STATE OF SOUTH DAKOTA

JOINT POWERS

MAINTENANCE AND ENCROACHMENT AGREEMENT

BETWEEN

DEPARTMENT OF TRANSPORTATION

AND

CITY OF RAPID CITY

This Agreement is made by and between the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the "STATE," and the city of Rapid City, South Dakota, referred to in this Agreement as the "CITY." The parties acknowledge and agree the CITY'S population is deemed to be 74,048 for purposes of this Agreement.

1. JOINT POWERS

This Agreement does not establish a separate legal entity, as contemplated by SDCL 1-24-5. The cooperative undertaking described in this Agreement will be financed and conducted under the provisions of this Agreement by the CITY and the STATE. Each party has responsibilities under the terms of this Agreement and no joint board or administrator will be used. No real property will be purchased for use for this Agreement.

2. STATE PROJECT

The STATE and the CITY concur in the proposal for the new construction or improvement of streets identified by South Dakota Federal Aid Construction Project Number IM 0902(112)59 PCN 6968, referred to in this Agreement as the "STATE PROJECT." The STATE PROJECT is located on Interstate 90 (I90), Exit 59 (LaCrosse Street). The STATE PROJECT consists of interchange reconstruction, PCC Surfacing, addition of an auxiliary lane (westbound and eastbound), structure widening, deck overlay, and approach slabs.

3. CONTRACT PROCUREMENT

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

B. As part of the STATE PROJECT and as requested by the CITY, the STATE will design and construct additional curb and gutter and surfacing work on LaCrosse Street. The CITY will reimburse the STATE a lump sum amount which represents the cost of design and construction. The CITY'S lump sum reimbursement to the STATE is Seventy Thousand Four Hundred Twenty-four Dollars. ($70,424.00).

4. RIGHT-OF-WAY

A. As part of the STATE PROJECT, the CITY will grant temporary and permanent easements for highway purposes. The necessary temporary easements are located in Parcel 2 and Parcel A11. The necessary temporary and permanent easements are summarized in Exhibit A, attached to and incorporated in this Agreement. Both the temporary and permanent easements are identified with more specificity in the STATE PROJECT'S plans on file with the STATE. The CITY and the STATE will execute all documents necessary for the STATE'S acquisition of these easements pursuant to the terms set out in this Agreement. The CITY will grant a temporary and a permanent easement to the STATE for the following parcels:

Parcel A11  Knollwood Heights Park of Marshall Heights Tract to Rapid City, Pennington County, South Dakota.

5. COMBINATION LETTING

A. The STATE will let the CITY'S sanitary sewer and water main replacement project in combination with the STATE PROJECT. The CITY'S project is designated as CITY Project Number CIP 51108 PCN X04R and referred to in this Agreement as the "CITY PROJECT." The CITY PROJECT is located adjacent to the interchange on both the north and south segments of LaCrosse Street.

B. The CITY will provide the STATE with all plans, specifications, contract provisions, and cost estimates for the CITY PROJECT. Each bidder will be required to submit separate bids covering the CITY PROJECT and the STATE PROJECT. Award of the contract will be to the one bidder based on the total combination bid for the two projects. The lowest responsible bid on the STATE PROJECT will be the basis for determining STATE and federal funds participation.

C. If the total low combination bid for the CITY PROJECT and the STATE PROJECT does not have, as part of that bid, the lowest bid on the STATE PROJECT, the CITY will pay to the STATE the difference between that portion of the successful combination bid attributable to the STATE PROJECT and the lowest bid on the STATE PROJECT. The CITY will pay the STATE within thirty (30) days of receipt of billing from the STATE.

D. The STATE will award the contracts for both the STATE PROJECT and the CITY PROJECT; however, the CITY will be the contracting party for the CITY PROJECT. The CITY will make all payments under the contract for the CITY PROJECT directly to the contractor. The CITY'S estimated cost for the CITY PROJECT is Three Hundred Twenty-five Thousand Dollars ($325,000.00). Actual cost will be based upon bids and final quantities.

E. Except as set forth in section 5.F., if applicable, the CITY will provide for purposes of final acceptance by the STATE, all construction engineering for the CITY PROJECT, including all construction supervision and inspection, physical testing, measuring in-place quantities, and documenting locations for as-built records.

F. For the top of the utility trenches, the STATE will conduct inspection of the trench backfill, trench compaction testing, and moisture and density testing for the CITY PROJECT. The top of the utility trenches is defined as two feet (2') below the bottom of the undercut. The STATE will provide the CITY with a copy of all test reports for this portion of the CITY PROJECT. The CITY will pay the STATE for the cost of this testing and these inspections. The STATE will bill the CITY for testing and inspections based on the actual number of locations. Each moisture test will be charged at the rate of Twenty-five Dollars ($25.00) and each density test will be charged at the rate of Seventy-five Dollars ($75.00). The STATE will determine the number and location of the testing and inspections when final plans have been received by the Area Engineer. The CITY will pay the STATE for this work within thirty (30) days of receipt of billings from the STATE.

G. Except as set out in Section 5.F. above, the CITY will provide all construction engineering for the CITY PROJECT, including any construction supervision and inspection, physical testing, measuring in-place quantities, and documenting locations for as-built records. For any areas other than the top of the utility trenches, the CITY will conduct inspection of the trench backfill, trench compaction testing, and moisture and density testing for the CITY PROJECT. The CITY will provide the STATE with a copy of all test reports within forty-eight (48) hours of testing. The CITY will be responsible for ensuring that all work and test results on the CITY PROJECT are satisfactory to the STATE. The CITY will ensure all testing conducted by the CITY conforms to the South Dakota Department of Transportation Standard Specifications for Roads and Bridges, 2015 Edition, except as modified by any applicable special or supplemental provisions. The CITY will also ensure that all testing conducted by the CITY conforms to the STATE'S most recent Materials Manual. All personnel
6. ONE CALL SYSTEM REPORTING

The CITY will register as operator and provide data to the South Dakota One Call System (811) for the lighting and signal system.

7. RESPONSIBILITY FOR MAINTENANCE, POLICING ENCROACHMENTS, AND OTHER ACTIVITIES

The CITY is responsible for policing encroachments, performing maintenance and repair activities, limiting access, enforcing parking prohibitions, and servicing lighting systems along the STATE PROJECT in accordance with the terms of the "Maintenance and Encroachment Agreement," executed on June 1, 2010, and assigned Agreement Number 714097 by the STATE, and any amendments to that agreement entered into by the parties now or in the future.

8. SIGNALS

If a signal system is installed on any portion of the STATE PROJECT that is also within the CITY'S municipal boundaries, that signal system will be subject to the agreement entered into between the parties effective May 17, 2010, and entitled "Maintenance Agreement Between a Local Government Authority and the State of South Dakota for Traffic Signals on State Highway System," and assigned agreement number 613594 by the STATE and, any amendments to that agreement entered into by the parties now or in the future.

9. INDEMNIFICATION

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 solely from errors or omissions of the STATE, its officers, agents, or employees.

10. AMENDMENT

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

11. CERTIFICATION REGARDING LOBBYING

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

12. EMPLOYEE STATUS

Any officer, employee, or agent engaged in joint action under this Agreement will remain an employee with his or her agency during participation in joint action under this Agreement. Each agency will retain exclusive responsibility for its officers, agents, and employees while these officers, agents, and employees are engaged in joint action under this Agreement, including but not limited to responsibility for regular and overtime wages and salaries, unemployment benefits, workers' compensation coverage, health insurance, or other benefits, and liability coverage and indemnity, except as otherwise specifically provided in this Agreement.

13. 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 Mayor as the CITY'S authorized representative is attached to this Agreement as Exhibit B.

By signature of their representatives below, each party certifies that approval of this Agreement by ordinance, resolution, or other appropriate means has been obtained by that party's governing body or officer pursuant to SDCL § 1-24-3 and § 1-24-6.

City of Rapid City, South Dakota

By: __________________________________________

Its: Mayor

Date: __________________________________________

Attest:

City Auditor/Clerk

(CITY SEAL)

State of South Dakota
Department of Transportation

By: __________________________________________

Its: Secretary

Date: __________________________________________

Approved as to Form:

Special Assistant, Attorney General

Page 4 of 4
PLAT OF LOT PE1 IN LOT 42R, LOT PE1 IN LOT K2-A AND LOT PE1 IN LOT K2-B


PENNINGTON COUNTY, SOUTH DAKOTA
Showing permanent easements to be acquired for highway purposes for construction of Project IM 09002(112)59
Scale: 1 inch = 20 feet

LEGEND

= existing right of way
= found corner
= found corner (not used)
= set corner
All monumentation will be set upon project completion

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RAPID CITY

101' North Maple Avenue

W 1/4 Cor.
30-3-4
N 639452.19
E 1212562.09

Lot PE1 - Lot K2-B containing 0.04 ac
more or less

Lot PE1 - Lot K2-A containing 0.26 ac
more or less

Lot PE1 - Lot 42R containing 0.13 ac
5692 sq ft.
more or less

Present Interstate Hwy. 90

SURVEYOR’S CERTIFICATE

I, JONATHAN J. NEILSON, Registered Land Surveyor, in and for the State of South Dakota, do hereby certify that as ordered by the South Dakota Department of Transportation the parcel of land as shown on this plat has been surveyed at my direction and under my control, and such parcel of land shall be transferred herein by the lot number designated herein. The location and dimensions of the parcel are shown on this plat.

In witness whereof, I have set my hand and seal this ______ day of _______ A.D., 20___

Registered Land Surveyor
Registration No. 559

OFFICE OF REGISTER OF DEEDS

County: 55
Filed for record the ______ day of _______ A.D., 20___ at ______ M., and recorded in Books of Plats ______ on Page ______

Register of Deeds by Deputy

6568