

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION  
TRANSPORTATION ALTERNATIVES (TA)  
AGREEMENT**

THIS AGREEMENT is made by and between the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the "STATE," and the city of Rapid City, South Dakota, referred to in this Agreement as the "CITY."

**BACKGROUND:**

1. On June 23, 2014, the STATE and the CITY entered into a Transportation Alternatives Program (TAP) agreement for Project Number P TAPU(09) PCN 04UA. That agreement will be referred to in this Agreement as the "FIRST AGREEMENT." The STATE assigned agreement number 715373 to the FIRST AGREEMENT. The FIRST AGREEMENT expired on June 23, 2017, before the work contemplated under the FIRST AGREEMENT could be completed.
2. The parties wish to enter into this Agreement to continue the services provided under the FIRST AGREEMENT, to authorize payment for any costs incurred for the ongoing work under the FIRST AGREEMENT after the FIRST AGREEMENT expired, and to adjust the project's scope of work and cost of the project. It is understood and agreed between the parties that certain work pertaining to this Agreement was performed and any costs accrued or money expended be paid in accordance with this Agreement. In light of the foregoing, the parties to this Agreement ratify the acts of the respective parties which may have been performed pursuant to this Agreement during this period.
3. The STATE has determined that TA project number P TAPU(09) PCN 04UA in the City of Rapid City, South Dakota, referred to in this Agreement as the "Project," is eligible for funding under Fixing America's Surface Transportation Act (FAST Act) for Transportation Alternatives.
4. The CITY previously submitted an application to sponsor the Project, which the STATE has accepted. A copy of the application is made part of this Agreement by reference.
5. The Project's cost estimate is as follows, which includes work that was performed under the FIRST AGREEMENT: Three Hundred Twenty-five Thousand Dollars (\$325,000.00) in infrastructure and Fifty-two Thousand Seventy-five Dollars and Thirty-one Cents (\$52,075.31) for construction engineering;
6. Prior to bid letting advertisement and upon receiving the final plans, if the STATE, in its sole discretion, estimates the amount of the infrastructure portion of the Project (the STATE'S estimated amount) will be more than the eligible amount of infrastructure funding set out above in Background paragraph 5, the STATE will not pursue Federal Highway construction authorization for the Project until either: a) the plans are revised to reduce infrastructure costs to a level at or below the eligible amount of infrastructure funding, or b) the CITY agrees in writing to fund the difference between the STATE'S estimated amount and the eligible amount of infrastructure funding.
7. Once the Project has been let and the contract is awarded to the successful low bidder, if the cost of the infrastructure portion of the Project, as bid, exceeds the STATE'S estimated amount, as-bid costs that exceed the STATE'S estimated amount will be eligible for Federal Highway funding. The STATE will pay the as-bid costs and the CITY will pay the STATE for the CITY'S match of the as-bid costs.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

**I. THE STATE'S DUTIES AND RESPONSIBILITIES:**

- A. The STATE will provide technical assistance for the Project and review plans and specifications.
- B. The STATE will use the STATE'S best efforts to obtain Federal Highway Administration authorization of the Project.
- C. The STATE will advertise, let to contract, award, and be the contracting party for the infrastructure items of the Project, as detailed in the attached Exhibit A.
- D. The STATE will obtain the CITY'S concurrence before authorizing any changes to the Project work under the STATE approved Project plans and specifications.

- E. The STATE will provide construction engineering for the infrastructure portion of the Project and make all progress payments for the infrastructure portion of the Project directly to contractors, suppliers, and vendors with TAP funds, up to a maximum of Two Hundred Fifty-two Thousand Six Hundred Forty Dollars and Forty-six Cents (\$252,640.46). The STATE will bill the CITY for the 33% match on TAP funds, any costs exceeding Two Hundred Fifty-two Thousand Six Hundred Forty Dollars and Forty-six Cents (\$252,640.46), any non-participating costs, and any costs deemed ineligible.
- F. The STATE will not be responsible for any injury or property damage suffered by any user of the Project traveling through or within the STATE'S right-of-way.

## II. THE CITY'S DUTIES AND RESPONSIBILITIES:

- A. The CITY or the CITY'S designer, at the CITY'S expense, will design the Project as follows:
  - i. The CITY will develop plans, specifications, and cost estimates for the Project. The CITY will prepare plans according to STATE guidelines and will utilize STATE Specifications. The CITY will use the Engineering/Design Services section of the STATE website as a reference for plan preparation <https://dot.sd.gov/doing-business/engineering/design-services/forms-manuals>. The CITY will coordinate with the STATE TA Coordinator on plan and specification requirements.
  - ii. The CITY will identify and obtain STATE approval of the Project limits and perform the field survey necessary to establish beginning and ending stations, horizontal and vertical control points, and horizontal alignment data. The CITY will obtain plats or property information along the Project route to identify current streets' right-of-way.
  - iii. The CITY will obtain all necessary right-of-way for the Project according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended in 1987. The CITY will use unaltered STATE forms in obtaining right-of-way.
  - iv. The CITY will obtain all the necessary Project related environmental clearances. The CITY will submit documentation to the STATE verifying Project approval has been obtained from the required agencies prior to submitting sixty percent (60%) plans of the Project.
  - v. The CITY will prepare, submit, and certify an encroachment survey to the STATE once all permanent right-of-way boundaries have been established. The CITY will certify that all right-of-way and utility adjustments or agreements are in place prior to the STATE'S advertisement and letting.
  - vi. The CITY prepared and submitted preliminary plans to the STATE. Preliminary plans were submitted electronically at sixty percent (60%), and included plan and profile, right-of-way impacts, and a preliminary engineering estimate.
  - vii. The CITY prepared and submitted final plans to the STATE. Final plans were submitted at one hundred percent (100%) and ready for bid letting. The CITY will submit final plans in PDF format and will distributed the final plans for STATE review. Necessary revisions will be provided in electronic STATE review comments. Final plans include a vicinity map, design designation, estimate of quantities, rates of materials, plan notes, traffic control notes, typical sections, summary of items, standard plates, and specifications. A copy of the CITY'S engineer's estimate accompanied the plans. The CITY placed the final plans on the STATE'S FTP site. The CITY notified the STATE'S TA Coordinator when the plans have been uploaded.
  - viii. The CITY prepared plans for an estimated January 2015 bid letting. Bid letting plans incorporated plan changes requested in STATE electronic plan review comments and an electronic PDF file of the engineer stamped set of plans. The CITY submitted the plans within three (3) weeks of receipt of the electronic plan review comments. An updated copy of the CITY'S engineer's estimate must accompany the plans.
  - ix. The CITY will review and address general construction engineering issues that may occur during the construction of pathway project. Services, as requested by the STATE, will be on an as needed basis requiring the designer to respond in a timely manner based on the urgency of the request.
- B. The CITY will perform all management, operation, and maintenance of the Project, once these items are completed. The required maintenance will include, but not be limited to:
  - i. Debris and litter removal;

- ii. Maintenance and replacement of sidewalks, curb ramps, and detectable warnings, in accordance with the Americans with Disabilities Act;
  - iii. Maintenance, repair, and replacement of the Project;
  - iv. Snow and ice removal and any necessary hauling of snow that has been removed all in accordance with the CITY'S policy and practices.
  - v. Sweeping;
  - vi. Mowing where undesirable or noxious vegetation exists; and
  - vii. Any repair or maintenance of the STATE'S right-of-way related to or necessitated by the installation, repair, and maintenance of the Project.
- C. The CITY will make no operational adjustments without prior written approval from the STATE and Federal Highway Administration.
- D. If the CITY defaults under this Agreement, the CITY will reimburse the STATE and the Federal Highway Trust Fund the amount of all funds expended under the Project for the CITY'S infrastructure Project items.
- E. Upon receipt of billings from the STATE for the infrastructure portion of the Project, the CITY will promptly pay the STATE for the CITY'S 33% match on TA funds, any costs exceeding Two Hundred Fifty-two Thousand Six Hundred Forty Dollars and Forty-six Cents (\$252,640.46), any non-participating costs, and any costs deemed ineligible.
- F. The CITY will indemnify the STATE, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceedings that arise as a result of the CITY'S performance under this Agreement. This section does not require the CITY to be responsible for or defend against claims or damages arising from errors or omissions of the STATE, its officers, agents, or employees.
- G. The CITY will comply with all federal, state, and local laws, together with all ordinances and regulations applicable to the work and will be solely responsible for obtaining current information on such requirements. The CITY will procure all licenses, permits, or other rights necessary for the fulfillment of their obligations under this Agreement. The CITY'S noncompliance with these requirements will be cause for the STATE to withhold participation and reimbursement.
- H. The CITY warrants that the CITY has not employed or retained any company or person, other than a bona fide employee working solely for the CITY, to solicit or secure this Agreement, and that the CITY has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CITY, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the STATE will have the right to terminate this Agreement without liability, or, in the CITY'S discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- I. The CITY will be bound by **Exhibit B**, entitled, "Standard Title VI Assurance," attached to and made a part of this Agreement by reference.
- J. The CITY will provide services in compliance with the Americans with Disabilities Act of 1990 and any amendments.
- K. All project charges will be subject to audit in accordance with the STATE'S current procedures and U. S. Office of Management and Budget (OMB) Circular regulations found at 2 CFR Part 200. The CFDA Number for these funds is 20.205. Allowable costs will be determined in accordance with 2 CFR Part 200.

The CITY will maintain accurate cost accounting systems for all costs incurred under this Agreement and clearly identified with activities performed under this Agreement.

Upon reasonable notice, the CITY will allow the STATE, through any authorized representative to have access to and the right to examine and copy all records, books, papers, or documents related to services rendered under this Agreement. The CITY will keep these records clearly identified and readily accessible for a period of three (3) years after the date final payment under this Agreement is made and all other pending matters are closed.

If the CITY expends \$750,000.00 or more in federal funds during any CITY fiscal year covered, in whole or in part, under this Agreement, then the CITY will be subject to the single agency audit requirements of the US Office of Management and Budget (OMB) Circular regulations found at 2 CFR Part 200. If the CITY expends less than \$750,000.00 during any CITY fiscal year, the STATE may perform a more limited program or

performance audit related to the completion of Agreement objectives, the eligibility of services or costs and adherence to Agreement provisions.

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

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

- M. The CITY may not assign, sublet, or transfer this Agreement or any interest in this Agreement without the STATE'S written permission to do so.
- N. The CITY certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- O. The CITY certifies, to the best of the CITY'S knowledge and belief, that no federal appropriated funds have been paid or will be paid, by or on behalf of the CITY, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan, or cooperative Agreement. If any funds other than federal appropriated funds have been paid or will be paid to any of the above-mentioned parties, the CITY will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The CITY will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontract, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients will certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

- P. The CITY will be solely responsible for any damages to the Project, including, but not limited to, damages as a result of traffic accident impact and vandalism.
- Q. The CITY will assume all risk of loss or damage to the Project, inclusive of free or unused materials, supplies, and equipment, however caused, resulting directly or indirectly, by reasons of the construction, repair, replacement, maintenance, removal, or use of the Project, and releases the STATE from any and all liability on account of such loss or damage, whether or not the negligence of the STATE contributed to this loss or damage in whole or in part.
- R. The CITY will be responsible for any injury or property damage suffered by any user of the Project traveling through or within the STATE'S right-of-way.
- S. The CITY will limit the use of the Project to use by the general public, and for no other purpose.
- T. If the CITY anticipates performing construction activities, the CITY will be required to furnish the STATE the following certificates of insurance and assure that the insurance is in effect for the life of this Agreement:
  - i. Commercial General Liability Insurance:  
The CITY will maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it will apply separately to this Agreement or be no less than \$2,000,000.00.
  - ii. Business Automobile Liability Insurance:



The CITY will maintain business automobile liability insurance or equivalent form with a limit of not less than \$500,000.00 for each accident. Such insurance will include coverage for owned, hired, and non-owned vehicles.

iii. Workers' Compensation Insurance:

The CITY will procure and maintain workers' compensation coverage as required by South Dakota law.

**IV. THE PARTIES FURTHER UNDERSTAND AND MUTUALLY AGREE AS FOLLOWS:**

- A. Neither the STATE nor the Federal Highway Administration will be responsible for any expenses or costs incurred by the CITY under this Agreement prior to the date of the STATE'S written Notice to Proceed.
- B. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement may be terminated by the STATE. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.
- C. This Agreement depends upon the continued availability of federally appropriated funds and expenditure authority from Congress for the Transportation Alternative Program. If for any reason Congress fails to appropriate Transportation Alternative Program funds or grant expenditure authority, or Transportation Alternative Program funds become unavailable by operation of law or federal funds reductions, this Agreement may be terminated by the STATE. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.
- D. If any court of competent jurisdiction holds any provision of this Agreement unenforceable or invalid, such holding will not invalidate or render unenforceable any other provision of this Agreement.
- E. All other prior discussions, communications, and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and, except as specifically provided in this Agreement, this Agreement constitutes the entire Agreement with respect to the subject matter.
- F. The STATE may terminate this Agreement with or without cause. If the CITY breaches any term or condition of this Agreement, the STATE may terminate this Agreement at any time with or without notice. If the STATE terminates this Agreement for such a default, the STATE may adjust any payment due to the CITY at the time of termination to cover any additional costs to the STATE due to the CITY'S default. If after the STATE terminates for a default by the CITY it is determined the CITY was not at fault, then the CITY will be paid for eligible services rendered and expenses incurred up to the date of termination.
- G. If the STATE terminates this Agreement for fault on the part of the CITY, the STATE will be entitled to recover payments made to the CITY.
- H. This Agreement will be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
- I. This Agreement may not be amended, except in writing, which writing will be expressly identified as a part of this Agreement and be signed by an authorized representative of each of the parties.
- J. Any dispute between the parties concerning this Agreement will be referred to the Secretary of the South Dakota Department of Transportation or duly authorized representative for determination, whose decision in the matter will be final and conclusive on the parties to this Agreement.
- K. Any notice or other communication required under this Agreement will be in writing and sent to the STATE at 700 East Broadway, Pierre, SD 57501-2586. Notices will be given by and to Logan Gran, TA Coordinator, Office of Project Development, on behalf of the STATE, and by and to Steve Allender, Mayor, on behalf of the CITY, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties will be deemed to have been delivered when mailed by first class mail, or, if personally delivered, when received by such party; provided, however, that notice of default or termination will be sent by registered or certified mail.
- L. The STATE may, at any time, revoke this Agreement and notify the CITY that the CITY must remove or permit the removal of the Project from the right-of-way by a date certain. Removal of the Project will consist of removing the sidewalk and backfilling the disturbed area to maintain or restore adequate stability. If revocation of this Agreement is due to a proposed change in the highway, the STATE will give the CITY at

least ninety (90) days' written notice of the need to remove the Project. Upon notification from the STATE that the Project must be removed, the CITY will, at the CITY'S sole cost and expense, remove the Project from the right-of-way no later than the date designated by the STATE. The CITY will not be entitled to any compensation of any kind for removal of the Project from the right-of-way. If the CITY does not remove the Project by the designated deadline, the STATE may remove and dispose of the Project. The parties agree that removal of the Project from the right-of-way may entail removal of those portions of the Project which do not occupy the right-of-way. The CITY will hold the STATE, its employees, officers, agents, and contractors, harmless for any damage to the Project, including any portion of the Project which does not occupy the right-of-way, and for any damage to the CITY'S property.

**V. TERM**

This Agreement is effective June 24, 2017. The CITY will complete the work contemplated by this Agreement no later than December 31, 2022.

**VI. SIGNATURE AUTHORITY.** The CITY has designated its Mayor as the CITY'S authorized representative and has empowered the Mayor with the authority to sign this Agreement on behalf of the CITY. A copy of the CITY'S Commission minutes or resolution authorizing the execution of this Agreement by the CITY'S authorized representative is attached to this Agreement as **Exhibit C**.

The CITY and the STATE, by signing this Agreement, evidence authority to enter into this Agreement through formal action of their governing bodies.

City of Rapid City, South Dakota

State of South Dakota  
Department of Transportation

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

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

Its: Mayor

Its: Project Development Engineer

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

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

Attest:

Approved as to Form:

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

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

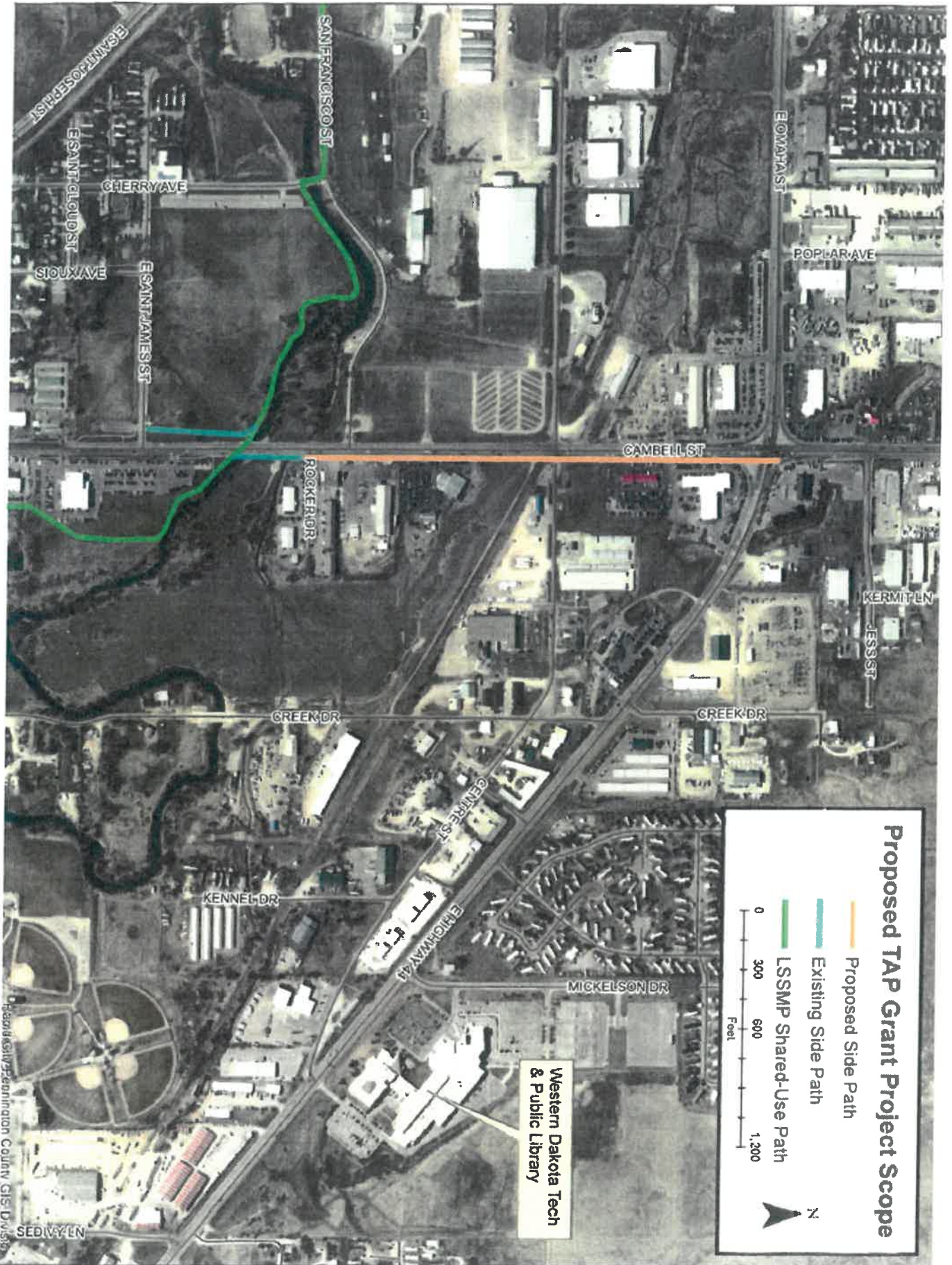
(City Seal)

## EXHIBIT A

ITEM NO.	STD.BID ITEM NO.	DESCRIPTION OF ITEM	UNIT	QTY (EST)	ENGINEER'S ESTIMATE	
					UNIT COST	TOTAL COST
1		Fillet and Pan Removal	Sq Yd	120.00	\$25.00	\$3,000.00
2		Fillet and Pan Replace	Sq Yd	120.00	\$75.00	\$9,000.00
3		Approach Pavement	Sq Yd	300.00	\$90.00	\$27,000.00
4		Curb and Gutter Removal	Ft	250.00	\$15.00	\$3,750.00
5		Curb and Gutter Replace	Ft	160.00	\$25.00	\$4,000.00
6		Asphalt Remove	Sq Yd	1,460.00	\$10.00	\$14,600.00
7		Asphalt Replace	Sq Yd	160.00	\$55.00	\$8,800.00
8		Sidewalk Remove	Sq Ft	655.00	\$3.00	\$1,965.00
9		Adjust Value Boxes	Each	10.00	\$100.00	\$1,000.00
10		Contractor Furnished Borrow	Cu Yd	0.00	\$25.00	\$0.00
11		36" RCP	Ft	0.00	\$156.00	\$0.00
12		18" RCP	Ft	0.00	\$70.00	\$0.00
13		18" Safety Ends	Each	0.00	\$500.00	\$0.00
14		Clear and Grub	Each	0.00	\$10,000.00	\$0.00
15		Large Sign	Each	1.00	\$200.00	\$200.00
16		Small Sign	Each	10.00	\$100.00	\$1,000.00
17		24 In Tape	Ft	460.00	\$20.00	\$9,200.00
18		24 In Grooving	Ft	460.00	\$7.00	\$3,220.00
19		12 In Tape	Ft	0.00	\$10.00	\$0.00
20		12 In Grooving	Ft	0.00	\$4.00	\$0.00
21		Bike Symbol	Each	0.00	\$250.00	\$0.00
22		Bike Symbol Grooving	Each	0.00	\$100.00	\$0.00
23		X-ing Pavement Sign	Each	0.00	\$250.00	\$0.00
24		X-ing Grooving	Each	0.00	\$100.00	\$0.00
25		4 In Bike Path	Sq Ft	25,750.00	\$5.50	\$141,625.00
26		Base Course	Tons	25.00	\$25.00	\$625.00

27		Seeding Fertilizer and Mulch	Sq Yd	450.00	\$3.00	\$1,350.00
28		Landscape Rock	Tons	0.00	\$50.00	\$0.00
29		Traffic Control	Each	1.00	\$20,000.00	\$20,000.00
30		Sod	Sq Yd	0.00	\$12.00	\$0.00
31		Signal Work - Mid Block Crosswalk	Each	0.00	\$25,000.00	\$0.00
32		Erosion Control	Each	1.00	\$2,500.00	\$2,500.00
33		Surveying	Each	1.00	\$3,000.00	\$3,000.00
34		Mobilization	Each	1.00	\$25,000.00	\$25,000.00
35		Incidental Work	Each	1.00	\$10,000.00	\$10,000.00
36		Engineering Design Signal Mid Block	Each	0.00	\$25,000.00	\$0.00
37		Detectable Warning Panels	Sq Ft	100.00	\$32.00	\$3,200.00
		Total				\$294,035.00
		10% Contingency				\$30,965.00
		Total with Contingency				\$325,000.00





STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATIONSTANDARD TITLE VI/NONDISCRIMINATION ASSURANCES  
APPENDIX A & E

MARCH 1, 2016

During the performance of this contract, the CITY, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.



During the performance of this contract, the CITY, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

**Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).