



Department of Transportation

Office of Project Development

700 E Broadway Avenue

Pierre, South Dakota 57501-2586 605/773-3268

FAX: 605/773-6608

July 20, 2020

City of Tea
Dawn Murphy, Finance Officer
600 East 1st Street, PO Box 128
Tea, SD 57064

Dawn:

Attached is the agreement for the Maintenance and Encroachment for project State Project IM 0292(92)73 PCN 06X4. Once the Mayor has signed the agreement please return to me for final signatures and to be assigned a contract number. I will return one signed original to you for your files. Please note that **Page 3 Number 10** requests a copy of the minutes giving the Mayor permission to sign the agreement.

If you have any questions, please feel free to contact me anytime.

Thank you,

Marilyn Patterson
Project Development Office
Department of Transportation
700 East Broadway Avenue
Pierre, SD 57501
(605) 773-6642

**STATE OF SOUTH DAKOTA
JOINT POWERS
MAINTENANCE AND ENCROACHMENT AGREEMENT
BETWEEN
DEPARTMENT OF TRANSPORTATION
AND
CITY OF TEA**

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 Tea, South Dakota, referred to in this Agreement as the "CITY." The parties acknowledge and agree the CITY'S population is deemed to be 5,624 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. CITY PROJECT

- A. The CITY and the STATE concur in the proposal for the new construction or improvement of streets referred to in this Agreement as the "CITY PROJECT." The CITY PROJECT is located on County Highway 106 (CO 106) (271st Street), in Tea from the intersection of Heritage Parkway to the west end of the Exit 73 interchange (approximately 1.3 miles).
- B. The CITY PROJECT consists of urban reconstruction, PCC paving, storm sewer, water main, sanitary sewer, traffic signal, and lighting upgrades.

3. STATE PROJECT

The STATE wishes to construct an interchange improvement and traffic signal project designated as project number IM 0292(92)73 PCN 06X4, referred to in this Agreement as the "STATE PROJECT." The STATE PROJECT is located on Interstate 29 (I29), Exit 73 (Tea Exit).

4. CONTRACT PARTIES

- A. The CITY has hired a consulting firm to design the CITY PROJECT and will be the contracting party for the CITY PROJECT.
- B. The STATE has hired a consulting firm to design the STATE PROJECT and will be the contracting party for the STATE PROJECT.

5. COMBINATION LETTING

- A. The CITY will let the STATE PROJECT in combination with the CITY PROJECT. The bid proposals for the STATE PROJECT and the CITY PROJECT will include the STATE'S prequalification requirements for bidders.
- B. The STATE will provide the CITY with all plans, specifications, contract provisions, and cost estimates for the STATE PROJECT. Each bidder will be required to submit separate bids covering the STATE PROJECT and the CITY PROJECT. Award of the contract will be to the one bidder based on the total combination bid for the two projects.

- C. If the total low combination bid for the CITY PROJECT and the STATE PROJECT does not have, as part of that bid, the lowest bid on the CITY PROJECT, the STATE will pay to the CITY the difference between that portion of the successful combination bid attributable to the CITY PROJECT and the lowest bid on the CITY PROJECT. The STATE will pay the CITY within thirty (30) days of receipt of billing from the CITY.
- D. The CITY will award the contracts for both the CITY PROJECT and the STATE PROJECT. The STATE will make all payments under the contract for the STATE PROJECT directly to the contractor. The CITY will make all payments under the contract for the CITY PROJECT directly to the contractor. The STATE'S estimated cost for the STATE PROJECT is One Million Six Hundred Thousand Dollars (\$1,600,000.00). Actual costs for the STATE PROJECT and for the CITY PROJECT will be based upon bids and final quantities.
- E. The STATE will provide all construction engineering for the STATE PROJECT, including all construction supervision and inspection, physical testing, measuring in-place quantities, and documenting locations for as-built records. The CITY will provide all constructing engineering for the CITY PROJECT, including all construction supervision and inspection, physical testing, measuring in-place quantities, and documenting locations for as-built records.

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

7. 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.

8. 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.

9. 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.

10. 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.

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 Tea, South Dakota

State of South Dakota
Department of Transportation

By: _____

By: _____

Name: _____

Name: Darin P. Bergquist

Its: Mayor

Its: Secretary

Date: _____

Date: _____

Attest:

Approved as to Form:

City Auditor/Clerk

Special Assistant Attorney General

(CITY SEAL)