## AGREEMENT BETWEEN THE CITY OF RAPID CITY AND HILLS MATERIALS COMPANY FOR

## EAST ST. PATRICK MANHOLE ADJUSTMENTS PROJECT: MIP09-1794 / CIP NO. 50298

- 1) Specifications to be followed under this contract are the City of Rapid City Standard Specifications for Public Works Construction (2007 Edition), as currently revised, and any Special Provisions, Special Conditions, and/or Detailed Specifications pertaining to this contract.
- 2) This Agreement is entered into this 28th day of May, 2009, by and between the City of Rapid City, 300 Sixth Street, Rapid City, SD 57701, a municipal corporation organized under the laws of the state of South Dakota, hereinafter referred to as the "City," and Hills Materials Company, hereinafter referred to as the "Contractor."
- 3) The Contractor agrees to perform the work described in the Project Plan at the rate per quantity specified in its Informal Quote. The parties recognize that the actual quantities provided by the Contractor will vary depending on the needs of the City. The Contractor agrees to provide quantities in excess of those contained in the Informal Quote if needed by the City. The Contractor will only be paid for work actually performed in an amount not to exceed \$12,205.00. This Agreement along with attached Informal Quotations and Project Plan constitutes the entire agreement between the City and Contractor and supersedes all prior written or oral communications.
- 4) The Contractor agrees to indemnify, defend and hold the City harmless against all liability, loss, damage, costs, and expenses including, but not limited to, costs of defense and reasonable attorney's fees, which the City may hereafter suffer itself or pay to another party by reason of any claim, action, or right of action, at law or in equity, arising out of willful misconduct, error, omission or negligent act of the Contractor and resulting in injury (including death) to any person or damage to any property to the extent such are caused by or are alleged to be caused by the Contractor or its employees, any subcontractor or its employees, or any person, firm, partnership, or corporation employed or engaged by the Contractor.
- 5) The Contractor is an independent entity and not an employee, agent, or partner of the City.
- 6) The Contactor shall obtain and maintain at its expense the following minimum limits of occurrence-based insurance coverage for the duration of this Agreement.

## Type of Coverage

## Minimum Limits of Coverage

A. Workers' Compensation Employer's Liability Statutory \$1,000,000

B. Comprehensive General Liability
(Including Contractual Liability
And Completed Operations)

Bodily Injury and Property Damage Combined Single Limit \$1,000,000 each occurrence \$1,000,000 aggregate

C. Comprehensive Automobile Liability (when applicable)
(Owned, Hired, and Non-owned Vehicles) \$1,000
Bodily Injury and Property Damage \$1,000

\$1,000,000 each person \$1,000,000 each accident

Combined Single Limit

\$1,000,000 each occurrence

Such insurance policies shall name the City of Rapid City as an additional insured with respect to all activities arising out of the performance of the work and/or services under this Agreement. Acceptable Certificates of Insurance and Endorsements confirming the above coverage shall be filed with the City before commencing any work and/or services. Such Certificates shall afford the City thirty (30) days written notice of cancellation or of a material change in coverage. The City's failure to obtain from the Contractor a Certificate of Insurance conforming to the foregoing requirements shall not be deemed a waiver of any of the foregoing requirements. This paragraph shall in no way limit the provisions of the indemnity section.

- 7) The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.
- 8) The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of the other provisions hereof. If any portion of this Agreement is unenforceable for any reason whatsoever, such provision shall be appropriately limited and given effect to the extent that it may be enforceable.

Dated this 28th day of May, 2009.

Ву:
Its: Lynn Kading, President
CITY OF RAPID CITY
Public Works Director

HILLS MATERIALS COMPANY

EAST ST. PATRICK MANHOLES

