

PERFORMANCE CONTRACT

BETWEEN
CITY OF LEAD
AND
BLACK HILLS COUNCIL OF LOCAL GOVERNMENTS

This performance contract between the City of Lead, the "CITY", and the Black Hills Council of Local Governments, the "COUNCIL", is for the COUNCIL to provide specified services for the completion of an Environmental Review related to the proposed use of USDA Rural Development funding by the CITY.

The purpose of the Rural Development funding is for the emergency repair of the retaining wall, street, and water and sewer infrastructure located on _____. One of the Federal administrative requirements associated with the USDA Rural Development funding is the completion of an Environmental Review. After reviewing the various requirements associated with the completion of this Environmental Review, the CITY has determined that outside technical assistance is needed from the COUNCIL.

TERMS OF CONTRACT:

This agreement shall commence upon its execution by both parties and shall terminate upon the completion of the Environmental Review. In the event of termination, the COUNCIL shall be compensated pro rata for the percentage of Responsibilities performed prior to the date of termination.

RESPONSIBILITIES:

The parties to this contract agree to the following responsibilities.

The CITY agrees to:

- ◇ Provide compensation to the COUNCIL in accordance with the terms of this contract;
- ◇ Provide information and guidance to the COUNCIL Staff during the contract period;
- ◇ Fully consider and take appropriate actions recommended by COUNCIL staff regarding specific administrative procedures;
- ◇ Assume financial responsibility for any extra or specialized technical studies beyond the normal level of study required with a USDA Rural Development Environmental Review for a Categorically-Excluded project (examples of extra, specialized, technical studies include but are not limited to: Phase I Environmental Site Assessments, archaeological surveys, historic preservation or recordation work, soils or geotechnical testing, etc.).
- ◇ Assume financial responsibility for any required publishing costs or costs associated

- with public hearings.
- ◇ Establish a suitable local site accessible to the public and COUNCIL for project files, data, documents and information.

The COUNCIL agrees to:

- ◇ Complete any and all functions (but not including responsibilities of the CITY as identified in the prior section) involved in completing a USDA Rural Development Environmental Review for the project (*emergency repairs located _____*)
- ◇ Assume financial responsibility for all necessary and customary travel and printing associated with completion of the Environmental Review.

COMPENSATION:

The CITY hereby agrees to provide compensation to the COUNCIL in the amount of \$2,500.00 (Two Thousand Five Hundred Dollars and Zero Cents) for services rendered as outlined in this contract. Periodic payment, based upon percentage of completion of the Environmental Review, shall be made upon submission of billings from the COUNCIL to the CITY.

The COUNCIL shall submit to the CITY an invoice for services rendered. The CITY agrees to pay the COUNCIL within sixty (60) days of receipt of billing.

HOLD HARMLESS

To the fullest extent permitted by law, each party shall indemnify and hold harmless the other party, including each other's agents, employees and volunteers from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the party's respective Responsibilities as set forth herein, including loss of use resulting therefrom and which is caused in whole or in part by any negligent act or omission of the party, or any subcontractor of such party, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

ENTIRE AGREEMENT; NO THIRD PARTY BENEFICIARIES

This Contract is the entire agreement between the parties concerning its subject matter, supersedes all prior agreements and understandings, whether or not written, and is not intended to confer upon any person other than the parties any rights or remedies hereunder.

MODIFICATION OR CANCELLATION OF CONTRACT:

This contract constitutes the entire agreement between all parties and supersedes all previous contract(s). No amendment or modification changing its scope or terms shall have any force or effect unless it is in writing and signed by both parties. This contract may be canceled by either party with thirty (30) days written notice, delivered by

registered mail. In the event of cancellation, the COUNCIL shall be compensated on a pro rata basis for the percentage of Responsibilities performed prior to the date of cancellation. All notices under this contract shall be addressed as follows:

To COUNCIL:

Black Hills Council of Local Governments
Attn: Jennifer Sietsema, Executive Director
730 E. Watertown St., Suite 102
Rapid City, SD 57701

To CITY:

CITY OF LEAD
Attn: Ron Everett, Mayor
801 W. Main Street
Lead, SD 57754

This agreement shall be binding upon the parties hereto, their successors and assigns.

Executed this ____ day of _____, 2024.

CITY OF LEAD

**BLACK HILLS COUNCIL OF LOCAL
GOVERNMENTS**

Ron Everett, Mayor

Jennifer Sietsema, Executive Director