

MULTI-COUNTY COMPETITIVE HIGHWAY BRIDGE PROGRAM AGREEMENT
BETWEEN
STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
AND
LAWRENCE COUNTY, SOUTH DAKOTA

This Agreement is made by and among the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the "STATE," and Lawrence County, South Dakota, referred to in this Agreement as "LAWRENCE COUNTY."

BACKGROUND:

- A. The Federal Highway Administration ("FHWA") awarded Competitive Highway Bridge Program (CHBP) funding in the amount of Two Million Two Hundred Forty-seven Thousand Dollars (\$2,247,000.00) for the West River Counties Bridge Replacement Project grant application submitted by the STATE.
- B. The South Dakota counties associated with the application for CHBP funding are Meade County, South Dakota; Butte County, South Dakota; and Lawrence County, South Dakota, collectively referred to in this Agreement as the "COUNTIES."
- C. As part of the application, the COUNTIES agreed to participate in providing matching funds as required by the terms of the CHBP funding.
- D. Structure #41-163-053, located on St. Onge Road 1 mile west and 1.3 miles south of St. Onge, South Dakota, over False Bottom Creek, referred to in the Agreement as "STRUCTURE," has a total estimated structure costs for repair/replacement of Two Million Six Thousand Five Hundred Ninety-six Dollars and Eighty-two Cents (\$2,006,596.82).
- E. BR CSBP(01), PCN 07NL, Lawrence County STRUCTURE, referred to in this Agreement as "PROJECT," consists of structure replacement to include structure and grading design and plans, foundations investigation, environmental coordination, letting, and construction oversight.
- F. LAWRENCE COUNTY applied for and the STATE has awarded LAWRENCE COUNTY with CHBP funding in the maximum amount of Seven Hundred Seventy Thousand Seven Hundred Twenty-one Dollars (\$770,721.00).
- G. LAWRENCE COUNTY has also applied for and the STATE has awarded to LAWRENCE COUNTY a Bridge Improvement Grant ("BIG") award for the PROJECT in the maximum limiting amount of One Hundred Eighty Thousand Three Hundred Dollars (\$180,300.00) identified as BRF 6405(00)20-2, PCN 07TW, in the State Transportation Infrastructure Program (STIP). However, due to FHWA requirements, all costs will accumulate under PROJECT.

THE STATE AND THE COUNTIES AGREE AS FOLLOWS:

- 1. PROJECT AND PERIOD OF PERFORMANCE
 - A. The STATE will advertise, let to contract, award, and be the contracting party for the STRUCTURE replacement project.
 - B. This Agreement is effective on August 29, 2019, and will end April 27, 2025, unless terminated earlier pursuant to the terms and conditions of this Agreement.

2. PAYMENT

- A. The STATE will pay actual federal participating costs for PROJECT, utilizing federal CHBP funds first at 81.95%, to a maximum funding amount of Seven Hundred Seventy Thousand Seven Hundred Twenty-one Dollars (\$770,721.00), with LAWRENCE COUNTY providing 18.05% match. The STATE will be responsible for 50% of the actual remaining eligible PROJECT costs not to exceed the maximum BIG amount of One Hundred Eighty Thousand Three Hundred Dollars (\$180,300.00).
- B. The STATE will bill LAWRENCE COUNTY utilizing the BR CSBP(01) PCN 07NL project number for 18.05% match on actual CHBP funds, and 50% match on actual BIG eligible PROJECT costs. LAWRENCE COUNTY will be responsible for 100% of all remaining PROJECT costs incurred exceeding the maximum CHBP and BIG funds, and any non-participating costs, preliminary engineering costs (estimated at \$75,500.00) and any costs deemed ineligible. LAWRENCE COUNTY will reimburse the STATE within thirty (30) days upon receipt of the billings.

3. FUNDING PROVISION

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement may be terminated by the STATE. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.

4. INDEMNIFICATION

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

5. AMENDMENT

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

6. TERMINATION

This Agreement may be terminated by either party hereto upon thirty (30) days' written notice. In the event the LAWRENCE COUNTY breaches any of the terms or conditions hereof, this Agreement may be terminated by the STATE for cause at any time, with or without notice. Upon termination of this Agreement, all accounts and payments shall be processed according to the financial arrangements set forth herein for services rendered to date of termination.

7. CONTROLLING LAW

Any lawsuit enforcing the terms of this Agreement between the COUNTIES and the STATE will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

8. 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.

9. SUPERCESSION

All other prior discussions, communications, and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided in this Agreement, this Agreement constitutes the entire agreement with respect to the subject matter.

10. CERTIFICATION REGARDING LOBBYING

- A. LAWRENCE COUNTY certify, to the best of LAWRENCE COUNTY'S knowledge and belief, that no federal appropriated funds have been paid or will be paid, by or on behalf of LAWRENCE 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 undersigned will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. LAWRENCE 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.

11. SIGNATURE AUTHORITY

LAWRENCE COUNTY has designated its County Commission Chairperson as LAWRENCE COUNTY'S authorized representative and has empowered the Chairperson with the authority to sign this Agreement on behalf of LAWRENCE COUNTY after consideration of the matter during a regularly scheduled meeting. A copy of LAWRENCE COUNTY'S Commission minutes or resolution authorizing the execution of this Agreement by the Chairperson as LAWRENCE COUNTY'S authorized representative is attached to this Agreement as **Exhibit A**.

- 12. This Agreement may be executed by the parties on separate signature pages attached to the originals of the Agreement. Once the STATE has received a signed original from all of the parties, including the STATE'S authorized representative, the originals will be collected together and treated as a part of a single fully executed agreement. The STATE will provide a copy of the body of the Agreement, with each separately executed signature page, to each of the parties to the Agreement.

SIGNATURE PAGE FOLLOW

The parties signify their agreement by signatures affixed below.

Lawrence County, South Dakota

State of South Dakota
Department of Transportation

By: _____

By: _____

Printed Name: _____

Joel M. Jundt

Its: County Commission Chairperson

Its: Department Secretary

Date: _____

Date: _____

Attest:

Approved as to Form:

By: _____

By: /s/ Dustin W. DeBoer

Printed Name: _____

Printed Name: Dustin W. DeBoer

County Auditor/Clerk

Special Assistant Attorney General

(COUNTY SEAL)

**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 COUNTIES, for themselves, their 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, the COUNTIES, for themselves, their assignees, and successors in interest (hereinafter referred to as the "contractor") agree 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.*).
