

AGREEMENT NUMBER _____

FUNDING AGREEMENT BETWEEN SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION AND CITY OF RAPID CITY FOR LETTING AND CONSTRUCTION OF PROJECTS P 1669(26), PCEMS 3595, AND CITY UTILITY PROJECT SSW02-1242

WHEREAS, the Department of Transportation acting through the South Dakota Transportation Commission, hereinafter referred to as **STATE**, and the City of Rapid City, hereinafter referred to as **CITY**, agree it is in the best interest to let in combination the grading and surfacing project P1669(26), PCEMS 3595, hereinafter referred to as **PROJECT**, and the city utility project SSW02-1242, hereinafter referred to as **CITY PROJECT**, all located in Rapid City, South Dakota on Haines Ave. from Northridge Dr. to Viking Drive, and

WHEREAS, **PROJECT** costs include preliminary engineering, construction, and construction engineering with an estimate of \$1,050,000.

NOW THEREFORE, **CITY** and **STATE** agree to the following:

A. **STATE** will

1. Provide technical assistance in preparation of all plans and specifications for **PROJECT**.
2. Advertise for bids and let **CITY PROJECT** in combination with **PROJECT**.
3. Award the contract for **CITY PROJECT** and **PROJECT** to the lowest responsible bidder based on the lowest total combination bid with concurrence by **CITY**. In the event the total low combination bid for the **CITY PROJECT** and **PROJECT** combined does not have as part of that bid the lowest bid on the **PROJECT**, the **CITY** agrees to pay the **STATE** the difference between the bid awarded on the **PROJECT** and the lowest bid on the **PROJECT**.
4. Make all eligible progress payments to consulting engineers, contractors and vendors for **PROJECT** costs with available **CITY** STP funds and associated **STATE** match.
5. Acquire the necessary right-of-way as established in the right-of-way agreement for the **PROJECT** using **CITY** STP funds and **STATE** match.
6. Provide assistance with the inspection and testing of **PROJECT** if requested by **CITY**, with a copy of the test results or data being sent to the **CITY** Engineer's Office.

B. CITY will

1. Provide separate plans, specifications, and cost estimates for **CITY PROJECT** complete with review and approval by the Department of Environment and Natural Resources prior to advertisement and letting.
2. Develop plans and specifications for **PROJECT**.
3. Provide construction administration for **PROJECT**.
4. Provide all construction administration for **CITY PROJECT** and make all contractor payments with 100% **CITY** funds.
5. Certify that all utility adjustments or agreements are in place prior to advertisement and letting.
6. Continue to maintain **PROJECT** upon completion of construction as a public street and shall dedicate the roadway and adjacent right of way for the public use.

C. CITY further agrees to the following with regard to 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 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.
6. That **CITY** will control access to the street at points other than those constructed as part of the **PROJECT**.
7. 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.

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

8. 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.
9. 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.

10. 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.
 11. That the **CITY** will enact such ordinances as are necessary to properly enforce any of the above provisions.
 12. That the **CITY** agrees to provide services in compliance with the Americans with Disabilities Act of 1990.
 13. 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.
- D. 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.

**SOUTH DAKOTA DEPARTMENT OF
TRANSPORTATION**

CITY OF RAPID CITY

BY: _____
Secretary

BY: _____
Mayor

DATE: _____

DATE: _____

BY: _____
Local Government Assistance

ATTEST: _____
Finance Officer

APPROVED AS TO LEGAL FORM

City Seal

BY: _____
Assistant Attorney General