

AGREEMENT

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

BACKGROUND:

1. Rapid City, Pierre, & Eastern Railroad, Inc., will upgrade the one (1) track public highway-rail grade crossing, DOT 190258N, located on City right-of-way on Saint Patrick Street in the city of Rapid City, South Dakota, with the installation of new highway-rail grade crossing signals with gates, bungalow, and associated signal material.
2. The State is responsible to assure the Federal Highway Administration that federal aid requirements are met in order to receive federal participation in adjustment costs.

THE STATE AND THE CITY MUTUALLY AGREE AS FOLLOWS:

1. The State will notify Rapid City, Pierre & Eastern Railroad, Inc. (RCPE), the owner of the railroad, and will negotiate agreements as necessary for the City for new flashing signals with gates.
2. The City will share in ten percent (10%) of the total project costs. The State will authorize the remaining ninety percent (90%) of the federal project costs for the signal upgrades from funds available under Section 130 of Title 23, United States Code.
3. The estimated cost of work to be performed by RCPE for the signal installation is Four Hundred Ninety-Seven Thousand One Hundred Twenty-Three Dollars (\$497,123.00). The estimated costs for construction engineering performed by the State is Five Hundred Dollars (\$500.00). The estimated ten percent (10%) City share is Forty- Nine Thousand Seven Hundred Sixty-Two Dollars and Thirty Cents (\$49,762.30). The City will pay the State for the City's ten percent (10%) share of the actual project costs upon billing by the State, within thirty (30) days of receipt of an invoice submitted by the State.
4. The City will maintain the roadway at said highway-rail grade crossing.
5. The Area Engineer responsible for the project is Rapid City Area Engineer Mike Carlson, South Dakota Department of Transportation, PO Box 1970, Rapid City, South Dakota 57709-1970, telephone 605-394-2248.

6. The City will indemnify the State, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceedings that may arise as the 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 State, its officers, agents, or employees.
7. 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 the City's behalf 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 must require 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 all subrecipients must 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.

8. **CERTIFICATION OF NO PROHIBITED STATE LEGISLATOR INTEREST:**

The City (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to this Agreement. By signing this Agreement, the City hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

9. The City has designated its Mayor as the City's authorized representative and has empowered the Mayor with the authority to sign this Agreement on behalf of the City. A copy of the City's Commission or Council minutes or resolution authorizing the execution of this Agreement by the Mayor as the City's authorized representative is attached to this Agreement as **Exhibit A**.

[Signature page follows.]

This Agreement is binding upon the signatories not as individuals but solely in their capacities as officials of their respective organizations and acknowledges proper action of the State and the City to enter into same.

City of Rapid City, South Dakota

State of South Dakota
Department of Transportation

By: _____

By: _____

Its: Mayor

Its: Director, Division of Planning and Engineering

Date: _____

Date: _____

Attest:

Approved as to Form:

City Auditor/Clerk

/s/ Dustin W. DeBoer

Special Assistant Attorney General

(CITY SEAL)