AGREEMENT BETWEEN THE CITY OF RAPID CITY
AND HIGHWAY IMPROVEMENT, INC.
FOR 2019 CRACK SEALING PROJECT PROJECT NO. 19-2521

This Agreement is made and entered into this ___ day of ____________________, 2019,
by and between the City of Rapid City, located at 300 Sixth Street, Rapid City, SD 57701
(“City”), and Highway Improvement, Inc., 1104 S. Enterprise Avenue, Sioux Falls, SD 57110
(“Contractor”).

WHEREAS, the City desires to retain a contractor to provide crack sealing services on
asphalt streets within the City; and

WHEREAS, the Contractor was the lowest responsible bidder for the same service with
the City of Spearfish within the last twelve months; and

WHEREAS, the Contractor is willing to perform crack sealing for the City of Rapid City
at the same price as it agreed to perform the work for City of Spearfish; and

WHEREAS, upon reviewing this bid, City engineering staff is of the opinion that this is a
favorable rate for the work to be performed and awarding the contract to the Contractor for this
amount is in the City’s best interests; and

WHEREAS, the City is awarding this contract without competitive bidding pursuant to
the exception contained in SDCL 5-18A-22(3), which allows a local government entity to
purchase an item from the lowest responsible bidder of an item competitively bid in the last
twelve months by itself, or another governmental entity, at or below the bid price.

NOW THEREFORE, the parties hereby agree as follows:

1. The Contractor shall provide crack sealing services to the City at a rate of $0.49
per foot. The work shall be performed in accordance with the General and Special Conditions
incorporated in the June 3, 2019 Agreement with the City of Spearfish and the City’s Standard
Specifications for Public Works Construction. If there is a conflict between the City’s criteria
and/or design standards and the general or special conditions contained in the contract with City
of Spearfish, the City standards shall control.

2. The work to be performed under this Contract shall commence within ten (10)
calendar days after the Contractor is notified by the City to proceed, and shall be completed on or
before November 1, 2019.

Liquidated damages as provided in the Standard Specifications for Public Works
Construction will be charged for failure to complete the project on or before the completion date
as specified herein. Requests for time extensions shall be made in writing to the City as soon as
possible before the project completion date. All time extensions will be issued by the City and
will be granted only for good cause beyond the control of the Contractor.
3. The Contractor shall perform the work at the direction of the City Engineer or his designee. The City Engineer shall provide Contractor with the areas where the work shall be done. The Contractor shall invoice the City for work actually performed at the rate listed above. The City shall pay Contractor upon review and approval of the invoices within 45 days of receipt of such invoices. The City anticipates that 149,197 feet of crack sealing will be performed at a price of $73,106.53. The Contractor will be paid for work actually performed at the rate described in paragraph one up to a maximum total contract price of $75,000, which includes a $1,000 mobilization fee and an $893 fee for traffic control, as provided by the City of Spearfish Agreement. The parties acknowledge that actual quantities and final payment may be less.

4. This Agreement along with the bid documents, Standard Specifications for Public Works Construction, and contract with City of Spearfish constitutes the entire agreement of the parties. Copies of the City of Spearfish documents are attached hereto and incorporated herein by this reference. No other documents or statements are incorporated herein.

5. This Agreement is governed under the laws of the State of South Dakota. Any action concerning this Agreement shall be venued in Pennington County, South Dakota in the Circuit Court for the Seventh Judicial Circuit.

HIGHWAY IMPROVEMENTS, INC.

By: [Signature]

Printed Name: Brett Meadors

Its: Project Manager

State of South Dakota, ss.
County of Minnehaha, ss.

On this 12th day of July, 2019, before me, the undersigned officer, personally appeared Brett Meadors, who acknowledged himself/herself to be the General Manager of Highway Improvements, Inc., and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Notary Seal]

Notary Public, South Dakota
My Commission Expires: Oct. 24, 2022
CITY OF RAPID CITY

ATTEST:

Mayor Steve Allender

Pauline Sumption, Finance Officer
(SEAL)

State of South Dakota )
ss.
County of Pennington )

On this the _____ day of _________________, 2019, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, being duly authorized to do so, executed the foregoing Agreement for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

(seal) Notary Public, South Dakota
My Commission Expires: ____________________
## CERTIFICATE OF LIABILITY INSURANCE

**Contact Person:** Sondra Bowden  
**Phone:** (605) 336-0425  
**Fax:** (605) 336-8187  
**E-Mail:** sondrab@boenassociates.com  
**Issuer(s) Affording Coverage:** 
- Acuity Insurance Company  
  **NAIC #:** 14184

### Producer

**Boen & Associates, Inc.**  
307 W. 41st Street  
PO Box 89010  
Sioux Falls SD 57105

### Insured

- **Highway Improvement, Inc.**  
  1104 S. Enterprise Ave.  
  Sioux Falls SD 57110

### Coverages

**Certificate Number:** CL18122618650  
**Revision Number:**

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<tbody>
<tr>
<td>A</td>
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<td>C</td>
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<td>D</td>
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<td>E</td>
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<tr>
<td>F</td>
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</table>

### Important Notes

- If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed.
- If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

### Description of Operations / Locations / Vehicles

- **City of Rapid City**  
  300 6th Street

### Certificate Holder

**City of Rapid City**  
300 6th Street  
Rapid City SD 57701

**Authorized Representative:**

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## 2019 Asphalt Surface Crack Sealing Project

City of Spearfish  
Spearfish, SD  
Project No. 2019-17  
Bid Opening 1:30 pm, on Tuesday, May 7th, 2019

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Acknowledge</th>
<th>Addendum 1</th>
<th>Bid Bond/Cashier’s Check</th>
<th>Base Bid</th>
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<tr>
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<td>3 Black Hills Asphalt</td>
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<td>6 GTI Companies, Inc.</td>
<td>X BB</td>
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<td>$109,940.00</td>
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</tbody>
</table>
PLANS AND SPECIFICATIONS FOR

2019 ASPHALT SURFACE CRACK SEALING PROJECT

City of Spearfish
Spearfish, SD

April 2019
SPECIFICATIONS
FOR

2019 Crack Sealing Repairs Project

Location: Various road locations within City Limits

Bid Opening Date: May 7th, 2019, at 1:30 p.m.

Owner: City of Spearfish
625 N. Fifth Street
Spearfish, SD 57783
(605) 642-1335
NOTICE TO BIDDERS

NOTICE IS HEREBY GIVEN that the City of Spearfish, South Dakota will open bids in the Council Chambers of the Municipal Services Centre at 625 Fifth Street on the following:


Plans and specifications are available thru QuestCDN at the City of Spearfish Website https://www.cityofspearfish.com/departments/engineering/project_bidding_services.php. Select link 'Click Here for Current City of Spearfish Projects' at the bottom of the webpage.

Plans and specifications are also on file at the Building and Development Office, 625 Fifth Street and are available upon request. In accordance with South Dakota law, each bid shall be accompanied by a bid bond in the amount of ten percent (10%) of the bid, or a cashier’s check or money order in the amount of five percent (5%) of the bid.

Bids must be submitted upon the printed bid form and sealed with the items being bid clearly indicated on the outside for each project.

The City of Spearfish reserves the right to accept or reject any or all bids and/or waive any irregularities therein.

Dated this the 9th day of April 2019.

CITY OF SPEARFISH

BY: [Signature]

Michael L. Harmon
City Administrator

PUBLISH: April 16th, 2019
April 23rd, 2019
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<td>SC-1</td>
</tr>
<tr>
<td>TECHNICAL SPECIFICATIONS</td>
<td>TS-1</td>
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</table>
INSTRUCTIONS TO BIDDERS

Bids will be received by the City of Spearfish, at the City Hall office of Building and Development Office, until 1:30 p.m., May 7th 2019, for materials, labor, and equipment for construction of improvements to include crack sealing repairs at various road locations within city limits for the City of Spearfish, South Dakota.

Specifications are available thru QuestCDN at the City of Spearfish Website, https://www.cityofspearfish.com/departments/engineering/project_bidding_services.php. Select link ‘Click Here for Current City of Spearfish Projects’ at the bottom of the webpage. Copies of the plans and specifications are also on file at the Building and Development Office, 625 N. Fifth Street, Spearfish, South Dakota.

Each bid must be accompanied by a cashier's check or money order in the amount of five percent (5%) and drawn on a State or National Bank, or a ten percent (10%) bond issued by a surety authorized to do business in the State of South Dakota and made payable to the Finance Officer, Spearfish, South Dakota.

Bid Requirements

All bids must be upon the printed forms provided in the bound specifications. Bids must be enclosed in a sealed envelope and shall be marked with the words "Sealed Bid – 2019 Crack Sealing Repairs Project" and shall include the bidders name on the envelope.

The Bidder may attach a substitute Bid Form printed by a computer in lieu of completing the Unit and Extended Price Bid Form(s) in the bound specifications. All of the provisions of this section must be fully complied with. If a substitute computer-printed Bid Form is used, it shall be attached to the front side of Pages 8 through 12, of the Unit and Extended Price bound Bid Forms. Such substitute computer-printed Bid Form shall include at least the following at the top of each page, Project Name and Bidder’s Name and Address, and shall replicate the Unit and Extended Price bound Bid Form(s) as close as possible.

The substitute computer-printed Bid Form shall have column headings that include the Item Number, Item Description, Unit Designation, Quantity, Unit Bid Price, and Extended Bid Amount for each item. The Subtotal Bid and/or Total Bid shall be printed below the last bid item for each subtotal or total. The sealed bid must include Pages 8 through 12.

All bids shall be legibly written in ink, with the Base Bids and Alternate Bids written in dollars and cents and also written in words and figures in the space provided on Page 9 of the bound Bid Form. In case of a discrepancy between the item number, item description, and/or quantity shown in the bound Bid Form and the substitute computer-printed Bid Form, the bid item description and the quantity shown on the bound Bid Form shall govern over extended prices.

The page size and size of printed characters on the substitute Bid Form shall be approximately the same as the bound Bid Form. Columns may be arranged either vertically or horizontally on the substitute Bid Form. Pages must be arranged and numbered the same as those contained in the bound Bid Form.

The City of Spearfish (“City”) reserves the right to reject any or all bids or schedules and to waive any irregularities therein.

Please return plans and specifications to the Building and Development Department as soon as possible following the bid opening.
Time of Commencement and Completion:

Award of the contract will be made as soon as practicable and within thirty (30) days of the bid opening unless the City rejects all bids.

Within ten (10) days after Contractor’s receipt of the Construction Contract Document, the Contractor shall submit to the Building & Development Department the Performance and Payment Bond and Certificates of Insurance for this Contract, including worker’s compensation.

The contractor shall commence work within ten (10) consecutive calendar days after issuance of written Notice to Proceed.

Completion Date: **Thirty (30) days from start date**

Contract Bond and Payment Bond:

A Performance and Payment bond in the amount of one-hundred percent (100%) of the contract valid until the project is complete and accepted by the City will be required and made out to the City.

Warranty Process:

The City shall notify the Contractor in writing of any defects in the project during the warranty period as per paragraph GP-27 of the General Provisions. The Contractor shall then submit to the City Engineering Department a construction schedule to correct the defects at their expense within ten (10) days of receipt of the notice. Failure to correct or undertake, with due diligence, to correct the deficiencies within the specified time may cause the City to make the necessary repairs and bill the Contractor one and one-half (1½) times the costs incurred; providing, however, that in case of an emergency, where, in the judgment of the City, delay would cause serious loss or damage, repairs may be made without notice being sent to the Contractor and the Contractor shall pay the cost thereof.

Contractor's Contractual Coverage:

Each and every policy for liability insurance, carried by each Contractor and Subcontractor, as required under this contract, shall include a "Contractual Liability Coverage" endorsement.

City of Spearfish Contractors License:

All Prime Contractors and Sub-contractors shall obtain a City Contractors License **prior to beginning work**. This License can be obtained at the Building and Development Office in City Hall, 625 N. Fifth Street, Spearfish, S.D.

Highway Contractor Fuel Tax License:

No state, county, township, or municipality may award a public highway or street contract to a contractor who has not been issued said license. Therefore Contractor's awarded bids for work to be done on public highways or streets must obtain a Highway Contractor Fuel Tax License **prior to the City awarding the bid.** For additional information on this license please visit:

[https://dor.sd.gov/Motor_Vehicles/Motor_Fuel/Highway_Contractor.aspx](https://dor.sd.gov/Motor_Vehicles/Motor_Fuel/Highway_Contractor.aspx)
Proof of Insurance Coverage:

Contractor shall furnish the City with satisfactory proof of coverage of all insurance required, including Worker's Compensation. Copies of all insurance policies for required insurance shall be furnished at the City's request.

Taxes:

Contractor shall, without additional expenses to the City, pay all applicable Federal, State, and local taxes of every kind except taxes and assessments on the real property comprising the site of the project. Said taxes shall be considered incidentals and included in the total bid. Contractor shall furnish the City with statements evidencing payment of any sales, use or excise tax and whatever documents are necessary for the City to make request for tax refund as provided by law. Such statements and documents shall be furnished to the City before final payment on the contract is made to the Contractor.

Excise Tax Information:

This project will be subject to the Contractor’s Excise Tax of SDCL 10-46A. Additional information on excise tax may be obtained through the Department of Revenue and Regulations.

Bidder’s Responsibility:

Before submitting proposals, bidders shall carefully examine the entire site of the proposed work and adjacent premises and the various means of approach in access to the site, and make all investigations to inform themselves thoroughly as to all facilities for delivery, handling and placing materials at the site.

They shall inform themselves thoroughly as to all difficulties involved in the completion of all work under this contract in accordance with its requirements.

No plea of ignorance of conditions that exist or may hereafter exist or of conditions or difficulties that may be encountered in the execution of the work under this contract as a result of failure to make the necessary examinations and investigations will be accepted as an excuse for any failure or omission on the part of the Contractor to fulfill in every detail, all requirements of the contract documents or will be accepted as a basis for any claim whatsoever for extra compensation or for an extension of time.

Intent of Plans and Specifications:

If any prospective bidder is in doubt as to the meaning or intent of any part of the plans and/or specifications, he may request clarification or interpretation thereof by written request to the City Engineer. Such clarification or interpretation shall be issued in the form of an addendum and shall be supplied to all prospective bidders.

Construction Staking and Materials Testing:

All original control stakes for lines and grades and design staking will be the responsibility of the City. Additional intermediate stakes required for replacement of original stakes shall be the responsibility of the Contractor. The Contractor shall be responsible for any testing of construction materials.

Partial Payments:

GP-35 of the General Provisions contained herein call out the partial schedule.
Liquidated Damages:

In the event that the Contractor fails to complete the work in accordance with the time of completion as set forth herein, the Contractor shall be assessed liquidated damages, for each and every calendar day that the work shall remain uncompleted, based on the estimated contract amount, as per the liquidated damage scale in General Provisions, GP-30.

Exemption From the Payment of the Federal Tax on Transportation of Property:

The Contractor shall be authorized to ship all property necessary for the work to the City, in care of the Contractor, exempt from payment of Federal Tax with the distinct understanding that all benefits from such exemption shall be reflected in the Contractor's Bid and that all transportation charges shall be borne by the Contractor.

Preliminary Site Inspection:

A representative of the Engineer will be available to accompany any prospective bidder to the work site to point out the proposed areas of construction and to answer questions which the prospective bidder may have concerning the project.

Unemployment Compensation:

Before final payment may be made on any contract for public improvement, the City requires the contractor to furnish a certificate from the Department of Labor and Regulation that all contributions and interest due to the Department of Labor and Regulation in the performance of the contract have been paid per SDCL 5-18-18B.

Basis for Awarding Contract:

At the City’s discretion, the contract will be awarded to the lowest responsible and responsive bidder. The total used for comparison of bids will include all alternate bid items that the City selects, if any.

Materials:

The Contractor shall provide all materials unless otherwise specified in these contract documents.

Qualifications of a Responsible and Responsive Bidder:

The City may make such investigations as it deems necessary to determine the ability of the bidder and all subcontractors to perform the work. The bidder shall furnish the City all such information and data for this purpose as the City may request. The City reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the City that such bidder is properly qualified to carry out the obligations of the contract and to complete the work therein.
BID FORM

2019 Crack Sealing Repairs
City of Spearfish
Spearfish, South Dakota

To: City Finance Officer
    City Hall
    Spearfish, South Dakota, 57783

Date

The undersigned, being familiar with the local conditions affecting the work, and the Contract Documents, including the Advertisement for Bids, Instructions to Bidders, Bid Forms, Bid Bond Form, Instructions for Executing Contract, Form of Construction Contract, Form of Performance and Payment Bond, Acknowledgment of Surety, General Conditions, Special Conditions, Technical Specifications, and Addenda which govern the purchase of material and labor and the awarding of contracts, hereby proposes to do all the work and provide all the equipment which pertains to the items of work described in this Bid Form for materials, labor, and equipment for construction of improvements to include crack sealing repairs at various road locations within city limits, as provided for in the Plans and Specifications dated April 2019 for the City of Spearfish.

BASE BID $ __________________________________________

$ ______________________________________________________________________

(Write Base Bid in words and figures)

Addendums Acknowledged _______________________________

Signed ________________________________

Name Printed or Typed _________________________________

Company ____________________________________________

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## BID FORM
2019 Asphalt Surface Crack Sealing Project

*Electronic Bid Forms are acceptable as per Instructions to Bidders*

<table>
<thead>
<tr>
<th>Item</th>
<th>Item Description</th>
<th>Quantity</th>
<th>Units</th>
<th>Unit Cost</th>
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<td>LS</td>
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<td>2</td>
<td>CRACK SEAL</td>
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<td>3</td>
<td>TRAFFIC CONTROL</td>
<td>1</td>
<td>LS</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total Construction Cost**
The above price shall include all labor, materials, baling, shoring, removal, profit, insurance, etc., to cover the finished work. Changes shall be processed in accordance with paragraph GP-29 of the General Provisions.

The City also reserves the unrestricted privilege to reject any unit prices for additions to or deductions from the scheduled amount of work as given in the Bid, if the same are considered excessive or unreasonable, or to accept by including the same in the contract as unit prices applicable in the event of addition to or deduction from the work to be performed under the contract, any or all such unit prices which may be considered fair and reasonable.

The above bid includes State Sales Tax on materials and all other State and Federal Taxes that would affect the amount of the bid.

Contract shall note paragraph GP-8 of the General Provisions, Contracts; paragraph GP-13, Performance and Payment Bond; paragraph GP-14, Insurance; and Affirmative Action Plan (if applicable), and shall adhere to the requirements thereof:

Within ten (10) days after Contractor's receipt of the Construction Contract Document, the Contractor shall submit to the Building & Development Office Performance and Payment Bond, Certificates of Insurance, copies of all applicable licenses and Affirmative Action Plan (if applicable).

The contractor shall commence work within ten (10) consecutive calendar days after issuance of written Notice to Proceed.

Completion Date: **Thirty (30) days from start date**

See General Provisions, GP-30, Time of Completion and Schedule of Liquidated Damages.

The undersigned acknowledges receipt of the following addenda to the drawings and/or specifications. (Give number and date of each):

Addenda Nos._______________ Dated_______________ respectively.

Accompanying this proposal is a (cashier's check or money order in the amount of 5% of the base bid and all add alternates, and drawn on a State or National Bank in the amount of $_______________) or a (10% bid bond issued by a surety authorized to do business in the State of South Dakota, in the amount of $_______________). (Strike out one).
CONTRACTOR QUALIFICATIONS

Contractor shall provide with the SEALED BID the following information and documentation (use additional sheets or attachments as needed).

1. Documented proof of a minimum of three (3) similar projects showing experience and capabilities.

2. Proof of:
   • City of Spearfish Contractor’s License Number: ______________

3. List of all quantity and types of equipment being utilized to spray turf, bare ground, noxious weeds, and other types of applications that may be required applications in a timely and efficient manner:
   
   Equipment Description: ________________________________ Quantity: ____
   Equipment Description: ________________________________ Quantity: ____
   Equipment Description: ________________________________ Quantity: ____
   Equipment Description: ________________________________ Quantity: ____
   Equipment Description: ________________________________ Quantity: ____
   Equipment Description: ________________________________ Quantity: ____
   Equipment Description: ________________________________ Quantity: ____
   Equipment Description: ________________________________ Quantity: ____
In submitting this bid it is understood that the right is reserved by the City to reject any and all bids and to waive all informalities. It is further understood by the bidder that he/she may not withdraw his/her Bid within thirty (30) days after the actual opening thereof.

BIDDER_____________________________________
(Company)

FEDERAL TAX I.D. NO._______________________

BY________________________________________
Name of Authorized Agent, typed or printed

_____________________________________________
(Agent’s Title)

OFFICIAL BUSINESS ADDRESS

_____________________________________________

_____________________________________________

PHONE NUMBER_____________________________

EMAIL CONTACT____________________________

STATE OF INCORPORATION____________
BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned __________________________________, as Principal, and ____________________________, as Surety, are hereby held and firmly bound unto the CITY OF SPEARFISH as Owner in the penal sum of $_________________________ for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Signed the _________ day of ___________________, 20____.

The condition of the above obligation is such that whereas the Principal has submitted to THE CITY OF SPEARFISH a certain bid, attached hereto and hereby made a part hereof to enter into a contract in writing for the 2019 Crack Sealing Repairs Project

NOW THEREFOR,

(a) If said Bid shall be rejected, or in the alternate,
(b) If said Bid shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said bid) and shall furnish a bond for his/her faithful performance of said contract, and for the payment of all other respects perform the agreement created by the acceptance of said Bid,

then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officer, the day and year first set forth above.

______________________________ (L.S.)
Principal

S E A L

______________________________
Surety

By: _______________________________
CONSTRUCTION CONTRACT

This CONSTRUCTION CONTRACT is made and entered into this _____ day of ____________, ______, by and between ____________, (hereinafter "Contractor"), and the CITY OF SPEARFISH, a municipal corporation and political subdivision of the State of South Dakota, 625 North Fifth Street, Spearfish, South Dakota 57783 (hereinafter “Owner”).

WITNESSETH that Contractor and Owner of the consideration herein stated agree as follows:

ARTICLE I. SCOPE OF WORK. The Contractor shall provide and furnish all of the plant, labor, materials, necessary tools, expendable equipment, and all utility and transportation services required to perform and complete in a workman like manner and ready for operation all work required materials, labor, and equipment for construction of improvements to include crack sealing repairs at various road locations within city limits all in strict accordance with the Specifications, including any and all addenda, which Plans and Specifications are made a part of this Contract, and in strict compliance with the Contractor's Proposal and other contract documents herein mentioned which are a part of this Contract.

ARTICLE II. TIME FOR COMPLETION. The Contractor shall commence work within ten (10) consecutive calendar days after issuance of written Notice to Proceed and the date of completion shall be Complete by thirty (30) days from start date.

Contractor shall note General Provisions, GP-30, Time of Completion and Schedule of Liquidated Damages.

ARTICLE III. THE CONTRACT PRICE. The Owner shall pay to the Contractor for the performance of this Contract, subject to any additions or deductions provided therein, in current funds as follows: Upon completion of the project and approval by the City Council.

The bid quantities are estimates and payment will be based on the actual quantities performed or materials furnished in accordance with the plans and specifications. The quantities may be increased, decreased, or eliminated. An adjustment will be made to the Contract for changes in quantities that significantly change the character of the work materially in kind or nature. The basis for the adjustment must be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made in such amount as the Owner determines to be fair and equitable.
ARTICLE IV. ACCEPTANCE AND FINAL PAYMENT. Final payment shall be due within thirty (30) days after the completion and approval of the public improvement by the Owner.

The Contractor shall submit evidence satisfactory to the Owner that all claims of unpaid payrolls, material bills, and other indebtedness connected with the work have been satisfied, prior to approval of the final payment.

ARTICLE V. COMPONENT PARTS OF THIS CONTRACT. This Contract consists of the following component parts, all of which are as fully a part of this Contract as if herein set out verbatim, or, if not attached, as if hereto attached:

1. This Instrument (Contract) (Supplements)
2. Advertisement for Bids
3. Instructions to Bidders
5. Special Conditions
6. Technical Specifications
7. Addendums
8. Contractor’s Bid (Bid Form)
9. Performance and Payment Bond
10. Certificate of Insurance
11. Notice to Proceed

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in two (2) original counterparts the day and year first above written:

CITY OF SPEARFISH

By: ____________________________
    (Seal)         Dana Boke, Its Mayor

Attest:

________________________________
David H. Dutton, Finance Officer

State of South Dakota  )
                   ) ss.
County of Lawrence  )

On this ____ day of _______________, 20___, before me, the undersigned officer, personally appeared Dana Boke, the Mayor of the City of Spearfish, a South Dakota Municipal Corporation, and David H. Dutton, the Finance Officer of the City of Spearfish, a South Dakota Municipal Corporation, known to me or satisfactorily proven to be the persons described in the foregoing instrument, and acknowledged that they executed the same in the capacity therein stated and for the purposes therein contained.
In Witness Whereof, I have set my hand and official seal.

(Seal)

___________________________
Notary Public

My Commission Expires:

CONTRACTOR

By: ____________________________

[SIGNED NAME]

State of South Dakota )
( ) ss.
County of _________________)

On this ____ day of ________________, 20___, before me, the undersigned officer,

___________________________ [PRINTED NAME] personally appeared known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In Witness Whereof, I have set my hand and official seal.

(Seal)

___________________________
Notary Public

My Commission Expires:
GENERAL PROVISIONS

GP-1 DEFINITIONS

(a) Owner: When the Owner is referred to in these documents, it shall mean the CITY OF SPEARFISH.

(b) Engineer: The Engineer referred to in the Specifications is the CITY OF SPEARFISH or authorized representative.

(c) Contractor: The Contractor shall be the party or corporation contracting to do the work and furnish the materials, equipment, and transportation provided in the Contract Documents. In these General Conditions the term "Contractor" is synonymous with "auxiliary principal contractor".

(d) Subcontractor: Any individual, firm or corporation to whom the Contractor sublets any part of the contract for supplying materials and labor, or only labor, at the site of the project.

(e) Work on (at) the Project: Work to be performed, including work normally done, at the location of the project.

GP-2 TITLES

Titles to divisions and paragraphs in these Contract Provisions are introduced merely for convenience, and shall not be taken as correct or complete segregation of the several units of materials and labor. No responsibility, either direct or implied, is assumed by the Owner for omissions or duplications by the Contractor or his/her subcontractor, due to real or alleged error in arrangement of matter in these Contract Documents.

GP-3 PLANS AND SPECIFICATIONS

The City will furnish two (2) hard copies and one (1) electronic copy of the plans and specifications. The Contractor will be responsible for any additional replications that they, or their subcontractors, require.

GP-4 PLACING DRAWINGS AND SPECIFICATIONS

The Contractor shall keep a copy of all drawings and specifications on the work, in good order, available to the Engineer, and to his/her representatives. A copy of plans and specifications will be kept on file with the Engineer at all times during the progress of construction.

GP-5 ERRORS OR OMISSIONS

(a) If the Contractor discovers any error or omission in the Contract Drawings or Plans or Specifications, he/she shall immediately notify the Owner, and the Owner shall promptly verify or correct same. The Contractor's notification shall be in writing.

(b) If, knowing of such error or omission and prior to correction thereof, the Contractor proceeds with any work affected thereby, he shall do so at his/her own risk, and the work so done shall not be considered as work done under the contract and in performance thereof, unless and until approved and accepted by Owner.
If Contractor discovers any error or omission in the work undertaken and performed by him/her or by a subcontractor, the Contractor shall immediately notify the Owner. The Contractor shall promptly correct any such error or omission. The Contractor’s notification of the error or omission and of the correction of the same shall be in writing.

GP-6 BIDS

(a) Each bid must be accompanied by a certified check or cashier’s check, for five percent (5%) of the amount of the bid, including all add alternates. Such check shall be certified or issued by either a state or national bank and payable to the Owner as a guarantee that such bidder will enter into a contract with the Owner in accordance with the terms of the letting and bid in case such bidder be awarded the contract. Bid bonds are acceptable as bid security under these specifications. (See next paragraph.)

(b) In lieu of a certified check or cashier’s check as a bid guarantee, a bid may contain a bid bond for ten percent (10%) of the total amount of the bid, including all add alternates. Such bond shall be issued by a surety authorized to do business in the State of South Dakota and shall be payable to Owner as guarantee that such bidder will enter into a contract with Owner in accordance with the terms of such letting and bid in case such bidder be awarded the contract.

(c) No bidder shall be required, either in the Advertisement for Bids, or otherwise, to leave his/her certified check, cashier’s check, or other guarantee posted for a longer period than thirty (30) days for a contract for services or public improvement or forty-five (45) days for a contract for supplies if his/her bid is not accepted. The cashier’s check or other guarantee of the successful bidder shall be returned to him/her forthwith upon the execution of the Contract and surety herein provided for. SDCL §§ 5-18A-35 and 5-18A-36.

(d) Any bid may be withdrawn by letter, electronic communication, or in person, before the time specified in the advertisement for bids. Bids may be modified by mail, facsimile, or electronic notice received at the place designated in the invitation to bid not later than the time set for the opening of bids. A modification shall not reveal the bid price, but shall provide the addition, subtraction, or the modification so the final prices or terms will not be known to the Owner until the sealed bid is opened. A modification may not be withdrawn after the time set for the opening of bids. Each modification must be confirmed in writing by the successful bidder before award of the contract. No bid made may be changed or altered by telephone. No oral changes, alterations or conditions will be accepted under any circumstances. SDCL 5-18A-5.

(e) If any error exists on the bid form between the quantity and unit price to the extended price, the quantity given and the unit price shown will prevail and the extended price will be corrected. A new total will then be calculated.

If all the extended prices are correct but an error has been made in totaling the extended prices, the extended prices will remain the same and a new total calculated. After all errors have been corrected the new corrected total will be used in evaluating the low bid.
Whenever a material, article, or piece of equipment is identified in the plans or specifications by reference to manufacturer's or vendor's names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and any materials, article, or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed is, in the opinion of the Engineer, of equal substance and function. Requests for such approval must be made to the Engineer ten (10) days prior to the bid opening. The approval of material or equipment as equal to that specified will be made in writing in the form of an addendum issued by the Engineer to all plan holders of record. The base bid and any alternate shall be based on materials only as specified or approved.

**GP-8 CONTRACTS**

All contracts shall be made and set forth in writing and shall be signed on behalf of the Owner by the proper officials thereof, and with the formalities required by the governing statutes. The contract shall permit progress payments but an amount necessary to complete the improvement shall be retained from the final payment until the contract is fully executed and the public improvement completed to the satisfaction and acceptance of the Owner. SDCL 5-18B-11.

**GP-9 SEPARATE CONTRACTS**

Nothing in the Contract Documents shall preclude Owner's right to do work on site during the period the contract is in effect. The Contractor shall afford the Owner access to the site for purpose of such work.

**GP-10 SUBCONTRACTORS**

(a) Consent of the Engineer for any proposed subletting is required. Prior to the pre-construction meeting, the contractor shall submit to the Engineer a list of proposed subcontractors including pertinent contact information and description of work to be performed. If requested, the Contractor shall also provide a statement that the organization(s) which will perform the work is (are) particularly experienced and equipped for such work and shall provide proof that the proposed subcontractor(s) is (are) licensed to perform the work in South Dakota. The Contractor will give assurance that all pertinent provisions of the prime contract shall apply to all work sublet, assigned, or otherwise disposed of in any way. Consent to sublet, assign, or otherwise dispose of any portion of the contract shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the Contract.

(b) The Contractor agrees that he/she is fully responsible to the Owner for the acts and omissions of his/her subcontractors and of persons either directly or indirectly employed by them, as he/she is for the acts and omissions of persons directly employed by him/her.

(c) Nothing contained in the contract documents shall create any obligation on the part of the Owner to pay, or to see to the payment of any sums owed to subcontractor by Contractor.

(d) No Contractor shall write any subcontract at variance with the conditions of the contract documents and the provisions of the contract documents shall be incorporated in any subcontract agreement.
It will not be permissible for a Subcontractor to sublet work, but any work sublet to a Subcontractor can be canceled or reassigned upon request from the prime Contractor and approval of the Engineer.

GP-11 MUTUAL RESPONSIBILITY OF CONTRACTORS

If, through acts of the Contractor, any other Contractor or any Subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other Contractor or Subcontractor by agreement or arbitration if such other Contractor or Subcontractor shall assert any claim against the Owner on account of any damage alleged to have been sustained. The Owner shall notify the Contractor, who shall indemnify and hold harmless the Owner against any such claim.

GP-12 ASSIGNMENT

(a) Neither party to the contract shall assign the contract or sublet it as a whole without the written consent of the other; nor shall the Contractor assign monies due, or to become due to him/her hereunder, without the previous written consent of the Owner.

(b) In case the Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that: "It is agreed that the right of and to, any monies due or to become due to the Contractor shall be subject to prior liens of all persons, firms, and corporations for services rendered, or materials supplied, for the performance of the work called for in this contract."

GP-13 PERFORMANCE AND PAYMENT BOND

(a) The Contractor shall, before commencing the work, furnish surety satisfactory to the Owner and on the form provided by the Owner, in amount not less than the contract price, for the faithful performance of the contract, with the additional obligation that such Contractor shall promptly pay all persons supplying him/her labor or material in the prosecution of the work provided for in the Contract. Such performance and payment bond shall be furnished to the Owner or his/her authorized agent within ten (10) days after the date of the award. (Failure on the part of the bidder to furnish such bond in the time stated shall be cause for consideration by the City of awarding the Contract to the second low responsible and responsive bidder and the retention of the bid deposit.)

(b) In case of a partnership contract, each partner must sign the bond, (see Sealed Documents, 40 Am. Jur., P. 239, Par. 154, as amended.)

GP-14 INSURANCE

The Contractor shall not commence work under this contract until he/she has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his/her subcontract until the insurance required of the subcontractor has been so obtained and approved. Each contractor and subcontractor shall maintain for the life of the contract, Commercial General Liability Insurance, Business Automobile Liability Insurance, Worker's Compensation Insurance, and Builder's Risk or Installation Floater or Property in the Course of Construction to cover all claims which may arise from operations under this Contract, whether such operations be by himself/herself or by any subcontractor of any one directly or indirectly employed by
either of them and also against any special hazard which may be encountered in the performance of this Contract according to the following requirements:

(a) **COMMERCIAL GENERAL LIABILITY INSURANCE**

The Contractor shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of no less than one million dollars ($1,000,000) for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Contract or be no less than two times the occurrence limit.

Such insurance shall provide coverage for:

1. Grading of land, excavation, borrowing, filling, backfilling, tunneling, pile driving, cofferdam work, or caisson work;
2. Moving, shoring, underpinning, razing, or demolition of any building or structure, or removal or rebuilding of any structural support thereof;
3. Injury to, or destruction of wires, conduits, conduits, pipes, or mains, sewers, or other similar property, or any apparatus in connection therewith below the surface of the ground, if such injury or destruction is caused by, or occurs during the use of, mechanical equipment for the purpose of grading of land, paving, excavating, or drilling;
4. Injury to, or destruction of, public or private property at any time resulting therefrom including paint damage;
5. Injury to, or destruction of, any property arising out of blasting or explosion;

   The Contractor agrees to indemnify and hold harmless the Owner for all incidents arising out of the Contractor's operation in connection with this project.

(b) **BUSINESS AUTOMOBILE LIABILITY INSURANCE**

The Contractor shall maintain business automobile liability insurance with a limit of not less than one million dollars ($1,000,000) each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

(c) **WORKER'S COMPENSATION INSURANCE**

The Contractor shall procure and worker’s compensation and employer’s liability insurance as required by South Dakota law.

(d) **BUILDERS' RISK ON BUILDINGS, STRUCTURE, EQUIPMENT AND APPLIANCES/INSTALLATION FLOATER/PROPERTY IN THE COURSE OF CONSTRUCTION**

The Contractor shall procure and maintain fire, windstorm, tornado, hail, extended coverage, theft, vandalism, malicious mischief, explosion and smoke insurance, in the full amount of his/her contract, upon any building, structure, equipment and appliance in the process of construction under City contract and upon all materials on site and intended for
use therein until such time as the building, structure, equipment and appliances have been finally accepted by the Owner and the contract completed.

(c) CERTIFICATES OF INSURANCE

(1) Contractor shall provide certificates of insurance to Owner, which shall be subject to the Owner's approval for adequacy of protection. The insurer shall state in his/her certificate that no cancellation of said insurance will be made without at least thirty (30) days prior to notice to the Owner and such notice shall be directed to the Owner in writing. The policies by endorsement shall name the Owner and its representatives as additional insureds.

(2) The Owner's approval or acceptance of such certificates of insurance shall in no way release or relieve the respective contractor or subcontractor from any responsibility, liability, or obligation of him/her.

(3) All insurance policies and certificates shall be issued only by companies authorized to do business in the State of South Dakota. It shall be the Contractor's responsibility to keep the respective insurance policies and coverages current and in force for the life of the contract.

GP-15 PATENTS

(a) The Contractor shall hold the Owner and its agents, officers, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents.

(b) License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project, must be reasonable, and paid to the holder of the patent, or his/her authorized licensee, direct by the Owner and not by or through the Contractor.

(c) If the Contractor uses any design, device or materials covered by letters patent or copyright, he shall provide for such use by suitable agreement with the Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials in any way involved in the work. The Contractor and/or his/her sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trade mark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense or damage which it may be obligated to pay by reason of such infringement at any time during the prosecution of the work or after the completion of the work.

GP-16 PROGRESS CHART, PROGRESS OF WORK

Contractor shall submit to the Engineer his/her proposed schedule within (10) days after contractor's receipt of the Construction Contract Document.
GP-17 PERMITS AND REGULATIONS

(a) Permits and licenses of a temporary nature necessary for the execution of the work shall be secured and paid for by the Contractor. Permits, licenses, and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified.

(b) The Contractor shall give all notices and comply with all laws, ordinances rules and regulations bearing on the conduct of the work as drawn and specified.

GP-18 MATERIALS, SERVICES AND FACILITIES

(a) It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

(b) When required by the plans and specifications or when called for by the Owner, the Contractor shall furnish the Owner for approval full information concerning the materials or articles, which he contemplates incorporating in the work. Samples of the materials shall be submitted for approval when so directed. Machinery, equipment, materials, and articles installed or used without approval shall be at the risk of subsequent rejection.

(c) If not otherwise provided, materials or work called for in this Contract shall be furnished and performed in accordance with well-known established practice and standards recognized by Architects, Engineers, and the trade.

(d) Workers shall be qualified for their respective trade. Laborers shall not be used in lieu of skilled tradesmen for the various crafts.

(e) **Contractor's Title to Materials:** No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by the seller. The contractor warrants that he/she has good title to all materials and supplies used by him/her in the work, free from all liens, claims, or encumbrances.

(f) Unless otherwise stipulated in the plans or specifications all workmanship, equipment, materials, and articles incorporated in the work covered by this Contract shall be new and of the best grade of their respective kinds for the purpose.

GP-19 CUTTING AND PATCHING

All cutting and patching of roadways within the City right-of-way shall be performed as per the attached construction plans.

GP-20 SALVAGED MATERIAL

All salvaged material shall remain the property of the City unless specifically stated otherwise in the specifications.
GP-21 COORDINATION OF WORK

It is the Contractor’s responsibility to coordinate all work between himself/herself, the Owner, utility companies, and any contractor or subcontractor working on or adjacent to the site.

GP-22 SANITATION

All sanitation features of the project shall comply with the Rules and Regulation of the Sanitary Division of the State Health Department and shall be subject to inspection by authorized officials of that Department.

GP-23 PROTECTION OF WORK AND PROPERTY

(a) The Contractor shall maintain continuous adequate protection of all his/her work from damage and shall protect the Owner's property from injury or loss arising in connection with this contract. He/she shall adequately protect adjacent property as provided by law and the contract documents.

(b) He/she shall provide and maintain all passageways, guard fences, lights, and other facilities for protection required by public authority or local conditions.

GP-24 SPECIAL SAFETY REQUIREMENTS

Protection of Lives and Health: In order to protect the lives and health of his/her employees under the contract, the Contractor shall comply with all pertinent provisions of the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc., and shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the contract. The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his/her plant, appliances, and methods, and for damage which may result from their failure of their improper construction, maintenance, or operation.

GP-25 INSPECTION OF WORK

The Engineer and his/her representative shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide proper facilities for such access and inspection. The Contractor shall give the Engineer forty-eight (48) hours prior notice of readiness for inspection of any work ordinarily requiring inspection.

GP-26 SUPERINTENDENCE

The Contractor shall keep on the work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Owner. The superintendent shall not be changed except with the consent of the Owner, unless he/she proves to be unsatisfactory to the Contractor and/or ceases to be in his/her employ. The superintendent shall represent the Contractor in his/her absence and all directions given to him/her shall be as binding as if given to the Contractor.

GP-27 RESPONSIBILITY FOR WORK (WARRANTY)

Neither the final certificates, nor payment, nor any provision in the contract documents shall relieve the Contractor of responsibility for faulty materials or workmanship and, unless otherwise specified, he/she shall remedy any such faulty materials or workmanship and defects for any damage to other work resulting
therefrom, which shall appear within a period of ninety (90) days from the date of final acceptance by Spearfish City Council. In addition, Contractor is responsible for replacing any trees, shrubs, or other plantings with the exception of grass that fail to survive for a period of one (1) year from the date of final acceptance by Spearfish City Council. The owner shall give notice of observed defects with reasonable promptness.

**GP-28 NON-COMPLIANCE**

Acceptance of the work of this Contractor upon completion of the project shall not preclude the Owner from requiring strict compliance with the contract documents including that the Contractor complete or correct upon discovery of faulty, incomplete, or incorrect work not discovered at the time of acceptance. The ninety (90) day limit specified in GP-27 shall not void nor limit this requirement.

**GP-29 CHANGE ORDERS TO THE CONTRACT**

(a) The Owner, without invalidating the contract, may order extra work or make changes by altering, adding to, or deducting from the work, the contract sum being adjusted accordingly. All such work shall be executed under the conditions of the original contract, except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change. No changes in the work covered in the approved contract documents shall be made without having prior consent of the Owner and acceptance by the Contractor of the terms and conditions of the change. All change orders must be done on Owner’s Change Order forms and approved by Owner.

(b) In the event an immediate agreement cannot be reached, the Owner may at any time, by a written order and without notice to the sureties, make changes in the drawings and/or specifications of this Contract and within the general scope thereof.

If such changes cause an increase or decrease in the amount due under this Contract or in the time required for its performance, and equitable adjustment shall be made and the Contract shall be modified in writing accordingly.

Any claim of the Contractor for adjustment under this clause must be asserted in writing within thirty (30) days from the date of receipt by the Contractor of the notification of change; provided, however, that the Owner, if the Owner determines the facts justify such action, may receive and consider and adjust any such claim asserted at any time prior to the date of final settlement of the Contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in GP-37 hereof. But nothing provided in this paragraph shall excuse the Contractor from proceeding with the performance of the work as changed. Except as otherwise herein provided, no charge for any extra work or material will be allowed.

(c) Change orders shall be executed in accordance with procedure required by the Owner and no work involving the change shall be done by the Contractor until a copy of the approved change order has been received by Owner. Verbal change orders may be authorized by the Owner only where loss of life or property appears imminent. Such changes shall further be reduced to writing within a reasonable length of time in accordance with the procedure herein stated.
(d) Change orders will be issued for any change in the contract price, materials used, manner of construction, or change in completion time. The change or amount of contract price will be determined by the method shown in paragraph GP-29(e) (3) below.

(e) Changes or credits for work covered by the approved change shall be determined by one or more, or a combination of the following methods at the Owner's discretion.

1. Unit price bids previously approved.

2. An agreed lump sum.

3. The actual cost of:
   a. Labor, including foreman and equipment operators, plus 25.1% for social security, workers’ compensation, unemployment, insurance, administration, overhead, and other payroll expenses.
   b. Materials entering permanently into the work at net or Contractor's cost.
   c. The ownership or rental cost of construction plant and equipment during the time of use on the extra work. Ownership rates shall be calculated using industry accepted procedures and calculations provided to the City. Invoices for rental rates shall be provided to the City.
   d. Power and consumable supplies for the operation of power equipment.
   e. Insurance, OASI payments, and sales tax, where applicable.

(f) To the above cost as determined by Paragraph GP-29 (e) (3), there shall be added an allowance not to exceed 5% for overhead and 10% profit.

(g) For change orders of work where the prime contractor (architectural, trades, mechanical, or electrical) has awarded the work to a subcontractor, the prime contractor shall be allowed one fee only in an amount not to exceed 5% for change orders.

(h) The Owner shall have the right to require actual quotations for materials and/or labor from the respective contractors or suppliers. The materials and labor prices allowed will be at their net cost when computing the amount of the change order. These quotations will appear on the breakdown prepared by the Contractor and attached to his/her proposal for a change order.

(i) Contractor's superintendent shall communicate changes in his/her contract to all other trades.

(j) Minor changes and/or adjustments as may be authorized by the Owner, involving no change in price, shall be verified by a no-cost change statement, signed by the Contractor.

(k) Additional Instructions and Detail Drawings: The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the contract. The additional drawings and instructions thus supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.

The Contractor and the Owner will prepare jointly: (a) a schedule, fixing the dates at which special detail drawings will be required; such drawings, if any, to be furnished by the Owner in accordance with said schedule, and (b) a schedule fixing respective dates for submission
of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the work; each such schedule to be subject to change from time to time in accordance with the progress of the work.

(l) **Subsurface Conditions:** The Contractor is responsible for determining the subsurface conditions, prior to bid opening. No exploratory borings have been made.

**GP-30 TIME OF COMPLETION AND SCHEDULE OF LIQUIDATED DAMAGES**

(a) Time is an essential element of the contract, and it is important that the work be pressed vigorously to completion. The cost to the Owner for administration of the contract, including engineering, inspection, and supervision, will be increased as the time occupied in the work is lengthened. The public is subject to detriment and inconvenience when full use cannot be made of an incomplete project.

(b) It is understood and agreed, by and between the Contractor and the City, that the time for completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in the locality. The following table shows the expected number of adverse weather days based on average climactic conditions:

<table>
<thead>
<tr>
<th>Month</th>
<th>Expected number of weather days*</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>18</td>
</tr>
<tr>
<td>February</td>
<td>18</td>
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<tr>
<td>March</td>
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<td>3</td>
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<tr>
<td>November</td>
<td>9</td>
</tr>
<tr>
<td>December</td>
<td>19</td>
</tr>
</tbody>
</table>

*Note: Includes Holidays and Weekends

A qualifying weather day shall be defined as a work day during or after an adverse weather event in which the Contractor is only able to work on the controlling item(s) for 0 to 2 total hours.

A qualifying one-half (1/2) weather day shall be defined as a work day during or after an adverse weather event in which the Contractor is able to work on the controlling item(s) between 2 to 6 total hours.

Work days in which the Contractor is able to work more than 6 hours shall not be considered a qualifying weather day or portion thereof.

If the Contractor wishes to request additional contract days due to adverse weather, he/she shall provide the Engineer, a summary spreadsheet of the applicable month which shall include, at a minimum, the dates of the proposed weather days, description of the adverse
weather, precipitation totals from a verified local weather station, total hours worked, work accomplished and proposed weather day total (1/2 day or 1 day). The spreadsheet shall be submitted to the Engineer for review and approval within ten (10) calendar days of the end the applicable month. Failure to comply with this requirement could result in denial of the request.

Example: Contractor prepares spreadsheet for month of May and provides noted information showing eight (8) total proposed weather days– upon Engineer’s concurrence, two (2) additional contract days would be allowed.

(c) Should the Contractor fail to complete the work within the time agreed upon in the contract, or within such extra time as may have been allowed by increases in the contract or by formally approved extensions granted by the Owner, there shall be deducted from any monies or amounts due or that may become due the Contractor, the sum set forth in the schedule shown herein for each consecutive calendar day that the work shall remain uncompleted. This sum shall be considered and treated not as a penalty, but as liquidated damages due the Owner from the Contractor by reason of inconveniences to the public, added cost of engineering and supervision, and other items which have caused an expenditure of public funds resulting from his/her failure to complete the work within the time specified in the contract. Permitting the Contractor to continue and complete the work covered by the terms of the contract after the expiration of the working time provided for therein and inclusive of any extensions granted, shall in no way be construed as a waiver by the Owner of any of its' rights under this contract.

(d) Schedule

<table>
<thead>
<tr>
<th>ORIGINAL CONTRACT AMOUNT</th>
<th>From</th>
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(e) It is further agreed that time is of the essence of each and every portion of this Contract and of the plans and specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages of any excess cost when the delay in completion work is due:

1. To any preference, priority or allocation duly issued by the government;
2. To unforeseeable cause beyond the control and without the fault of negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy,
acts of the Owner, acts of another Contractor in the performance of a Contract with the owner, fires, floods, epidemics, quarantine restriction, strikes, freight embargoes and unusually severe weather, and;

(3) To any delays of subcontractor or suppliers occasioned by any of the caused specified in subsections (1) and (2) of this condition.

(f) Provided, further, that the Contractor shall, within seven (7) days from the beginning of such delay, notify the Owner, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

(g) Assessment of liquidated damages shall be made against the Contractor or Auxiliary Principal Contractor on the basis of the respective Contractor causing the delay or shall be proportioned according to the respective liability as determined by the Owner.

GP-31 TESTING OF EQUIPMENT AND ALL CONSTRUCTION

(a) When notified by the Contractor that, in his/her opinion, all work required by the Contract has been completed, a date for final inspection of the work shall be mutually agreed upon by the Owner and representative of all other parties involved. After completion of this inspection and all tests, the Owner shall, if all things are satisfactory, issue a certificate of final completion certifying that, in his/her opinion, the work required by the Contract has been completed in accordance with the plans and specifications. However, the certificate shall not operate to release the Contractor or his/her sureties from any obligations under the Contract or the Performance Bond, or from any guaranties, warranties, or maintenance bonds required in the Contract Documents.

(b) The Owner shall be permitted access to the project at all times for the purpose of making inspections and tests of the materials and equipment.

The Contractor shall provide necessary assistance to the Owner to perform all necessary operation and quality tests on the site. The Contractor will not be required to furnish personnel for tests conducted off the site.

(c) All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards.

The laboratory or inspection agency shall be selected by the Owner. The Owner will pay for all laboratory inspection service direct, and not as a part of the contract.

(d) Materials of construction, particularly those upon which the strength and durability of the structure and/or roadway may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for use intended.

GP-32 APPLICATIONS FOR PAYMENT

(a) The Contractor shall submit to the Owner an application for payment on forms supplied by the Owner.
In applying for payment, the Contractor shall submit his/her monthly payment estimate based upon the approved schedule of work for the project, itemized in such form and supported by such evidence as will show his/her right to the payment claimed. Applications for payment for the year are due each month on the following dates: 2019 - January 22nd, February 19th, March 18th, April 15th, May 20th, June 17th, July 15th, August 19th, September 16th, October 21st, November 18th, and December 16th. Each application for payment will be for work completed through the Friday before the application due date.

Claims made on account of materials delivered and suitably stored at the Site, but not incorporated in this work, shall be conditioned upon submission by the Contractor of Bills of Sale or such other procedure as will establish the Owner's title to such material or otherwise adequately protect the Owner's interest. The Bills of Sale documentation must correlate with each Line Item Number, Unit Price, and Quantity.

If the Contractor chooses to apply for payment for materials, which cannot be incorporated into the work and cannot be stored on this site, he/she may do so provided the following conditions are met:

The material shall be stored in a bonded or insured commercial warehouse (within a geographic radius of 15 miles) of the construction site, with the Owner being listed on the bond or insurance certificate as the sole beneficiary, in the case of loss or damage to the stored materials.

The Contractor shall be responsible for all storage, insurance or transportation costs associated with the materials. Conditions of insurance will apply to applicable portions of GP-14. Contractor shall provide the Owner with Bills of Sale or such other documents as will establish the ownership of the materials.

Payments to the extent of the value of the work done and materials furnished, less amounts retained as above indicated, shall be made to the Contractor as soon after the end of the month following the beginning of the work as is consistent with the time required to make the payment through regular City channels, and at the end of each month during the process of construction. None of such payments, however, shall be held to constitute an acceptance, in whole or in part, by the Owner prior to making of the final payment and acceptance in full completion of the contract.

With the proper Bills of Sale documentation, stored materials will be paid for each pertinent Bid Item. In no event, shall the value of stored materials paid to the Contractor exceed 50% of the ‘extended price’ of that bid item.
Each bid item that contains payment of stored materials will not be reimbursed at 100% of the units installed, but rather, a weighted ‘Stored Materials Deduction’ (SMD) will be included. The SMD will be calculated based on the percentage of units installed (%) multiplied by the ‘Outstanding Stored Materials payment total’ (OSM). An example is provided:

For Pay Request 1:
Bid Item: 4” Waterline, Unit Price = $20.00, Total Bid Units = 1000 feet.
Zero feet of 4” water main installed and Stored Materials payment on Pay Request 1 of $5000.00.

AND

For Pay Request 2:
Units of 4” waterline installed for Pay Request 2 = 100 feet

Therefore,

\[
\text{If (SMD)} = (\text{OSM}) \times (\%) \text{ or } \$5000.00 \times (100/1000) = \$500.
\]

\[
\text{Overall payment for the 20 units installed} = (100 \text{ feet} \times \$20/\text{foot}) - \text{OSM or } (\$2000) - \$500 = \$1500.
\]

Note that the OSM payment will be $4500 ($5000 - $500) for Pay Request 3.

(c) As part of the monthly progress payment, the Contractor shall be paid 90% of the approved work performed to date. The remaining 10% shall be held by the Owner as retainage until final completion and acceptance of the project, unless otherwise approved by the Owner. The retainage will be released to the Contractor within thirty (30) days after final acceptance of the project by the Owner.

(d) All material and work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver or the right of the Owner to require the fulfillment of all of the terms of the contract.

(e) The preferred payment method of the City of Spearfish is via electronic funds transfer (EFT). The contractor will provide the necessary bank account information to initiate the payments by completing and returning the authorization form. EFT deposits occur on the Friday following council approval of the invoice. If the preferred payment method is not utilized a paper check will be mailed on the Friday following council approval of the invoice. Please refer to the Finance Office for the EFT Payments form or visit their webpage at cityofspearfish.com/departments/finance/index.php under “Vendor Direct Deposit” for more information and the sign-up sheet.
GP-34  SUBSTANTIAL COMPLETION AND FINAL ACCEPTANCE

The Contractor is advised that the following schedule will be used for conducting the pre-final and final inspections. The Contractor shall notify the Engineer in writing when he considers his/her contract to be substantially complete.

If the Engineer agrees that the project is substantially complete, he shall within two weeks of the written notification suspend the performance period and schedule a substantial completion inspection. The substantial completion inspection shall produce a correction list of items either not performed or not performed in reasonably close conformance with the contract documents. A time schedule prepared by the Engineer shall also be produced during which the contractor is expected to have all of the items appearing on the list completed to the satisfaction of the Engineer. The time schedule shall have the same effect and the same penalties as the original performance period.

Once the contractor has completed all of the items on the correction list, he shall again notify the Engineer in writing and request the final inspection for final acceptance. Once the final inspection is completed to the satisfaction of the Engineer, the final pay estimate and final acceptance certificate will be produced and retention released.

GP-35  OWNERS' RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF

The Contractor agrees that he/she will indemnify and save the Owner harmless from all claims growing out of the lawful demands incurred in the performance of this Contract. The Contractor shall furnish satisfactory evidence that all obligations above designated have been paid, discharged, or waived. If the Contractor fails to do so, then the Owner may, after having served written notice on said Contractor, either pay unpaid bills, of which the Owner has written notice direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to the Contractor shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of the sentence be construed to impose any obligations upon the Owner to either the Contractor or his/her surety. In paying any unpaid bills of the Contractor, and any payment so made by the Owner shall be deemed the agent of the Contractor, and any payment so made by the Owner shall be considered as a payment made under the contract by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payment in good faith.

GP-36  DEDUCTIONS FOR UNCORRECTED WORK

If the Owner deems it expedient to accept work injured or not done in accordance with the Contract, an equitable adjustment will be made with a proper deduction from the Contract price for unsatisfactory work.

GP-37  DISPUTES

All work shall be done under the supervision of the Engineer and performed to his/her satisfaction. He/she shall decide all questions which may arise as to the quality and acceptability of materials furnished, work performed, manner of performance, rate of progress, interpretation of the plans and specifications, all questions as to the acceptable fulfillment of the contract on the part of the Contractor, all disputes and mutual rights between Contractors. The Engineer shall determine the amount and the quality of the several kinds of work performed. His/her decision shall be final and he/she shall have the authority to require the Contractor to carry out all orders promptly.
The Engineer will have the authority to suspend the work wholly or in part, by written suspension order, due to the failure of the Contractor to correct conditions unsafe for the workmen or the general public; for failure to carry out provisions of the contract; for failure to carry out order; for such periods as he may deem necessary due to unsuitable weather; for conditions considered unsuitable for the prosecution of the work or for any other reason deemed to be in the public interest by the exercise of reasonable judgment.

GP-38 UNEMPLOYMENT COMPENSATION CONTRIBUTIONS

(a) The Contractor to whom the contract is awarded will pay the South Dakota Department of Labor and Regulation all contributions and interest due under the provisions of SDCL 5-18B-18 on wages paid to individuals employed in performance of said contract.

(b) The Contractor shall furnish to the Engineer a certificate from the South Dakota Department of Labor and Regulation that all contributions and interest due to the Department in the performance of such contract have been paid. The said certificate shall accompany Contractor's request for final payment.

GP-39 CONTRACT TERMINATION

Right of the Owner to Terminate Contract: In the event that any of the provisions of this Contract are violated by the Contractor, or by any of his/her subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate the Contract. Such notice will contain the reasons for Owner's intention to terminate the Contract. The Contract will terminate after ten (10) days unless the Contractor makes arrangements of correction satisfactory to Owner within ten (10) days after the serving of such notice upon the Contractor. In the event of any such termination, the Owner shall immediately serve Notice of Termination upon the Surety and the Contractor and the Surety shall have the right to take over and perform the contract. If the Surety does not commence performance thereof within five (5) days from the date of the mailing of Notice of Termination, the Owner may take over the work and perform the same to completion by contract or force account at the expense of the Contractor. In such event the Owner may also take possession of and utilize the materials, appliances, and plant as may be on the site of the work and necessary therefor in completing the work. The Contractor and his/her surety shall be liable to the Owner for any and all excess cost as a result of Contractor's violation.

GP-40 REJECTED MATERIALS

Any material which has been rejected by the Engineer for reasons of not being in accord with contract plans; specifications or shop drawings shall be removed from the project site within twenty-four (24) hours after written rejection.

GP-41 INDEPENDENT CONTRACTOR

While performing services hereunder, contractor is an individual contractor and not an officer, agent, or employee of Owner.

GP-42 GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Contract shall be venued in the Fourth Judicial Circuit, Lawrence County, South Dakota.
GP-43 INDEMNIFICATION AND HOLD HARMLESS

Contractor agrees to indemnify and hold Owner, its officers, agents, and employees, harmless from and against any and all actions, suits, damages, liability, or other proceedings that may arise as the result of performing services hereunder. This section does not require Contractor to be responsible for or to defend against claims or damages arising solely from errors or omissions of Owner, its officers, agents, or employees.

GP-44 COMPLIANCE PROVISION

Contractor will comply with all federal, state, and local laws, regulations, ordinances, guidelines, permits, and requirements applicable to providing services pursuant to this Contract, and will be solely responsible for obtaining current information on such requirements.
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AND SPECIFICATIONS

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SPECIAL CONDITIONS

SC-1  TEMPORARY BUILDINGS

The Contractor shall, at his expense, furnish all temporary buildings during the construction period.

a)  Temporary Toilet:

1. The Contractor may provide and maintain a sanitary, commercially manufactured, self-contained, temporary toilet, which shall comply with the South Dakota DENR. The location of the temporary toilet shall be approved by the Owner.

2. The temporary toilets shall be enclosed and weatherproofed and kept in a sanitary condition at all times.

b)  Storage Buildings: The Contractor may construct or bring on the site, such trailers or storage buildings as necessary to protect materials, tools or equipment for use on the project. Such buildings shall meet with the approval of the Owner and shall be removed from the site upon completion of the work of the respective contractors.

SC-2  UTILITIES

The Contractor will provide all electrical energy for power and lighting on this project, as the Contractor deems necessary.

SC-3  DELIVERY AND PROTECTION OF MATERIALS

a)  Deliver all materials in their original packages, containers, crates and bundles bearing the name of the manufacturer and the brand. Except as otherwise specified herein, the mixing, installation and application of materials shall be in strict accordance with the printed directions of the manufacturer and supplier.

b)  Store materials other than fabricated and/or assembled equipment off the ground, under cover from dampness, and protected from blowing snow and rain. Exercise care in handling units to avoid chipping, abrasion and breakage. Locate storage piles, stacks, or bins to protect materials from damage, rust, contamination and avoid being disturbed.

SC-4  TEMPORARY ENCLOSURES

No temporary enclosures are anticipated to be needed on job. Temporary enclosures are subject to approval of the Owner.

SC-5  ENGINEERING AND LAYOUT

The Owner has established, or will establish, such general reference point as will, in his/her judgment, enable the Contractor to proceed with the work. If the Contractor finds that any previously established reference points have been destroyed or displaced, he shall promptly notify the Owner.
SC-6 **CLEAN-UP**

The site shall be kept in a tidy condition by all contractors to the satisfaction of the Owner at all times during the work and all rubbish shall be removed from the premises. Each contractor shall be required to clean up all rubbish debris, and dirt, which his/her work has caused. At its option, the City may notify the Contractor of an unacceptable job site, give them a warning, and if not corrected, the City shall remove all rubbish and debris. In this circumstance the Contractor will be charged. At his/her option, the Owner may withhold any or all payments to be made until all rubbish and debris has been removed. No burning will be permitted on the premises.

SC-7 **TIME OF WORK**

a) All contractors shall note paragraph GP-8 of the General Provisions, Contract; paragraph GP-13, Performance and Payment Bond; and paragraph GP-14, Insurance, and shall adhere to the requirements thereof.

(1) Within the (10) days after contractor's receipt of the Construction Contract Document, the Contractor shall submit to the Owner, Performance and Payment Bond and Certificates of Insurance and a Construction Schedule.

(2) Work shall be commenced within ten (10) consecutive calendar days after written Notice to Proceed by the Owner, and shall be completed as noted in the Contract. See General Provisions, GP-31, Time of Completion and Schedule of Liquidated Damages.

b) Contract work shall be limited to weekdays, 7:00 AM to 8:00 PM, Monday - Saturday. Holiday, Sunday, or night work is prohibited unless approved in advance by the Owner and Engineer.

c) **Occupancy:** It shall be noted that the site will be occupied during the period of construction. The Contractor shall take all necessary precautions to protect occupants, and the public, fixtures, equipment and storage from construction hazards, dust and debris. Scheduling of work in occupied areas shall be coordinated with the City. At least 48 hours’ notice shall be given prior to the desired time for working in public right-of-way areas. No work shall be done in public right-of-way areas without the consent of the City.

d) The Contractor shall protect all newly installed concrete from unwanted marks and defacing until properly set. Bicycle tracks, foot tracks, scribing, etc. in uncured concrete will not be tolerated.

SC-8 **CONSTRUCTION PROGRESS SCHEDULES**

Contractor shall submit to the Engineer his/her proposed schedule, which shall show the project completed within the time frame established in the contract.

SC-9 **PAINTING**

Not Applicable.
SC-10  OPERATION AND MAINTENANCE MANUALS

Contractor shall supply operation and maintenance manuals as per plan notes.

SC-11  OBSTACLES IN THE RIGHT-OF-WAY

Any damages or destruction not approved by the Owner shall be repaired or replaced by Contractor to the satisfaction of the Owner.

SC-12  TRESPASSING OUTSIDE OF RIGHT-OF-WAY

Permission must be obtained from the property owner if equipment utilizes or crosses on ground outside the easement area. Any damages to property outside of the right-of-way must be repaired or replaced to the satisfaction of the property owner prior to final payment to the contractor by the City.

SC-13  BACKFILL MATERIALS

All wet or unaccepted backfill materials if any shall be hauled away and acceptable materials hauled in by the Contractor.

SC-14  DISPOSAL AREA

The City will provide a disposal area at the City of Spearfish Restricted Use Site for concrete, roots, trees, and other rubble. A pass for the Restricted Use Site shall be required (free of charge) and dumping shall be coordinated through the City Public Works Department.
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TECHNICAL SPECIFICATION, ADDITIONAL REQUIREMENTS

TS-1 GENERAL DESCRIPTION OF WORK TO BE ACCOMPLISHED

The awarded Contractor shall be responsible for providing all labor, equipment, and materials necessary to clean and seal cracks in existing asphalt pavements and milled roads, using the hot pour materials method. All work performed by the Contractor will be approved by the City of Spearfish Public Works department.

TS-2 SCOPE OF SERVICES

All-inclusive bids shall be submitted, covering labor, equipment and materials for the items listed in the bid response. Such work shall include, but is not limited to: related cleaning, road preparation, traffic control and clean-up.

(a) Equipment

The equipment required is: air compressor, melting kettle, application wand, hot air lance, and shall conform to the requirements provided by the awarding entity. On the information sheet, each respondent shall note all equipment that he/she owns and will use in performing this contract. The respondent shall also indicate any other machines available to him/her through lease, etcetera.

Maintenance

The Contractor shall keep and maintain their work in good repair for a period of ninety (90) days from the date of completion of the work on the respective streets. It is agreed and understood that the Contractor will at any time during this period, upon notification in writing from the Owner, execute all repairs which may be necessary, as determined by the Owner by reason of defective workmanship or pavement/roadway use.

(b) Cleaning/Road Preparation

The awarded Contractor shall clean the existing asphalt road surface of all dirt, sand, oil, grease and loose materials by brooming, blowing, or flushing with pressurized water as approved in advance by the Owner. All unsealed cracks, all previously sealed cracks with the surface of the existing sealant greater than or equal to ¼” below the surface of the surrounding pavement, and all previously sealed cracks exhibiting cracks, holes, voids and separation from the adjacent pavement shall be sealed. Immediately prior to sealing, all cracks shall be thoroughly cleaned of all foreign material. When cracks show evidence of vegetation, the vegetation shall be removed and sterilized by the use of a propane torch unit, eliminating all vegetation, dirt, moisture and seeds. No crack-sealing material shall be applied in wet cracks, or, where frost, snow or ice is present. The pavement temperature shall be above 40
degrees Fahrenheit (4 degrees Celsius) at the time of the installation of the poured
sealing material.

(c) Traffic Control

All traffic control methods and devices are to be in compliance with the current
edition of the Manual of Uniform Traffic Control Devices. All adjustments to traffic
operations are to be coordinated with the Director of Public Works for the awarding
entity. The Contractor shall maintain and protect traffic in the project area in
accordance with the requirements and regulations of the applicable Federal, State
and Local Regulatory Agencies and these specifications. It shall be the sole
responsibility of the Contractor to notify the State and Local Regulatory Agencies of
the awarding entity at least 72 hours in advance of changes in traffic patterns due to
the reduction of pavement widths or other traffic obstructions. The Contractor shall
furnish, install, maintain, adjust, and remove all signs, suitable barricades, flashers,
and traffic cones, as necessary to carry out the traffic routing plan and maintain
vehicular and pedestrian traffic. All of this work shall meet with the approval of all
the State and Local Regulatory Agencies.

The road may be restricted during the construction period but must be opened at the
end of each day. The road must be made passable as soon as possible.

In addition, access to emergency vehicles, police, rubbish removal trucks, school
buses and mail delivery vehicles must be maintained.

When requested to do so by the Owner, the Contractor shall furnish the Public
Works Director with a plan or a written statement of methods, which the Contractor
proposes to use, and said plans or methods shall be approved before any work
proceeds.

The cost associated with this item shall not be paid separately, but be included in the
bid items.

TS-3 EXPERIENCE

Each respondent must submit satisfactory evidence as part of their bid proposal demonstrating
experience repairing/sealing asphalt pavement cracks on public roads and knowledge of regulations
established by the State and Local Regulatory Agencies, including the most recent regulations. The
Contractor shall further guarantee that any employee operating asphalt pavement crack sealing
equipment is experienced in operating a machine of this type and competent in its use.

TS-4 TIME OF STARTING AND COMPLETION

The Contractor may be requested to start work within seven (7) calendar days of receipt of order.
All work under any contract awarded as a result of this bid shall be completed within thirty (30)
calendar days of receipt of the order unless a specific agreement with the Owner provides for a later completion date. If physical conditions prevent adherence to this time schedule, the Public Works Director shall make arrangements necessary for performance of the work. It is understood that the Owner may take appropriate action if an unreasonable delay is encountered beyond the thirty (30) calendar day period mentioned above.

It is also understood that should delays occur, the Contractor will prioritize rescheduling efforts to expedite completion and minimize the Owner from unmarked roadways. Note: Equipment breakdown shall not be considered a valid cause for a time extension request. The contractor shall be expected to have backup equipment available.

TS-5  **PAVEMENTS TO BE SEALED**

Sealants shall be applied mainly on sheet asphalt and milled road pavements.

TS-6  **MATERIALS**

All materials shall be in accordance with the State and local regulations.

**Joint Sealer**

The hot poured rubberized sealant material shall meet requirements of ASTM D6690, or the latest edition. The Owner may require joint material samples to be submitted prior to the start of work.

Respondents are asked to include, as part of their response, a manufacturer specification sheet for the sealant that will be used to perform the work.

**Crack Sealant**

Glenzoil 20 Plus by Emulso Corp. or equivalent crack sealant barrier material.

Respondents are asked to include, as part of their response, a manufacturer specification sheet for the sealant that will be used to perform the work.

**Post-Sealing Spray**

Members may require a post-seal anti-stick spray agent, to prevent sealing materials from sticking to tires.

TS-7  **EQUIPMENT**

Equipment used in the performance of the work required shall be subject to the approval of the Owner, and maintained in satisfactory working condition at all times.
Air Compressor:

Air compressors shall be capable of furnishing not less than 185 cubic feet of air per minute and shall be equipped with traps that will maintain the compressed air free of oil and water.

Melting Kettle:

The joint sealant material shall be heated in a melter constructed as a double boiler, with a space between the inner and outer shells filled with oil or other heat transfer medium having a flash point of not less than 600 degrees. The equipment shall include positive temperature controls, automatic and continuous mechanical agitation, recirculation pumps, and thermometers for continuous reading of temperature of both the sealing compounds and the heat transfer medium. The melter shall be equipped with a thermostat to maintain the sealant compound within the range of temperatures specified by the manufacturer. Respondents are asked to include, as part of their response, a manufacturer specification sheet for the material that will be used to perform the work.

Application Wand and Shoe and Hand Pouring Pots

Application shoes that are worn shall be replaced. The application shoe shall produce a band aid type of appearance of at least 1” wide on either side of the crack, as well as filling the crack. The height of the sealant above the crack must not exceed 1/8”. Hand pouring pots must be equipped with mobile carriage and rubber shoe, and have a flow control valve which allows all cracks to be filled to refusal, so as to eliminate all voids or entrapped air, and not leave unnecessary surplus crack sealer on pavement surfaces. Respondents are asked to include, as part of their response, a manufacturer spec sheet for the material that will be used to perform the work.

Hot Air Lance

Hot air lance shall be a propane torch unit which operates at 3,000 degrees Fahrenheit and a gas velocity of 3,000 feet per second.

TS-8 VENDOR PERFORMANCE/LIABILITY FOR SERVICE FAILURES

Failure of any successful bidder to adhere to the specifications, prices, terms or conditions of their agreement during the course of the contract period may preclude such bidder from bidding on future City of Spearfish bids in addition to any action that municipalities may take as a result of the vendor’s failure to perform. It should be noted that the awarded vendor shall assume full responsibility for the negligence of any sub-contractor(s) utilized to fulfill any and all obligations under resulting contracts. Moreover, if the contractor fails to provide the contracted services within the time specified or if the services are rejected by the municipality, the municipality may obtain such services or any part thereof from other sources in the open market or on contract. Should the new price be greater than the contract price, the difference will be charged against the contractor. Should the new price be less, the contractor shall have no claim to the difference.
## PROPOSAL 2019 ASPHALT SURFACE CRACK SEALING PROJECT

### City of Spearfish

<table>
<thead>
<tr>
<th>Priority</th>
<th>Road Name</th>
<th>Description</th>
<th>Approximate linear feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>North Ave./Main St./E. Colorado Blvd.</td>
<td>Rec Center to Golf Course</td>
<td>10,000</td>
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<tr>
<td>2</td>
<td>N. Main St.</td>
<td>Hospital to Rec Center</td>
<td>2,600</td>
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<tr>
<td>3</td>
<td>Ryan Rd.</td>
<td>North Ave. to N. Main St.</td>
<td>500</td>
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<tr>
<td>4</td>
<td>Recreation Ln.</td>
<td>Entire Street</td>
<td>500</td>
</tr>
<tr>
<td>5</td>
<td>Reserve St.</td>
<td>Entire Street</td>
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</tr>
<tr>
<td>6</td>
<td>Windmill Dr.</td>
<td>Entire Street</td>
<td>5,000</td>
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<tr>
<td>7</td>
<td>Iron Horse Lp.</td>
<td>Entire Street</td>
<td>1,000</td>
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<tr>
<td>8</td>
<td>Sandstone Hills Dr.</td>
<td>Entire Street</td>
<td>4,000</td>
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<tr>
<td>9</td>
<td>Woodland Lp.</td>
<td>Entire Street</td>
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<td>10</td>
<td>Evans Ln.</td>
<td>Hillsvie Rd. to Fruitdale St.</td>
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<td>11</td>
<td>Fruitdale St.</td>
<td>Entire Street</td>
<td>700</td>
</tr>
<tr>
<td>12</td>
<td>3rd St.</td>
<td>Entire Street</td>
<td>700</td>
</tr>
<tr>
<td>13</td>
<td>2nd St.</td>
<td>Entire Street</td>
<td>700</td>
</tr>
<tr>
<td>14</td>
<td>Custer St.</td>
<td>Entire Street</td>
<td>700</td>
</tr>
<tr>
<td>15</td>
<td>Ward Ave.</td>
<td>Entire Street</td>
<td>3,000</td>
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<tr>
<td>16</td>
<td>Clear Spring Rd.</td>
<td>Entire Street</td>
<td>1,500</td>
</tr>
<tr>
<td>17</td>
<td>W. Jackson Blvd./Sunset Dr.</td>
<td>Jonas Blvd. to Jonas Blvd.</td>
<td>5,000</td>
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<tr>
<td>18</td>
<td>Harmony Cir.</td>
<td>Entire Street</td>
<td>500</td>
</tr>
<tr>
<td>19</td>
<td>Rain Drop Cir.</td>
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<td>500</td>
</tr>
<tr>
<td>20</td>
<td>River View Cir.</td>
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<td>1,600</td>
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<tr>
<td>21</td>
<td>College Ln.</td>
<td>Entire Street</td>
<td>3,000</td>
</tr>
<tr>
<td>22</td>
<td>Jonas Blvd.</td>
<td>Woodburn Dr. to Charles St.</td>
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<tr>
<td>23</td>
<td>Hillcrest St./Lariat Dr.</td>
<td>Entire Street</td>
<td>3,000</td>
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<tr>
<td>24</td>
<td>Lookout Valley Ct.</td>
<td>Entire Street</td>
<td>1,000</td>
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<tr>
<td>25</td>
<td>Bird Ct.</td>
<td>Polley Dr. to Oriole Dr.</td>
<td>3,000</td>
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<tr>
<td></td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>63,100</strong></td>
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</tbody>
</table>
MAP OF PROPOSED STREETS AND AREAS FOR SEALING

LEGEND
Crack Sealing Locations

- 0
- 0.25
- 0.5

H. SCALE: 1” = 0.5 Miles

TS-6
PLANS AND SPECIFICATIONS PREPARED BY: City of Spearfish

PROJECT: 2019 Asphalt Surface Crack Sealing Project

CONSTRUCTION CONTRACT

This CONSTRUCTION CONTRACT is made and entered into this 3rd day of June, 2019, by and between Highway Improvement, Inc. (hereinafter "Contractor"), and the CITY OF SPEARFISH, a municipal corporation and political subdivision of the State of South Dakota, 625 North Fifth Street, Spearfish, South Dakota 57783 (hereinafter “Owner”).

WITNESSETH that Contractor and Owner of the consideration herein stated agree as follows:

ARTICLE I. SCOPE OF WORK. The Contractor shall provide and furnish all of the plant, labor, materials, necessary tools, expendable equipment, and all utility and transportation services required to perform and complete in a workman like manner and ready for operation all work required materials, labor, and equipment for construction of improvements to include crack sealing repairs at various road locations within city limits all in strict accordance with the Specifications, including any and all addenda, which Plans and Specifications are made a part of this Contract, and in strict compliance with the Contractor’s Proposal and other contract documents herein mentioned which are a part of this Contract.

ARTICLE II. TIME FOR COMPLETION. The Contractor shall commence work within ten (10) consecutive calendar days after issuance of written Notice to Proceed and the date of completion shall be thirty (30) days from start date.

Contractor shall note General Provisions, GP-30, Liquidated Damages.

ARTICLE III. THE CONTRACT PRICE. The Owner shall pay to the Contractor for the performance of this Contract, subject to any additions or deductions provided therein, in current funds as follows: Upon completion of the project and approval by the City Council.

The bid quantities are estimates and payment will be based on the actual quantities performed or materials furnished in accordance with the plans and specifications. The quantities may be increased, decreased, or eliminated. An adjustment will be made to the Contract for changes in quantities that significantly change the character of the work materially in kind or nature. The basis for the adjustment must be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made in such amount as the Owner determines to be fair and equitable.
ARTICLE IV. ACCEPTANCE AND FINAL PAYMENT. Final payment shall be due within thirty (30) days after the completion and approval of the public improvement by the Owner.

The Contractor shall submit evidence satisfactory to the Owner that all claims of unpaid payrolls, material bills, and other indebtedness connected with the work have been satisfied, prior to approval of the final payment.

ARTICLE V. COMPONENT PARTS OF THIS CONTRACT. This Contract consists of the following component parts, all of which are as fully a part of this Contract as if herein set out verbatim, or, if not attached, as if hereto attached:

1. This Instrument (Contract) (Supplements)
2. Advertisement for Bids
3. Instructions to Bidders
5. Special Conditions
6. Technical Specifications
7. Addendums
8. Contractor’s Bid (Bid Form)
9. Performance and Payment Bond
10. Certificate of Insurance
11. Notice to Proceed

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in two (2) original counterparts the day and year first above written:
CITY OF SPEARFISH

By: [SIGNATURE]
Dana Boke, Its Mayor

Attest:

[Signature]
David H. Dutton, Finance Officer

State of South Dakota  )
    ) ss.
County of Lawrence  )

On this 21st day of [Month], 2019, before me, the undersigned officer, personally appeared Dana Boke, the Mayor of the City of Spearfish, a South Dakota Municipal Corporation, and David H. Dutton, the Finance Officer of the City of Spearfish, a South Dakota Municipal Corporation, known to me or satisfactorily proven to be the persons described in the foregoing instrument, and acknowledged that they executed the same in the capacity therein stated and for the purposes therein contained.

In Witness Whereof, I have set my hand and official seal.

[Signature]
Notary Public

My Commission Expires: October 14, 2022
State of South Dakota  )
   ) ss.
County of Minnehaha  )

On this 3rd day of June, 2019, before me, the undersigned officer,
Timothy A. Vanderpan [PRINTED NAME] personally appeared known to me or
satisfactorily proven to be the person described in the foregoing instrument, and acknowledged
that he executed the same in the capacity therein stated and for the purposes therein contained.

In Witness Whereof, I have set my hand and official seal.

(Seal)

Sam Pudlig
Notary Public

My Commission Expires: October 24th, 2022
### BID FORM

**2019 Asphalt Surface Crack Sealing Project**

*Electronic Bid Forms are acceptable as per Instructions to Bidders*

<table>
<thead>
<tr>
<th>Item</th>
<th>Item Description</th>
<th>Quantity</th>
<th>Units</th>
<th>Unit Cost</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>MOBILIZATION</td>
<td>1</td>
<td>LS</td>
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<td>1,000.00</td>
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<tr>
<td>2</td>
<td>CRACK SEAL</td>
<td>1</td>
<td>Lineal Feet</td>
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<td>30,919.00</td>
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<td>3</td>
<td>TRAFFIC CONTROL</td>
<td>1</td>
<td>LS</td>
<td>893.00</td>
<td>893.00</td>
</tr>
</tbody>
</table>

**Total Construction Cost**

$32,812.00