

**STATE OF SOUTH DAKOTA
JOINT POWERS FINANCIAL AND MAINTENANCE AGREEMENT
AMONG
DEPARTMENT OF TRANSPORTATION,
CITY OF RAPID CITY,
PENNINGTON COUNTY,
AND
MEADE COUNTY**

This Agreement is made by and among the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the "STATE"; the city of Rapid City, South Dakota, referred to in this Agreement as the "CITY"; Pennington County, South Dakota, referred to in this Agreement as "PENNINGTON COUNTY"; and Meade County, South Dakota, referred to in this Agreement as "MEADE COUNTY."

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, PENNINGTON COUNTY, MEADE COUNTY, 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, the CITY, PENNINGTON COUNTY, and MEADE COUNTY concur in the proposal for the new construction or improvement of streets identified by South Dakota Federal Aid Construction Project Number PH 0040(334) PCN 05W5, referred to in this Agreement as the "STATE PROJECT." The STATE PROJECT is located at various locations on the state and local systems in the Rapid City Region. The STATE PROJECT consists of high friction surface treatment.

3. CONTRACT PROCUREMENT

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

4. FINANCIAL RESPONSIBILITIES

- A. The STATE PROJECT is eligible for Roadway Safety Improvement Federal Funding (RSI) based on past crash history and the benefits from the STATE PROJECT.
- B. The estimated cost of the STATE PROJECT is Nine Hundred Thirty-nine Thousand Two Hundred Fifteen Dollars and Eleven Cents (\$939,215.11).
- C. The STATE will seek federal aid reimbursement for ninety percent (90%) of project costs estimated to be Eight Hundred Forty-five Thousand Two Hundred Ninety-three Dollars and Sixty Cents (\$845,293.60). The STATE, the CITY, PENNINGTON COUNTY and MEADE COUNTY will each contribute towards the required ten percent (10%) match estimated to be Ninety-three Thousand Nine Hundred Twenty-one Dollars and Fifty-one Cents (\$93,921.51) based on the ratio of the STATE PROJECT located within their jurisdiction as follows:
 - i. The CITY will provide the CITY'S share of the required match on the STATE PROJECT in a lump sum reimbursement of Eight Thousand Three Hundred Fifty-nine Dollars and One Cent (\$8,359.01).
 - ii. PENNINGTON COUNTY will provide PENNINGTON COUNTY'S share of the required match on the STATE PROJECT in a lump sum reimbursement of Fifteen Thousand One Hundred Twenty-one Dollars and Thirty-six Cents (\$15,121.36).

iii. MEADE COUNTY will provide MEADE COUNTY'S share of the required match on the STATE PROJECT in a lump sum reimbursement of One Thousand Eight Hundred Seventy-eight Dollars and Forty-three Cents (\$1,878.43).

iv. The STATE will pay the remaining balance of the required match.

D. The CITY, PENNINGTON COUNTY, and MEADE COUNTY will each pay the STATE within thirty (30) days of receipt of billing from the STATE.

5. PERMANENT AND TEMPORARY EASEMENTS

A. The CITY, PENNINGTON COUNTY, and MEADE COUNTY will acquire all permanent or temporary easements needed for the STATE PROJECT prior to letting and in accordance with the Code of Federal Regulations (CFR), Title 49, Part 24.

B. The CITY, PENNINGTON COUNTY, and MEADE COUNTY will certify to the STATE at least sixty (60) days prior to the bid letting notice to contractors, that the permanent or temporary easements have been acquired, encroachments removed, and utilities relocated, as necessary for the construction of the STATE PROJECT.

6. MAINTENANCE RESPONSIBILITIES

The CITY, PENNINGTON COUNTY, and MEADE COUNTY will maintain and be responsible for all maintenance of the STATE PROJECT within their jurisdictional boundaries including but not limited to the following:

- A. Lighting;
- B. Signals;
- C. Structures;
- D. Snow removal;
- E. Pavement markings;
- F. Repairs and improvements;
- G. Permanent signing;
- H. Drainage;
- I. Access management;
- J. Utility management; and
- K. Compliance with the American with Disabilities Act requirements

7. INDEMNIFICATION

The CITY, PENNINGTON COUNTY, and MEADE COUNTY will each 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, PENNINGTON COUNTY'S, and MEADE COUNTY'S performance under this Agreement. This section does not require the CITY, PENNINGTON COUNTY, or MEADE COUNTY to be responsible for or defend against claims or damages arising from solely 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, PENNINGTON COUNTY, and MEADE COUNTY each certify, to the best of their knowledge and belief, that no federal appropriated funds have been paid or will be paid, by or on behalf of the CITY, PENNINGTON COUNTY, and MEADE COUNTY 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, PENNINGTON COUNTY, and MEADE COUNTY will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The CITY, PENNINGTON COUNTY, and MEADE COUNTY will each 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 \$10,000.00 and not more than \$100,000.00 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 or Council 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**.
12. PENNINGTON COUNTY has designated its Chairperson as PENNINGTON COUNTY'S authorized representative and has empowered the Chairperson with the authority to sign this Agreement on behalf of PENNINGTON COUNTY. A copy of PENNINGTON COUNTY'S Commission or Council minutes or resolution authorizing the execution of this Agreement by the Chairperson as PENNINGTON COUNTY'S authorized representative is attached to this Agreement as **Exhibit B**.
13. MEADE COUNTY has designated its Chairperson as MEADE COUNTY'S authorized representative and has empowered the Chairperson with the authority to sign this Agreement on behalf of MEADE COUNTY. A copy of MEADE COUNTY'S Commission or Council minutes or resolution authorizing the execution of this Agreement by the Chairperson as MEADE COUNTY'S authorized representative is attached to this Agreement as **Exhibit C**.

This Agreement may be executed by the parties on separate signature pages attached to four originals of the Agreement. Once the STATE has received four signed originals from all of the parties, including the STATE'S authorized representative, the four signed originals will be collected together and treated as part of a single fully executed Agreement. The STATE will provide a copy of the body of the Agreement with each separately executed signature page to each of the parties to the Agreement.

SIGNATURES ON FOLLOWING PAGES

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

By: _____

Its: Mayor

Date: _____

Attest:

City Auditor/Clerk

(CITY SEAL)

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.

Pennington County, South Dakota

By: _____

Its: Chairperson

Date: _____

Attest:

County Auditor/Clerk

(COUNTY SEAL)

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.

Meade County, South Dakota

By: _____

Its: Chairperson

Date: _____

Attest:

County Auditor/Clerk

(COUNTY SEAL)

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.

State of South Dakota
Department of Transportation

By: _____

Its: Secretary

Date: _____

Approved as to Form:



Special Assistant Attorney General