

**AN AGREEMENT BETWEEN THE CITY OF RAPID CITY AND THE HAWTHORNE
DITCH CO. FOR VACATION AND RELEASE OF IRRIGATION RIGHT OF WAY
ACROSS PORTIONS OF TRACT 1 AND 2 OF BRADSKY NO. 2 SUBDIVISION.**

This Agreement is made and entered into by and between the City of Rapid City (the "City"), a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, and Hawthorne Ditch Co. ("Hawthorne Ditch"), a South Dakota corporation, located at 23130 Radar Hill Road, Rapid City, South Dakota 57703.

RECITALS

WHEREAS, the City is doing drainage improvements adjacent to Tracts 1 and 2 of Bradsky No. 2 Subdivision; and

WHEREAS, the Hawthorne Ditch meanders across Tracts 1 and 2 of Bradsky No. 2 Subdivision; and

WHEREAS, the owners of Tracts 1 and 2 have agreed to donate the permanent easements the City needs to construct the drainage improvements if the City agrees to reroute the Hawthorne Ditch so it no longer meanders across their property; and

WHEREAS, the Hawthorne Ditch is willing to release its irrigation right of way across Tracts 1 and 2 if the City constructs a new irrigation ditch in conjunction with the City drainage project.

NOW THEREFORE, the parties hereby agree as follows:

1. The City agrees to construct, in conjunction with the project "Knollwood Drainage Outfall Elements 2 and 20," a new channel for the Hawthorne Ditch to replace the channel currently crossing Tracts 1 and 2 of Bradsky No.2 Subdivision. The new channel will be located along the southern and edge of these tracts. The City will also construct a crossing for the ditch where it intersects with the City's new drainage channel. The current Hawthorne Ditch is in an open channel. The City will place it in an underground pipe adjacent to these tracts. Once completed and accepted by Hawthorne Ditch, Hawthorne Ditch will have sole responsibility for the maintenance and care of the pipe and easement area.
2. The Hawthorne Ditch agrees to allow the City to use dirt from the City drainage/irrigation ditch project to fill in and grade over the current Hawthorne Ditch as it crosses these tracts. The sequence of construction will be dependent on the time of year. From April 1st to October 1st the City will coordinate construction so that it will not impact the ability of Hawthorne Ditch to provide service to its customers. Upon completion of the new drainage improvements and irrigation ditch, Hawthorne Ditch agrees to relinquish its rights to the original irrigation ditch channel by signing a release and vacation of irrigation right of way. The City will obtain from the landowners all necessary easements to secure Hawthorne Ditch's rights to the new irrigation ditch channel.

3. The City agrees to provide a two (2) year warranty from the date the project has been accepted by the City. During this period the City shall make, or cause to be made all needed repairs arising out of defective workmanship or materials. This provision does not cover any repairs necessitated by the actions of Hawthorne Ditch, third parties (other than the City and/or its agents and employees), or lack of maintenance once the new structure has been accepted by Hawthorne Ditch.

4. 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.

5. 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.

6. 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

HAWTHORNE DITCH CO.

Harold J. Bies
By: _____
Its: *President of Board*

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 21st day of December, 2009, before me, the undersigned officer, personally appeared Harold Bies, who acknowledged himself to be the Board President of Hawthorne Ditch Co., and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

Brenda Vespsted

Notary Public, State of South Dakota
My Commission Expires: 3/13/2015

[SEAL]

