

**LETTING, FINANCIAL AND MAINTENANCE/ENCROACHMENT  
AGREEMENT BETWEEN THE CITY OF RAPID CITY AND THE STATE  
FOR  
FEDERAL-AID HIGHWAY IMPROVEMENT  
PROJECT NH 0235(01) 0 - PCEMS 3151**

**WHEREAS**, the South Dakota Department of Transportation acting through the South Dakota Transportation Commission, hereinafter designated as the STATE, concurs in the proposal with the City for the new construction or improvement of a highway identified as Federal-Aid Construction Project Number NH 0235(01) 0-PCEMS 3151, Pennington County, hereinafter designated as the PROJECT, extending through portions of the City of Rapid City, South Dakota, hereinafter referred to as the CITY, located and further described as follows:

SD235 Southeast Connector Route from the Junction of SD79/US16B northeast to Rapid Creek, north over SD44 and then northeast to I90 in Rapid City, SD. Grading, Interchange on SD79, Surfacing, Structures, Signals, and Lighting; and

**WHEREAS**, as part of the PROJECT, it is necessary for the STATE to provide access by constructing a new Service Road adjacent to SD79 and a new Access Road to the Community Alternative Building site; and

**WHEREAS**, the CITY agrees to accept jurisdiction and continuing maintenance of a portion of SD437 (previous Elk Vale Road from Concourse Drive southwest to the existing SD44/RR crossing) and an existing service road west of SD79 from Hartland Drive south approximately 1,500 feet; and

**WHEREAS**, the CITY desires the STATE to let the CITY water and sewer project number SSW02-1137 further described as water and sewer relocations for the SE Connector South Phase; and

**WHEREAS**, the Statutes of the State of South Dakota give assent to the provisions of the Transportation Equity for the 21<sup>st</sup> Century Act 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; and

**WHEREAS**, the section of the PROJECT within the CITY 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;

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**NOW, THEREFORE**, be it agreed for and in consideration of the undertaking of the PROJECT under the requirements of the Act with the STATE 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 the purposes stipulated in the Act and to this end, the CITY hereby agrees:

### 1. COMBINATION LETTING CONDITIONS:

- A. The STATE will let the CITY water and sanitary sewer project number SSW02-1137 in combination with the PROJECT. Bidders will be required to submit a bid on CITY project number SSW02-1137 and state PROJECT with award of contract to the same bidder based on the total combination bid for the two projects.
- B. The lowest responsible bid on the state PROJECT will be the basis for determining State and Federal Funds participation. 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 combination project and the lowest bid on the state PROJECT.
- C. The STATE will award and will issue a contract for both projects; however, the CITY will be the contracting party for CITY project number SSW02-1137. The CITY Engineer's estimated cost for the CITY project is \$ 500,000 . It is understood by the CITY that the actual costs will be based upon bids and final quantities.
- D. The CITY will provide plans, specifications, and estimates for the CITY project.
- E. The CITY agrees to provide all project construction engineering including construction supervision and inspection for the water main and sanitary sewer construction project as described herein. The CITY will inspect the physical installation of the water mains and sanitary sewer, including measuring in-place quantities and documenting location for as-built records. The CITY will conduct all physical testing of the water mains and sanitary sewer for final acceptance.
- F. The STATE agrees to provide testing of trench backfill and conduct trench compaction testing for that portion of the CITY project under the surface of the highway at no cost with a copy of the compaction tests being sent to the CITY Engineer's Office.

### 2. FINANCIAL:

- A. The STATE, as part of the PROJECT, agrees to design, let and construct the Service Road east of SD79 further described as from SD79/Minnesota east 380' and then south 1200' to Merillat Drive and then west 290' towards SD79 and then south 630'. The CITY, after completion of the PROJECT, agrees to accept the absolute jurisdiction and the continuing maintenance (including right-of-way) of the Service Road.

- B. The STATE, as part of the PROJECT, agrees to design, let and construct the Access Road from the STATE Weigh Scale to the Community Alternative Building. The CITY, after completion of the PROJECT, agrees to accept the absolute jurisdiction and the continuing maintenance (including right-of-way) of the Access Road.
- C. The CITY, after completion of construction of PROJECT, agrees to accept absolute jurisdiction and continuing maintenance (including right-of-way) of a portion of SD437 (previous Elk Vale Road from Concourse Drive southwest to existing SD44/RR crossing).
- D. The CITY, after completion of construction of PROJECT, agrees to accept absolute jurisdiction and continuing maintenance (including right-of-way) of an existing service road west of SD79 from Hartland Drive south approximately 1,500 feet.

3. MAINTENANCE & ENCROACHMENTS:

Those 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 three feet back from the face of the curb.
  - b. Advertising or other similar signs which are less than three feet 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 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 three feet back from the face of the curb and 8 feet above the curb elevation.

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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 State 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 State, the immediate removal would impose unreasonable hardship, the South Dakota Department of 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.

- D. On Federal Aid Projects, the permitting of such encroachments as described in the previous paragraph shall be in conformance with 23 CFR 1.23.
- E. 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.
- F. 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 South Dakota Department of Transportation.
- G. That it will prohibit all parking in the traffic lanes constructed under this project. It further agrees that it will prohibit double and diagonal parking and control all parallel parking where and if allowed in a manner satisfactory to the South Dakota Department of Transportation.

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 South Dakota Department of Transportation.

- H. That it will not allow access to the highway at points other than constructed as part of the PROJECT without prior approval of the South Dakota Department of Transportation or their authorized representatives.
- I. That, if plastic pavement marking is applied on this street, it will use plastic material approved by the South Dakota Department of Transportation, to maintain those plastic pavement markings which are the responsibility of the CITY.

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- J. 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 South Dakota Department of Transportation referred to in this Agreement.
- K. That the CITY will enact such ordinances as are necessary to properly enforce any of the above provisions.
- L. 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 \_\_\_\_\_, 2002

CITY OF RAPID CITY

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Auditor/Finance Officer

(S E A L)

SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION

APPROVED AS TO FORM:

\_\_\_\_\_  
Project Development Engineer

\_\_\_\_\_  
Assistant Attorney General

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AGREEMENT BETWEEN THE POLITICAL SUBDIVISION AND THE STATE  
FOR  
FEDERAL AID HIGHWAY ENCROACHMENTS

EXHIBIT "A"

NONE