

**Funding Agreement Examples for the  
Bridge Improvement Grant for Rehabilitation/Replacement  
Locally Administered**

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**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION  
BRIDGE IMPROVEMENT GRANT AGREEMENT FOR  
REHABILITATION/REPLACEMENT – LOCAL ADMINISTRATION**

This Agreement is made and entered into by and between the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the “STATE,” and \_\_\_\_\_ County, South Dakota, referred to in this Agreement as the “COUNTY.”

**1. BACKGROUND:**

- A. The STATE has funding available for rehabilitation / replacement of eligible local public agency bridges. The funding is only available for bridges located on local public roads.
- B. The COUNTY has applied for and the STATE has awarded to the COUNTY a Bridge Improvement Grant (“BIG”) for bridge rehabilitation / replacement for structure number \_\_\_\_\_ - \_\_\_\_\_, project number BR \_\_\_\_\_ (00) - PCN \_\_\_\_\_, referred to in this Agreement as the “PROJECT.”

**THE STATE AND THE COUNTY MUTUALLY AGREE AS FOLLOWS:**

**2. TERM**

- A. The STATE issued a letter on       Date       notifying the COUNTY of the award of the BIG. This Agreement is effective on the date of the letter of award and is attached to and incorporated in this Agreement as **Exhibit A**.
- B. The rehabilitation/replacement work contemplated by this Agreement will be completed no later than four years from the date of the letter of award. No reimbursements will be processed by the STATE for work performed after the date of       Date      .

**3. PROJECT APPROVAL**

- A. The COUNTY applied for and was awarded a BIG for bridge rehabilitation / replacement for the PROJECT. The BIG award amount is (\$ \_\_\_\_\_), plus \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the actual costs of reasonable and necessary construction engineering for the PROJECT.
- B. The COUNTY will obtain the STATE’S concurrence in the award of the contract.
- C. The COUNTY will obtain all necessary right-of-way for the PROJECT according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended in 1987. The COUNTY will use STATE forms in obtaining right-of-way.
- D. The COUNTY will arrange for all needed utility adjustments as part of the PROJECT and certify prior to advertisement or letting that all right-of-way and utility adjustments or agreements are in place.
- E. The COUNTY will obtain all necessary PROJECT environmental clearances and permits as required for this Agreement. If any part of the PROJECT affects the Federal Emergency Management Agency’s (FEMA) flood plain insurance maps, the COUNTY will be responsible for all map revisions and obtaining FEMA approval or a Conditional Letter of Map Revision (CLOMR).

**4. PROJECT PLANNING AND CONSTRUCTION**

- A. The COUNTY will retain a professional engineering firm to perform the preliminary engineering for the PROJECT. The COUNTY will select and hire the firm from the STATE’S current consultant retainer list for the bridge design category of work. The requirements of the preliminary engineering services to be performed by the firm are identified in the attached **Exhibit B**.

- B. The COUNTY will select and hire a geotechnical firm to conduct the foundation investigation if the STATE'S Geotechnical Office is unable to meet the project timeline. The firm must be on the STATE'S current consultant retainer list for the local geotechnical services category of work. The COUNTY will submit a copy of the contract between the geotechnical firm and the COUNTY to the STATE. The requirements to be performed by the firm are identified in the attached **Exhibit B**.
- C. The COUNTY will require the design firm to submit plans, design calculations, and check design calculations to the STATE.
- D. The COUNTY will also require the design firm to load rate each structure, including culverts that are bridge length, in accordance with the edition of the AASHTO "Manual for Bridge Evaluation" with latest Interim Revisions using the LFRF method currently in place at the time of execution of the design engineering contract. The design firm will perform an HL-93 design load rating for each structure. The design firm will analyze the AASHTO HS20 vehicle for Inventory and Operating Ratings. The design firm will also perform a legal load rating for South Dakota legal trucks, the notional rating load, and the four specialized hauling vehicles. The design firm will submit a copy of the rating analyses to the STATE. The STATE will review load ratings and provide comments to the design firm. The design firm will address all STATE comments to the satisfaction of the STATE. The design firm will provide a separate summary table of all load ratings to be included in the STATE'S bridge inspection file.
- E. If applicable, the COUNTY will also require the bridge design engineering firm to submit scour analyses and develop a Quality Control/Quality Assurance (QC/QA) plan. The QC/QA plan must follow the format developed by the STATE.
- F. The parties recognize that unanticipated and time-sensitive work may be needed for completion of the PROJECT and that delays in completing such work could jeopardize the PROJECT schedule. The COUNTY authorizes the STATE to write work orders and hire consultants for the PROJECT for unanticipated and time-sensitive work that must be completed promptly in order to avoid PROJECT delays and increased PROJECT costs. The COUNTY'S signature will not be required for these work orders or consultant agreements, and the COUNTY agrees to pay for the cost of this additional work in accordance with the provisions of this Agreement. The STATE will notify the COUNTY of the purpose and need of any such work orders or consultant agreements prior to the STATE issuing a Notice to Proceed for the additional work. The STATE will provide the COUNTY with a fully executed copy of any work order or consultant agreement executed by the STATE pursuant to this section of the Agreement.
- G. The COUNTY will obtain and submit to the STATE a copy of the bid documents, plans, and specifications sealed and signed by a professional engineer licensed in the State of South Dakota. The COUNTY will address, in writing, all comments made by the STATE to the STATE'S satisfaction. The COUNTY must obtain the STATE'S approval of the final bid documents, plans, and specifications before proceeding with any award of the contract.
- H. If applicable, the COUNTY will have the design engineer review shop plans of prefabricated products.
- I. The COUNTY will retain a construction engineering firm to perform the construction engineering services for the PROJECT. The COUNTY will select and hire the firm from the STATE'S current consultant retainer list for construction administration, inspection, and testing. The requirements of the construction engineering services to be performed are identified in the attached **Exhibit C**.
- J. The STATE will review and approve a quality assurance and testing plan for construction testing and inspection.
- K. As part of the PROJECT, one or more signs will be erected to indicate the PROJECT was built with a BIG. The COUNTY will be responsible for maintaining these signs for the life of the bridge.
- L. The COUNTY will notify the STATE upon completion of the rehabilitation/replacement work under this Agreement.

M. The STATE will conduct a final inspection of the PROJECT.

## 5. FINANCING THE PROJECT

- A. **COUNTY COSTS.** The COUNTY will be one hundred percent (100%) responsible for any ineligible PROJECT costs.
- B. **COST SHARING.** The parties will share costs for the actual eligible PROJECT costs as follows:
- i. The STATE will reimburse the COUNTY for eighty percent (80%) of the actual costs of reasonable and necessary construction engineering for the PROJECT. In addition, the STATE will reimburse the COUNTY for eighty percent of other eligible PROJECT costs, but the reimbursement for these other eligible PROJECT costs may not exceed (\$ ).
- C. **FUNDING DISBURSEMENTS FOR PRELIMINARY ENGINEERING, CONSTRUCTION AND CONSTRUCTION ENGINEERING.** Upon receipt of the copy of the signed preliminary engineering contract between the COUNTY and its preliminary engineering consultant, the copies of the signed construction contract between the COUNTY and the contractor, and the signed construction engineering contract between the COUNTY and its construction engineering consultant, the STATE will issue payments to the COUNTY for seventy-five percent (75%) of the STATE'S SHARE of the cost of preliminary engineering, and for seventy-five percent (75%) of the STATE'S SHARE of the cost of construction and construction engineering for the PROJECT. If requested, the COUNTY may receive an extra percent ( %) of the STATE'S SHARE before final payment. For purposes of calculating these payments, the cost of preliminary engineering will be based on the maximum limiting amount of the executed preliminary engineering contract, and the cost of construction will be based on the contract amount set out in the executed construction contract, and the cost of construction engineering will be based on the maximum limiting amount of the executed construction engineering contract or the STATE'S estimate of the likely cost of construction engineering for the PROJECT, whichever is less. Upon completion of construction of the PROJECT, the COUNTY will provide the STATE with all documentation of preliminary engineering, construction and construction engineering costs, including contracts, amendments, construction change orders, pay estimates, progress reports, a summary of the QC/QA test results, and any other PROJECT documentation requested by the STATE. Upon receipt of all such documentation, the STATE will issue payment to the COUNTY for any remaining amount of the STATE'S SHARE of the actual eligible preliminary engineering, construction and construction engineering costs. If the STATE'S SHARE of eligible PROJECT preliminary engineering, construction and construction engineering is less than the funding advance made by the STATE, then the COUNTY will reimburse the STATE for the difference between the funding advance and the STATE'S SHARE of PROJECT preliminary engineering, construction and construction engineering.

## 6. SUBCONTRACTING

The COUNTY will include provisions in the COUNTY'S contracts and subcontracts requiring the COUNTY'S contractors and subcontractors to comply with the applicable provisions of this Agreement, to indemnify the STATE, and to provide insurance coverage for the benefit of the STATE, all in a manner consistent with this Agreement. The COUNTY will cause the COUNTY'S contractors, 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 such compliance.

## 7. AMENDMENT

This Agreement may not be amended, except in writing, which writing will be expressly identified as a part of this Agreement and be signed by an authorized representative of each of the parties.

## 8. INDEMNIFICATION

The COUNTY 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 COUNTY'S negligence, tortious acts, or intentional acts in performing services under this Agreement. Notwithstanding the foregoing, the STATE may, in its sole discretion engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist COUNTY in the defense. If the STATE exercises this authority and COUNTY 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 COUNTY in the proceeding. This section does not require COUNTY 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.

## **9. AUDIT**

- A. All PROJECT charges will be subject to audit by the STATE. The COUNTY and the COUNTY'S contractors and subcontractors will keep accounting records clearly identified with this Agreement and will support all PROJECT charges by documents which evidence, in detail, the nature and propriety of those charges.
- B. The COUNTY certifies the COUNTY is in compliance with the federal Single Audit Act and the requirements of SDCL § 4-11-2.1, if applicable. The COUNTY further certifies audits are displayed on the COUNTY'S website.

## **10. EXAMINATION OF RECORDS**

Upon reasonable notice, the COUNTY and the COUNTY'S contractors and subcontractors will allow the STATE, through 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 COUNTY 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.

## **11. CIVIL RIGHTS ACT**

The COUNTY will abide by the requirements of Title VI of the Civil Rights Act of 2016, incorporated in and attached to this Agreement as **Exhibit D**.

## **12. AMERICAN WITH DISABILITIES ACT**

The COUNTY will perform under this Agreement in compliance with the Americans with Disabilities Act of 1990 and any amendments.

## **13. FUNDING AVAILABILITY**

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, the STATE may terminate this Agreement. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.

## **14. TERMINATION**

The STATE may terminate this Agreement upon thirty (30) days' notice to the COUNTY. If the STATE terminates this Agreement due to the COUNTY'S breach, then any payments owed to the COUNTY at the time of termination may be adjusted to cover any additional costs to the STATE because of the COUNTY'S breach. The adjustment of payments will be in addition to any other remedies the STATE may pursue as a result of COUNTY'S breach, and the STATE does not waive these other remedies by making a payment

adjustment. If termination is not due to a breach by the COUNTY, then the COUNTY will be paid for eligible PROJECT costs incurred up to the date of termination, subject to the maximum limiting amount of the BIG.

## **15. COMPLIANCE**

- A. The COUNTY must comply with all federal, state, and local laws, together with all ordinances and regulations applicable to the work and will be solely responsible for obtaining current information on such requirements. The COUNTY must procure all licenses, permits, or other rights necessary for the fulfillment of its obligations under this Agreement.
- B. The COUNTY certifies the COUNTY has filed an Internal Revenue Services (IRS) Form 990 in compliance with federal law, if applicable. The COUNTY will display the filed IRS Form 990 on the COUNTY'S website immediately upon filing.
- C. The COUNTY certifies the COUNTY has a conflict of interest policy and enforces said policy.
- D. The COUNTY certifies the COUNTY employs an effective internal control system.

## **16. CONTROLLING LAW**

This Agreement will be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

## **17. SEVERABILITY**

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.

## **18. SUPERCESSION**

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 its subject matter.

## **19. CERTIFICATION OF NO PROHIBITED STATE LEGISLATOR INTEREST**

The COUNTY (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to this Agreement. By signing this Agreement, the COUNTY hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

## **20. SIGNATURE AUTHORITY**

The COUNTY has designated its County Commission Chairperson as the COUNTY'S authorized representative and has empowered the Chairperson with the authority to sign this Agreement on behalf of the COUNTY. A copy of the COUNTY'S Commission minutes or resolution authorizing the execution of this Agreement by the Chairperson as the COUNTY'S authorized representative is attached to this Agreement as **Exhibit E**.

SIGNATURE PAGE FOLLOWS

This Agreement is binding upon the signatories not as individuals but solely in their capacities as officials of their respective organizations and acknowledges proper action of the STATE and the COUNTY to enter into the same.

County of \_\_\_\_\_, South Dakota

State of South Dakota  
Department of Transportation

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: Commission Chairperson

Its: Program Manager,  
Administration Program

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

COUNTY Auditor/Clerk

(COUNTY SEAL)

COUNTY EXAMPLE

**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 COUNTY, 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:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **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 COUNTY, 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 Ch. 471, § 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 CFR Parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. Ch. 471, § 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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**STATE OF SOUTH DAKOTA  
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BRIDGE IMPROVEMENT GRANT AGREEMENT FOR  
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This Agreement is made and entered into by and between the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the “STATE,” and the city of \_\_\_\_\_, South Dakota, referred to in this Agreement as the “CITY.”

**1. BACKGROUND:**

- A. The STATE has funding available for rehabilitation / replacement of eligible local public agency bridges. The funding is only available for bridges located on local public roads.
- B. The CITY has applied for and the STATE has awarded to the CITY a Bridge Improvement Grant (“BIG”) for bridge rehabilitation / replacement for structure number \_\_\_\_\_ - \_\_\_\_\_, project number BR \_\_\_\_\_ (00) - \_\_\_\_\_ PCN \_\_\_\_\_, referred to in this Agreement as the “PROJECT.”

**THE STATE AND THE CITY MUTUALLY AGREE AS FOLLOWS:**

**2. TERM**

- A. The STATE issued a letter on \_\_\_\_\_ Date notifying the CITY of the award of the BIG. This Agreement is effective on the date of the letter of award and is attached to and incorporated in this Agreement as **Exhibit A**.
- B. The rehabilitation/replacement work contemplated by this Agreement will be completed no later than four years from the date of the letter of award. No reimbursements will be processed by the STATE for work performed after the date of \_\_\_\_\_ Date.

**3. PROJECT APPROVAL**

- A. The CITY applied for and was awarded a BIG for bridge rehabilitation / replacement for the PROJECT. The BIG award amount is (\$ \_\_\_\_\_), plus \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the actual costs of reasonable and necessary construction engineering for the PROJECT.
- B. The CITY will obtain the STATE’S concurrence in the award of the contract.
- C. The CITY will obtain all necessary right-of-way for the PROJECT according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended in 1987. The CITY will use STATE forms in obtaining right-of-way.
- D. The CITY will arrange for all needed utility adjustments as part of the PROJECT and certify prior to advertisement or letting that all right-of-way and utility adjustments or agreements are in place.
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## **9. AUDIT**

- A. All PROJECT charges will be subject to audit by the STATE. The CITY and the CITY'S contractors and subcontractors will keep accounting records clearly identified with this Agreement and will support all PROJECT charges by documents which evidence, in detail, the nature and propriety of those charges.
- B. The CITY certifies the CITY is in compliance with the federal Single Audit Act and the requirements of SDCL § 4-11-2.1, if applicable. The CITY further certifies audits are displayed on the CITY'S website.

## **10. EXAMINATION OF RECORDS**

Upon reasonable notice, the CITY and the CITY'S contractors and subcontractors will allow the STATE, through 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 CITY 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.

## **11. CIVIL RIGHTS ACT**

The CITY will abide by the requirements of Title VI of the Civil Rights Act of 2016, incorporated in and attached to this Agreement as **Exhibit D**.

## **12. AMERICAN WITH DISABILITIES ACT**

The CITY will perform under this Agreement in compliance with the Americans with Disabilities Act of 1990 and any amendments.

## **13. FUNDING AVAILABILITY**

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, the STATE may terminate this Agreement. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.

## **14. TERMINATION**

The STATE may terminate this Agreement upon thirty (30) days' notice to the CITY. If the STATE terminates this Agreement due to the CITY'S breach, then any payments owed to the CITY at the time of termination may be adjusted to cover any additional costs to the STATE because of the CITY'S breach. The adjustment of payments will be in addition to any other remedies the STATE may pursue as a result of CITY'S breach, and the STATE does not waive these other remedies by making a payment adjustment. If termination is not due to a breach by the CITY, then the CITY will be paid for eligible PROJECT costs incurred up to the date of termination, subject to the maximum limiting amount of the BIG.

**15. COMPLIANCE**

- A. The CITY must comply with all federal, state, and local laws, together with all ordinances and regulations applicable to the work and will be solely responsible for obtaining current information on such requirements. The CITY must procure all licenses, permits, or other rights necessary for the fulfillment of its obligations under this Agreement.
- B. The CITY certifies the CITY has filed an Internal Revenue Services (IRS) Form 990 in compliance with federal law, if applicable. The CITY will display the filed IRS Form 990 on the CITY'S website immediately upon filing.
- C. The CITY certifies the CITY has a conflict of interest policy and enforces said policy.
- D. The CITY certifies the CITY employs an effective internal control system.

**16. CONTROLLING LAW**

This Agreement will be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

**17. SEVERABILITY**

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.

**18. SUPERCESSION**

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 its subject matter.

**19. CERTIFICATION OF NO PROHIBITED STATE LEGISLATOR INTEREST**

The CITY (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to this Agreement. By signing this Agreement, the CITY hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

**20. SIGNATURE AUTHORITY**

The CITY has designated its Mayor as the CITY'S authorized representative and has empowered the Mayor with the authority to sign this Agreement on behalf of the CITY. A copy of the CITY'S Commission minutes or resolution authorizing the execution of this Agreement by the Mayor as the CITY'S authorized representative is attached to this Agreement as **Exhibit E**.

SIGNATURE PAGE FOLLOWS

This Agreement is binding upon the signatories not as individuals but solely in their capacities as officials of their respective organizations and acknowledges proper action of the STATE and the CITY to enter into the same.

City of \_\_\_\_\_, South Dakota

State of South Dakota  
Department of Transportation

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: Mayor

Its: Program Manager,  
Administration Program

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

City Auditor/Clerk (CITY SEAL)

CITY EXAMPLE

**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 CITY, 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:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **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 CITY, 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 Ch. 471, § 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 CFR Parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. Ch. 471, § 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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