

**AN AGREEMENT TO EXCHANGE FEDERAL FOR STATE FUNDS FOR CONSTRUCTION OF PROJECT P 1650(00),
PCN 005Q, IN RAPID CITY, SD**

This **AGREEMENT** is made by and between the South Dakota Department of Transportation, hereinafter referred to as "**STATE**" and the Rapid City, City Council hereinafter referred to as "**CITY**".

WHEREAS, both parties to this **AGREEMENT** desire that project P 1650(00), PCN 005Q – Eglin Street from East North Street to the DOT Complex Entrance, be let for construction in FY2008 and shall be hereinafter referred to as "**PROJECT**";

AND WHEREAS it is in the best interest to let **PROJECT** as a state project thus eliminating certain federal requirements resulting in significant anticipated cost savings;

AND WHEREAS PROJECT costs include preliminary engineering, right of way, construction, and construction engineering with a total estimated at \$950,000.

NOW THEREFORE, the parties to this **AGREEMENT** agree as follows:

A. STATE will perform the following activities:

1. **STATE** will provide technical assistance for **PROJECT**, review and approve plans and specifications prior to advertising for letting, and concur in **CITY** award of contract to the lowest responsible bidder.
2. **STATE** will exchange **CITY** STP funds for **STATE** funds at a ratio of 90:10 (91.05555%) to fund 81.95% of **PROJECT**. The remainder will be **STATE** match.
3. **STATE** agrees to pay for **PROJECT** construction costs by making progress payments directly to the contractors and suppliers (or vendors) with funds as described in section A.2 upon receipt of proper documentation of work completed, services performed, or supplies furnished.
4. **STATE** will reimburse **CITY** for all other eligible **PROJECT** costs as certified by the **CITY**.
5. The Local Transportation Programs Engineer or his designee may be present for final inspection of **PROJECT**.

B. CITY will perform the following:

1. **CITY** agrees to transfer **CITY** STP funds to **STATE** balance of STP funds at a ratio of 90:10 (91.05555%) to fund 81.95% of **PROJECT** costs as per section A.2.
2. **CITY** will develop plans, specifications, bid documents, advertise for bids, and award contract to the lowest responsible bidder upon concurrence by the Local Transportation Programs Engineer.
3. **CITY** will arrange for all utility adjustments, obtain all necessary right-of-way in accordance with the Uniform Act, and obtain all necessary environmental clearances prior to advertising the bid letting.
4. **CITY** agrees to provide construction administration for **PROJECT**.
5. **CITY** shall pay for services, materials, and work described in B.2., B.3., and B.4. and may then seek reimbursement from **STATE** with funds as set forth in section A.2. upon proper documentation.

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, suits, 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. SUBCONTRACT PROVISION

CITY will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this **AGREEMENT**, to indemnify the **STATE**, and to provide insurance coverage for the benefit of the **STATE** in a manner consistent with this **AGREEMENT**. **CITY** will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

E. RECORDS RETENTION AND AUDIT

1. All project charges will be subject to audit in accordance with current **STATE** procedures.
2. The **CITY** and its subcontractors shall keep accounting records clearly identified with the agreement.
3. Upon reasonable notice, the **CITY** and subcontractors will allow the **STATE**, through any authorized representative, to have access to and the right to examine and copy all records, books, papers or documents

related to services rendered under 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 final payment under this agreement is made and all other pending matters are closed.

PW092507-11

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 the same.

SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION

CITY OF RAPID CITY

BY: _____
Division Director – Fiscal and Public Assistance

BY: _____
Mayor

DATE: _____

DATE: _____

BY: _____
Local Transportation Programs

ATTEST: _____
City Clerk or Finance Officer

DATE: _____