

**STATE OF SOUTH DAKOTA  
JOINT POWERS  
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, referred to in this Agreement as the "STATE," and the City of Rapid City, South Dakota, referred to in this Agreement as the "CITY." The parties acknowledge and agree the CITY'S population is deemed to be 69,200 for purposes of this Agreement.

1. JOINT POWERS

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 the CITY and the STATE. 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. STATE PROJECT

The STATE and the CITY concur in the proposal for the new construction or improvement of streets identified by the following South Dakota Federal Aid Construction Project Number: P 0231(11)81 PCN 02R2, referred to in this Agreement as the "STATE PROJECT." The STATE PROJECT is located on South Dakota Highway 231 (SD231) SD231 north and SD231 south (Sturgis Road), from West Chicago Street in Rapid City to Peaceful Pines Road in Blackhawk, and consists of mill and asphalt concrete resurfacing.

3. CONTRACT PROCUREMENT

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

4. MAINTENANCE AND ENCROACHMENT

The Parties entered into a separate "Maintenance and Encroachment Agreement," which was signed by representatives of each of the parties on June 1, 2010, and assigned agreement number 714097 by the STATE. That agreement, and the maintenance and encroachment responsibilities required by that agreement are incorporated into this Agreement by reference.

Notwithstanding the terms and conditions of June 1, 2010, Maintenance and Encroachment Agreement between the parties, the encroachments for the STATE PROJECT will be removed or permitted to remain as detailed in Exhibit A attached to and made part of this Agreement.

5. SIGNALS

If a signal system is installed on any portion of the STATE PROJECT located within the CITY'S municipal boundaries, that signal system will be subject to the terms of the May 17, 2010, "Maintenance Agreement Between a Local Government Authority and the State of South Dakota for Traffic Signals on State Highway System" between the parties, assigned agreement number 613594 by the STATE.

6. INDEMNIFICATION

The CITY will indemnify the STATE, its officers, agents, and employees 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.

7. AMENDMENT PROVISION

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

8. 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 will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The CITY will 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 will 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 or not less than \$10,000 and not more than \$100,000 for each such failure.

9. EMPLOYEE STATUS

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.

10. 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.

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: Project Development Engineer

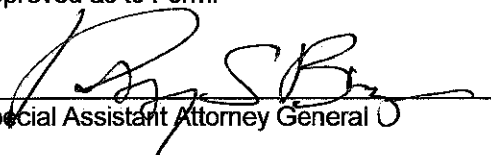
Date: \_\_\_\_\_

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

Attest:

Approved as to Form:

\_\_\_\_\_  
City Auditor/Clerk

  
Special Assistant Attorney General U

(CITY SEAL)

**APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE**

NEN      1-21-13  
Attorney      Date

AGREEMENT BETWEEN THE POLITICAL SUBDIVISION AND THE STATE  
FOR  
HIGHWAY ENCROACHMENTS  
P 0231(11)81 PCN 02R2  
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
2a	MRM 81.44 Lt.	Concrete Retaining Wall	18'
6	MRM 81.429 Rt.	Trees	17.5'
9	MRM 81.54 Rt.	Trees	15.5'
15	MRM 85.72 Lt. Outside Rapid City, City Limits	Chain Link Fence	17'

**2. Smaller signs, portable items**

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

Pic#	Station	Description	Encroaches
10	MRM 84.22 Rt. Outside Rapid City, City Limits	Raynor Sign	5'
11	MRM 84.26 Rt. Outside Rapid City, City Limits	Wood Fence	3'
13	MRM 85.67 Lt. Outside Rapid City, City Limits	Sign	81'
13	MRM 85.67 Lt. Outside Rapid City, City Limits	Garden	70'

**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
1	MRM 81.33 Rt.	Parking	22'
2	MRM 81.44 Lt.	Parking	10'
3	MRM 81.491 Lt.	Advertising Sign	3'
4	MRM 81.54 Lt.	Parking	13.5'
5	MRM 81.60 Lt.	Parking	10'
7	MRM 81.703 Rt.	Parking	5.5'
8	MRM 81.898 Rt.	Parking	16'

12	MRM 84.715 Lt. Outside Rapid City, City Limits	Sign	3'
----	---	------	----

#### 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 will be recorded against the properties.

Pic#	Station	Description	Encroaches
2	MRM 81.44 Lt.	Family Inn Overhang	2.5'
14	MRM 85.69 Lt. Outside Rapid City, City Limits	Garage	14'

#### 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	

#### 7. Awnings and attached signs meeting criteria

Permits will be issued by the Department of Transportation Area office allowing the following encroachment(s) to remain in place until such time that they become functionally or structurally obsolete. The replacement, upgrading, or refurbishing for any reason including storm damage of these encroachments must be relocated/installed out of the right-of-way or be at least 3' behind the curb and at least 8' above the curb.

Pic#	Station	Description	Encroaches
		N/A	