

**LETTING, FINANCIAL AND MAINTENANCE/ENCROACHMENT
AGREEMENT BETWEEN THE CITY AND THE STATE
FOR
FEDERAL-AID HIGHWAY IMPROVEMENT**

AGREEMENT _____

WHEREAS, the **DEPARTMENT OF TRANSPORTATION** acting through the South Dakota Transportation Commission, hereinafter designated as the STATE, concurs in the proposal with the City of Rapid City, hereinafter referred to as the CITY, for the improvement or new construction of a street identified as South Dakota Urban Federal Aid Construction Project Number P-BRF 1746(02) PCEMS 4338 and City Project Number SSW00-999 PCEMS X083, Pennington County, hereinafter designated as the Project, extending through Rapid City, South Dakota, located and further described as follows:

Canyon Lake Drive from Mountain View Road to just west of Dakota Drive and
Structure 52-398-303 over Rapid Creek

WHEREAS, the Project costs are estimated to be **\$600,000** for the roadway portion of P-BRF 1746(02) PCEMS 4338, **\$500,000** for the structure portion of P-BRF 1746(02) PCEMS 4338, and **\$10,000** for the non-participating utilities portion of City Project Number SSW00-999 PCEMS X083. These are estimated amounts subject to revision following the bid letting.

The work will involve the reconstruction of Canyon Lake Drive from Mountain View Road to just west of Dakota Drive. Project improvements will include grading, storm sewer, curb and gutter, portland cement concrete pavement, right-of-way, striping, roadway lighting and signalization. Non-participating work includes water main reconstruction.

The work on the bridge structure includes demolition and removal of the existing structure and replacement with a Continuous Concrete Bridge.

WHEREAS, the CITY desires the STATE to let the water main project, City Project Number SSW00-999 PCEMS X083, from the intersection of Mountain View Road and Canyon Lake Drive to just west of the intersection of Dakota Drive and Canyon Lake Drive in Rapid City, South Dakota in conjunction with Project P-BRF 1746(02) PCEMS 4338, and

WHEREAS, the Statutes of the State of South Dakota give assent to the provisions of the Transportation Equity Act for the 21st Century and acts amendatory thereof or supplementary thereto and regulations issued pursuant thereto by the Federal Highway Administration, Department of Transportation, United States of America, which hereinafter collectively will be designated as the Act, and charge of the STATE and the CITY to do all things necessary fully to carry out the cooperation contemplated and provided for in the Act; the parties hereto authorize funds and obligations herein by official action of their respective commissions or officers, and

WHEREAS, the Project will be subject to the provisions of the Act, and is within the legal jurisdiction of the CITY for traffic regulations and the control of building setbacks, zoning, sidewalks, utilities, etc., and

WHEREAS, the construction of the Project is conditioned upon the fulfillment of the obligation of the CITY in a manner satisfactory to the STATE and the Federal Highway Administrator, or their authorized representatives;

NOW THEREFORE, be it agreed for and in consideration of the undertaking of the Project under the requirements of the Act with the STATE's approval that insofar as its legal jurisdiction over the Project is concerned the CITY assents to the requirements of the Act and pledges its good faith to the carrying out of the purposes stipulated in the Act and to this end, the CITY hereby agrees:

I. LETTING CONDITIONS:

- A. The STATE will let City Project Number SSW00-999 PCEMS X083 in conjunction with STATE Project P-BRF 1746(02) PCEMS 4338 and be the contracting party for both projects. The STATE shall be the agent of the CITY for purposes of this agreement. Bidders will be required to submit a bid on City Project Number SSW00-999 PCEMS X083 and STATE Project P-BRF 1746(02) PCEMS 4338 with award of the contract to the same bidder based on the total combination bid for the two projects.
- B. The STATE will award all projects, subject to concurrence in the award by the CITY.
- C. The lowest responsible bid on the STATE Project will be the basis for determining State and Federal Funds participation. If construction change orders cause a subsequent increase or decrease in the Project cost, State and Federal Funds participation will be based on unit prices found in the lowest responsible bid on the STATE Project. In the event the total low combination bid for the CITY Project and the STATE Project combined does not have as part of that bid the lowest bid on the STATE Project, the CITY agrees to pay the STATE the difference between the bid awarded on the STATE Project and the lowest bid on the STATE Project.

II. SPECIFIC LETTING CONDITIONS:

- A. The CITY will provide plans, specifications, and cost estimates, for the CITY's water main project.
- B. The CITY agrees to provide all construction engineering including construction supervision and inspection for the water main construction project as described herein. The CITY will inspect the physical installation of the water mains, including measuring in place quantities and documenting location for as built records. The CITY will conduct all physical testing of the water mains for final acceptance.

- C. The STATE agrees to provide inspection of trench backfill and conduct trench compaction testing for that portion of the CITY Project under the surface of the highway with a copy of the compaction tests being sent to the CITY Engineer's Office. The cost estimate for this service is \$1000.00.
- D. The CITY agrees to make payment directly to the contractor for the full costs of the non-participating City Project.

III. FINANCIAL;

A. CITY agrees to perform the following:

- 1. CITY shall dedicate to public use any roadway and adjacent right-of-way constructed under this Project.
- 2. CITY will continue to maintain all streets constructed under this Project as a public street after construction of same in compliance with Title 23 of the United States Code, Section 116, Maintenance and the Federal Highway Administration Federal-Aid Policy Guide; and SDCL 31-4-5, upon completion of the Project or during periods of seasonal work shutdown.
- 3. CITY will pay for the structure replacement portion of the Project with CITY funds until such time that Federal Bridge Replacement Funds are available.
- 4. CITY will pay for any non-participating items included in the City Project Number SW00-999 PCEMS X083.

B. STATE agrees to perform the following:

- 1. STATE will let to bid and be contracting party for Project. STATE will pay for portions of actual Project construction costs including any engineering.
- 2. The STATE will award the Project bid subject to concurrence in the award by the CITY.
- 3. STATE will reimburse CITY for Bridge Replacement part of the Project at 80% of the replacement costs at such time Federal Bridge Replacement Funds become available.

C. General Conditions:

- 1. Failure by CITY to comply with STATE approved Project plans and specifications will be cause for STATE to withhold participation and reimbursement.
- 2. 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.

3. The CITY agrees to provide electric power necessary to operate any roadway lighting system and all necessary maintenance and replacements, in kind, including lamps so as to ensure the continuing operation of said roadway lighting system until such time as the parties to this agreement shall agree to discontinue the operation of the system.

IV. MAINTENANCE/ENCROACHMENT;

1. That encroachments on the public right-of-way shall be treated as follows:
 - A. In outlying commercial areas and through residential areas, all encroachments on or above the right-of-way shall be prohibited.
 - B. The use of the right-of-way by owners or lessees of abutting property for the storage of vehicles, placement of portable signs or other private use thereof shall be prohibited.
 - C. Where the highway passes through established business districts and the buildings are at the property line and are continuous or very closely spaced, encroachments overhanging the right-of-way will be prohibited except under the following conditions:
 - a. Awnings, canopies, marquees and similar installations on buildings shall be permitted to remain in place until such time that they become functionally or structurally obsolete, providing that the edge of such encroachment be not less than one meter back from the face of the curb.
 - b. Advertising or other similar signs which are less than one meter back from the face of the curb and are supported wholly from the front of the building shall be permitted to remain in place until such time that they become functionally or structurally obsolete, providing that the bottom of such encroachment be not less than four and one half meters (approximately 14.5 feet) above the curb elevation.
 - c. The replacement of obsolete or the installation of new awnings, canopies, marquees, advertising signs or similar installations supported wholly from the building shall be permitted provided that no part of the encroachment is less than one meter back from the face of the curb and two and one half meters (approximately 8 feet) above the curb elevation.
 - d. In the event the encroachments referred to in (a), (b) and (c) above, by reason of color or placement, obscure or in any way detracts from the effectiveness of the highway signs, traffic signals, pedestrian safety, or interferes with the free or safe flow of the traffic, the CITY shall cause the removal of such encroachments or take appropriate measures to improve highway signs or traffic signals and traffic safety.
 - e. The provisions of paragraph (C) and subparagraphs (a), (b), (c) and (d) above shall not apply to isolated business or commercial buildings in outlying areas.

f. In cases where there are encroachments of long standing which will in no way impair the highway operation or interfere with the free and safe flow of traffic and in the opinion of the South Dakota Transportation Commission, the immediate removal would impose unreasonable hardship, the South Dakota Transportation Commission may at its discretion permit the encroachment to remain for a specific period. This permission is subject to revocation or extension at the Commission's discretion. Each such encroachment shall be described in the attached Exhibit A.

2. On Federal Aid Projects, the permitting of such encroachments as described in the previous paragraph shall be in conformance with 23 CFR 1.23.
3. In all sections of Title 23 United States Code and the Federal Aid Program Manual, the term "City" shall be substituted for the term "State" whenever the Project is not on the State Trunk System.
4. That it will control the location and maintenance of utilities within the right-of-way so as to not impair the free flow of traffic and provide the maximum safety to the traveling public.
5. That it will not designate a speed limit on State Trunk System Projects until after appropriate engineering and traffic investigation has been made and such speed limit has been approved by the STATE.
6. It further agrees that where curbs are not installed and are not to be installed under the proposed improvement, the curbs when proposed to be constructed in the future shall be at a lateral distance approved by the STATE.

It further agrees that it will prohibit double parking and control all parking where and if allowed in a manner satisfactory to the STATE or their authorized representatives. Any temporary pavement marking needed to facilitate parking will be non-participating for federal funds.

It further agrees that it will prohibit parking in the traffic lanes constructed under this Project as necessary to allow for free flow of traffic and to provide maximum safety to the traveling public.

7. That it will not allow access to the street at points other than constructed as part of the Project without prior approval of the Department of Transportation or their authorized representatives.
8. That if a signal and/or street lighting system is installed on this street it will provide electric power necessary to operate the signal and/or street lighting system and all necessary maintenance and replacements, in kind, of all parts and apparatus of said system, including lamps so as to insure the continuing operation of said signals and/or street lighting systems until such time as the parties to this agreement shall agree to discontinue the operation of the said system.

That if a signal is coordinated through the use of leased telephone lines, it will pay the required hookup fee and monthly rental fees. It further agrees that on the State Trunk System, prior to

changing the signal timing from that originally set by the STATE, the CITY will submit the necessary data and proposed timing to the STATE for approval.

9. That, if plastic pavement marking is applied on this street, it will use plastic material approved by the STATE, to maintain those plastic pavement markings which are the responsibility of the CITY; and use rubber cutting edges on the blades of the snow removal equipment used in areas where plastic material is applied for the pavement markings.
10. That on Urban Systems Projects it will save harmless the STATE from any claim or damage made against it for consequential damage arising from and out of changing the grade of streets, causing loss or inconvenience to the property or business or surrounding property owners, or from any cause or causes whatsoever, after the Project is completed and accepted.
11. That said CITY does acknowledge that the members of its governing board and/or engineering staff have examined the plans for the Project prepared under the supervision of the STATE referred to in this Agreement.
12. That the CITY will enact such ordinances as are necessary to properly enforce any of the above provisions.
13. That the CITY agrees to provide services in compliance with the Americans with Disabilities Act of 1990.
14. That the Mayor is authorized to enter into a mutual agreement with the STATE providing for the understanding of this Project under the considerations described above.

DATED this _____ day of _____, 2000.

**SOUTH DAKOTA DEPARTMENT OF
TRANSPORTATION**

CITY OF RAPID CITY

By: _____
Deputy Secretary of Transportation

By: _____
Mayor

Date: _____

Date: _____

APPROVED AS TO LEGAL FORM

Attest: _____
Finance Officer

By: _____
Assistant Attorney General

(City Seal)

AGREEMENT BETWEEN THE POLITICAL SUBDIVISION AND THE STATE

FOR

FEDERAL AID HIGHWAY ENCROACHMENTS

EXHIBIT "A"

The following encroachments are permitted to remain by action of the South Dakota Department of Transportation Commission for the period specified:

NONE