

AGREEMENT NUMBER _____

**FUNDING AGREEMENT BETWEEN SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION
AND CITY OF RAPID CITY FOR LETTING AND CONSTRUCTION OF PROJECT EM 1608(3), PCN
012F, CIP 50521 and CITY SANITARY SEWER & WATER PROJECT SSW-1334b**

WHEREAS, the South Dakota Department of Transportation, hereinafter referred to as **STATE**, acting with the approval of the South Dakota Transportation Commission, and the City of Rapid City, hereinafter referred to as **CITY** agree it is in the best interest of both parties to let in combination the grading and surfacing project EM 1608(3), PCN 012F, CIP 50521 hereinafter referred to as **PROJECT**, and the city utility project SSW-1334b, hereinafter referred to as **CITY PROJECT** all located in Rapid City, South Dakota, on East Mall Drive from North LaCrosse Street to East North Street (Exit 60), and

WHEREAS, the Statutes of the State of South Dakota give assent to the provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act – Legacy for Users (SAFTETEA – LU) and it 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 the Commission and the Municipality to do all things necessary fully to carry out the cooperation contemplated and provided for in the Act; and

WHEREAS, total costs are estimated to be \$5,633,000 and will include preliminary engineering, construction, and construction engineering.

NOW THEREFORE, CITY and STATE agree to the following:

A. STATE will

1. Provide technical assistance, and approve all plans and specifications for **PROJECT** prior to the **CITY** advertising and letting the **PROJECT**.
2. Concur in award of **PROJECT** and **CITY PROJECT** to the lowest responsible bidder.
3. Provide progress payments for 81.95% of eligible **PROJECT** costs to contractors and vendors with HPP Discretionary Funds (up to a maximum of \$2,000,000 less any reductions due to Federal Obligation Limits, which are currently estimated at 85%).

B. CITY will

1. Provide plans, specifications, and cost estimates for both the **PROJECT** and **CITY PROJECT** complete with review and approval of the **CITY PROJECT** by the Department of Environment and Natural Resources prior to advertisement and letting.
2. Obtain all necessary right-of-way for both projects.

3. Provide all necessary environmental assessments and clearance documents.
4. Certify that all right of way and utility adjustments or agreements are in place prior to advertising the letting.
5. Provide 18.05% local match associated with the federal earmark portion of **PROJECT** using **CITY** funds. Eligible costs in excess of the Federal Obligation Limits and local match will be covered with remaining State Road Swap funds acquired through agreement number 612978, currently estimated at \$3,648,000.00. The balance of the **PROJECT** costs will be the responsibility of the **CITY**.
6. Provide construction engineering and administration for both the **PROJECT** and **CITY PROJECT**.
7. Provide payment for **CITY PROJECT** with 100% **CITY** funds.
8. 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.
9. Perform items B.1 through B.4 in accordance with all Federal requirements and guidelines so that future Federal funding is not jeopardized.

C. **HOLD HARMLESS AND INDEMNIFICATION PROVISION**

CITY agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suites, damages, liability or other proceedings that may arise as the result of performing services hereunder. 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.

D. **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 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 for construction 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 **CITY** will control access to the street at points other than those constructed as part of the **PROJECT**.
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.

E. INSURANCE

If the **CITY** anticipates performing construction activities, the **CITY** shall be required to furnish the **STATE** the following certificates of insurance and assure that the insurance is in effect for the life of the contract:

1. Commercial General Liability Insurance:

CITY shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

2. Business Automobile Liability Insurance:

CITY shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$500,000 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

3. Worker's Compensation Insurance:

CITY shall procure and maintain workers' compensation coverage as required by South Dakota law.

4. Before beginning work under this Agreement, the **CITY** shall furnish the **STATE** with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days' prior written notice to the **STATE**. The **CITY** shall furnish copies of insurance policies if requested by the **STATE**.

- F. 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: _____
Department Secretary

BY: _____
Mayor

DATE: _____

DATE: _____

BY: _____
Local Transportation Programs

ATTEST: _____
Finance Officer

City Seal