



SOUTH DAKOTA
DEPARTMENT
OF PUBLIC SAFETY

prevention — protection — enforcement

October 18, 2023

City of Deadwood
c/o Kevin Kuchenbecker
108 Sherman St
Deadwood, SD 57732

Dear City of Deadwood:

Enclosed is the 2019 Infrastructure Disaster Recovery Program Agreement.

Once you have reviewed the agreement and if you still wish to participate in this program, City of Deadwood will need to hold a meeting. During this meeting, the City of Deadwood will need to approve signing the enclosed agreement and appoint a designee.

After the meeting, please complete the fields in Section III E, handwrite the name and title of the designee, date, and then, have the designee sign each copy of the agreement. Attach a copy of the meeting minutes and return both copies of the agreement to:

SD Dept of Public Safety
Attn: Arin Diedrich
118 W Capitol Ave
Pierre, SD 57501

Once the agreement has been fully executed, we will mail an original to you.

Also enclosed is a reimbursement request. Payments from the Infrastructure Disaster Recovery Program will be made on a reimbursement basis. If you have incurred, and paid for, expenses related to the FEMA projects referenced in your agreement and would like to receive reimbursement at this time, please complete the enclosed reimbursement request and submit it and all supporting documentation when you return both copies of the agreement.

If you have any questions, please contact me at 605-773-3178 or Arin.Diedrich@state.sd.us.

Sincerely,

Arin Diedrich
Management Analyst

2019 INFRASTRUCTURE DISASTER RECOVERY PROGRAM AGREEMENT

THIS AGREEMENT is made by and between the State of South Dakota and its Department of Public Safety, Office of Emergency Management (hereinafter referred to as “the State”) and the City of Deadwood (hereinafter referred to as “City of Deadwood”).

I. RECITALS

- A. The City of Deadwood is an eligible applicant in one of the four Presidential Disasters declared in South Dakota in 2019 for the United States Department of Homeland Security, Federal Emergency Management Agency (“FEMA”) Public Assistance Grant Program, which FEMA pays 75% of project costs as public assistance funds (“Federal Share”), the City of Deadwood pays 15% of the project costs (“Local Share”), and the State pays 10% of the project costs (“State Share”).
- B. The State established the 2019 Infrastructure Disaster Recovery Program (“the 2019 IDR”) which advances funding for an eligible project(s) in an amount representing the Federal Share and the Local Share. The City of Deadwood desires to participate in the 2019 IDR and submitted an application (attached hereto as Exhibit A and hereby incorporated by reference) to the State.
- C. The application of the City of Deadwood affirms that the eligible project(s) is an emergency by nature and the result of unprecedented storms, flooding, and damage to homes, businesses, and South Dakota’s public infrastructure, particularly roads during 2019.
- D. The State reviewed the application of the City of Deadwood, approves of the request for 2019 IDR advance funding for the eligible project(s), and agrees to advance funding to the City of Deadwood under the terms of this Agreement, and the City of Deadwood accepts the terms of this Agreement;

II. NOW, THEREFORE, the parties to this Agreement agree as follows:

- A. Project. The eligible project(s) for this Agreement is: DSR4467 Project #123108 (the “Project”). The Presidential Disaster(s) for which funding is available under the Public Assistance Grant Program for the Project is \$7,575,00. This Agreement shall be for an amount up to \$6,817,500.
- B. Maximum Project payment. The State agrees to advance up to the amount of \$6,817,500, which represents the Federal Share and Local Share. The failure of the City of Deadwood to complete the Project for this amount shall not be grounds for default or termination of this Agreement, regardless of the reason or circumstance for such failure. Should additional funding be needed beyond this amount to complete the Project, the parties may negotiate and enter into a separate agreement for any additional funding.
- C. Payments. The City of Deadwood shall make Project payment requests, with detailed cost sheets, to the State as costs for the Project under this Agreement accrue, and within 45 days of receiving such request, the State will advance to the City of Deadwood such amount requested to cover those costs.
- D. Repayment of Federal Share Advanced by the State. Federal regulations require that FEMA funding be paid to the subrecipient. The City of Deadwood agrees to reimburse the State for the

advances made by the State which constitute the Federal Share of the Project, and any applicable interest, upon receipt of Public Assistance Grant Program funding by the City of Deadwood. The State will provide a billing notice for the amount representing the Federal Share advanced by the State. Payment to the State for the Federal Share advanced by the State is due upon receipt of the billing notice. The City of Deadwood shall be obligated to reimburse the State at an annual interest rate of zero percent (0%) either within thirty-six (36) months from the date of execution of the original Agreement or within thirty (30) days of final settlement with the United States Department of Homeland Security, FEMA Public Assistance Grant Program, whichever occurs first. If the outstanding balance of the Federal Share advanced by the State is not paid in full either within thirty-six (36) months from the date of execution of the original Agreement or within thirty (30) days of final settlement with the United States Department of Homeland Security, FEMA Public Assistance Grant Program, whichever occurs first, any outstanding balance shall accrue interest at the rate of two percent (2.0%) per annum. The City of Deadwood shall be responsible to the State for any outstanding balance remaining after the application of Public Assistance Grant Program funding, less the State Share of Project costs, if any.

- E. Repayment of Local Share Advanced by the State. The City of Deadwood agrees to reimburse the State for all portions of the amount advanced not approved by FEMA, portions constituting the Local Share of the Project, and any applicable interest, less the State Share of Project costs, if any. The City of Deadwood shall be obligated to reimburse the State at an annual interest rate of zero percent (0%) within eighteen (18) months from the date of execution of this Agreement, and at the rate of two percent (2.0%) per annum thereafter.
- F. Payment Schedule. All advances made by the State under this Agreement must be repaid to the State within seven (7) years from the date of this Agreement. After eighteen (18) months from the date of this Agreement, the City of Deadwood will make a minimum of two payments per year to the State in accordance with the Payment Schedule attached hereto as Exhibit B and hereby incorporated by reference.
- G. Withholdings in Event of Default. The City of Deadwood understands this is an unsecured advancement of state funds. In consideration thereof, the State reserves the right to withhold any and all state funds, including but not limited to sales and use tax, from the City of Deadwood if: (a) the amounts due and owing to the State under this Agreement are not paid in full within seven (7) years from the date of this Agreement; (b) the City of Deadwood is late on making a payment or violates any of the Payment Schedule terms in Exhibit B; or (c) the City of Deadwood violates any term of this Agreement.
- H. Prior repayment. The City of Deadwood shall have the option in its sole discretion to prepay any or all of the amounts advanced by the State under this Agreement without penalty; however, the City of Deadwood shall provide fifteen (15) days prior notice to the State before making a prepayment for accurate calculation of principal and interest due.
- I. No Other Federal Funds. With the exception of the Federal Share of public assistance funds, the City of Deadwood will not use any other federal funds to repay the State.
- J. Subrecipient Eligibility. The City of Deadwood shall be responsible for maintaining its eligibility as a subrecipient for federal funds. Should the City of Deadwood become ineligible as a subrecipient for federal funds for any reason whatsoever, the City of Deadwood remains obligated to repay the State in full. Further, the City of Deadwood agrees to provide any

documents requested by the State to ensure that the City of Deadwood is complying with the terms of this provision.

- K. Program Eligibility. To maintain eligibility for 2019 IDRPs funding under this Agreement, the City of Deadwood shall: 1) provide proof on an ongoing funding source to repay the advance; 2) provide quotes in accordance with South Dakota law for eligible "shovel ready" projects; 3) submit a mitigation project proposal; 4) follow all FEMA requirements; 5) provide annual financial statements and audits to demonstrate a need for 2019 IDRPs funding; and 6) provide all required supporting documentation, including costs, with each payment request.

III. GENERAL CONDITIONS

- A. 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 will 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.
- B. This Agreement may not be amended, except in writing, which writing shall be expressly identified as a part hereof and be signed by an authorized representative of each of the parties hereto.
- C. All parties agree to the jurisdiction of the courts of the State of South Dakota, and venue for any dispute or enforcement of this Agreement shall be in the Sixth Judicial Circuit, Hughes County, South Dakota.
- D. In the event the City of Deadwood breaches any of the terms or conditions hereof, the State may terminate this Agreement at any time with or without notice, and the total outstanding balance to the State shall be immediately due.
- E. The City of Deadwood has designated its _____ as its authorized representative and has empowered said _____ the authority to sign this Agreement on behalf of the City of Deadwood. Attached hereto as Exhibit C and hereby incorporated by reference is a copy of the minutes of the City of Deadwood showing the approval of this Agreement and designation of the signatory below.



Applicant

State of South Dakota
Department of Public Safety

Print Name:

Robert Perry

Title:

Cabinet Secretary

Date:

Date:

EXHIBIT B
City of Deadwood in Lawrence County
Loan Repayment Schedule

Loan Amount:
Interest Rate:
Loan Agreement Date:
Total Principal & Interest
Payment Amount
Repayment Terms:

Note: This exhibit will be updated as needed to set up a payment schedule once the repayment terms have been met.

Payment Number	Payment Due Date	Beginning Balance	Principal Amount	Interest Amount	Total PI	Ending Balance
1						-
2						-
3						-
4						-
5						-
6						-
7						-
8						-
9						-
10						-
11						-
12				-		
13						
14						
Total			-	-	-	