

MAINTENANCE AND FINANCIAL AGREEMENT
BETWEEN SD DEPARTMENT OF TRANSPORTATION
CITY OF BOX ELDER AND CITY OF RAPID CITY
FOR
TRAFFIC SIGNALS, ROADWAY LIGHTING, LANDSCAPING AND
ASPHALT CONCRETE

AGREEMENT NO. _____

Financial agreement between the Department of Transportation, the City of Box Elder and the City of Rapid City for traffic signals, roadway lighting and landscaping at I90 Exit 61 and US16B (North Elk Vale Road).

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 and the City of Box Elder for the construction of a single point urban interchange that will include traffic signals, roadway lighting and landscaping as identified under South Dakota Project No. EM 0902(39)61 PCN 1939 Pennington County, hereinafter designated as the **PROJECT**, extending through the jurisdiction of the City of Box Elder and the City of Rapid City, South Dakota described as follows:

PROJECT - Project No. EM 0902(39)61 PCN 1939 - Exit 61, North Elk Vale Road from north of the railroad tracks to north of East Mall Drive; resurfacing of Beale Street from Dyess Ave to west of Eglin Street; and resurfacing of Dyess Ave from Eglin Street to Beale Street.

- the City of Rapid City Project No. P 1608(02) -- PCN 012D Pennington County, for the widening from 2 to 3 lanes; the design; and grading, curb and gutter, storm sewer and PCCP Surfacing, hereinafter designated as the **RC PROJECT**, extending through the jurisdiction of the City of Rapid City, South Dakota, located and further described as follows:

RC PROJECT - Project No. P 1608(02) -- PCN 012D - East Mall Drive, from North Elk Vale Road westerly 0.09 Mile to the intersection of Discovery Circle and East Mall Drive at the Visitor Information Center (VIC) entrance in Rapid City, South Dakota.

WHEREAS, the Statutes of the State of South Dakota give assent to the provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity 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, the City of Box Elder and the City of Rapid City to do all things necessary to fully carry out the cooperation contemplated and provided for in the Act; and

WHEREAS, the section of the PROJECT within the City of Box Elder and the City of Rapid City will be subject to the provisions of the Act, and is within the legal jurisdiction of the City of Rapid City and the City of Box Elder 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 of Box Elder and the City of Rapid City in a manner satisfactory to the STATE, or their authorized representatives; and

WHEREAS, the City of Box Elder and City of Rapid City wish to share the cost to operate the traffic signals, roadway lighting and landscape maintenance costs; and

WHEREAS, the City of Box Elder and the City of Rapid City desires the STATE to let in combination with the PROJECT resurfacing work to mill and resurface North Elk Vale Road from the end of the PROJECT north approximately 1150 feet. (This work will be entirely paid for by the Cities); and

WHEREAS, the STATE and the City of Rapid City agree that it is in the best interest of both parties to construct the RC PROJECT.

NOW, THEREFORE BE IT AGREED by the STATE, the City of Box Elder and the City of Rapid City that the following agreement is hereby authorized, signed by the necessary governing officials regarding the maintenance costs and liability responsibilities concerning the traffic signals, roadway lighting, and landscaping for the PROJECT:

I. STATE RESPONSIBILITIES:

1. That the STATE will design, advertise, let to contract, and award PROJECT, resurfacing work from the end of the PROJECT north to the section line (approximately 1150 feet) and the RC PROJECT to the lowest responsible bidder;
2. That the STATE will provide construction administration, inspection and material testing for the PROJECT according to the SD DOT Materials Manual;
3. That the STATE shall provide the match for Roadway Lighting and Traffic Signals.

II. CITIES RESPONSIBILITIES FOR MAINTENANCE AND FINANCIAL:PROJECT

1. That the City of Rapid City and the City of Box Elder acknowledge that the members of their 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;
2. That when the signal and roadway lighting system is installed on this street, the City of Rapid City will be responsible for all routine maintenance regarding the maintenance tasks including bulb changes, signal head cleaning/inspection/adjustments, controller inspections and cabinet weathering on the same schedule as performed for other signals under City of Rapid City jurisdiction. This will include replacements, in kind, of all parts and apparatus of said system 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;
3. That the City of Rapid City further agrees that on this State Trunk System, prior to changing the signal timing from that originally set by the STATE, that the City of Rapid City will submit the necessary data and proposed timing to the STATE for approval;
4. That the City of Rapid City will receive, field review, and address signal operation complaints;
5. That any operational complaint received by the City of Box Elder shall be forwarded to the City of Rapid City Traffic Engineering and Operations;
6. That the City of Rapid City will repair all damage to the signal and/or roadway lighting or their components caused by weather events, with exception of major storm event resulting in near total destruction of entire system (repair costs for subject major storm events may be split among all three parties);
7. That all costs, including but not limited to personnel, benefits, equipment usage, parts, rentals, contractor work, associated with items 4-6 above shall be paid by the City of Rapid City;
8. That the City of Rapid City shall be responsible for all electric and telephone costs associated with the traffic signal and the roadway lighting system within the PROJECT north of the centerline of I90;

9. That the City of Box Elder shall be responsible for all electric costs associated with the roadway lighting system south of the centerline of I90 along with a Yearly Maintenance Fee of twenty five hundred dollars (\$2500) to be paid to the City of Rapid City;
10. That in the event of damage to the traffic signal and roadway lighting systems due to vehicular accident or other man made event, the City of Rapid City will perform necessary repairs, bill the responsible party, and receive all of the reimbursement funds. In the event that these reimbursement funds are not received within six months of billing, or are of an amount that does not cover the full repair amount, the City of Box Elder and the City of Rapid City shall split the cost of the repair;
11. That all monies owed by the City of Box Elder to the City of Rapid City shall be so paid within 60 days of notice or request;
12. That the City of Rapid City shall be responsible for repair and costs associated with any acts of maintenance negligence caused by the action of the City of Rapid City maintenance personnel;
13. That police control of the intersection whenever necessary to facilitate the safe maintenance or repair of these traffic signals shall be a shared responsibility between the City of Rapid City and the City of Box Elder and as such shall be coordinated between agencies;
14. That the City of Rapid City shall maintain trained personnel, equipment and repair items necessary to perform routine traffic signal maintenance activities for this traffic signal;
15. That the City of Rapid City accepts liability responsibility resulting directly from the maintenance of these traffic signals;
16. That the City of Box Elder and the City of Rapid City agree to be responsible for providing future maintenance and costs for the landscaping aspect of the PROJECT within their respective boundary. Items such as, but not limited to, periodic mowing, pruning, watering and replacement of shrubs and trees; debris and litter removal; repair and replacement of irrigation heads, lines, and valves and snow removal from sidewalks;
17. That each City will reimburse STATE for the cost to mill and resurface North Elk Vale Road from the end of the PROJECT north to the section line, approximately 1150 feet. Costs shall be evenly split between the City of Box Elder and the City of Rapid City. Actual amount will be based on final quantities and actual bids and construction engineering costs. (Estimated cost for each City is \$19,000);
18. That each City 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;

19. That each City 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;
20. That each City will prohibit all parking on the traffic lanes constructed under this PROJECT. The City of Box Elder and the City of Rapid City further agree that they will prohibit double parking and control all parking where and if allowed in a manner satisfactory to the STATE or their authorized representatives;
21. That each City further agrees that, where curbs are not installed and are not to be installed under the proposed improvement; the curbs, when constructed in the future, shall be at a lateral distance approved by the STATE;
22. That each City will not allow access to the street/highway at points other than constructed as part of the PROJECT without prior approval of the STATE or their authorized representatives;
23. That, if plastic pavement marking is applied on this street, each City will use plastic material approved by the STATE, and will be responsible to maintain those plastic pavement markings;
24. That the City of Box Elder and the City of Rapid City will enact such ordinances as are necessary to properly enforce any of the above provisions;
25. That each City agrees to indemnify and hold the STATE of South Dakota, its officers, agents and employees harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as a result of either City's performance under this agreement. This section does not require either City to be responsible for or defend against claims or damages arising from errors or omissions of the STATE, its officers, agents or employees;
26. That each Mayor is authorized to enter into a mutual agreement with the South Dakota Transportation Commission to implement the provisions described above.

RC PROJECT

1. That the City of Rapid City will participate in the review and approve the design plan for all improvements on RC PROJECT prior to advertisement of the project for bids;
2. That the City of Rapid City will accept the STATE's bid award for RC PROJECT based on the PROJECT's low bid;

3. That the City of Rapid City will pay for eligible RC PROJECT - P 1608(02) PCN 012D design and construction costs with 81.95% Urban STP Funds and 18.05% State match relative to East Mall Drive realignment and resurfacing actual costs. Costs are based on City of Rapid City paying for all improvement on East Mall Drive from station 191+34± to station 194+92±. Included in the costs will be any design engineering and construction engineering costs. City of Rapid City will make final payment of the RC PROJECT cost with 81.95% Urban STP Funds as identified above upon notification by STATE that the RC PROJECT is complete and construction is in conformance with contract as awarded;
4. That the City of Rapid City will secure the necessary public right-of-way for the RC PROJECT and certify that all necessary right-of-way and utility adjustments are in place prior to the letting.

III. ENCROACHMENT:

1. That encroachments on the public right-of-way shall be treated as follows by each City:
 - 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 three feet (one meter) back from the face of the curb.
 - b. Advertising or other similar signs which are less than three feet (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 14.5 feet (four and one half meters) 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 (one meter) back from the face of the curb and 8 feet (two and one half meters) 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 STATE at its discretion permit the encroachment to remain for a specific period. This permission is subject to revocation or extension at the STATE'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.

Either City's 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 _____, 2006

CITY OF BOX ELDER

ATTEST:

Mayor

City Auditor/Finance Officer

(S E A L)

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

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