

State of South Dakota  
 Project No. PP 8052(41)  
Pennington County, PCN 1432  
11<sup>th</sup> Street in Rapid City, SD  
DOT #190273R, Crossing Surface

#### AGREEMENT 1 OF 2

THIS AGREEMENT is between the City of Rapid City, South Dakota, referred to in this Agreement as the "City," and the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the "State."

#### BACKGROUND:

1. The City wants to have the one (1) track highway-rail grade crossing on 11<sup>th</sup> Street located in the City of Rapid City, South Dakota, rehabilitated with forty-five feet (45') of precast concrete crossing surface material at the City's highway-rail grade crossing located on City right-of-way in compliance with federal aid requirements and priority listing of Project PP 8052(41), Pennington County, PCN 1432, at crossing DOT #190273R; and
2. The State is responsible to assure the Federal Highway Administration that federal aid requirements are met in order to receive federal participation in adjustment costs.

#### THE STATE AND THE CITY MUTALLY AGREE AS FOLLOWS:

1. The State will notify the Dakota, Minnesota & Eastern Railroad Corporation (DM&E), a subsidiary of Canadian Pacific Railway Limited, the owner of the railroad, and will negotiate an agreement as necessary for the City for the rehabilitation of the crossing.
2. The City will provide the City's 10% share of the total project cost of the above referenced highway-rail project through a combination of City funds and the labor and materials provided by the City for approach work, construction signing, and pavement markings. The State will authorize the remaining 90% of the total project cost from funds available under Section 130 of Title 23, United States Code.
3. The City may bill project costs incurred through the City's labor and materials, as indicated in Section 2 above, to the State upon completion of the City's portion of the work. The State will credit the City's project costs so incurred and as found eligible by an audit performed by the State, towards the City's 10% share of the project. If the City's project costs incurred are more than the City's 10% share of the total project cost, the State will provide a check to the City for the City's costs incurred in excess of the City's 10% share of the total project cost. If the City's project

costs incurred are less than the City's 10% share of the total project cost the State will bill the City for the difference.

4. The estimated cost of the various items of work to be performed by the City under this Agreement is \$16,115.00. The estimated cost of work to be performed by the DM&E for the rehabilitation of the crossing is \$31,275.00. The estimated cost for construction engineering performed by the State is \$610.00. The total estimated project cost is \$48,000.00. The estimated 10% City match is \$4,800.00.
5. The City will provide for the approach work, construction signing, and pavement markings as shown in the estimate attached to this Agreement as Exhibit "A."
6. The City will complete the City's work in a timely manner. Within one (1) year following rehabilitation of the crossing, the City will provide a final and complete billing of all reimbursable project costs incurred.
7. The City will send all billings for the City's project costs to the Rapid City Area Engineer, Gary Engel, South Dakota Department of Transportation, PO Box 1970, Rapid City, South Dakota 57709.
8. The City will retain all records and accounts necessary to support project costs claimed under this Agreement and will make these records and accounts available for audit performed by the State or the federal government for a period of three (3) years from the date of final payment has been received and all other pending matters are closed.
9. The City may not use subcontractors to perform the services described in this Agreement without the State's express prior written consent. The 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. The 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. Any existing continuing contract, under which the City now has certain work performed regularly, will be considered to conform to the requirements of this Section.
10. The City will maintain the approaches and pavement markings at said highway-rail grade crossing.

11. The City will notify the Rapid City Area Engineer, Gary Engel, South Dakota Department of Transportation, PO Box 1970, Rapid City, South Dakota 57709; telephone 605-394-1635, when commencing, discontinuing, resuming, and upon completion of the work.
12. The City will not begin any work not covered by Exhibit "A" which increases the amount of the estimate without first notifying the State and obtaining the State's prior written approval that the work is necessary and eligible. The City will not exceed the estimate unless one of the two following conditions is met:
  - a. The State may allow an increase in the cost estimate when a change in construction plans is authorized by an approved Change Order issued by the State before such work is begun.
  - b. The State may allow a minor increase in the estimated cost, eligible for reimbursement, after completion of the work, when such increase is adequately supported by detailed billing and sufficient explanation. A final Change Order, when approved, will place the increase in line for audit and payment.
13. The City will indemnify the State, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceedings that may arise as the result of performing services under this Agreement. This section does not require the City to be responsible for or defend against claims or damages arising solely from acts or omissions of the State, its officers, agents, or employees.
14. 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 the City's behalf 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 will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The City must require 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 all subrecipients must 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 will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- 15. 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 to this Agreement as Exhibit M.

This Agreement is binding upon the signatories not as individuals but solely in their capacities as officials of their respective organizations and acknowledges proper action of the State and the City to enter into same.

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)

<b>11TH STREET RAILROAD CROSSING ESTIMATE</b>						
	<b>ITEM</b>	<b>UNIT</b>	<b>QUANTITY</b>	<b>UNIT COST</b>	<b>TOTAL COST</b>	
1	MOBILIZATION	LS	1.00	\$ 2,500.00	\$ 2,500.00	
2	REMOVE ASPHALT CONCRETE	SY	100.00	\$ 25.00	\$ 2,500.00	
3	REMOVE CURB & GUTTER	LF	24.00	\$ 15.00	\$ 360.00	
4	INSTALL CURB & GUTTER	LF	20.00	\$ 25.00	\$ 500.00	
5	FURNISH & PLACE BASE COURSE	TN	35.00	\$ 25.00	\$ 875.00	
6	ASPHALT CONCRETE PAVEMENT	TN	40.00	\$ 130.00	\$ 5,200.00	
7	PAVEMENT MARKING PAINT 4" YELLOW	LF	60	\$ 3.00	\$ 180.00	
8	TRAFFIC CONTROL	LS	1	\$2,500.00	\$ 2,500.00	
9	INCIDENTAL	LS	1	\$1,500.00	\$ 1,500.00	
					\$ 16,115.00	

EXHIBIT A