

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. The City wants to rehabilitate the one (1) track highway-rail grade crossing, DOT 190137R, located on City right-of-way on Lacrosse Street in the city of Rapid City, South Dakota, with the installation of one hundred eight feet (108') of precast concrete crossing surface material in compliance with federal aid requirements; and
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., (RCP&E), the owner of the railroad, and will negotiate an agreement as necessary for the City for the rehabilitation of the crossing surface.
2. The City will provide the City's ten percent (10%) share of the total project cost of the above referenced highway-rail project through a combination of City funds and the labor and materials provided by the City for approach work, sidewalk work, and traffic control. The State will authorize the remaining ninety percent (90%) of the total project cost from funds available under Section 130 of Title 23, United States Code.
3. The City may bill project costs incurred through the City's labor and materials, as indicated in Section 2 above, to the State upon completion of the City's portion of the work. The City will provide to the State proper documentation of the labor and material costs incurred. The State will credit the City's project costs so incurred and as found eligible by an audit performed by the State towards the City's ten percent (10%) share of the project. If the City's project costs incurred are more than the City's ten percent (10%) share of the total project cost, the State will provide a check to the City for the City's costs incurred in excess of the City's ten percent (10%) share of

the total project cost. If the City's project costs incurred are less than the City's ten percent (10%) share of the total project cost, the State will bill the City for the difference.

4. In order to receive credit for the City's labor and materials as described in Section 2 above, the City will provide the following information to the State upon completion of the services:
 - A. The City will provide a daily labor record, containing the name of the person providing the service, dates the person worked, number of hours worked, the project number, and a description of the type of work performed. A sample form of the daily labor records is attached to this Agreement as Exhibit "B."
 - B. The City will provide a weekly labor record containing the name of the person providing the service, the gross hours worked, the regular hours worked, the overtime hours worked, the pay rate for both regular hours and overtime hours, the dates the person worked, a description of the type of work performed, and the project number. A sample form of the weekly labor record is attached to this Agreement as Exhibit "C."
 - C. The City will provide a daily equipment record containing a description of the equipment used, the name of the person that operated the equipment, the hours worked, the regular hours, the overtime hours, the standby hours, rate of the cost to use the equipment, the total amount of the donated equipment use, the project number, the dates the equipment was used, and the type of work done by the equipment. A sample form of the daily equipment record is attached to this Agreement as Exhibit "D."
 - D. The City will provide a daily materials record containing a description of the material, the quantity of the materials, an invoice for the purchase of the materials or an affidavit if the material was from previous stock, the cost per each item used, the total amount of the donated materials, the project number, the date the materials were used, and the type of work for which the materials were used. A sample form of the daily materials record is attached to this Agreement as Exhibit "E."
 - E. The City is not required to use the forms provided as exhibits but must provide the information contained in the forms.
 - F. The City will calculate hourly rates for services as follows:
 - a. The City should base the value of City staff time on the staff person's base hourly wage, not including benefits or other added pay.
 - b. The value of equipment will be the City's standard equipment rate or the standard hourly rental rate at a local equipment rental establishment.
 - c. The City will provide receipts or proof of cost for fuel and other items for actual cost credit.
4. The estimated cost of the various items of work to be performed by the City under this Agreement is \$22,270.00. The estimated cost of work to be performed by RCP&E for the rehabilitation of the

crossing surface is \$36,374.00. The estimated cost for construction engineering performed by the State is \$1,000.00. The total estimated project cost is \$59,644.00. The estimated ten percent (10%) City match is \$5,964.40.

5. The City will provide for the approach work, sidewalk work, and traffic control as shown in the estimate attached to this Agreement as Exhibit "A."
6. The City will complete the City's work in a timely manner. Within six (6) months following rehabilitation of the crossing surface and the City work, the City will provide a final and complete billing of all reimbursable project costs incurred and required project records specified in this Agreement.
7. The City will send all billings for the City's project costs to the Rapid City Area Engineer Mike Carlson, South Dakota Department of Transportation, PO Box 1970, Rapid City, South Dakota 57709-1970, telephone 605-394-2248.
8. The City will retain all records and accounts necessary to support project costs claimed under this Agreement and will make these records and accounts available for audit performed by the State or the federal government for a period of three (3) years from the date of final payment has been received and all other pending matters are closed.
9. The City may not use subcontractors to perform the services described in this Agreement without the State's express prior written consent. The City will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The City will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. Any existing continuing contract, under which the City now has certain work performed regularly, will be considered to conform to the requirements of this Section.
10. The City will maintain the approaches and sidewalks at said highway-rail grade crossing.
11. The City will notify the Rapid City Area Engineer Mike Carlson, South Dakota Department of Transportation, PO Box 1970, Rapid City, South Dakota 57709-1970, telephone 605-394-2248, when commencing, discontinuing, resuming, and upon completion of the work.
12. The City will not begin any work not covered by Exhibit "A" which increases the amount of the estimate without first notifying the State and obtaining the State's prior written approval that the

work is necessary and eligible. The City will not exceed the estimate unless one of the two following conditions is met:

- a. The State may allow an increase in the cost estimate when a change in construction plans is authorized by an approved Change Order issued by the State before such work is begun.
 - b. The State may allow a minor increase in the estimated cost eligible for reimbursement after completion of the work when such increase is adequately supported by detailed billing and sufficient explanation. A final Change Order, when approved, will place the increase in line for audit and payment.
13. 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.
14. 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.

15. 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 "F."

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: Project Development Engineer

Date: _____

Date: _____

Attest:

City Auditor/Clerk

(CITY SEAL)

LACROSSE RAILROAD CROSSING ESTIMATE

	<i>Item</i>	<i>Unit</i>	<i>Quantity</i>	<i>Unit Cost</i>	<i>Total Cost</i>
1	SAW AND REMOVE PAVEMENT	SY	85.00	\$ 25.00	\$ 2,125.00
2	REMOVE CURB & GUTTER	LF	35.00	\$ 13.00	\$ 455.00
3	REMOVE CONCRETE SIDEWALK	SF	180.00	\$ 10.00	\$ 1,800.00
4	INSTALL 4" SIDEWALK	SF	180.00	\$ 10.00	\$ 1,800.00
5	DETECTABLE WARNING PANEL	SF	40.00	\$ 75.00	\$ 3,000.00
6	INSTALL CURB & GUTTER	LF	50.00	\$ 40.00	\$ 2,000.00
7	BASE COURSE	TN	30.00	\$ 28.00	\$ 840.00
8	A/C PAVING	TN	25.00	\$ 200.00	\$ 5,000.00
9	TRAFFIC CONTROL, MISC.	LS	1.00	\$ 4,000.00	\$ 4,000.00
10	INCIDENTAL WORK	LS	1.00	\$ 1,250.00	\$ 1,250.00
TOTAL					\$ 22,270.00

**HIGHWAY-RAIL SAFETY PROGRAM
IN KIND MATCH
DAILY LABOR RECORD**

Project No: _____ PCN: _____ Date: _____

Type of Work: _____

Name	Start	Stop	Start	Stop	Start	Stop	Total Hours

City of _____, South Dakota

By: _____

Its: Finance Officer

Date: _____

**HIGHWAY-RAIL SAFETY PROGRAM
IN KIND MATCH
DAILY MATERIALS RECORD**

Project No: _____ PCN: _____ Date: _____

Type of Work: _____

Type	Quantity	Invoice (Purchased) Affidavit (From Stock)	Rate	Amount
TOTALS				

City of _____, South Dakota

By: _____

Its: Finance Officer

Date: _____