

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND JLD
PROPERTIES LLC., FOR CONSTRUCTION OF AN OVERSIZE WATER
TRANSMISSION MAIN.**

THIS AGREEMENT is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the "City," and JLD Properties, LLC, located at 1513 E. Philadelphia Street, Rapid City, South Dakota, 57703, herein after referred to as the "Landowner."

WHEREAS, the Landowner has insufficient water pressure to meet required fire flows to its property at 1513 E. Philadelphia Street; and

WHEREAS, the Landowner needs to construct a new water main to serve its property which will provide sufficient pressure to meet the required fire flows; and

WHEREAS, it would be in the best interests of the City to have the water main extended in a manner and location that would facilitate future expansion in the area; and

WHEREAS, the City has requested that the Landowner construct a 16" water transmission main in E. Philadelphia Street in general accordance with the Utility Master Plan; and

WHEREAS, the Landowner could legally construct an 8" water main which would provide sufficient fire flows to serve its property in a location that would be less expensive than the location requested by the City; and

WHEREAS, the estimated cost of constructing the water main in the location requested by the Landowner is \$50,000; and

WHEREAS, the Landowner has had preliminary engineering completed on the 8" water main; and

WHEREAS, the estimated cost of constructing the water main in the location requested by the City is \$100,000; and

WHEREAS, in consideration of the increased cost of constructing the water main in the manner and location the City has requested, the parties have agreed to share the cost of designing and constructing the water main; and

WHEREAS, the Landowner has submitted preliminary cost estimates for the requested 16" water transmission main, and for the 8" water main. Said estimates shall be the basis of this agreement and are attached hereto and incorporated herein as Exhibit "A;" and

WHEREAS, additional engineering costs for design for the 16" water transmission main within the East Philadelphia Street Right-of-Way will be paid for by the City of Rapid City under a separate contract with the design engineer.

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions herein set forth, it is agreed by the parties as follows:

1. The Landowner and City have each entered into separate agreements with the design engineer. The parties will each be responsible for paying the design engineer per the terms of their respective agreements. The City will have final approval of any design decisions related to the 16" water transmission main.
2. The City agrees to prepare the contract documents for the project.
3. The City agrees to advertise and bid the project as well as manage the construction component of the project.
4. The project construction costs are to be split between the Developer and the City. The Developer shall pay the City 50% for its share of the construction costs, not to exceed \$55,000.00. The City will notify the Landowner when the project has been bid. The Landowner shall deposit \$55,000.00 with the City Finance Office, for use by the City in constructing this project, at least Seven (7) days prior to the award of the construction contract. The parties acknowledge that the City cannot legally award the construction contract if it does not have the funds needed for payment of the contract in its possession at the time the contract is awarded. If the lowest responsible bid for construction of the project exceeds \$110,000, the City will need to identify funds prior to awarding the contract for construction. If the City is unable to identify additional funds sufficient to pay for construction of the project, or if the Landowner fails to remit the required funds to the City within the time frame specified, the City may reject all bids. If the City rejects all bids, the parties respective rights and obligations under this agreement shall be terminated. If the parties rights and obligations under this agreement are terminated, the City will have Thirty (30) days to return any Landowner funds in its possession. The Landowner may then proceed with its own project. The City will incur no liability to the Landowner for failure to award the construction contract.
5. The City will pay the contractor for all work associated with constructing the water main. Upon completion of the project and its acceptance by the City, the City will determine the final total cost of the project. The final total cost will not include any of the City's design fees and will be limited to the total cost of constructing the water main, including any change orders. If the final total cost of construction is less than \$110,000.00, the City will remit to the Landowner any funds in excess of the Landowner's 50% share of the total project costs. These funds shall be remitted within Sixty (60) days of the City's final acceptance of the project.
6. The 16" water transmission main contemplated by this agreement is a public improvement and shall belong solely to the City. Any future maintenance or expansion of the main shall be the responsibility of the City.
7. In the event that any section(s), or provision(s) 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(s) of this agreement if it can be given effect without the invalid section(s) or provision(s).
8. 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 law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this

agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

9. The parties agree that this writing constitutes the entire agreement between them and that there are no other oral or collateral agreements or understandings of any kind or character except those contained herein. No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

Dated this 20 of MAY, 2009.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

JLD Properties, LLC.

Jeffrey Devine
Jeff Devine

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

On this the ____ day of _____, 2009, before me, the undersigned officer, personally appeared Alan Hanks and Jim 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 to do so, executed the foregoing instrument for the purposes therein contained.

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

Notary Public

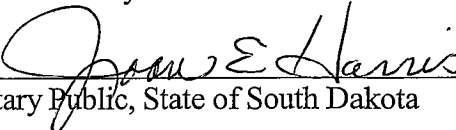
(SEAL)

My Commission Expires:

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

On this 20 day of May, 2009, before me, the undersigned officer, personally appeared Johnny Devine, who acknowledged himself to be the Owner of JLD Properties, LLC. 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.



Notary Public, State of South Dakota

[SEAL]

My Commission Expires:

11-03-2010

EXHIBIT A

**PROJECT NAME: J&J Truck and Auto Body - 16" Water
Main Extension in East Philadelphia
PROJECT NUMBER: SSW08-1776**

LET DATE: (TYPE DATE)

LOW BID AMOUNT: \$0.00

ITEM NO.	STD. BID ITEM NO.	DESCRIPTION OF ITEM	UNIT	QTY (EST)	ENGINEER'S ESTIMATE		(LOW BIDDER)	
					UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
1	A00001	CONTRACTOR MOBILIZATION	LS	1.00	\$4,500.00	\$4,500.00		\$0.00
2	D00111	6" PVC WATER MAIN	LF	10.00	\$32.00	\$320.00		\$0.00
3	D00130	16" C905-DR25 PVC WATER MAIN	LF	700.00	\$42.16	\$29,512.00		\$0.00
4	D00199	6" X 6" X 6" TEE	EA	1.00	\$376.10	\$376.10		\$0.00
5	D00217	16" X 16" X 6" TEE	EA	2.00	\$1,252.34	\$2,504.68		\$0.00
6	D00239.1	16" X 16" X 16" TAPPING TEE	EA	1.00	\$10,000.00	\$10,000.00		\$0.00
7	D00304	16" MJ PLUG	EA	1.00	\$532.69	\$532.69		\$0.00
8	D00307.1	6" POST INDICATOR VALVE	EA	1.00	\$960.00	\$960.00		\$0.00
9	D00312	16" GATE VALVE W/BOX	EA	2.00	\$5,960.78	\$11,921.56		\$0.00
10	D00334	FIRE HYDRANT W/AUX VALVE, BOX & LEAD	EA	2.00	\$3,280.50	\$6,561.00		\$0.00

11	D00391	CATHODIC PROTECTION	LS	1.00	\$4,200.00	\$4,200.00		\$0.00
12	H00011	SAWING, ASPHALT PAVEMENT	LF	756.00	\$3.55	\$2,683.80		\$0.00
13	H00022	REMOVE ASPHALT CONCRETE PAVEMENT (10' x 340')	SY	378.00	\$2.70	\$1,020.60		\$0.00
14	H00028	REMOVE, STOCKPILE, AND REPLACE GRAVEL SURFACING (320' x 20')	SY	715.00	\$4.11	\$2,938.65		\$0.00
15	I00012	AGGREGATE BASE COURSE (378 SY@5")	T	107.00	\$20.23	\$2,164.61		\$0.00
16	I00018	GRAVEL CUSHION (64 SY@6")	T	22.00	\$24.58	\$540.76		\$0.00
17	I00019	GRAVEL SURFACING	T	42.00	\$15.98	\$671.16		\$0.00
18	I00084	PCC PAVEMENT, 8" NONREINFORCED PANEL REPLACEMENT (4 ea 12x12 panels)	SY	64.00	\$63.38	\$4,056.32		\$0.00
19	J01010	EROSION AND SEDIMENT CONTROL PLAN	LS	1.00	\$500.00	\$500.00		\$0.00
20	J01014	EROSION AND SEDIMENT CONTROLS	LS	1.00	\$100.00	\$100.00		\$0.00
21	K50005	SEEDING, FERTILIZING, MULCHING	SY	0.00	\$1.02	\$0.00		\$0.00
22	M00062	TRAFFIC CONTROL, Cambell / Philidelphia intersection	LS	1.00	\$8,000.00	\$8,000.00		\$0.00
23	M00062.1	TRAFFIC CONTROL, Philidelphia Street	LS	1.00	\$500.00	\$500.00		\$0.00
24	M00066	TRAFFIC CONTROL PLAN PREPARATION	LS	1.00	\$500.00	\$500.00		\$0.00
25		10% Contingency		1.00	\$9,506.39	\$9,506.39		\$0.00
TOTAL						\$104,570.32		\$0.00

**PROJECT NAME: J&J Truck and Auto Body - 8" Water Main
Extension Through Private
PROJECT NUMBER: SSW08-1776**

LET DATE: (TYPE DATE)

LOW BID AMOUNT: \$0.00

					ENGINEER'S ESTIMATE		(LOW BIDDER)	
ITEM NO.	STD. BID ITEM NO.	DESCRIPTION OF ITEM	UNIT	QTY (EST)	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
1	A00001	CONTRACTOR MOBILIZATION	LS	1.00	\$2,000.00	\$2,000.00		\$0.00
2	D00114	8" PVC WATER MAIN	LF	753.00	\$28.58	\$21,520.74		\$0.00
3	D00201	8" X 8" X 6" TEE	EA	3.00	\$406.00	\$1,218.00		\$0.00
4	D00252	8" 22.5 DEGREE BEND	EA	2.00	\$286.20	\$572.40		\$0.00
5	D00254	8" 90 DEGREE BEND	EA	3.00	\$363.50	\$1,090.50		\$0.00
6	D00300	8" MJ PLUG	EA	1.00	\$276.22	\$276.22		\$0.00
7	D00307.1	6" POST INDICATOR VALVE	EA	1.00	\$960.00	\$960.00		\$0.00
8	D00308	8" GATE VALVE W/ BOX	EA	3.00	\$1,165.50	\$3,496.50		\$0.00
9	D00334	FIRE HYDRANT W/AUX VALVE, BOX & LEAD	EA	2.00	\$3,280.50	\$6,561.00		\$0.00
10	D00360	CONNECT TO EXISTING WATER MAIN	EA	1.00	\$1,402.14	\$1,402.14		\$0.00

11	H00011	SAWING, ASPHALT PAVEMENT	LF	60.00	\$3.55	\$213.00		\$0.00
12	H00021	REMOVE ASPHALT SURFACING	SF	900.00	\$1.37	\$1,233.00		\$0.00
13	H00028	REMOVE, SALVAGE, AND REPLACE GRAVEL SURFACING	SY	1,177.00	\$4.11	\$4,837.47		\$0.00
14	H00037	REMOVE & RESET CHAIN LINK FENCE	LF	24.00	\$2.01	\$48.24		\$0.00
15	H00043.1	REMOVE & RESET LANDSCAPE AGGREGATE	SY	78.00	\$3.00	\$234.00		\$0.00
16	I00012	AGGREGATE BASE COURSE	T	22.50	\$20.23	\$455.18		\$0.00
17	I00019	GRAVEL SURFACING	T	42.00	\$15.98	\$671.16		\$0.00
18	I00027	ASPHALT CONCRETE COMPOSITE	T	22.50	\$83.11	\$1,869.98		\$0.00
19	J01014	WATER POLLUTION AND EROSION CONTROL	LS	1.00	\$800.00	\$800.00		\$0.00
20	K50005	SEEDING, FERTILIZING, MULCHING	SY	200.00	\$1.02	\$204.00		\$0.00
21	M00062	TRAFFIC CONTROL, Philadelphia Street	LS	1.00	\$500.00	\$500.00		\$0.00
22	M00066	TRAFFIC CONTROL PLAN PREPARATION, SMALL PROJECT	LS	1.00	\$100.00	\$100.00		\$0.00
TOTAL						\$50,263.52		\$0.00

EXHIBIT "A"

PW052609-10

SCALE 1" = 200'



EAST PHILADELPHIA STREET
16" WATER TRANSMISSION MAIN EXTENSION
PROJECT NO. W09-1793 **CIP #50760**