

**Funding Agreement Examples for the  
Local Federal Bridge Program  
State Administered**

**Eligible Costs: 81.95% federal, 18.05% local**

**Ineligible Costs: 100% local**

**County Example - Page 2**

**City Example - Page 9**

**Eligible Costs: 100% federal**

**Ineligible Costs: 100% local**

**County Example - Page 16**

**City Example Page 23**

**JOINT POWERS AND FUNDING AGREEMENT  
FOR BRIDGE REPLACEMENT  
BETWEEN  
SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION  
AND COUNTY**

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. JOINT POWERS:**

This Agreement does not establish a separate legal entity, as contemplated by SDCL § 1-24-5. The cooperative undertaking described in this Agreement will be financed and conducted under the provisions of this Agreement by the COUNTY and the STATE. Each party has responsibilities under the terms of this Agreement and no joint board or administrator will be used. The COUNTY will be responsible for acquiring, holding and disposing of all real property required in connection with this Agreement.

**2. BACKGROUND:**

- A. The STATE has limited federal and state funding available for the replacement of eligible local public agency bridges.
- B. The COUNTY has applied for Federal Highway Local Bridge Replacement Program funding ("Federal Funds") for the bridge replacement of structure number - - , project number BR ( ) , PCN , referred to in this Agreement as the "PROJECT."
- C. The Federal Highway Local Bridge Replacement Program provides Federal Funds for 81.95% of the actual total eligible costs of an approved bridge replacement project.

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

**3. TERM**

This Agreement is effective upon execution by both parties and its term is perpetual.

**4. PROJECT FUNDING AWARD**

The COUNTY has been awarded federal funds for the costs of the PROJECT. The STATE will apply these federal funds to pay for eighty-one point nine five percent (81.95%) of eligible PROJECT costs. The COUNTY will reimburse the STATE for the COUNTY'S eighteen point zero five percent (18.05%) required share of eligible PROJECT costs. The COUNTY will be one hundred percent (100%) responsible for any costs deemed ineligible for federal funds by the STATE. Ineligible expenses include, but are not limited to, real property acquisition costs, utility relocations, finished roadway surfacing (asphalt, gravel, or concrete), fencing, aesthetics, and off-site environmental mitigation and monitoring costs.

**5. DESIGN ENGINEERING SERVICES**

The STATE will execute and administer the contracts and work orders for design engineering services for the PROJECT, which includes surveys, hydraulic analysis, and preparation of plans and specifications. The STATE will advertise, let to contract, award, and be the contracting party for the construction of the PROJECT. The COUNTY'S concurrence will not be required for the STATE'S award and execution of the construction contract.

## **6. CONSTRUCTION ENGINEERING**

The STATE will provide construction engineering services for the PROJECT through STATE forces or a consultant selected by the STATE and approved by the COUNTY. If a consultant is retained, the STATE will execute and administer the contracts and works orders for construction administration services for the PROJECT. The reasonable and necessary costs of these services will be an eligible PROJECT expense.

## **7. PROJECT COSTS**

The parties estimate the costs of design, construction engineering and construction of the PROJECT to be \$ , (\$ ), but payment obligations under this Agreement will be based on actual costs. The STATE will pay consultants and contractors for any PROJECT design, construction engineering, and construction costs and bill the COUNTY for ineligible PROJECT costs. The COUNTY will pay within 30 days of receipt of billing from the STATE.

## **8. WORK PERFORMED PRIOR TO AGREEMENT**

It is understood and agreed between the parties that certain PROJECT work pertaining to this Agreement may have been performed by the consultant or contractor hired by the STATE before this Agreement was executed. Further, it was the intent of the parties that certain work be performed by the consultant or contractor and be paid for in accordance with this Agreement. In light of the foregoing, the parties to this Agreement ratify the acts of the consultant or contractor hired by the STATE which may have been performed during this period and agree to pay for these services in accordance with the terms of this Agreement.

## **9. STRUCTURE MAINTENANCE**

Upon completion of the PROJECT, the COUNTY will be one hundred percent (100%) responsible for all work on the structure, including, but not limited to, any inspection, maintenance, repair, rehabilitation, and replacement.

## **10. REAL PROPERTY ACQUISITION**

The COUNTY will obtain all right-of-way and other real property interests necessary for the PROJECT in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended in 1987. The COUNTY will use unaltered STATE forms in obtaining right-of-way and other real property interests necessary for the PROJECT, unless alterations are approved in advance by the STATE.

## **11. UTILITY ADJUSTMENTS**

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 and agreements are in place.

## **12. CONFLICT OF INTEREST**

The COUNTY certifies the COUNTY has a conflict of interest policy and enforces said policy.

## **13. INTERNAL REVENUE COMPLIANCE**

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.

## **14. INTERNAL CONTROLS**

The COUNTY certifies the COUNTY employs an effective internal control system.

## **15. SINGLE AUDIT ACT**

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.

## **16. 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.

## **17. CIVIL RIGHTS ACT**

The COUNTY will abide by the requirements of Title VI of the Civil Rights Act of 1964, incorporated in and attached to this Agreement as **Exhibit A**.

## **18. AMERICANS WITH DISABILITIES ACT**

The COUNTY will perform under this Agreement in compliance with the Americans with Disabilities Act of 1964 and any amendments.

## **19. AMENDMENTS**

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.

## **20. FUNDING AVAILABILITY**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the federal government, Legislature and South Dakota Transportation Commission for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, the South Dakota Transportation Commission fails to allocate state highway funds, or funds become unavailable by operation of law or federal funds reductions, the STATE may terminate this Agreement or reduce the Federal Funds or state highway funds paid under this Agreement. Termination or funding reductions for any of these reasons is not a default or breach by the STATE nor does it give rise to a claim against the STATE.

## **21. TERMINATION**

The STATE may terminate this Agreement with or without cause. If this Agreement is terminated prior to completion of the PROJECT, the COUNTY will, within 180 days of termination of this Agreement, repay all Federal Funds and state highway funds expended on the PROJECT.

## **22. COMPLIANCE WITH LAWS**

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.

## **23. GOVERNING 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 affecting this Agreement will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

## **24. 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.

## **25. ENTIRE AGREEMENT**

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.

## **26. EMPLOYEE STATUS**

Any officer, employee, or agent engaged in joint action under this Agreement will remain an employee with his or her agency during participation in joint action under this Agreement. Each agency will retain exclusive responsibility for its officers, agents, and employees while these officers, agents, and employees are engaged in joint action under this Agreement, including but not limited to responsibility for regular and overtime wages and salaries, unemployment benefits, workers' compensation coverage, health insurance, or other benefits, and liability coverage and indemnity, except as otherwise specifically provided in this Agreement.

## **27. 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.

## **28. PUBLIC ACCESS TO AGREEMENT**

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

## **29. 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 or Council 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 B**.

[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, South Dakota

State of South Dakota  
Department of Transportation

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

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

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

Printed Name: Joel M. Jundt

Its: Chairperson

Its: Department Secretary

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

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

Attest:

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

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

County Auditor/Clerk  
(COUNTY SEAL)

**EXHIBIT A**

**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 § 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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**JOINT POWERS AND FUNDING  
AGREEMENT FOR BRIDGE  
REPLACEMENT  
BETWEEN  
SOUTH DAKOTA DEPARTMENT OF  
TRANSPORTATION AND  
CITY OF**

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. JOINT POWERS:**

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**2. BACKGROUND:**

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

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## **16. INDEMNIFICATION**

The CITY agrees to indemnify the State of South Dakota, its officers, agents, and employees, from and against all claims or proceedings for actions, suits, damages, liabilities, other losses or equitable relief to the extent arising as a result of the CITY'S negligence, tortious acts, or intentional acts in performing services under this Agreement. Notwithstanding the foregoing, the STATE may, in its sole discretion engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist CITY in the defense. If the STATE exercises this authority and CITY is determined to be liable, then the STATE is entitled to reimbursement of its reasonable attorney fees and costs in defending the suit in proportion to the degree of liability attributed to CITY in the proceeding. This section does not require CITY to be responsible for or defend against claims or proceedings for damages, liabilities, losses or equitable relief arising solely from errors or omissions of the STATE, its officers, agents or employees.

## **17. AMERICANS WITH DISABILITIES ACT**

The CITY will perform under this Agreement in compliance with the Americans with Disabilities Act of 1964 and any amendments, which is incorporated in and attached to this Agreement as **Exhibit A**.

## **18. AMENDMENTS**

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.

## **19. FUNDING AVAILABILITY**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the federal government, Legislature and South Dakota Transportation Commission for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, the South Dakota Transportation Commission fails to allocate state highway funds, or funds become unavailable by operation of law or federal funds reductions, the STATE may terminate this Agreement or reduce the Federal Funds or state highway funds paid under this Agreement. Termination or funding reductions for any of these reasons is not a default or breach by the STATE nor does it give rise to a claim against the STATE.

## **20. TERMINATION**

The STATE may terminate this Agreement with or without cause. If this Agreement is terminated prior to completion of the PROJECT, the CITY will, within 180 days of termination of this Agreement, repay all Federal Funds and state highway funds expended on the PROJECT.

## **21. COMPLIANCE WITH LAWS**

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.

## **22. GOVERNING 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 affecting this Agreement will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

### **23. 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.

### **24. ENTIRE AGREEMENT**

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.

### **25. EMPLOYEE STATUS**

Any officer, employee, or agent engaged in joint action under this Agreement will remain an employee with his or her agency during participation in joint action under this Agreement. Each agency will retain exclusive responsibility for its officers, agents, and employees while these officers, agents, and employees are engaged in joint action under this Agreement, including but not limited to responsibility for regular and overtime wages and salaries, unemployment benefits, workers' compensation coverage, health insurance, or other benefits, and liability coverage and indemnity, except as otherwise specifically provided in this Agreement.

### **26. 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.

### **27. PUBLIC ACCESS TO AGREEMENT**

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

### **28. SIGNATURE AUTHORITY**

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

[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: Joel M. Jundt

Its: Mayor

Its: Department Secretary

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

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

Attest:

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

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

City Auditor/Clerk

(CITY SEAL)

**EXHIBIT A**

**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 § 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).

\*\*\*\*\*

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION  
JOINT POWERS AND FUNDING AGREEMENT  
FOR BRIDGE REPLACEMENT**

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. JOINT POWERS:**

This Agreement does not establish a separate legal entity, as contemplated by SDCL § 1-24-5. The cooperative undertaking described in this Agreement will be financed and conducted under the provisions of this Agreement by the COUNTY and the STATE. Each party has responsibilities under the terms of this Agreement and no joint board or administrator will be used. The COUNTY will be responsible for acquiring, holding and disposing of all real property required in connection with this Agreement.

**2. BACKGROUND:**

- A. The STATE has limited federal and state funding available for the replacement of eligible local public agency bridges.
- B. The COUNTY has applied for Federal Highway Local Bridge Replacement Program funding ("Federal Funds") for the bridge replacement of structure number \_\_\_\_\_ - \_\_\_\_\_, project number BR (\_\_\_\_\_) \_\_\_\_\_, PCN \_\_\_\_\_, referred to in this Agreement as the "PROJECT."
- C. The Federal Highway Local Bridge Replacement Program provides Federal Funds for 100% of the actual total eligible costs of an approved bridge replacement project.

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

**3. TERM**

This Agreement is effective upon execution by both parties and its term is perpetual.

**4. PROJECT FUNDING AWARD**

The COUNTY is awarded Federal Funds for 100% of the actual total eligible costs of the PROJECT. The COUNTY is responsible for 100% of all expenses deemed by the Federal Highway Administration or the STATE to be non-participating or ineligible for Federal Funds. Ineligible expenses include, but are not limited to, real property acquisition costs, utility relocations, finished roadway surfacing (asphalt, gravel, or concrete), fencing, aesthetics, and off-site environmental mitigation and monitoring costs.

**5. DESIGN ENGINEERING SERVICES**

The STATE will execute and administer the contracts and work orders for design engineering services for the PROJECT, which includes surveys, hydraulic analysis, and preparation of plans and specifications. The STATE will advertise, let to contract, award, and be the contracting party for the construction of the PROJECT. The COUNTY'S concurrence will not be required for the STATE'S award and execution of the construction contract.

**6. CONSTRUCTION ENGINEERING**

The STATE will provide construction engineering services for the PROJECT through STATE forces or a consultant selected by the STATE and approved by the COUNTY. If a consultant is retained, the STATE will execute and administer the contracts and work orders for construction administration services for the PROJECT. The reasonable and necessary costs of these services will be an eligible PROJECT expense.



## **7. PROJECT COSTS**

The parties estimate the costs of design, construction engineering and construction of the PROJECT to be \$\_\_\_\_\_, (\$\_\_\_\_\_), but payment obligations under this Agreement will be based on actual costs. The STATE will pay consultants and contractors for any PROJECT design, construction engineering, and construction costs and bill the COUNTY for ineligible PROJECT costs. The COUNTY will pay within 30 days of receipt of billing from the STATE.

## **8. WORK PERFORMED PRIOR TO AGREEMENT**

It is understood and agreed between the parties that certain PROJECT work pertaining to this Agreement may have been performed by the consultant or contractor hired by the STATE before this Agreement was executed. Further, it was the intent of the parties that certain work be performed by the consultant or contractor and be paid for in accordance with this Agreement. In light of the foregoing, the parties to this Agreement ratify the acts of the consultant or contractor hired by the STATE which may have been performed during this period and agree to pay for these services in accordance with the terms of this Agreement.

## **9. STRUCTURE MAINTENANCE**

Upon completion of the PROJECT, the COUNTY will be one hundred percent (100%) responsible for all work on the structure, including, but not limited to, any inspection, maintenance, repair, rehabilitation, and replacement.

## **10. REAL PROPERTY ACQUISITION**

The COUNTY will obtain all right-of-way and other real property interests necessary for the PROJECT in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended in 1987. The COUNTY will use unaltered STATE forms in obtaining right-of-way and other real property interests necessary for the PROJECT, unless alterations are approved in advance by the STATE.

## **11. UTILITY ADJUSTMENTS**

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 and agreements are in place.

## **12. CONFLICT OF INTEREST**

The COUNTY certifies the COUNTY has a conflict of interest policy and enforces said policy.

## **13. INTERNAL REVENUE COMPLIANCE**

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.

## **14. INTERNAL CONTROLS**

The COUNTY certifies the COUNTY employs an effective internal control system.

## **15. SINGLE AUDIT ACT**

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.

## **16. 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.

#### **17. CIVIL RIGHTS ACT**

The COUNTY will abide by the requirements of Title VI of the Civil Rights Act of 1964, incorporated in and attached to this Agreement as **Exhibit A**.

#### **18. AMERICANS WITH DISABILITIES ACT**

The COUNTY will perform under this Agreement in compliance with the Americans with Disabilities Act of 1964 and any amendments.

#### **19. AMENDMENTS**

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.

#### **20. FUNDING AVAILABILITY**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the federal government, Legislature and South Dakota Transportation Commission for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, the South Dakota Transportation Commission fails to allocate state highway funds, or funds become unavailable by operation of law or federal funds reductions, the STATE may terminate this Agreement or reduce the Federal Funds or state highway funds paid under this Agreement. Termination or funding reductions for any of these reasons is not a default or breach by the STATE nor does it give rise to a claim against the STATE.

#### **21. TERMINATION**

The STATE may terminate this Agreement with or without cause. If this Agreement is terminated prior to completion of the PROJECT, the COUNTY will, within 180 days of termination of this Agreement, repay all Federal Funds and state highway funds expended on the PROJECT.

#### **22. COMPLIANCE WITH LAWS**

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.

#### **23. GOVERNING 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 affecting this Agreement will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

#### **24. 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.

## **25. ENTIRE AGREEMENT**

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.

## **26. EMPLOYEE STATUS**

Any officer, employee, or agent engaged in joint action under this Agreement will remain an employee with his or her agency during participation in joint action under this Agreement. Each agency will retain exclusive responsibility for its officers, agents, and employees while these officers, agents, and employees are engaged in joint action under this Agreement, including but not limited to responsibility for regular and overtime wages and salaries, unemployment benefits, workers' compensation coverage, health insurance, or other benefits, and liability coverage and indemnity, except as otherwise specifically provided in this Agreement.

## **27. 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.

## **28. PUBLIC ACCESS TO AGREEMENT**

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

## **29. 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 or Council 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 B**.

[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, South Dakota

State of South Dakota  
Department of Transportation

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

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

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

Printed Name: Joel M. Jundt

Its: Chairperson

Its: Department Secretary

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

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

Attest:

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

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

County Auditor/Clerk

(COUNTY SEAL)

**EXHIBIT A**

**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 § 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;
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- 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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**JOINT POWERS AND FUNDING AGREEMENT  
FOR BRIDGE REPLACEMENT  
BETWEEN  
SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION  
AND  
CITY OF**

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. JOINT POWERS:**

This Agreement does not establish a separate legal entity, as contemplated by SDCL § 1-24-5. The cooperative undertaking described in this Agreement will be financed and conducted under the provisions of this Agreement by the CITY and the STATE. Each party has responsibilities under the terms of this Agreement and no joint board or administrator will be used. The CITY will be responsible for acquiring, holding and disposing of all real property required in connection with this Agreement.

**2. BACKGROUND:**

- A. The STATE has limited federal and state funding available for the replacement of eligible local public agency bridges.
- B. The CITY has applied for Federal Highway Local Bridge Replacement Program funding ("Federal Funds") for the bridge replacement of structure number \_\_\_\_\_ - \_\_\_\_\_, project number BR (\_\_\_\_\_) \_\_\_\_\_, PCN \_\_\_\_\_, referred to in this Agreement as the "PROJECT."
- C. The Federal Highway Local Bridge Replacement Program provides Federal Funds for 100% of the actual total eligible costs of an approved bridge replacement project.

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

**3. TERM**

This Agreement is effective upon execution by both parties and its term is perpetual.

**4. PROJECT FUNDING AWARD**

The CITY is awarded Federal Funds for 100% of the actual total eligible costs of the PROJECT. The CITY is responsible for 100% of all expenses deemed by the Federal Highway Administration or the STATE to be non-participating or ineligible for Federal Funds. Ineligible expenses include, but are not limited to, real property acquisition costs, utility relocations, finished roadway surfacing (asphalt, gravel, or concrete), fencing, aesthetics, and off-site environmental mitigation and monitoring costs.

**5. DESIGN ENGINEERING SERVICES**

The STATE will execute and administer the contracts and work orders for design engineering services for the PROJECT, which includes surveys, hydraulic analysis, and preparation of plans and specifications. The STATE will advertise, let to contract, award, and be the contracting party for the construction of the PROJECT. The CITY'S concurrence will not be required for the STATE'S award and execution of the construction contract.

**6. CONSTRUCTION ENGINEERING**

The STATE will provide construction engineering services for the PROJECT through STATE forces, or a consultant selected by the STATE and approved by the CITY. If a consultant is retained, the STATE will execute and administer the contracts and work orders for construction administration services for the PROJECT. The reasonable and necessary costs of these services will be an eligible PROJECT expense.

## **7. PROJECT COSTS**

The parties estimate the costs of design, construction engineering and construction of the PROJECT to be \_\_\_\_\_, (\$ \_\_\_\_\_), but payment obligations under this Agreement will be based on actual costs. The STATE will pay consultants and contractors for any PROJECT design, construction engineering, and construction costs and bill the CITY for ineligible PROJECT costs. The CITY will pay within 30 days of receipt of billing from the STATE.

## **8. WORK PERFORMED PRIOR TO AGREEMENT**

It is understood and agreed between the parties that certain PROJECT work pertaining to this Agreement may have been performed by the consultant or contractor hired by the STATE before this Agreement was executed. Further, it was the intent of the parties that certain work be performed by the consultant or contractor and be paid for in accordance with this Agreement. In light of the foregoing, the parties to this Agreement ratify the acts of the consultant or contractor hired by the STATE which may have been performed during this period and agree to pay for these services in accordance with the terms of this Agreement.

## **9. STRUCTURE MAINTENANCE**

Upon completion of the PROJECT, the CITY will be one hundred percent (100%) responsible for all work on the structure, including, but not limited to, any inspection, maintenance, repair, rehabilitation, and replacement.

## **10. REAL PROPERTY ACQUISITION**

The CITY will obtain all right-of-way and other real property interests necessary for the PROJECT in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended in 1987. The CITY will use unaltered STATE forms in obtaining right-of-way and other real property interests necessary for the PROJECT, unless alterations are approved in advance by the STATE.

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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 and agreements are in place.

## **12. CONFLICT OF INTEREST**

The CITY certifies the CITY has a conflict of interest policy and enforces said policy.

## **13. INTERNAL REVENUE COMPLIANCE**

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.

## **14. INTERNAL CONTROLS**

The CITY certifies the CITY employs an effective internal control system.

## **15. SINGLE AUDIT ACT**

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.

## **16. INDEMNIFICATION**

The CITY agrees to indemnify the State of South Dakota, its officers, agents, and employees, from and against all claims or proceedings for actions, suits, damages, liabilities, other losses or equitable relief to the extent arising as a result of the CITY'S negligence, tortious acts, or intentional acts in performing services under this Agreement. Notwithstanding the foregoing, the STATE may, in its sole discretion engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist CITY in



the defense. If the STATE exercises this authority and CITY is determined to be liable, then the STATE is entitled to reimbursement of its reasonable attorney fees and costs in defending the suit in proportion to the degree of liability attributed to CITY in the proceeding. This section does not require CITY to be responsible for or defend against claims or proceedings for damages, liabilities, losses or equitable relief arising solely from errors or omissions of the STATE, its officers, agents or employees.

#### **17. AMERICANS WITH DISABILITIES ACT**

The CITY will perform under this Agreement in compliance with the Americans with Disabilities Act of 1964 and any amendments, which is incorporated in and attached to this Agreement as **Exhibit A**.

#### **18. AMENDMENTS**

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.

#### **19. FUNDING AVAILABILITY**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the federal government, Legislature and South Dakota Transportation Commission for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, the South Dakota Transportation Commission fails to allocate state highway funds, or funds become unavailable by operation of law or federal funds reductions, the STATE may terminate this Agreement or reduce the Federal Funds or state highway funds paid under this Agreement. Termination or funding reductions for any of these reasons is not a default or breach by the STATE nor does it give rise to a claim against the STATE.

#### **20. TERMINATION**

The STATE may terminate this Agreement with or without cause. If this Agreement is terminated prior to completion of the PROJECT, the CITY will, within 180 days of termination of this Agreement, repay all Federal Funds and state highway funds expended on the PROJECT.

#### **21. COMPLIANCE WITH LAWS**

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.

#### **22. GOVERNING 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 affecting this Agreement will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

#### **23. 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.

#### **24. ENTIRE AGREEMENT**

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.

## 25. EMPLOYEE STATUS

Any officer, employee, or agent engaged in joint action under this Agreement will remain an employee with his or her agency during participation in joint action under this Agreement. Each agency will retain exclusive responsibility for its officers, agents, and employees while these officers, agents, and employees are engaged in joint action under this Agreement, including but not limited to responsibility for regular and overtime wages and salaries, unemployment benefits, workers' compensation coverage, health insurance, or other benefits, and liability coverage and indemnity, except as otherwise specifically provided in this Agreement.

## 26. 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.

## 27. PUBLIC ACCESS TO AGREEMENT

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

## 28. SIGNATURE AUTHORITY

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

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

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

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

Its: Mayor

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

Attest:

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

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

City Auditor/Clerk

(CITY SEAL)

State of South Dakota  
Department of Transportation

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

Printed Name: Joel M. Jundt

Its: Department Secretary

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

**EXHIBIT A**

**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 § 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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