

**AGREEMENT FOR A  
FEDERAL-AID ENHANCEMENT PROJECT  
P OENH(131), PCN H107 – CITY OF RAPID CITY**

AGREEMENT NO. \_\_\_\_\_

**WHEREAS**, the DEPARTMENT OF TRANSPORTATION acting through the South Dakota Transportation Commission, hereinafter referred to as **DOT**, concurs in the proposal with the City of Rapid City, hereinafter referred to as **SPONSOR**, for the enhancement project identified as South Dakota, Federal Aid Construction Project Number P OENH(131), PCN H107, hereinafter designated as **PROJECT**, further described as follows:

Design and construction of a Bike Path and Landscaping on the North Side of Omaha Street from East Blvd to West of Cross Street in Rapid City, South Dakota.

**WHEREAS, SPONSOR** wishes to proceed with **PROJECT** using Federal Enhancement funds with work to begin in 2004;

**WHEREAS, PROJECT** costs are estimated at \$707,000 for engineering, construction, and materials.

**NOW THEREFORE, SPONSOR and DOT** hereby agree:

**I. MAINTENANCE**

Maintenance of **PROJECT** shall be the sole obligation and responsibility of **SPONSOR**. **SPONSOR** shall enact such ordinances and resolutions as are necessary to properly fulfill its maintenance responsibilities.

**II. PLANS, SPECIFICATIONS AND ESTIMATES**

**SPONSOR** will provide **DOT** with final **PROJECT** plans, specifications and estimates for **DOT** review and approval. The **PROJECT** cannot be advertised for bids until approval is given from **DOT**.

The plans shall be designed in accordance with AASHTO Standards if applicable. Specifications to be used are the latest edition of the SD Department of Transportation Standard Specifications for Roads and Bridges. Any special conditions not covered by the Standard Specifications should be addressed using special provisions or plan notes. Testing shall follow the latest edition of the Enhancement Materials Manual.

**SPONSOR** may request recommendations or assistance from the **DOT** regarding materials information and design parameters.

#### IV. STRUCTURE DESIGN

- A. Bridge design shall be in accordance with the current AASHTO Standards except as modified by DOT design practices.
- B. Structures other than bridges and box culverts shall be designed in accordance with the various AASHTO standards, guides and manuals current at the time this contract takes effect.

#### V. RIGHT-OF-WAY AND EASEMENT ACQUISITION

Prior to advertising the **PROJECT** for bids, **SPONSOR** must:

- A. Provide certification and documentation that right of way was obtained in conformance to "The Uniform Assistance and Real Property Acquisition Policies Act of 1970" P.L. 91-646 as amended. The acquiring agency shall submit documentation to **DOT** that:
  - 1. Either all right-of-way clearance, utility and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed for proper coordination with the physical construction schedules. Where it is determined that the completion of such work is not feasible in advance of the project

construction, notification should be provided in the bid proposals identifying the work being completed concurrently with the highway construction.

2. That all individuals and families have been relocated to decent, safe, and sanitary housing or the agency has made available to relocatees adequate replacement housing in accordance with the provisions of the current FHWA directives covering the administration of the Highway Relocation Assistance Program (49 CRF Part 24) and that one of the following has application:
  - a. All necessary rights-of-way, including legal and physical possession and control of access rights, have been acquired. Trial or appeal of cases may be pending in court, but legal possession has been obtained. There may be some improvements remaining on the right-of-way, but all occupants have vacated the lands and improvements.
  - b. Although all necessary rights-of-way required for the **PROJECT** have not been acquired, the right to occupy and use all rights-of-way required for the **PROJECT** have been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained, but right of entry has been obtained; the occupants of all the lands and improvements have vacated.
  - c. The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with the title 49, Code of Federal Regulations, Part 24, Subpart C.
3. Advises that right-of-way has been acquired or will be acquired in accordance with the current FHWA directives covering the acquisition of real property or that acquisition of right-of-way is not required.

4. Advises that the steps relative to relocation advisory assistance and payments as required by the current FHWA directives covering the administration of the Highway Relocation Assistance Program have been completed or that they are not required.

B. Or, Certify to DOT that no right-of-way or easements are necessary for **PROJECT**.

## VI. UTILITIES

**SPONSOR** shall submit a resolution certifying that all utility companies have been notified of the **PROJECT** and will be relocated if required. Utility relocation costs will be the responsibility of **SPONSOR**.

## VII. ENVIRONMENTAL CLEARANCES

- A. **SPONSOR** will be responsible for obtaining all necessary **PROJECT** environmental clearances and permits from the various agencies as listed in Appendix A.
- B. If any part of **PROJECT** affects the Federal Emergency Management Agency's (FEMA) flood plain insurance maps, **SPONSOR** is responsible for all map revisions and obtaining FEMA approval, or a Conditional Letter of Map Revision (CLOMR).
- C. Documentation will be submitted to **DOT** verifying that **PROJECT** approval has been obtained from the various agencies prior to receiving **DOT** approval of **PROJECT**.

## VIII. BID LETTING

- A. **SPONSOR** shall advertise, let to contract, and award **PROJECT** subject to **DOT** approval and concurrence in the bid award. A copy of FHWA required bid documents will be provided by **DOT**. The **PROJECT** Plans, Specifications, and Estimates (PS&E) will be submitted to **DOT** for approval prior to **SPONSOR** advertising the **PROJECT** to bids. **PROJECT** must be advertised for three weeks prior to the bid letting date and for two consecutive weeks. **SPONSOR** will provide **DOT** with copies of all the bid tabulations and a

copy of the recommendation to award **PROJECT** to the lowest responsible bidder. Upon concurrence by **DOT**, **SPONSOR** may proceed with award of the contract.

**IX. PAYMENT**

- A. Total **PROJECT** costs are estimated \$707,000. **DOT** will reimburse **SPONSOR** 81.95% of eligible **PROJECT** costs up to \$460,000. Any costs above \$460,000 shall be paid for 100% by **SPONSOR**.
- B. **SPONSOR** shall make payments to the contractors, suppliers, and vendors and seek reimbursement from **DOT** as provided in Section IX. A.
- C. Force account costs incurred by **SPONSOR** are eligible for reimbursement if they are direct **PROJECT** costs and must have prior approval from **DOT**. Administrative overhead is not an eligible cost.
- D. Failure by **SPONSOR** to comply with State and Federal regulations or the terms of this **AGREEMENT** will be cause for **DOT** to withhold participation and reimbursement.

**X. CONSTRUCTION CHANGE ORDERS (CCO)**

**SPONSOR** will obtain approval from **DOT** before authorizing any changes to **PROJECT** work under **DOT** approved **PROJECT** plans and specifications.

**XI. AUDIT**

- A. **PROJECT** charges will be subject to audit in accordance with current **DOT** procedures and U.S. Office of Management and Budget (OMB) Circular A-133. The CFDA Number for these funds is 20.205.
- B. **SPONSOR** shall maintain an accurate cost accounting system for all costs incurred under this **AGREEMENT** and clearly identified with activities performed under this **AGREEMENT**.

- C. Upon reasonable notice, **SPONSOR** will allow state and federal auditors to audit all records related to this **AGREEMENT** during normal business hours. 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**.
- D. If **SPONSOR** expends \$500,000 or more in federal funds during any **SPONSOR** fiscal year covered, in whole or in part, under this **AGREEMENT**, then **SPONSOR** shall be subject to the single agency audit requirements of the US Office of Management and Budget (OMB) Circular A-133. If **SPONSOR** expends less than \$500,000 during any **SPONSOR** fiscal year, state may perform a more limited program or performance audit related to the completion of **AGREEMENT** objectives, the eligibility of services or costs and adherence to **AGREEMENT** provisions.

## XII. CIVIL RIGHTS

The **SPONSOR** agrees to be bound by Exhibit 1 attached hereto and hereby made a part of this **AGREEMENT**.

## XIII. MISCELLANEOUS

- A. ADA  
**SPONSOR** shall provide services in compliance with the Americans with Disabilities Act of 1990.
- B. SUBCONTRACTS  
Neither this agreement nor any interest therein shall be assigned, sublet or transferred unless written permission to do so is granted by the **DOT**.
- C. TERMINATION FOR CAUSE  
In the event the **AGREEMENT** is terminated by **DOT** for fault on the part of **SPONSOR**, the **AGREEMENT** shall be null and void, and **DOT** shall be entitled to recover payments made to **SPONSOR** on work which is the cause of the at-fault termination.

D. SETTLEMENT OF DISPUTES

Any dispute concerning this **AGREEMENT** between the parties hereto shall be referred to the Secretary of the South Dakota Department of Transportation or his duly authorized representative for determination, whose decision in the matter shall be final and conclusive on the parties to this **AGREEMENT**.

XIV. AGREEMENT TERMINATION AND AMENDMENT

**DOT** and **SPONSOR** have the option to, and the right to, terminate or cancel the entire **AGREEMENT** or amend any portion of the **AGREEMENT** if both parties agree thereto in writing.

<b>CITY OF RAPID CITY</b>	<b>SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION</b>
<b>BY:</b>	<b>BY:</b>
Mayor	Program Manager Local Government Assistance
<b>Date:</b>	<b>Date:</b>
<b>ATTEST:</b>	<b>APPROVED AS TO FORM:</b>
Finance Officer	Assistant Attorney General

## EXHIBIT 1

**SPONSOR ASSURANCE WITH REGARD TO THE CIVIL RIGHTS ACT OF 1964 AND  
THE U.S. DEPARTMENT OF COMMERCE REGULATIONS, 15 C.F.R., PART 8**

During the performance of this **AGREEMENT**, **SPONSOR**, for itself, its assignees and successors in interest, agree as follows:

- (1) Compliance with Regulations: **SPONSOR** will comply with the Regulations of the Department of Commerce relative to nondiscrimination in federally assisted programs of the Department of Commerce (Title 15, Code of Federal Regulations, Part 8, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: **SPONSOR**, with regard to the work performed by it after award and prior to completion of **PROJECT** work will not discriminate on the ground of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. **SPONSOR** will not participate either directly or indirectly in the discrimination prohibited by Section 8.4 of the Regulations, including employment practices when the **AGREEMENT** covers a program set forth in Appendix A-II of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by **SPONSOR** for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by **SPONSOR** of **SPONSOR'S** obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, or national origin.
- (4) Information and Reports: **SPONSOR** will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to its books, records, determined by the State Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a **SPONSOR** is in the exclusive possession of another who fails or refuses to furnish this information, **SPONSOR** 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 **SPONSOR'S** noncompliance with the nondiscrimination provisions of this **AGREEMENT**, 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 **SPONSOR** under the **AGREEMENT** until **SPONSOR** complies, and/or
  - (b) cancellation, termination or suspension of the **AGREEMENT**, in whole or in part.
- (6) Incorporation of Provisions: **SPONSOR** will include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. **SPONSOR** will take such action with respect to any subcontract or procurement as the State Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event **SPONSOR** becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, **SPONSOR** may request **DOT** to enter into such litigation to protect the interests of **DOT**, and, in addition, **SPONSOR** may request the United States to enter into such litigation to protect the interests of the United States.



APPENDIX A

AGENCY CONTACTS FOR  
ENVIRONMENTAL CLEARANCES

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Mr. John Miller  
Department of Environment and Natural Resources  
523 East Capitol  
Pierre, SD 57501-3181  
(605) 773-3351

DEPARTMENT OF GAME, FISH AND PARKS

Leslie Petersen  
SD Department of Game, Fish and Parks  
Joe Foss Building  
Pierre, SD 57501  
(605) 773-6208

STATE HISTORICAL PRESERVATION OFFICE

Jay Vogt  
State Historic Preservation Officer  
South Dakota State Historical Society  
Cultural Heritage Center  
900 Governors Drive  
Pierre, SD 57501-2217  
(605) 773-3458

US FISH AND WILDLIFE SERVICE

Mr. Pete Gober  
US Fish & Wildlife Service  
420 Garfield Suite 400  
Pierre, SD 57501-5408  
(605) 224-8693

CORPS OF ENGINEERS\*

Steve Naylor  
Federal Building  
Pierre, SD 57501  
(605) 224-8531

FEDERAL EMERGENCY MANAGEMENT AGENCY\*\*

Ms. Barb Fitzpatrick  
Natural Hazard Program Specialist  
Flood Insurance and Mitigation Division  
Region VIII  
Federal Emergency Management Agency  
Denver Federal Center, Bldg 710  
PO Box 25267  
Denver, CO 80225-0267

\* Contact with the Corps of Engineers is only necessary if any portion of the project is in a creek, stream, river, lake, wetland, or other body of water.

\*\* Contact with the Federal Emergency Management Agency is only necessary if any portion of the project influences the floodway or floodplain.