

STATE OF SOUTH DAKOTA  
 LETTING AND FINANCIAL AGREEMENT  
 BETWEEN  
 DEPARTMENT OF TRANSPORTATION  
 AND  
 CITY OF RAPID CITY

This Agreement is made by and between the State of South Dakota, acting by and through its Department of Transportation, hereinafter referred to as the "STATE," and the City of Rapid City, South Dakota, hereinafter referred to as "CITY."

1. PROJECT

STATE and CITY concur in the proposal to relocate the 6 ½ Street pedestrian crossing on Omaha Street (SD Hwy 44) to the west side of 6<sup>th</sup> Street in the City of Rapid City, South Dakota. The pedestrian crossing relocation project, hereinafter referred to as the "CITY PROJECT," consists of relocation of the existing sidewalk/pedestrian crossing to the west side of 6<sup>th</sup> Street. The CITY PROJECT will include relocation of pedestrian curb ramps, signing, pavement markings, and traffic signals.

It is anticipated that the relocation of the pedestrian crossing will have only a minor effect on the current level of service (LOS) for Omaha Street (SD Hwy 44) considering present average daily traffic (ADT).

2. CONTRACT PROCUREMENT

- a. CITY shall design, advertise, let to contract, award, and be the contracting party for the CITY PROJECT. Material certification and testing shall comply with STATE standards.
- b. CITY shall provide plans for review and secure approval from STATE prior to letting.
- c. CITY shall design the project in accordance with MUTCD, National Electric Code, and ADA standards.

3. CITY RESPONSIBILITIES

- a. CITY acknowledges that the ADT will grow over time and that the relocation of the pedestrian crossing is a temporary use allowed by the STATE. The relocated crosswalk may remain in place until such time that the degradation of the LOS prompts moving the pedestrian crossing back to either the 6 ½ Street location or another location that is mutually acceptable to the STATE and CITY that addresses improvement in LOS.
- b. CITY shall pay one hundred percent (100%) of the costs for future relocation of the pedestrian crossing back to the current location at 6 ½ Street or other mutually acceptable location, upon written notice received from the STATE.

4. STATE RESPONSIBILITIES

- a. STATE will periodically review ADT and make a determination of LOS.
- b. STATE will determine when LOS has degraded to a point that relocation of the pedestrian crossing can no longer be tolerated at 6<sup>th</sup> Street.

5. FINANCIAL RESPONSIBILITY

The CITY will pay one hundred percent (100%) of the costs for CITY PROJECT and any future relocation of the pedestrian crossing.

6. MAINTENANCE

CITY shall be responsible for all maintenance of CITY PROJECT, including, but not limited to: debris and litter removal, snow and ice removal, repair, and replacement of sidewalks and curb ramps, including detectable

warnings, in accordance with the Americans with Disabilities Act.

7. CERTIFICATION REGARDING LOBBYING

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 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 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.

8. INDEMNIFICATION AND HOLD HARMLESS

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'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 STATE, its officers, agents, or employees.

9. AMENDMENT PROVISION

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. TERMINATION PROVISION

This Agreement can be terminated upon thirty (30) days' written notice by the STATE. 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.

11. 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.

12. 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.

13. SUPERCESSION PROVISION

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.

14. COMPLIANCE PROVISION

The CITY shall 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.

15. REPORTING

CITY shall 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, its officers, agents, or employees to liability. CITY shall report any such event to the STATE immediately upon discovery.

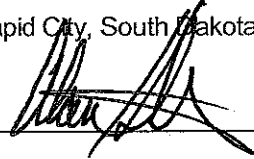
16. SUBCONTRACT PROVISION

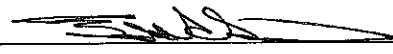
CITY will include provisions in CITY'S subcontracts requiring subcontractors to comply with the applicable provisions of this Agreement, to indemnify the STATE, and to provide insurance coverage for the benefit of the STATE in a manner consistent with this Agreement. CITY will cause subcontractors, agents, 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.

The CITY, by signing this Agreement, evidences authority to enter into this Agreement through formal action of its governing body.

City of Rapid City, South Dakota

State of South Dakota  
Department of Transportation

By:  \_\_\_\_\_

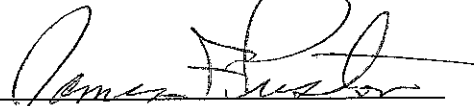
By:  \_\_\_\_\_

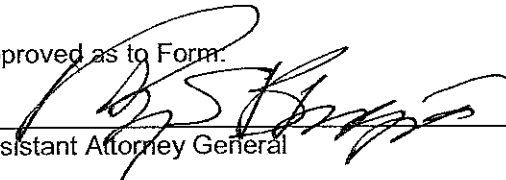
Its: Mayor

Its: Region Engineer

Date: 10/5/09

Date: 19 Oct 2009

Attest:   
\_\_\_\_\_  
City Finance Officer

Approved as to Form:  
  
\_\_\_\_\_  
Assistant Attorney General

(SEAL)