

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND  
JENNER, LLC FOR TATANKA ROAD WATER MAIN EXTENSION**

This Agreement is made this 7 day of JANUARY, 2017, by and between the **CITY OF RAPID CITY**, a municipal corporation of the State of South Dakota (hereinafter the "City"), of 300 Sixth Street, Rapid City, SD 57701, and **JENNER, LLC** (hereinafter the "Owner"), of PO Box 3102, Rapid City, SD 57709-3102.

WHEREAS, Owner own certain real properties along the route of a proposed water main extension by the City; and

WHEREAS, Owner have agreed to pay for design and construction of the water main extension; and

WHEREAS, the parties desire to enter into this Agreement to reduce their mutual agreements to writing.

NOW THEREFORE, the parties hereby agree as follows:

1. Incorporation of Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.
2. Project Payment. Owner will pay for the design of the construction plans and for the construction of the water main. Payment for design and construction shall be made by the Owner prior to award of the project, as set forth below.
3. Representatives of the Parties. The City designates its Public Works Director to act on its behalf for purposes of carrying out its obligations and any agreements or consents described herein. The Owner designate Doug Jenner to act on their collective behalf.
4. Owner's Payments. The Owner shall be responsible for the following:
  - a. Owner shall pay for the design of the construction plans. The fee for design services shall be ten percent (10%) of the construction cost, as evidenced by the lowest responsible bid. Payment shall be made to the City Finance Office prior to award of the project to the lowest responsible bidder. No adjustment shall be made to design costs if the construction cost is altered by change order.
  - b. Owner shall pay for the construction cost of the project, less oversize costs. The construction cost shall be equal to the amount bid by the lowest responsible bidder. Owner shall pay to the City Finance Office an amount equal to the lowest responsible bid. Payment of such amount shall be made prior to award of the project.
  - c. Owner shall pay for all contract change orders that add to the total cost of the project. The City shall send an invoice to Owner following City Council approval of any such change order. Owner shall make payment to the City Finance Office within thirty (30) calendar days of each invoice's date.

5. Warranties of City.

- a. The parties agree that the oversize costs (8" to 12") is Ten Thousand Dollars (\$10,000). City shall reimburse Owner the oversize costs within 45 days after Owner has made payment of construction costs.
- b. City agrees to comply with all applicable statutes, ordinances, rules, regulations and other laws in construction of the water main.
- c. All work by City shall be done in a workmanlike manner.
- d. Following execution of the final contract change order, the City shall reimburse Jenner, LLC any amounts overpaid if the final project cost is less than the bid amount. Payment shall be made to Jenner, LLC within forty-five (45) calendar days of the City Council approval of the final contract change order.

6. Survival of Representations and Warranties. All of the representations and warranties of the parties contained in this Agreement shall survive the date of this Agreement and the execution of the easement documents contemplated by this Agreement.

7. Default. City shall have the right to maintain and exercise all legal and equitable rights available to it under the laws of the State of South Dakota for Smiths' breach of this Agreement, including the right to specific performance.

8. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

9. Time. Time is of the essence of this Agreement.

10. Effect of Agreement. This Agreement shall be binding in all respects upon and shall inure to the benefit of City and Owner and their respective successors and assigns.

11. Integration. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

12. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

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

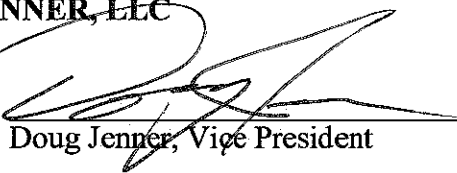
14. Severability. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

15. Construction. This Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

16. Headings. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

17. Governing Law and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the Circuit Court of Pennington County, State of South Dakota.

JENNER, LLC

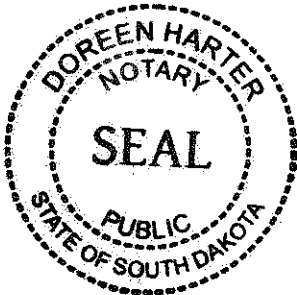
By  \_\_\_\_\_  
Doug Jenner, Vice President

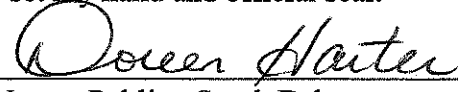
State of South Dakota    )  
  ) ss.  
County of Pennington    )

On this the 9<sup>th</sup> day of January, 2017, before me, the undersigned officer personally appeared Doug Jenner, who acknowledged himself to be the Vice President of Jenner, LLC, a South Dakota corporation, and that he, as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Vice President.

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

(seal)



 \_\_\_\_\_  
Notary Public - South Dakota  
My Commission Expires 12-19-2022

**CITY OF RAPID CITY**

\_\_\_\_\_  
Mayor

Attest

\_\_\_\_\_  
Finance Officer

State of South Dakota    )  
  ) ss.  
County of Pennington    )

On this the \_\_\_\_ day of \_\_\_\_\_, 2017 before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer 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 instrument 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.

(seal)

\_\_\_\_\_  
Notary Public - South Dakota  
My Commission Expires \_\_\_\_\_