

**JOINT POWERS AGREEMENT FOR THE CRESCENT STREET RECONSTRUCTION PROJECT
BETWEEN
SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION
AND
CITY OF DEADWOOD, 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 "SDDOT," and city of DEADWOOD, South Dakota, referred to in this Agreement as the "CITY."

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 CITY, and the SDDOT. Each party has responsibilities under the terms of this Agreement and no joint board or administrator will be used. Reconstruction of Crescent Street will be undertaken as set forth in this Agreement as well as the Cost Sharing Agreement referenced herein.

BACKGROUND:

1. The Days of '76 is the owner of Crescent Street. The CITY has an easement over Crescent Street and desires to work with the Days of '76, the SDDOT and the Lead Deadwood Sanitary District make improvements to Crescent Street and the surrounding area. . Crescent Street provides access to SDDOT' maintenance yard. Crescent Street is in need of resurfacing. The Parties desire for SDDOT to contribute towards CITY's costs in resurfacing Crescent Street because of the extent of SDDOT's use of the road.

THE SDDOT AND THE CITY MUTUALLY AGREE AS FOLLOWS:

2. The Project

- A. SDDOT and CITY concur in the proposal for the resurfacing of Crescent Street within the City of Deadwood, South Dakota (the "PROJECT"). The PROJECT also includes tree removal, pavement removal, installation of curb and gutter, and additional paved surface installation pursuant to the Cost Sharing Agreement entered into between the City of Deadwood, the Lead Deadwood Sanitary District ("Sanitary District") and the Days of '76, attached hereto as Exhibit A (hereinafter "the Cost-Sharing Agreement").
- B. The CITY will design, advertise, let to contract, award and be the contracting party for the PROJECT. The PROJECT must be completed by September 30, 2027.
- C. The CITY will obtain the required environmental clearances for the PROJECT, if any.
- D. Nothing contained herein will be construed as a transfer to the SDDOT, or as an assumption by SDDOT of any jurisdiction or maintenance responsibilities for Crescent Street or the PROJECT.

3. Term

This Agreement will commence upon the last date of signature and will end upon completion of the PROJECT, unless terminated earlier pursuant to the terms of this Agreement.

4. Payment

- A. SDDOT will contribute Seventy-Five Thousand Dollars (\$75,000.00) toward the project. SDDOT will pay a lump sum amount to CITY within forty-five days of the receipt of an invoice from CITY.

- B. The Seventy-Five Thousand Dollars (\$75,000.00) paid by SDDOT, pursuant to this agreement, will be used by CITY exclusively for the design and construction of the PROJECT.
- C. CITY will be responsible for all remaining costs and expenses for the PROJECT except as set forth in the Cost-Sharing Agreement which will be contributed by the Sanitary District and Days of '76. Other than the sum paid by SDDOT pursuant to Section 3A, above, SDDOT will have no further responsibility for the costs of designing, constructing or maintaining the PROJECT. Nothing contained herein will be construed as to impose upon SDDOT an obligation to participate in or contribute toward any future improvement or maintenance of Crescent Street.
5. **Amendment.** This Agreement may not be amended, except in writing, which writing will be expressly identified as a part of this Agreement and must be signed by an authorized representative of each of the parties.
6. **Indemnification.** CITY 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 CITY'S performance under this Agreement. This section does not require 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.
5. **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 party 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.
6. **Compliance Provision.** 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 CITY will procure all licenses, permits, or other rights necessary for the fulfillment of its obligations under this Agreement.
7. **Certification of No Prohibited State Legislator:** 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.
8. **Public Access to Agreement:** The parties acknowledge and agree that this entire Agreement, including any exhibits and attachments to this Agreement, is a public record that may be provided to the public and posted in its entirety on the State of South Dakota's searchable internet website pursuant to SDCL 1-27-45.
9. **Miscellaneous**
- A. This Agreement is contingent upon approval by the South Dakota Transportation Commission. In the event the South Dakota Transportation Commission declines to approve all real property transfers anticipated by this Agreement, this Agreement will be null and void.
- B. CITY may not assign this Agreement, in whole or in part, without the STATE'S prior written consent. This Agreement may not be amended, except in writing, which writing will be expressly identified as a part of this Agreement and must be signed by an authorized representative of each of the parties.

- C. The STATE makes no representations or warranties of title for any of the property to be conveyed pursuant to this Agreement.
- D. This Agreement will be effective as of date of last signature.
- E. CITY has approved the terms and conditions of this Agreement and designated its Mayor as CITY'S duly authorized representative and has empowered the Mayor with the authority to sign this Agreement on behalf of the CITY and to execute all other documents necessary to comply with the requirements of this Agreement. A copy of the City Council minutes or resolution approving this Agreement and authorizing the execution of this Agreement by the Mayor as CITY'S authorized representative is attached hereto as **Exhibit B**.

This Agreement is binding upon the signatories not as individuals but solely in their capacities as officials of their respective organizations and acknowledges proper action of the STATE and CITY to enter into same.

City of Deadwood	State of South Dakota Department of Transportation
By: _____	By: _____
Printed Name: _____	Printed Name: Joel M. Jundt
Its: Mayor	Its: Secretary
Date: _____	Date: _____
Attest:	Approved as to Form:
By: _____	By: _____
Printed Name: _____	Printed Name: _____
CITY Auditor/Clerk	Special Assistant Attorney General
(CITY SEAL)	

EXHIBIT A