

**LETTING, FINANCIAL AND MAINTENANCE/ENCROACHMENT
AGREEMENT BETWEEN THE CITY OF RAPID CITY AND THE STATE
FOR
FEDERAL-AID HIGHWAY IMPROVEMENT PROJECT
P-PH 0044(31)43-PCN 5617**

WHEREAS, the **DEPARTMENT OF TRANSPORTATION** acting through the South Dakota Transportation Commission, hereinafter designated as the STATE, concurs in the proposal with the city for the new construction or improvement of a street identified as South Dakota Federal Aid Construction Project No. P-PH 0044(31)43-PCN5617, Pennington County, hereinafter designated as the PROJECT, extending through portions of City of Rapid City, South Dakota, hereinafter referred to as the CITY, located and further described as follows:

SD44, Mountain View Road, from North of Jackson Boulevard Intersection to South of Omaha Street; Intersections of Mountain View/ West Main and Mountain View/Omaha in Rapid City.

WHEREAS, the CITY desires the STATE to let in combination with PROJECT a water main and sanitary sewer project number W05-1342-PCN X00C; SD44, Mountain View Road, from North of Jackson Boulevard Intersection to North of West Main Street in Rapid City; and

WHEREAS, the Statutes of the State of South Dakota give assent to the provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act – Legacy for Users (SAFTETEA – LU) and its acts amendatory thereof or supplementary thereto and regulations issued pursuant thereto by the Federal Highway Administration, Department of Transportation, United States of America, which hereinafter collectively will be designated as the Act, and charge of the STATE and the CITY to do all things necessary to fully carry out the cooperation contemplated and provided for in the Act; and

WHEREAS, the section of the PROJECT within the CITY will be subject to the provisions of the Act, and is within the legal jurisdiction of the CITY for traffic regulations and the control of building setbacks, zoning, sidewalks, utilities, etc.; and

WHEREAS, the construction of the PROJECT is conditioned upon the fulfillment of the obligation of the CITY in a manner satisfactory to the STATE and the Federal Highway Administrator, or their authorized representatives;

NOW THEREFORE, be it agreed for and in consideration of the undertaking of the PROJECT under the requirements of the Act, with the STATE's approval, that insofar as its legal jurisdiction over the PROJECT is concerned, the CITY assents to the requirements of the Act and pledges its good faith to the carrying out the purposes stipulated in the Act and to this end, the CITY hereby agrees:

I. LETTING CONDITIONS:

1. The STATE will let CITY water main and sanitary sewer project number W05-1342-PCN X00C in combination with the STATE PROJECT. Bidders will be required to submit a bid on Rapid City project W05-1342-PCN X00C and STATE PROJECT with award of the contract to the same bidder based on the total combination bid for the two projects.
2. The lowest responsible bid on the STATE PROJECT will be the basis for determining State and Federal Funds participation. In the event the total low combination bid for the CITY Project and the STATE PROJECT combined does not have as part of that bid the lowest bid on the STATE PROJECT, the CITY agrees to pay the STATE the difference between the bid awarded on the combination project and the lowest bid on the STATE PROJECT.
3. The STATE will award and will issue a contract for both the STATE PROJECT and the CITY Project W05-1342-PCN X00C; however, the CITY will be the contracting party for CITY Project Number W05-1342-PCN X00C and will make payments to the contractor. The CITY's engineer's estimated cost for CITY Project W05-1342-PCN X00C is \$400,000. Actual costs will be based upon bids and final quantities.
4. The CITY will provide plans, specifications, and estimates, for its project.
5. The CITY will provide construction engineering including construction supervision and inspection of the water main and sanitary sewer construction project described herein. The CITY will inspect the physical installation of the water mains and sanitary sewer, including measuring in place quantities and documenting location for as built records. The CITY will conduct all physical testing of the water mains and sanitary sewer for final acceptance.
6. The CITY will provide testing of trench backfill and conduct trench compaction testing for that portion of the CITY project W05-1342-PCN X00C under the surface of the highway with a copy of the compaction tests being sent to the STATE.

II. FINANCIAL:

1. The CITY agrees to reimburse the STATE for 18.05% of the actual and final costs, excluding the cost of preliminary engineering and construction engineering, for lighting on Mountain View Road from North of Jackson Boulevard Intersection to South of Omaha Street. The estimated cost of the CITY share of the lighting is \$5,363.20.

III. MAINTENANCE/ENCROACHMENT:

1. Encroachments on the public right-of-way shall be treated as follows:
 - A. In outlying commercial areas and through residential areas all encroachments on or above the right-of-way shall be prohibited.
 - B. The use of the right-of-way by owners or lessees of abutting property for the storage of vehicles, placement of portable signs or other private use thereof shall be prohibited.
 - C. Where the highway passes through established business districts and the buildings are at the property line and are continuous or very closely spaced, encroachments overhanging the right-of-way will be prohibited except under the following conditions:
 - a. Awnings, canopies, marquees and similar installations on buildings shall be permitted to remain in place until such time that they become functionally or structurally obsolete, providing that the edge of such encroachment be not less three feet (one meter) back from the face of the curb.
 - b. Advertising or other similar signs which are less than three feet (one meter) back from the face of the curb and are supported wholly from the front of the building shall be permitted to remain in place until such time that they become functionally or structurally obsolete, providing that the bottom of such encroachment be not less than 14.5 feet (four and one half meters) above the curb elevation.
 - c. The replacement of obsolete or the installation of new awnings, canopies, marquees, advertising signs or similar installations supported wholly from the building shall be permitted provided that no part of the encroachment is less than three feet (one meter) back from the face of the curb and 8 feet (two and one half meters) above the curb elevation.
 - d. In the event the encroachments referred to in (a), (b) and (c) above, by reason of color or placement, obscure or in any way detracts from the effectiveness of the highway signs, traffic signals, pedestrian safety, or interferes with the free or safe flow of the traffic, the city shall cause the removal of such encroachments or take appropriate measures to improve highway signs or traffic signals and traffic safety.
 - e. The provisions of paragraph (C) and subparagraphs (a), (b), (c) and (d) above shall not apply to isolated business or commercial buildings in outlying areas.
 - f. In cases where there are encroachments of long standing which will in no way impair the highway operation or interfere with the free and safe flow of traffic and, in the opinion of the STATE, the immediate removal would impose unreasonable hardship, the STATE at its discretion permit the encroachment to remain for a specific period. This permission is subject to revocation or extension at the STATE's discretion. Each such encroachment shall be described in the attached Exhibit A.

2. On Federal Aid Projects, the permitting of such encroachments as described in the previous paragraph shall be in conformance with 23 CFR 1.23.
3. That CITY will control the location and maintenance of utilities within the right-of-way so as to not impair the free flow of traffic and provide the maximum safety to the traveling public.
4. That CITY will not designate a speed limit on State Trunk System Projects until after appropriate engineering and traffic investigation has been made and such speed limit has been approved by the STATE.
5. That CITY will prohibit all parking in the traffic lanes constructed under this PROJECT. It further agrees that it will prohibit double parking and control all parking where and if allowed in a manner satisfactory to the STATE or their authorized representatives.

The CITY further agrees, that where curbs are not installed and are not to be installed under the proposed improvement, the curbs, when proposed to be constructed in the future, shall be at a lateral distance approved by the STATE.

6. That CITY will not allow access to the street/highway at points other than constructed as part of the PROJECT without prior approval of the STATE or their authorized representatives.
7. That when a signal and/or roadway lighting system is installed on this street CITY will provide electric power necessary to operate the signal and/or roadway lighting system and all necessary maintenance and replacements, in kind, of all parts and apparatus of said system, including lamps so as to insure the continuing operation of said signals and/or roadway lighting systems until such time as the parties to this agreement shall agree to discontinue the operation of the said system. CITY will also be responsible for replacement of poles, which may be damaged due to weather or by vehicle accidents. That if a signal is coordinated through the use of leased telephone lines; CITY will pay the required hookup fee and monthly rental fees.

CITY further agrees that on the State Trunk System, prior to changing the signal timing from that originally set by the STATE, the City will submit the necessary data and proposed timing to the South Dakota Department of Transportation for approval.

8. That, if plastic pavement marking is applied on this street, CITY will use plastic material approved by the STATE, to maintain those plastic pavement markings, which are the responsibility of the City.
9. That said CITY does acknowledge that the members of its governing board and/or engineering staff have examined the plans for the Project prepared under the supervision of the STATE referred to in this Agreement.
10. That the CITY will enact such ordinances as are necessary to properly enforce any of the above provisions.

11. That the Mayor is authorized to enter into a mutual agreement with the Commission providing for the understanding of this project under the considerations described above.
12. The CITY agrees to indemnify and hold the STATE of South Dakota, its officers, agents and employees harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as a result of CITY's performance under this agreement. This section does not require CITY to be responsible for or defend against claims or damages arising from errors or omissions of the STATE, its officers, agents or employees.

DATED this _____ day of _____, 2006

CITY OF RAPID CITY

ATTEST:

Mayor

City Auditor/Finance Officer

(S E A L)

SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

APPROVED AS TO FORM:

Project Development Engineer

Assistant Attorney General

AGREEMENT BETWEEN THE POLITICAL SUBDIVISION AND THE STATE
FOR
FEDERAL AID HIGHWAY ENCROACHMENTS

EXHIBIT "A"

NONE