

**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.