AGREEMENT NO.

# AGREEMENT FOR PROFESSIONAL SERVICES

**BETWEEN**

# SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION (the DEPARTMENT)

# AND

**(the CONSULTANT)**

CONSULTANT ADDRESS:

The CONSULTANT may provide services in the following categories:

|  |  |
| --- | --- |
| STATE CATEGORIES: | **LOCAL TRANSPORTATION CATEGORIES:** |
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Required Contract Provisions: The parties agree to all of the provisions set out in **EXHIBIT 1 and its ATTACHMENTS A through E,** annexed to and by this reference made a part of this Agreement.

The CONSULTANT warrants the CONSULTANT is in compliance with the “Certification of CONSULTANT,” attached to and by this reference made a part of this Agreement.

Special Conditions/Changes to Standard Provisions: **None**

Term of Agreement: The term of this Agreement will be from **January 1, 2024, to December 31, 2025,** unless extended pursuant to Section A.6. of **EXHIBIT 1** to this Agreement.

 State of South Dakota

Legal Name of the CONSULTANT Department of Transportation

By: By:

Title: Title: Department Secretary

Date: Date:

 Recommended:

(Corporate Seal)

 By:

 Title: Program Manager

 Administration Program

Date:

**CORPORATE ACKNOWLEDGMENT**

State of )

 :ss

County of )

On this day of , 20 , before me, , a Notary Public within and for said County and State, personally appeared , who acknowledged himself/herself to be the [title/position] of      , a corporation, and that he/she, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer.

In witness whereof I hereunto set my hand and official seal.

 Notary Public

 My commission expires:

[Notary Seal]

**CERTIFICATION OF CONSULTANT**

I hereby certify that I am the and duly authorized representative of the CONSULTANT of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ whose address is , and that neither I nor the above CONSULTANT I represent has:

1. Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any CONSULTANT or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this Agreement;
2. Agreed, as an expressed or implied condition for obtaining this Agreement, to employ or retain the services of any CONSULTANT or person in connection with carrying out this Agreement; or
3. Paid, or agreed to pay, to any CONSULTANT, organization, or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring, or carrying out this Agreement; except as expressly stated herein (if any):

I acknowledge that this certification is to be furnished to the State of South Dakota, Department of Transportation, the Federal Highway Administration, and United States (U.S.) Department of Transportation, in connection with this Agreement involving participation of Federal-aid Highway Funds, and is subject to applicable State and Federal laws, (both criminal and civil).

CONSULTANT:

Signature:

Name of Corporate Official:

Title:

Date of Execution:

**CERTIFICATION OF SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION**

I hereby certify that I am, Joel M. Jundt, the Secretary of the Department of Transportation of the State of South Dakota, and that neither the above CONSULTANT or its representative has been required, directly or indirectly, as an expressed or implied condition in connection with obtaining or carrying out this Agreement, to:

1. Employ or retain, or agree to employ or retain, any CONSULTANT or person; or
2. Pay, or agree to pay, to any CONSULTANT, person, or organization, any fee, contribution, donation, or consideration of any kind; except as expressly stated herein (if any):

I acknowledge that this certificate is to be furnished to the Federal Highway Administration, United States (U.S.) Department of Transportation, in connection with this Agreement involving participation of Federal-aid Highway Funds, and is subject to applicable State and Federal laws, (both criminal and civil).

(Date) (Signature)**CONSULTANT ACCOUNTING CERTIFICATION**

CONSULTANT Name:

I, the undersigned, certify that I will review the proposals to establish final indirect cost rates for the fiscal periods during which work will be performed as authorized by Work Orders issued under this Agreement and to the best of my knowledge and belief:

1. The accounting system is capable of segregating and allocating reasonable and allowable costs, in accordance with 48 CFR 31.2;
2. All costs included in the proposals to establish final indirect cost rates for the period of this Agreement will be allowable in accordance with the cost principals of the Federal Acquisition Regulations (FAR) of Title 48, Code of Federal Regulations (CFR), part 31;
3. The proposals will not include any costs which are expressly unallowable under applicable cost principles of the FAR of 48 CFR 31, such as: advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, defense of fraud proceedings, and good will; and
4. All indirect costs included in the proposals will be properly allocable to contracts on the basis of a beneficial or causal relationship between the expenses incurred and the contracts to which they are allocated in accordance with applicable acquisition regulations.

I declare that the foregoing is true and correct.

Signature:

Name of CONSULTANT Official:

Title:

Date of Execution:

**EXHIBIT 1**

**EXHIBIT 1 TO AGREEMENT FOR PROFESSIONAL SERVICES**

1. **PROVISION OF SPECIFIED SERVICES.**
2. **Categories of Services.** The DEPARTMENT has advertised for services in the following specified categories:

**ARCHAEOLOGY/PALEONTOLOGY (STATE):** Intended to include (but not limited to) conducting Level I Record Searches, Level II Sample Surveys, and Level III Intensive Surveys to identify and document (maps, descriptions, GIS, project limits, findings) areas of potential effect associated with highway projects in compliance with the requirements of the State Historic Preservation Office (SHPO), the Tribal Historic Preservation Office (THPO), and the National Environmental Policy Act (NEPA).

**BRIDGE DESIGN (STATE):** intended to include (but not be limited to) structure hydraulics studies, design/analysis, specification development, plans preparation, construction support (shop plan reviews, field inspection, CCO design & plans, etc.) related to structure design and retrofits on highway projects for motorized and non-motorized modes of transportation.

**BRIDGE EVALUATION/TESTING (STATE):** intended to include (but not be limited to) non-destructive testing/evaluation (NDT/NDE) of structural connections and materials, physical testing of structural materials, fracture analysis, petrographic analysis, ultrasonic impact treatment, condition inspection, load rating and evaluation related to existing bridges and structural elements.

**BRIDGE HYDRAULICS / HYDROLOGY (STATE):** intended to include (but not be limited to) drainage & flood studies, hydraulic design, TS&L meetings, bridge scour determination, erosion protection recommendations, specification development, plans preparation, construction support (field inspection, reviews, CCO design, etc.) related to drainage features on highway projects for motorized and non-motorized modes of transportation.

**BRIDGE INSPECTIONS (STATE):** – intended to include (but not limited to) perform National Bridge Inspection Standards (NBIS) in-field bridge safety inspections and load analyses, complete AASHTOWare BrM inventory coding, and submit inspection reports and pictures detailing the condition of each structure.

**BRIDGE PROTECTIVE COATING DESIGN (STATE):** intended to include (but not be limited to) design, specification development, plans preparation, and construction support (field inspection, reviews, CCO design, etc.) related to bridge protective coatings.

**BUILDING ARCHITECTURE (STATE):** intended to include (but not be limited to) design/analysis, plans preparation, construction support (shop plan reviews, building inspection, CCO design & plans, etc.) related to buildings (structure, heating/cooling, electric, water, sewage, etc.) for rest area, scale site, etc. projects.

**CONSTRUCTION ADMINISTRATION/INSPECTION/TESTING (STATE):** intended to include (but not be limited to) project administration (pay estimates, CCO preparation, project documentation etc.), construction inspection, and testing.

**ENVIRONMENTAL STUDIES (STATE):** Involves the identification and evaluation of environmental, social, and economic effects from proposed transportation improvements on the human and natural environment. Components include (but not limited to) the investigation and studies necessary to identify potential impacts, evaluate their significance, and recommend mitigation actions. Work shall meet the requirements of the Federal Highway Administration (FHWA) and the National Environmental Policy Act (NEPA) through the preparation and approval of a Categorical Exclusion, Environmental Assessment, or Environment Impact Study document. Special studies for specific disciplines may be required.

**GEOTECHNICAL SERVICES (STATE):** intended to include (but not limited to) investigative borings, sample collection, laboratory analysis, and soil parameters required for design of highway projects ranging from the suitability of surficial soils for construction to deep foundation design alternatives including construction support (field inspection and CCO design).

**HAZARDOUS WASTE/PETROLEUM CONTAMINATION TESTING (STATE):** Intended to include (but not limited to) environmental site assessments, field inspection, subsurface soil borings, sample collection, laboratory analysis, contamination remediation, soil and groundwater monitoring, and reports regarding materials and wastes regulated under Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Work may also require asbestos and lead inspection and abatement.

**HISTORIC PRESERVATION (STATE):** intended to include (but not be limited to) preservation of historic buildings and facades, restoration and reuse of historic structures and buildings, and interpretive displays at historic sites. All work must comply with the State Historic Preservation Office requirements.

**LAND SURVEYING (STATE):** intended to include (but not be limited to) the research and establishment of property boundaries, the marking of corner locations, and the proper filing of survey information in accordance with SDCL and preliminary survey collection and submission of topographic data to be used for planning and design purposes.

**LANDSCAPE ARCHITECTURE (STATE):** intended to include (but not be limited to) concept and graphic development, design/analysis, plans preparation, construction support (CCO design & plans, etc.) related to landscape development and irrigation systems on highway projects. Planting design projects may include vegetation, revegetation and landscape preservation, native plantings, living snow fences, visual screening, noise attenuation, and wetland mitigation. Projects may also include landscape architectural designs, aesthetic details and specifications for hardscape features such as walks, trails, retaining walls, bridge railings, sound walls, scenic pull-offs/overlooks and other landscape architectural and aesthetic treatments related to highway projects.

**PHOTOGRAMMETRY AND LIDAR SURVEYS (STATE):** intended to include (but not be limited to) land surveying, aerial photography, photogrammetric surveying, stock pile surveying, and LiDAR and drone surveys related to corridor preservation and design on highway projects.

**PUBLIC INFORMATION/PUBLIC RELATIONS (STATE):**  Intended to include (but not limited to) developing and implementing processes for marketing and communication, including listening to and responding to concerns of the public, businesses, landowners, schools, and impacted agencies. Includes promotion of general public information related to Department project activities and Department initiatives.  Includes informing and actively engaging the public and adjacent businesses of transportation pre-construction and/or construction project activities and progress to mitigate construction impacts on the traveling public while working within schedule constraints. May include any of the following: web site development, planning and attending weekly construction meetings, photography and video production that may include aerial, drone or time-lapse video services, social media, press releases, engaging the news media, newsletters, info-graphics or other graphic design, event planning, developing a communication plan and other communication tools as needed for construction projects and other Department initiatives.

**REAL ESTATE SERVICES (STATE):** Project Management for right of way activities, Title research, Appraisals of real estate or billboards, Review appraisals of real estate or billboards, Acquisitions of real estate, billboards or relocation benefits, Provide relocation assistance and services.

**ROADWAY DESIGN (STATE):** intended to include (but not be limited to) design/analysis, specification development, plans preparation, environmental studies appropriate to the project, construction support (CCO design & plans, etc.) related to roadway design on highway projects for motorized and non-motorized modes of transportation.

**SUBSURFACE UTILITIES ENGINEERING (SUE) / EXPLORATION (STATE):** intended to include (but not be limited to) designating, surveying, mapping, conflict identification/analysis and Quality Level A (QLA) non-destructive locating of existing underground utilities to be used for planning and design purposes.

**TRANSPORTATION PLANNING (STATE):** intended to include (but not be limited to) conducting planning level studies such as transportation (intermodal) master plans, highway system, interchange and corridor studies for the state highway system to accommodate future traffic, land use, and access rights. Corridor studies may also include preparation of environmental scan documents to be used to determine NEPA actions as part of a Planning Environmental Linkage (PEL) type study. Category also includes the writing of grant applications for federal infrastructure funding.  Examples of past studies can be found at <https://dot.sd.gov/projects-studies/projects/special-studies>.

**UNMANNED AERIAL INSPECTION (STATE)** – Including (but not limited to) the use of an unmanned aerial system to perform media coverage, search and rescue efforts, asset inspection (buildings, bridges, towers, overhead signs, etc.), geotechnical survey, vegetation survey, hazardous material inspection, pre- and post-construction documentation.

**WETLAND DELINEATION/MITIGATION (STATE):** Intended to include (but not limited to) the formal wetland identification, delineation, and  documentation (narrative description of review area, maps, data sheets and photos)  of wetlands in accordance with the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual (USACE, 1987) for Corps of Engineers 404 Permits and the Federal Highway Administration environmental approval process (NEPA); mitigation plan design; and  wetland mitigation site monitoring and documentation based on performance criteria, and recommendations for repairs for wetland mitigations associated with highway projects.

**AIRPORT PLANNING AND DESIGN (LOCAL):** intended to include airport design, master plans, ALP development, construction engineering, PCI inspections, and approach obstruction surveys.

**BRIDGE DESIGN (LOCAL):** intended to include (but not be limited to) structure hydraulics studies and TS&L meetings, design/analysis, specification development, plans preparation, construction support (shop plan reviews, field inspection, CCO design & plans, etc.) related to structure design and retrofits on highway projects for motorized and non-motorized modes of transportation.

**BRIDGE INSPECTION (LOCAL):** intended to include (but not be limited to) perform in-field bridge safety inspections and load rating analysis, complete AASHTOWare BrM inventory coding, and submit inspection reports and pictures detailing the condition for each structure.

**GEOTECHNICAL SERVICES (LOCAL):** intended to include (but not limited to) investigative borings, sample collection, laboratory analysis, and soil parameters required for design of highway projects ranging from the suitability of surficial soils for construction to deep foundation design alternatives including construction support (field inspection and CCO design).

**RAILROAD PLANNING, DESIGN, AND CONSTRUCTION ADMINISTRATION (LOCAL):** intended to include (but not be limited to) design, analysis, specification development, plans preparation, State Rail Plans, rail traffic planning, construction support (CCO design & plans, etc.), construction administration and inspection related to railroad projects.

**ROADWAY DESIGN (LOCAL):** intended to include (but not be limited to) design/analysis, specification development, plans preparation, environmental studies appropriate to the project, construction support (CCO design & plans, etc.) related to roadway design on highway projects for motorized and non-motorized modes of transportation.

**TRANSPORTATION PLANNING (LOCAL):** intended to include (but not be limited to) conducting planning level studies such as transportation (intermodal) master plans, sidewalk / pedestrian plans, bicycle plans, asset management, and corridor studies to accommodate future traffic, land use, access rights for cities and counties. Examples of past studies can be found at <https://dot.sd.gov/projects-studies/projects/special-studies/spr>.

**UNDERWATER BRIDGE INSPECTION (STATE):** intended to conduct National Bridge Inspection Standards (NBIS) in-the-field underwater inspections using experienced dive teams in accordance with the Federal Highway Administration Report (FHWA-NHI-10-027), enter inspection data into AASHTOWare Bridge Management (BrM), perform basic scour investigation, and submit inspection reports and pictures detailing the condition of each structure.

2. **Agreed-to Services.** The CONSULTANT has expertise in one or more of these categories and submitted a proposal in response to the DEPARTMENT’S advertisement. The parties agree that the CONSULTANT may provide services to the DEPARTMENT in the categories specified on Page 1 of this Agreement.

1. **Indefinite Quantity Contract.** This Agreement is an indefinite-quantity contract for the services specified. The quantity of services is not purchased by this Agreement alone; performance will be made only as specified in written work orders executed by both parties. Neither party is obligated to perform under this Agreement until a work order has been executed by both parties.
2. **Work order issuance.** To obtain the CONSULTANT’S services, the DEPARTMENT will issue a written request for a proposal from the CONSULTANT to provide services for specified projects. The DEPARTMENT’S request will include the scope of work to be performed and the required completion dates. In any proposal in response to the DEPARTMENT’S request, the CONSULTANT will include the estimated man-hours and equipment units necessary to complete the services within the deadlines required by the DEPARTMENT and a proposed lump sum fixed fee for profit, unless a different payment method is specified by the DEPARTMENT. If the DEPARTMENT wishes to accept a CONSULTANT’S proposal, the parties will execute a written work order consistent with the proposal. The CONSULTANT will provide the services as specified in the executed work order. The work order will include the following information:
3. Scope of work to be performed;
4. Schedule with start date and completion date for contracted activities including phases of work with deliverables;
5. Personnel required, estimated hours per person, and units per equipment;
6. Maximum limiting amount or lump sum amount calculated based on the current actual costs for labor, overhead, equipment, and materials;
7. Lump sum fixed fee for profit, if the method of payment will be cost plus fixed fee;
8. Contact person representing each party;
9. Specifics regarding payment for travel and subsistence;
10. Procedures to be used for accomplishing the work;
11. Activities which will not start without the DEPARTMENT’S prior approval;
12. Compensation for travel time to and from the project; and
13. Progress Report requirements.
14. **Total contract dollar limit.** There is no limit on the number of work orders that may be executed by the parties, except that the total amount paid to CONSULTANT under this Agreement may not exceed Twenty Million Dollars ($20,000,000.00).
15. **Extension of agreement.** If a work order is issued during the term of this Agreement and not completed by December 31, 2025, then this Agreement will continue in full force and effect until such work is completed or this Agreement is terminated by the DEPARTMENT.
16. **Work for non-DEPARTMENT entity (LOCAL).** At the DEPARTMENT’S request, the CONSULTANT may execute a task order agreement with another state agency, a political subdivision of the state, a municipal planning organization, or a subrecipient of a federal grant administered by the DEPARTMENT, to provide the services specified on Page 1 of this Agreement to that entity under the same terms and conditions as specified in this Agreement.
17. **Progress reporting.** The CONSULTANT will submit complete and regular progress reports to the DEPARTMENT when requesting payment or as defined in the work order.
18. **Progress control.** The parties acknowledge and agree that time is of the essence. The DEPARTMENT will provide the CONSULTANT with project and deliverable deadlines for each work order. Unless otherwise indicated in writing by the DEPARTMENT, the CONSULTANT will complete the work in accordance with these deadlines.
19. **PAYMENT.** The DEPARTMENT will pay the CONSULTANT for labor needed to perform the work on a cost plus fixed fee, cost per unit of work, time and materials, or a lump sum basis. Unless a different payment method is specified in the work order, the method of payment for labor will be cost plus fixed fee. In all cases, the DEPARTMENT will reimburse the CONSULTANT for materials and equipment needed to perform the work on the basis of cost. Allowable costs will be direct salary, material and equipment direct costs, payroll additive, and general overhead. The general overhead will include insurance costs as described in the INSURANCE section of this Agreement. Allowable direct and indirect costs must be based on the established and customary accounting practices of the CONSULTANT. **No payment will be made for work undertaken before a written “Notice to Proceed” has been issued.**

The DEPARTMENT will reimburse meals in accordance with the CONSULTANT’S established policy, except that the reimbursement may not exceed the meal reimbursement rates established by the South Dakota Bureau of Finance and Management for State of South Dakota employees. Lodging costs will be reimbursed based on actual costs up to a maximum of the established US General Services Administration rate excluding tax.

For provisional billing purposes, the CONSULTANT will use actual costs for direct salary and current available costs for material and equipment, payroll additive, and general overhead.

The final reimbursement will be based on the actual unit rates in accordance with 48 CFR Part 31, 2 CFR Part 200, and the CONSULTANT’S usual and normal practice as determined by audit after all authorized work is completed, subject to the maximum limiting amount. No additional payment for premium time as it relates to hours worked beyond forty (40) hours per week will be considered unless accumulated in accordance with the CONSULTANT’S usual and normal practice.

The CONSULTANT will submit to the DEPARTMENT indirect costs as percentages of direct salary costs to be used provisionally for progress payments for work accomplished during the CONSULTANT’S current fiscal year. The CONSULTANT will be required to use updated provisional percentage rates within four (4) months after the close of each of the CONSULTANT’S fiscal year in order to more accurately reflect the cost of work during subsequent years. The CONSULTANT will submit to the DEPARTMENT a final indirect cost rate invoice at the end of each fiscal year for the CONSULTANT. Provisional rates will be based on the actual costs incurred during the CONSULTANT’S fiscal year. In accordance with FHWA Order 4470.1A, the CONSULTANT will submit all schedules of indirect costs with a certification of indirect costs in the form set forth in **ATTACHMENT A.**

The CONSULTANT certifies that the CONSULTANT’S accounting system complies with standards stated in the attached Consultant Accounting Certification, attached to and incorporated in this Agreement.

The CONSULTANT will submit invoices for the CONSULTANT’S services, materials, and equipment after the work has been performed and the expenses incurred. The CONSULTANT will submit the invoices in accordance within the timeframes established by the work order. All invoices must be submitted with the proper project number. The DEPARTMENT reserves the right to require the CONSULTANT to submit additional documentation to support labor costs and other expenses. Documentation must be to the satisfaction of the DEPARTMENT.

If the DEPARTMENT determines the final plans are not acceptable, the DEPARTMENT may deduct from the CONSULTANT’S payment all reasonable costs incurred by the DEPARTMENT to complete the plans to the satisfaction of the DEPARTMENT.

The maximum limiting amount specified in the work order sets the upper limit of compensation to which the CONSULTANT may be entitled. The DEPARTMENT is not obligated to pay the maximum limiting amount unless the work, invoices, and documentation submitted by the CONSULTANT justify payment equal to the maximum limiting amount. The parties further agree that the CONSULTANT is not entitled to receive any payments in excess of the maximum limiting amount.

For work orders involving the bridge inspection category of work, the DEPARTMENT will deduct liquidated damages of Fifty Dollars ($50.00) per structure per week from payments otherwise due to the CONSULTANT for each report, load rating or other deliverable not submitted to the DEPARTMENT by the overall completion dates specified in the work order. In addition, unless the DEPARTMENT agrees to a different schedule, individual structures must be inspected within the required inspection frequency plus a thirty day grace period or the DEPARTMENT will deduct liquidated damages of Fifty Dollars ($50.00) per structure per week from payments otherwise due to the CONSULTANT.

1. **RETAINAGE.** If supported by regular progress reports from the CONSULTANT, the DEPARTMENT will pay the fixed fee based on the proportion of work completed during the billing cycle, except that the DEPARTMENT may apply a retainage of ten percent (10%) in its sole discretion. Unless the DEPARTMENT decides to make an earlier payment, any retained or remaining fixed fee will be released after the final invoice and upon satisfactory completion of all work, including receipt of all deliverables.

If the DEPARTMENT determines the CONSULTANT is performing unsatisfactory or untimely work, the DEPARTMENT may, in addition to other remedies set out in this Agreement and available at law or in equity, withhold ten percent (10%) of the total payment otherwise due to the CONSULTANT to encourage timely and satisfactory completion of the work. The DEPARTMENT will notify the CONSULTANT in writing if retainage will be withheld for this reason.

1. **TECHNICAL REQUIREMENTS AND PROVISIONS.**
2. **General.** The CONSULTANT must complete all work in a reasonable manner and to the satisfaction of the DEPARTMENT.
3. **Preparation of Construction Plans.** If the categories of services identified on page one of this Agreement involve the preparation of construction plans and specifications, the CONSULTANT will comply with the following requirements:
4. The CONSULTANT will furnish and deliver to the DEPARTMENT original drawings of all sheets comprising the set of plans, together with all reports, drawings, computer files, studies, memoranda, and other data pertaining to the preparation of the plans.
5. The CONSULTANT will furnish to the DEPARTMENT an electronic MS Word file of all supplemental specifications and special provisions.
6. The CONSULTANT will use a consistent DEPARTMENT-approved format for notes, tables, and rates of materials.
7. The CONSULTANT will prepare plans on sheets 11” x 17” or 8 ½” x 11” in size, under the guidance of the Road Design Manual’s Chapter 18 – Plans Assembly: <https://dotfiles.sd.gov/rd/rdmch18.pdf> or as directed by the DEPARTMENT. The CONSULTANT will follow Chapter 18 of the DEPARTMENT’S Road Design Manual as it relates to plans produced by consultants in order to provide accurate electronic plans and bid items for the DEPARTMENT’S electronic bidding system. The CONSULTANT will utilize the DEPARTMENT’S websites: <https://dot.sd.gov/doing-business/engineering/design-services/downloadable-files> and <https://dot.sd.gov/doing-business/engineering/design-services/forms-manuals> for Plan Preparation (i.e. Road Design Manual, CADD Procedure Manual, and User Guide for Electronic Plan Review), Downloadable Files (i.e. Form Letters, Microstation and InRoad files, and Plan Notes), and other information as necessary to design and prepare plans. The CONSULTANT will follow the properties and procedures for the DEPARTMENT’S electronic plans as set forth in documents located at the following web site address: <https://dot.sd.gov/doing-business/engineering/design-services/forms-manuals>. Electronic plans are required for bid-letting purposes and must contain a watermark on each sheet stating “For Bidding Purposes Only.”
8. The CONSULTANT will prepare plans with sufficient precision in accordance with the Road Design Manual – Chapter 18 – Construction Rounding Guidelines (<https://dotfiles.sd.gov/rd/rdmch18.pdf>).
9. The CONSULTANT will furnish such other pertinent information and data with respect to the plans and designs as the DEPARTMENT may request.
10. All persons designing, detailing, and checking structure plans will legibly place their names or initials on each plan sheet in the spaces provided for this purpose.
11. The DEPARTMENT will designate the basic premises and criteria for the design. The CONSULTANT will develop plans in accordance with the DEPARTMENT’S 2015 SDDOT Standard Specifications for Roads and Bridges, as modified by any supplemental provisions in place at the time of the work order.
12. The CONSULTANT will prepare and furnish to the DEPARTMENT special provisions in standard DEPARTMENT format for items of work included in the plans which are not covered by the DEPARTMENT’S existing standard specifications, plan notes, and special provisions.
13. The CONSULTANT will ensure scales, lettering, and the general delineation of the plans mirror the DEPARTMENT format and provide readily legible reproductions.
14. The CONSULTANT will ensure each plan sheet bears the professional seal and endorsement as required by the South Dakota Board of Technical Professions.
15. The CONSULTANT will use software acceptable to the DEPARTMENT. The DEPARTMENT’S standard software programs are the Bentley Civil Products (OpenRoads Suite), MicroStation, AASHTOWare BrR and BrD products, Adobe Acrobat, Bluebeam, and the Microsoft Office Suite.
16. **Category-Specific Technical Requirements and Provisions.** For all categories of services identified on page one of this Agreement, the CONSULTANT must also comply with the technical requirements and provisions associated with each category. The following technical requirements and provisions are associated with the following categories of work, unless expressly modified by the work order.
17. **BUILDING ARCHITECTURE (STATE).** Architectural design will conform to the “Design Criteria for State Building Construction, International Building Codes, Heating, Ventilating and Air Conditioning Guide, National Plumbing Codes, and the National Electrical Codes.”
18. **WETLAND DELINEATION/MITIGATION (STATE).** Wetland delineation will be performed in conformance with the 1987 US Army Corps of Engineers Wetland Delineation Manual and Regional Supplements. Wetland mitigation plans will include construction plans, performance criteria, and a five (5) year monitoring plan.
19. **BRIDGE DESIGN (STATE) AND BRIDGE DESIGN (LOCAL).**
20. Prior to initiating design, the CONSULTANT will be required to submit the Quality Control/Quality Assurance (QC/QA) plan/procedure to be followed for structure design to the DEPARTMENT for approval.
21. The CONSULTANT may not begin structure design work until the QC/QA plan/procedure is approved and documented. The DEPARTMENT must review and approve all modifications to an approved QC/QA plan/procedure prior to the CONSULTANT commencing structure design work.
22. The CONSULTANT will design bridges, box culverts, and miscellaneous highway structures in accordance with the South Dakota Structure Design Manual and the edition of the “AASHTO LRFD Bridge Design Specifications,” currently in place at the time of execution of the Work Order, except as modified by the DEPARTMENT’S design practices. The CONSULTANT will design highway structures for HL-93 vehicular live loading. Additional design criteria may be included in the Scope of Work.
23. The CONSULTANT will load rate each structure using AASHTOWare BrR software, including culverts that are bridge length, in accordance with the SDDOT Load Rating Manual and the edition of the AASHTO "Manual for Bridge Evaluation" with the latest Interim Revisions using the LRFR method currently in place at the time of execution of the Work Order. The CONSULTANT will perform an HL-93 Load Rating for each structure at Inventory and Operating levels. The CONSULTANT will also perform a Legal Load Rating for South Dakota legal trucks, the notional rating load, the four specialized hauling vehicles, and emergency vehicles. The CONSULTANT will submit a copy of the rating analyses to the DEPARTMENT along with the Final Plans for bid letting purposes. Load ratings on all state-owned structures must be at least 1.0 for all vehicles listed above. Load ratings on locally owned structures must be at least 1.0 for all vehicles listed, with the exception of concrete box culverts. Emergency vehicle ratings on locally owned concrete box culverts located more than 1 mile from interstate access may be less than 1.0. The CONSULTANT will complete a [Load Rating Summary Sheet](https://dot.sd.gov/media/Load%20rating%20summary%20sheet.pdf) to be included in the Bridge Inspection file.
24. The CONSULTANT will provide the DEPARTMENT a hard copy of design computations, independent check design computations, and load ratings, including computer output if applicable, as well as an electronic copy of the BrR model with the final review set of drawings.
25. The CONSULTANT will review shop plans for fabricated items and will forward marked-up shop plans to the DEPARTMENT for the DEPARTMENT’S opportunity for review. Any review by the DEPARTMENT is limited to general conformance with the contract plans and specifications only. If the DEPARTMENT returns the shops plans for revision, the CONSULTANT must make the revisions and resubmit the shop plans for the DEPARTMENT’S opportunity for review. The CONSULTANT will not arrange for fabrication unless the DEPARTMENT has confirmed, in writing, a completed review with a response of “No Exceptions Noted” or “Not Required for Review.”
26. Survey for roadway and hydraulic design will be in accordance with the edition of the Department of Transportation Survey Manual currently in place at the time of execution of the Work Order.
27. Hydrologic/hydraulic design will be in accordance with the edition of the South Dakota Drainage Manual (and its revisions) currently in place at the time of execution of the Work Order.
28. For Bridge Design (LOCAL), hydrologic/hydraulic design will also be in accordance with the Local Roads Plan.
29. **ROADWAY DESIGN (STATE) AND ROADWAY DESIGN (LOCAL).**
30. For Roadway Design (STATE) and Roadway Design (LOCAL), design work will be in accordance with the editions of the following manuals, guidance, and policies in place at the time of the execution of the Work Order, including any interim revisions:
* Department of Transportation Road Design Manual
* American Association of State Highway and Transportation Officials (AASHTO) Specifications; and
* A Policy on Geometric Design of Highways and Streets.
1. For Roadway Design (LOCAL), design work will also be in accordance with the Local Roads Plan.
2. When final plans are delivered to the DEPARTMENT, the CONSULTANT will complete and submit a checklist, on a form approved by the DEPARTMENT, certifying that a separate check has been performed, all review revisions have been made, and the plans are correct and complete.
3. The CONSULTANT will furnish basic design criteria in the Scope Summary Report and in the Scope of Services.
4. The CONSULTANT may obtain standard drawings of roadway appurtenances from the DEPARTMENT’S Office of Road Design.
5. The CONSULTANT will contact the DEPARTMENT’S Office of Bridge Design if a DEPARTMENT structure’s drainage area is greater than one thousand (1,000) acres. For these structures, the DEPARTMENT’S Office of Bridge Design (OBD) will make a hydraulics recommendation or will concur on the hydraulics requirement if hydraulics is part of the Work Order scope.
6. The DEPARTMENT will furnish basic surfacing design criteria, such as type, thickness, and width of pavement.
7. The DEPARTMENT will furnish material recommendations.
8. Surveys for roadway and hydraulic design will be in accordance with the edition of the Department of Transportation Survey Manual currently in place at the time of execution of the Work Order.

1. Hydrologic/hydraulic design will be in accordance with the edition of the South Dakota Drainage Manual (and its revisions) currently in place at the time of execution of the Work Order.
2. For Road Design (LOCAL), hydrologic/hydraulic design will also be in accordance with the Local Roads Plan.
3. **RAILROAD PLANNING, DESIGN, AND CONSTRUCTION ADMINISTRATION (LOCAL).**

i. The CONSULTANT will design structures, grades, and beds according to the Manual for Railway Engineering by the American Railway Engineering and Maintenance of Way Association.

ii. The CONSULTANT will design structure for a Cooper E80 live load.

iii. The CONSULTANT will provide the DEPARTMENT a copy of the design computations and independent check design computations with the final review set of drawings.

iv. The CONSULTANT will review shop plans for fabricated items and will forward marked-up shop plans to the DEPARTMENT for the DEPARTMENT’S opportunity for review. Any review by the DEPARTMENT is limited to general conformance with the contract plans and specifications only. If the DEPARTMENT returns the shops plans for revision, the CONSULTANT must make the revisions and resubmit the shop plans for the DEPARTMENT’S opportunity for review. The CONSULTANT will not arrange for fabrication unless the DEPARTMENT has confirmed, in writing, a completed review with a response of “No Exceptions Noted” or “Not Required for Review.”

1. **ARCHAEOLOGY AND PALEONTROLOGICAL STUDIES.** Any investigations conducted by the CONSULTANT must comply with the Advisory Council on Historic Preservation’s Section 106 Archaeology Guidance. The CONSULTANT’S staff and any subconsultant must meet or exceed the minimum professional qualification standards required under 36 CFR 61, Appendix A.
2. **CONSTRUCTION ADMINISTRATION/INSPECTION/TESTING (STATE).** The CONSULTANT will complete the work in accordance with the technical requirements and provisions contained in **Attachment B,** attached to and incorporated into this Exhibit 1.
3. **REAL ESTATE SERVICES (STATE).** The CONSULTANT will perform the work in accordance with: (1) the South Dakota Department of Transportation Right of Way Manual, (2) 49 CFR Part 24 (Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs), and (3) the Uniform Standards of Professional Appraisal Practice (USPAP), using the Jurisdiction Exception Rule, when needed for compliance with this paragraph. The CONSULTANT will appear in court, depositions, hearings, and pretrial conferences as an expert witness at the request of the DEPARTMENT or upon court order. This work includes, but is not limited to, consulting with the DEPARTMENT and its attorneys; examining appraisal work performed by other experts; conferring with other experts; creating trial exhibits; preparing for testimony; attending hearings and trials; appearing before mediators; and testifying in depositions, hearings, and trials.
4. **UNDERWATER BRIDGE INSPECTIONS (STATE).** The CONSULTANT will complete the work in accordance with the technical requirements and provisions contained in **Attachment C,** attached to, and incorporated into this Exhibit 1.
5. **BRIDGE INSPECTIONS (STATE).** The CONSULTANT will complete the work in accordance with the technical requirements and provisions contained in **Attachment D,** attached to, and incorporated into this Exhibit 1.
6. **BRIDGE INSPECTION (LOCAL).** The CONSULTANT will complete the work in accordance with the technical requirements and provisions contained in **Attachment E,** attached to, and incorporated into this Exhibit 1.
7. **GENERAL PROVISIONS.**

# Independent contractor. While performing services under this Agreement, the CONSULTANT is an independent contractor and not an officer, agent, or employee of the State of South Dakota or the DEPARTMENT. No employee of the CONSULTANT engaged in the performance of services required under this Agreement will be considered an employee of the State of South Dakota or the DEPARTMENT. No claim under the South Dakota Workers’ Compensation Act on behalf of said employee or other person while so engaged and no claim made by any third party as a consequence of any act or omission of the part of the work or service provided or to be rendered under this Agreement by the CONSULTANT will be the obligation or responsibility of the State of South Dakota or the DEPARTMENT.

1. **Furnishing of documents.** Except where otherwise specifically provided in this Agreement or in the Work Order, the CONSULTANT will furnish documents in accordance with this Section.

The CONSULTANT will timely furnish to the DEPARTMENT all plans, specifications, drawings, reports, exhibits, photographs, agreements, deeds, presentations, files and other documents and deliverables necessary for satisfactory completion of the specified categories of work. The DEPARTMENT may require construction documents to be submitted in electronic or paper format, or both.

The CONSULTANT will furnish to the DEPARTMENT any design, check design, and load rating computations required for the specified categories of work.

The CONSULTANT will provide any survey documents for bench levels and for the checking of bench levels on standard loose-leaf transit field book sheets. The CONSULTANT will provide electronic copies of any of the following Bentley OpenRoads files created in connection with specified categories of work: FWD file, DGN file, DTM file, ALG file, and the RAW data file. The FWD file, DGN file, DTM file, and ALG file will be compatible with the DEPARTMENT’S current version of OpenRoads. The RAW data file will be in ASCII format and will include the following information: point number, northing, easting, elevation description, and any pertinent notes corresponding to a particular point.

1. **Compliance.** The CONSULTANT will comply with all federal, state, and local laws, regulations, permits, and other requirements applicable to providing services under this Agreement and will be solely responsible for obtaining current information on all requirements. The CONSULTANT will procure all professional licenses and registrations, permits, rights, and other licenses necessary for the fulfillment of the CONSULTANT’S obligations under this Agreement.
2. **Indemnification**. The CONSULTANT 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 CONSULTANT’S negligence, tortious acts, or intentional acts in performing services under this Agreement.  For purposes of this section, “CONSULTANT” includes any subconsultant performing services for any portion or component of 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 CONSULTANT in the defense.  If the State exercises this authority and CONSULTANT 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 CONSULANT in the proceeding.  This section does not require CONSULTANT 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.
3. **Insurance**. At all times during the term of this Agreement, CONSULTANT shall obtain and maintain in force insurance coverage of the types and with the limits as follows:
4. Commercial General Liability Insurance:

CONSULTANT shall maintain occurrence-based commercial general liability insurance or equivalent form of coverage with a limit of not less than one million dollars ($1,000,000) for each occurrence.  If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit.  The insurance policy shall name the State of South Dakota, its officers and employees, as additional insureds, but liability coverage is limited to claims not barred by sovereign immunity.  The State of South Dakota, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

1. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

CONSULANT agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than one million dollars ($1,000,000).  The State of South Dakota, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

1. Business Automobile Liability Insurance:

CONSULTANT shall maintain business automobile liability insurance or equivalent form with a limit of not less than one million dollars ($1,000,000) for each accident.  This insurance shall include coverage for owned, hired and non-owned vehicles.  The State of South Dakota, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

1. Worker’s Compensation Insurance:

CONSULTANT shall procure and maintain workers’ compensation and employers’ liability insurance as required by South Dakota or federal law.

6. **Errors and omissions.** In addition to any other legal or equitable remedies available to the DEPARTMENT as a result of any act or omission of the CONSULTANT, the CONSULTANT will correct any errors and omissions in its work at no additional cost to the DEPARTMENT and within the time periods specified by the DEPARTMENT.

1. **Certification regarding debarment, suspension, ineligibility, and voluntary exclusion.** The CONSULTANT certifies, by signing this Agreement, that neither the CONSULTANT nor the CONSULTANT’S principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any federal department or agency. The CONSULTANT must notify the DEPARTMENT immediately if the CONSULTANT is debarred, suspended, proposed for debarment, declared ineligible, or is voluntarily excluded from participation at any time during the term of this Agreement.

8. **Employment of current and former state employees.** The CONSULTANT acknowledges that SDCL 5-18A-17 through 5-18A-17.6 concern conflicts of interest associated with current and former employees of the State of South Dakota who are or were responsible for approving, awarding, recommending or administering contracts or who are or were responsible for supervising individuals performing those tasks. The CONSULTANT will ensure that any current or former employee of the State of South Dakota who performs services under this Agreement is in compliance with the conflict of interest laws found in SDCL 5-18A-17 through 5-18A-17.6.

9. **Civil rights**. The CONSULTANT will be bound by **ATTACHMENT F,** attached to and made a part of this Agreement, said assurance being entitled “STANDARD TITLE VI / NONDISCRIMINATION ASSURANCES.”

10. **Warranty regarding award**. The CONSULTANT warrants that the CONSULTANT has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and the CONSULTANT has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the DEPARTMENT will have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. **Audit**. The CONSULTANT will maintain a cost accounting system capable of segregating and allocating costs incurred in connection with this Agreement.

 All project charges will be subject to audit in accordance with the DEPARTMENT’S current procedures, 48 CFR Part 31.2, and 2 CFR Part 200.

 The CONSULTANT will keep accounting records clearly identified with this Agreement.

 Upon reasonable notice, the CONSULTANT will allow the DEPARTMENT, the Federal Highway Administration (FHWA), the United States Department of Transportation’s Inspector General, the Comptroller of the United States, or any authorized representative, to have access to and the right to examine and copy all records, books, papers, or documents related to services rendered under this Agreement. The CONSULTANT will keep these records clearly identified and readily accessible for a period of three (3) years after the date of final payment under this Agreement is made and all other pending matters are closed.

12. **Suspension and termination**. The DEPARTMENT may suspend or terminate this Agreement or any work order, upon ten (10) days’ written notice, except that if the CONSULTANT breaches any of the terms or conditions of this Agreement, the DEPARTMENT may suspend or terminate this Agreement at any time, with or without notice.

 If the DEPARTMENT suspends or terminates this Agreement or any work order without fault on the part of the CONSULTANT, the CONSULTANT will be paid for work performed and delivered up to the date of suspension or termination. The CONSULTANT will be paid a portion of the fixed fee, plus actual costs. The portion of the fixed fee will be based on the ratio of the actual costs incurred to the estimated actual costs contained in the work order. The DEPARTMENT will determine actual costs to be reimbursed by audit of such costs to the date of suspension or termination, except actual costs to be reimbursed will not exceed any maximum limiting fee.

 If the DEPARTMENT suspends or terminates this Agreement or any work order due to the fault of the CONSULTANT, the DEPARTMENT may, in addition to any other legal or equitable remedies, deduct from payments otherwise owed to the CONSULTANT any damages or costs incurred by the DEPARTMENT as a result of the CONSULTANT’S faulty acts or omissions. Upon suspension or termination for fault, the DEPARTMENT may take over the work and may award another party an agreement to complete the work under this Agreement.

 The CONSULTANT may suspend or terminate this Agreement or any work order only with the DEPARTMENT’S written approval.

13. **Amendment**. The terms set forth in this Agreement may be amended only upon written approval of both parties to this Agreement. The DEPARTMENT may, at any time, make prospective changes in the work and services to be performed by the CONSULTANT under the work order. Any changes that materially increase or decrease the cost or time required for performance of the work will be deemed a change in the scope of the work and an adjustment will be made to the work order to address any necessary changes in the maximum limiting fee, fixed fee and time of performance. Any additional compensation to be paid to the CONSULTANT will be provided upon the basis of actual costs plus a fixed fee amount, or at a negotiated lump sum. No claim for payment will be allowed unless written approval for the work and the payment was received in advance from the DEPARTMENT.

# 14. Agreement assignment. The CONSULTANT will not assign, sublet, or transfer this Agreement in whole or in part unless the DEPARTMENT grants prior written permission to do so. The CONSULTANT may not use subcontractors to perform any of the services described in this Agreement without the DEPARTMENT’S prior written consent. The CONSULTANT will include provisions in the CONSULTANT’S subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the DEPARTMENT, and to provide insurance coverage for the benefit of the DEPARTMENT, in a manner consistent with this Agreement. The CONSULTANT will include provisions in its agreement with its subcontractors, agents, and employees requiring the subcontractors, agents, and employees to comply with applicable federal, state, and local laws, regulations, ordinances, guidelines, permits, and requirements, and will adopt such review and inspection procedures as are necessary to assure compliance. The CONSULTANT will not sublet more than forty-nine percent (49%) of the total project costs to other CONSULTANTs unless agreed to in writing and approved by the DEPARTMENT

15. **Prompt payment as required in 49 CFR 26.29**. The CONSULTANT will pay subcontractors or suppliers within thirty (30) days of receiving payment for work that is submitted for progress payment by the DEPARTMENT. If the CONSULTANT withholds payment beyond this time period, the CONSULTANT will submit written justification to the DEPARTMENT upon request. If it is determined that a subcontractor or supplier has not received payment due without just cause, the DEPARTMENT may withhold future estimated payments or may direct the CONSULTANT to make such payment to the subcontractor or supplier.

# 16. Questions of fact. Any question of fact in connection with work not disposed of by agreement between the parties will be referred to the DEPARTMENT’S Secretary for determination, whose decision will be final and conclusive to the parties of this Agreement.

1. **Funding provision**. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement may be terminated by the DEPARTMENT. Termination for any of these reasons is not a default by the DEPARTMENT nor does it give rise to a claim against the DEPARTMENT.
2. **Severability provision**. If any court of competent jurisdiction holds any provision of this Agreement unenforceable or invalid, such holding will not invalidate or render unenforceable any other provision of this Agreement.
3. **Supersession provision**. All other prior discussions, communications, and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided in this Agreement, this Agreement constitutes the entire agreement with respect to the subject matter.
4. **Controlling law and venue**. This Agreement will be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or effecting this Agreement will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
5. **Compliance with SDCL §5-18A.** CONSULTANT certifies and agrees that the following information is correct:

The CONSULTANT is not an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled, directly or indirectly, by a foreign parent entity from, or the government of, the People’s Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the DEPARTMENT to terminate any contract awarded and further would be cause to suspend and debar a business under SDCL § 5-18D-12.

The successful CONSULTANT further agrees to provide immediate written notice to the DEPARTMENT if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination and would be cause to suspend and debar a business under SDCL § 5-18D-12.

1. **CERTIFICATION OF NO PROHIBITED STATE LEGISLATOR INTEREST.** CONSULTANT (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 DEPARTMENT or the State of South Dakota 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, CONSULTANT hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.
2. **Reporting of potential liability**. The CONSULTANT will report to the DEPARTMENT any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject the CONSULTANT, or the DEPARTMENT, or their officers, agents, or employees to liability. The CONSULTANT will report any such event to the DEPARTMENT immediately upon discovery.

 The CONSULTANT’S obligation under this section will only be to report the occurrence of any event to the DEPARTMENT and to make any other report provided for by the CONSULTANT’S duties or applicable law. The CONSULTANT’S obligation to report will not require disclosure of any information subject to privilege or confidentiality under law (such as attorney-client communications). Reporting to the DEPARTMENT under this section will not excuse or satisfy any obligation of the CONSULTANT to report any event to law enforcement or other entities under the requirements of any applicable law.

1. **Notice**. Any notice or other communication required under this Agreement will be in writing and sent to the address set forth above. Notices will be given by and to Tiffany Hanisch (605) 773-2406 or sent via email to Tiffany.Hanisch@state.sd.us on behalf of the DEPARTMENT, and by and to on behalf of the CONSULTANT, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties will be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination will be sent by registered or certified mail, or, if personally delivered, when received by such party.
2. **Certification regarding lobbying**. The CONSULTANT certifies, to the best of the CONSULTANT’S knowledge and belief, that no federal appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, 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 CONSULTANT will complete and submit Standard Form LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

 The CONSULTANT 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.

1. **Intellectual Property Rights.**
2. **Intellectual property rights of the DEPARTMENT**. The DEPARTMENT owns all rights, title, and interest in all of the intellectual property rights, including, but not limited to, copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this Agreement. The CONSULTANT hereby assigns all right, title, and interest it may have in the Works and the Documents to the DEPARTMENT. For purposes of this Agreement, “Works” is defined as all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, plans, specifications, materials, tapes, and disks conceived, reduced to practice, created, or originated by the CONSULTANT, its employees, agents and subconsultants or subcontractors, either individually or jointly with others in the performance of this Agreement. Works includes documents. For purposes of this Agreement, “Documents” are defined as the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, plans, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the CONSULTANT, its employees, agents, or subconsultant or subcontractors, in the performance of this Agreement. Documents will be the exclusive property of the DEPARTMENT and the CONSULTANT will provide DEPARTMENT with a copy of such Documents when created and, upon DEPARTMENT’s request, shall destroy such Documents and provide a written certification that such destruction has taken place. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be “works made for hire”. The CONSULTANT must, at the request of the DEPARTMENT, execute all papers and perform all other acts necessary to transfer or record the DEPARTMENT’S ownership interest in the Works and Documents.
3. **Intellectual Property Rights of the CONSULTANT**. The CONSULTANT retains title and interest in all of its standard details, plans, specifications, and engineering computation documents (“Previously Created Works and Documents”), whether in written or electronic form, which have been incorporated into the Works and Documents, but which were developed by the CONSULTANT independent of this Agreement. The CONSULTANT issues to the DEPARTMENT a royalty-free, nonexclusive, and irrevocable license to use the Previously Created Works and Documents. For clarification, any Previously Created Works and Documents in combination with Works under Paragraph 24.a. would be treated as Works under Paragraph 24.a.
4. **Notification**. Whenever the CONSULTANT reasonably believes the CONSULTANT, or the CONSULTANT’S employees or subconsultant or subcontractor, has made an invention, improvement, or discovery (whether or not patentable) or Works in the performance of this Agreement, and has or actually or constructively reduced it to practice, the CONSULTANT will immediately give the DEPARTMENT’S authorized representative written notice of such invention, improvement, or discovery, and must promptly furnish the DEPARTMENT’S authorized representative with complete information and disclosure.
5. **Representation**. The CONSULTANT must perform all acts and take all steps necessary to ensure that all intellectual property rights in the Works and Documents created and paid for under this Agreement are the sole property of the DEPARTMENT and that neither the CONSULTANT nor the CONSULTANT’S employees, agents, subconsultants, or subcontractors retain any interest in and to the Works and Documents created and paid for under this Agreement, except that the CONSULTANT need not obtain patents, copyrights, or trademarks. The CONSULTANT represents that the Works and Documents created and paid for under this Agreement do not and will not infringe upon any intellectual property rights of other persons or entities. The CONSULTANT will indemnify; defend, to the extent permitted by the Attorney General for South Dakota; and hold harmless the DEPARTMENT, at the CONSULTANT’S expense, from any action or claim brought against the DEPARTMENT to the extent that it is based on a claim that all or part of the Works or Documents created and paid for under this Agreement infringe upon the intellectual property rights of others. The CONSULTANT will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages including, but not limited to, reasonable attorney fees. If such a claim or action arises, or in the CONSULTANT’S or the DEPARTMENT’S opinion is likely to arise, the CONSULTANT must, at the DEPARTMENT’S discretion, either procure for the DEPARTMENT the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents created and paid for under this Agreement as necessary and appropriate to obviate the infringement claim. This remedy of the DEPARTMENT will be in addition to and not exclusive of other remedies provided by law.
6. **The DEPARTMENT’S Reuse of Works and Documents**. If the Works and Documents created and paid for under this Agreement are engineering plans, specifications, or recommendations requiring the certification of a licensed professional engineer, the DEPARTMENT acknowledges that such plans, specifications, and recommendations have been created solely for the specific project covered by this Agreement and may not be suitable for reuse on other projects. There will be no restriction on the DEPARTMENT’S reuse of the Works and Documents created and paid for under this Agreement, but reuse without the written verification or adaptation by the CONSULTANT will be done at the DEPARTMENT’S sole risk and without liability to the CONSULTANT.
7. **Licenses.** The Parties agree that unless specifically stated and provided for in this Agreement, no licenses of the Work and Documents and the Previously Created Works and Documents are provided to the other Party.
8. **Certification Regarding Restriction of Boycott of Israel.** The CONSULTANT certifies for itself and for all suppliers and subcontractors (all tiers) with five (5) or more employees, that they have not refused to transact business activities, have not terminated business activities, and have not taken other similar actions intended to limit their commercial relations, related to the services provided under this Agreement, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel or its territories, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the DEPARTMENT to terminate this Agreement. The CONSULTANT further agrees to provide immediate written notice to the DEPARTMENT if, during the term of this Agreement, the CONSULTANT no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.
9. **Survival Following Termination**. Any terms of this Agreement that would, by their nature or through the express terms of this Agreement, survive the expiration or termination of this Agreement shall so survive including but not limited to the terms of the sections entitled “Suspension and Termination”, “Indemnification”, “Intellectual Property Rights”, and “Controlling Law and Venue”.
10. **Third Party Beneficiaries.** This Agreement is intended to govern only the rights and interests of the parties named herein. It is not intended to create, does not and may not be relied upon to create, any rights, substantive or procedural, enforceable at law by any third party in any matters, civil or criminal.
11. **DEPARTMENT’S** **Right to Reject.** The DEPARTMENT reserves the right to reject any person from performing services under this Agreement who the DEPARTMENT believes would be detrimental to the services, presents insufficient skills, presents inappropriate behavior or is considered by the DEPARTMENT to be a security risk.
12. **Waiver of Breach.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision in this Agreement.
13. **Disclosure of the Contract.** The CONSULTANT acknowledges that the DEPARTMENT is a public entity and thus is bound by South Dakota open meetings and open records laws. It is therefore not a breach of this Agreement for the DEPARTMENT to take any action that the DEPARTMENT reasonably believes is necessary to comply with the South Dakota open records or open meetings laws, including, without limitation, posting this Agreement on the website pursuant to SDCL 1-27-46. The CONSULTANT agrees that the Agreement and any prices, fees and rates paid by the DEPARTMENT under the Agreement are not confidential.

## **ATTACHMENT A**

**CONSULTANT INDIRECT COST RATE CERTIFICATION**

CONSULTANT Name:

Indirect Cost Rate Proposal:

Date of Proposal Preparation:

Fiscal Period Covered (mm/dd/yyyy to mm/dd/yyyy):

I, the undersigned, certify that I have reviewed the proposal to establish final indirect cost rates for the fiscal period as specified above and to the best of my knowledge and belief:

1. All costs included in this proposal to establish final indirect cost rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of title 48, Code of Federal Regulations (CFR), part 31.

2. This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR 31.

Signature:

Name of CONSULTANT Official (Print):

Title:

Date of Certification (mm/dd/yyyy):

**ATTACHMENT B**

**CONSTRUCTION ADMINISTRATION/INSPECTION/TESTING (STATE)**

**TECHNICAL REQUIREMENTS AND PROVISIONS**

**The CONSULTANT will:**

* + 1. Be knowledgeable of the requirements of the project plans and specifications, the DEPARTMENT’S Survey Manual, Road Design Manual, South Dakota Drainage Manual, and Computer-Aided Design and Drafting (CADD) Procedures Manual.
		2. Assure project personnel are knowledgeable of their duties and responsibilities.
		3. Assure project personnel are knowledgeable of the DEPARTMENT’S Materials Manual.
		4. Oversee day to day activities to ensure the project is constructed in accordance with plans and specifications.
		5. Ensure all documentation and reports are accurate, timely and current.
		6. Arrange for the preparation and submission of biweekly progress reports, construction change orders, progress pay estimates, the final pay estimate, and the final construction change order, all on the current version of the DEPARTMENT’S Construction Management and Payment System (“CM&P”). The CONSULTANT will use CM&P solely for DEPARTMENT purposes. The DEPARTMENT reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use and authorize others to use CM&P, and CM&P will remain the property of the DEPARTMENT. The CONSULTANT may not sell or reproduce CM&P or its parts without the DEPARTMENT’S express written permission. The CONSULTANT’S personnel (project engineers, inspectors, and test persons) will receive a one-time training from the DEPARTMENT on the use of CM&P during the regularly scheduled training sessions.
		7. Require all individuals providing acceptance testing and independent assurance testing of construction materials or acceptance inspection to record all data and results electronically on the current version of the DEPARTMENT’S CM&P, or as instructed by the DEPARTMENT.
		8. Require all individuals providing acceptance testing and independent assurance testing of materials or acceptance inspection to meet the requirements of the DEPARTMENT’S Materials Testing and Inspection Certification Program Manual.
		9. Ensure testing equipment identified in the DEPARTMENT’S Materials Testing and Inspection Certification Program Manual is calibrated and documented according to the designated frequencies and procedures designated in the Manual.
		10. Perform other duties as assigned by the DEPARTMENT.

**The CONSULTANT’S PROJECT ENGINEER will:**

1. Assist with conducting the pre-construction meeting.
2. Prepare and electronically submit biweekly progress reports, construction change orders, progress pay estimates, final estimate, and final construction change order electronically on the current version of CM&P.
3. Handle equal employment opportunity (EEO) and labor compliance activities.
4. Ensure that subcontractors working on the project are approved by the DEPARTMENT.

**The CONSULTANT’S INSPECTOR will:**

1. Assure the asphalt or concrete plant is properly calibrated.

2. Perform scale accuracy checks.

3. Ensure construction activities remain inside the acquired right-of-way or easement as specified on the plans unless approved by the DEPARTMENT.

**The CONSULTANT’S SURVEY PARTY CHIEF will:**

1. Record field notes for slope stakes, blue tops, paving grades, pipe, structure layout, and other items of the same sort in electronic format, FWD files, DGN files, DTM files, ALGfiles, and RAW files compatible to the current version of OpenRoads being used by the DEPARTMENT.
2. Set centerline, offset lines, bluetops, slope stakes, pipe stakes, structure stakes, and other items of the same sort by electronic or manual means.
3. Run bench levels within acceptable tolerances of the DEPARTMENT’S Survey Manual and maintain field notes on standard loose-leaf transit field book sheets.
4. Obtain necessary topographic data within acceptable tolerances of the DEPARTMENT’S Survey Manual.
5. Supervise and assure the survey crew is knowledgeable as to its duties and responsibilities.

**The CONSULTANT’S TESTERS will:**

1. Be knowledgeable of the requirements of the project plans and specifications.
2. Sample and test materials for acceptanceas specified by the DEPARTMENT’S Materials Manual. Perform material tests for QC/QA projects in accordance with QC/QA manual and have the proper QC/QA certification.
3. Recognize and have the ability to take corrective action for calibration of testing equipment.

**ATTACHMENT C**

**UNDER WATER BRIDGE INSPECTION (STATE)**

**TECHNICAL REQUIREMENTS AND PROVISIONS**

**UNDERWATER BRIDGE INSPECTION (STATE): Intended to include the inspection of the underwater portion of a bridge substructure and the surround channel, which cannot be inspected visually at low water or by wading or probing, and generally requiring diving or other appropriate techniques.**

1. **WORK TO BE PREFORMED.** The CONSULTANT will conduct in-the-field underwater inspections of substructure elements of each structure in accordance with procedures in the current edition of the AASHTO “Manual for Bridge Evaluation” and “Manual of Bridge Element Inspection” with latest Interim Revisions and all “National Bridge Inspection Standards” requirements in place on the date of full execution of the Work Order.

The CONSULTANT will ensure timing interval for all Inspections, Data entry into AASHTOWare Bridge Management software, and submission of Final Inspection Reports will meet Federal Highway Administration rule on May 6, 2022 for National Bridge Inspection Standards.

Within five (5) days of a bridge inspection, the CONSULTANT will notify the STATE of any needed modifications to bridge postings.

1. **CONSULTANT’S WORK PRODUCT**
	1. CONSULTANT will report the results of these inspections to the STATE in comprehensive reports for each structure which must detail:
		1. General condition of each substructure and channel
		2. Identify any areas of damage and deterioration
		3. Outline any required corrective action
	2. Reports must be signed and sealed by a Professional Engineer in the State of South Dakota.
	3. STATE will provide plan profile and the latest inspection reports that will include both NBI and underwater if applicable for each structure.
	4. The CONSULTANT will give the STATE two (2) weeks’ notice prior to beginning work with the exact dates of structures to be inspected and the Team Members that will be inspecting and their credentials and certifications. On locally owned structures, the CONSULTANT will also notify the county or city (2) weeks prior to inspection.
	5. The CONSULTANT will complete the inspection of each structure within the same month or prior of five years from the last underwater inspection date listed for that structure (If the last inspection date was done more than 5 years ago, or no UW has been done in the past, the next inspection can be conducted any month during the contract season).
	6. The CONSULTANT will document with photographs and text of elements that are out of water.
	7. The CONSULTANT will submit a preliminary report the next month after the month of inspection.
	8. The STATE will conduct review sessions in BlueBeam Revu and the CONSULTANT will participate and address all comments in the review session. Following any comments and corrections, final reports will be produced by CONSULTANT.
	9. The CONSULTANT will submit a final report in a hard copy format, signed and sealed by a Professional Engineer in the State of South Dakota. and enter inspection data into AASHTOWare Bridge Management (BrM) by the second month after the inspection, on all structure reports and pictures uploaded into BrM Multimedia. The STATE will provide login credentials.

**DIVING INSPECTOR QUALIFICATIONS AND SAFETY STANDARDS**

1. All divers will be experienced, accomplished, and certified through a recognized diver training program such as: YMCA, Professional Association of Diving Instructors (PADI), Association of Diving Contractors (ADCI), National Oceanographic and Aeronautical Administration (NOAA), a Commercial Dive School, or the Military. Divers performing the inspections will be qualified to oversee a bridge inspection team as defined by the “National Bridge Inspection Standards” in Title 23 of the Code of Federal Regulations, Part 650, Subpart C, Section 650.309 “Qualifications of Personnel.” All diving operations will be performed in accordance with the applicable Occupational Safety and Health Administration (OSHA) as well as local safety standards.
2. The individual in charge of the dive team during the inspections at each bridge inspection site will be a licensed Professional Engineer in the State of South Dakota and have the qualifications of team leader as defined by the “National Bridge Inspection Standards” in Title 23 of the Code of Federal Regulations, Part 650, Subpart C, Section 650.309(b).

**INSPECTION**

1. The CONSULTANT will submit to the STATE a Bridge Inspector Experience and Training Record for all members of the inspection team prior to mobilization of the inspection. All inspections will be performed with a minimum team of three underwater inspection professionals, consisting of a Team Leader engineer-diver and two assistant bridge inspector-divers.
2. Where it’s not possible to launch a boat, CONSULTANT will:
	1. Use dry suits, NOT waders, in these conditions to prevent sinking or getting stuck in soft soil.
	2. Carry extension ladders that can be used to climb up or down steep banks and be used horizontally to cross lengths of soft mud above the waterline.
	3. Use army crawling and barrel rolling techniques when necessary to minimize risk of getting stuck in soft soil.
3. Noted deficiencies should include detail on location, type of work needed and quantity (area of spall or delamination, width and length of crack, as well as the extent of any other defect or condition that may compromise the integrity of the structure). The location for the defects on columns should be referenced from the bottom of the cap and NOT existing water level. The area of identified deficiencies would be those below the normal high-water elevation.
4. All structural components below the waterline, as well as those elements subjected to periodic submersion, are to be given a Level I Inspection with a Level II Inspection of at least 10% of the substructure elements. All structural elements inspected are to be given AASHTO Elements ratings following the current edition of the AASHTO Manual of Bridge Element Inspection. A recommended condition rating for NBI item 60, Substructure, will be provided when appropriate.
5. Structures that do not warrant an underwater inspection must be documented with the structure number, location and sufficient quantity of color digital images showing the elements not submerged.
6. Levels of inspection are defined by the Federal Highway Administration Report FHWA-NHI-10-027 “Underwater Bridge Inspection.” The CONSULTANT will perform a basic scour investigation which will include providing a triangulated surface of the channel for a minimum of 200’ from the structure’s facia upstream and downstream along with cross sections at 200’, 100’, and adjacent to the substructure both upstream and downstream for a total of six cross sections. The STATE Operations Maintenance Engineer may require additional Level II and Level III investigations. Levels of inspection are defined as:
	1. Level I Inspection - A visual survey of all structural components below the waterline. Where underwater vision is obscured to less than one foot, all portions of the structure will be inspected by sweeping motions of the diver’s hands.
	2. Level II Inspection – Detailed Inspection of at least 10% of all underwater elements. All encrustation is to be removed from the components to be inspected.
	3. Level III Inspection – Highly detailed inspection with Non-Destructive Testing (NDT). All areas of section loss are to be measured and documented.
7. The CONSULTANT will take color digital images of each structure’s roadway centerline, upstream profile, and all deficiencies. The CONSULTANT will use lights to supplement sunlight when turbidity is high and will perform services during daylight hours only. The CONSULTANT will use a clear water box to photograph deficiencies in black water conditions.
8. The CONSULTANT will inspect the underwater portion of the structure that may contain but not limited to the following:
	1. Substructure:
		* 1. The CONSULTANT will inspect the condition of concrete, measure the size of spalls and delamination, and provide their location, locate and measure any areas of concrete erosion, and provide the location and size of cracks. The locations for the defects on columns should be referenced from the bottom of the cap and NOT the existing water level.
			2. The CONSULTANT will inspect any exposed reinforcing steel and document remaining section adjacent to areas with section loss.
			3. The CONSULTANT will inspect the toe of slope protection for scour and undermining, measure area, and provide location of any voids.
			4. The CONSULTANT will inspect masonry piers and abutments for missing stones or bricks and provide the size and location of any cracks.
	2. Footings:
		* 1. The CONSULTANT will inspect for scour upstream of and adjacent to footings that could affect stability and measure and document size and location of scour.
			2. The CONSULTANT will inspect for scour under footing, measure water depth, and depth and extent of scour from edge of footing to the point under footing where bearing is established.
			3. The CONSULTANT will inspect condition of concrete, measure locations and size of spalls, delamination’s, and cracks, inspect any exposed reinforcing steel and document remaining section adjacent to areas with section loss, and inspect condition of concrete where pile enters footing and record any voids or cracks.
			4. The CONSULTANT will inspect for scour at piling and record depth.
			5. The CONSULTANT will inspect piles for soundness and section loss. If piles are encrusted, all piles will receive a Level II inspection. Piles that exhibit section loss will receive Level III inspection.
	3. Pile Bents
		* 1. General
				1. The CONSULTANT will inspect for scour at base of piling and record depth.
				2. When efflorescence or other encrustation covers the piles, all piles will receive a Level II inspection. If a pile exhibits section loss, a Level III inspection will be performed.
			2. Concrete Piles
				1. The CONSULTANT will inspect condition of concrete and measure and record size and location of cracks and spalls.
				2. The CONSULTANT will inspect any exposed reinforcing steel and document remaining section adjacent to areas with section loss.
			3. Steel Piles
				1. The CONSULTANT will inspect condition of steel
				2. The CONSULTANT will inspect paint or epoxy coating
				3. The CONSULTANT will inspect for corrosion. Piles with sever corrosion should receive a complete pass to determine the worst areas of deterioration. The worst areas should be scraped to determine section loss and remaining section documented.
			4. Timber Piles
				1. CONSULTANT will inspect condition of timber, inspect for soundness, core pile when there is evidence of possible decay, and plug hole with treated plugs after inspection. When decay is found, the CONSULTANT will remove decayed material to determine section loss. If piles are encrusted all piles will receive a Level II inspection.
				2. The CONSULTANT will measure size and location of splits or other damage.

**ATTACHMENT D**

**BRIDGE INSPECTION (STATE)**

**TECHNICAL REQUIREMENTS AND PROVISIONS**

**BRIDGE INSPECTION TECHNICAL REQUIREMENTS – STATE BRIDGES**

1. **WORK TO BE PERFORMED**. The CONSULTANT will conduct in-the-field inspections of each structure in accordance with the South Dakota Bridge Inspection Field Manual, the Bridge Inspector’s Reference Manual, the procedures listed in the edition of the AASHTO “Manual for Bridge Evaluation” with latest Interim Revisions and all NBIS requirements in place on the date of full execution of the Work Order.

 The CONSULTANT will complete the bridge inspection and provide an analysis of the condition and load carrying capacity of each structure. Any critical findings will be addressed in accordance with Appendix 1 of the Bridge System Code Manual. The CONSULTANT will review National Bridge Inspection Standards (NBIS) inspection data and will update AASHTOWare Bridge Management (BrM) inventory and inspection ratings as necessary. The CONSULTANT will utilize the current “South Dakota Bridge Inventory Coding Manual” in conducting the inspection and analysis of each structure.

Within five (5) days of a bridge inspection, the CONSULTANT will notify the DEPARTMENT of any needed modifications to bridge postings. This notification will allow the DEPARTMENT to properly sign the structure within thirty (30) days of inspection.

1. **CONSULTANT’S WORK PRODUCT**
	1. The CONSULTANT will provide one (1) copy of each of the following items to the DEPARTMENT on each structure inspected by no later than the completion date stated in the Work Order.
		1. A completed structure inspection report on the DEPARTMENT’S inspection forms, written in a clear and concise language, documenting the condition of the structure. The CONSULTANT will include any findings obtained during Fracture Critical inspections. The CONSULTANT will indicate any structures the CONSULTANT recommends for underwater inspections.
		2. Two (2) new photographs each inspection cycle (one (1) of approach roadway and one (1) of elevation view), supporting photographs to help define the condition of the structure, such as showing major defects and current photos showing any load posting signs from both traffic directions. The CONSULTANT will provide photographs of any defect in structure as noted in a structure inspection report. The CONSULTANT will label all photographs with the structure number and inspection year.
		3. For existing structures designed before October 1, 2010 (allowable stress design (ASD) or load factor design (LFD) designs), the CONSULTANT will provide load capacity analysis calculations in accordance with the edition of the AASHTO “Manual for Bridge Evaluation” with the latest Interim Revisions in place at the time of execution of the Work Order and the [SDDOT Load Rating Manual](https://dot.sd.gov/media/SDDOT%20LOAD%20RATING%20Manual%20%28FEB_2022%29.pdf). The CONSULTANT will perform a load capacity analysis (Rating) for the HS-20 design vehicle, the DEPARTMENT’S Legal Load Truck Types: Type 3, Type 3S2, and Type 3-2, and the notional rating load and four specialized hauling vehicles. The load capacity for the HS-20 vehicle will be computed at both Inventory and Operating Levels. The CONSULTANT will compute load capacities based on member sections found during the final inspection for the DEPARTMENT’S Legal Truck Types at the Operating or Legal Levels as appropriate. Provide Emergency Vehicle ratings if identified as required for the structure being evaluated.
		4. For existing structures designed by load and resistance factor design (LRFD) after October 1, 2010, the CONSULTANT will provide load capacity analysis calculations in accordance with the edition of the AASHTO “Manual for Bridge Evaluation” with latest Interim Revisions in place at the time of execution of the Work Order and the [SDDOT Load Rating Manual](https://dot.sd.gov/media/SDDOT%20LOAD%20RATING%20Manual%20%28FEB_2022%29.pdf) using the load and resistance factor rating (LRFR) method. The CONSULTANT will perform a load capacity analysis (Rating) for the HL-93 Design Load vehicle at Inventory and Operating levels, a Legal Load Rating for the South Dakota Legal Load Truck Types, the notional rating load, and the four specialized hauling vehicles. The CONSULTANT will provide Emergency Vehicle ratings if identified as being required for the structure being evaluated.
		5. The CONSULTANT will prepare a load analysis on all structures where feasible, such as steel girder, timber, culverts, and concrete structures with plans. The analysis will include an electronic AASHTOWare Bridge Rating (BrR) model.
		6. The CONSULTANT will complete a [Load Rating Summary Sheet](https://dot.sd.gov/media/Load%20rating%20summary%20sheet.pdf) to be included in the Bridge Inspection file.
		7. The CONSULTANT will enter inspection data into the DEPARTMENT’S bridge management software.
		8. The CONSULTANT will complete Repair and Posting Recommendation Forms, one (1) per structure. The CONSULTANT will include posting recommendations relative to repairs, rehabilitation, and replacement.
		9. Frequency of Inspection Recommendation: The CONSULTANT will recommend a frequency of the inspection interval on each structure. If the interval is less than twenty-four (24) months, this recommendation should include the frequency, what type of inspection will be required (NBI Routine or Special Inspection), or if the condition merely needs to be monitored, and which element(s) require the more frequent inspection or monitoring.
		10. The CONSULTANT will provide a stream cross section and place the cross section in the inspection file on all drainage structures, taken on the upstream side of bridge, to monitor scour.
	2. The CONSULTANT will provide one (1) copy of each of the following items to the DEPARTMENT within the time frames identified below:
		1. No later than the completion date stated in the Work Order, a Posting Summary Sheet listing, at a minimum, structure numbers, current postings, and recommended postings for all structures inspected under each Work Order; and
		2. When a critical finding is discovered, the Inspection Team Leader shall complete Part I of the Critical Finding Report and submit a copy to the DEPARTMENT’S Inspection Program Manager and notify the DEPARTMENT’S Area Engineer where the structure is located within 48 hours of the finding. A Critical Finding is defined by the DEPARTMENT in Appendix I of the Bridge System Code Manual.
2. **PERSONNEL REQUIREMENTS**. The CONSULTANT’S field unit personnel responsible for bridge inspection, reporting, and inventory will meet the qualifications as defined in 23 CFR 650. The CONSULTANT’S inspection team leader will be present on the bridge site for all bridge inspections and meet National Bridge Inspection Standards. The CONSULTANT’S team leader will be required to have successfully completed a comprehensive bridge inspection training course approved by the Federal Highway Administration. The CONSULTANT’S bridge load rating engineer will be a professional engineer licensed in South Dakota.

**ATTACHMENT E**

**BRIDGE INSPECTION (LOCAL)**

**TECHNICAL REQUIREMENTS AND PROVISIONS**

1. **WORK TO BE PERFORMED**. The CONSULTANT will conduct in-the-field inspections of each structure in accordance with the South Dakota Bridge Inspection Field Manual, the Bridge Inspector’s Reference Manual, the procedures listed in the edition of the AASHTO “Manual for Bridge Evaluation” with latest Interim Revisions and all NBIS requirements in place on the date of full execution of the Work Order.

 The CONSULTANT will complete the bridge inspection and provide an analysis of the condition and load carrying capacity of each structure. Any critical findings will be addressed in accordance with Appendix 1 of the Bridge System Code Manual. The CONSULTANT will review National Bridge Inspection Standards (NBIS) inspection data and will update AASHTOWare Bridge Management (BrM) inventory and inspection ratings as necessary. The CONSULTANT will utilize the current “South Dakota Bridge Inventory Coding Manual” in conducting the inspection and analysis of each structure.

The CONSULTANT will perform the bridge inspection and submit the report to the DEPARTMENT by the deadlines specified by the DEPARTMENT. The CONSULTANT will submit monthly reports to the DEPARTMENT tracking anticipated dates for inspections and reports and completed inspections and reports.

For any structure identified as being “Fracture Critical,” the CONSULTANT will, as a part of the regular inspection, conduct a Fracture Critical inspection and fill out the DEPARTMENT’S Fracture Critical Form.

The CONSULTANT will notify the city or county having jurisdiction over the bridge of any needed modifications to bridge postings. This notification will allow the city or county the opportunity to properly sign the structure within thirty (30) days of inspection.

## 2. **CONSULTANT’S WORK PRODUCT**

* 1. The CONSULTANT will provide one (1) copy of each of the following items to the DEPARTMENT on each structure inspected by no later than the completion date stated in the Work Order.
		1. A completed structure inspection report on the DEPARTMENT’S inspection forms, written in a clear and concise language, documenting the condition of the structure. The CONSULTANT will include any findings obtained during Fracture Critical inspections. The CONSULTANT will indicate any structures the CONSULTANT recommends for underwater inspections.
		2. Two (2) new photographs each inspection cycle (one (1) of approach roadway and one (1) of elevation view), supporting photographs to help define the condition of the structure, such as showing major defects and current photos showing any load posting signs from both traffic directions. The CONSULTANT will provide photographs of any defect in structure as noted in a structure inspection report. The CONSULTANT will label all photographs with the structure number and inspection year.
		3. For existing structures designed before October 1, 2010 (allowable stress design (ASD) or load factor design (LFD) designs), the CONSULTANT will provide load capacity analysis calculations in accordance with the DEPARTMENT’S Load Rating Manual and the edition of the AASHTO “Manual for Bridge Evaluation” with the latest Interim Revisions in place at the time of execution of the Work Order The CONSULTANT will perform a load capacity analysis (Rating) for the HS-20 design vehicle, the DEPARTMENT’S Legal Load Truck Types: Type 3, Type 3S2, and Type 3-2, the notional rating load, and four specialized hauling vehicles. The load capacity for the HS-20 vehicle will be computed at both Inventory and Operating Levels. The CONSULTANT will compute load capacities based on the member sections found during the field inspection for the DEPARTMENT’S Legal Truck Types at the Operating or Legal Levels as appropriate. Provide Emergency Vehicle ratings if identified as required for the structure being evaluated.
		4. For existing structures designed by load and resistance factor design (LRFD) after October 1, 2010, the CONSULTANT will provide load capacity analysis calculations in accordance with the DEPARTMENT’S Load Rating Manual and the edition of the AASHTO “Manual for Bridge Evaluation” with latest Interim Revisions in place at the time of execution of the Work Order using the load and resistance factor rating (LRFR) method. The CONSULTANT will perform a load capacity analysis (Rating) for the HL-93 Design Load vehicle at Inventory and Operating levels, a Legal Load Rating for the South Dakota Legal Load Truck Types, the notional rating load and the four specialized hauling vehicles. Provide Emergency Vehicle ratings if identified as required for the structure being evaluated.
		5. The CONSULTANT will prepare a load analysis on all structures where feasible, such as steel girder, timber, culverts, and concrete structures with plans. The analysis shall include an electronic AASHTOWare Bridge Rating (BrR) model.
		6. The CONSULTANT will complete a [Load Rating Summary Sheet](https://dot.sd.gov/media/Load%20rating%20summary%20sheet.pdf) to be included in the Bridge Inspection file.
		7. The CONSULTANT will enter inspection data into the Department’s bridge management software.
		8. The CONSULTANT will complete Repair and Posting Recommendation Forms, one (1) per structure. The CONSULTANT will include posting recommendations relative to repairs, rehabilitation, and replacement.
		9. Frequency of Inspection Recommendation: The CONSULTANT will recommend a frequency of the inspection interval on each structure. If the interval is less than twenty-four (24) months, this recommendation should include the frequency, what type of inspection will be required (NBI Routine or Special Inspection), or if the condition merely needs to be monitored, and which element(s) require the more frequent inspection or monitoring.
		10. The CONSULTANT will provide a stream cross section and place the cross section in the inspection file on all drainage structures, excluding box culverts and pipe, taken on the upstream side of bridge, to monitor scour.
		11. The CONSULTANT will have until January 1st of each year to individually meet with the county commission or city commission or council to review inspection documents and findings, including posting requirements if needed.

b. The CONSULTANT will provide one (1) copy of each of the following items to the DEPARTMENT for each county or city.

* + 1. A Posting Summary Sheet listing, at a minimum, structure numbers, current postings, and recommended postings for all structures inspected under each Work Order provided no later than the completion date stated in the Work Order.
		2. When a critical finding is discovered the Inspection Team Leader shall complete Part I of the Critical Finding Report and submit a copy to the responsible local official and the Local Government Bridge Inspection Engineer within 48 hours of the finding. A Critical Finding is defined by the DEPARTMENT in Appendix I of the Bridge System Code Manual.
		3. An underwater inspection list summarizing the structures requiring an underwater inspection for each Work Order.

c. The CONSULTANT will provide, to the city or county having jurisdiction over the structure, one (1) copy of the following items on each structure inspected .

1. Completed inspection report as noted in Paragraph 2.a.1).
2. Supporting photographs as noted in Paragraph 2.a.2).
3. Load calculations as noted in Paragraphs 2.a.3) and 2.a.4).
4. Repair and posting recommendations as noted in Paragraph 2.a.7).
5. Posting Summary Sheet as noted in Paragraph 2.b.1).
6. Critical Findings Report(s) as noted in Paragraph 2.b.2).

**3. PERSONNEL REQUIREMENTS**. The CONSULTANT’S field unit personnel responsible for bridge inspection, reporting, and inventory will meet the qualifications as defined in 23 CFR 650. The CONSULTANT’S inspection team leader will be present on the bridge site for all bridge inspections and meet National Bridge Inspection Standards. The CONSULTANT’S team leader must have successfully completed a comprehensive bridge inspection training course approved by the Federal Highway Administration and must have successfully completed a bridge inspection refresher course every subsequent five (5) years to remain qualified as a team leader. The CONSULTANT’S bridge load rating engineer shall be a licensed professional engineer in South Dakota.

**ATTACHMENT F**

**STATE OF SOUTH DAKOTA**

**DEPARTMENT OF TRANSPORTATION**

**STANDARD TITLE VI / NONDISCRIMINATION ASSURANCES**

**APPENDIX A & E**

**MARCH 1, 2016**

During the performance of this Agreement, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”), agrees as follows:

1. **Compliance with Regulations**: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination**: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment**: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports**: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance**: In the event of a contractor's noncompliance with the Non­ discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
6. withholding payments to the contractor under the contract until the contractor complies; and/or
7. cancelling, terminating, or suspending a contract, in whole or in part.
8. **Incorporation of Provisions**: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided that if the contractor becomes involved in, or is threatened with litigation, by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

During the performance of this Agreement, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”), agrees to comply with the following non-discrimination statutes and authorities; including, but not limited to:

**Pertinent Non-Discrimination Authorities**:

* Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
* Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
* Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
* The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
* Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
* The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
* Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
* The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
* Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
* Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
* Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

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