

AGREEMENT NUMBER _____

**FUNDING AGREEMENT BETWEEN SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION
AND CITY OF RAPID CITY FOR THE DESIGN OF PROJECT P 1774(03), PCN 01FN**

WHEREAS, the South Dakota Department of Transportation, hereinafter referred to as **STATE**, acting with the approval of the South Dakota Transportation Commission, and the City of Rapid City, hereinafter referred to as **CITY**, agree to have **CITY** design project P 1774(03), PCN 01FN, hereinafter referred to as **PROJECT**, and the City utility project #50142-1511, hereinafter referred to as **CITY PROJECT**, further described as East North Street from Cambell Street to Rapid Creek in Rapid City, South Dakota, and

WHEREAS, **PROJECT** costs are estimated to be \$84,000 and will include preliminary engineering and design. All other activities and costs, including construction, will be covered by separate agreement.

NOW THEREFORE, CITY and STATE agree to the following:

A. STATE will

1. Provide technical assistance in the preparation of plans and specifications for **PROJECT**, and review those documents prior to advertising and letting of the construction phase.
2. Reimburse **CITY** for eligible design costs with 81.95% Urban STP funds and 18.05% **STATE** match, upon receipt of proper documentation of work completed or services performed.

B. CITY will

1. Provide separate plans, specifications, and cost estimates for both the **PROJECT** and **CITY PROJECT** complete with review and approval of the **CITY PROJECT** by the Department of Environment and Natural Resources prior to advertisement and letting.
2. Perform preliminary engineering and design in accordance with all Federal requirements and guidelines so that future Federal funding is not jeopardized.
3. Pay for services, and work described in B.1. and B.2., and may then seek reimbursement of eligible costs from **STATE** with funds as set forth in section A.2.
4. Pay for costs associated with **CITY PROJECT** with 100% city funds.

C. HOLD HARMLESS AND INDEMNIFICATION PROVISION

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 the result of performing services hereunder. This section does

not require the **CITY** to be responsible for or defend against claims or damages arising from errors or omissions of the State, its officers, agents or employees.

D. FUNDING PROVISION

The **AGREEMENT** depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, the **AGREEMENT** will be terminated by the **STATE**. Termination for any of these reasons is not a default by the **STATE** nor does it give rise to a claim against the **STATE**.

E. INDEPENDENT ENTITY PROVISION

While performing services hereunder, **CITY** is an independent contractor and not an officer, agent, or employee of the **STATE** of South Dakota.

Any employee of the **CITY** engaged in the performance of services required under the agreement shall not be considered an employee of the **STATE**, and any and all claims that may or might arise under the Worker's Compensation Act of the State of South Dakota on behalf of said employees or other persons while so engaged and any and all claims made by any third party as a consequence of any act or omission of the part of the work or service provided or to be rendered herein by the **CITY** shall in no way be the obligation or responsibility of the **STATE**.

F. CONTROLLING LAW PROVISION

The **AGREEMENT** shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

G. SEVERABILITY PROVISION

In the event that any court of competent jurisdiction shall hold any provision of the **AGREEMENT** unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

H. REPORTING

CITY agrees to report to the **STATE** any event encountered in the course of performance of the **AGREEMENT** which results in injury to any person or property, or which may otherwise subject **CITY**, or the **STATE** of South Dakota or its officers, agents or employees to liability. **CITY** shall report any such event to the **STATE** immediately upon discovery.

CITY'S obligation under this section shall only be to report the occurrence of any event to the **STATE** and to make any other report provided for by their duties or applicable law. **CITY'S** obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the **STATE** under this section shall not excuse or satisfy any obligation of **CITY** to report any event to law enforcement or other entities under the requirements of any applicable law.

I. **SUPERCESSION PROVISION**

All other prior discussions, communications and representations concerning the subject matter of the **AGREEMENT** are superseded by the terms of the **AGREEMENT**, and except as specifically provided herein, the **AGREEMENT** constitutes the entire **AGREEMENT** with respect to the subject matter hereof.

J. **NOTICE PROVISION**

Any notice or other communication required under the **AGREEMENT** shall be in writing and sent to **STATE** at 700 East Broadway, Pierre, SD 57501-2586. Notices shall be given by and to Bruce Lindholm, Program Manager, Office of Local Transportation Programs on behalf of the **STATE**, and by Robert Ellis, City Engineer on behalf of the **CITY**, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

K. **CODE OF CONDUCT**

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

L. **DISPUTES**

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the parties hereto shall be referred to State's Secretary of Transportation or his duly authorized representative for determination, whose decision in the matter shall be final and conclusive on the parties to the **AGREEMENT**.

M. CIVIL RIGHTS

The **CITY** does agree to be bound by Exhibit 1 attached hereto and hereby made a part of the **AGREEMENT**.

N. PAYMENT AS REQUIRED IN 49 CFR 26.29

The **CITY** shall pay subcontractors or suppliers within 15 days of receiving payment for work that is submitted for progress payment by the **STATE**. If the **CITY** withholds payment beyond this time period, written justification by the **CITY** shall be submitted to the **STATE** upon request. If it is determined that a subcontractor or supplier has not received payment due without just cause, the **STATE** may withhold future estimated payments and/or may direct the **CITY** to make such payment to the subcontractor or supplier. Prompt payment deviations will be subject to price adjustments.

O. COMPLIANCE WITH CLEAN AIR ACT

CITY stipulates that any facility to be utilized in the performance of this contract, under the Clean Air Act, as amended, Executive Order 11738, and regulations in implementation thereof is not listed on the U.S. Environmental Protection Agency List of Violating Facilities pursuant to 40 CFR 15.20 and that the **STATE** shall be promptly notified of the receipt by the **CITY** 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.

P. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION.

CITY certifies, by signing the **AGREEMENT**, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Q. SUBCONTRACT PROVISION

CITY will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this **AGREEMENT**, to indemnify the **STATE**, and to provide insurance coverage for the benefit of the **STATE** in a manner consistent with this **AGREEMENT**. **CITY**

will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. Failure to comply with federal requirements related to right-of-way, environmental clearances, utilities, and the bid letting process could jeopardize future federal funding.

R. RECORDS RETENTION AND AUDIT

1. All project charges will be subject to audit in accordance with current **STATE** procedures. Allowable costs will be determined in accordance with 49 CFR 18.22(b).
2. The **CITY** and its subcontractors shall keep accounting records clearly identified with the agreement.
3. Upon reasonable notice, the **CITY** and subcontractors will allow the **STATE**, through any authorized representative, to have access to and the right to examine and copy all records, books, papers or documents related to services rendered under 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 final payment under this agreement is made and all other pending matters are closed.

S. CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his/her 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 any 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 subcontract, 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 was 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 the 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.

T. INSURANCE

The **CITY** shall require their consultant to furnish the following certificates of insurance and assure that the insurance is in effect for the life of the contract:

1. Commercial General Liability Insurance:

Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a

general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

2. Business Automobile Liability Insurance:

Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$500,000 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

3. Worker's Compensation Insurance:

Consultant shall procure and maintain workers' compensation coverage as required by South Dakota law.

4. Before beginning work under this Agreement, the consultant shall furnish the **CITY** with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days' prior written notice to the **CITY**. The **CITY** shall furnish copies of insurance policies if requested by the **STATE**.

U. This agreement is binding upon 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.

**SOUTH DAKOTA DEPARTMENT OF
TRANSPORTATION**

CITY OF RAPID CITY

BY: _____
Local Transportation Programs

BY: _____
Mayor

DATE: _____

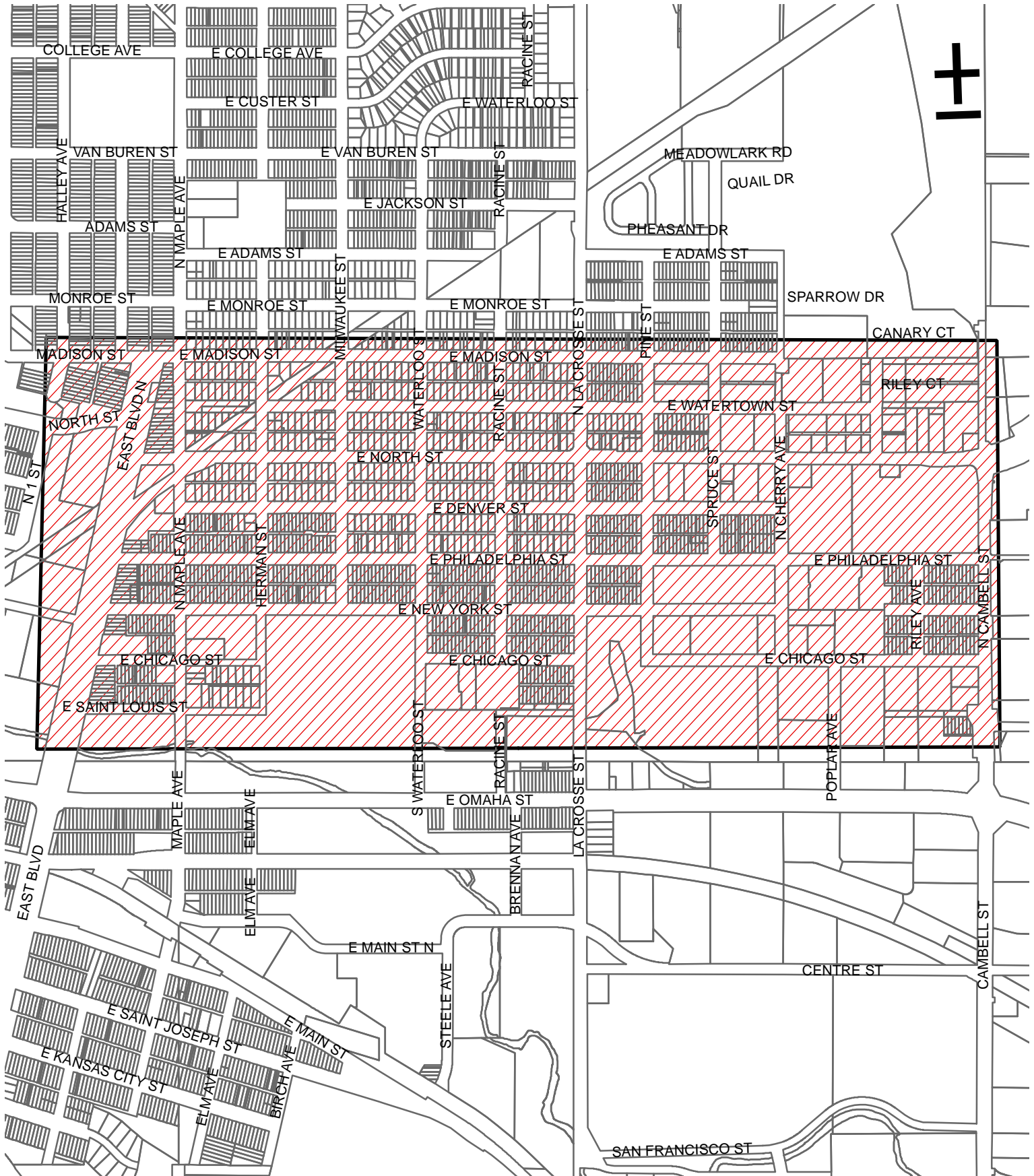
DATE: _____

ATTEST: _____
City Finance Officer

City Seal

EXHIBIT "A"

PW010208-10



**EAST BLVD. & E. NORTH ST.
RECONSTRUCTION
CIP # 50142-1511 P 1774(3) PCN OIFN**