

**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 69,854 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 NH 0016(79)68 PCN 027C, referred to in this Agreement as the "STATE PROJECT." The STATE PROJECT is located on United States Highway 16 (US16), from St. James Street to Omaha Street. The STATE PROJECT consists of urban grading, storm sewer, curb and gutter, sidewalk, lighting, signals, and PCC surfacing, from St. James Street to Kansas City Street, and minor joint and spall repair from Kansas City Street to Omaha Street.

3. CONTRACT PROCUREMENT

- A. The STATE will design, advertise, let to contract, award, and be the contracting party for the STATE PROJECT.
- B. As part of the STATE PROJECT and as requested by the CITY, the STATE will install gasketed storm sewer piping in lieu of non-gasketed storm sewer pipe. The CITY will reimburse the STATE a lump sum amount for the difference between the estimated cost of installing the STATE'S standard non-gasketed storm sewer piping and the estimated cost of installing the gasketed storm sewer. The CITY'S lump sum reimbursement to the STATE is Thirty-eight Thousand One Hundred Sixty Dollars (\$38,160.00).
- C. As part of the STATE PROJECT and as requested by the CITY, the STATE will, install decorative lighting and signal poles in lieu of the STATE'S standard lighting and standard signal poles. The CITY will reimburse the STATE for the difference between the estimated cost of installing the STATE'S standard lighting and signal poles and the actual cost of installing the decorative lighting and decorative signal poles requested by the CITY. The CITY'S estimated cost is One Hundred Thirty Thousand Seven Hundred Fifty Dollars (\$130,750.00). Actual costs will be based upon bids and final quantities.
- D. The STATE will install electrical service with meter(s), wiring, conduit, and junction boxes to provide service to street light receptacles located on the proposed roadway light poles, to monument lights between St. James Street and Kansas City Street, and to an irrigation controller between Clark Street and South Street. The CITY will pay a lump sum reimbursement to the STATE in the amount of Five Thousand Three Hundred Fifty Dollars (\$5,350.00) for the

additional cost of the STATE'S consultant providing the design and plans assembly services for this electrical work.

The work order for this design and plans assembly work is established by STATE Agreement Number 410461, Work Order D-04-12 Amendment #2, and is shown in Exhibit A, attached to and made part of this Agreement. The CITY will pay a lump sum reimbursement to the STATE in the amount of Twenty-seven Thousand Seven Hundred Forty Dollars (\$27,740.00) for the construction of this electrical infrastructure.

- E. As part of the STATE PROJECT and as requested by the CITY, the STATE will, construct additional asphalt concrete pavement and curb and gutter for the purposes of side street parking at St. James and Fulton Street. The CITY will pay a lump sum reimbursement to the STATE in the amount of Twenty-six Thousand Nine Hundred Fifty Dollars (\$26,950.00).
- F. As part of the STATE PROJECT and as requested by the CITY, the STATE will, install colored concrete in the boulevards in lieu of the STATE'S standard sod. The CITY will reimburse the STATE for the difference between the estimated cost of installing the STATE'S standard sod and the estimated cost of installing colored concrete. The CITY'S lump sum reimbursement to the STATE is One Hundred Thirty-four Thousand, Seven Hundred Ten Dollars (\$134,710.00).
- G. The CITY will pay the STATE within forty-five (45) days of receipt of billings from the STATE.

4. COMBINATION LETTING

- A. The STATE will let the CITY'S water main, sanitary sewer, and landscaping enhancement project in combination with the STATE PROJECT. The CITY'S project, designated as CITY Project Number 13-2139/50950 PCN X03L, and referred to in this Agreement as the "CITY PROJECT," is located along and adjacent to the limits of the STATE PROJECT, from St. James Street to Kansas City Street.
- 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 Two Million Five Hundred Fifteen Thousand, Nine Hundred Twenty Dollars and Fifty-five Cents (\$2,515,920.55). Actual cost will be based upon bids and final quantities.
- E. Except as set forth in Section 4.F., 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. For the top of the CITY utility trenches, the STATE will conduct inspection of the trench backfill, trench compaction testing, and moisture and density testing for the CITY PROJECT. The top of the

utility trenches is defined as two feet (2') below the bottom of the undercut. The STATE will provide the CITY with a copy of all test reports for this portion of the UTILITY PROJECT. The CITY will pay the STATE for the cost of this testing and these 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 for this work within forty-five (45) days of receipt of billings from the STATE.

- G. Except for the top of the utility trenches, the CITY will conduct inspection of the trench backfill, trench compaction testing, and moisture and density testing for the CITY PROJECT. The CITY will provide the STATE with a copy of all test reports within forty-eight (48) hours of testing. The CITY will be responsible for ensuring that all work and test results on the CITY PROJECT are satisfactory to the STATE. The CITY will ensure all testing conducted by the CITY conforms to the South Dakota Department of Transportation Standard Specifications for Roads and Bridges, 2015 Edition, except as modified by any applicable special or supplemental provisions. The CITY will also ensure that all testing conducted by the CITY conforms to 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.

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

The CITY is responsible for policing encroachments, performing maintenance and repair activities, limiting access, enforcing parking prohibitions, and servicing lighting systems along the STATE PROJECT in accordance with the terms of 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.

6. 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 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 and, any amendments to that agreement entered into by the parties now or in the future.

7. 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.

8. AMENDMENT

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.

9. 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.

10. EMPLOYEE STATUS

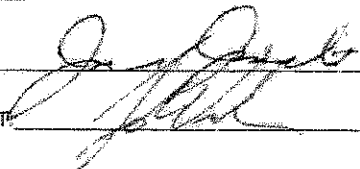
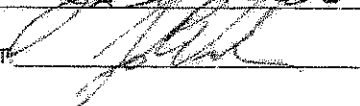
Any officer, employee, or agent engaged in joint action under this Agreement will remain an employee with his or her agency during participation in joint action under this Agreement. Each agency will retain exclusive responsibility for its officers, agents, and employees while these officers, agents, 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.

11. 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: Secretary
Date: _____	Date: _____
Attest:	Approved as to Form:
_____	<i>William J. Nevins</i>
City Auditor/Clerk	Special Assistant Attorney General
(CITY SEAL)	

EXHIBIT A

WORK ORDER FOR CONSULTANT SERVICES		Form 917
GENERAL		
Work Order No.: <u>D-04-12</u> Amendment No.: <u>2</u> Agreement No.: <u>410461</u> Date: <u>May 22, 2015</u>		
Consultant: <u>Ferber Engineering Company</u>		
PROJECT INFORMATION		
Project No.: <u>NH 0016(79)67</u> PCN: <u>027C</u> County: <u>Pennington</u>		
Project Type/Description: <u>Urban Grading, Storm Sewer, C&G, Sidewalk, Lighting, Signals & PCCP Surfacing Fm St. James St. to Kansas City St. Minor Joint & Spall Repair Fm Kansas City St. to Omaha St.</u>		
Project Location (Revised): <u>US16 - Fm St. James St. to Omaha St in Rapid City</u>		
Scope of Work: - See Attachment I		
SERVICES REQUIRED		
<u>Estimated Hours</u>	<u>Total Hourly Rate</u>	<u>Estimated Cost</u>
See Attachment II		
REIMBURSEMENT FOR TRAVEL		
Same as above		
MAXIMUM LIMITING AMOUNT		
Original	\$404,000.00	
Amendment #1	\$-14,000.00	
Amendment #2	\$+ 5,350.00	
	\$395,350.00	
COMPLETION DATE		
See Attachment I - The overall completion date of this work order remains <u>December 31, 2016</u> .		
CONTACT PERSONS		
SIDDOT: <u>Neil Schochenmaier, PE, Engineering Manager, Office of Road Design</u>		
CONSULTANT: <u>John Van Beek, PE, President</u>		
COUNTY: <u>NA</u>		
INSURANCE REQUIREMENTS		
<u>Types of Insurance</u>	<u>Expiration Date</u>	<u>On File</u>
General Liability	August 03, 2015	Yes
Automobile Liability	November 22, 2015	Yes
Worker's Compensation	May 01, 2016	Yes
Errors and Omissions	February 10, 2016	Yes
APPROVAL BY:		
DOT: 		<u>5-27-15</u>
CONSULTANT: 		DATE <u>5/27/15</u>
COUNTY: <u>N/A</u>		DATE
CONCURRENCE		DATE
Distribution:		
(2) Originals - 1 Consultant, 1 Initiating Agency		
(3) Division of Finance		
(1) Internal Audits		
(1) Compliance Office		
(1) Local Transportation Programs		
		DOT-917

ATTACHMENT I – SCOPE OF WORK

DESCRIPTION OF AMENDED CONSULTANT WORK TASKS

1. Revise the project design and the project construction plans to include additional electrical infrastructure that the City of Rapid City has requested be included in the SD DOT project. That request is as follows:

Provide electrical service with meter(s), wiring, conduit and junction boxes to provide service to street light receptacles located on the proposed roadway light poles, to monument lights and to an irrigation controller (between St James Street and Omaha Street). The receptacles, monument lights, and irrigation controller electrical service shall be on a separate metered account from the light poles and signals.

2. The Consultant shall coordinate with the City and/or Black Hills Power for power source location(s).
3. The location of the monuments and irrigation controller will be provided by the City.
4. Separate Estimate of Quantities tables will be prepared for the individual bid items for this work and will be noted in the table heading as "Estimate of Quantities (Non-Participating)".

WORK ORDER COMPLETION DATE 12/31/2016

The overall work order completion date has not changed with this amendment.

Intermediate Dates and Deliverable Dates have not changed with this amendment.

STORM SEWER GASKETED PIPE UPGRADE

Bid Item	Description	Quantity	Unit	DOT Standard non-gasketed		City requested gasketed	
				Unit Price	Extended Price	Unit Price	Extended Price
450E0123	18" RCP Class 3, Furnish	2096	Ft	\$26.30	\$55,124.80	\$30.90	\$64,766.40
450E0130	18" RCP, Install	2096	Ft	\$32.50	\$68,120.00	\$32.50	\$68,120.00
450E0143	24" RCP Class 3, Furnish	220	Ft	\$34.50	\$7,590.00	\$39.50	\$8,690.00
450E0150	24" RCP, Install	220	Ft	\$32.90	\$7,238.00	\$32.90	\$7,238.00
450E0182	36" RCP Class 2, Furnish	94	Ft	\$71.10	\$6,683.40	\$80.10	\$7,529.40
450E0190	36" RCP, Install	94	Ft	\$49.40	\$4,643.60	\$49.40	\$4,643.60
450E0192	42" RCP Class 2, Furnish	1544	Ft	\$94.80	\$146,371.20	\$104.80	\$161,811.20
450E0200	42" RCP, Install	1544	Ft	\$48.80	\$75,347.20	\$48.80	\$75,347.20
450E0202	48" RCP Class 2, Furnish	856	Ft	\$115.50	\$98,868.00	\$128.50	\$109,996.00
450E0210	48" RCP, Install	856	Ft	\$60.30	\$51,616.80	\$60.30	\$51,616.80
					\$521,603.00		\$559,758.60
					\$38,160.00		

CITY ELECTRICAL INFRASTRUCTURE

Bid Item	Description	Quantity	Unit	Unit Price	Extended Price
635E5301	Type 1 Electrical Junction Box	3	Each	\$620.00	\$1,860.00
635E5302	Type 2 Electrical Junction Box	3	Each	\$620.00	\$1,860.00
635E5400	Electrical Service Cabinet	2	Each	\$1,480.00	\$2,960.00
635E8120	2" Rigid Conduit, Schedule 40	130	Ft	\$3.70	\$481.00
635E8220	2" Rigid Conduit, Schedule 80	40	Ft	\$8.00	\$320.00
635E9012	1/C #2 AWG Copper Wire	30	Ft	\$1.30	\$39.00
635E9013	1/C #3 AWG Copper Wire	3180	Ft	\$1.80	\$5,724.00
635E9014	1/C #4 AWG Copper Wire	2710	Ft	\$1.15	\$3,116.50
635E9016	1/C #6 AWG Copper Wire	9320	Ft	\$0.80	\$7,456.00
639E9018	1/C #8 AWG Copper Wire	4260	Ft	\$0.70	\$2,982.00
635E9020	1/C #10 AWG Copper Wire	645	Ft	\$0.50	\$322.50
				Subtotal	\$26,799
				CE Amount (3.5%)	\$938
				Total	\$27,740

SIDE STREET PARKING (ST. JAMES AND FULTON)

Bid Item	Description	Quantity	Unit	Unit Price	Extended Price
120E2000	Undercutting	145	CuYd	\$22.00	\$3,190.00
260E2010	Gravel Cushion	229	Ton	\$13.50	\$3,091.50
320E1200	Ashalt Concrete Composite	102	Ton	\$115.00	\$11,730.00
650E0060	Type B66 Concrete Curb and Gutter	312	Ft	\$21.50	\$6,708.00
				Subtotal	\$24,720
				PE Amount (5.5%)	\$1,360
				CE Amount (3.5%)	\$865
				Total	\$26,950

Penn027C Boulevard Treatment Cost Comparison

Sod/Fertilizer \$7.30 SqYd
 Colored Concrete \$67.50 SqYd (\$7.50/SqFt)
 Plain Concrete \$49.50 SqYd (\$5.50/SqFt)

Parcel	Mainline				Side Streets							
	SqFt Boulevard Area (Sod & Colored)	2'-4" Colored (by DOT)	Sod	City Share Colored Concrete Boulevard	State Share Boulevard Area (2'4" strip & replace existing)	Boulevard Area (Sod & Concrete)	Sod	Colored Concrete	Boulevard Area Concrete	City Share Colored Concrete Boulevard	Boulevard Area Plain Concrete	City Share Plain Concrete Boulevard
A1	NA											
A2	NA											
A3	NA											
A4	152.2	57.4	\$170.01	\$1,141.50	\$430.50	158	\$128.16	158	\$1,185.00	158		
A5	NA					199	\$161.41	199	\$1,492.50	199		
A6	171.6	67.4	\$193.86	\$1,287.00	\$505.50							
A7	260.4	102.2	\$294.11	\$1,953.00	\$766.50							
A8	262.8	103.1	\$296.79	\$1,971.00	\$773.25							
A9	NA											
1	337.3	156.6	\$400.61	\$2,529.75	\$1,174.50							
A10	850.5	298.7	\$932.13	\$6,378.75	\$2,240.25	356	\$288.76	356	\$2,670.00	356		
A11	950.4	344.6	\$1,050.39	\$7,128.00	\$2,584.50	350	\$283.89	350	\$2,625.00	350		
2	657.1	400.4	\$857.75	\$4,928.25	\$3,003.00	174	\$141.13	174	\$1,305.00	174		
A12	665.8	270.8	\$759.69	Existing	\$7,024.50	211	\$171.14	211	\$1,582.50	211		
A13	NA											
A14	879.6	351.1	\$998.23	\$6,597.00	\$2,633.25	460	\$373.11	460	\$3,450.00	460		
3	NA											
4	NA											
5	NA											
6	NA											
A15	651.4	263.8	\$742.33	\$4,885.50	\$1,978.50	55	\$44.61	55	\$412.50	55		
A16	235.2	90.9	\$264.50	\$1,764.00	\$681.75	450	\$365.00	450	\$3,375.00	450		

Parcel	SqFt Boulevard Area (Sod & Colored)	SqFt 2'-4" Colored (by DOT)	Sod	City Share Colored Concrete Boulevard	State Share Boulevard Area (2'-4" strip & replace existing)	SqFt Boulevard Area (Sod & Concrete)	Sod	Colored Concrete Boulevard Area	City Share Colored Concrete Boulevard	SqFt Plain Concrete Boulevard Area	City Share Plain Concrete Boulevard
A17	871.9	352.1	\$992.80	\$6,539.25	\$2,640.75	271	\$219.81	271	\$2,032.50		
A18	NA										
A19	NA										
A20	NA										
A21	NA										
A22	NA										
A23	NA										
A24	NA										
A25	NA										
A26	NA										
7	192.7	72.0	\$214.70	\$1,445.25	\$540.00						
8	1553.2	272.2	\$1,480.60	\$11,649.00	\$2,041.50						
A27	NA										
A28	NA										
A29	NA										
A30	917.1	294.7	\$982.90	\$6,878.25	\$2,210.25	257	\$208.46	257	\$1,927.50		
A31	701.1	213.5	\$741.84	\$5,258.25	\$1,601.25	595	\$482.61	595	\$4,462.50		
A32	303.6	95.7	\$323.88	Existing	\$2,994.75						
9	517.1	273.9	\$641.59	\$3,878.25	\$2,054.25	429	\$347.97	215	\$1,612.50	214	\$1,177.00
A33	583.2	171.0	\$611.74	\$4,374.00	\$1,282.50	389	\$315.52	389	\$2,917.50		
A34	NA					221	\$179.26	221	\$1,657.50		
A35	NA					331	\$268.48	331	\$2,482.50		
A36	929.2	284.9	\$984.77	\$6,969.00	\$2,136.75	463	\$375.54	367	\$2,752.50	96	\$528.00
A37	956.6	296.3	\$1,016.24	\$7,174.50	\$2,222.25	189	\$153.30	189	\$1,417.50		
A38	1065.8	327.9	\$1,130.45	\$7,993.50	\$2,459.25	347	\$281.46	347	\$2,602.50		
A39	1062.9	322.6	\$1,123.79	Existing	\$10,391.25	437	\$354.46	245	\$1,837.50	92	\$506.00
A40	1037.7	328.6	\$1,108.22	Existing	\$10,247.25	568	\$460.71	421	\$3,157.50	147	\$808.50
A41	726.5		NA	Existing	\$5,448.75	394	\$319.58	339	\$2,542.50	55	\$302.50

Parcel	SqFt (Sod & Colored) Boulevard Area	SqFt 2'-4" Colored (by DOT)	Sod	City Share Colored Concrete Boulevard	State Share Boulevard Area (2'4" strip & replace existing)	SqFt Boulevard Area (Sod & Concrete)	Sod	Colored Concrete Boulevard Area	City Share Colored Concrete Boulevard	Plain Concrete Boulevard Area	SqFt	City Share Plain Concrete Boulevard
A42	998.9	NA	NA	Existing	\$7,491.75	558	\$452.60	395	\$2,962.50	163	\$896.50	
A43	652.7	NA	NA	Existing	\$4,895.25							
A44	NA	NA	NA	Existing	\$4,673.25							
YMCA	623.1	NA	NA	Existing	\$4,673.25							
Totals			\$18,313.92	\$102,723.00	\$89,127.00		\$6,376.96		\$52,462.50		\$4,218.50	
Rounded			\$18,310.00	\$102,720.00	\$89,130.00		\$6,380.00		\$52,460.00		\$4,220.00	

Estimated cost to install colored concrete

Estimated cost to install sod

Difference

\$159,400.00
\$24,690.00
\$134,710.00