



Planning & Engineering
Office of Project Development
700 East Broadway Avenue
Pierre, South Dakota 57501-2586
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August 31, 2021

To: Lori Schultz, Finance Officer
520 3rd Street, Suite 100
Brookings, SD 57006

Subject: Project Number PH 00SW(118) PCN 07CG, consists of grading, asphalt concrete surfacing, pavement marking and signage.

Attached is the Joint Powers Maintenance and Financial Agreement between the Lake County and the Department of Transportation. Please note that I will need a **copy of the County/Board Commission minutes** giving the Chairperson permission to sign the agreement

Please return the signed originals to me, and I will complete the in house process for signatures and have the agreement assigned a contract number. Once this is completed, I will return one (1) signed original to you for your records.

If you have any questions please give me call at any time.

Thank you,

A handwritten signature in blue ink that reads 'Marilyn Patterson'.

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

**STATE OF SOUTH DAKOTA
JOINT POWERS
FINANCIAL AND MAINTENANCE AGREEMENT
BETWEEN
DEPARTMENT OF TRANSPORTATION
AND
BROOKINGS COUNTY**

This Agreement is made by and between the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the "STATE," and Brookings 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. No real property will be purchased for use for this Agreement.

2. STATE PROJECT

The STATE and the COUNTY concur in the proposal for the new construction or improvement of streets identified by the following South Dakota Federal Aid Construction Project Number PH 00SW(118) PCN 07CG, referred to in this Agreement as the "STATE PROJECT." The STATE PROJECT is located at the Intersection of 220th Street and 464th Avenue. The STATE PROJECT consists of grading, Asphalt Concrete surfacing, gravel surfacing, pavement marking, and signage.

3. CONTRACT PROCUREMENT

The STATE will hire a consultant to design the STATE PROJECT. The design of the STATE PROJECT will meet STATE standards. The STATE will review and approve the plans, advertise, let to contract, award, inspect, and be the contracting party for the STATE PROJECT.

4. COUNTY RESPONSIBILITIES

- A. The COUNTY will acquire all right-of-way needed for the STATE PROJECT prior to letting, according to the Code of Federal Regulations (CFR), Title 49, Part 24.
- B. The COUNTY will certify to the STATE at least sixty (60) days prior to the bid letting notice to contractors, that right-of-way has been acquired, encroachments removed, and utilities relocated, as necessary for the construction of the STATE PROJECT.

5. FINANCIAL RESPONSIBILITY

- A. The STATE PROJECT is eligible for High Risk Rural Road Program (HRRRP) Federal Funding.
- B. The estimated cost of the STATE PROJECT is One Hundred Fifteen Thousand Dollars (\$115,000.00). The STATE will pay ninety percent (90%) of the STATE PROJECT estimated at One Hundred Three Thousand Five Hundred Dollars (\$103,500.00). The COUNTY will pay the ten percent (10%) match of total STATE PROJECT costs which is currently estimated at Elveen Thousand Five Hundred Dollars (\$11,500.00). Actual costs will be based upon bid amounts and final quantities.

C. The STATE will bill the COUNTY for progress payments for the COUNTY'S match based on the amount of work completed and accepted. The COUNTY will make these progress payments to the STATE within thirty (30) days of billing.

6. The COUNTY will maintain ownership and will be responsible for all maintenance of the STATE PROJECT, which includes but is not limited to, the following:

- A. Snow removal;
- B. Pavement markings;
- C. Guardrail maintenance;
- D. Repairs and improvements;
- E. Permanent signing;
- F. Drainage;
- G. Access management;
- H. Utility management; and,
- I. Compliance with the American with Disabilities Act requirements.

7. INDEMNIFICATION

The COUNTY will indemnify the STATE, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceedings that arise as a result of the COUNTY'S performance under this Agreement. This section does not require the COUNTY to be responsible for or defend against claims or damages arising from errors or omissions of the STATE, its officers, agents, or employees.

8. RECORDS RETENTION AND AUDIT

- A. All STATE PROJECT charges will be subject to audit in accordance with the STATE'S current procedures and United States Office of Management and Budget (OMB) Circular A-133. The CFDA Number for these funds is 20.205. Allowable costs will be determined in accordance with OMB Circular A-87.
- B. Upon reasonable notice, the COUNTY will allow the STATE and U.S. Department of Transportation representatives to examine all records of the COUNTY related to this Agreement during the COUNTY'S normal business hours. The COUNTY will keep all records for a period of three (3) years after the date of final payment is made by the STATE under this Agreement.
- C. If the COUNTY expends Five Hundred Thousand Dollars (\$500,000) or more in federal funds during any COUNTY fiscal year covered, in whole or in part, under this Agreement, then the COUNTY will be subject to the single agency audit requirements of the U.S. Office of Management and Budget (OMB) Circular A-133. If the COUNTY expends less than Five Hundred Thousand Dollars (\$500,000) in federal funds during any COUNTY fiscal year, the STATE may perform a more limited program or performance audit related to the completion of Agreement objectives, the allowability of services or costs and adherence to Agreement provisions.

9. AMENDMENT PROVISION

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.

10. TERMINATION

The STATE may terminate this Agreement on thirty (30) days' written notice. If the COUNTY breaches any of the terms or conditions of this Agreement, the STATE may terminate this Agreement at any time with or without notice.

11. CERTIFICATION REGARDING LOBBYING

The COUNTY certifies, to the best of the COUNTY'S knowledge and belief, that: No Federal appropriated funds have been paid or will be paid, by or on behalf of the COUNTY, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any of the above mentioned parties, the COUNTY will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The COUNTY will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients will certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

12. 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.

13. 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 as **Exhibit A**.

By signature of their representatives below, each party certifies that approval of this Agreement by ordinance, resolution, or other appropriate means has been obtained by that party's governing body or officer pursuant to SDCL § 1-24-3 and § 1-24-6.

Brookings County, South Dakota

State of South Dakota
Department of Transportation

By: _____

By: _____

Its: County Commission Chairperson

Its: Project Development Engineer

Date: _____

Date: _____

Attest:

Approved as to Form:

County Auditor/Clerk

Special Assistant Attorney General

(COUNTY SEAL)

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State of South Dakota
Department of Transportation

By: _____

By: _____

Its: County Commission Chairperson

Its: Project Development Engineer

Date: _____

Date: _____

Attest:

Approved as to Form:

County Auditor/Clerk

Special Assistant Attorney General

(COUNTY SEAL)