Rapid City Council members,

A Joint Powers Agreement between the City of Rapid City and South Dakota Game, Fish and Parks was presented at the August 30th Public Works Committee. Parks and Recreation seeks to enter into this agreement so the City may receive funding toward Project PR20-6176 Canyon Lake Pond Walls Reconstruction, a project that is both necessary to improve public safety and exciting for our staff and project consultant. This item was approved at the September 6th Council meeting.

The item before you at this meeting is our department seeking authority to advertise for this project. The bid opening will be October 11th, 2022. In order to move the project forward expeditiously, Parks and Recreation is requesting approval of the Advertising Authority for this project at the September 19th Council meeting. There is a chance the Joint Powers Agreement will be signed by that time, but it has not been at the time of writing this memo. Should the City receive the executed contract before September 16th, we will replace this memo in the agenda attachments with the signed Joint Powers Agreement.

Parks and Recreation has approximately $770,000 in funding available. Game, Fish and Parks has agreed, upon the signing of the contract, to pay directly or reimburse the City up to $388,000 as indicated on the Request for Advertising Authority under Appropriation Data.

Thank you for your consideration,

Melissa Petersen, Landscape Designer

Attached:
Joint Powers Agreement between South Dakota Department of Game, Fish and Parks and City of Rapid City
JOINT POWERS AGREEMENT
BETWEEN
SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS
AND
CITY OF RAPID CITY

1. PURPOSE

To define the relationship between the South Dakota Department of Game, Fish and Parks (GFP) and the City of Rapid City (CITY) on issues relating to the reconstruction of the west series of ponds and improving fishing access in Canyon Lake Park, including accommodation of American with Disabilities Act (ADA) accessible fishing areas, henceforth referred as the PROJECT, in Canyon Lake Park, located in Rapid City, Pennington County, South Dakota.

2. GOAL

It is the mutual goal of GFP and the CITY to increase angling opportunity and access in the City of Rapid City on the ponds of Canyon Lake Park for the citizens of the State and its visitors.

3. AGREEMENT

This AGREEMENT between GFP and the CITY shall become effective upon the last date of signature. Upon 30 days written notice, this AGREEMENT may also be terminated by the mutual written agreement of the CITY and GFP.

I. General Provisions

1. The CITY will provide design, execute the design and re-construction of the west ponds in Canyon Lake Park, which includes improved ADA access and construction of a storm water detention pond near the north parking lot.

2. The CITY will act as the lead agency for the purposes of permitting, contracting, and construction oversight.

3. The TOTAL approved project cost for the construction of said PROJECT is $750,000. The CITY will provide $362,000 towards the PROJECT, while GFP will provide the remaining cost up to $388,000 using state Habitat Stamp funds allocated to the department.

4. The CITY will pay $362,000 in construction invoices submitted to it by the contractor(s). The CITY will submit invoices received by the City for the costs of construction related to improving fishing access and habitat to GFP and GFP will pay those invoices, up to $388,000. If GFP does not pay the invoices in a timely fashion, CITY reserves the right to pay the invoices and be reimbursed by GFP for the costs, up to $388,000.

5. After the CITY has paid $362,000 in construction costs and GFP has paid $388,000 in construction costs, the CITY will pay any further construction costs towards the PROJECT.

6. The CITY will replace existing stone walls and install cast-in-place walls or walls of suitable construction materials.
7. The CITY will excavate ponds to a depth of up to 72 inches, creating ponds with a finished volume increased to approximately 72,000 CF.

8. The CITY will install an access bridge over the pond, increasing ease of fishing access to all shores of the west ponds.

9. The PROJECT will be completed by May of 2023, as weather allows.

10. This AGREEMENT will remain in force throughout the useful life of the PROJECT.

11. The PROJECT will be maintained and preserved from willful destruction by the CITY during its minimum useful life. Maintenance will include, but is not limited to:
   a. Routine trash removal
   b. Routine mowing and weed control
   c. Routine maintenance of the ponds

12. The CITY and GFP agree to allow free, unrestricted, public access to all components of this PROJECT for the life of the development.

13. The CITY agrees that equipment and materials purchased, provided, or cost shared by the GFP cannot be sold, traded, or otherwise disposed of without written authorization from the GFP. This does not include disposal of materials and equipment relative to maintenance or construction of the PROJECT.

14. The CITY agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), and in accordance with Title VI of the Civil Rights Act of 1964, no person in the United States shall, on the grounds of race, color, or national origin, be otherwise subjected to discrimination under any program or activity for which the CITY receives federal financial assistance and will immediately take any measures necessary to effectuate this AGREEMENT.

15. CITY agrees to grant the GFP, Department of the Interior, the US Fish and Wildlife Service, or any of their duly authorized representatives, access to any documents, paper, and records of the CITY which are directly pertinent to this AGREEMENT for the purpose of making audit, examination, excerpts, and transcriptions.

16. In the event that the development is abandoned, destroyed or irreparably damaged under authority of the CITY before the end of its useful life due to negligence or failure to maintain, the CITY will reimburse the STATE 100% of the remaining amortized value of the development. This does not include damages to the PROJECT that are determined to be acts of God.

17. The CITY agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of performing services under this AGREEMENT. This section does not require the CITY to be responsible for or defend against claims or damages arising solely from acts or omissions of the GFP, its officers, agents or employees, and the GFP agrees to hold harmless and indemnify the CITY, its officers, agents and employees, from and against any and all actions, suits, damages, liabilities, or other proceedings which may arise as a result of the GFP’s acts or omissions.
18. Nothing in this AGREEMENT will be construed as limiting or affecting in any way the authority or legal responsibility of the GFP or CITY, or as binding any party to this AGREEMENT to perform beyond the respective authority of each.

19. The CITY will comply with all federal, state, and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this AGREEMENT, and will be solely responsible for obtaining current information on such requirements.

II. Agreement Conditions

1. This AGREEMENT may depend upon the continued availability of appropriated funds and expenditure authority from the GFP Commission for the purposes contemplated herein. In the event it becomes necessary that the GFP Commission appropriates funds and grants expenditure authority for the purposes contemplated herein but fails to do so, this AGREEMENT may be terminated by GFP.

2. The parties shall negotiate in good faith the terms of any agreement that is determined to be necessary or desirable to carry out the terms of this AGREEMENT.

3. Time is of the essence of this AGREEMENT and all its covenants, terms, conditions, and provisions.

4. This AGREEMENT and the covenants herein contained shall inure to the benefit of and be obligatory upon the legal representatives, successors in interest, and assigns of the respective parties hereto.

5. The parties declare that no specific entity as contemplated in SDCL 1-24-4(2) is being created to implement this AGREEMENT, and that the cooperative undertaking herein described shall be administered by the Director of the Division of Wildlife for GFP and the CITY or their authorized designees.

6. All notices or other communications hereunder shall be in writing and shall be deemed given when delivered, and if delivered by mail, shall be sent by first class, postage prepaid, to the parties at the following addresses:

   CITY:  City of Rapid City
          300 6th Street
          Rapid City, SD 57701

   GFP:   S.D. Department of Game, Fish and Parks
          523 E. Capital Avenue
          Pierre, SD 57501
          Attn:  Director, Division of Wildlife

   The parties, by notice given hereunder, may designate any further or different methods of notification and addresses to which notices and communications shall be provided.

7. In the event that any court of competent jurisdiction shall hold any provisions of this AGREEMENT unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.
8. This AGREEMENT is intended to only govern the rights and interests of the parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at any low by any third party in any manners, civil or criminal.

9. The parties acknowledge that a true copy of this AGREEMENT will be filed with the Office of the Attorney General and the Legislative Research Council within fourteen (14) days of the execution hereof, as required by low.

10. By the signature of their representative below, GFP and the CITY certify that approval of this AGREEMENT by ordinance, resolution or other appropriate means has been obtained by that governmental body’s governing body or officer pursuant to SDCL 1-24-3 and 1-24-6 and that the representative is authorized to sign on the party’s behalf. A copy of any authorizing resolution or ordinance is attached to this AGREEMENT and incorporated herein by reference.

IN WITNESS WHEREOF, the duly authorized officers of the parties hereto have executed this AGREEMENT on the dates shown with their respective signatures.

CITY OF RAPID CITY

_____________________________  ____________
Steve Allender, Mayor   Date

ATTEST:

_______________________  _________
Pauline Sumption   Date
Finance Director

STATE OF SOUTH DAKOTA
DEPARTMENT OF GAME, FISH AND PARKS

______________________________
Signature

______________________________
Name

______________________________
Title

______________________________
Date