

**URBAN SURFACE TRANSPORTATION PROGRAM
FUNDING AGREEMENT
BETWEEN
DEPARTMENT OF TRANSPORTATION
AND
CITY OF RAPID CITY
FOR LETTING AND CONSTRUCTION OF PROJECTS
EM 1648(07), PCN 04P5 AND EM 1648(06) PCN 04P6**

This 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 the "STATE," and the City of Rapid City, South Dakota, referred to in this Agreement as the "CITY."

BACKGROUND:

1. The STATE and the CITY agree to let, in combination, grading and surfacing project numbers, EM 1648(07) PCN 04P5, and EM 1648(06) PCN 04P6, collectively referred to in this Agreement as the "PROJECT," and the CITY utility project 13-2125 PCN X02X, referred to in this Agreement as the "CITY PROJECT," all located in Rapid City, South Dakota, on Anamosa Street from LaCrosse Street to Century Road; and
2. The PROJECT costs will consist of preliminary engineering, right-of-way, landscaping, materials, construction, and construction engineering.

THE CITY AND THE STATE MUTUALLY AGREE AS FOLLOWS:

A. The STATE will:

1. Provide technical assistance in the preparation of plans and specifications for the PROJECT, and review those documents prior to advertising and letting of the construction phase.
2. Obtain the necessary environmental clearances.
3. Advertise for bids and let the CITY PROJECT in combination with the PROJECT.
4. Require each bidder to submit separate bids covering the CITY PROJECT and the PROJECT. The STATE will award the contract to one bidder based on the total combination bid for the two projects. The lowest responsible bid on the PROJECT will be the basis for determining State and Federal Funds participation.

If the total low combination bid for the CITY PROJECT and the PROJECT does not have, as part of that bid, the lowest bid on the PROJECT, the CITY will pay to the STATE the difference between that portion of the successful combination bid attributable to the PROJECT and the lowest bid on the PROJECT.

5. Provide construction administration for the PROJECT and make all eligible progress payments to contractors and vendors with 81.95% HPP Discretionary Funds that remain after phase 1 of the Anamosa Street extension project (EM 1648(1) PCN 00UR), currently estimated to be \$675,000.00. The CITY will pay 18.05% of the eligible PROJECT costs with local matching funds.
6. In regard to the CITY projects that consist of water and sewer work, provide inspection of the trench backfill and conduct trench compaction testing for any portion of the CITY PROJECT which is situated under the surfacing of the PROJECT. The STATE will provide the CITY with a

copy of all test reports. The STATE will bill the CITY for testing and inspection based on current standard rates and according to the actual number of sample locations. The CITY agrees to pay the STATE within thirty (30) days of receipt of billings from the STATE.

B. The CITY will:

1. Provide the STATE with all plans, specifications, and cost estimates for the CITY PROJECT, complete with review and approval by the Department of Environment and Natural Resources, prior to advertisement and letting.
2. Develop plans, specifications, and cost estimates for the PROJECT. The CITY will prepare plans according to South Dakota Department of Transportation guidelines and will utilize South Dakota Department of Transportation Specifications.
3. Provide 18.05% local match for eligible PROJECT costs using CITY funds. The CITY will be 100% responsible for any eligible PROJECT costs in excess of the remaining HPP Discretionary Funds and local match.
4. Reimburse the STATE for the CITY'S local match and any excess costs as described in B.3. within thirty (30) days after receipt of billing from the STATE.
5. Provide all construction administration for the CITY PROJECT and make all contractor payments with 100% CITY funds.
6. Obtain all necessary right-of-way for both projects, according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended in 1987. The CITY will use unaltered STATE forms in obtaining right-of-way.
7. Certify that all right-of-way and utility adjustments or agreements are in place prior to advertisement and letting.
8. Continue to maintain the PROJECT upon completion of construction as a public street and will dedicate the roadway and adjacent right-of-way for the public use.

C. ENCROACHMENTS

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

1. In outlying commercial areas and through residential areas, all encroachments on or above the right-of-way will be prohibited unless specifically permitted below.
2. 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 will be prohibited.
3. 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 will be permitted to remain in place until such time that they become functionally or structurally obsolete, providing that the edge of such encroachment is 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 will be permitted to remain in place until such time that they become functionally or structurally obsolete, provided that

the bottom of such encroachment is not less than fourteen and one half (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 will 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.
- 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 will cause the removal of such encroachments or take appropriate measures to improve highway signs or traffic signals and traffic safety.
- v. The provisions of paragraph (3) and subparagraphs (i), (ii), (iii), and (iv) above will 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 opinion of the STATE, the immediate removal would impose unreasonable hardship, the STATE may, at its discretion, permit the encroachment to remain for a specific period. This permission is subject to revocation or extension at the STATE'S discretion.

4. On Federal Aid Projects, no encroachments will be permitted except in conformance with 23 CFR 1.23.

D. In all sections of Title 23 United States Code and the Federal Aid Program Manual, the term "City" will be substituted for the term "State" whenever the PROJECT is not on the state trunk highway system.

E. UTILITIES

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

F. PARKING

The CITY will enforce the prohibition of all parking, standing, and stopping in the traffic lanes constructed under the PROJECT in accordance with South Dakota Codified Law Chapter 32-30. The CITY will establish parking prohibitions 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 proposed improvement, the curbs, when proposed to be constructed in the future, will be at a lateral distance approved by the STATE. The CITY will be responsible for installation and financial obligations of any future constructed curbs.

Any temporary pavement marking needed to facilitate parking will be non-participating for federal funds.

G. LIGHTING

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

If a signal is coordinated through the use of leased telephone lines, the CITY will pay the required hookup fee and monthly rental fees. The CITY further agrees that on the state trunk highway system, prior to changing the signal timing from that originally set by the STATE, the CITY will submit the necessary data and proposed timing to the STATE for approval.

H. PAVEMENT MARKING

The CITY will be responsible for maintenance of plastic pavement markings applied on the CITY streets. The CITY will use plastic material approved by the STATE in maintaining the plastic pavement markings. The CITY will ensure that rubber cutting edges are used on the blades of snow removal equipment that is used in areas where plastic material is applied for the pavement markings.

I. On Urban Systems Projects the CITY will save harmless the STATE from any claim or damage made against it for consequential damage arising from and out of changing the grade of streets, causing loss or inconvenience to the property or business or surrounding property owners, or from any cause or causes whatsoever, after the PROJECT is completed and accepted.

J. The CITY acknowledges that the members of its governing board and engineering staff have examined the plans for the PROJECT prepared under the supervision of the STATE referred to in this Agreement.

K. The CITY will enact such ordinances as are necessary to properly enforce any of the above provisions.

L. The CITY will provide services in compliance with the Americans with Disabilities Act of 1990, and any amendments.

M. INDEMNIFICATION PROVISION

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 from errors or omissions of the STATE, its officers, agents, or employees.

N. FUNDING PROVISION

The Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, the Agreement may be terminated by the STATE. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.

O. CONTROLLING LAW PROVISION

The Agreement will be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

P. SEVERABILITY PROVISION

If any court of competent jurisdiction holds any provision of the Agreement unenforceable or invalid, such holding will not invalidate or render unenforceable any other provision of this Agreement.

Q. SUPERCESSION PROVISION

All other prior discussions, communications, and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and, except as specifically provided, this Agreement constitutes the entire agreement with respect to its subject matter.

R. DISPUTES

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the parties will be referred to the STATE'S Secretary of Transportation or duly authorized representative for determination, whose decision in the matter will be final and conclusive on the parties to the Agreement.

S. SUBCONTRACT PROVISION

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. Failure to comply with federal requirements related to right-of-way, environmental clearances, utilities, and the bid letting process could jeopardize future federal funding.

T. RECORDS RETENTION AND AUDIT

1. All PROJECT charges will be subject to audit in accordance with current STATE procedures and United States Office of Management and Budget (OMB) Circular A-133. The CFDA Number for these funds is 20.205. Allowable costs will be determined in accordance with 49 CFR 18.22(b).
2. The CITY and its subcontractors will keep accounting records clearly identified with the Agreement.
3. Upon reasonable notice, the CITY and its 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. The City will keep these records clearly identified and readily accessible for a period of three (3) years after the date final payment under this Agreement is made and all other pending matters are closed.

U. CERTIFICATION OF 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 subcontract, 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 of not less than \$10,000 and not more than \$100,000 for each such failure.

V. AUTHORIZATION

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.

This Agreement is binding upon 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 the same.

City of Rapid City, South Dakota

State of South Dakota
Department of Transportation

By: _____

By: _____

Its: Mayor

Its: Division Director, Planning & Engineering

Date: _____

Date: _____

Attest:

Office of Administration

City Auditor/Clerk

By: _____

Its: Program Manager

(CITY SEAL)

Date: _____

Approved as to Form:

William J. Weir

Special Assistant Attorney General