

## JOINT POWERS AGREEMENT

This Joint Powers Agreement (Agreement) is entered into by and between the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as "DOT," and the City of Rapid City, South Dakota, referred to in this Agreement as "CITY."

### BACKGROUND:

- A. CITY wants DOT to perform snowplowing activities on the following highways: 231, 79/Cambell Street, 16B, and 16, as follows:
  - Highway 231 - north of the City of Rapid City from St. Martins Drive to the north city limits;
  - Highway 79/Cambell Street - from Minnesota Street to the south city limits;
  - Highway 16B - from Highway 16 to Interstate 90; and,
  - Highway 16 - south of Rapid City from Addison Avenue to the south city limits.
- B. DOT is willing to provide these snowplowing services, on the terms set out in this Agreement.
- C. DOT wants CITY to perform snowplowing activities on Highway 44 from east of Valley Drive to the Rapid City Airport Road.
- D. CITY is willing to provide such snowplowing services, on the terms set out in this Agreement.

### DOT AND CITY MUTUALLY AGREE AS FOLLOWS:

1. This Agreement does not establish a separate legal entity, as contemplated by SDCL 1-24-5. The cooperative undertaking described in this Agreement will be financed and conducted under the provisions of this Agreement by DOT and CITY. Each party has responsibilities under the terms of this Agreement and no joint board or administrator will be used. No real property will be purchased for use for this Agreement.
2. DOT and CITY will perform the snowplowing services contemplated by this Agreement with such employees and equipment as may be necessary for performance of these services.
3. CITY will, in exchange for the snowplowing services to be provided by DOT, plow Highway 44 from east of Valley Drive to the Rapid City Airport Road to the same standards as CITY uses on adjacent similar routes (slow speed urban multi-lane highways) within CITY limits.
4. As necessary, DOT and CITY officials will maintain communication during periods of snow removal to determine snow and sanding needs and methods, to advise counterparts as to when snow removal operations are in progress or are planned, and to advise counterparts on the effect of road closures and other events effecting the safety and efficiency of a highway, including safety patrols to ensure motorist safety.
5. The CITY will provide services in compliance with the Americans with Disabilities Act of 1990, and any amendments.
6. Any officer, employee, or agent engaged in joint action under this Agreement will remain an employee with his or her agency during participation in joint action under this Agreement. Each agency will retain exclusive responsibility for its officers, agents, and employees while these officers, agents, and employees are engaged in joint action under this Agreement, including but not limited to responsibility for regular and overtime wages and salaries, unemployment benefits, workers' compensation coverage, health insurance, or other benefits, and liability coverage and indemnity, except as otherwise specifically provided in this Agreement.
7. While performing services under this Agreement, CITY is an independent contractor and not an officer, agent, or employee of DOT.

No employee of CITY engaged in the performance of services required under the Agreement will be considered an employee of the DOT, and no claim that may or might arise under the South Dakota Workers' Compensation Act on behalf of said employee or other persons while so engaged and no claims made by any third party as a consequence of any act or omission of the part of the work or service provided or to be rendered under this Agreement by CITY will be DOT'S obligation or responsibility.

8. This Agreement will commence on October 1, 2012, and will terminate on June 1, 2015.

- 9. Either party may terminate this Agreement by giving thirty (30) days' written notice to the other party.
- 10. CITY will indemnify DOT, 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 CITY to be responsible for or defend against claims or damages arising from errors or omissions of DOT, its officers, agents, or employees.
- 11. CITY will give written notice to DOT of any act or occurrence involving matters indemnified against in this Agreement as soon as practical after the occurrence of such act or occurrence has come to CITY'S knowledge.
- 12. Before CITY begins providing service, CITY will be required to furnish DOT the following certificates of insurance and assure that the insurance is in effect for the life of the Agreement:
  - A. Commercial General Liability Insurance:  
CITY will maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it will apply separately to this Agreement or be no less than \$2,000,000.
  - B. Business Automobile Liability Insurance:  
CITY will maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each accident. Such insurance will include coverage for owned, hired, and non-owned vehicles.
  - C. Workers' Compensation Insurance:  
CITY will procure and maintain workers' compensation coverage as required by South Dakota law.
- 13. This Agreement may not be amended, except in writing, which writing will be expressly identified as a part of this Agreement, and be signed by an authorized representative of each of the parties.
- 14. 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 A**.

By signature of their representatives below, each party certifies that approval of this Agreement by ordinance, resolution, or other appropriate means has been obtained by that party's governing body or officer pursuant to SDCL § 1-24-3 and § 1-24-6.

City of Rapid City, South Dakota

State of South Dakota  
Department of Transportation

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: Mayor

Its: Secretary

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

Approved as to Form:

\_\_\_\_\_  
City Finance Officer/Clerk

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

(City Seal)