DO NOT ACCEPT UNLESS THIS CHECK IS PRINTED WITH A COLOR BACKGROUND, CONTAINS A VOID PANTOGRAPH, MICROPRINTING FACE AND BACK, UV FIBERS AND A WATERMARK ON THE REVERSE SIDE Vendor Check Number



WARRANT OFFICE OF THE CITY CLERK CITY OF GILLETTE, WYOMING 82716 GENERAL FUND THIS WARRANT IS PAYABLE THROUGH FIRST INTERSTATE BANK GILLETTE, WYOMING 82716 99-64/1023

11/24/2015 00212736

VOID 180 DAYS FROM DATE OF ISSUE

I HEREBY CERTIFY THIS WARRANT IS ISSUED PURSUANT TO LAW AND IS WITHIN THE DEBT LIMIT OF THE CITY OF GILLETTE

\$16,536.40

Pay Sixteen Thousand Five Hundred Thirty Six Dollars and 40 cents ***

To The Order Of FIRST AMERICAN TITLE PO BOX 9 **GILLETTE, WY 827170009** 00212736

AGREEMENT REGARDING PERMANENT WATER LINE AND GENERAL UTILITY EASEMENT

The Parties to this Agreement Regarding Permanent Water Line And General Utility Easement (hereinafter the "Agreement") are the City of Gillette, Wyoming (the "City"), acting by and through its undersigned and authorized representatives, and S & S Concrete (S & S), acting by and through its undersigned Officers. The City and S & S may individually be referred to as a "Party", and collectively as the "Parties".

Recitals

- A. The City is participating with Campbell County, Wyoming and has adopted the Gillette Regional Joint Powers Agreement (JPA). The City is improving its water system under the Gillette Regional Water Supply Project (hereinafter the "Madison Project"). The City is desirous of causing to be constructed and installed the Gillette Regional Water Supply Project eighteen inch (18") blending line which requires the acquisition of an easement across certain real property and improvements owned by S & S.
- **B.** The City will cause to be constructed an eighteen inch (18") underground PVC pipeline which will cross certain real property and improvements owned by S & S which will entail surveying, soil evaluation, entry of construction equipment, trenching, placement of the eighteen inch (18") blending line, covering the line, and the reclamation of the surface over the line.
- C. In order to complete all of the above construction activities and the installation of the pipeline, the City is requesting the execution of a permanent water line and general utility easement across the real property and improvements of S & S having a legal description as identified on the attached Exhibit A (hereinafter the "S & S Land").
- **D.** The Parties have entered into negotiations regarding the granting of the Permanent Water Line And General Utility Easement (hereinafter the "Easement") in order to allow the City to install the blending line across the S &S Land.
 - E. In order to memorialize the agreement of the Parties, the Parties agree as follows.

The Agreement

1. Granting of Permanent Water Line and General Utility Easement by S & S Concrete in Favor of the City of Gillette, Wyoming. At Closing, and subject to approval by the City Council of Gillette, Wyoming, S & S shall execute the Permanent Water Line and General Utility Easement attached hereto as Exhibit B with all Exhibits attached to the same.

Within the Easement, S & S shall grant the City all of the rights as provided therein, subject to the obligations of the Parties as provided within the Easement and within this Agreement.

- 2. <u>Consideration for Grant of Easement.</u> The City will pay in immediately available funds to S & S at the time of Closing (as defined herein) for the Easement the total sum of \$16,286.40 (the "Consideration"), which has been calculated as follows:
 - a. Parcel B-2-1D (as numbered by the City of Gillette) for Permanent Water Line and General Utility Easement consisting of 32,456 sq. ft. calculated at \$.32 per sq. ft. equaling the sum of \$10,385.92.
 - b. Parcel B-2-1C (as numbered by the City of Gillette) for Permanent Water Line and General Utility Easement consisting of 18,439 sq. ft. calculated at \$.32 per sq. ft. equaling the sum of \$5,900.48.
- 3. Obligations of the City in Maintaining the Easement and Reclamation. The City will restore the surface of the S & S Land to a condition substantially equal to its condition immediately prior to the disturbance of the same for the installation of the pipeline within the Easement. The City shall restore any improvements constructed on or below the S & S Land following the initial disturbance and installation of the pipeline which are damaged or destroyed by future activities of the City or its contractors and subcontractors within the Easement to their condition immediately before the redisturbance activities.
- S & S agrees it shall not construct any permanent structures on the Easement, however may construct or cause to be constructed concrete or asphalt paving, gravel, or other improvements necessary to utilize the land within the Easement.
- 4. Access During Construction Activities. During the construction and installation of the pipeline within the Easement, the City will provide appropriate alternative access for the benefit of S & S, its agents, contractors, customers, and others if the existing access to Warlow Drive adjacent to the Easement is damaged or blocked. The alternative access will be of sufficient size, quality and servicing to accommodate trucks and other vehicles which access the S & S Land in the day-to-day operations conducted by S & S.
- 5. <u>Temporary Fencing and Security During Construction.</u> At the request of S & S, the City will provide temporary fencing around the Easement during the construction as necessary for safety and security purposes. Should any existing fence of S & S be damaged or destroyed, the City shall cause the same to be repaired or replaced following the installation of the pipeline and construction related activities being completed within the Easement.
- 6. Representations and Warranties of the City Regarding Consideration Being Paid. The City represents and warrants the Consideration being paid to S & S at \$.32 per square foot is equal to the highest amount paid by the City for comparable purchases of Easements by the City for the Madison Blending Line from third parties. No other Blending Line landowners have been paid money compensation which exceeds such rate.

7. Approval of Agreement by City of Gillette City Council; Closing. This Agreement, when fully executed by the Parties, will be contingent upon approval by the City Council of the City of Gillette, Wyoming. Representatives of the City shall provide this Agreement to the Gillette City Council for approval. The Parties agree to proceed to Closing and the execution of all documents and the payment of the Consideration within thirty (30) calendar days following the final approval of this Agreement by the Gillette City Council. However, in the event the Gillette City Council fails to approve this Agreement on or before the 28th day of February, 2016, then either Party may terminate this Agreement, in writing, and the same shall have no further force and effect.

Closing shall be held at the offices of First American Title located at 406 S. Gillette Avenue, Gillette, Wyoming 82716 at a date and time as agreed upon by the Parties. At Closing, the Parties shall sign all documents and take such actions as are necessary to place into effect the terms of this Agreement, including the execution of the Easement attached hereto as Exhibit B by S & S and the payment of the Consideration. The City shall pay all Closing costs and title insurance.

8. Miscellanous Terms and Conditions.

- **8.1** Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.
- 8.2 Obligations Run with the Land. The obligations of the City of Gillette and S & S Concrete as provided within this Agreement shall run with the land of S & S Concrete as identified on the attached Exhibit A.
- 8.3 <u>Captions and Sections.</u> Captions and Sections contained within this Agreement are for reference purposes, only, and are not intended to describe, interpret, define, or limit the scope of, extent, or intent of this Agreement or any provisions herein. Whenever the terms or context of this Agreement require or provide, the gender of all words herein will include the masculine, feminine and neuter, and the number of all words herein will include the singular and the plural.
- 8.4 No Waiver. No waiver of any failure by a Party to comply with or perform any provision, covenant or condition of this Agreement shall be valid unless such waiver is in writing and signed by the other Party, nor shall any such waiver be deemed to be a waiver of any proceeding or succeeding breach of the same or any other provision, covenant, or condition. Failure on the part of either Party to complain of any act or failure to act of the other Party hereunder, irrespective of how long such failure continues, shall not constitute a waiver of such first Party's rights hereunder or any future failure to comply or perform under this Agreement.

- **8.5** Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of Wyoming.
- 8.6 Notices. Any notice, request, instruction or other document or communication to be given hereunder shall be in writing and shall be deemed to have been duly given: (a) if mailed, three (3) calendar days following the mailing of such notice in any general or branch office of the United States Postal Service, enclosed in a registered or certified postage prepaid envelope; (b) if sent by facsimile transmission, when so sent and receipt acknowledged by an appropriate facsimile receipt; or (c) if sent by other means, when actually received by the Party to which such notice has been directed, in each case at the respective addresses or numbers set forth below or such other address or number as such Party may have fixed by notice; provided, however, that in the event of delivery under clauses (b) or (c) (otherwise than by receipted hand delivery), such notice shall be promptly followed by notice pursuant to clause (a):

If to City:

City of Gillette

Attn: R. Douglas Dumbrill, Esq.

P.O. Box 3003 Gillette, WY 82717

Tele: 307.686.5262

Email: ddumbrill@gillettewy.gov

If to S & S:

S&S Concrete

Attn: Loretta L. Manning, President

P.O. Box 1867 Gillette, WY 82717

Tele: 307.686.5659

Email: <u>Imanning@ssbuildersllc.com</u>

With copies (which shall not constitute notice) to:

Law Firm of J. Stan Wolfe, P.C. Attn: J. Stan Wolfe, Esq.

222 S. Gillette Avenue, Suite 500

Gillette, WY 82716 Tele: 307.682.2151 Fax: 307.686.3721

Email: wolfelaw@ycn.com

- 8.7 <u>Day or Days.</u> The term "day" or "days" shall refer to calendar days unless otherwise expressly provided herein.
- 8.8 Attorneys' Fees and Costs. In the event an attorney is retained to enforce the terms of this Agreement, whether or not suit is brought, the prevailing Party shall be entitled to recover all reasonable attorneys' fees, costs, costs of investigation, and other expenses incurred in connection therewith, including any appeal. Each of the Parties agrees that should litigation be instituted regarding the terms, conditions, or interpretation of this Agreement, such action shall be brought and venue and jurisdiction shall lie with the appropriate Court of the Sixth Judicial District located in Gillette, Campbell County, Wyoming. If the prevailing Party recovers judgment in any such proceeding or action, such costs, expenses, and attorneys' fees shall be included as a part of the judgment.

- 8.9 Entire Agreement; Incorporation of Recitals. This Agreement sets forth and constitutes the entire agreement between the Parties, and supersedes any prior or contemporaneous agreements, whether written or oral, between the City of Gillette, Wyoming, and S & S Concrete relating to the subject matter of this Agreement. There are no other representations, warranties, covenants, promises, agreements, arrangements, or understandings, written or oral, express or implied, between the Parties with respect to the subject matter of this Agreement that are not set forth within this Agreement. The Recitals are incorporated by reference within this Agreement.
- Further Assurances. Each Party agrees to execute such additional documents and take such other actions as the other Party may reasonably request to carry out the purposes of this Agreement.
- 8.11 **Amendments.** No amendment to any provision of this Agreement shall be valid or effective unless such amendment is in writing and signed by all Parties.
- No Rule of Construction. The Parties acknowledge this Agreement was initially prepared by J. Stan Wolfe of the Law Firm of J. Stan Wolfe, P.C., the attorney for S & S Concrete, solely as a convenience, and that both Parties and their counsel hereto have read it and have fully negotiated all of the terms of this Agreement. The Parties agree no rule of construction shall apply to this Agreement which construes any language, whether ambiguous, unclear or otherwise, in favor of or against any Party.
- Time of the Essence. Time is and shall be of the essence of each and 8.13 every term and provision of this Agreement.

WHEREAS, the Parties have executed this Agreement Regarding Permanent Water Line

And General Utility Easement on this	day of November, 2015.		
CITY OF GILLETTE, WYOMING	S & S CONCRETE		
By: R. Douglas Dumbrill Its: Land Consultant Date Signed //-20-/5	By: Loretta L. Manning Its: President/Director Date Signed		
	Ву:		
	Its:		
	Date Signed		

The Agreement Regarding Permanent Water Line And General Utility Easement has been approved as to form and content by counsel for S & S Concrete as identified herein.

LAW FIRM OF J. STAN WOLFE, P.C.

By: J. Stan Wolfe
Attorney for S & S Concrete
Date Signed

15-344.5

LEGAL DESCRIPTION (Parcel #1)

A permanent utility easement located in Lot 1-C, Block 2, of the Resubdivision of Lot 1, Block 2, Energy Park Subdivision in the NE¼SE¼ of Section 23, T.50N., R.72W. of the 6th Principal Meridian, Campbell County, Wyoming, where said easement runs across, adjoins, or touches the aforementioned tract, being more particularly described as follows:

Commencing at the Center one quarter corner of Section 23, being monumented by a Brass Cap, thence S89°47'14"E along the North line of Energy Park Subdivision, 1st Addition, a distance of 1493.37 feet to the Northwest corner of Lot 1-C, of the Resubdivision of Lot 1, Block 2, Energy Park Subdivision; thence S00°12'46"W along the line West line of Lot 1-C of said Block 2, a distance of 20.00 feet to the Point of Beginning and the Southerly line of an existing 20 foot wide utility easement parallel and contiguous to the North line of said Lot 1-C as shown on the plat of the Resubdivision of Lot 1, Block 2, Energy Park Subdivision, 1st filing in Book 6 of Plats, page 28; thence S89°47'14"E along said Southerly easement line, a distance of 399.76 feet to the East line of Lot 1-C of said Block 2; thence S00°12'46"W along said East line a distance of 48.76 feet to the Northerly line of an existing overhead power line easement as shown on the plat of the Resubdivision of Lot 1, Block 2, Energy Park Subdivision, 1st filing in Book 6 of Plats, page 28; thence N89°01'41"W along said overhead power line easement a distance of 399.82 feet to the West line of said Lot 1-C; thence N00°12'46"E along said West line, a distance of 43.46 feet to the Southerly line of said utility easement and the Point of Beginning, containing 18,438.6 square feet more or less, subject to easements either of record or apparent on the ground, and all according to Exhibit A (Figure B-2-1C) attached hereto.

The sidelines of said permanent easement are to be shortened or extended to prevent gaps or overlaps.

All areas are computed at ground.

All measured distances are grid. For conversion to ground, multiply by 1.00027048

LEGAL DESCRIPTION (Parcel #2)

A permanent utility easement located in Lot 1-D, Block 2, of the Resubdivision of Lot 1, Block 2, Energy Park Subdivision in the NE¼SE¼ of Section 23, T.50N., R.72W. E, 6th Principal Meridian, Campbell County, Wyoming, where said easement runs across, adjoins, or touches the aforementioned tract, being more particularly described as follows:

Commencing at the Center one quarter corner of Section 23, being monumented by a Brass Cap, thence S89°47'14"E along the North line of Energy Park Subdivision, 1st Addition, a distance of 1893.13 feet to the Northwest corner of Lot 1-D, of the Resubdivision of Lot 1, Block 2, Energy Park Subdivision; thence S00°12'46"W along the line West line of Lot 1-D of said Block 2, a distance of 20.00 feet to the Point of Beginning and the Southerly line of an existing 20 foot wide utility easement parallel and contiguous to the North line of said Lot 1-D as shown on the plat of the Resubdivision of Lot 1, Block 2, Energy Park Subdivision, 1st filing in Book 6 of Plats, page 28; thence S89°47'14"E along said Southerly easement line, a distance of 631.08 feet to the East line of said Lot 1-D, Block 2; thence S00°27'13"W along said East line a distance of 57.15 feet to the Northerly line of an existing overhead power line easement as shown on the plat of the Resubdivision of Lot 1, Block 2, Energy Park Subdivision, 1st filing in Book 6 of Plats, page 28; thence N89°01'41"W along said overhead power line easement a distance of 631.10 feet to the West line of said Lot 1-D; thence N00°12'46"E along said West line, a distance of 48.76 feet to the Southerly line of said utility easement and the Point of Beginning, containing 32,455.4 square feet more or less, subject to easements either of record or apparent on the ground, and all according to Exhibit A (Figure B-2-1D) attached hereto.

The sidelines of said permanent easement are to be shortened or extended to prevent gaps or overlaps.

All areas are computed at ground.

All measured distances are grid. For conversion to ground, multiply by 1.00027048

The basis of bearings for this legal and attached Exhibit A is Wyoming State Plane Grid, NAD83, East zone, (4901)

PERMANENT WATER LINE AND GENERAL UTILITY EASEMENT S & S Concrete B-2-1C, B-2-10

S & S Concrete of P.O. Box 1867, Gillette, WY 82717 hereinafter GRANTOR, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged does Grant, Convey, and Warrant to the City of Gillette, Wyoming, a municipal corporation and city of the first class, of 201 E. 5th St, P.O. Box 3003, Gillette, Wyoming, 82717 hereinafter GRANTEE, a Permanent Water Line and General Utility Easement in and to the following described tract of land:

LEGAL DESCRIPTION (Parcel #1)

A permanent utility easement located in Lot 1-C, Block 2, of the Resubdivision of Lot 1, Block 2, Energy Park Subdivision in the NE¼SE¼ of Section 23, T.50N., R.72W. of the 6th Principal Meridian, Campbell County, Wyoming, where said easement runs across, adjoins, or touches the aforementioned tract, being more particularly described as follows:

Commencing at the Center one quarter corner of Section 23, being monumented by a Brass Cap, thence S89°47'14"E along the North line of Energy Park Subdivision, 1st Addition, a distance of 1493.37 feet to the Northwest corner of Lot 1-C, of the Resubdivision of Lot 1, Block 2, Energy Park Subdivision; thence S00°12'46"W along the line West line of Lot 1-C of said Block 2, a distance of 20.00 feet to the Point of Beginning and the Southerly line of an existing 20 foot wide utility easement parallel and contiguous to the North line of said Lot 1-C as shown on the plat of the Resubdivision of Lot 1, Block 2, Energy Park Subdivision, 1st filing in Book 6 of Plats, page 28; thence S89°47'14"E along said Southerly easement line, a distance of 399.76 feet to the East line of Lot 1-C of said Block 2; thence S00°12'46"W along said East line a distance of 48.76 feet to the Northerly line of an existing overhead power line easement as shown on the plat of the Resubdivision of Lot 1, Block 2, Energy Park Subdivision, 1st filing in Book 6 of Plats, page 28; thence N89°01'41"W along said overhead power line easement a distance of 399.82 feet to the West line of said Lot 1-C; thence N00°12'46"E along said West line, a distance of 43.46 feet to the Southerly line of said utility easement and the Point of Beginning, containing 18,438.6 square feet more or less, subject to easements either of record or apparent on the ground, and all according to Exhibit A (Figure B-2-1C) attached hereto.

The sidelines of said permanent easement are to be shortened or extended to prevent gaps or overlaps.

All areas are computed at ground.

All measured distances are grid. For conversion to ground, multiply by 1.00027048

The basis of bearings for this legal and attached Exhibit A is Wyoming State Plane Grid, NAD83, East zone, (4901)

LEGAL DESCRIPTION (Parcel #2)

A permanent utility easement located in Lot 1-D, Block 2, of the Resubdivision of Lot 1, Block 2, Energy Park Subdivision in the NE¼SE¼ of Section 23, T.50N., R.72W. E, 6th Principal Meridian, Campbell County, Wyoming, where said easement runs across, adjoins, or touches the aforementioned tract, being more particularly described as follows:

Commencing at the Center one quarter corner of Section 23, being monumented by a Brass Cap, thence S89°47'14"E along the North line of Energy Park Subdivision, 1st Addition, a distance of 1893.13 feet to the Northwest corner of Lot 1-D, of the Resubdivision of Lot 1, Block 2, Energy Park Subdivision; thence S00°12'46"W along the line West line of Lot 1-D of said Block 2, a distance of 20.00 feet to the Point of Beginning and the Southerly line of an existing 20 foot wide utility easement parallel and contiguous to the North line of said Lot 1-D as shown on the plat of the Resubdivision of Lot 1, Block 2, Energy Park Subdivision, 1st filing in Book 6 of Plats, page 28; thence S89°47'14"E along said Southerly easement line, a distance of 631.08 feet to the East line of said Lot 1-D, Block 2; thence S00°27'13"W along said East line a distance of 57.15 feet to the Northerly line of an existing overhead power line easement as shown on the plat of the Resubdivision of Lot 1, Block 2, Energy Park Subdivision, 1st filing in Book 6 of Plats, page 28; thence N89°01'41"W along said overhead power line easement a distance of 631.10 feet to the West line of said Lot 1-D; thence N00°12'46"E along said West line, a distance of 48.76 feet to the Southerly line of said utility easement and the Point of Beginning, containing 32,455.4 square feet more or less, subject to easements either of record or apparent on the ground, and all according to Exhibit A (Figure B-2-1D) attached hereto.

The sidelines of said permanent easement are to be shortened or extended to prevent gaps or overlaps.

All areas are computed at ground.

All measured distances are grid. For conversion to ground, multiply by 1.00027048

The basis of bearings for this legal and attached Exhibit A is Wyoming State Plane Grid, NAD83, East zone, (4901)

The easement is further shown and described by the drawings attached as Exhibit "A".

Said easement is subject to any right-of-way and or easements, reservations and encumbrances of record.

Said easement unto GRANTEE, its successors, licensees and assigns to have and to hold forever in the lands described above for a waterline and general utility easement over, under, upon and within which to construct, maintain, service, reconstruct, operate, and locate at any time and from time to time any public utilities, such as, for purpose of illustration but not limitation, water pipelines and sanitary sewer lines, storm water drains and sewers, electrical lines, natural gas lines, telephone lines, cable television and other communication lines and other utilities to be determined in the sole discretion of the GRANTEE.

At the conclusion of initial construction and any reconstruction or repair activities within the easement, GRANTEE shall restore the surface and any improvements damaged and any adjacent areas disturbed during the construction or repair activities to a condition substantially equal to the condition of the disturbed or damaged area before construction within the easement.

GRANTOR:

DV.			
BY:(Signature)			
TITLE:			
S & S Concrete (Please Print)		•	
STATE OF)		
STATE OF) ss.		
County of)		
The above and foregoing	instrument	was acknowledge	d before me by
	, the		of S & S Concrete this
day of	, 2015, who	states that their sig	gnature hereto is the free
and voluntary act of S & S Con-	crete.		
		Notary Public	
My Commission Expires:			



