

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

JRC
2-12-16

**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 4th day of February, 2016, 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 for the operation of a ditch to convey water across property for irrigation purposes; and

WHEREAS, Cyclone Ditch’s prescriptive easement crosses the following described property:

Tract 1 of the East Half (E1/2) 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 for residential development and to construct Ping Drive, a new street which will cross Cyclone Ditch’s prescriptive easement; and

WHEREAS, the property owner intends to enclose Cyclone Ditch’s irrigation ditch in an underground pipe beneath Ping Drive; and

WHEREAS, Cyclone Ditch’s prescriptive easement also crosses the following described right-of-way;

Jolly Lane Right-of-Way, approximately 10 feet north of the East Minnesota Street Right-of-Way located in Section 16, Township 1 North (T1N), Range 8 East (R8E), Black Hills Meridian, Rapid City, Pennington County, South Dakota; and

East Minnesota Street Right-of-Way, approximately 285 feet west of the Jolly Lane Right-of-Way located in Section 16 and Section 21, Township 1 North (T1N), Range 8 East (R8E), Black Hills Meridian, Rapid City, Pennington County, South Dakota.

WHEREAS, these crossings are adjacent to the Property and are currently enclosed in underground pipe; and

WHEREAS, Property owner also intends to make improvements to those sections of Jolly Lane and to East Minnesota Street that include the areas that intersect with Cyclone Ditch's prescriptive easement; and

WHEREAS, the property owner intends to construct Ping Drive, Jolly Lane, and East Minnesota Street (hereinafter "Streets") in accordance with City standards; and

WHEREAS, where the Streets are not currently public right of way, the property owner intends to dedicate Streets to the City of Rapid City as public right of way and the City anticipates that it will accept these dedications as public rights of way and as City streets; 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 within the Streets described above.

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 as part of the Streets described above. 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. If Cyclone Ditch or its successors in interest shall cease to use the underground pipe for irrigation purposes, then Cyclone Ditch or its successors shall be relieved of any obligations under this Agreement and the City's obligations to Cyclone Ditch or its successors under this Agreement shall cease, except that the City shall remain responsible for maintenance of the

public right of way, including the irrigation ditch and/or underground pipe that is located in the public right of way.

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, unless one party executes a written document that releases, in whole or in part, the other party from its obligations in this Agreement.

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.

Dated this _____ day of _____, 2016.

CITY OF RAPID CITY

Steve Allender, Mayor

ATTEST:

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 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)



