

Department of Transportation

Division of Finance & Management

Office of Local Transportation Programs

700 East Broadway Avenue

Pierre, South Dakota 57501-2586

OFFICE: 605/773-3574

FAX: 605/773-4870

November 26, 2008

Jerry Cole, Director
Rapid City Parks and Recreation
125 Waterloo Street
Rapid City, SD 57701

RE: EM 8052(59) PCN 010E – Rapid City Greenway funding agreement

Dear Mr. Cole:

Enclosed are three copies of the funding agreement for the Rapid City Greenway project. Please have the Mayor and city finance officer sign all three copies and return them for SDDOT signatures. I will return a signed original for your records.

If you have any questions, please feel free to call me at (605) 773-6253.

Sincerely,

A handwritten signature in black ink, appearing to read "Paula Huizenga", is written over the typed name.

Paula Huizenga
Grant Program Engineer

AGREEMENT NUMBER _____

**FUNDING AGREEMENT BETWEEN SOUTH DAKOTA DEPARTMENT OF
TRANSPORTATION AND THE CITY OF RAPID CITY FOR DESIGN, LETTING, AND
CONSTRUCTION OF PROJECT
EM 8052(59), RAPID CITY, PCN 010E**

WHEREAS, the State of South Dakota, acting by and through its Department of Transportation, hereinafter referred to as "STATE," and the City of Rapid City, South Dakota, hereinafter referred to as "CITY," desire that project EM 8052(59), PCN 010E, greenway pedestrian and bike path extension in Rapid City, be constructed in Federal Fiscal Year (FFY) 2009 and shall be hereinafter referred to as "PROJECT";

WHEREAS, PROJECT costs are estimated to be Two Million, Eighty Thousand Dollars (\$2,080,000). High Priority Project Funds (**HPP Funds**), in the amount of One Million, Seven Hundred Thousand Dollars (\$1,700,000) shall be used for eligible PROJECT costs. Eligible PROJECT costs shall include preliminary engineering, materials, right-of-way acquisition, construction, and construction engineering;

NOW, THEREFORE, CITY and STATE agree to the following:

A. STATE will

1. Provide technical assistance for PROJECT and review plans and specifications.
2. Reimburse City 81.95% for eligible PROJECT costs with HPP Funds, up to a maximum of One Million, Seven Hundred Thousand Dollars (\$1,700,000). The remaining 18.05% and any amount exceeding the maximum amount of HPP Funds shall be paid by the CITY.

B. CITY will

1. Arrange for all needed right-of-way and utility adjustments as part of PROJECT and certify that all right-of-way and utility adjustments or agreements are in place prior to advertisement and letting.
2. Provide ongoing maintenance of PROJECT upon completion of construction.
3. Obtain all necessary PROJECT environmental clearances and permits from the various agencies as listed in Appendix A.
4. If any part of PROJECT affects the Federal Emergency Management Agency's (FEMA) flood plain insurance maps, be responsible for all map revisions and obtaining FEMA approval, or a Conditional Letter of Map Revision (CLOMR).
5. Submit documentation to STATE verifying that PROJECT approval has been obtained from the various agencies prior to receiving STATE approval of PROJECT.
6. Prepare PROJECT plans, specifications, and estimates for STATE review and approval. The PROJECT cannot be advertised for bids until written approval is received from STATE.

7. Advertise the PROJECT for three (3) weeks prior to the letting date.
8. Recommend award of PROJECT to lowest responsible bidder.
9. Provide STATE with copies of all the bid tabulations, proof of advertisement, and the recommendation of award.
10. Provide bi-weekly construction progress reports to STATE. Construction Progress Reports will include any failed tests, problems encountered, and status of the project. The reports will also include what is being done to resolve the issues identified.
11. Make payments to the contractors, suppliers, and vendors, and seek reimbursement from the STATE.
12. Obtain approval from STATE before authorizing any changes to PROJECT work under STATE approved PROJECT plans and specifications.
13. Comply with State and Federal regulations or the terms of this Agreement. CITY'S failure to comply will be cause for STATE to withhold participation and reimbursement.
14. Pay the prime contractor or suppliers within fifteen (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 prime contractor 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 prime contractor or supplier. Prompt payment deviations will be subject to price adjustments.
15. Stipulate that any facility to be utilized in the performance of this Agreement, 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. CITY shall promptly notify the State Department of Transportation of CITY'S receipt 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.
16. Not allow the prime contractor to use subcontractors to perform the services described herein without the STATE'S express prior written consent. CITY will ensure that the prime contractor 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 prime contractors, 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.
17. Warrant that CITY 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 CITY 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 CITY'S 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.

18. 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 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.
19. Comply with all federal, state, and local laws, together with all ordinances and regulations applicable to the work and will be solely responsible for obtaining current information on such requirements. The CITY shall procure all licenses, permits, or other rights necessary for the fulfillment of its obligation under the Agreement.
20. Report to the STATE any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject CITY, or the STATE, 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 CITY'S 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.

C. INSURANCE

If the CITY anticipates performing construction activities, the CITY shall be required to furnish the STATE the following certificates of insurance and assure that the insurance is in effect for the life of the contract:

1. Commercial General Liability Insurance:

CITY 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:

CITY 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. Workers' Compensation Insurance:

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

4. Before beginning work under this Agreement, the CITY shall furnish the STATE 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 thirty (30) days' prior written notice to the STATE. The CITY shall furnish copies of insurance policies if requested by the STATE.

D. AUDIT

1. PROJECT charges will be subject to audit in accordance with current STATE procedures and U.S. Office of Management and Budget (OMB) Circular A-133. The CFDA Number for these funds is 20.205. Allowable costs will be determined in accordance with 49 CFR 18.22(b).
2. CITY shall maintain an accurate cost accounting system for all costs incurred under this Agreement and clearly identified with activities performed under this Agreement.
3. Upon reasonable notice, CITY 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.
4. If CITY expends \$500,000 or more in federal funds during any CITY fiscal year covered, in whole or in part, under this Agreement, then CITY shall be subject to the single agency audit requirements of the US Office of Management and Budget (OMB) Circular A-133. If CITY expends less than \$500,000 during any CITY 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.
5. CITY will include the provisions of section D Audits paragraph 1 through 4 in every Agreement, including procurement of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto.

E. MISCELLANEOUS

1. The CITY agrees to be bound by Exhibit 1 attached hereto and hereby made a part of this Agreement.
2. CITY shall provide services in compliance with the Americans with Disabilities Act of 1990.
3. This 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, this Agreement may 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.

4. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.
5. All other prior discussions, communications, and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire Agreement with respect to the subject matter hereof.
6. Any notice or other communication required under this 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 John Childs, 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.
7. This Agreement can be terminated upon thirty (30) days' written notice by either party. In the event the CITY breaches any of the terms or conditions hereof, this Agreement may be terminated by the STATE at any time with or without notice. If termination for such a default is effected by the STATE, any payments due to CITY at the time of termination may be adjusted to cover any additional costs to the STATE due to CITY'S default. If after the STATE terminates for a default by CITY it is determined that CITY was not at fault, then the CITY shall be paid for eligible services rendered and expenses incurred up to the date of termination.
8. This 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.
9. This Agreement may not be amended, except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.
10. Neither this Agreement nor any interest therein shall be assigned, sublet, or transferred unless written permission to do so is granted by the STATE.
11. In the event the Agreement is terminated by STATE for fault on the part of CITY, the Agreement shall be null and void, and STATE shall be entitled to recover payments made to CITY on work which is the cause of the at-fault termination.
12. Any dispute between the parties hereto concerning this Agreement 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.
13. STATE and CITY 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.

14. CITY certifies, by signing this 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.
15. The CITY certifies, to the best of CITY'S knowledge and belief, that: No Federal appropriated funds have been paid or will be paid, by or on behalf of the CITY, 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 CITY 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.

- F. This Agreement shall become effective on the date of signature by the Local Transportation Programs Manager. The work contemplated by this Agreement shall be completed within three (3) years of the effective date.
- G. 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.

City of Rapid City

State of South Dakota
Department of Transportation

By: _____

By: _____

Its: Mayor

Its: Secretary

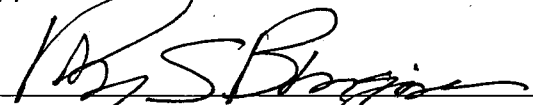
Date: _____

Date: _____

Attest:

Approved as to Form:

City Auditor/Clerk



Assistant Attorney General

[SEAL]

Exhibit I
STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

STANDARD TITLE VI ASSURANCE
FEBRUARY 1, 2004

During the performance of this Agreement, the City, for itself, its assignees and successors in interest (hereinafter referred to as the "CITY") agrees as follows:

- (1) Compliance with Regulations: The CITY shall comply with the Regulations relative to nondiscrimination in Federally or State assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended (hereinafter referred to as the "Regulations"), incorporated by reference and made a part of this Agreement.
- (2) Nondiscrimination: The CITY, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CITY shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CITY for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CITY of the CITY'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color national original, sex, age, or disability.
- (4) Information and Reports: The CITY shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a CITY is in the exclusive possession of another who fails or refuses to furnish this information, the CITY shall so certify to the Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain this information.
- (5) Sanctions for Noncompliance: In the event of the CITY'S noncompliance with the nondiscrimination provisions of this Agreement, the Department of Transportation shall impose such Agreement sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
 - (a) withholding of payments to the City under the contract until the CITY complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The CITY shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives pursuant thereto. The CITY shall take such action with respect to any subcontract or procurement as the Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that, in the event a CITY becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CITY may request the Department of Transportation to enter into such litigation to protect the interest of the State, and, in addition, the CITY may request the United States to enter such litigation to protect the interests of the United States.

APPENDIX A

AGENCY CONTACTS FOR ENVIRONMENTAL CLEARANCES

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

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

Pete Gober, Field Supervisor
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.