

**AGREEMENT AND RELEASE ENTERED BETWEEN FATTER BOYS LLC AND
THE CITY OF RAPID CITY**

THIS AGREEMENT AND RELEASE is made and entered into on this 31 day of July, 2014, between the **CITY OF RAPID CITY**, a municipal corporation, operating under the laws of the State of South Dakota, with a principle location of 300 Sixth Street, Rapid City, Pennington County, South Dakota, 57701-2724, (hereafter "City"), and **FATTER BOYS, LLC. d/b/a The Firehouse**, of 610 Main Street, Rapid City, Pennington County, South Dakota, 57701, (hereafter the "Landowner"). The City and the Fatter Boys will be collectively referred to as the Parties.

RECITATIONS

WHEREAS, Landowner currently maintains business operations d/b/a the Firehouse Brewing Company in the City of Rapid City, and maintains business locations at 616 & 620 Main Street, Rapid City, Pennington County, South Dakota, and

WHEREAS, on or about January 7, 2014, a valve connecting the water service line serving these locations to the City's primary water service line failed, causing water to escape and these failed valves were replaced by Landowner at Landowner's expense as mandated by the Rapid City Municipal Code Section 13.06.080, and

WHEREAS, following completion of the repairs to Landowner's service line, the City determined other valves which operate the City's mainline water service line in this area of town may suffer from the same type of corrosion that caused Landowner's service line to fail and it is prudent to replace all valves in this area in order to avoid future mainline failures, and

WHEREAS, as the City has determined that because it will perform significant excavation and repair work to replace the mainline valves, it is prudent to also replace and/or the service line valves connecting to the mainline during this process to avoid further complications which will require duplication of excavation and repair efforts in the future; and

WHEREAS, repair and/or replacement of these mainline tap valves may not be necessary at the current time, but the City desires to proceed with replacement nonetheless, the City will assume the costs of repair and/or replacement of these valves although the general rule would normally place the burden of these costs on the Landowner; and

WHEREAS, in the interest of fairness and the appropriate distribution of costs, the City agrees to reimburse a portion of the costs expended by Landowner to repair the failed

valve as the City will be assuming such costs for all other valves in the repair of its own mainline water valves and will avoid the need to replace Landowners valve during this project; and

WHEREAS, to achieve the interests stated above the Parties have agreed to enter this Agreement and Release.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual obligations, promises, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree and state as follows:

1. **CITY TO REIMBURSE LANDOWNER:** The City agrees to reimburse a portion of the costs Landowner incurred in replacing the failed service line valve, in the amount of Fifteen Thousand Dollars and Zero Cents (\$15,000.00) to be made through a onetime lump sum payment.
2. **RELEASE OF PRIOR CLAIMS AND LIABILITIES:** In exchange for the City's reimbursement of costs stated in Clause 1, Landowner agrees to fully and forever release and discharge the City, its officers, employees, and representatives, from any potential existing or future claims, damages, causes of action, or requests for compensation, arising out of or as a consequence of the failed valve and/or and ancillary damage resulting therefrom.
3. **CITY NOT LIABLE FOR PAST DAMAGES:** The Parties have entered this Agreement absent an official determination as to the cause of the failed valves and the City's actions of entering this Agreement shall not be interpreted as an admission of any liability whatsoever by or on behalf of the City and that any liability is expressly denied.
4. **MERGER:** This Agreement shall represent the entire Agreement entered between the Parties and no prior or subsequent oral statements, promises, or assurances, which are not incorporated in this Agreement, shall be binding on the Parties.
5. **SEVERABILITY:** If any provision of this Agreement is held unenforceable, then such provision will be modified to reflect the Parties' intention, and all remaining provisions of this Agreement shall remain in full force and effect.

- 6. **ENFORCEMENT:** Failure by one party to require performance of any provision of this Agreement, 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 Contract constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
- 7. **GOVERNING LAW:** This Agreement shall be interpreted under the laws of the State of South Dakota. The proper venue for any litigation arising hereunder shall be the 7th Judicial Circuit Courts in Pennington County, South Dakota.

IN WITNESS WHEREOF, the Parties to this Agreement execute the same for the purposes stated herein.

City of Rapid City

Mayor Sam Kooiker

ATTEST:

Finance Officer; Pauline Sumption

Fatter Boys, LLC

[Handwritten Signature], Pres.

STATE OF SOUTH DAKOTA)
)
COUNTY OF PENNINGTON)

On this 31st day of July, 2014, before me Jeanette Flood, the undersigned officer, personally appeared Robert Fuchs, who certifies himself/herself and an officer of the company identified herein and has sufficient authority to enter this agreement for the purposes described herein, and duly acknowledged to me that he/she executed the same for the purpose therein contained.

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

Jeanette Flood

NOTARY PUBLIC

My commission expires: 7-8-2019

