FIRST AMENDMENT TO AGREEMENT BETWEEN THE CITY OF RAPID CITY
AND THE HAWTHORNE DITCH COMPANY FOR PURCHASE OF WATER RIGHTS

This First Amendment to the Agreement Between the City of Rapid City, a municipal
corporation, of 300 Sixth Street, Rapid City, SD 57701 (hereinafter the “City”), and The
Hawthorne Ditch Company, of 6500 Higgins Lane, Rapid City, SD 57703 (hereinafter
“Hawthorne”) is effective as of September 1, 2021.

WHEREAS, the parties previously entered into an Agreement for purchase of water rights
(the “Agreement”); and

WHEREAS, the parties desire to amend the terms of the Agreement; and

WHEREAS, the Agreement provided for sale of all water rights held by Hawthorne to be
sold to the City; and

WHEREAS, a shareholder of Hawthorne had a previous commitment to transfer a portion
of the water right held by Hawthorne to a third party; and

WHEREAS, the parties have agreed to jointly submit their applications through the City’s
consultant; and

WHEREAS, the parties have agreed to amend the agreement to reflect these
understandings.

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

1. Recitals. The recitals set forth above constitute an integral part of this First
Amendment and are incorporated herein by this reference as if fully set forth herein as agreements
of the parties.

2. Purpose. The parties agree that Paragraph 2 of the Agreement entitled “Purpose”
shall be modified to read in its entirety as follows:

Purpose and Understanding. The purpose of this Agreement is to set forth the terms
and conditions under which the City agrees to purchase the Water Rights described
below from Hawthorne. The parties have agreed that City shall submit
simultaneously two applications for transfer of water rights: the first transferring
the City Water described below from Hawthorne to the City, and the second
transferring the remaining Arrowhead Water from Hawthorne to Arrowhead, a
South Dakota nonprofit corporation, of 3675 Sheridan Lake Road, Rapid City, SD
57702.

3. Water Right. The parties agree that Paragraph 3 of the Agreement, entitled “Water
Right,” shall be modified to read in its entirety as follows:
Water Right. The Water Rights to be transferred are generally described as all Water Rights held by Hawthorne under the following:

South Dakota Vested Water Right License No. 2039-2 dated December 1, 1988, and as subsequently modified for utilizing water from the Hawthorne Ditch.

The Water Rights shall be divided into two portions as follows:

a. *Arrowhead Water.* That portion of the Water Rights attributable to the land owned by Black Hills Capital, LLC. The parties agree that the Arrowhead Water shall be determined by the Water Management Board's final action establishing the amount of water associated with the Black Hills Capital, LLC property.

b. *City Water.* All of the Water Rights less the Arrowhead Water.

4. **Consideration.** The parties agree that Paragraph 4 of the Agreement shall be amended to read as follows:

Consideration. The City will pay the following per acre-foot for the transferable City Water. The total consideration paid is dependent upon, and shall be calculated according to the amount of water approved by the South Dakota Water Management Board (the Board) for transfer for beneficial use by the City, or by final court order, should the Board's decision be appealed.

<table>
<thead>
<tr>
<th>Priority Date</th>
<th>Purchase Price ($/acre-foot)</th>
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<tbody>
<tr>
<td>July 12, 1886</td>
<td>$820.00/acre-foot</td>
</tr>
<tr>
<td>July 8, 1890</td>
<td>$768.75/acre-foot</td>
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<tr>
<td>May 21, 1896</td>
<td>$717.50/acre-foot</td>
</tr>
<tr>
<td>October 1, 1907</td>
<td>$691.88/acre-foot</td>
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<tr>
<td>July 2, 1973</td>
<td>$5.00/acre-foot</td>
</tr>
<tr>
<td>July 12, 1973</td>
<td>$5.00/acre-foot</td>
</tr>
</tbody>
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5. **Engineering Fees.** The parties agree that Paragraph 6 of the Agreement shall be amended to read as follows:

Engineering Fees. Hawthorne agrees to pay for one-half (½) of the transfer-related fees and professional services incurred by the City related to the transfer of the City Water. City agrees to invoice Hawthorne such amount upon completion of the transfer or election to terminate under Paragraph 7. Upon approval, Hawthorne may elect to offset its share of the engineering fees against the payment to be made by the City pursuant to Paragraph 5. The fees for the transfer of Arrowhead Water shall be reimbursed in full by Hawthorne. Hawthorne agrees to utilize the previously prepared Topical Report RSI-4001 by RESPEC titled "Hawthorne Ditch Company Water Volume for Water Rights Transfer", as amended or updated, at no cost to the City, in order to facilitate both transfers of the Water Rights.
6. **City Option to Cancel Transaction.** The parties agree that Paragraph 7 of the Agreement shall be amended to read as follows:

   **City Option to Cancel Transaction.** The City covenants and agrees to pursue purchase and transfer of the City Water unless or until it is clearly evident that the transfer will not be approved by the governing authorities, the Water Rights are not deemed valid, or the quantity is such that the City does not wish to pursue the transfer. At any such time, the City shall have the option to terminate this Agreement and cease proceedings related to the transfer. The City has hired the firm RESPEC to assist in the transfers of the Water Rights. RESPEC's independent judgment and engineering analysis shall be adequate justification for the City reaching the above conclusions. The City may also cease its involvement in the transfer of Arrowhead Water for the reasons stated above, with the exception of quantity of water, upon RESPEC's recommendation as described above.

7. **City Obligations.** The parties agree that Paragraph 10 of the Agreement shall be amended to include subparagraph f. as follows:

   f. The City shall instruct its consultant to separately track its time in preparing the two applications described above purposes of reimbursement as provided herein.

8. **Other Terms Unchanged.** The rest and remainder of the Agreement shall remain in full force and effect, unchanged, as it existed prior to this First Amendment. In the case of conflict of another portion of the Agreement not changed hereby with the amendments above, the amended paragraphs shall control.

9. **Counterparts.** This First Amendment may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one First Amendment.

   DATED this 2nd day of __________, 2021.

   THE HAWTHORNE DITCH COMPANY

   By __________________________
   Howard Rice, President
DATED this ___ day of ____________, 2021.

CITY OF RAPID CITY

__________________________
Mayor

__________________________
Finance Director

(seal)