

**AGREEMENT BETWEEN RAPID CITY, SOUTH DAKOTA AND  
 BERRY DUNN MCNEIL & PARKER, LLC dba BERRYDUNN**

This AGREEMENT, made and entered into this, the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Rapid City, a State of South Dakota City, whose location is 300 Sixth Street, Rapid City, South Dakota 57701, hereinafter referred to as the "THE CITY," party of the first part, and Berry Dunn McNeil & Parker, LLC dba BerryDunn, with an office located at 100 Middle Street, Portland, ME 04101, hereinafter referred to as the "CONSULTANT," party of the second part.

WITNESSETH: That the CONSULTANT does hereby agree with the CITY for the consideration named herein, to perform the services stipulated in this AGREEMENT.

**1. CONSULTANT'S SERVICES**

A. The CONSULTANT, on behalf of the CITY, shall perform and carry out in a professional manner components essential for Full-Time Project Management Services for Enterprise Resource Planning (ERP) system implementation.

B. The Scope of Work shall be defined by the CITY'S Request for Full-Time Project Management Services, and CONSULTANT'S response entitled, BerryDunn ERP Project Management Services, dated, December 19, 2013. The Request for Full-Time Project Management Services and CONSULTANT'S Statement of Work are incorporated herein by reference.

C. Compensation for work provided by CONSULTANT will be as follows:

**Full-Time Project Management**

Services	Cost
<ul style="list-style-type: none"> <li>• Project Management 32 hours per week, (1,728 hours) two weeks onsite per month average, depending on project activities. Remaining time will be offsite.               <ul style="list-style-type: none"> <li>○ Lead Weekly Project Team Meetings</li> <li>○ Review of Implementation Vendor Deliverables</li> <li>○ Bi-Weekly Project Status Reports and On-Site Project Management Activities</li> <li>○ User Acceptance Testing (UAT)</li> <li>○ Training Oversight</li> </ul> </li> </ul>	\$328,320
Services	Cost
<b>Total</b>	<b>\$328,320*</b>

\*does not include expenses.

In the table below we have summarized a per-trip travel expense amount to assist the City in planning for travel expenses. Expenses will be billed to the City on a monthly basis as incurred.

**Travel Expense Estimates**

<b>Expense Category</b>	<b>Price</b>	<b>Units per trip</b>	<b>Total</b>
Airfare	\$580	1 ticket	\$580
Hotel	\$90	3 nights	\$270
Rental Car	\$70	4 days	\$280
Per Diem (per Federal GSA rates)	\$51	4 days	\$204
<b>Estimated per onsite trip cost (assumes average 3 days onsite)</b>			<b>\$1,334</b>
<b>Total estimate of travel expenses based on 40* on-site trips</b>			<b>\$53,360</b>

BerryDunn will progress bill the City on a monthly basis against each deliverable. Travel expenses will be billed on a monthly basis as incurred.

**2. THE CITY SHALL PROVIDE**

- A. Access to pertinent information and available data requested by the CONSULTANT.
- B. Certain assumptions that may be necessary to the CONSULTANT.
- C. Attendance and participation at all scheduled meetings and work sessions.
- D. Timely review of draft and preliminary materials submitted by the CONSULTANT.

**3. DOCUMENTS**

All documents and services provided by the CONSULTANT pursuant to this AGREEMENT are instruments of service with respect to this project. Upon receipt of payment for services due the CONSULTANT'S, documents and material developed by the CONSULTANT under this AGREEMENT are the property of the CITY. The CITY shall have the right to re-use documents and computer software on extensions of the project or for other projects; such re-use shall be at the CITY'S sole risk and without liability or legal exposure to the CONSULTANT.

**4. NONDISCLOSURE OF PROPRIETARY INFORMATION**

The CONSULTANT shall consider all information provided by the CITY and all reports, studies, and other documents resulting from the CONSULTANT'S performance of this service to be proprietary unless such information is available from public sources. The CONSULTANT shall not publish or disclose proprietary information for any purpose other than the performance of the services without the prior written authorization of the CITY or in response to legal process. The CONSULTANT shall maintain all originals in the CONSULTANT'S files for a period of not less than five years from the final report and shall provide the CITY access to and the right to examine and copy information contained in the files pertaining to the services. In the rights of access, examination, and copying

thereunder shall continue until any litigation, appeals, claims, or arbitration shall have been finally disposed of.

#### 5. CHANGES AND ADDITIONS

A. It shall be the responsibility of the CONSULTANT to notify the CITY, in writing, of any necessary modifications or additions in the Scope of this AGREEMENT. Compensation for changes or additions in the Scope of this AGREEMENT will be negotiated and approved by the CITY in writing.

B. It is understood and agreed to by both the CITY and the CONSULTANT that such modifications or additions to this AGREEMENT shall be made only by the full execution of the CITY'S standard contract change order form. Furthermore, it is understood and agreed by both parties that any work done by the CONSULTANT on such modification or addition to this AGREEMENT prior to the CITY'S execution of its standard contract change order form shall be at the total risk of the CONSULTANT and said work may not be compensated by the CITY.

#### 6. ADDITIONAL SERVICES

The CITY, at its discretion, may request additional services. When directed by the CITY, in writing, the CONSULTANT shall perform additional services, associated with this project, which are outside the original scope of services. Compensation for these additional services will be based on current billing rates plus reasonable travel expenses. The CITY shall approve the scope, number of hours, and fee schedule for such services with the CONSULTANT before any additional work commences.

#### 7. NOTICE

Any notice, demand, or request required by or made pursuant to this AGREEMENT shall be deemed properly made if personally delivered in writing or deposited in the United States mail, postage prepaid, to the representative specified below or as otherwise designated in writing and mutually agreed. However, any notice of suspension or termination pursuant to paragraph 9 hereof, if mailed, shall be sent by United States certified mail, postage prepaid, return receipt requested and shall not become effective until the date of receipt. Nothing contained in this Article shall be construed to restrict the transmission or routine communications between representatives of the CONSULTANT and the CITY.

A. The CITY'S Representative's will be the "Finance Officer", as otherwise designated in writing: Pauline Sumption, Finance Officer, 300 Sixth Street, Rapid City, SD 57701.

B. The CONSULTANT'S Representative shall be Timothy F. Masse, Principal, or as otherwise designated in writing and accepted by the CITY in writing: Nothing contained in this Article shall be construed to restrict the transmission or routine communications between representative(s) of the CONSULTANT and the CITY.

## 8. MANNER OF PAYMENT

A. The CONSULTANT shall furnish the CITY with timely progress invoices each month for services rendered to date for each project phase. The terms of payment will be net forty-five (45) days.

B. Interest can be charged at the rate of one percent (1%) per month for any past due payments.

C. Should any statement be the subject of a legitimate dispute between the parties, no interest shall apply to any amounts not paid by the CITY because of said dispute; CITY shall pay all amounts not included in the dispute.

## 9. TERMINATION OR SUSPENSION OF CONTRACT

A. The obligation to continue services under this AGREEMENT may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

B. The CITY shall have the right to terminate or suspend performance of services under this AGREEMENT as of the date the CONSULTANT receives written notice thereof or on a later scheduled date acceptable to the CITY. In the event the CITY, in its sole discretion and at its option, terminates or suspends the CONSULTANT'S services under this AGREEMENT, the CITY shall pay the CONSULTANT for all services performed to the date of the CONSULTANT'S receipt of the written termination or suspension notice, or the later scheduled date acceptable to the CITY, whichever applies. The CONSULTANT shall be entitled to receive only the fair value of services rendered hereunder prior to the effective date of such termination or suspension without penalty, termination, profit or overhead expenses of any kind. Upon restart of a suspended project, equitable adjustment may be made to compensation for remobilization of the project.

The CONSULTANT shall be entitled to receive only the fair value of services rendered hereunder prior to the effective date of such termination or suspension without penalty, termination, profit or overhead expenses of any kind. Upon restart of a suspended project, equitable adjustment may be made to compensation for remobilization of the project.

## 10. ASSIGNMENT

Neither the CITY nor the CONSULTANT shall assign or transfer their right or obligations in the AGREEMENT without consent of the other; such consent shall not be unreasonably withheld. Consent to assign or otherwise transfer the rights or obligations of this AGREEMENT shall not be construed to relieve the CONSULTANT of any responsibility for the fulfillment of this AGREEMENT.

## 11. INSURANCE AND INDEMNITY

The CONSULTANT shall purchase and maintain insurance coverage. Insurances shall cover all employees while performing any work incidental to the performance of the agreement between the CITY and the CONSULTANT.

12. ETHICS IN PUBLIC CONTRACTING

The CONSULTANT certifies that their proposal is made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Contractor, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred with any public employee having official responsibility for this procurement transaction nor have they received any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

13. SEVERABILITY

If any part, term, or provision of this AGREEMENT, shall be found by the Court to be legally invalid or unenforceable, then such provision or portion thereof, shall be performed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of any contract document shall not affect the validity of any other provision or portion of the contract document.

14. AGREEMENT CONSTRUED UNDER SOUTH DAKOTA LAWS

The AGREEMENT is to be executed and performed in the State of South Dakota and shall be construed in accordance with the laws of the South Dakota.

15. ENTIRE UNDERSTANDING

This AGREEMENT comprises the entire understanding between the parties and cannot be modified, altered or amended, except in writing and signed by all parties.

IN WITNESS WHEREOF, the parties hereto have executed and sealed this AGREEMENT as of the day and year first above written.

**CITY OF RAPID CITY, SOUTH DAKOTA**

**BERRY DUNN MCNEIL &  
PARKER, LLC dba BERRYDUNN**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Sam Kooiker, Mayor

Timothy F. Masse, Principal

ATTEST:

ATTEST:

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_