

**FINANCIAL, LETTING & MAINTENANCE/ENCROACHMENT  
AGREEMENT BETWEEN THE CITY OF RAPID CITY AND THE STATE  
FOR  
FEDERAL-AID HIGHWAY IMPROVEMENT  
PROJECT P 0016(57)69-PCEMS 3864, P 0044(125)44-PCEMS 4757 &  
BRF I90-2(01)0-PCEMS 6561**

**WHEREAS**, the **DEPARTMENT OF TRANSPORTATION** acting through the South Dakota Transportation Commission, hereinafter designated as the STATE, concurs in the proposal with the city for the new construction or improvement of a street identified as Federal Aid Construction Project No. P 0016(57)69-PCEMS 3864, P 0044(125)44-PCEMS 4757 and BRF I90-2(01)0-PCEMS 6561, Pennington County, hereinafter designated as the PROJECT, extending through portions of the City of Rapid City, South Dakota, hereinafter referred to as the CITY, located and further described as follows:

SD44/US16 on Omaha Street from W of I-190 to E of 1<sup>st</sup> Street and I90 Structure 0.1 N of Jct SD44 Over Rapid Creek in Rapid City. Grading, PCCP, Roadway Lighting and Deck Overlay on One Structure.

**WHEREAS**, the CITY desires the STATE to let water main and sanitary sewer project number SSW02-1106 further described as water main and sanitary sewer on Omaha Street from 12<sup>th</sup> Street to East Boulevard and Median Beautification project number PR02-1215.

**WHEREAS**, the STATE has agreed to reimburse the CITY for a colored concrete median as per the Median Beautification project number PR02-1215 and the CITY has agreed to pay for any costs over and above colored concrete in the Median Beautification project, and

**WHEREAS**, the Statutes of the State of South Dakota give assent to the provisions of the Transportation Equity for the 21<sup>st</sup> Century Act and acts amendatory thereof or supplementary thereto and regulations issued pursuant thereto by the Federal Highway Administration, Department of Transportation, United States of America, which hereinafter collectively will be designated as the Act, and charge of the STATE and the CITY to do all things necessary fully to carry out the cooperation contemplated and provided for in the Act; and

**WHEREAS**, the section of the PROJECT within the CITY will be subject to the provisions of the Act, and is within the legal jurisdiction of the CITY for traffic regulations and the control of building setbacks, zoning, sidewalks, utilities, etc., and

**WHEREAS**, the construction of the project is conditioned upon the fulfillment of the obligation of the CITY in a manner satisfactory to the STATE and the Federal Highway Administrator, or their authorized representatives:

**NOW THEREFORE**, be it agreed for and in consideration of the undertaking of the PROJECT under the requirements of the Act with the STATE's approval that insofar as its legal jurisdiction over the PROJECT is concerned the CITY assents to the requirements of the Act and pledges its good faith to the carrying out the purposes stipulated in the Act and to this end, the CITY hereby agrees:

1. COMBINATION LETTING CONDITIONS:

- A. The STATE will let CITY Water Main and Sanitary sewer project number SSW02-1106 and Median Beautification project number PR02-1215 (one set of plans) in combination with PROJECT. Bidders will be required to submit a bid on CITY project numbers SSW02-1106 & PR02-1215 and PROJECT with award of contract to the same bidder based on the total combination bid for the two projects.
- B. The lowest responsible bid on the PROJECT will be the basis for determining State and Federal Funds participation. In the event the total low combination bid for the CITY project and the PROJECT combined does not have as part of that bid the lowest bid on the PROJECT, the CITY agrees to pay the STATE the difference between the bid awarded on the combination project and the lowest bid on the PROJECT.
- C. The STATE will award and will issue a contract for all projects; however, the CITY will be the contracting party for CITY project numbers SSW02-1106 and PR02-1215. The CITY's engineer's estimated cost for CITY project is \$2,405,000. It is understood by the CITY that the actual costs will be based upon bids and final quantities.
- D. The CITY will provide plans, specification, and estimates for project numbers SSW02-1106 and PR02-1215.
- E. The CITY agrees to provide all construction engineering including construction supervision and inspection for the water main and sanitary construction project as described herein. The CITY will inspect the physical installation of the water mains and sanitary sewer, including measuring in place quantities and documenting location for as built records. The CITY will conduct all physical testing of the water mains and sanitary sewer for final acceptance.
- F. The STATE agrees to provide testing of trench backfill and conduct trench compaction testing for that portion of the CITY project under the surface of the highway with a copy of the compaction tests being sent to the CITY Engineer's Office. The cost for this service is not to exceed \$27,500 and is to be based on (350 Density Tests @ \$75 ea. = \$26,250 + 50 Moisture Tests @ \$25 ea. = \$1,250) number of tests per these unit prices.

2. FINANCIAL:

- A. STATE will reimburse CITY for the cost to provide for approximately 6,047 sq. yds. of colored concrete median as per CITY Median Beautification project PR02-1215. Total estimated amount will be based on final quantities and actual bids. CITY agrees to be responsible for 100% of additional costs for landscaping, irrigation & sprinklers and stamping of colored concrete.
- B. CITY agrees to provide on going maintenance of median landscaping including but not limited to shrub pruning, shrub replacement, mowing, and irrigation & sprinkler repair/replacement. CITY also agrees to repair/replace any damage to concrete median including concrete slab and curb as a result of landscaping (such as root heaving). If landscaping is replaced at anytime with concrete it will be at CITY cost.

- C. CITY agrees to pay for the decorative lighting that is over and above the standard lighting that is typical for this type of project. The estimated cost of the amount over and above the typical lighting is \$ 100,000 .
- D. CITY agrees to provide electric power necessary to operate the roadway lighting and traffic signals systems and all necessary maintenance and replacements including lamps so as to ensure the continuing operation of said roadway lighting system until such time as the parties to this Agreement shall agree to discontinue the operation of the system.

3. MAINTENANCE & ENCROACHMENTS:

Those encroachments on the public right-of-way shall be treated as follows:

- A. In outlying commercial areas and through residential areas all encroachments on or above the right-of-way shall be prohibited.
- B. 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 thereof shall be prohibited.
- C. 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:
  - a. Awnings, canopies, marquees and similar installations on buildings shall be permitted to remain in place until such time that they become functionally or structurally obsolete, providing that the edge of such encroachment be not less than three feet back from the face of the curb.
  - b. Advertising or other similar signs which are less than three feet back from the face of the curb and are supported wholly from the front of the building shall be permitted to remain in place until such time that they become functionally or structurally obsolete, providing that the bottom of such encroachment be not less than 14.5 feet above the curb elevation.
  - c. The replacement of obsolete or the installation of new awnings, canopies, marquees, advertising signs or similar installations supported wholly from the building shall be permitted provided that no part of the encroachment is less than three feet back from the face of the curb and 8 feet above the curb elevation.
  - d. In the event the encroachments referred to in (a), (b), and (c) above, by reason of color or placement, obscure or in any way detracts from the effectiveness of the highway signs, traffic signals, pedestrian safety, or interferes with the free or safe flow of the traffic, the CITY shall cause the removal of such encroachments or take appropriate measures to improve highway signs or traffic signals and traffic safety.
  - e. The provisions of paragraph (C) and subparagraphs (a), (b), (c), and (d) above shall not apply to isolated business or commercial buildings in outlying areas.

f. 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 South Dakota Department of Transportation Commission may at its discretion permit the encroachment to remain for a specific period. This permission is subject to revocation or extension at the commission's discretion. Each such encroachment shall be described in the attached Exhibit A.

2. On Federal Aid Projects, the permitting of such encroachments as described in the previous paragraph shall be in conformance with 23 CFR 1.23.
3. That it will control the location and maintenance of utilities within the right-of-way so as to not impair the free flow of traffic and provide the maximum safety to the traveling public.
4. That it will not designate a speed limit on State Trunk System Projects until after appropriate engineering and traffic investigation has been made and such speed limit has been approved by the South Dakota Department of Transportation.
5. That it will prohibit all parking in the traffic lanes constructed under this project. It further agrees that it will prohibit double and diagonal parking and control all parallel parking where and if allowed in a manner satisfactory to the STATE.

It further agrees that where curbs are not installed and are not to be installed under the proposed improvement, the curbs when proposed to be constructed in the future shall be at a lateral distance approved by the South Dakota Department of Transportation.

6. That it will not allow access to the street/highway at points other than constructed as part of the PROJECT without prior approval of the Department of Transportation or their authorized representatives.
7. That if a signal and/or roadway lighting system is installed on this street it will provide electric power necessary to operate the signal and/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 insure the continuing operation of said signals and/or roadway lighting systems until such time as the parties to this agreement shall agree to discontinue the operation of the said system. That if a signal is coordinated through the use of leased telephone lines, it will pay the required hookup fee and monthly rental fees.

It further agrees that on the State Trunk System, prior to changing the signal timing from that originally set by the South Dakota Department of Transportation, the CITY will submit the necessary data and proposed timing to the South Dakota Department of Transportation for approval.

8. That, if plastic pavement marking is applied on this street, it will use plastic material approved by the South Dakota Department of Transportation, to maintain those plastic pavement markings which are the responsibility of the CITY.
9. That said CITY does acknowledge that the members of its governing board and/or engineering staff have examined the plans for the Project prepared under the supervision of the South Dakota Department of Transportation referred to in this Agreement.

10. That the CITY will enact such ordinances as are necessary to properly enforce any of the above provisions.
11. That the Mayor is authorized to enter into a mutual agreement with the STATE providing for the understanding of this PROJECT under the considerations described above.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003

CITY OF RAPID CITY

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Auditor/Finance Officer

(S E A L)

SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION

APPROVED AS TO FORM:

\_\_\_\_\_  
Project Development Engineer

\_\_\_\_\_  
Assistant Attorney General

AGREEMENT BETWEEN THE POLITICAL SUBDIVISION AND THE STATE  
FOR  
FEDERAL AID HIGHWAY ENCROACHMENTS

EXHIBIT "A"

Portions of the following buildings are located inside the Right-of-way. A Revocable Occupancy Permit will be issued and recorded against the property. They will be allowed to remain until such time that the Highway Right-of-way is needed for highway use.

Omaha Street in Rapid City:

Sta. Rt. 7+00. Poker Joes encroaches approximately 0.9 feet. The encroachment is one corner of the building. The awning is 8.1 feet above the face of the curb and will be 11 feet back of the new curb.

Sta. Rt. 51+90 Indian Motorcycle encroaches approximately 0.7 feet to 1.0 feet. The awning encroaches 6 feet closer to the roadway. The awning is 8.5 feet above the curb and will be 8 feet back of the new curb.