

**AMENDMENT NUMBER 1
TO
FUNDING, MAINTENANCE AND ENCROACHMENT AGREEMENT
FOR
PH 1771(13) PCN 00LM**

WHEREAS the South Dakota Department of Transportation, hereinafter “STATE” and City of Rapid City, hereinafter “CITY” mutually desire to amend Funding, Maintenance and Encroachment Agreement Number 613225 between the two parties, entered into June 18 2007, (hereafter “AGREEMENT”) as set forth below.

WHEREAS, the CITY desires the STATE to let Roadway Safety Improvement Project PH 1771(13) PCN 00LM; Signal Upgrade, Pavement Markings and ADA Ramps; hereinafter referred to as the PROJECT;

NOW, THEREFORE, it is mutually agreed between the STATE and the CITY that the following paragraphs shall be deleted from the AGREEMENT:

C. FUNDING:

1. The estimated cost of the PROJECT is One Hundred and Thirty-One Thousand Seventy One Dollars (\$131,071.00). The STATE shall pay for Ninety Percent (90%) of total costs of PROJECT with Federal Funds up to One Hundred and Seventeen Thousand Nine Hundred and Sixty Four Dollars (\$117,964.00). The CITY shall pay for Ten Percent (10%) of the total costs of the PROJECT up to Thirteen Thousand One Hundred and Seven Dollars (\$13,107.00). Any costs for the PROJECT above One Hundred and Seventeen Thousand Nine Hundred and Sixty Four Dollars (\$117,964.00) will be paid One Hundred Percent (100%) by CITY.
2. The CITY will pay for One Hundred Percent (100%) of the non-participating costs for PROJECT.

IT IS FURTHER mutually agreed between the STATE and the CITY that the paragraphs deleted in the foregoing section of this amendment will be replaced with the following:

C. FUNDING

1. The estimated cost of the PROJECT is Two Hundred and Forty Thousand Dollars (\$240,000). The STATE shall pay One Hundred and Eighty Thousand Dollars (\$180,000) with Federal Funds. Any Costs for the PROJECT above One Hundred and Eighty Thousand (\$180,000) will be paid One Hundred Percent (100%) by CITY.

IT IS FURTHER mutually agreed between the STATE and the CITY that the following paragraph will be added to the AGREEMENT:

CERTIFICATION REGARDING LOBBYING:

I certify, to the best of my knowledge and belief, that: No Federal appropriated Funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of and Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any of the above mentioned parties, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Upon completion of construction of the project and acceptance by City of Rapid City, the City of Rapid City agrees to indemnify and hold the STATE, its officers, agents and employees harmless from and against any and all actions, suits, damages, liability or other proceedings that arise as a result of City of Rapid City operation and maintenance of the pipeline. This section does not require the City of Rapid City to be responsible for or defend against claims or damages arising from errors or omissions of the STATE, its officers, agents or employees.

CITY and STATE agree that all other terms of the original AGREEMENT shall remain in full force and effect

This AGREEMENT is binding upon the signatories hereto not as individuals, but solely in their capacities as officials of their respective organizations and acknowledges proper action of STATE and CITY to enter into same.

Dated this _____ day of _____, 2007

CITY OF RAPID CITY

ATTEST:

Mayor

City Auditor/Finance Officer

(S E A L)

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

Project Development Engineer

APPROVED AS TO FORM:

Assistant Attorney General