URBAN SURFACE TRANSPORTATION PROGRAM FUNDING AND
JOIN POWERS
AGREEMENT
BETWEEN
DEPARTMENT OF TRANSPORTATION
AND
CITY OF RAPID CITY FOR LETTING AND CONSTRUCTION OF PROJECT NH 0044(00)45 PCN 0515
AND P 1774(00)6 PCN 02SF

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 over 2,500 for purposes of this Agreement.

This Agreement supersedes and nullifies the agreement entitled "Urban Surface Transportation Program Funding Agreement Between Department of Transportation and City of Rapid City for Letting and Construction of Project P 1774(00)6 PCN 02SF and P 0044(190)45 PCN 0515" which was executed by the CITY on October 6, 2014, and by the STATE on October 29, 2014, and assigned Agreement Number 715466 by the STATE. Said Agreement Number 715466 is deemed null and void and of no force and effect.

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 PROJECTS

The STATE and the CITY concur in the proposal for the new construction or improvement of streets identified by South Dakota Construction Project Numbers NH 0044(00)45, PCN 0515, referred to as the "STATE PROJECT" and P 1774(00)6, PCN 02SF, referred to in this Agreement as the "CITY STREET PROJECT." The STATE PROJECT and the CITY STREET PROJECT will be referred to collectively in this Agreement as the "HIGHWAY PROJECTS." The STATE PROJECT consists of intersection improvements located at the intersection of South Dakota Highway 44 (Omaha Street) and East Boulevard in Rapid City, South Dakota. The CITY STREET PROJECT consists of urban reconstruction located at East Boulevard and East North Street from St. Joseph Street north and east to Herman Street in Rapid City, South Dakota.

3. PLAN DEVELOPMENT FOR THE HIGHWAY PROJECTS

The STATE will design and prepare the cost estimate for the STATE PROJECT. The CITY will design and prepare the cost estimate for the CITY STREET PROJECT. The STATE will review the plans and cost estimate generated by the CITY for the CITY STREET PROJECT and the CITY will incorporate any of the STATE'S proposed revisions into the final plans and cost estimate. The plans for the HIGHWAY PROJECTS will be prepared in the STATE'S design and bid-letting format and will be subject to the 2015 edition of the STATE's Standard Specifications for Roads and Bridges, as modified by any supplemental specifications and special provisions required by the STATE. The parties will incorporate the plans for the STATE PROJECT and the CITY STREET PROJECT into a single plan set.

4. CONTRACT PROCUREMENT FOR THE HIGHWAY PROJECTS

The STATE will advertise, let to contract, and award a single contract for the HIGHWAY PROJECTS. The HIGHWAY PROJECTS will be let to bid no later than federal fiscal year 2018. The STATE will be
the contracting party for the HIGHWAY PROJECTS and will make all payments under the contract for the HIGHWAY PROJECTS directly to the contractor.

5. CONTRACT ADMINISTRATION AND CONSTRUCTION COSTS FOR THE HIGHWAY PROJECTS

The STATE will perform all construction administration for the HIGHWAY PROJECTS, but any change orders for the CITY STREET PROJECT will require approval by the CITY. The STATE will bill the CITY for all construction administration costs incurred for the CITY STREET PROJECT. The STATE will issue billings for this work after construction of the HIGHWAY PROJECTS is 80% and 100% complete. The parties agree that the construction administration costs for the CITY STREET PROJECT are estimated at Four Hundred Thousand Dollars ($400,000.00), but the CITY will reimburse the STATE for the actual costs incurred. The CITY will reimburse the STATE for these costs within thirty (30) days of receipt of billings. The CITY will also reimburse the STATE for all construction costs for the CITY STREET PROJECT. The STATE will bill the CITY for these construction costs on a monthly basis and the CITY will pay the STATE within thirty (30) days of receipt of billings.

6. COMBINATION LETTING

A. The STATE will let the CITY’S water and sewer project in combination with the HIGHWAY PROJECTS. The CITY’S water and sewer project is designated as CITY Project Number 14-2170, PCN X03M, and referred to in this Agreement as the “CITY UTILITY PROJECT.” The CITY UTILITY PROJECT is located on East Boulevard and East North Street from St. Joseph Street north and east to Herman Street in Rapid City and the Intersection of South Dakota Highway 44 (Omaha Street) and East Boulevard in Rapid City.

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

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

D. Upon concurrence by the CITY and approval by the State Transportation Commission, the STATE will award the contracts for both the HIGHWAY PROJECTS and the CITY UTILITY PROJECT; however, the CITY will be the contracting party for the CITY UTILITY PROJECT. The CITY will make all payments under the contract for the CITY UTILITY PROJECT directly to the contractor. The CITY’S estimated cost for the CITY UTILITY PROJECT is Three Million Eight Hundred Eighty Thousand Dollars ($3,880,000.00). Actual cost will be based upon bids and final quantities.

E. Except as set forth in section 6.F., if applicable, the CITY will provide for purposes of final acceptance by the STATE, all construction engineering for the CITY UTILITY PROJECT, including all construction supervision and inspection, physical testing, measuring in-place quantities, and documenting locations for as-built records.

F. The STATE will provide inspection of the trench backfill, conduct trench compaction testing, and conduct moisture and density testing, for the top of the utility trench on that portion of the CITY UTILITY PROJECT that impacts the HIGHWAY PROJECTS. The top of the utility trench is defined as two feet (2') below the bottom of the undercut. The STATE will provide the CITY with a copy of each of these test reports. The CITY will pay the STATE for the cost of testing and inspections. The STATE will bill the CITY for testing and inspections based on the actual number of locations.
The cost of each moisture test will be Twenty-five Dollars ($25.00) and the cost of each density test will be 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 within thirty (30) days of receipt of billings from the STATE.

7. ENVIRONMENTAL CLEARANCES AND CERTIFICATIONS

The STATE will obtain any necessary environmental clearances for the HIGHWAY PROJECTS. The CITY will obtain any necessary environmental clearances for the CITY UTILITY PROJECT.

8. CERTIFICATIONS

The STATE will acquire any necessary real property interests and right-of-way certifications for STATE PROJECT. The STATE will also obtain encroachment and utility certifications for STATE PROJECT. The CITY will acquire any necessary real property interests and right-of-way certifications for the CITY STREET PROJECT and the CITY UTILITY PROJECT. The CITY will also obtain railroad notification, encroachment and utility certifications for the CITY STREET PROJECT and the CITY UTILITY PROJECT.

9. ENCROACHMENTS

The CITY will enforce the following prohibitions against encroachments on the state trunk highway system within the CITY'S jurisdictional limits:

A. All encroachments on or above the right-of-way will be prohibited unless specifically permitted by the STATE.

B. The use of the right-of-way by owners or lessees of abutting property for the storage of vehicles, placement of portable signs, or other private use will be prohibited.

C. Where the highway passes through established business districts and the buildings are at the property line and are continuous or very closely spaced, encroachments overhanging the right-of-way will be prohibited except under the following conditions:

i. Awnings, canopies, marquees, and similar installations on buildings will be permitted to remain in place until such time that they become functionally or structurally obsolete, provided that the edge of such encroachment be not less than three feet (3') back from the face of the curb;

ii. Advertising or other similar signs which are less than three feet (3') back from the face of the curb and are supported wholly from the front of the building will be permitted to remain in place until such time that they become functionally or structurally obsolete, provided that the bottom of such encroachment be not less than fourteen and a half feet (14.5') above the curb elevation;

iii. The replacement of obsolete or the installation of new awnings, canopies, marquees, advertising signs, or similar installations supported wholly from the building will be permitted provided that no part of the encroachment is less than three feet (3') back from the face of the curb and eight feet (8') above the curb elevation; and

iv. In the event the encroachments referred to in subparagraphs C. i., ii., and iii., above, by reason of color or placement, obscure or in any way detract from the effectiveness of the highway signs, traffic signals, pedestrian safety, or interfere with the free or safe flow of the traffic, the CITY will cause the removal of such encroachments or take appropriate measures to improve highway signs or traffic signals and traffic safety.
v. The provisions of subparagraphs C. i., ii., iii., and iv., above, do not apply to isolated business or commercial buildings in outlying areas.

vi. Where there are encroachments of long standing which will in no way impair the highway operation or interfere with the free and safe flow of traffic and, in the opinion of the STATE, the immediate removal would impose unreasonable hardship, the STATE may, at its discretion, permit the encroachment to remain for a specific period. This permission is subject to revocation or extension at the STATE'S discretion. (Each existing encroachment located within the STATE PROJECT, if any, will be described in an attached Exhibit A.)

10. UTILITIES

The CITY will control the location and maintenance of utilities within the CITY'S right-of-way so as not to impair the free flow of traffic and to provide maximum safety to the traveling public.

11. SPEED LIMITS

The CITY will not designate a speed limit on the state trunk highway system within the CITY'S jurisdictional limits. The CITY will request any change in the speed limit and the STATE will consider such change, after appropriate engineering and traffic investigations have been made.

12. PARKING

The CITY will enforce the prohibition of all parking, standing, and stopping in the traffic lanes on the state trunk highway system within the CITY'S jurisdictional limits in accordance with South Dakota State Codified Laws Chapter 32-30. The CITY will establish parking prohibitions along the CITY'S streets within the HIGHWAY PROJECTS if parking becomes a safety concern or hindrance.

The CITY further agrees where curbs are not installed and are not to be installed under the proposed improvement, the curbs, when proposed to be constructed in the future, will be at a lateral distance approved by the STATE. The CITY will be responsible for installation and financial obligations of any future constructed curbs.

13. ACCESS

The CITY will not allow access to the state trunk highway system within the CITY'S jurisdictional limits without the STATE'S or the STATE'S authorized representative's prior written approval.

14. LIGHTING

When a roadway lighting system or flashing beacon system is installed on any portion of the state trunk highway system within the CITY'S jurisdictional limits, the CITY will provide electrical power necessary to operate the system and will provide all necessary maintenance and replacements, in kind, of all parts, poles, and apparatus of said system, to ensure the continuing operation of said system until such time as the parties to this Agreement will agree to discontinue the operation of the said system. The CITY will be responsible for replacement of poles which may be damaged due to weather or by vehicle crashes.

Prior to changing the operation parameters of any flashing beacon on a state highway route, including, but not limited to, flash rate, light intensity, number and location of displays and hours or days of operation, from those originally set or currently approved by the STATE, the CITY will submit, in writing, the necessary data and proposed changes to the Department of Transportation Area Office. The CITY will not make any changes without the approval of that office.

The CITY will obtain approval from the Department of Transportation Area Office prior to attachment of banners, signs, or other appurtenances to the light poles.
15. SIGNALS

If a signal system is installed on any portion of the STATE PROJECT located within the CITY’S municipal boundaries, that signal system will be subject to the terms of the agreement entered into between the parties effective May 17, 2010, 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.

16. GENERAL CITY MAINTENANCE

The CITY will be responsible for providing timely maintenance of the STATE PROJECT and the remaining state trunk highway system within the municipal boundaries of the CITY and any future expansions of the CITY’S municipal boundaries. The CITY’S maintenance responsibilities will include, but are not limited to:

A. Debris and litter removal;
B. Maintenance, repair, and replacement of sidewalks and curb ramps, including detectable warnings, in accordance with the Americans with Disabilities Act;
C. Snow and ice removal from roadways and sidewalks, if the CITY’S population is deemed to be 2500 or more;
D. Snow and ice removal from sidewalks and parking areas, if the CITY’S population is deemed to be less than 2500, with the STATE having responsibility for plowing snow and ice from driving lanes and shoulders;
E. Any necessary hauling of snow, including snow plowed by the STATE from driving lanes and shoulders;
F. Roadway sweeping, except that the STATE will be responsible for roadway sweeping if the CITY’S population is deemed to be less than 2500;
G. Maintenance of rural section drainage;
H. Cleaning, repair, and replacement of storm sewers and drop inlets, including any frames and grates, except that the STATE will be responsible for replacement of storm sewers and drop inlets, including any frames and grates, if the CITY’S population is deemed to be less than 2500;
I. Vegetation and weed management of boulevards, split medians, raised medians, and other areas where undesirable vegetation exists; All right-of-way vegetation and weed management within curb and gutter sections;
J. Maintenance of stamped or colored concrete, trees, flowers, decorative plants, and watering systems in boulevards, split medians, raised medians, and other areas within the right-of-way; and
K. All repairs or maintenance of the STATE’S right-of-way, including the driving surface, related to or necessitated by the CITY’S installation, repair, or maintenance of utilities.

17. PAVEMENT MARKING MAINTENANCE

If the CITY is deemed to have a population of 2500 or more, the CITY will be responsible for maintaining the applicable pavement markings from the following list, at the original location on the STATE PROJECT and on the state trunk highway system, within the CITY’S municipal boundaries and any future expansions of the CITY’S municipal boundaries:

A. Stop and Yield lines;
B. Crosswalks;
C. Word message pavement markings, including but not limited to “PED XING,” “SCHOOL XING,” “LANE,” and “RXR”;
D. Parking space markings;
E. Speed measurement markings;
F. Curb marking; and
G. Accessibility parking space marking.

All pavement markings for which the CITY is responsible will be maintained in the same manner, dimensions, and locations as originally established by the STATE, so long as the same is in accordance with the most recent version of the federal Manual on Uniform Traffic Control Devices (MUTCD).

The STATE will maintain all other pavement markings on the state trunk highway system which are not identified above as a CITY responsibility. The parties understand and agree that if the CITY is deemed to have a population of less than 2500, the STATE will be responsible for all pavement markings on the state trunk highway system.

18. SIGN MAINTENANCE

If the CITY is deemed to have a population of 2500 or more, the CITY will be responsible for maintaining the following signs at the locations and on supports as originally installed on the STATE PROJECT and on the remaining state trunk highway system within the CITY'S municipal boundaries and any future expansions of the CITY'S municipal boundaries:

A. Stop signs (R1-1) on city routes approaching the state trunk highway system;
B. Yield signs (R1-2) on city routes approaching the state trunk highway system;
C. Parking, standing, and stopping signs (R7 and R8 series);
D. Truck route signing (R14-1 series);
E. Street name sign (D3-1);
F. Advance street name signs (D3-2);
G. Parking area sign (D4-1);
H. Park and ride sign (D4-2);
I. Evacuation route sign (EM-1);
J. Area closed signs (EM-2);
K. Traffic control point sign (EM-3);
L. Maintain top safe speed sign (EM-4);
M. Road (Area) use permit required for thru traffic sign (EM-5);
N. Emergency aid center signs (EM-6 series);
O. Shelter directional signs (EM-7 series); and
P. Dynamic engine brake signs.

All signs for which the CITY is responsible will be installed and thereafter maintained by the CITY in accordance with the most recent version of the federal MUTCD, unless otherwise directed by the STATE.

If the CITY is deemed to have a population of 2500 or more, the CITY will also be responsible for installation and maintenance of all Emergency Snow Route (R7-203) signs as deemed necessary on the STATE PROJECT and on the remaining state trunk highway system within the CITY'S municipal boundaries and any future expansions of the CITY'S municipal boundaries. The signs will be installed on steel supports that meet the requirements of National Cooperative Highway Research Program (NCHRP) 350. The locations of the signs must be approved by the STATE prior to installation. The CITY will keep an inventory of all signs installed and maintained by the CITY pursuant to this Agreement, and the CITY will provide a copy of said inventory to the STATE upon request.

The STATE will install and maintain all other signs on the state trunk highway system which are not identified above as a CITY responsibility. The parties understand and agree, however, if the CITY is deemed to have a population of less than 2500, the STATE will be responsible for all sign installation and maintenance on the state trunk highway system.
19. STATE REPAIRS – DRIVING SURFACE

The STATE will be responsible for repair of the driving surface for the STATE PROJECT and the remaining state trunk highway system within the CITY’S municipal boundaries. For sections of roadway with curb and gutter on opposite sides of the roadway, the STATE’S responsibility will extend from back of curb to back of curb. For sections of roadway with curb and gutter on only one side of the roadway, the STATE’S responsibility will extend from the back of any existing curb to the edge of the finished roadway. For sections of roadway with no curb and gutter, the STATE’S responsibility will extend from the edge of the finished roadway to the edge of the finished roadway. Surface repair work to be performed by the STATE will include joint sealing, joint repair, concrete pavement repair, repair of concrete curb and gutter, chip sealing, pothole repair, patching, crack sealing, and shoulder repairs. CITY will, however, be solely responsible for any work related to or necessitated by the CITY’S installation, repair, or maintenance of utilities.

20. TEMPORARY TRAFFIC CONTROL

The CITY will adhere to Part 6 of the federal MUTCD concerning temporary traffic control when completing maintenance work activities on the state trunk highway system.

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

22. 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.

23. 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.
24. **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.

25. 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:

[Signature]

Special Assistant Attorney General