

**STATE OF SOUTH DAKOTA
JOINT POWERS
MAINTENANCE, ENCROACHMENT, AND FINANCIAL AGREEMENT
AMONG
DEPARTMENT OF TRANSPORTATION,
CITY OF BROOKINGS,
AND
BROOKINGS MUNICIPAL UTILITY BOARD**

This Agreement is made by and among the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the "STATE"; the city of Brookings, South Dakota, referred to in this Agreement as the "CITY"; and the city of Brookings, South Dakota, acting by and through its Brookings Municipal Utility Board, referred to in this Agreement as "BMU." The parties acknowledge and agree the CITY'S population is deemed to be 23,895 for purposes of this Agreement.

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 PROJECT

The STATE and the CITY concur in the proposal for the new construction or improvement of streets identified by South Dakota Federal Aid Construction Project Number P-PH 0014(179)419 PCN 027B, referred to in this Agreement as the "STATE PROJECT." The STATE PROJECT is located on United States Highway 14 (US14), from Main Avenue to Medary Avenue and the intersection of US14 and 12th Avenue. The STATE PROJECT consists of urban grading, curb and gutter, storm sewer, traffic signal, ADA sidewalk, roadway lighting, and PCC surfacing.

3. CONTRACT PROCUREMENT

- A. The STATE will design, advertise, let to contract, award, and be the contracting party for the STATE PROJECT.
- B. As part of the STATE PROJECT and as requested by the CITY, the STATE will design the CITY'S storm sewer project along 9th Avenue for one-half (1/2) block. The CITY will reimburse the STATE a lump sum reimbursement of Forty-three Thousand Eight Hundred Sixty-one Dollars and Thirty-six Cents (\$43,861.36).
- C. As part of the STATE PROJECT and as requested by the CITY, the STATE will upgrade the standard storm sewer system located from Main Avenue to 6th Avenue. The CITY will reimburse the STATE a lump sum amount for the difference between the estimated cost of installing the STATE'S standard storm sewer and the estimated cost of installing the upgraded storm sewer. The CITY'S lump sum reimbursement to the STATE is One Hundred Twenty-four Thousand Forty-nine Dollars and Thirty-four Cents (\$124,049.34).
- D. As part of the STATE PROJECT and as requested by the CITY, the STATE will install decorative lighting in lieu of the STATE'S standard lighting. The CITY will reimburse the STATE for the difference between the estimated cost of installing the STATE'S standard lighting and the actual cost of installing the decorative lighting requested by the CITY. The CITY'S lump sum reimbursement to the STATE is estimated to be Three Hundred Sixty-nine Thousand Three Hundred Eighty-two Dollars and Eighty-six Cents (\$369,382.86).

E. The CITY will pay the STATE within thirty (30) days of receipt of billings from the STATE.

4. BANNERS, SIGNS, AND APPURTENANCES

A. The STATE will allow the CITY to attach banners, signs, or other appurtenances to the luminary poles on the STATE PROJECT. The maximum size banner that will be allowed by the STATE is eighteen inches (18") wide and thirty-six inches (36") high. The top of the banner will not be located more than fifteen feet (15') above the base of the luminary pole.

B. The CITY will reimburse the STATE for the actual cost for the extra footings for the luminaries in order to accommodate the banners and festoon outlets. The CITY'S lump sum reimbursement to the STATE for the extra footings for the luminaries to accommodate the banners and festoon outlets is included with the dollar amount listed in Paragraph 3.D.

5. COMBINATION LETTING

A. The STATE will let BMU'S water main/sewer project in combination with the STATE PROJECT. BMU'S project is designated as BMU Project Number WW2001 PCN X04Q, and referred to in this Agreement as the "BMU PROJECT." The BMU PROJECT is located on US14, from Main Avenue to Medary Avenue.

B. BMU will provide the STATE with all plans, specifications, contract provisions, and cost estimates for the BMU PROJECT. Each bidder will be required to submit separate bids covering the BMU PROJECT and the STATE PROJECT. Award of the contract will be to the one bidder based on the total combination bid for the two projects. The lowest responsible bid on the STATE PROJECT will be the basis for determining STATE and federal funds participation.

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

D. The STATE will award the contracts for the STATE PROJECT and BMU PROJECT; however, BMU will be the contracting party for the BMU PROJECT. BMU will make all payments under the contract for the BMU PROJECT directly to the contractor. BMU'S estimated cost for the BMU PROJECT is Five Hundred Thousand Dollars (\$500,000.00). Actual cost will be based upon bids and final quantities.

E. BMU will provide for purposes of final acceptance by the STATE all construction engineering for the BMU PROJECT, including all construction supervision and inspection, physical testing, measuring in-place quantities, and documenting locations for as-built records, including the inspection of the trench backfill as set forth in Paragraph 5.F. below.

F. BMU will provide inspection of the trench backfill, conduct trench compaction testing, and conduct moisture and density testing for the BMU PROJECT. BMU will conduct the testing in accordance with the South Dakota Department of Transportation Materials Manual and Specifications. BMU will provide the STATE with a copy of each test report for the BMU PROJECT. The STATE will conduct independent assurance testing to verify results are within established tolerances.

6. RESPONSIBILITY FOR MAINTENANCE, POLICING ENCROACHMENTS, AND OTHER ACTIVITIES

The CITY is responsible for policing encroachments, performing maintenance and repair activities, limiting access, enforcing parking prohibitions, and servicing lighting systems along the STATE PROJECT in accordance with the terms of the "Maintenance and Encroachment Agreement," executed on January 19, 2010, and assigned Agreement Number 713995 by the STATE, and any amendments to that agreement entered into by the parties now or in the future.

7. 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 December 28, 2010, and 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 613522 by the STATE, and any amendments to that agreement entered into by the parties now or in the future.

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

9. 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.

10. 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.

11. 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.

12. 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**.

13. BMU has designated its Board President as the BMU'S authorized representative and has empowered the Board President with the authority to sign this Agreement on behalf of BMU. A copy of the BMU'S minutes or resolution authorizing the execution of this Agreement by the Board President as the BMU'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 Brookings, South Dakota

State of South Dakota
Department of Transportation

By: _____

By: _____

Its: Mayor

Its: Secretary

Date: _____

Date: _____

Attest:

Approved as to Form:

City Auditor/Clerk

Special Assistant Attorney General

(CITY SEAL)

City of Brookings, South Dakota
Brookings Municipal Utility Board

By: _____

Its: Board President

Date: _____

Attest:

Secretary