

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

This Agreement is made by and between the State of South Dakota, acting by and through its Department of Transportation, hereinafter referred to as the "STATE," and the City of Rapid City, South Dakota, hereinafter referred to as the "CITY." The parties acknowledge and agree that the CITY'S population is deemed to be 59,607 for purposes of this Agreement.

1. STATE PROJECT

The STATE and the CITY concur in the proposal for the new construction or improvement of streets identified as South Dakota Federal Aid Construction Project Number NH 2016(17)64 PCN 6875, hereinafter referred to as the "STATE PROJECT." The STATE PROJECT is located on US16B, from US16 to SD79 and consists of urban grading, portland cement concrete (PCC) surfacing, roadway lighting, and traffic signals at the intersections of US16B with 5th Street and US16.

2. CONTRACT PROCUREMENT

The STATE shall design, advertise, let to contract, award, and be the contracting party for the STATE PROJECT.

3. COMBINATION LETTING

- A. The STATE shall let the CITY'S sewer and water main project, which includes adjustments to sewer and water crossings, installation of casing for future crossings, adjustments to manholes, and abandonment of a lift station, in combination with the STATE PROJECT. The CITY'S sewer and water main project, designated as Project Number SSW09-1819 PCN X01J, hereinafter referred to as the "CITY PROJECT," is located on US16B/Catron Boulevard, from west of US16 to east Wellington Drive, with adjustments and modifications continuing east until just west of SD79.
- B. The CITY will provide the STATE with all plans, specifications, contract provisions, and cost estimates for the CITY PROJECT. Each bidder will be required to submit separate bids covering each the CITY PROJECT and the STATE PROJECT. Award of the contract will be to one bidder based on the total combination bid for the two projects..
- C. In the event the total low combination bid for the CITY PROJECT and the STATE PROJECT does not have, as part of that bid, the lowest bid on the STATE PROJECT, the CITY will pay to STATE the difference between that portion of the successful combination bid attributable to the STATE PROJECT and the lowest bid on the STATE PROJECT. The CITY shall pay the STATE within thirty (30) days of receipt of billing from the STATE.
- D. The STATE shall award the contracts for both the STATE PROJECT and the CITY PROJECT; however, the CITY will be the contracting party for the CITY PROJECT. The CITY will make all payments under the contract for the CITY PROJECT directly to the contractor.
- E. The CITY will provide all construction engineering for the CITY PROJECT, including all construction supervision and inspection, physical testing, measuring in-place quantities, and documenting locations for as-built records, except as set forth in section 3.F., if applicable, for purposes of final acceptance by the STATE.
- F. The CITY agrees to provide inspection of the trench backfill, conduct trench compaction testing, and conduct moisture and density testing, for the CITY PROJECT, up to the bottom of the Undercut in cut sections, or final subgrade elevation in fill sections. The CITY shall provide the STATE with a copy of all test reports within Forty-eight (48) hours of testing. All testing shall conform to South Dakota Department of Transportation Standard Specifications for Roads and

Bridges, 2004 Edition, Required Provisions, and Supplemental Specifications, except that paragraph 3.3.D of the South Dakota Materials Manual Test Number SD114 shall be deleted.

4. ENCROACHMENTS

The CITY shall enforce the following prohibitions against encroachments in the public right-of-way on the STATE PROJECT and on the state trunk highway system within the CITY'S jurisdictional limits:

- A. All encroachments on or above the right-of-way shall be prohibited unless specifically permitted below.
- 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 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:
 - i. 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, provided that the edge of such encroachment be not less than three (3) feet back from the face of the curb;
 - ii. Advertising or other similar signs which are less than three (3) 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, provided that the bottom of such encroachment be not less than 14.5 feet above the curb elevation;
 - iii. 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 (3) feet back from the face of the curb and eight (8) feet above the curb elevation; and
 - iv. In the event the encroachments referred to in i., ii., and iii., above, by reason of color or placement, obscure or in any way detract from the effectiveness of the highway signs, traffic signals, pedestrian safety, or interfere 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.
 - v. The provisions of subparagraphs C. i., ii., iii., and iv., above do not apply to isolated business or commercial buildings in outlying areas.
 - vi. 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 STATE'S opinion, the immediate removal would impose unreasonable hardship, the STATE may, at the STATE'S 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**.
- D. On Federal Aid Projects, no encroachments will be permitted except in conformance with 23 CFR 1.23.

5. UTILITIES

The CITY shall control the location and maintenance of CITY utilities within the right-of-way so as to not impair the free flow of traffic and to provide maximum safety to the traveling public.

6. SPEED LIMITS

The CITY shall not designate a speed limit within the STATE PROJECT or on the remaining state trunk highway system within the CITY'S jurisdictional limits. The CITY shall request any change in the speed limit and the STATE shall consider such change, after appropriate engineering and traffic investigations have been made.

7. PARKING

The CITY shall enforce the prohibition of all parking, standing, and stopping in the traffic lanes constructed under the STATE PROJECT and on the state trunk highway system within the CITY'S jurisdictional limits in accordance with South Dakota State Codified Laws Chapter 32-30. CITY shall establish parking prohibitions along the CITY'S streets within the STATE PROJECT if parking becomes a safety concern or hindrance.

The CITY 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. The CITY shall be responsible for installation and financial obligations of any future constructed curbs.

8. ACCESS

The CITY shall not allow access to the state trunk highway system within the CITY'S jurisdictional limits without the STATE'S or the STATE'S authorized representative's prior written approval. With regards to the CITY'S streets within the STATE PROJECT, The CITY shall not allow access at points other than constructed as part of the STATE PROJECT, unless prior written approval is received from the STATE or the STATE'S authorized representatives.

9. LIGHTING

When a roadway lighting system or flashing beacon system is installed on any street within the STATE PROJECT or on any portion of the state trunk highway system within the CITY'S jurisdictional limits, the CITY shall provide electrical power necessary to operate the system and all necessary maintenance and replacements, in kind, of all parts, poles, and apparatus of said system, to ensure the continuing operation of said system until such time as the parties to this Agreement shall agree to discontinue the operation of the said system. The CITY shall be responsible for replacement of poles which may be damaged due to weather or by vehicle crashes.

Prior to changing the operation parameters of any flashing beacon on a state highway route, including, but not limited to flash rate, light intensity, number and location of displays, and hours or days of operation, from those originally set or currently approved by the STATE, the CITY will submit, in writing, the necessary data and proposed changes to the Department of Transportation Area Office. The CITY shall not make any changes without the approval of that office.

The CITY shall obtain approval from the Department of Transportation Area Office prior to attachment of banners, signs, or other appurtenances to the light poles.

10. SIGNALS

If a signal system is installed on any portion of the STATE PROJECT that is also within the CITY'S municipal boundaries, such signal system will be subject to the terms of a separate agreement between the parties entitled "Maintenance Agreement Between a Local Government Authority and the State of South Dakota for Traffic Signals on State Highway System." If such agreement has not already been executed by the parties, it will be executed simultaneously with this Agreement, provided there are signal systems within the STATE PROJECT or along the state trunk highway system within the CITY'S jurisdictional limits.

11. GENERAL CITY MAINTENANCE

The CITY agrees to be responsible for providing timely maintenance of the STATE PROJECT and the remaining state trunk highway system within the municipal boundaries of the CITY and any future expansions of the CITY'S municipal boundaries. Maintenance items shall include but are not limited to:

- A. Debris and litter removal;
- B. Maintenance, repair, and replacement of sidewalks and curb ramps, including detectable warnings, in accordance with the Americans with Disabilities Act;
- C. Subject to existing agreement between the CITY and the STATE, snow and ice removal from roadways and sidewalks, if the CITY'S population is deemed to be 2500 or more;
- D. Snow and ice removal from sidewalks, if CITY'S population is deemed to be less than 2500, with STATE having responsibility for snow and ice removal from roadways;
- E. Any necessary hauling of snow that has been removed from either sidewalks or roadways;
- F. Roadway sweeping, except the STATE shall be responsible for roadway sweeping if the CITY'S population is deemed to be less than 2500;
- G. Maintenance of rural section drainage;
- H. Cleaning, repair, and replacement of storm sewers and drop inlets, including any frames and grates, except the STATE shall be responsible for replacement of storm sewers and drop inlets, including any frames and grates, if the CITY'S population is deemed to be less than 2500;
- I. Mowing of boulevards, split medians, raised medians, and other areas where undesirable vegetation exists;
- J. Maintenance of stamped or colored concrete, trees, flowers, decorative plants, and watering systems in boulevards, split medians, raised medians, and other areas within the right-of-way; and,
- K. All repairs or maintenance of the STATE'S right-of-way, including the driving surface, related to or necessitated by the CITY'S installation, repair, or maintenance of utilities.

12. PAVEMENT MARKING MAINTENANCE

If the CITY is deemed to have a population of 2500 or more, the CITY shall be responsible for maintaining the applicable pavement markings from the following list, at the original location on the STATE PROJECT and on the state trunk highway system, within the CITY'S municipal boundaries and any future expansions of the CITY'S municipal boundaries:

- A. Stop and Yield lines;
- B. Crosswalks;
- C. Word message pavement markings, including but not limited to "PED XING," "SCHOOL XING," "LANE," and "RXR";
- D. Parking space markings;
- E. Speed measurement markings;
- F. Curb marking; and,
- G. Accessibility parking space marking.

All pavement markings for which the CITY is responsible shall be maintained in the same manner, dimensions, and locations as originally established by the STATE, so long as the same is in accordance with the most recent version of the federal Manual on Uniform Traffic Control Devices (MUTCD).

STATE shall maintain all other pavement markings on the state trunk highway system which are not identified above as a CITY responsibility. It is understood and agreed by the parties, however, that if the CITY is deemed to have a population of less than 2500, the STATE shall be responsible for all pavement markings on the state trunk highway system.

13. SIGN MAINTENANCE

If the CITY is deemed to have a population of 2500 or more, the CITY shall be responsible for maintaining the following signs at the locations and on supports as originally installed on the STATE

PROJECT and on the remaining state trunk highway system within the CITY'S municipal boundaries and any future expansions of the CITY'S municipal boundaries:

- A. Stop signs (R1-1) on city routes approaching the state trunk highway system;
- B. Yield signs (R1-2) on city routes approaching the state trunk highway system;
- C. Parking, standing, and stopping signs (R7 and R8 series);
- D. Truck route signing (R14-1 series);
- E. Street name sign (D3-1);
- F. Advance street name signs (D3-2);
- G. Parking area sign (D4-1);
- H. Park and ride sign (D4-2);
- I. Evacuation route sign (EM-1);
- J. Area closed signs (EM-2);
- K. Traffic control point sign (EM-3);
- L. Maintain top safe speed sign (EM-4);
- M. Road (Area) use permit required for thru traffic sign (EM-5);
- N. Emergency aid center signs (EM-6 series);
- O. Shelter directional signs (EM-7 series); and,
- P. Dynamic engine brake signs.

All signs for which the CITY is responsible shall be installed and thereafter maintained by the CITY in accordance with the most recent version of the federal Manual on Uniform Traffic Control Devices, unless otherwise directed by the STATE.

If the CITY is deemed to have a population of 2500 or more, the CITY shall also be responsible for installation and maintenance of all Emergency Snow Route (R7-203) signs as deemed necessary on the STATE PROJECT and on the remaining state trunk highway system within the CITY'S municipal boundaries and any future expansions of the CITY'S municipal boundaries. The signs shall be installed on steel supports that meet the requirements of National Cooperative Highway Research Program (NCHRP) 350. The locations of the signs must be approved by the STATE prior to installation. The CITY shall keep an inventory of all signs installed and maintained by the CITY pursuant to this Agreement, and the CITY shall provide a copy of said inventory to the STATE upon request.

Other than any specialty signing requested by the CITY, which specialty signing will remain the CITY'S responsibility, the STATE will install and maintain all other signs on the state trunk highway system which are not identified in this Agreement as a CITY responsibility. It is understood and agreed by the parties, however, that if the CITY is deemed to have a population of less than 2500, the STATE shall be responsible for all sign installation and maintenance on the state trunk highway system.

14. STATE REPAIRS – DRIVING SURFACE

The STATE shall be responsible for repair of the driving surface for the STATE PROJECT and the remaining state trunk highway system within the CITY'S municipal boundaries. For sections of roadway with curb and gutter on opposite sides of the roadway, the STATE'S responsibility will extend from back of curb to back of curb. For sections of roadway with curb and gutter on only one side of the roadway, the STATE'S responsibility will extend from the back of any existing curb to the edge of the finished roadway. For sections of roadway with no curb and gutter, the STATE'S responsibility will extend from the edge of the finished roadway to the edge of the finished roadway. Surface repair work to be performed by the STATE shall include joint sealing, joint repair, concrete pavement repair, repair of concrete curb and gutter, chip sealing, pothole repair, patching, crack sealing, and shoulder repairs. The CITY shall, however, be solely responsible for any work related to or necessitated by the CITY'S installation, repair, or maintenance of utilities.

15. TEMPORARY TRAFFIC CONTROL

The CITY shall adhere to Part 6 of the federal Manual on Uniform Traffic Control Devices concerning temporary traffic control when completing maintenance work activities on the state trunk highway system.

16. INDEMNIFICATION AND HOLD HARMLESS

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 the CITY'S performance under this Agreement. 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.

17. AMENDMENT PROVISION

This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

18. CERTIFICATION REGARDING LOBBYING

The CITY certifies, to the best of the CITY'S knowledge and belief, that: No Federal appropriated funds have been paid or will be paid, by or on behalf of the CITY, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any of the above mentioned parties, the CITY shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The CITY shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty or not less than \$10,000 and not more than \$100,000 for each such failure.

19. The CITY has designated its Mayor as the CITY'S authorized representative and has empowered the Mayor with the authority to sign this Agreement on behalf of the CITY. A copy of the CITY'S Commission minutes or resolution authorizing the execution of this Agreement by the Mayor as the CITY'S authorized representative is attached hereto as Exhibit M.

The CITY, by signing this Agreement, evidences authority to enter into this Agreement through formal action of its governing body.

City of Rapid City, South Dakota

State of South Dakota
Department of Transportation

By: _____

By: _____

Its: Mayor

Its: Project Development Engineer

Date: _____

Date: _____

Attest:

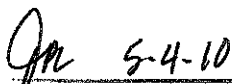
Approved as to Form:

City Auditor/Clerk


Special Assistant Attorney General

(CITY SEAL)

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE



Attorney

Date

AGREEMENT BETWEEN THE POLITICAL SUBDIVISION AND THE STATE
FOR
HIGHWAY ENCROACHMENTS

EXHIBIT "A"

The following encroachments will either be removed or permitted to remain by action of the South Dakota Department of Transportation Commission for the period specified in this Exhibit:

1. Landscaping and fencing items

Permits will be issued by the Department of Transportation Area Office allowing the following encroachments to remain. The replacement, upgrading, or refurbishing for any reason, including storm damage of encroaching fence or other landscaping obstacles, must be relocated/installed out of the right-of-way.

Pic#	Station	Description	Encroaches
		N/A	

2. Smaller signs, portable items

The following encroachment(s) will be removed from the right-of-way prior to construction:

Pic#	Station	Description	Encroaches
		N/A	

3. Smaller signs on posts, parking areas

The following encroachment(s) will be removed from the right-of-way prior to end of construction:

Pic#	Station	Description	Encroaches
			N/A

4. Large signs or other items on footings

The following encroachments are permitted to remain by action of the South Dakota Transportation Commission for a period of time which should not exceed five (5) years after completion of the project or sooner if they become functionally or structurally obsolete for any reason, including storm damage. This permission will be in the form of a permit/agreement issued by the Department of Transportation Area Office with each property owner and will be recorded as an encumbrance on the property.

Pic#	Station	Description	Encroaches
		N/A	

5. Buildings, canopies, and other items greater than 0.4 foot encroachment

The following, buildings, canopies, and other items are located inside the right-of-way and encroach by greater than 0.4 foot. A revocable occupancy permit will be issued by Department of Transportation Property Management and recorded against the properties.

Pic#	Station Description	Encroaches
		N/A

6. Buildings, signs, and other items with 0.4 foot or less encroachment

The following buildings, signs, and other items are located inside the right-of-way and encroach by 0.4 foot or less. Variations in Survey Monumentation may put the encroachment outside the right-of-way. Land owner will be advised to check for accuracy of their property line prior to any adjustments or improvements to the items.

Pic#	Station Description	Encroaches
		N/A