

General Information for All Loans

There are three categories of loans administered by the South Dakota Department of Transportation (SDDOT):

- (1) State Infrastructure Bank (SIB) Loan/Federal Loan Program;
- (2) Surface Transportation Block Grant Program (STBGP) Advance; and
- (3) State Highway Fund Loan.

Applications are available at <https://dot.sd.gov/doing-business/local-governments/forms-documents>.

Loans are subject to approval by the South Dakota Transportation Commission. Applicants are required to demonstrate their ability and commitment to repay the loan. The Commission may impose such terms and conditions as the Commission, in its discretion, determines are appropriate. The Commission regards loans as funding of **last resort** and may reject any application. This informational sheet is intended to give applicants guidance on how loans have been administered in the past, but applicants are cautioned that the Commission is not bound by this guidance and has ultimate authority over the approval, terms, and conditions relating to any loan. Applicants who are approved for a loan will be required to execute a loan agreement with SDDOT. Sample loan agreements are available upon request.

State Infrastructure Bank (SIB) / Federal Loan Program

- Federal money is available to loan to tribes and political subdivisions for public road and bridge construction projects on federal-aid routes and federal-aid eligible activities.
- Applicants perform all right-of-way acquisitions, wetland mitigation, and utility relocations for federal loan projects.
- SDDOT performs project bid-lettings and manages project construction.
- Federal loan projects must receive approval from the Commission for inclusion in SDDOT's Statewide Transportation Improvement Program.
- Interest rates on recent loans have been set at 1.5% per year.
- Typically, full repayment of the loan is due within 7 years after project completion.
- Applicants that receive annual STBGP funding allocations will be required to pledge those allocations toward repayment of the loan. However, a loan recipient is responsible for making timely repayment of the loan, regardless of whether STBGP allocations stop or are inadequate to cover the full repayment obligation.
- Applicants may be required to submit audited financial statements, annual financial reports, and proof of taxing or bonding authority.
- Federal loan funding is limited to the available balance at the time of application.

Surface Transportation Block Grant Program (STBGP) Advance

- STBGP advances are only available to counties and Class I cities that receive an annual STBGP allocation.
- Advances may be used for construction of public roads and bridges under the jurisdiction of counties and Class I cities.
- Advances are issued in a lump sum directly to the recipient.

- The loan recipient is responsible for all aspects of the project, including but not limited to right-of-way acquisition, wetland mitigation, environmental clearances, utility relocation, design, bid letting, construction, and construction management for the project.
- Interest rates are anticipated to be 1.5% per year.
- Typically, full repayment of the loan is received within three years after loan issuance.
- The maximum loan amount is usually limited to two times the applicant's estimated annual STBGP allocation.
- Applicants will be required to pledge STBGP allocations toward repayment of the loan. However, a loan recipient is responsible for making timely repayment of the loan, regardless of whether STBGP allocations stop or are inadequate to cover the full repayment obligation.
- Applicants may be required to submit audited financial statements, annual financial reports, and proof of taxing or bonding authority.

State Highway Fund Loan

- State highway fund loans are available to municipalities, townships, and counties to construct, reconstruct, repair, maintain and mark public roads and bridges.
- The Commission considers four factors when deciding whether to award a state highway fund loan:
 - The availability of other funding for the proposed project;
 - The likelihood the proposed project will foster and support economic development;
 - Whether a highway emergency exists; and
 - The ability of the local government to repay the loan on terms satisfactory to the Commission.
- Applicants should show they have pursued and exhausted other feasible funding avenues, while demonstrating their requests are still a reasonable risk.
- Local funding commitments, in addition to the requested loan, increase the likelihood of a loan award.
- Eligible project costs are limited to preliminary engineering, design, utility relocation, right-of-way acquisition, environmental coordination and permitting, bid-letting, materials, construction, and construction engineering.
- Applicants should refrain from applying for funding for routine highway projects.
- Applicants that receive annual STBGP funding allocations will be required to pledge those allocations toward repayment of the loan. However, a loan recipient is responsible for making timely repayment of the loan, regardless of whether STBGP allocations stop or are inadequate to cover the full repayment obligation.
- Applicants that don't receive STBGP funding allocations, such as towns and townships, should be prepared to explain how repayment will be secured. One option is to enter into a joint powers agreement with a county or Class 1 city that supports the project, to ensure STBGP allocations are available for repayment.
- For projects tied to an imminent economic development project, applicants may be required to secure a loan guarantee from the developer.
- Applicants should consider creative methods for securing repayment, such as tax increment financing (TIF).
- Total loans from the state highway fund are limited to \$25 million, and loans typically do not exceed \$7 million for a single project.
- Interest rates on recent loans have been set at 1.5% per year, amortized over a period determined by the Commission.
- Annual payments will be required, with final payment due seven years after the initial loan issuance.
- The loan recipient is responsible for all aspects of the project, including but not limited to right-of-way acquisition, wetland mitigation, environmental clearances, utility relocation, design, bid letting, and construction management.

**AN AGREEMENT PROVIDING A
STATE INFRASTRUCTURE BANK (SIB) LOAN
TO THE CITY OF CITY, SOUTH DAKOTA,
FOR A FEDERAL AID ELIGIBLE PROJECT**

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 the city of CITY, South Dakota, referred to in this Agreement as the "CITY."

1. BACKGROUND

- A. The CITY has requested, by formal resolution, the addition of the following federal aid eligible project to the Statewide Transportation Improvement Plan (STIP): PROJECT PCN NUMBER, located PROJECT LOCATION, referred to in this Agreement as the "PROJECT."
- B. The PROJECT costs may include preliminary engineering, construction, and construction engineering with a total PROJECT cost estimated at \$TOTAL PROJECT ESTIMATE.
- C. The CITY will have an estimated \$STBGP TOTAL AMOUNT available in Surface Transportation Program (STBGP) funds for the PROJECT in Federal Fiscal Year PROGRAMMED YEAR. Of this amount, 81.95% or \$STBGP FEDERAL FUNDS is STBGP federal funds and 18.05% or \$STBGP STATE MATCH represents STATE matching funds.
- D. The CITY has applied for a SIB loan to supplement the funding of the PROJECT. The SIB loan amount requested is \$SIB LOAN TOTAL AMOUNT. Federal funds would constitute 81.95% or \$SIB FEDERAL FUNDS of the total loan amount and STATE matching funds would constitute 18.05% or \$SIB STATE MATCH of the total loan amount.
- E. The STATE has added the PROJECT to the STIP and will manage the PROJECT according to the federal aid process. The STATE will formally let the PROJECT through the STATE Bid Letting Office. The South Dakota Transportation Commission has approved the SIB loan amount as requested for eligible PROJECT expenses.

THE STATE AND CITY MUTUALLY AGREE TO THE FOLLOWING:

2. PROJECT FUNDING

- A. The STATE will provide a loan to the CITY in an amount up to \$SIB LOAN TOTAL AMOUNT to cover the CITY'S share of eligible PROJECT costs. Of the total loan amount, 81.95% will be federal SIB funds and 18.05% will be STATE SIB matching funds. The CITY will be obligated to repay the federal SIB funds to the STATE at an annual interest rate of PERCENTAGE%. The amortization and repayment schedule for the loan is attached as **Exhibit A**.
- B. The STATE will drawdown the CITY'S actual STBGP fund account balance by a total amount of \$. Drawdown, including STATE match, will occur at the time of submittal of form DOT-292 Request for Federal-Aid Project Approval and Agreement to the Federal Highway Administration. The STATE will adjust the drawdown of the CITY'S STBGP fund account as needed to match actual PROJECT costs and actual STBGP funds received when the PROJECT is completed and PROJECT payments have been finalized.
- C. The STATE will bill the CITY for any PROJECT costs that are in excess of the total SIB loan amount or ineligible for federal SIB funding or STATE SIB matching funds. The STATE will also bill the CITY for any applicable interest as described in Section 2.A. of this Agreement.
- D. The STATE will seek reimbursement for eligible PROJECT costs by the noted funding sources in the following order: 1) Other Federal funds; 2) SIB loan funds; and 3) local funds.

3. CITY PAYMENT

- A. The CITY will repay the federal SIB funds and any applicable interest, with all of the CITY'S annual STBGP allocation until said obligations are paid in full. In the event the CITY does not receive an STBGP allocation for a given year, the CITY will make loan repayment with other funds. The payment will be made in accordance with the repayment schedule set out in the attached **Exhibit A**.
- B. Upon receipt of billings from the STATE, the CITY will promptly pay all PROJECT costs in excess of the maximum loan amount, all PROJECT costs that are ineligible for federal SIB funding or STATE SIB matching funds, and any applicable interest.
- C. To the extent permitted by law, any other federal highway funding received by the CITY will be applied to repay the federal SIB loan amount, plus any interest, until said obligations have been paid in full to the STATE.
- D. If the PROJECT is deleted from the STIP prior to construction, the CITY will reimburse the STATE for all federal SIB funds and STATE SIB matching fund expenditures, as well as any accrued interest.

4. AMENDMENT

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

5. TERMINATION

If the CITY breaches any of the terms or conditions of this Agreement, the STATE may terminate this Agreement at any time with or without notice. If the STATE terminates this Agreement for a breach by the CITY, the CITY will reimburse the STATE for 100% of any Loan funds disbursed prior to the date of termination, as well as any accrued interest. The reimbursement will be made in full within 60 days of termination of the Agreement. The obligation to reimburse the STATE will survive termination of the Agreement.

6. INDEMNIFICATION

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

7. FUNDING AVAILABILITY

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, the Agreement may be terminated by the STATE. In the event that this occurs, CITY will reimburse the STATE for 100% of any federal SIB funds and STATE SIB matching funds expended, as well as any accrued interest. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.

8. AMERICANS WITH DISABILITIES ACT

The CITY will provide services in compliance with the Americans with Disabilities Act of 2016 and any amendments.

9. RECORDS RETENTION AND AUDIT

- A. All 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 regulations, found at 2 CFR Part 200 Subpart F. The CFDA Number for these funds is 20.205. Allowable costs will be determined in accordance with 2 CFR Part 200.

- B. Upon reasonable notice, the CITY will allow the STATE or U.S. Department of Transportation representatives to examine all records of the CITY related to this Agreement during the CITY'S normal business hours. The CITY 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 and all other pending matters are closed.
- C. If the CITY expends Seven Hundred Fifty Thousand Dollars (\$750,000.00) or more in federal funds during any CITY fiscal year covered, in whole or in part, under this Agreement, then the CITY 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 Subpart F. If the CITY expends less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) in federal funds during any CITY 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.

10. COMPLIANCE WITH LAWS

The CITY will 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 will procure all licenses, permits, or other rights necessary for the fulfillment of their obligations under this Agreement. The CITY'S noncompliance with these requirements will be cause for the STATE to withhold participation and reimbursement.

11. 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.

12. 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 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**.

[SIGNATURES FOLLOW]

City of CITY, 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: _____

By: /s/ _____

Printed Name: _____

Its: Budget and Finance Director

Date: _____

Approved as to Form:

By: /s/ _____

Printed Name: _____

Special Assistant Attorney General

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
AGREEMENT PROVIDING A
FEDERAL FUND LOAN TO
COUNTY, SOUTH DAKOTA
FOR A FEDERAL AID ELIGIBLE PROJECT**

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 County, South Dakota, referred to in this Agreement as the "COUNTY."

1. BACKGROUND

- A. The COUNTY has requested, by formal resolution, the addition of the following federal aid eligible project to the Statewide Transportation Improvement Plan (STIP): Project # & PCN, located on road name(s), referred to in this Agreement as the "Project."
- B. Eligible PROJECT costs consist of preliminary engineering, construction, and construction engineering with a total eligible PROEJCT cost estimated at Dollars (\$).
- C. COUNTY will have an estimated \$ available in Surface Transportation Block Grant Program (STBGP) funds for the PROJECT in Federal Fiscal Year 20 . Of this amount, %, or is STBGP federal funds and % or \$ represents STATE matching funds.
- D. COUNTY has applied for a federal funds loan to supplement the funding of the PROJECT. The loan amount requested is Dollars (\$). Federal funds would constitute % or \$ of the total loan amount and STATE matching funds would constitute % or \$ of the total loan amount.
- E. STATE has added the PROJECT to the STIP and will manage the PROJECT according to the federal aid process. STATE will formally let the PROJECT through the STATE Bid Letting Office.

2. PROJECT FUNDING

- A. STATE will provide a loan to COUNTY in an amount up to Dollars (\$) to cover eligible PROJECT costs. Of the total loan amount, % will be federal STBGP funds and % will be STATE matching funds. COUNTY will repay the federal funds to STATE plus annual interest at the rate of %. The amortization and repayment schedule for the loan is attached as **Exhibit A**.
- B. STATE will drawdown COUNTY'S actual STBGP fund account balance, including STATE match, by a total amount of (\$). Drawdown will occur at the time of submittal of form DOT-292 Request for Federal-Aid Project Approval and Agreement to the Federal Highway Administration. STATE will adjust the drawdown of COUNTY'S STBGP fund account as needed to match actual PROJECT costs and actual STBGP funds received when the PROJECT is completed and PROJECT payments have been finalized.
- C. STATE will bill COUNTY for any PROJECT costs that are in excess of the total loan amount or ineligible for federal STBGP funding or STATE matching funds. STATE will also bill COUNTY for any applicable interest as described in Section 2.A of this Agreement.

- D. STATE will obtain reimbursement for eligible PROJECT costs by the noted funding sources in the following order: 1) Other Federal funds; and 3) local funds.

3. COUNTY REPAYMENT

- A. COUNTY will repay the federal fund loan and any applicable interest with all of COUNTY'S annual STBGP allocation until said obligations are paid in full. In the event COUNTY does not receive an STBGP allocation for a given year, COUNTY will make loan repayment with other funds. The payment will be made in accordance with the repayment schedule set out in the attached **Exhibit A**.
- B. Upon receipt of billings from STATE, COUNTY will promptly pay all PROJECT costs in excess of the maximum loan amount of \$ _____, all PROJECT costs that are ineligible for federal funding or STATE matching funds, and any applicable interest.
- C. To the extent permitted by law, any other federal highway funding received by the COUNTY will be applied to repay the federal loan amount, plus any interest, until said obligations have been paid in full to STATE.
- D. If the PROJECT is deleted from the STIP prior to construction, COUNTY will reimburse STATE for all federal funds and STATE matching fund expenditures, as well as any accrued interest.

4. AMENDMENT

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

5. TERMINATION

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. If the STATE terminates this Agreement for a breach by the COUNTY, the COUNTY will reimburse the STATE for 100% of any Loan funds disbursed prior to the date of termination, as well as any accrued interest. The reimbursement will be made in full within 60 days of termination of the Agreement. The obligation to reimburse the STATE will survive termination of the Agreement.

6. INDEMNIFICATION

The COUNTY will indemnify the STATE, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceedings that may arise as the result of performing services under this Agreement. This section does not require the 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.

7. FUNDING AVAILABILITY

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, the Agreement may be terminated by STATE. In the event that this occurs, COUNTY will reimburse STATE for 100% of any federal funds and STATE matching funds expended, as well as any accrued interest. Termination for any of these reasons is not a default by STATE nor does it give rise to a claim against STATE.

8. AMERICANS WITH DISABILITIES ACT

The COUNTY will provide services in compliance with the Americans with Disabilities Act of 2016 and any amendments.

9. RECORDS RETENTION AND AUDIT

- A. All 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 regulations, found at 2 CFR Part 200 Subpart F. The CFDA Number for these funds is 20.205. Allowable costs will be determined in accordance with 2 CFR Part 200.
- B. Upon reasonable notice, the COUNTY will allow the STATE or 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 and all other pending matters are closed.
- C. If the COUNTY expends Seven Hundred Fifty Thousand Dollars (\$750,000.00) 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 regulations, found at 2 CFR Part 200 Subpart F. If the COUNTY expends less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) 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.

10. COMPLIANCE WITH LAWS

The COUNTY will 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 will procure all licenses, permits, or other rights necessary for the fulfillment of their obligations under this Agreement. The COUNTY'S noncompliance with these requirements will be cause for the STATE to withhold participation and reimbursement.

11. CERTIFICATION OF NO PROHIBITED STATE LEGISLATOR INTEREST

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, COUNTY hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

12. 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**.

County, South Dakota

By: _____

Printed Name: _____

Its: County Commission Chairperson

Date: _____

Attest

By: _____

Printed Name: _____

County Auditor/Clerk

(County Seal)

State of South Dakota

Department of Transportation

By _____

Printed Name: Joel M. Jundt

Its: Department Secretary

Date: _____

Approved as to Form:

By: /s/ _____

Printed Name: _____

Special Assistant Attorney General

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
AGREEMENT PROVIDING AN STBGP ADVANCE TO
COUNTY, SOUTH DAKOTA**

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 _____ County, South Dakota, referred to in this Agreement as the "COUNTY."

1. BACKGROUND

- A. The COUNTY receives annual STBGP allocations. The STBGP allocation, including state match, disbursed to the COUNTY in 20_____ was _____ Dollars (\$ _____).
- B. The COUNTY has requested a Surface Transportation Block Grant Program ("STBGP") fund advance in the amount of _____ Dollars (\$ _____) for a public highway infrastructure project. The project consists of _____. The project will be referred to in this Agreement as the "PROJECT."
- C. The COUNTY is willing to pledge its future STBGP allocations to repay the STBGP funds advance plus accrued interest.
- D. The South Dakota Transportation Commission has approved the STBGP advance amount as requested.

2. PROJECT FUNDING

- A. The STATE will disburse funding to the COUNTY in the amount of _____ Dollars (\$ _____) for the PROJECT. The funding payment will be issued upon full execution of this Agreement. The COUNTY will use the funds for eligible PROJECT expenses and for no other purpose. Eligible PROJECT expenses consist of design, right-of-way acquisition, wetland mitigation, environmental clearances, utility relocation, bid-letting, construction, and construction administration. Any funds not expended for the PROJECT will be repaid to the STATE and will be applied first to interest and then to the principal balance owed to the STATE by the COUNTY.
- B. COUNTY is obligated to repay the fund advance to the STATE, plus annual interest at the rate of _____%. An amortization and repayment schedule for the loan is attached as **Exhibit A**. The COUNTY'S annual STBGP allocation from the STATE will be applied toward repayment of the fund advance and interest until the STATE is reimbursed in full and all interest has been paid. As the first installment payment toward repayment of the loan, on or around _____, 20_____, the STATE will withhold and accept the annual STBGP allocation that would otherwise be issued to the COUNTY in the amount of _____ (\$ _____). On or around _____ of each subsequent year, the STATE will withhold and accept the COUNTY'S entire annual STBGP allocation until the STATE has been fully reimbursed for the advance of STBGP funds and all accrued interest has been paid. In the event COUNTY does not receive an STBGP allocation for a given year, COUNTY will make repayment in accordance with the repayment schedule attached as **Exhibit A**.

3. AMENDMENT

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

4. TERMINATION

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. If the STATE terminates this Agreement for a breach

by the COUNTY, the COUNTY will reimburse the STATE for 100% of any funds disbursed to the COUNTY prior to the date of termination, as well as any accrued interest. The reimbursement will be made in full within 60 days of termination of the Agreement. The obligation to reimburse the STATE will survive termination of the Agreement.

5. INDEMNIFICATION

The COUNTY will indemnify the STATE, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceedings that may arise as the result of performing services under this Agreement. This section does not require the 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.

6. FUNDING AVAILABILITY

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, the Agreement may be terminated by STATE. In the event that this occurs, COUNTY will reimburse STATE for 100% of any federal funds and STATE matching funds expended, as well as any accrued interest. Termination for any of these reasons is not a default by STATE nor does it give rise to a claim against STATE.

7. AMERICANS WITH DISABILITIES ACT

The COUNTY will provide services in compliance with the Americans with Disabilities Act of 2016 and any amendments.

8. RECORDS RETENTION AND AUDIT

- A. All PROJECT charges will be subject to audit in accordance with the STATE'S current procedures.
- B. Upon reasonable notice, the COUNTY will allow the STATE or 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 and all other pending matters are closed.

9. COMPLIANCE WITH LAWS

The COUNTY will 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 will procure all licenses, permits, or other rights necessary for the fulfillment of their obligations under this Agreement. The COUNTY'S noncompliance with these requirements will be cause for the STATE to withhold participation and reimbursement.

10. CERTIFICATION OF NO PROHIBITED STATE LEGISLATOR INTEREST

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, COUNTY hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

11. NOTICES

Any notices or submission required under this Agreement will be provided to the following:

For the COUNTY

County, South Dakota
Attention:

, South Dakota

For the STATE

SD Department of Transportation
Attention: Joanne Hight
700 East Broadway Avenue
Pierre, South Dakota 57501-2586

12. 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**.

County, South Dakota

By: _____

Printed Name: _____

Its: County Commission Chairperson

Date: _____

State of South Dakota

Department of Transportation

By: _____

Printed Name: Joel M. Jundt

Its: Department Secretary

Date: _____

Attest

By: _____

Printed Name: _____

County Auditor/Clerk

(County Seal)

Approved as to Form:

By: /s/ _____

Printed Name: _____

Special Assistant Attorney General

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
AGREEMENT PROVIDING A
STATE HIGHWAY FUND LOAN TO
THE CITY OF _____, SOUTH DAKOTA**

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 the city of CITY, South Dakota, referred to in this Agreement as the "CITY."

1. BACKGROUND

- A. The CITY desires to _____, referred to in this Agreement as the "PROJECT."
- B. Due to _____ for the construction of the PROJECT, the CITY applied to the STATE for a State Highway Fund Loan for Local Governments, referred to in this Agreement as the "Loan," to supplement the PROJECT funding. The Loan amount requested is _____ (\$ _____).
- C. The South Dakota Transportation Commission has approved the Loan amount as requested for eligible PROJECT expenses.

2. STATE RESPONSIBILITIES

- A. The STATE will provide a Loan to the CITY up to a maximum amount of _____ Dollars (\$ _____) to cover eligible PROJECT costs. Eligible PROJECT costs are limited to highway purposes, more specifically preliminary engineering, design, right-of-way acquisition, environmental coordination and permitting, bid-letting, materials, construction, and construction engineering for the PROJECT. The CITY will be obligated to repay the Loan funds to the STATE at an annual simple interest rate of _____ percent (_____ %) per annum, amortized over _____ (_____) years. The CITY will execute a promissory note for the Loan.
- B. The STATE will disburse the Loan funds to CITY for eligible PROJECT costs upon receipt of billings with supporting documents.
- C. The STATE will apply each annual installment payment first to interest accrued to the date such payment is received by the STATE, with any balance to be applied to principal.
- D. In the event the CITY fails to make an annual Loan payment when due under the terms of this Agreement, the STATE may apply any current or future local highway and bridge funds that may be allocated to the CITY towards repayment of the Loan.

3. CITY RESPONSIBILITIES

- A. The CITY will be responsible for completing all aspects of the PROJECT, including all preliminary engineering, right-of-way acquisition, utility relocation, environmental coordination and permits, design, bid-letting, construction, and construction engineering for the PROJECT.
- B. The CITY will repay the Loan and any applicable interest in annual equal payments based on a _____ (_____) year amortization, with a final balloon payment of all outstanding principal and interest due on or before _____, 20_____. Interest will not begin accruing on the Loan until the first payout amount has been received by the CITY. Interest accrued after the first Loan payout amount to the CITY will be due with the first annual payment made by the CITY. The first annual payment is due on _____, 20_____, with a like payment to be made on or before _____ each year thereafter, until _____, 20_____, at which time any remaining balance of the Loan principal, together with any unpaid interest, will become due. The amortization and repayment schedule for the loan is attached as **Exhibit A**.

- C. The CITY will have the full right of prepayment, without penalty, and may pay the Loan balance in full at any time during the performance of this Agreement, notwithstanding the terms of payment in Paragraph 3.B.
- D. The CITY will execute the promissory note attached as **Exhibit B** in accordance with the foregoing provisions.

4. SECURITY

If the City of _____ fails to timely repay the Loan, the STATE may apply the CITY'S Surface Transportation Block Grant Program (STBGP) allocation to repayment of the Loan and interest until all obligations are paid in full.

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

If the CITY breaches any of the terms or conditions of this Agreement, the STATE may terminate this Agreement at any time with or without notice. If the STATE terminates this Agreement for a breach by the CITY, the CITY will reimburse the STATE for 100% of any Loan funds disbursed prior to the date of termination, as well as any accrued interest. The reimbursement will be made in full within 60 days of termination of the Agreement. The obligation to reimburse the STATE will survive termination of the Agreement.

7. INDEMNIFICATION

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

8. AMERICANS WITH DISABILITIES ACT

The CITY will provide services in compliance with the Americans with Disabilities Act of 2016 and any amendments.

9. RECORDS RETENTION AND AUDIT

- A. All PROJECT charges will be subject to audit in accordance with the STATE'S current procedures.
- B. Upon reasonable notice, the CITY will allow the STATE to examine all records of the CITY related to this Agreement during the CITY'S normal business hours. The CITY 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 and all other pending matters are closed.

10. COMPLIANCE WITH LAWS

The CITY will 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 will procure all licenses, permits, or other rights necessary for the fulfillment of their obligations under this Agreement. The CITY'S noncompliance with these requirements will be cause for the STATE to withhold participation and reimbursement.

11. FUNDING AVAILABILITY

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, the Agreement may be terminated by the STATE. In the event that this occurs, CITY will reimburse the STATE for 100% of any federal SIB funds and STATE SIB matching funds expended, as well as any accrued interest. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.

12. 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.

13. 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 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 C**.

City of [redacted], 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: _____

Approved as to Form:

Printed Name: _____

By: /s/ _____

City Auditor/Clerk

Printed Name: _____

(City Seal)

Special Assistant Attorney General