

**LETTING, FINANCIAL AND MAINTENANCE/ENCROACHMENT  
AGREEMENT BETWEEN THE CITY OF RAPID CITY AND THE STATE  
FOR  
FEDERAL-AID HIGHWAY IMPROVEMENT PROJECT  
BRO 8052(56) PCN H100**

**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. BRO 8052(56) PCN H100, Pennington County, hereinafter designated as the **PROJECT**, extending through portions of the City of Rapid City, South Dakota, hereinafter referred to as the **CITY**, located and further described as follows:

The structure over Rapid Creek on Creek Drive north of St. Patrick Street in Rapid City.

**WHEREAS**, the **CITY** desires the **STATE** to let in combination with **PROJECT** a water main project, number ST04-1241 PCN X00D, on Creek Drive North of St. Patrick 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 project number ST04-1241-PCN X00D in combination with the STATE PROJECT. Bidders will be required to submit a bid on the Rapid City project ST04-1241 PCN X00D 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 ST04-1241-PCN X00D; however, the CITY will be the contracting party for CITY Project Number ST04-1241-PCN X00D and will make payments to the contractor. The CITY's engineer's estimated cost for CITY Project ST04-1241-PCN X00D is \$73,800.00 Actual costs will be based upon bids and final quantities.
4. The CITY will provide plans, specifications, and an estimate for its project.
5. The CITY will provide construction engineering including construction supervision and inspection of the water main construction project described herein. The CITY will inspect the physical installation of the water main, including measuring in place quantities and documenting location for as built records. The CITY will conduct all physical testing of the water main for final acceptance.
6. The CITY agrees to 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 Rapid City Area Engineer within twenty-four hours of the results.

II. MAINTENANCE/ENCROACHMENT:

1. That 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 may 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.

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 roadway lighting system is installed on this street CITY will provide electric power necessary to operate the 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 roadway lighting system 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.
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