

**AGREEMENT BETWEEN  
SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION  
AND  
CITY OF RAPID CITY**

<b>No. PW012704-17</b>
------------------------

**AGREEMENT NO.** \_\_\_\_\_

*Financial and maintenance agreement for the intersection of US16B and 5<sup>th</sup> Street Extension in Rapid City*

**IT IS HEREBY AGREED** between the State of South Dakota acting through the Department of Transportation, hereinafter referred to as the STATE, and the City of Rapid City, South Dakota, hereinafter referred to as the CITY, as follows:

**WHEREAS**, the STATE and the CITY agree that construction of the proposed new intersection of 5<sup>th</sup> Street and US16B will require the installation of new turning lanes to handle traffic capacity issues; and

**WHEREAS**, the STATE and the CITY will both benefit from the improvements by this infrastructure work; and

**WHEREAS**, this intersection improvement will be constructed under project NH 2016 (15) 66 PCEMS 6393, hereinafter referred to as the PROJECT. The PROJECT will consist of a right-turn lane for westbound to northbound traffic, an extension of the climbing lane from the new intersection west to the existing climbing lane, and a left-turn lane for eastbound to northbound and westbound to southbound traffic movements – all located on US16B. This work will involve traffic control, drainage, shoulder widening, asphalt concrete resurfacing, pavement marking, roadway lighting and traffic signals. The PROJECT costs are estimated at \$317,000; and

**WHEREAS**, the CITY acting by and through its agents and employees shall oversee the PROJECT; and

**WHEREAS**, the CITY anticipates letting to bids the 5<sup>th</sup> Street Extension Project in FFY 2004, and it would be advantageous to let to bids and construct both projects at the same time;

**NOW, THEREFORE**, it is mutually agreed as follows:

1. FINANCIAL:

A. STATE will perform the following activities:

1. STATE will and must participate in the review and approve the design plans for all improvements to US16B prior to advertisement of the project for bids.

2. STATE will concur in CITY'S bid award.
3. STATE will reimburse CITY for eligible PROJECT construction costs, as described within this paragraph, estimated to be \$266,000. Costs are based on STATE paying for improvements required on US16B including providing a left-turn lane, providing a climbing lane extension and providing a right-turn lane on the northeast corner of 5<sup>th</sup> Street. STATE agrees to pay for the cost of all improvements south of the existing US16B north right-of-way line with the exception of the major drainage structure (a 48" RCP which extends north from the existing cattle pass) and traffic signal costs. The traffic signal costs are to be shared, 1/2 CITY and 1/2 STATE cost.
4. STATE agrees to make partial payments to CITY within thirty (30) days of billing. The CITY will bill the STATE for the PROJECT, based on the work completed and accepted. Submitted costs shall be provided on an estimate prepared by a registered professional engineer.
5. STATE will make final payment of the PROJECT (their cost share) upon receipt of certification by a registered engineer that the PROJECT is complete and construction is in conformance with the contract as awarded.

B. CITY will perform the following activities:

1. CITY will retain a consultant for Design Engineering of the PROJECT and shall pay for all design expenses with no direct reimbursement from the STATE.
2. CITY will advertise, let to contract, and award PROJECT to the lowest responsible bidder.
3. CITY will obtain the necessary right-of-way needed to construct the PROJECT. It is anticipated temporary easements may be required.
4. CITY will keep separate the contract expenses for the two projects.
5. CITY will pay for Construction Engineering expenses with no direct reimbursement from the STATE.
6. CITY will provide construction inspection and material testing for the PROJECT according to the SD DOT Materials Manual with the exception of Certified testing and inspection personnel. Upon completion of the PROJECT, the CITY will provide the STATE a copy of all material testing records. STATE will provide the list of the tests and certifications necessary for record submittal.
7. CITY will obtain approval from the STATE before authorizing any changes to work under STATE approved PROJECT plans and specifications.
8. CITY shall keep accounting records clearly identified with the AGREEMENT. All PROJECT charges shall be supported by documents which evidence, in detail, the nature and propriety of those charges.

9. Upon reasonable notice, CITY will allow Auditors of the STATE to audit all records of CITY related to this AGREEMENT. These records shall be clearly identified and readily accessible. All records shall be kept for a period of three (3) years after the date of final payment under this AGREEMENT.
10. CITY shall abide by the requirements of Title VI of the Civil Rights Act of 1964. These requirements are contained in Exhibit 1 attached to and hereby made a part of this AGREEMENT.
11. CITY shall provide services in compliance with the Americans with Disabilities Act of 1990.
12. CITY will submit requests for reimbursement to the DOT Rapid City Area Engineer for the state's share of the Contract costs and include notification when the project is complete in order for both parties to participate in a final joint inspection.

## 2. MAINTENANCE & ENCROACHMENTS:

1. 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.

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 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.

On Federal Aid Projects, the permitting of such encroachments as described in the previous paragraph shall be in conformance with 23 CFR 1.23.

2. 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.
3. 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.
4. 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 STATE.
5. 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.
6. That it will not allow access to the street/highway at points other than constructed as part of the PROJECT without prior approval of the Department of Transportation or their authorized representatives.
7. That if a signal and/or roadway lighting system is installed on this street it will provide electric power necessary to operate the signal and/or roadway 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 roadway 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 South Dakota Department of Transportation, the CITY will submit the necessary data and proposed timing to the South Dakota Department of Transportation for approval.

8. 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.
9. That said CITY does acknowledge that the members of its governing board and/or engineering staff has examined the plans for the PROJECT as referred to in this Agreement.
10. That the CITY will enact such ordinances as are necessary to properly enforce any of the above provisions.
11. CITY failure to adhere to the provisions of this AGREEMENT will constitute withdrawal of STATE funding for the PROJECT. 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 the same.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2004

ATTEST:

CITY OF RAPID CITY

By: \_\_\_\_\_  
City Auditor/Finance Officer

\_\_\_\_\_  
Mayor

(SEAL)

APPROVED AS TO FORM:

SOUTH DAKOTA DEPARTMENT OF  
TRANSPORTATION

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

By: \_\_\_\_\_  
Director of Operations

By: \_\_\_\_\_  
Region Engineer

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

EXHIBIT "A"

NONE

## EXHIBIT 1

### STATE OF SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION

#### STANDARD TITLE VI ASSURANCE

SEPTEMBER 1, 1997

#### TITLE VI - NONDISCRIMINATION:

During the performance of this contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. Compliance with Regulations: The Contractor shall comply with the Regulations relative to nondiscrimination in Federally or State assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.
4. Information and Reports: The Contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State Transportation Department or the Federal Highway Administration to be pertinent to ascertain compliance with such regulations or directives. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State Transportation Department, or the Federal Highway Administration as appropriate, and shall set forth what efforts were made to obtain the information.
5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the non-discrimination provisions of this contract, the State Transportation Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
  - a. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or
  - b. Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions: The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the State Transportation Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event a

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the State Transportation Department to enter into such litigation to protect the interests of the State, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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