AGREEMENT BETWEEN THE CITY OF RAPID CITY AND PENNINGTON COUNTY FOR THE RECONSTRUCTION OF DEADWOOD AVENUE CITY PROJECT NO. 17-2375

This Agreement is made by and between the City of Rapid City, a South Dakota municipal corporation of 300 Sixth Street, Rapid City, SD 57701, and Pennington County, a political subdivision of the State of South Dakota, of 130 Kansas City Street, Rapid City, SD 57701.

WHEREAS, a portion of Deadwood Avenue from the Meade County line south to its intersection with Tatanka Road is in need of repair; and

WHEREAS, the above described portion of Deadwood Avenue lies both within and outside of the city limits of Rapid City; and

WHEREAS, the parties have agreed to share the cost of the repairs in the interests of efficiency and economy; and

WHEREAS, the parties desire to reduce their agreements and understandings to writing.

NOW THEREFORE, it is agreed by the parties as follows:

1. **Recitals.** The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth as agreements of the parties.

2. **Cooperation.** City and County will participate on a joint Project to reconstruct Deadwood Avenue from Tatanka Road to the Meade County line, approximately 6,050 feet in City and approximately 2,900 feet in County, for a total Project length of approximately 8,950 feet.

3. **Professional Services.** City will hire a Consultant for design, bid and construction administration of the Project. The City will follow its currently adopted Technical Consultant Selection Procedure for Public Infrastructure. The County will participate in the selection process with a representative on the selection committee. The City will negotiate an agreement with the consultant selected. The scope and fee of the agreement will be reviewed by County for concurrence.

4. **Standards.** The Project shall be designed and constructed according to the City’s Standard Specifications for Public Works Construction and Infrastructure Design Criteria, as applicable. It is assumed that the minimum typical section to be used will match the typical section constructed by Meade County.

5. **Reviews.** County shall have the opportunity to review and provide comments on the design plans for work outside city limits. The City shall review and provide comments on the design plans for work within city limits.
6. **Rights-of-way.** City agrees to obtain all rights-of-way or easements necessary for the portion of the project within city limits. County agrees to obtain all rights-of-way or easements necessary for the portion of the project outside of city limits. The City or consultant will prepare all rights-of-way or easement documents to be recorded. City and County are each responsible for negotiations and preparation of tailored agreements as necessary to secure rights-of-way and easements. In the event a single property owner has property located in both the City and County then the City and County shall coordinate the acquisitions.

7. **Funding.** County and City agree to have sufficient funding available for professional services in 2018 and for professional services and construction in calendar year 2019. No federal funding shall be used for the Project. The parties have agreed to share funding of the project as follows:
   a. **Professional Services.** County will reimburse City at a rate of 33% for all work related to design, bidding, and construction administration. City may elect to have construction administration done by City staff in lieu of the consultant. In such case, County will reimburse City for 33% of its total actual costs of construction administration.
   b. **Construction.** County agrees to reimburse the City for 100% of the costs for work associated with the work outside city limits. The project will utilize two bid schedules to track city work and county work. County shall have the opportunity to concur with construction change orders for work outside city limits.

8. **Bidding.** City will bid the construction project with its standard forms and agreements. Separate bid schedules will be included for work within the city limits and work outside city limits. County shall have the right to concur in bid award for the Project. Award will be based on the lowest responsible total bid for the combined summation of the two bid schedules.

9. **Invoices.** City agrees to invoice County as follows:
   a. **Professional Services.** City shall invoice County upon completion of design and bidding services. Construction administration costs and any other remaining professional service costs will be invoiced upon project completion.
   b. **Construction.** City shall invoice County approximately once every three months following the start of construction. A final invoice will be sent to County within six months of final completion and acceptance of the Project.

10. **Designated Representatives.** The designated representatives of the parties for this Project shall be the City’s Public Works Director and the County’s Highway Superintendent, or the designee of either or both.

11. **Integration.** This Agreement and the agreements and documents referred to herein (including any exhibits and schedules incorporated herein) contain the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter hereof. This Agreement may only be amended by a written document duly executed by all parties.
12. **Third Parties.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein shall give or be construed to give any person or entity, other than the parties hereto, their respective successors, and permitted assigns, any legal or equitable rights hereunder.

13. **Counterparts.** This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

14. **Further Action.** The parties covenant and agree that each shall execute and deliver such further instruments or documents as shall be necessary or convenient to effectuate the purposes contemplated by this Agreement.

15. **Construction.** The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision. The parties agree that each party has reviewed this Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

16. **Severability.** The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement or the remainder of such section. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible.

17. **Choice of Law.** This Agreement shall be governed and construed in accordance with the laws of the state of South Dakota, without regard for its choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the state of South Dakota, without regard for its choice-of-law principles.

18. **Jurisdiction and Venue.** The parties hereto explicitly agree to submit to the personal jurisdiction of South Dakota state courts, and any dispute relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall be decided solely and exclusively by the Circuit Court located in Rapid City, South Dakota.

[Signature page follows]
Dated this _____ day of ______________, 2017.

CITY OF RAPID CITY

__________________________________________
Mayor

Attest

__________________________________________
Finance Officer

(seal)

Dated this 29 day of August, 2017.

PENNINGTON COUNTY

[Signature]
Highway Superintendent

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

[Signature] 8-25-17
Attorney  Date