

**STATE OF SOUTH DAKOTA
JOINT POWERS
MAINTENANCE, ENCROACHMENT,
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, referred to in this Agreement as the "STATE," and the City of Rapid City, South Dakota, referred to in this Agreement as the "CITY." The parties acknowledge and agree the CITY'S population is deemed to be 69,200 for purposes of this Agreement.

1. JOINT POWERS

This Agreement does not establish a separate legal entity, as contemplated by SDCL 1-24-5. The cooperative undertaking described in this Agreement will be financed and conducted under the provisions of this Agreement by the CITY and the STATE. Each party has responsibilities under the terms of this Agreement and no joint board or administrator will be used. No real property will be purchased for use for this Agreement.

2. STATE PROJECT

The STATE and the CITY concur in the proposal for the new construction or improvement of streets identified by South Dakota Federal Aid Construction Project Number PH 1902(65)0 PCN 03AZ, referred to in this Agreement as the "STATE PROJECT." The STATE PROJECT is located at the intersection of United States Highway 16 (US16), Interstate 90 (I90), and West Boulevard, and consists of intersection improvement.

3. CONTRACT PROCUREMENT

The STATE will design, advertise, let to contract, award, and be the contracting party for the STATE PROJECT.

4. COMBINATION LETTING

A. The STATE will let the CITY'S utility project in combination with the STATE PROJECT. The CITY'S project, designated as CITY Project Number 14-2097 PCN X02V, and referred to in this Agreement as the "CITY PROJECT," is located on West Boulevard from West Rapid Street to the north side of Omaha Street.

B. The CITY will provide the STATE with all plans, specifications, contract provisions, and cost estimates for the CITY PROJECT. Each bidder will be required to submit separate bids covering the CITY PROJECT and the STATE PROJECT. Award of the contract will be to the one bidder based on the total combination bid for the two projects. The lowest responsible bid on the STATE PROJECT will be the basis for determining STATE and federal funds participation.

C. If the total low combination bid for the CITY PROJECT and the STATE PROJECT does not have, as part of that bid, the lowest bid on the STATE PROJECT, the CITY will pay to the STATE the difference between that portion of the successful combination bid attributable to the STATE PROJECT and the lowest bid on the STATE PROJECT. The CITY will pay the STATE within forty-five (45) days of receipt of billing from the STATE.

D. The STATE will award the contracts for both the STATE PROJECT and the CITY PROJECT; however, the CITY will be the contracting party for the CITY PROJECT. The CITY will make all

payments under the contract for the CITY PROJECT directly to the contractor. The CITY'S estimated cost for the CITY PROJECT is One Hundred Thirty-one Thousand Dollars (\$131,000.00). Actual cost will be based upon bids and final quantities.

- E. The CITY will provide all construction engineering for the CITY PROJECT, including all construction supervision and inspection, physical testing, measuring in-place quantities, and documenting locations for as-built records, except as set forth in section 4.F., if applicable, for purposes of final acceptance by the STATE.
- F. The STATE will provide inspection of the trench backfill, conduct trench compaction testing, and conduct moisture and density testing, for the CITY PROJECT. The STATE will provide the CITY with a copy of each test report for the CITY PROJECT. The CITY will pay the STATE for the cost of testing and inspections. The STATE will bill the CITY for testing and inspections based on the actual number of locations. Each moisture test will be charged at the rate of Twenty-five Dollars (\$25.00) and each density test will be charged at the rate of Seventy-five Dollars (\$75.00). The STATE will determine the number and location of the testing and inspections when final plans have been received by the Area Engineer. The CITY will pay the STATE within forty-five (45) days of receipt of billings from the STATE.

5. MAINTENANCE AND ENCROACHMENT

The parties entered into a separate "Maintenance and Encroachment Agreement," which was signed by representatives of each of the parties on June 1, 2010, and assigned Agreement Number 714097 by the STATE. That agreement, and the maintenance and encroachment responsibilities required by that agreement are incorporated into this Agreement by reference.

6. SIGNALS

If a signal system is installed on any portion of the STATE PROJECT located within the CITY'S municipal boundaries, that signal system will be subject to the terms of the May 17, 2010, "Maintenance Agreement Between a Local Government Authority and the State of South Dakota for Traffic Signals on State Highway System" between the parties, and assigned agreement number 613594 by the STATE.

7. INDEMNIFICATION

The CITY will indemnify the STATE, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceedings that arise as a result of the CITY'S performance under this Agreement. 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.

8. AMENDMENT

This Agreement may not be amended, except in writing, which writing will be expressly identified as a part of this Agreement, and must be signed by an authorized representative of each of the parties.

9. CERTIFICATION REGARDING LOBBYING

The CITY certifies, to the best of the 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

CITY will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The CITY will 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 will 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 will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

10. EMPLOYEE STATUS

Any officer, employee, or agent engaged in joint action under this Agreement will remain an employee with his or her agency during participation in joint action under this Agreement. Each agency will retain exclusive responsibility for its officers, agents, and employees while these officers, agents, and employees are engaged in joint action under this Agreement, including but not limited to responsibility for regular and overtime wages and salaries, unemployment benefits, workers' compensation coverage, health insurance, or other benefits, and liability coverage and indemnity, except as otherwise specifically provided in this Agreement.

11. The CITY has designated its Mayor as the CITY'S authorized representative and has empowered the Mayor with the authority to sign this Agreement on behalf of the CITY. A copy of the CITY'S Commission minutes or resolution authorizing the execution of this Agreement by the Mayor as the CITY'S authorized representative is attached to this Agreement as Exhibit M.

By signature of their representatives below, each party certifies that approval of this Agreement by ordinance, resolution, or other appropriate means has been obtained by that party's governing body or officer pursuant to SDCL § 1-24-3 and § 1-24-6.

City of Rapid City, South Dakota

State of South Dakota
Department of Transportation

By: _____

By: _____

Its: Mayor

Its: Project Development Engineer

Date: _____

Date: _____

Attest:

Approved as to Form:

City Auditor/Clerk



Special Assistant Attorney General

(CITY SEAL)