

**STATE OF SOUTH DAKOTA  
LETTING 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, hereinafter referred to as the "STATE," and the City of Rapid City, South Dakota, hereinafter referred to as "CITY." The parties acknowledge and agree that CITY'S population is deemed to be 59,607 for purposes of this Agreement.

1. STATE PROJECT

STATE and CITY concur in the proposal for the new construction or improvement of streets identified as South Dakota Construction Project No. NH 0016(70)67 PCN 01W5, hereinafter referred to as the "STATE PROJECT." The STATE PROJECT is located at the intersection of St. Patrick Street and US16 (Mt. Rushmore Road) and consists of sidewalk and ADA upgrades.

2. CONTRACT PROCUREMENT

The STATE will design, advertise, let to contract, construct, award, and be the contracting party for the STATE PROJECT. CITY will provide the design and plan sheet insert for the relocation of the fire hydrant to within the Northwest Quadrant in US 16 and St. Patrick Street.

3. FINANCIAL RESPONSIBILITY

The STATE will pay for STATE PROJECT, including the actual cost to relocate the fire hydrant referenced in Section 2, above.

4. MAINTENANCE

CITY shall be responsible for all maintenance of STATE PROJECT, including, but not limited to: debris and litter removal, snow and ice removal, repair, and replacement of sidewalks and curb ramps, including detectable warnings, in accordance with the Americans with Disabilities Act.

5. CERTIFICATION REGARDING LOBBYING

CITY certifies, to the best of 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 undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The CITY shall 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 shall 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 shall be subject to a civil penalty or not less than \$10,000 and not more than \$100,000 for each such failure.

6. INDEMNIFICATION AND HOLD HARMLESS.

CITY agrees to indemnify and hold the State of South Dakota, its officers, agents, and employees harmless from and against any and all actions, suits, damages, liability, or other proceedings that arise as a result of CITY'S performance 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 STATE, its officers, agents, or employees.

7. AMENDMENT PROVISION

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

8. TERMINATION PROVISION

This Agreement can be terminated upon thirty (30) days' written notice by either party. In the event the CITY breaches any of the terms or conditions hereof, this Agreement may be terminated by the STATE at any time with or without notice.

9. FUNDING PROVISION

This 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.

10. CONTROLLING LAW PROVISION

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

11. SEVERABILITY PROVISION

In the event that any court of competent jurisdiction shall hold any provision of the Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

12. 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 herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

13. COMPLIANCE PROVISION

The CITY shall comply with all federal, state, and local laws, together with all ordinances and regulations applicable to the work and will be solely responsible for obtaining current information on such requirements.

14. REPORTING

CITY shall report to the STATE any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject CITY, or the STATE, its officers, agents, or employees to liability. CITY shall report any such event to the STATE immediately upon discovery.

CITY'S obligation under this section shall only be to report the occurrence of any event to the STATE and to make any other report provided for by their duties or applicable law. CITY'S obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the STATE under this section shall not excuse or satisfy any obligation of CITY to report any event to law enforcement or other entities under the requirements of any applicable law.

15. RECORDS RETENTION AND AUDIT

- A. All STATE PROJECT charges will be subject to audit in accordance with STATE'S current procedures and OMB Circular A-87.
- B. The CITY and CITY'S subcontractors shall keep accounting records clearly identified with the Agreement.
- C. Upon reasonable notice, the CITY and CITY'S 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. These records shall be clearly identified and readily accessible. All records shall be kept for a period of three (3) years after the date final payment under this Agreement is made and all other pending matters are closed.

16. SUBCONTRACT PROVISION

CITY will include provisions in CITY'S subcontracts requiring 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. CITY will cause 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.

The CITY, by signing this agreement, evidences authority to enter into this agreement through formal action of its governing body.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

City of Rapid City, South Dakota

State of South Dakota  
Department of Transportation

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

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

Its: Mayor

Its: Project Development Engineer

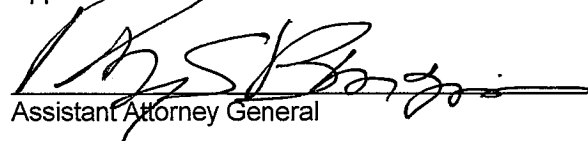
Date: \_\_\_\_\_

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

Attest:

Approved as to Form:

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

  
Assistant Attorney General

(SEAL)