Dated this _____ day of _____, 2015.

CITY OF RAPID CITY

Steve Allender, Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2015, 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 duly authorized to do so, executed the foregoing instrument for the purposes herein 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)

