

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION AND  
CITY OF RAPID CITY  
FUNDING, MAINTENANCE AND ENCROACHMENT AGREEMENT**

IT IS HEREBY AGREED between the DEPARTMENT OF TRANSPORTATION hereinafter referred to as STATE, and the City of Rapid City, South Dakota, hereinafter referred to as the City, as follows:

WHEREAS, the CITY desires the STATE to let Roadway Safety Improvement Project PH 1771(13) PCN 00LM; Signal Upgrade, Pavement Markings and ADA Ramps; hereinafter referred to as the PROJECT;

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 its amendments 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 Commission and the Municipality to do all things necessary fully to carry out the cooperation contemplated and provided for in the Act; and

AND WHEREAS, the CITY is desirous of receiving Federal funds under the provisions of the Federal Aid Highway Act for the improvement of said intersection; and

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

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;

NOW THEREFORE, be it agreed for and in consideration of the undertaking of the Project under the requirements of the Act with the STATE's 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:

A. The CITY hereby agrees to:

1. Provide the STATE a utilities resolution agreeing that the relocation and/or adjustments of utilities will be at no cost to the STATE.
2. Make payments to the STATE for their share and the non-participating portion of the PROJECT within thirty (30) days of billing. It is understood by the CITY that the actual costs will be based upon bids and final quantities. The estimated cost of the CITY's share of the Signal Upgrade is \$13,107.00. The cost will be based on the unit prices for bid items and final quantities.

3. Have the sole obligation and responsibility for maintenance of the PROJECT upon completion including but not limited to: debris and litter removal, snow removal and repair and replacement of ADA Ramps in accordance with the American with Disabilities Act (ADA). The CITY shall enact such ordinances and resolutions as are necessary to properly fulfill its maintenance responsibilities.
4. To maintain Projects on the Urban System in Compliance with Title 23 of the United States Code, Section 116, Maintenance and the Federal Highway Administration Federal-Aid Policy Guide; and SDCL 31-4-5, upon completion of the projects or during periods of seasonal work shutdown.
5. 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 supported wholly from the face of the 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 fourteen and one half feet above the curb elevation.
    - c. The replacement of obsolete or installation of new awnings, canopies, marquees, advertising signs or similar installations supported wholly from the building allowed to remain under (a) and (b) above, shall be permitted provided that no part of the encroachment is less than three feet back from the face of the curb and eight 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 or traffic signals, the city shall cause the removal of such encroachments or take appropriate measures to improve the effectiveness of the highway signs or traffic signals.
    - 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 may 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. (Note Exhibit A does not apply as there are no locations on the PROJECT).

5. On Federal Aid Projects, the permitting of such encroachments as described in the previous paragraph shall be in conformance with the 23 CFR 1.23.
6. 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.
7. 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.
8. 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 or their authorized representatives.

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 STATE.

9. That it will not allow access to the project at points other than shown on the plans without prior approval of the STATE or their authorized representatives.
10. That if a signal and/or roadway lighting system is installed 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.

11. That on Roadway Safety Improvement 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.

12. That said CITY does acknowledge that the members of its governing board have examined the plans for the Project prepared under the supervision of the South Dakota Department of Transportation, and the same are hereby deemed approved and binding upon the said CITY and the STATE.
13. That the CITY will enact such ordinances as are necessary to properly enforce any of the above provisions.
14. That the CITY agrees to provide services in compliance with the Americans with Disabilities Act of 1990.
15. If CITY expends Five Hundred Thousand Dollars (\$500,000) or more in federal funds during any CITY fiscal year covered, in whole or in part, under this AGREEMENT, then CITY shall be subject to the single agency audit requirements of the U. S. Office of Management and Budget (OMB) circular A-133. If CITY expends less than \$500,000 in federal funds during any CITY fiscal year, the STATE may perform a more limited program or performance audit related to the completion of AGREEMENT objectives, the allowability of services or costs and adherence to AGREEMENT provisions.
21. Upon reasonable notice, CITY will allow STATE or U. S. Department of Transportation representatives to examine all records of the CITY related to this AGREEMENT during CITY's normal business hours. All records shall be kept by CITY for a period of three (3) years after the date of final payment by STATE under this AGREEMENT.

B. The STATE hereby agrees to:

1. Buy the ROW in the CITY's name for this project.
2. Design the PPROJECT. PROJECT will be designed in accordance with AASHTO standards. Specifications to be used are the latest edition of the SD Department of Transportation Standard Specifications for Roads and Bridges.
3. Let the PROJECT and be the contracting party for the same.
4. Bill the CITY for project progress payments on the amount of work completed and accepted. The payment will be based on the unit prices for bid items and final quantities.
5. Obtain the required environmental clearances for the PROJECT.
6. Provide construction engineering including construction supervision and inspection for the PROJECT.

## C. FUNDING:

1. The estimated cost of the PROJECT is One Hundred and Thirty-One Thousand Seventy One Dollars (\$131,071.00). The STATE shall pay for Ninety Percent (90%) of total costs of PROJECT with Federal Funds up to One Hundred and Seventeen Thousand Nine Hundred and Sixty Four Dollars (\$117,964.00). The CITY shall pay for Ten Percent (10%) of the total costs of the PROJECT up to Thirteen Thousand One Hundred and Seven Dollars (\$13,107.00). Any costs for the PROJECT above One Hundred and Seventeen Thousand Nine Hundred and Sixty Four Dollars (\$117,964.00) will be paid One Hundred Percent (100%) by CITY.
2. The CITY will pay for One Hundred Percent (100%) of the non-participating costs for PROJECT.

## D. OTHER mutually agreed upon items:

1. Neither this agreement nor any interest therein shall be assigned, sublet or transferred unless written permission to do so is granted by the STATE.
2. In the event the AGREEMENT is terminated by the STATE for fault on the part of CITY, the AGREEMENT shall be null and void, and the STATE shall be entitled to recover payments made to CITY on work which is the cause of the at-fault termination.
3. Any dispute concerning this AGREEMENT between the parties hereto shall be referred to the Secretary of the South Dakota Department of Transportation or his duly authorized representative for determination, whose decision in the matter shall be final and conclusive on the parties to this AGREEMENT.
4. The STATE and CITY have the option to and the right to, terminate or cancel the entire AGREEMENT or amend any portion to the AGREEMENT if both parties agree thereto in writing.
5. Upon completion of construction of the project and acceptance by the CITY, the CITY agrees to indemnify and hold the STATE, its officers, agents and employees harmless from and against any and all actions, suits, damages, liability or other proceedings that arise as a result of CITY'S operation and maintenance of the lighting system. This section does not require CITY to be responsible for or defend against claims or damages arising from errors or omissions of the STATE, its officers, agents or employees.

This AGREEMENT is binding upon the 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.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007

CITY OF RAPID CITY

ATTEST:

\_\_\_\_\_  
Mayor

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

(S E A L)

STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION

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

APPROVED AS TO FORM:

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