

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
JOINT POWERS FORCE ACCOUNT AGREEMENT**

This Agreement is made and entered into this 15th day of October, 2019, by and between the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as "STATE," and Hand County, South Dakota, referred to in this Agreement as "COUNTY."

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 COUNTY and 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.

BACKGROUND:

1. COUNTY has sustained damage to COUNTY'S Federal Aid Highway System due to a natural disaster, with the extent of the damage being identified in the Detailed Damage Inspection Report(s), attached to and incorporated in this Agreement as **Exhibit B**.
2. The beginning date for Traditional Flooding for the 2019 Flood is March 16, 2019.
3. COUNTY is eligible for Federal Aid Emergency Relief Funds for restoration of said damaged highways as provided for under Federal Aid Policy Guide Part 668.
4. It is necessary to expedite repair of the damaged COUNTY highway(s) in order to provide for the safe movement of essential and emergency traffic.
5. The damaged COUNTY highway(s), collectively referred to in this Agreement as "PROJECT," whether one or more, is/are identified as follows:

Traditional Flooding Projects, beginning date March 16, 2019:

Site No.	Project No.	PCN	Limiting Amount
1	ER6223(04)	07FY	\$9,547.50

The initial funding limit is based on the original Detailed Damage Inspection Report. The maximum limiting amount for each Project No. listed above has been determined by the current approved Request for Federal-Aid Project Approval and Agreement (Form 292) between STATE and Federal Highway Administration (FHWA). Should the Form 292 need to be amended to change the funding amount, STATE will submit an amended Form 292 to FHWA for approval.

STATE AND COUNTY MUTUALLY AGREE AS FOLLOWS:

1. COUNTY will perform the following:
 - A. COUNTY will perform the required restoration of PROJECT with COUNTY'S own forces and equipment under force account cost procedures as provided for by 23 CFR Parts 635.201 through 635.204, each inclusive. COUNTY will limit restoration to the scope of work identified in the attached Detailed Damage Inspection Report for PROJECT. Any alteration in the scope of work must receive STATE'S prior written approval. Emergency work performed through contracts initiated within 180 days of the beginning date must comply with South Dakota Codified Laws. All other work contracted after the 180 days must also comply with the requirements of 23 CFR Parts 630 through 637, each inclusive.

- B. COUNTY will maintain force account cost records for labor, equipment, and materials, using current rates for such work as established by COUNTY based on Legislative Audit County Accounting Manual procedures and in accordance with Office of Management and Budget Circular Regulations found at 2 CFR Part 200. Materials purchased specifically for this PROJECT must be billed at actual invoice costs.
 - C. COUNTY will provide services in compliance with the Americans with Disabilities Act of 1990 and any amendments.
 - D. COUNTY will indemnify STATE, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceedings that arise as a result of COUNTY'S performance under this Agreement. This section does not require COUNTY to be responsible for or defend against claims or damages arising solely from errors or omissions of STATE, its officers, agents, or employees.
 - E. No COUNTY employee engaged in the performance of services required under this Agreement will be considered an employee of STATE. No claim arising under the South Dakota Workers' Compensation Act on behalf of said employees or other persons while so engaged and no claim made by any third party as a consequence of any act or omission of the part of the work or service provided or to be rendered under this Agreement by COUNTY will in any way be the responsibility of STATE.
 - F. COUNTY will submit quarterly bills to STATE for reimbursement to keep the projects off the FHWA Fire Inactive List.
2. STATE will perform the following:
- A. STATE may, at STATE'S option, inspect COUNTY'S restoration work throughout COUNTY'S progress.
 - B. STATE will make progress and final payments under this Agreement for work completed based on Force Account and other accounting and related records submitted by COUNTY to STATE. PROJECT costs will not exceed the limiting amount as approved in the current Request for Federal-Aid Project Approval and Agreement (Form 292) between STATE and Federal Highway Administration, and any amendments.
3. AUDIT:
- A. PROJECT charges will be subject to audit in accordance with current Department of Transportation procedures and U.S. Office of Management and Budget (OMB) Circular Regulations found at 2 CFR Part 200. The CFDA Number for these funds is 20.205.
 - B. COUNTY will maintain an accurate cost accounting system for all costs incurred under this Agreement and clearly identified with activities performed under this Agreement.
 - C. Upon reasonable notice, COUNTY will allow state and federal auditors to audit all records related to this Agreement during normal business hours. 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 and all other pending matters are closed.
 - D. If COUNTY expends \$750,000.00 or more in federal funds during any COUNTY fiscal year covered, in whole or in part, under this Agreement, then COUNTY will be subject to the single agency audit requirements of the U.S. Office of Management and Budget (OMB) Circular Regulations Found at 2 CFR Part 200. If COUNTY expends less than \$750,000.00 during any COUNTY fiscal year, STATE may perform a more limited program or performance audit related

to the completion of Agreement objectives, the eligibility of services or costs, and adherence to Agreement provisions.

- E. COUNTY will include the provisions of Section 3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations, order, or instructions issued pursuant thereto.
4. **TERMINATION:** Either party may terminate this Agreement on thirty (30) days' written notice to the other. If COUNTY breaches any term or condition of this Agreement, STATE may terminate this Agreement with or without notice. STATE retains all applicable administrative, legal, and equitable remedies. If termination for such a default is effected by STATE, STATE may adjust any payments due to COUNTY at the time of termination to cover any additional costs to STATE due to COUNTY'S default. If, after STATE terminates for a default by COUNTY, it is determined COUNTY was not at fault, STATE will pay COUNTY for eligible services rendered and expenses incurred up to the date of termination.
 5. **AMENDMENT:** This Agreement may not be amended, except in writing, which writing will be expressly identified as a part of this Agreement and will be signed by an authorized representative of each of the parties.
 6. **DISPUTES:** Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the parties will be referred to STATE'S Secretary of Transportation or duly authorized representative for determination, whose decision in the matter will be final and conclusive on the parties to this Agreement.
 7. **PAYMENT AS REQUIRED IN 49 CFR 26.29:** COUNTY will pay subcontractors or suppliers within fifteen (15) days of receiving payment for work that is submitted for progress payment by STATE. If COUNTY withholds payment beyond this time period, COUNTY will submit written to STATE designated Engineer upon request. If it is determined that a subcontractor or supplier has not received payment due without just cause, STATE may withhold future estimated payments and may direct COUNTY to make such payment to the subcontractor or supplier. Prompt payment deviations will be subject to price adjustments.
 8. **CERTIFICATION REGARDING LOBBYING:** COUNTY certifies, to the best of COUNTY'S knowledge and belief, that no federal appropriated funds have been paid or will be paid, by or on behalf of 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, COUNTY will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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 \$10,000.00 and not more than \$100,000.00 for each such failure.
 9. COUNTY will be bound by the "STANDARD TITLE VI / NONDISCRIMINATION ASSURANCES," attached as **Exhibit A** and made a part of this Agreement by reference.

10. COMPLIANCE WITH CLEAN AIR ACT: COUNTY stipulates that any facility to be utilized in the performance of this Agreement under the Clean Air Act, as amended, Executive Order 11738, and regulations in implementation thereof is not listed on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20 and that STATE will be promptly notified of the receipt by COUNTY of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the agreement is under consideration to be listed on the EPA List of Violating Facilities.
11. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION: COUNTY certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
12. COMPLIANCE WITH THE TRANSPARENCY ACT: COUNTY will comply with the Federal Funding Accountability and Transparency Act of 2006 (S.2590) and will provide all applicable information to the STATE as requested.
13. 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.
14. COUNTY has designated its COUNTY Commission Chairperson as COUNTY'S authorized representative and has empowered the Chairperson with the authority to sign this Agreement on behalf of COUNTY after consideration of the matter during a regularly scheduled meeting. A copy of COUNTY'S Board of Commissioner's minutes or resolution authorizing the execution of this Agreement by the Chairperson as COUNTY'S authorized representative is attached to this Agreement as **Exhibit C**.

SIGNATURE PAGE FOLLOWS

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.

Hand County, South Dakota

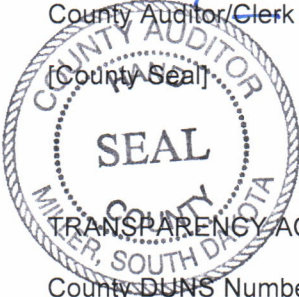
By: [Signature]

Its: County Commission Chairperson

Date: October 1, 2019

Attest:

[Signature]
County Auditor/Clerk



TRANSPARENCY ACT INFORMATION:

County DUNS Number: 965018109

County Seat: Miller, South Dakota

Nine Digit Zip Code: 57362

State of South Dakota
Department of Transportation

By: _____

Its: Secretary

Date: _____

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
STANDARD TITLE VI / NONDISCRIMINATION ASSURANCES
APPENDIX A & E
MARCH 1, 2016**

During the performance of this contract, 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 contract, 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.*).



U.S. Department
of Transportation
Federal Highway
Administration

DETAILED DAMAGE INSPECTION REPORT

(Title 23, Federal-aid Highways)

Report Number
Hand - 1

Sheet
1 of 1

Location (Name of Road and Milepost)

6.5 miles north of St. Lawrence on FAS route 6223 in between 191st Street and 192nd Street

FHWA Disaster Number
SD19-01

Inspection Date
05/06/2019

Description of Damage

Flood Water washed gravel surfacing 600 ft in length and 28 ft wide. Road will need be reshaped and gravel placed. GPS coordinates: Lat N 44 36.759' Long W 98 55.685'

Federal-aid Route Number
6223

State SD County Hand

Cost Estimate

	Description of Work to Date (Equipment, Labor, and Materials)	Unit	Unit Price	Quantity	Cost	
					Completed	Remaining
Emergency Repair	Roadway Shaping (600' x 28')/9	SY	\$3.00	1,870	\$5,610.00	
	= approx. 1870 SY	ea				
		ea				
	Gravel	ton	\$6.50	375	\$2,437.50	
		ea				
	Crushed Cement	ton	\$4.00	375	\$1,500.00	
		LS				
		ea				
		ea				
		ea				
Method <input checked="" type="checkbox"/> Local Forces <input type="checkbox"/> State Forces <input type="checkbox"/> Contract				Subtotal PE/CE	\$9,547.50	
					Emergency Repair Total	\$9,547.50
Permanent Restoration		ea				
		ea				
		ea				
		ea				
		ea				
		ea				
		ea				
		ea				
		ea				
		ea				
		ea				
		ea				
	Method <input checked="" type="checkbox"/> Local Forces <input type="checkbox"/> State Forces <input type="checkbox"/> Contract				Subtotal PE/CE	
					Right-of-Way	
					Perm. Repair Totals	
Environmental Assessment Recommendation <input checked="" type="checkbox"/> Categorical Exclusion <input type="checkbox"/> E/IEIS				Estimated Total	\$9,547.50	
Recommendation <input checked="" type="checkbox"/> Eligible <input type="checkbox"/> Ineligible				FHWA Engineer <i>Mark J. Clausen</i>	Date 05/17/2019	
Concurrence <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				State Engineer <i>[Signature]</i>	Date 5/13/2019	
Concurrence <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				Local Agency Representative <i>[Signature]</i>	Date	



ER 6223(04), PCN 07FY, Hand County
Emergency Project: Hand - 1
363 Ave - 6.5 miles north of St. Lawrence
between 191 St and 192 St

Road reshaped and additional gravel

