

**STATE OF SOUTH DAKOTA
JOINT POWERS
MAINTENANCE, ENCROACHMENT,
AND FINANCIAL 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 70,812 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 South Dakota Federal Aid Construction Project Number IM 1902(61)0 PCN 1162, referred to in this Agreement as the "STATE PROJECT." The STATE PROJECT is located on Interstate 190 (I190), Exit 1 in Rapid City (Silver Street), and from the junction of United States Highway 16 (US16)/South Dakota Highway 44 (SD44) (Omaha Street), north 1.1 miles. The STATE PROJECT consists of grading, curb and gutter, storm sewer, asphalt concrete and PCC pavement, structures, pavement marking, roadway lighting, signals, and permanent signing.

3. CONTRACT PROCUREMENT

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

4. STATE AND CITY RESPONSIBILITIES

- A. As part of the STATE PROJECT and as requested by the CITY, the STATE will upgrade the standard storm sewer system located on I190, Exit 1 in Rapid City (Silver Street), and from the junction of (US16/SD44) (Omaha Street), north 1.1 miles. The CITY will reimburse the STATE a lump sum amount for the difference between the estimated cost of the STATE'S standard sewer system and the cost of CITY'S upgraded sewer system. The CITY'S lump sum reimbursement to the STATE will be Three Hundred Seventy-three Thousand, Nine Hundred Dollars (\$373,900.00).
- B. The STATE will, for the purposes of the storm sewer maintenance, install a gate with a chain and lock on the I190 chain link fence on each side of I190. The CITY will use these gates to access the storm sewer outside of the I190 right-of-way, and will perform traffic control in accordance with the current version of the Manual on Uniform Traffic Control Devices (MUTCD) when parking in the I190 right-of-way to perform maintenance on the storm sewer.
- C. As part of the STATE PROJECT and as requested by the CITY, the STATE will increase the sidewalk width from five feet (5') to ten feet (10'), along both sides of North Street, from the new West Boulevard east to the northbound off and on ramps. The CITY will reimburse the STATE a lump sum amount for the difference between the cost of installing the STATE'S standard five foot

(5') wide sidewalk and the estimated cost of installing a ten foot (10') wide sidewalk. The CITY'S lump sum reimbursement to the STATE will be Thirty-nine Thousand, Ninety Dollars (\$39,090.00).

- D. The STATE will, as requested by the CITY, construct a Best Management Practices (BMP) storm water quality pond at the project storm sewer outfall, adjacent to the southbound on ramp. The storm water quality pond will be constructed in part on STATE property. Upon completion the STATE will transfer to the CITY the property that the storm water quality pond is constructed on.
 - i. The CITY will be responsible for all future maintenance/replacement of the storm water quality pond. The CITY will pay Fifty Percent (50%) of the cost to construct the storm water quality pond, minus the Unclassified Excavation. The CITY'S lump sum reimbursement to the STATE is Thirty-four Thousand, Five Hundred Dollars (\$34,500.00).
 - ii. The STATE PROJECT will benefit from the Unclassified Excavation and therefore the STATE will assume One Hundred Percent (100%) of the Unclassified Excavation costs. The estimated cost for the construction of the storm water quality pond, excluding the cost of the Unclassified Excavation, is Sixty-nine Thousand Dollars (\$69,000.00).
- E. The STATE will provide asphalt concrete patch paving for the CITY PROJECT at various side streets and parking lot locations adjacent to the STATE PROJECT. The CITY'S estimated cost is Eleven Thousand Dollars (\$11,000.00). The CITY will reimburse the STATE for the actual cost of the asphalt concrete patch paving. Actual costs will be based upon actual bids and quantities
- F. The CITY will reimburse the STATE the additional cost for the extra footings for the luminaries along the new West Boulevard and along North Street to accommodate the banners requested by the CITY. The CITY'S lump sum reimbursement to the STATE is Two Thousand, Nine Hundred Dollars (\$2,900.00).
- G. As part of the STATE PROJECT and as requested by the CITY, the STATE will design and install longitudinal underdrains along North Street between West Boulevard (west of I190) and the northbound ramps; along West Boulevard (west of I190) between North Street and the end of reconstruction; and along West Boulevard North (east side of I190) between Fillmore Street and Adams Street. The CITY'S lump sum reimbursement to the STATE is Sixty-five Thousand, Four Hundred Dollars (\$65,400.00).
- H. The STATE will construct a new street, connecting the existing West Boulevard on the west side of I190 with the new North Street at the 11th Street and Philadelphia Street intersection. The CITY will accept complete ownership, jurisdiction, and maintenance responsibilities of the new street connection and all appurtenances constructed, including, but not limited to:
 - i. Soil slope earth retaining system;
 - ii. Storm sewer;
 - iii. Curb and gutter;
 - iv. Sidewalk;
 - v. Pavement;
 - vi. Lighting; and
 - vii. Right-of-way
- I. The CITY will pay the STATE within forty-five (45) days of receipt of a billing from the STATE.

5. ACQUISITION AND TRANSFER OF HIGHWAY RIGHT-OF-WAY

- A. The STATE will acquire all right-of-way needed for the STATE PROJECT. The STATE will begin transfer of the right-of-way required for the local street/infrastructure to the CITY upon completion of the STATE PROJECT.

- B. Upon completion of the STATE PROJECT, subject to approval by the Transportation Commission, and pursuant to SDCL 31-19-63 and 31-19-64, the STATE will transfer by quit claim deed the highway right-of-way required in 4.H. for the construction of a new street and the STATE right-of-way used to construct the storm water pond in 4.D. as shown on **Exhibit A**, attached to and made a part of this Agreement, to the CITY for public highway purposes.
- C. The STATE will not require any payment from the CITY for the transfer of the STATE'S highway right-of-way.
- D. The CITY will transfer existing CITY right-of-way located within the limits of the new I190 Exit, Interchange 1 to the STATE, as shown on **Exhibit A** attached to and made a part of this Agreement.
- E. The STATE will transfer any interests in West Boulevard North (I190 Exit 1 northbound on-ramp) and the corresponding right-of-way to the CITY.
- F. The CITY will not require any payment from the STATE for the transfer of this CITY highway right-of-way.

6. COMBINATION LETTING

- A. The STATE will let the CITY'S utility project in combination with the STATE PROJECT. The CITY'S project is designated as CITY Project Number 12-2053/CIP 50940 PCN X03T, and referred to in this Agreement as the "CITY PROJECT." The CITY PROJECT is located adjacent to the limits of the STATE Project.
- 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 the CITY PROJECT and the STATE PROJECT. Award of the contract will be to the one bidder based on the total combination bid for the two projects. The lowest responsible bid on the STATE PROJECT will be the basis for determining STATE and federal funds participation.
- C. If 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 the 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 will pay the STATE within forty-five (45) days of receipt of billing from the STATE.
- D. The STATE will 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. The CITY'S estimated cost for the CITY PROJECT is One Million, Five Hundred Eighty Thousand Dollars (\$1,580,000). Actual cost will be based upon bids and final quantities.
- E. Except as set out in Section 6.G., 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, if applicable, for purposes of final acceptance by the STATE.
- F. Except for the top of the CITY utility trenches, the CITY will conduct inspection of the trench backfill, conduct trench compaction testing, and conduct moisture and density testing, for the CITY PROJECT. The top of the CITY utility trenches is defined as 2' below bottom of the undercut. The CITY will provide the STATE with a copy of all test reports within forty-eight (48) hours of testing. The CITY will ensure all testing conforms to the South Dakota Department of Transportation Standard Specifications for Roads and Bridges, 2004 Edition, Required Provisions, and Supplemental Specifications. The CITY will ensure all testing is in accordance with the STATE'S

most recent Materials Manual. All personnel conducting testing must meet the requirements of the South Dakota Department of Transportation's Materials Testing and Inspection Certification Program Manual.

- G. For the top of the CITY utility trenches, the STATE will conduct inspection of the trench backfill, conduct trench compaction testing, and conduct moisture and density testing, for the CITY PROJECT. The STATE will provide the CITY with a copy of all test reports for this portion of the CITY PROJECT. The CITY will pay the STATE for the cost of testing and inspections. The STATE will bill the CITY for testing and inspections based on the actual number of locations. Each moisture test will be charged at the rate of Twenty-five Dollars (~~\$25.00~~) and each density test will be charged at the rate of Seventy-five Dollars (~~\$75.00~~). The STATE will determine the number and location of the testing and inspections when final plans have been received by the Area Engineer. The CITY will pay the STATE within forty-five (45) days of receipt of billings from the STATE.

7. FUTURE PROJECT COMMITMENT

- A. The STATE and CITY recognize and understand that some of the soils within the project limits are very expansive in nature and that expansion is expected to occur. The expansion may result in changes in grade, elevation, or integrity of the roadway pavement, curb and gutter, underdrains, or sidewalk. The STATE will monitor the soils and at such time the STATE determines expansion has ceased to an acceptable level, the STATE will plan a project to improve/repair I190 and North Street between West Boulevard/11th Street and the southbound ramps. At that time the STATE and CITY will inspect West Boulevard (west of I190 from North Street north five hundred feet and any agreed upon corrections or repairs to the roadway pavement, curb and gutter, underdrains, or sidewalk will be included with the future planned STATE project. The STATE will, with the future planned STATE project, construct a center raised median along North Street between West Boulevard/11th Street and the southbound ramps.
- B. The STATE will be One Hundred Percent (100%) responsible for all costs associated with the changes in the grade, elevation, and integrity of the roadway pavement, curb and gutter, underdrains, and sidewalk due to expansion of the soils in the project limits.

8. RESPONSIBILITY FOR MAINTENANCE, POLICING ENCROACHMENTS, AND OTHER ACTIVITIES

Any responsibilities the CITY may have for policing encroachments, performing maintenance and repair activities, limiting access, enforcing parking prohibitions, and servicing lighting systems along the STATE PROJECT will be governed by the "Maintenance and Encroachment Agreement," executed on June 1, 2010, and assigned Agreement Number 714097 by the STATE, and any amendments to that agreement entered into by the parties now or in the future.

9. SIGNALS

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

10. 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.

11. AMENDMENT PROVISION

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.

12. 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 of not less than \$10,000 and not more than \$100,000 for each such failure.

- 13. 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 B.

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:
_____	<i>William J. Nevin</i>
City Auditor/Clerk	Special Assistant Attorney General

(CITY SEAL)

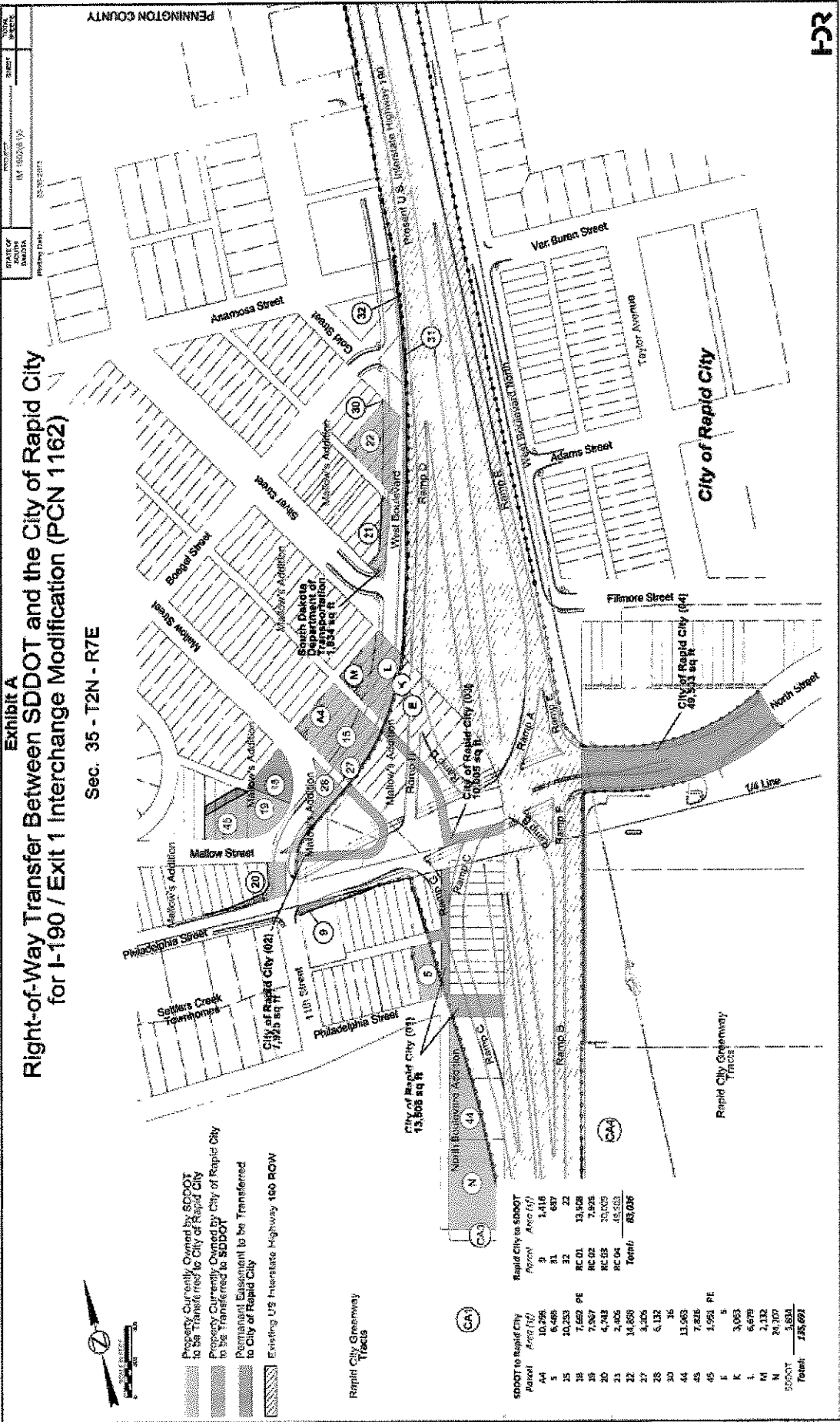


Exhibit A
Right-of-Way Transfer Between SDDOT and the City of Rapid City
for I-190 / Exit 1 Interchange Modification (PCN 1162)

Sec. 35 - T2N - R7E

STATE OF SOUTH DAKOTA
 PROJECT DATA
 PROJECT NO. 1162076192
 SHEET

- Property Currently Owned by SDDOT to be Transferred to City of Rapid City
- Property Currently Owned by City of Rapid City to be Transferred to SDDOT
- Permanent Easement to be Transferred to City of Rapid City
- Existing US Interstate Highway 160 ROW

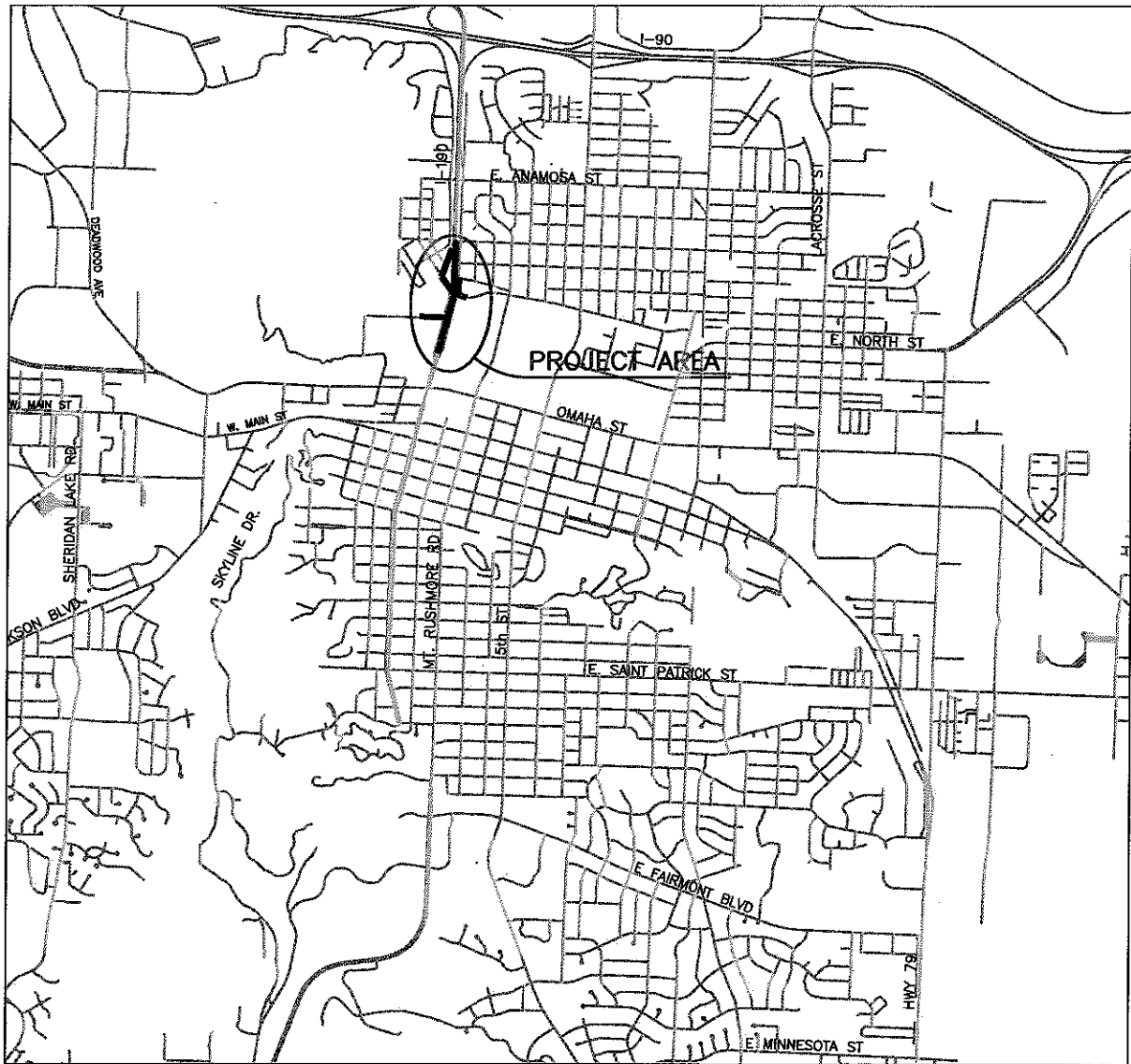


Rapid City Greenway Tracts

SDDOT to Rapid City		Rapid City to SDDOT	
Parcel	Area (sq ft)	Parcel	Area (sq ft)
44	10,326	A	1,416
1	10,326	B	637
15	10,326	33	22
28	7,652	RC01	13,656
39	7,657	RC02	7,293
20	4,743	RC03	30,305
21	2,405	RC04	45,510
22	14,859	Total	85,016
27	3,205		
28	6,132		
30	36		
44	13,563		
45	7,826		
45	1,923		
E	5		
K	3,063		
L	6,478		
M	2,132		
N	29,709		
SDDOT Total	3,633		
		Rapid City Total	125,697

PCN

EXHIBIT 'A'



**SILVER STREET INTERCHANGE
UTILITIES RECONSTRUCTION PROJECT
PROJECT # 12-2053, CIP 50940**