

**AGREEMENT \_\_\_\_\_****AGREEMENT FOR PROFESSIONAL SERVICES FOR FEDERAL AID****PROJECT NUMBER P 1669(42) PCEMS 5191****Fifth Street from Columbus Street through Main Avenue**

This AGREEMENT entered into by and between the South Dakota Department of Transportation, by and through its Transportation Commission, hereinafter referred to as STATE, and the CITY of Rapid City, hereinafter referred to as CITY.

WITNESSETH:

WHEREAS, STATE desires to cooperate with CITY to construct Federal Aid Project Number P 1669(42) PCEMS 5191 within Rapid City, South Dakota, hereinafter referred to as PROJECT consisting of Grading, Curb & Gutter, Storm Sewer, Striping, Lighting, ROW and PCCP Surfacing on Fifth Street from Columbus to Omaha.

WHEREAS, CITY has agreed to be responsible for PROJECT design engineering and STATE has agreed to participate in design engineering costs.

NOW, THEREFORE, STATE and CITY agree as follows:

A. Scope of Services:

City agrees to furnish engineering services as follows:

1. CITY agrees to provide an experienced engineering staff with the necessary assistants required to properly test materials and such other design engineering services as are deemed necessary by STATE to assure compliance with PROJECT Plans and Specifications.
2. CITY shall provide inspection for PROJECT as construction progresses, and shall provide advisory services to Construction Contractor, as required. CITY shall prepare change orders, reports, pay estimate, and calculations to determine item quantities. Those will be submitted through STATE's Rapid City Area Engineer for approval.
3. CITY agrees that the results from the performance of its duties under this AGREEMENT may be inspected by STATE Supervisors as the STATE deems necessary. No employee, officer, or agent of the grantee shall participate in selection or in the award of administration or a contract supported by Federal funds if a conflict of interest, real, or apparent, would be involved as required by OMB Circular A-102, Text of the Common Rule, effective March 11, 1988, Paragraph 7.

4. CITY may provide engineering services through force account, utilizing qualified CITY employees or may procure services from a qualified Consultant Engineering Firm. If CITY elects to contract with a consultant Engineering Firm, the process used by CITY for procurement will conform to the principles outlined in Federal-Aid Policy Guide, Chapter I-FHWA, DOT, Subchapter B-Payment Procedures, Part 172-Administration of Engineering and Design Related Service Contracts on December 9, 1991 and U.S. Office of Management and Budget, Circular A-102, Test of Common Rule, effective March 11, 1988. CITY and STATE will jointly approve the Engineering Consultant Firm selected. The contract between the CITY and consultant will contain all required provisions and elements of the contract between the CITY and STATE.
5. STATE may provide the materials testing and other materials quality controls.

B. Compensation

1. STATE agrees that an amount not to exceed One Hundred Twenty-One Thousand Dollars (\$121,000) for PROJECT, shall be paid by STATE to CITY for PROJECT Resident Engineering and may include the testing of materials. Allowable costs used in this contract will be determined in accordance with OMB A-87.
2. CITY shall send periodic vouchers to STATE no more than once per month, requesting reimbursement of allowable costs.
3. No costs in excess of \$121,000 for PROJECT can be reimbursed to CITY by STATE unless a written Addendum to this AGREEMENT is mutually agreed to, and executed by both STATE and CITY.

C. Schedule of Hourly Rate and Estimated Costs:

1. Exhibit 1, a detailed estimate of costs required for supervision of PROJECT design, is attached to, and hereby made a part of, this AGREEMENT.
2. Payment for Resident Engineering Services to CITY shall be paid on an Hourly Rate Basis in accordance with the schedule of Hourly Rates contained in Exhibit 1. No provisions for profit or other increment above cost is intended. Actual salary rate of each specific employee assigned to the project and actual fringe benefit rate at the time the services are provided will be eligible for Federal Participation and are understood to be incorporated in the Exhibit 1 rate schedule.
3. Reimbursement for Transportation, Subsistence and Lodging will be based in accordance with CITY's current policies.

D. Civil Rights:

1. CITY shall abide by the requirement of Title VI of the Civil Rights Act of 1964. These requirements are attached hereto as Exhibit 2, and hereby made a part of the AGREEMENT.

E. Records Retention and Audit:

1. The CITY shall keep accounting records clearly identified with the AGREEMENT. All charges shall be supported by documents that evidence, in detail, the nature and propriety of charges.
2. Upon reasonable notice, CITY will allow Auditors of the STATE to audit all records of CITY related to this AGREEMENT. These records shall be clearly identified and readily accessible. All records shall be kept for a period of three (3) years after the date of final payment under this AGREEMENT.
3. If CITY expends Three Hundred Thousand Dollars (\$300,000) or more in federal funds during any CITY fiscal year covered, in whole or in part, under this AGREEMENT, then CITY shall be subject to the single agency audit requirements of the U. S. Office of Management and Budget (OMB) Circular A-133. If CITY expends less than \$300,000 in federal funds during any CITY fiscal year, the STATE may perform a more limited program or performance audit related to the completion of AGREEMENT objectives, the allowability of services or costs and adherence to AGREEMENT provisions.

F. Termination

1. If this AGREEMENT is terminated pursuant to Paragraph F.2 prior to completion of work to be performed under the AGREEMENT, CITY shall be paid a reasonable value for the work performed or services rendered, demobilization expense and contract closing costs upon tendering to STATE the work products produced up to the time of termination. The total compensation will be determined by mutual agreement between STATE and CITY.
2. This AGREEMENT may be unilaterally terminated by either party upon ten (10) days notice of termination. Such notice shall be served by first class U.S. mail, postage prepaid. If this AGREEMENT is so terminated, CITY shall be paid as provided for in Paragraph F.1. This AGREEMENT shall begin on September 15, 2000, and shall terminate on or before December 31, 2003, or under its own terms upon project completion and final acceptance of this project.

3. In the event the services of the CITY are terminated by the DOT for fault on the part of the CITY, the agreement shall be null and void, and, the DOT shall be entitled to recover payments made to the CITY on the work which is the cause of the at-fault termination. The CITY shall be paid only for work satisfactorily performed and delivered to the DOT up to the date of termination. After audit of the CITY'S actual costs to the date of termination and after determination by the ENGINEER of the amount of work satisfactorily performed, the ENGINEER shall determine the amount to be paid to the CITY.

G. Hold Harmless:

The CITY agrees to hold harmless and indemnify the STATE, its officers, agents, and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of the negligence, misconduct, error or omission of the CITY or any officer, agent or employee of the CITY performing services hereunder. This section does not require the CITY to be responsible for or defend against claims or damages arising solely from acts or omissions of the STATE, its officers, agents or employees.

H. Code of Conduct:

CITY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CITY, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for CITY, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach of violation of the warranty, STATE shall have the right to annul this contract without liability, or, in its discretion, deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage brokerage fee, gift, contingent fee and prosecute under applicable criminal law.

I. ADA:

The CITY agrees to provide services in compliance with the American with Disabilities Act of 1990.

J. Disputes:

All disputes which may arise as the quality and acceptability of services; manner of performance; or rate of progress as to the completion of the AGREEMENT shall be decided by the Secretary of the South Dakota Department of Transportation.

K. Clean Air Act, Executive Order 11738, and EPA Regulations

The CITY stipulates that any facility to be utilized in the performance of this contract is not listed, on the date of contract execution, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities Pursuant to 40 CFR 15.20. The CITY agrees to comply with sections 306 and 508 of the Clean Air Act, Executive Order 11738, and EPA regulations. The CITY shall promptly notify the DOT of the receipt of any communication from the Director, Office of Federal activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

This AGREEMENT shall commence on September 15, 2000.

IN WITNESS WHEREOF, the parties here to have caused the AGREEMENT to be executed by their respective and duly authorized officers on the day and year first written above.

CITY OF RAPID CITY

SOUTH DAKOTA DEPARTMENT OF  
TRANSPORTATION  
TRANSPORTATION COMMISSION

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

BY: \_\_\_\_\_  
Program Manager

ATTEST

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Clerk/Auditor

\_\_\_\_\_  
Assistant Attorney General

**FEDERAL-AID URBAN SYSTEMS PROJECT  
P1669(42) FIFTH STREET FROM COLUMBUS THRU MAIN STREET  
GRADING/CURB & GUTTER/PCC PAVEMENT/STORM SEWER**

**EXHIBIT I**

LINE ITEM	DESCRIPTION	ESTIMATED DAYS & TRIPS	HOURS & MIL	RATES	EXTENDED COST
<b>A PERSONNEL COSTS</b>					
	Division Manager	20 Days x 4 Hrs		\$30.88	\$2,470.40
	Project Manager	200 Days x 4 Hrs		\$26.19	\$20,952.00
	Project Engineer	50 Days x 4 Hrs		\$25.68	\$5,136.00
	Sr. Engrg. Technician	200 Days x 8 Hrs		\$18.89	\$30,224.00
		100 Days x 4 Hrs/OT		\$28.34	\$11,334.00
	Survey Crew Chief	0 Days x 8 Hrs		\$15.99	\$0.00
		0 Days x 4 Hrs/OT		\$23.99	\$0.00
	Engineering Technician	0 Days x 8 Hrs		\$13.05	\$0.00
		0 Days x 4 Hrs/OT		\$19.58	\$0.00
	Engineering Technician	60 Days x 8 Hrs		\$14.56	\$6,988.80
		15 Days x 4 Hrs/OT		\$21.84	\$1,310.40
	Admin. Secretary	15 Days x 8 Hrs		\$15.71	\$1,885.20
	Subtotal				\$80,300.80
	Fringe Benefits @ 45.5%				\$36,536.86
	<b>TOTAL PERSONNEL COSTS</b>				<b>\$116,837.66</b>
<b>B TRANSPORTATION COSTS</b>					
	Division Manager	20 Trips x 10 Miles		\$0.24	\$48.00
	Project Manager	200 Trips x 10 Miles		\$0.24	\$480.00
	Project Engineer	50 Trips x 10 Miles		\$0.24	\$120.00
	Sr. Engrg. Technician	600 Trips x 10 Miles		\$0.24	\$1,440.00
	Engineering Technicians	120 Trips x 10 Miles		\$0.24	\$288.00
	Survey Crew	0 Trips x 10 Miles		\$0.24	\$0.00
	<b>TOTAL TRANSPORTATION COSTS</b>				<b>\$2,376.00</b>
<b>C COMMUNICATION/REPRODUCTION COSTS</b>					
	Telephone Charges	6 Months Service		\$50.00	\$300.00
	Reproduce Documents	300 @ 5 Copies Each		\$0.20	\$300.00
	<b>TOTAL COMMUNICATION/REPRODUCTION COSTS</b>				<b>\$600.00</b>
<b>D CONSTRUCTION MATERIALS COSTS</b>					
	Construction Stakes	150 Bundles of 50		\$7.50	\$1,125.00
	Miscellaneous Hardware	Lump Sum			\$61.34
	Testing by State Personnel				\$0.00
	<b>TOTAL CONSTRUCTION MATERIALS COSTS</b>				<b>\$1,186.34</b>
	<b>GRAND TOTAL</b>				<b>\$121,000.00</b>

**FEDERAL-AID URBAN SYSTEMS PROJECT**  
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## EXHIBIT TWO

### CITY ASSURANCE WITH REGARD TO THE CIVIL RIGHTS ACT OF 1964 AND U.S. DEPARTMENT OF TRANSPORTATION, 49 C.F.R., PART 121

During the performance of this AGREEMENT CITY and any subcontractors, for themselves, their assignees and successors in interest (hereinafter referred to as the "contractor"), agree as follows:

1. **Compliance with Regulations:** The consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
4. **Information and Reports:** The contractor shall provide all Information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the State Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - A. withholding of payments to the contractor under the contract until the contractor complies, and/or
  - B. cancellation, termination or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor shall include the provision of this paragraph 2 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the State Department of Transportation or the Federal Highway Administration may direct as a means of enforcing however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.