

City of Colton City Council
Special Session Meeting Agenda
Date: 02/19/2026 Time: 6:00 PM
Colton City Hall 309 E 4th St, Colton, SD, 57018

- 1) Call to order / Roll call:
- 2) Bunde Bunjer Evans Lyon Vande Voort Wochnick
 Pedersen Pilker
- 3) **Approve Agenda:** Special Session to review SD DOT Agreements.
- 4) **Public Time/Public Hearing:**
- 5) **Reports/Other Business:**
 - a. Review and approve an amendment to the SD DOT Community Access Agreement for 4th and 6th Streets, PCN 09P2. This agreement extends the agreement until April 16, 2027, and outlines the payment process to the city.
 - b. Review and approve SD DOT Joint Powers Maintenance and Encroachment Agreement regarding the work to be done on 4th St and Charles Ave. through Minnesota Ave.
- 6) **Adjourn/ Executive Session:**

AMENDMENT NUMBER 1
AGREEMENT NUMBER 718523

BACKGROUND:

1. On April 10, 2024, the State of South Dakota, acting by and through its Department of Transportation, referred to in this Amendment as the "STATE," and the city of Colton, South Dakota, referred to in this Amendment as the "CITY," entered into an Agreement entitled "Community Access Grant Agreement Between South Dakota Department of Transportation and City of Colton," which agreement referred to in this Amendment as "AGREEMENT," was signed by representatives of each party and assigned agreement number 718523 by the STATE; and;
2. The parties wish to amend the AGREEMENT to extend the term and to adjust the respective payment obligations.

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Paragraph 2. "TERM" of the AGREEMENT is amended to read as follows:

3. TERM

This Agreement will become effective on the date it is fully signed. The CIT will complete the work contemplated by this Agreement no later than April 16, 2027.

2. Paragraph 4.D. "FINANCING THE PROJECT" of the AGREEMENT is amended to read as follows:

4. FINANCING THE PROJECT

- A. Upon award of the contract, the STATE will issue payment to the CITY for seventy-five percent (75%) of the STATE'S SHARE of the eligible costs of construction for the PROJECT. Upon completion of the construction of the PROJECT, the CITY will provide the STATE with all construction change orders, pay estimates, and final close out documents, including a certification by a professional engineer that the PROJECT is complete and in conformance with the requirements of the contract. Upon receipt of all such documentation, the STATE will issue payment to the CITY for any remaining portion of the STATE'S SHARE of eligible construction costs. If the STATE'S share of eligible PROJECT construction costs is less than the funding advance made by the STATE, then the CITY will reimburse the STATE for the difference between the funding advance and the STATE'S SHARE of eligible PROJECT construction costs.
3. Except as specifically modified by this Amendment, all terms and conditions of the original AGREEMENT referred to above, together with any prior amendments to such AGREEMENT, will remain in full force and effect.
4. The SPONOSR has designated its Mayor as the CITY'S authorized representative and has empowered its 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 is attached to this Agreement as **Exhibit "A."**

(Signature page follows.)

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 CITY to enter into the same.

City of Colton, South Dakota

State of South Dakota
Department of Transportation

By: _____

By: _____

Printed Name: _____

Printed Name: Joanne Hight

Its: Mayor

Its: Program Manager, Office of Administration

Date: _____

Date: _____

Attest:

Approved as to Form:

By: _____

/s/ Dustin W. DeBoer
Special Assistant Attorney General

Printed Name: _____
City Finance Officer

(CITY SEAL)

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

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 Colton, South Dakota, referred to in this Agreement as the "CITY." The parties acknowledge and agree the CITY'S population is deemed to be 688 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.

THE STATE AND CITY MUTUALLY AGREE TO THE FOLLOWING:

2. TERM

The term of this Agreement will begin upon the last date of signature and will be perpetual.

3. THE PROJECT

The STATE and the CITY concur with the proposal for the new construction or improvement of streets identified by South Dakota Federal Aid Construction Project Numbers:

- A. P TAPR(57), PCN 09G6, is referred to in this Agreement as the "STATE PROJECT." The STATE PROJECT is located on 4th Street from Charles Avenue through Minnesota Avenue in Colton, South Dakota. The STATE PROJECT consists of sidewalk, shared use path, curb and gutter, and storm sewer.
- B. CA 024A(), PCN 09P2, is referred to in this Agreement as the "CITY PROJECT." The CITY PROJECT is located on 4th Street from Charles Avenue through Minnesota Avenue in Colton, South Dakota. The CITY PROJECT consists of roadway reconstruction including pavement removals, watermain installation, and asphalt concrete surfacing.
- C. The STATE PROJECT and CITY PROJECT will be bid and constructed as a single construction contract and will collectively be referred to in this agreement as "THE PROJECT."

4. CONTRACT PROCUREMENT

The STATE will advertise, let to contract, award, and be the contracting party for THE PROJECT.

5. STATE RESPONSIBILITIES

- A. The STATE has hired a consulting firm to design and prepare the construction plans and specifications for the STATE PROJECT.
- B. The STATE will hire a consulting firm to perform the Construction Administration, including all construction supervision and inspections, staking, physical testing, measurement of quantities, and

documenting locations for as-built records for the STATE PROJECT. The STATE shall pay all invoiced costs charged to the STATE PROJECT for Construction Administration services performed by the consulting firm in connection with the STATE PROJECT.

- C. The STATE will be responsible for making payments to the Contractor for THE PROJECT.
- D. The STATE will apply the funding the CITY has been awarded through the Federal Transportation Alternatives Program in accordance with a separate agreement entered into between the parties entitled "State of South Dakota Department of Transportation Joint Powers Agreement for Transportation Alternative Funding" and assigned Agreement Number 410929 by the STATE, for costs associated with the STATE PROJECT.
- E. The STATE will bill the CITY for all infrastructure costs attributable to the CITY PROJECT.

6. CITY RESPONSIBILITIES

- A. The CITY has hired a consulting firm to design and prepare the construction plans, specifications, and cost estimates for the CITY PROJECT.
- B. The CITY has hired a consulting firm to perform the Construction Administration for the CITY PROJECT, including all construction supervision and inspection, physical testing, measurement of quantities, and documenting locations for as-built records. The CITY shall pay all invoiced costs charged to the CITY PROJECT for Construction Administration services performed by the consulting firm in connection with the CITY PROJECT.
- C. The CITY will be responsible for all costs associated with the CITY PROJECT. The CITY has secured a Community Access Grant (CAG) from the STATE for roadway improvement eligible items associated with the CITY PROJECT, subject to a separate agreement entered into between the parties entitled "Community Access Grant Between South Dakota Department of Transportation and City of Colton" and assigned Agreement Number 718523, by the STATE and any amendments thereto.
- D. The CITY has secured State Revolving Funds (SRF) from the South Dakota Department of Agriculture and Natural Resources for water main improvements associated with the CITY PROJECT.

7. RESPONSIBILITIES FOR SHARED USE PATH

- A. The CITY will be responsible for the maintenance of the SHARED USE PATH, which includes, but is not limited to:
 - i. Mowing adjacent to the SHARED USE PATH;
 - ii. Snow and ice removal from the SHARED USE PATH, including any necessary hauling of snow that has been removed from the SHARED USE PATH, all in accordance with the CITY'S policies and practices;
 - iii. Surface maintenance and replacement of SHARED USE PATH due to removal of snow with equipment; and
 - iv. Debris and litter removal.
- B. The CITY will be solely responsible for repairs due to any damage to the SHARED USE PATH, including, but not limited to, damages as a result of traffic accident impact and vandalism subject to all claims, defenses, and immunities that may be asserted against third parties.
- C. Upon completion of construction of the SHARED USE PATH, the CITY will assume all risk of loss or damage to the SHARED USE PATH, however caused, resulting directly or indirectly, by reasons of the existence, repair, replacement, maintenance, removal or use of the SHARED USE PATH, and releases the STATE from any and all liability on account of such loss or damage, whether or not the negligence of the STATE contributed to this loss or damage in whole or in part.

8. ENCROACHMENTS

The CITY will enforce the following prohibitions against encroachments in the public right-of-way on the STATE PROJECT.

- 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.
- D. On Federal Aid Projects, no encroachments will be permitted except in conformance with 23 CFR 1.23.

9. 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.

10. PARKING

The CITY will enforce the prohibition of all parking, standing, and stopping in the traffic lanes on the STATE PROJECT 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 STATE PROJECT 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.

11. GENERAL CITY MAINTENANCE

The CITY will be responsible for providing timely maintenance of the STATE PROJECT 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.
- D. Any necessary hauling of snow.
- E. Surface maintenance and replacement of sidewalks due to removal of snow by the CITY with equipment;
- F. Maintenance of rural section drainage;
- G. Cleaning, repair, and replacement of storm sewers and drop inlets, including any frames and grates
- H. 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;
- I. 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
- J. All repairs or maintenance of the STATE'S Project.

12. PAVEMENT MARKING MAINTENANCE

the CITY will be responsible for maintaining the applicable pavement markings from the following list, at the original location on the STATE PROJECT, 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).

13. SIGN MAINTENANCE

The CITY will be responsible for maintaining the following signs at the locations and on supports as originally installed on the STATE PROJECT 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.

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.

14. 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 PROJECT.

15. INDEMNIFICATION

The CITY agrees to indemnify the State of South Dakota, its officers, agents, and employees, from and against all claims or proceedings for actions, suits, damages, liabilities, other losses or equitable relief to the extent arising as a result of the CITY'S negligence, tortious acts, or intentional acts in performing services under this Agreement. Notwithstanding the foregoing, the STATE may, in its sole discretion engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist CITY in the defense. If the STATE exercises this authority and CITY is determined to be liable, then the STATE is entitled to reimbursement of its reasonable attorney fees and costs in defending the suit in proportion to the degree of liability attributed to CITY in the proceedings. This section

does not require CITY to be responsible for or defend against claims or proceedings for damages, liabilities, losses or equitable relief arising solely from errors or omissions of the STATE, its officers, agents or employees.

16. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Agreement, the CITY will not discriminate against any employee, or applicant for employment, because of race, religions, color, sex, disability, or national origin. Such actions will include but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment, or advertising, layoff or termination, rates of pay, or other forms of compensation, and selection for training, including apprenticeship. The CITY will provide services in compliance with the Americans with Disabilities Act of 1990, and any amendments.

17. 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.

18. 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.

19. 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.

20. CERTIFICATION OF NO PROHIBITED STATE LEGISLATOR INTEREST

The CITY (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the

opportunity to seek independent legal advice on the applicability of that provision to this Agreement. By signing this Agreement, the CITY hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

21. PUBLIC ACCESS TO AGREEMENT

The parties acknowledge and agree that this entire Agreement, including any exhibits and attachments to this Agreement, is a public record that may be provided to the public and posted in its entirety on the State of South Dakota's searchable internet website pursuant to SDCL 1-27-45.

22. SIGNATURE AUTHORITY

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 Colton, South Dakota

State of South Dakota
Department of Transportation

By: _____

By: _____

Printed Name: _____

Printed Name: Joel M. Jundt

Its: Mayor

Its: Department Secretary

Date: _____

Date: _____

Attest:

Approved as to Form:

By: _____

By: /s/ Dustin W. DeBoer

Printed Name: _____

Printed Name: Dustin W. DeBoer

City Finance Officer

Special Assistant Attorney General

(CITY SEAL)