

# OGLALA LAKOTA COUNTY

## HIGHWAY DEPARTMENT

To: Oglala Lakota County Commissioners

Re: Petition for Private Road Maintenance

The petition is from residents within the boundaries of Oglala Lakota County who have roads that are not on the Oglala Lakota County road system. Road maintenance is being requested at the following physical location (1/4 Section, Township, and Range):

Sharps Corner, section 3 Township 39 Range 43

Description of requested work would be:

Dig water line

Cost for the requested work would be:

Cost will be determined by the cost accounting system (see attached sheets for estimates), one hour minimum. Time will begin when leaving the shop, and end when returning to the shop if there is no County equipment located near the requested job site; or travel time will be from the area where the equipment is being stored and ending when returning back to the area where the equipment is being stored, if there is County equipment located near the requested job site.

The cost of each project will be estimated by the Highway Superintendent, determined by the number of hours. The estimated cost will be 100% paid by the petitioner to the Highway Superintendent, who will forward the money to the County Auditor, 906 N. River Street, Hot Springs, SD 57747, and upon receipt of money, Auditor will notify the Highway Superintendent to authorize start of project. All contracts will be taken to the Board of Commission meetings for approval in the minutes.

This work will be performed by the Oglala Lakota County Superintendent and employees, with cost records maintained. This work will be only performed when weather permits, and when normal maintenance duties are caught up. State law authorizes a maximum of 6 hours per year, per applicant.

The applicant agrees to indemnify and hold harmless Oglala Lakota County for any and all actions, suits, liability, damages or other proceedings arising out of operations to complete the requested road maintenance.

nt Dineh / Anna Benally / Hasnida 101 Sharpscorner Rd Porcupine, SD 57742 605-515-3774 2/17/21  
 Property Owner                      Address                      Phone #                      Date

X [Signature] [Signature]  
 Property Owner Signature

[Signature] 2-23-2021  
 Oglala Lakota County Chairman                      Date                      Oglala Lakota Hwy Supt.                      Date

6                      348                      \_\_\_\_\_  
 Total Hours Estimated                      100% Estimate Amount                      Date received by Auditor

# Oglala Lakota County Highway Department

(605) 288-1866 ~ shop (605) 288-1867 ~ fax

X  
P  
PIAT

Name: Dineh Benally

Date: 2/17/21

<u>ITEM</u>	<u>COST PER HOUR</u>	<u>HOURS</u>	<u>TOTAL</u>
Motor Grader	\$78.00		
Dump Truck	\$58.00		
Loader	\$58.00	6	348 <sup>00</sup>
Semi/Belly Dump	\$132.00		
Pit Run Gravel	\$2.00		
Mower Tractor	\$48.00		

Grand Total 348.00

X Signature A-L Benally

Date: 2/17/21

Superintendent Signature James Bittleson

Date: 2-23-2021

# QUOTE FOR PURCHASE



**Date** 2/23/2021  
**Job Number** 02232021-dkh  
**To Customer** Lynx Bettelyoun  
**Company** Oglala Lakota County Highway Department  
**Address** PO Box 208 - 105 Dakota St.  
**City, State, Zip** Batesland, SD 57716  
**Phone** 605-288-1866  
**Email** olchwy@hotmail.com

**Road Groom Manufacturing**  
 601 East 1st St • PO Box 97  
 Grundy Center, IA • 50638 • USA  
 Phone: 319-824-3011 • Fax: 319-824-5013

QTY	DESCRIPTION	UNIT	UNIT PRICE	TOTAL
	<b>New 2020 8.5' Road Groom</b> - 6' Main Frame w/ 2-1/2' Wing Extension - All-Steel Blade Construction - (5) Solid 5/8" x 8" Cutting Blades - Full Serrated Rear Comb - Hydraulic Cylinders - (1) 3 x 8 Lift Cylinder - (1) 2-1/2 x 16 Wing Cylinder - (3) 20.5 x 8.5 x 10 Tires (incl. (1) Spare)			
	<b>New 2020 8.5' Road Groom</b>		<b>\$14,200</b>	<b>\$14,200</b>
	<b>Selected Options</b> - Hydraulic Pump Kit (when live hydraulics not available)		<b>\$2,850</b>	
	<b>New 8.5' Road Groom w/ Selected Options</b>			<b>\$17,050</b> *
	<b>Available Options (can be added later)</b> - Front Magnets (for picking up loose steel debris) - Carbide Teeth (replaces front blades in severe conditions)		<b>\$1,200</b> <b>\$2,880</b>	
	<i>Delivery included at No Extra Charge</i> All Applicable Taxes Extra			

**Customer** agrees to purchase and Road Groom Manufacturing ( hereinafter " RGM" ) agrees to sell the described equipment in the quantity and at the price set forth in this contract.  
**Customer** agrees to pay interest to RGM on any unpaid balances at the rate of 10% per annum from 10 days after sending of notice of completion until paid in full.  
**Customer** shall pay all amounts due hereunder in United States Currency to RGM prior to delivery of said equipment to Customer FOB, Grundy Center, Iowa, USA.  
**Time** is of the essence; however, failure to promptly asset rights of RGM hereunder shall not be a waiver of such rights or a waiver of any existing or subsequent default.  
**This contract** shall be governed and controlled by the laws of the State of Iowa. Customer agrees to pay RGM's reasonable attorney fees related to RGM's enforcement of it's rights hereunder together with costs and expenses related thereto.  
**RGM** may assign this contract in whole or in part without any notice to Customer for purpose of security and/or any other purpose or reason with Customer hereby agreeing to such assign ability.  
**This contract** will become effective upon the date of the last party to sign this contract; further, facsimile and/or e-mail copies of this contract showing all dates and signatures will be treated as originals of this contract

Date 2-25-21  
 Customer [Signature]  
 Title Sue Bunty - Auditor  
 Tax ID 35-2368121

Date \_\_\_\_\_  
 Road Groom Manufacturing  
 Title: \_\_\_\_\_



TROY KRETZSCHMAR TRUCKING

dba TK TRANSPORT LLC  
46879, 257TH ST.  
CROOKS, SD 57020

# Invoice

Date	Invoice #
2/28/2021	1485

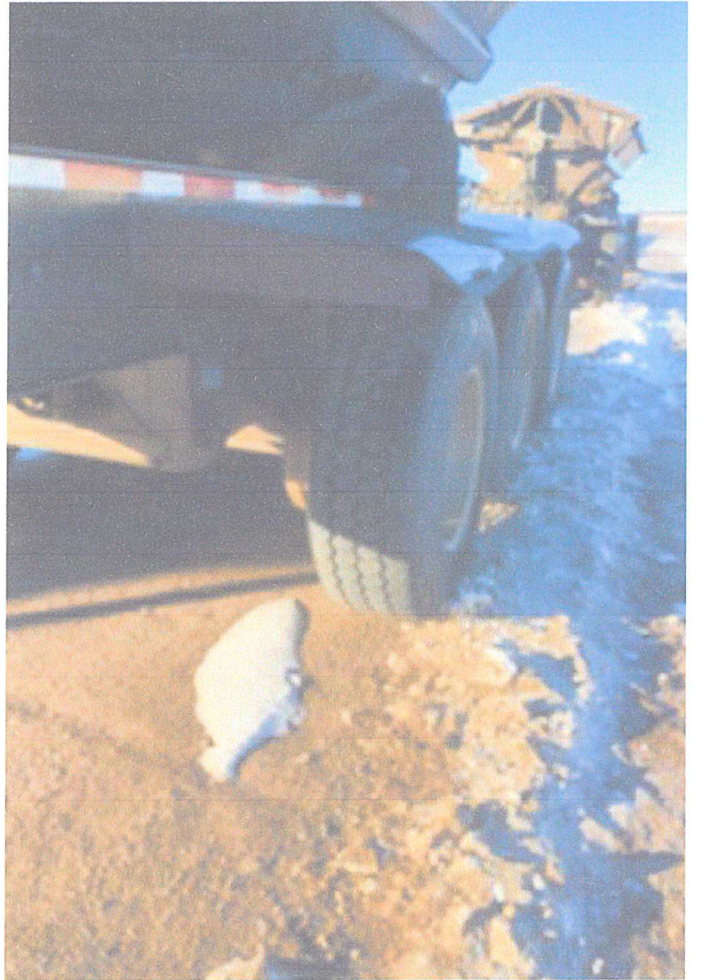
Bill To
OGLALA LAKOTA COUNTY

P.O. No.	Terms	Project

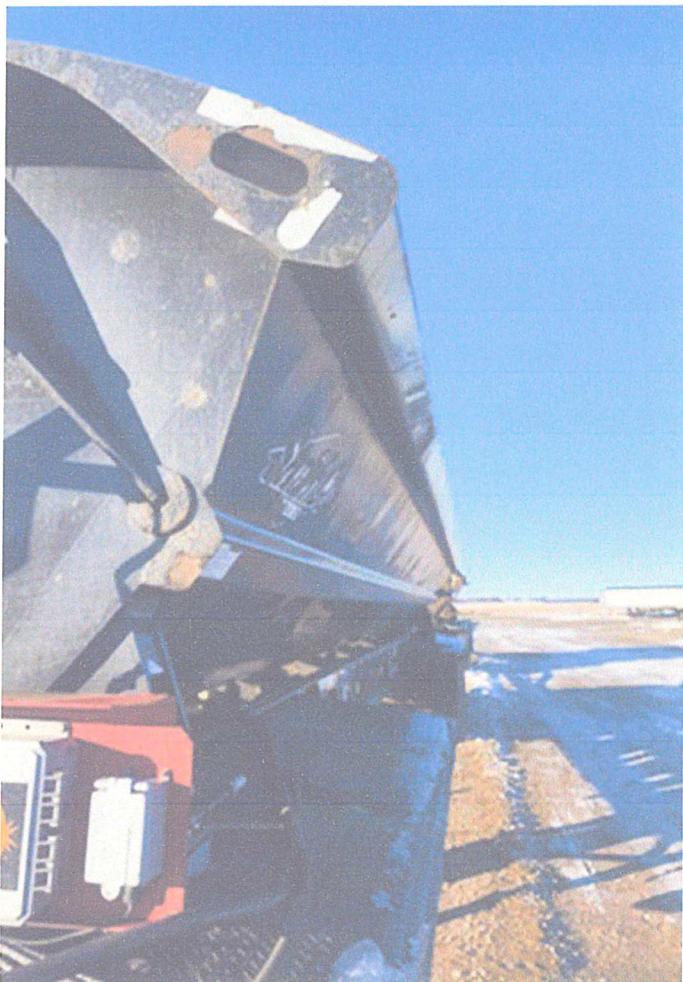
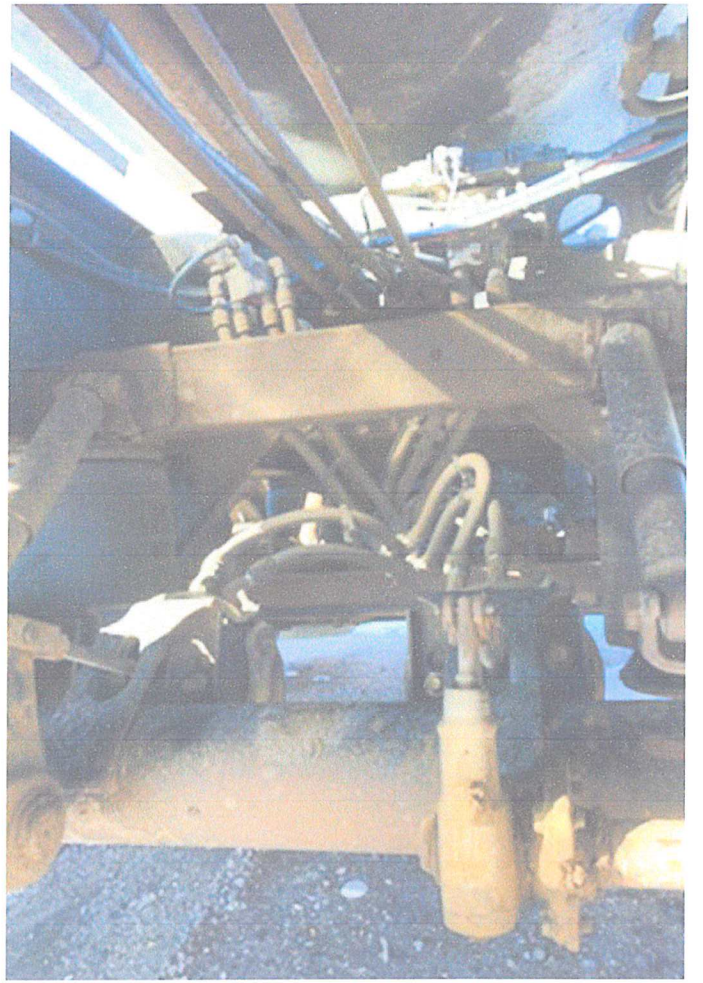
Quantity	Description	Rate	Amount
1	ONE USED 2008 SMITHCO SIDE DUMP	37,000.00	37,000.00
<b>Total</b>			\$37,000.00

RECEIVED  
MAR 02 2021

















Banner Associates, Inc.  
2307 W 57th St, Ste 102  
Sioux Falls, SD 57108  
Tel 605.692.6342  
Toll Free 855.323.6342  
[www.bannerassociates.com](http://www.bannerassociates.com)

March 2, 2021

Mr. Lynx Bettelyoun  
Oglala Lakota County Highway Department  
105 Dakota St.  
PO Box 208  
Batesland, SD 57716

Re: Contract Award  
Oglala Lakota County Road 7 Resurfacing – Phase I  
BAI. No. 23166.00.00

Dear Mr. Bettelyoun and County Commissioners:

Attached hereto is one (1) copy of the Certified Bid Tabulation for the Oglala Lakota County Road 7 Resurfacing – Phase I project. Bids were received and opened for the unit price bid schedule on February 10, 2021.

A total of one (1) Bid was received and opened for the project. The total bid was \$531,350.00. The engineer's estimate was \$600,000.

The low bid was submitted by Western Construction, Inc. from Rapid City, SD. All the items submitted with the Bid appear to be in order. Banner Associates recommends awarding the Contract to Western Construction, Inc. in the amount of \$531,350.00.

If you have any questions or need anything further, please do not hesitate to contact me at (855) 323-6342 or by email at [richu@bannerassociates.com](mailto:richu@bannerassociates.com).

Sincerely,

A handwritten signature in blue ink that reads "Richard Uckert". The signature is written in a cursive, flowing style.

Richard Uckert, PE  
Project Manager

Encl. Certified Bid Tab

# BID TABULATION

PROJECT OGLALA LAKOTA COUNTY ROAD 7 RESURFACING - PHASE I REBID  
 OWNER OGLALA LAKOTA COUNTY, SD  
 DATE WEDNESDAY, FEBRUARY 10, 2021 - 1:00 PM MDT  
 BAI NO 23166.00.00



Banner Associates, Inc.  
 2201 Jackson Blvd, Ste 200  
 Rapid City, SD 57702  
 Tel 605.692.6342  
 Toll Free 855.323.6342  
[www.bannerassociates.com](http://www.bannerassociates.com)

CERTIFIED BY Richard Uckert  
 Richard Uckert, PE #9603

DATE March 2, 2021

ITEM NO.	SPEC SECTION	DESCRIPTION OF WORK AND MATERIALS	QTY	UNIT	ENGINEER'S ESTIMATE		Western Construction, Inc. Rapid City, SD 10% BID BOND	
					UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1	10.A.1	Mobilization	1	LS	\$60,000.00	\$60,000.00	\$50,000.00	\$50,000.00
2	10.B.2	Production & Stockpiling of Gravel Surfacing	34,000	Ton	\$7.00	\$238,000.00	\$6.35	\$215,900.00
3	10.C.2	Hauling of Gravel Surfacing	24,000	Ton	\$10.50	\$252,000.00	\$9.25	\$222,000.00
4	10.D.1	Quality Control Testing	1	LS	\$5,000.00	\$5,000.00	\$5,200.00	\$5,200.00
5	10.E.1	Haul Route Maintenance & Dust Control	1	LS	\$45,000.00	\$45,000.00	\$38,250.00	\$38,250.00
					<b>TOTAL</b>	<b>\$600,000.00</b>		<b>\$531,350.00</b>

**NOTICE OF AWARD**

Date of Issuance: March 10, 2021  
Owner: Oglala Lakota County Owner's Project No.:  
Engineer: Banner Associates, Inc. Engineer's Project No.: 23166.00.00  
Project: Oglala Lakota County Road 7 Resurfacing – Phase I  
Contract Name: Oglala Lakota County Road 7 Resurfacing – Phase I  
Bidder: Western Construction, Inc.  
Bidder's Address: PO Box 771 Rapid City, SD 57709

You are notified that Owner has accepted your Bid dated February 10, 2021 for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

**Oglala Lakota County Road 7 Resurfacing – Phase I**

The Contract Price of the awarded Contract is \$ 531,350.00 Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

3 unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award or has been transmitted or made available to Bidder electronically.

Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

- 1. Deliver to Owner 3 counterparts of the Agreement, signed by Bidder (as Contractor).
- 2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
- 3. Other conditions precedent (if any):

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner:

By (signature): \_\_\_\_\_

Name (printed): \_\_\_\_\_

Title: \_\_\_\_\_

Copy: Engineer



## CONTRACT FOR CONSTRUCTION OF A SMALL PROJECT

This Contract is by and between Oglala Lakota County (Owner) and Western Construction Inc. (Contractor). Owner and Contractor hereby agree as follows:

### ARTICLE 1—THE WORK

#### 1.01 *Work*

- A. Work includes all labor, materials, equipment, services, and documentation necessary to construct the Project defined herein. The Work may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- B. The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Project is generally described as follows:
  1. **County Road 7 Aggregate Resurfacing Project – Phase I** which consists of:
    - **Producing and stockpiling approximately 34,000 Tons of Gravel Surfacing Material**
    - **Hauling approximately 24,000 Tons of Gravel Surfacing Material to be placed by Oglala Lakota County Highway Department**
  2. The Site of the Work includes property, easements, and designated work areas described in greater detail in the Contract Documents but generally located:
    - **Pit Location: Buzzy’s Pit is located in the NW1/4 of Sec. 20 – T41N – R41W of the 6<sup>th</sup> P.M., Approximately 6 Miles North of Kyle, SD on BIA Hwy 25**
    - **Material Delivery Location: Oglala County Road 7, Approximately 3.5 Miles Southeast of Porcupine, South Dakota**

### ARTICLE 2—CONTRACT DOCUMENTS

#### 2.01 *Intent of Contract Documents*

- A. It is the intent of the Contract Documents to describe a functionally complete Project. The Contract Documents do not indicate or describe all of the Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with Owner and Engineer. This Contract constitutes the entire agreement between Owner and Contractor, and supersedes prior negotiations, representations, and agreements, whether written or oral. The Contract Documents are complementary; what is required by one part of the Contract Documents is as binding as if required by other parts of the Contract Documents.
- B. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work under the Contract Documents. During the performance of the Work and until final payment, Contractor and Owner shall submit to Engineer all matters in question concerning the requirements of the Contract Documents, or relating to the acceptability of the Work. Engineer will render a written clarification,

interpretation, or decision on the issue submitted, or initiate a modification to the Contract Documents.

- C. Contractor, and its subcontractors and suppliers, shall not have or acquire any title to or ownership rights to any of the Drawings, Specifications, or other documents (including copies or electronic media versions) prepared by Engineer or its consultants.
- D. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- E. Nothing in the Contract Documents creates any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity.

## 2.02 *Contract Documents Defined*

- A. The Contract Documents consist of the following documents:
  - 1. This Contract for Construction of a Small Project.
  - 2. Project Manual in its entirety.
    - a. **C-111 – Advertisement**
    - b. **C-200 – Instruction to Bidders**
    - c. **C-410 – Bid Form**
    - d. **C-510 – Notice of Award**
    - e. **C-550 – Notice to Proceed**
    - f. **C-610 – Performance Bond**
    - g. **C-625 – Payment Bond**
    - h. **C-625 – Certificate of Substantial Completion**
    - i. **C-700 – Standard General Conditions**
  - 3. Construction Documents in its entirety.
  - 4. Addenda.
  - 5. The following which may be delivered or issued on or after the Effective Date of the Contract:
    - a. Work Change Directives (EJCDC® C-940).
    - b. Change Orders (EJCDC® C-941).
    - c. Field Orders (EJCDC® C-942).

### ARTICLE 3—ENGINEER

#### 3.01 *Engineer*

- A. The Engineer for this Project is **Banner Associates, Inc in Brookings, South Dakota.**

### ARTICLE 4—CONTRACT TIMES

#### 4.01 *Contract Times*

- A. Once Hauling operations begin, the Work shall be substantially complete within **30 calendar days**. The Work will be substantially complete on or before **October 8, 2021** and completed and ready for final payment on or before **October 8, 2021**. Contractor shall provide Owner **14 calendar days** notice prior to beginning hauling operations.

#### 4.02 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence in the performance of the Contract, and that Owner will incur damages if Contractor does not complete the Work according to the requirements of Paragraph 4.01. Because such damages would be difficult and costly to determine, Owner and Contractor agree that as liquidated damages for delay in completion (but not as a penalty) Contractor shall pay Owner **\$500** for each calendar day that expires after the Contract Time for substantial completion. Contractor shall pay Owner **\$500** for each calendar day that expires beyond the 30 days from commencement of hauling operations. These damages will be assessed concurrently, if applicable.

#### 4.03 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times or Contract Price.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor or its subcontractors or suppliers.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times.
- D. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor or Contractor's subcontractors or suppliers.

#### 4.04 *Progress Schedules*

- A. Contractor shall develop a progress schedule and submit it to Owner for review and comment before starting Work on the Site. Contractor shall modify the schedule in accordance with Owner's comments.



- B. Contractor shall update and submit the progress schedule to Owner each month. Owner may withhold payment if Contractor fails to submit the schedule.

**ARTICLE 5—CONTRACT PRICE**

5.01 *Payment*

- A. Owner shall pay Contractor, in accordance with the Contract Documents, at the following unit prices for each unit of Work completed:

Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
1	Mobilization	Lump Sum	1	\$50,000.00	\$50,000.00
2	Production and Stockpiling of Gravel Surfacing	Ton	34,000	\$6.35	\$215,900.00
3	Hauling of Gravel Surfacing	Ton	24,000	\$9.25	\$222,000.00
4	Quality Control Testing	Lump Sum	1	\$5,200.00	\$5,200.00
5	Haul Route Maintenance and Dust Control	Lump Sum	1	\$38,250.00	\$38,250.00
<b>Total of all extended prices for Estimated Quantities of Work</b>					<b>\$531,350.00</b>

Payment will be made in an amount equal to the total of all extended prices for actual Work completed. The extended price is determined by multiplying the unit price times the actual quantity of that Work item completed. Actual quantities installed will be determined by the Owner.

**ARTICLE 6—BONDS AND INSURANCE**

6.01 *Bonds*

- A. When Contractor delivers the signed counterparts of the Contract to Owner, Contractor shall also deliver the performance bond and payment bond to Owner. Each bond must be in an amount equal to the Contract Price, as security for the faithful performance and payment of all of Contractor’s obligations under the Contract. These bonds must remain in effect until the completion of the correction period specified in Paragraph 7.12 but, in any case, not less than one year after the date when final payment becomes due.
- B. Upon request, Owner will provide a copy of the payment bond to any person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work.

6.02 *Insurance*

- A. When Contractor delivers the signed counterparts of the Contract to Owner, Contractor shall furnish certificates, endorsements, and any other evidence of insurance requested by Owner. Insurance is to be provided by companies that are duly licensed or authorized in the jurisdiction in which the Project is located with a minimum A.M. Best rating of A-VII or better. Contractor shall provide insurance in accordance with the following:

1. Contractor shall provide coverage that meets or exceeds the limits found in Section 7.15 of the South Dakota Department of Transportation Standard Specifications for Roads and Bridges, 2015 Edition.
- B. All insurance policies required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days after notice has been received by the purchasing policyholder. Within three days of receipt of any such notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Owner.
- C. Automobile liability insurance provided by Contractor will be written on an occurrence basis and provide coverage against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.
- D. Contractor's commercial general liability policy will be written on a 1996 or later ISO commercial general liability occurrence form and include the following coverages and endorsements:
  1. Products and completed operations coverage maintained for three years after final payment;
  2. Blanket contractual liability coverage to the extent permitted by law;
  3. Broad form property damage coverage; and
  4. Severability of interest; underground, explosion, and collapse coverage; personal injury coverage.
- E. The Contractor's commercial general liability and automobile liability, umbrella or excess, and pollution liability policies will include and list Owner and Engineer and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each as additional insureds; and the insurance afforded to these additional insureds will provide primary coverage for all claims covered thereby (including, as applicable, those arising from both ongoing and completed operations) on a non-contributory basis.
  1. Additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
  2. Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for design professional additional insureds.
- F. Umbrella or excess liability insurance will be written over the underlying employer's liability, commercial general liability, and automobile liability insurance. The coverage afforded must be at least as broad as that of each and every one of the underlying policies. Contractor may meet the policy limits specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy's policy limits and partial attribution of the policy limits of an



umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy.

- G. The Contractor shall provide property insurance covering physical loss or damage during construction to structures, materials, fixtures, and equipment, including those materials, fixtures, or equipment in storage or transit.
- H. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.

## **ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES**

### **7.01 Contractor's Means and Methods of Construction**

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

### **7.02 Supervision and Superintendence**

- A. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without notice to and approval by the Owner and Engineer except under extraordinary circumstances.
- C. Contractor shall maintain good discipline and order at the Site.
- D. Except as otherwise required for the safety or protection of the Work or persons or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday.

### **7.03 Other Work at the Site**

- A. In addition to and apart from the Work of the Contractor, other work may occur at or adjacent to the Site. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
- B. Contractor shall notify Owner, the owners of adjacent property, the owners of underground facilities and other utilities (if the identity of such owners is known to Contractor), and other contractors and utility owners performing work at or adjacent to the Site when Contractor



knows that prosecution of the Work may affect them; and Contractor shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for everything necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work must be new and of good quality, and be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

7.05 *Subcontractors and Suppliers*

- A. Just as Contractor is responsible for its own acts and omissions, Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of suppliers and subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work. The Contractor's retention of a subcontractor or supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.

7.06 *Licenses, Fees and Permits*

- A. Contractor shall pay all license fees and assume all costs incident to performing the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.
- B. Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy, unless otherwise provided in the Contract Documents.
- C. Contractor shall obtain all necessary haul road permits with the Oglala Lakota Department of Transportation for hauling on the roads as defined in the Construction Documents.

7.07 *Laws and Regulations; Taxes*

- A. Contractor shall give all notices required by, and shall comply with, all local, state, and federal laws and regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any laws or regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to laws or regulations, Contractor shall bear all resulting costs and losses, and to the fullest extent permitted by law Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all such claims, costs, losses, and damages.
- C. Contractor shall pay all applicable sales, consumer, use, and other similar taxes.

7.08 *Record Documents*

- A. Contractor shall maintain one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved shop drawings in a safe place at the Site. Contractor shall annotate them to show changes made during construction. Contractor shall deliver these record documents to Owner upon completion of the Work.

7.09 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. All persons on the Site or who may be affected by the Work;
  - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, or anyone for whose acts the Contractor may be liable, will be remedied by Contractor at its expense (except damage or loss attributable to the fault of the Contract Documents or to the acts or omissions of Owner or Engineer and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor).
- E. Contractor shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with laws or regulations.
- F. In emergencies affecting the safety or protection of the Work or persons or property at the Site or adjacent thereto, Contractor shall act to prevent damage, injury, or loss. Contractor shall give Owner prompt notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency or are required as a result of Contractor's response to an emergency. If Owner determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.10 *Submittals*

- A. Contractor shall review and coordinate shop drawings, samples, and other submittals with the requirements of the Work and the Contract Documents, and shall verify all related field measurements, quantities, dimensions, specified performance and design criteria,



installation requirements, materials, catalog numbers, and similar information. Contractor shall confirm that the submittal is complete with respect to all related data included in the submittal.

- B. Shop drawings and samples must bear a stamp or specific written certification that Contractor has satisfied its obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
- C. With each shop drawing or sample submittal, Contractor shall give Owner specific written notification, in a communication separate from the shop drawing or sample, of any variations that the shop drawing or sample may have from the requirements of the Contract Documents.
- D. Owner will provide timely review of submittals. Owner's review and approval of submittals will not extend to the means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs.
- E. Owner's review of shop drawings and samples will be only to determine if the items covered will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole.
- F. Owner's review and approval of a separate item in a shop drawing or sample does not indicate approval of the assembly in which the item functions.
- G. Contractor shall make corrections required by Owner, return the required number of corrected copies of shop drawings, and submit new samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Owner on previous submittals.
- H. Shop drawings are not Contract Documents.

#### 7.11 *Warranties and Guarantees*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its consultants are entitled to rely on Contractor's warranty and guarantee.

#### 7.12 *Correction Period*

- A. If within one year after the date of substantial completion, any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, or other adjacent areas used by Contractor as permitted by laws and regulations, is found to be defective, then Contractor shall promptly correct any such defective Work and repairs, at no cost to Owner.

#### 7.13 *Indemnification*

- A. To the fullest extent permitted by law, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from all losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and



other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.

## **ARTICLE 8—OWNER’S RESPONSIBILITIES**

### **8.01 *Responsibilities***

- A. Except as otherwise provided in the Contract Documents, Owner shall issue all communications to Contractor.
- B. Owner shall make payments to Contractor as provided in this Contract.
- C. Owner shall provide the Site and easements required to construct the Project.
- D. While at the Site, Owner’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which Owner has been informed.
- E. Owner shall furnish copies of any applicable Owner safety programs to Contractor.
- F. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, unless stated elsewhere in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.
- G. Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or for related safety precautions and programs, or for any failure of Contractor to comply with laws and regulations applicable to the performance of the Work. Owner will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.
- H. Owner shall pay all royalties to the material pit.
- I. Owner shall perform all Construction Administration duties.

## **ARTICLE 9—ENGINEER’S STATUS DURING CONSTRUCTION**

### **9.01 *Engineer’s Status***

- A. The Engineer will not participate in any Construction Administration duties unless requested by the Owner to do so. The Engineer will be available for questions concerning the Construction Documents and Project Manual.

## **ARTICLE 10—CHANGES IN THE WORK**

### **10.01 *Authority to Change the Work***

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work.

#### 10.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in the Work which are: (a) ordered by Owner or (b) agreed to by the parties or (c) resulting from the Engineer's decision, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
  - 3. Changes in the Contract Price or Contract Times or other changes which embody the substance of any final binding results under Article 12.
- B. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

#### 10.03 *Work Change Directive*

- A. A Work Change Directive may be issued to Contractor ordering an addition, deletion, or revision in the Work. A Work Change Directive will not change the Contract Price or Contract Times, but is evidence that the parties expect that the modification ordered or documented by the Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on Contract Price or Contract Times.

#### 10.04 *Field Orders*

- A. Owner may issue a Field Order to authorize minor changes in the Work, provided that the changes do not involve an adjustment in the Contract Price or Contract Times.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then Contractor shall request such adjustment before proceeding with the Work.

### **ARTICLE 11—DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS**

#### 11.01 *Differing Site Conditions Process*

- A. If Contractor believes that any subsurface or physical condition (including but not limited to utilities or other underground facilities) that is uncovered or revealed at the Site either (1) differs materially from that shown or indicated in the Contract Documents, or (2) is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents, then Contractor shall promptly notify Owner about such condition. Contractor shall not further disturb such condition or perform any Work in connection with the condition (except with respect to an emergency) until receipt of authorization to do so.



1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if Contractor knew of, or should have known of, the existence of the condition prior to entry into the Contract.
- B. After receipt of notice regarding a possible differing subsurface or physical condition, Owner will promptly:
  1. Review the condition in question;
  2. Determine if it is necessary to obtain additional exploration or tests with respect to the condition;
  3. Determine whether the condition falls within one of the two differing site condition categories described in Paragraph 11.01.A.;
  4. Obtain any pertinent cost or schedule information from Contractor;
  5. Prepare recommendations regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question, the need for any change in the Drawings or Specifications, and possible Contract Price or Contract Times adjustments.
- C. After receipt of Engineer's findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and granting any equitable adjustment in Contract Times or Contract Price to which Contractor is entitled.

## **ARTICLE 12—CLAIMS AND DISPUTE RESOLUTION**

### *12.01 Claims Process*

- A. The party submitting a claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 10 days) after the start of the event giving rise thereto.
- B. The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim must be stated in writing and submitted to the other party.
- C. If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving notice of denial to the other party. If the receiving party does not take action on the claim within 45 days, the claim is deemed denied.
- D. If the dispute is not resolved to the satisfaction of the parties, Owner or Contractor shall give notice to the other party of the intent to submit the dispute to a court of competent jurisdiction unless the Owner and Contractor both agree to an alternative dispute resolution process.



## **ARTICLE 13—TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK**

### **13.01 *Tests and Inspections***

- A. Owner or Owner’s representative will have access to the Site and the Work at reasonable times for observation, inspection, and testing. Contractor shall provide proper and safe conditions for such access.
- B. Contractor shall give Owner timely notice of readiness of the Work for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- C. Except as otherwise provided in the Contract Documents, Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required: (1) by the Contract Documents; (2) by codes, laws, or regulations; (3) to attain Owner’s acceptance of materials or equipment; and (4) to obtain Owner’s approval prior to purchase of materials, mix designs, or equipment.
- D. If any Work that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Owner, Contractor shall, if requested by Owner, uncover such Work for observation. Such uncovering will be at Contractor’s expense.

### **13.02 *Defective Work***

- A. Contractor warrants that the Work is not defective.
- B. Owner has the authority to determine whether Work is defective, and to reject defective Work.
- C. Prompt notice of all defective Work of which Owner has actual knowledge will be given to Contractor.
- D. The Contractor shall promptly correct all defective Work.
- E. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner’s warranty and guarantee on said Work.
- F. If the Work is defective or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

## **ARTICLE 14—PAYMENTS TO CONTRACTOR**

### **14.01 *Progress Payments***

- A. Contractor shall prepare a schedule of values that will serve as the basis for progress payments. The schedule of values will be in a form acceptable to Owner. Lump sum items will be broken into units that allow for measurement of Work in progress. For unit price work, the unit price breakdown in Article 5 will be used as the schedule of values.

14.02 *Applications for Payments*

- A. Contractor shall submit signed applications for payment to Owner monthly, in a form acceptable to the Owner. Contractor shall provide supporting documentation required by the Contract Documents. Owner will pay for Work completed as of the date of the application for payment.
- B. Beginning with the second application for payment, each application must include an affidavit of Contractor stating that all previous progress payments have been applied to discharge Contractor's obligations associated with the prior applications for payment.

14.03 *Retainage*

- A. The Owner shall retain **10%** of each progress payment until the Work is substantially complete.

14.04 *Review of Applications*

- A. Within 10 days after receipt of each application for payment, Owner will either recommend payment, or return the application for payment to Contractor indicating their reasons for refusing to recommend payment. The Contractor will make the necessary corrections and may resubmit the application for payment.
- B. Owner will recommend reductions in payment (set-offs) which, in the opinion of the Owner, are necessary to protect themselves from loss because the Work is defective and requires correction or replacement.
- C. The Owner is entitled to impose set-offs against payment based on any claims that have been made against Owner, or any incurred costs, losses, or damages, on account of Contractor's conduct in the performance of the Work; for defective Work; or for liquidated damages that have accrued as a result of Contractor's failure to complete the Work.

14.05 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

14.06 *Substantial Completion*

- A. When Contractor considers the Work ready for its intended use, Contractor shall request that Owner issue a certificate of substantial completion. Contractor shall at the same time submit to Owner an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's request, Owner will inspect the Work with Contractor to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Contractor of the reasons for Owner's decision.
- C. If Owner considers the Work substantially complete, or upon resolution of all reasons for non-issuance of a certificate, Owner will deliver to Contractor a certificate of substantial completion that will fix the date of substantial completion and include a punch list of items to be completed or corrected before final payment.



14.07 *Final Inspection*

- A. Upon notice from Contractor that the entire Work is complete, Owner will promptly make a final inspection with Contractor, and will notify Contractor of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work and remedy such defects.

14.08 *Final Payment*

- A. Contractor may make application for final payment after satisfactorily completing all Work, including providing all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents, and other documents.
- B. The final application for payment must be accompanied (except as previously delivered) by:
  - 1. All documentation called for in the Contract Documents;
  - 2. Consent of the surety to final payment;
  - 3. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any liens or other title defects, or will so pass upon final payment;
  - 4. A list of all pending claims; and
  - 5. Complete and legally effective releases or waivers (satisfactory to Owner) of all lien rights arising out of the Work, and of liens filed in connection with the Work.
- C. The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Owner's written recommendation of final payment and issuance of notice of the acceptability of the Work.

14.09 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding claim, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a claim.

**ARTICLE 15—SUSPENSION OF WORK AND TERMINATION**

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 60 consecutive days by notice to Contractor. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or Contract Times, to the extent directly attributable to any such suspension.

15.02 *Owner May Terminate for Cause*

- A. Contractor's failure to perform the Work in accordance with the Contract Documents or other failure to comply with a material term of the Contract Documents will constitute a default by Contractor and justify termination for cause.
- B. If Contractor defaults in its obligations, then after giving Contractor and any surety 10 days' notice that Owner is considering a declaration that Contractor is in default and the termination of the Contract, Owner may proceed to:
  - 1. Declare Contractor to be in default, and give Contractor and any surety notice that the Contract is terminated; and
  - 2. Enforce the rights available to Owner under any applicable performance bond.
- C. Owner may not proceed with termination of the Contract under Paragraph 15.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- D. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- E. In the case of a termination for cause, if the cost to complete the Work, including related claims, costs, losses, and damages, exceeds the unpaid contract balance, Contractor shall pay the difference to Owner.
- F. If Contractor has provided a performance bond, the provisions of that bond will govern over any inconsistent provisions of Paragraph 15.02.

15.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for the following, without duplication of any items:
  - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, less any set-offs, and including fair and reasonable sums for overhead and profit on such Work;
  - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  - 3. Other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits, or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.



15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 60 consecutive days by Owner or under an order of court or other public authority, or (2) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' notice to Owner, and provided Owner does not remedy such suspension or failure within that time, either stop the Work until payment is received, or terminate the Contract and recover payment from the Owner.

**ARTICLE 16—CONTRACTOR'S REPRESENTATIONS**

16.01 *Contractor Representations*

- A. Contractor makes the following representations when entering into this Contract:
  - 1. Contractor has examined and carefully studied the Contract Documents.
  - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - 3. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - 4. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
  - 5. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that, without exception, all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

**ARTICLE 17—MISCELLANEOUS**

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of notice to Owner, Engineer, or Contractor, such notice must be in writing, and delivered in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

17.02 *Cumulative Remedies*

- A. The duties and obligations expressly imposed by this Contract, and the rights and remedies expressly available to the parties under this Contract, are in addition to, and are not to be construed in any way as a limitation of, any duties, obligations, rights, or remedies otherwise imposed or available by laws or regulations, by warranty or guarantee, or by other provisions of the Contract.

17.03 *Limitation of Damages*

- A. Neither Owner, Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs,

losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

17.04 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

17.05 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

17.06 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or entering into the Contract.

17.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.



COUNTY ROAD 7 AGGREGATE RESURFACING PROJECT – PHASE I REBID  
OGLALA LAKOTA COUNTY, SOUTH DAKOTA  
AGREEMENT

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The Effective Date of the Contract is March 10, 2021.

**Owner:**

Oglala Lakota County  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Date: \_\_\_\_\_  
*(date signed)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Attest: \_\_\_\_\_  
*(individual's signature)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address for giving notices:

105 Dakota St

Batesland, SD 57716

Designated Representative:

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

*Agreement.)*

**Contractor:**

Western Construction, Inc.  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Date: \_\_\_\_\_  
*(date signed)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

*(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest: \_\_\_\_\_  
*(individual's signature)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address for giving notices:

PO Box 771

Rapid City, SD 57709

Designated Representative:

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

License No.: \_\_\_\_\_  
*(where applicable)*

State: \_\_\_\_\_

## PERFORMANCE BOND

<b>Contractor</b> Name: Address <i>(principal place of business)</i> :	<b>Surety</b> Name: Address <i>(principal place of business)</i> :
<b>Owner</b> Name: Mailing address <i>(principal place of business)</i> :	<b>Contract</b> Description <i>(name and location)</i> :  Contract Price: Effective Date of Contract:
<b>Bond</b> Bond Amount: Date of Bond: <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 16	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
_____ <i>(Full formal name of Contractor)</i>	_____ <i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	



1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
  - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
  - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
  - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
  - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
  - 5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
  - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

- 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
  - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
- 6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.
- 7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
  - 7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  - 7.2. additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
  - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
- 8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
- 9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
- 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
- 11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
- 12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
- 13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such



statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1. *Balance of the Contract Price*—The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3. *Contractor Default*—Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.

16. Modifications to this Bond are as follows: None

## PAYMENT BOND

<b>Contractor</b> Name: Address <i>(principal place of business)</i> :	<b>Surety</b> Name: Address <i>(principal place of business)</i> :
<b>Owner</b> Name: Mailing address <i>(principal place of business)</i> :	<b>Contract</b> Description <i>(name and location)</i> :  Contract Price: Effective Date of Contract:
<b>Bond</b> Bond Amount: Date of Bond: <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 18	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
<i>(Full formal name of Contractor)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	



1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond will arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
  - 5.1. Claimants who do not have a direct contract with the Contractor
    - 5.1.1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
    - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
  - 5.2. Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
  - 7.1. Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
  - 7.2. Pay or arrange for payment of any undisputed amounts.
  - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract will be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfying obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. Definitions
  - 16.1. *Claim*—A written statement by the Claimant including at a minimum:
    - 16.1.1. The name of the Claimant;
    - 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;
    - 16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
    - 16.1.4. A brief description of the labor, materials, or equipment furnished;



- 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
  - 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
  - 16.1.7. The total amount of previous payments received by the Claimant; and
  - 16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2. *Claimant*—An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic’s lien or similar statute against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of “labor, materials, or equipment” that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor’s subcontractors, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.3. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
18. Modifications to this Bond are as follows: None

## PLAN COVERAGE

IN-NETWORK  
(PPO FEE)

OUT-OF-NETWORK  
(95TH PERCENTILE UCR)

### PREVENTIVE & DIAGNOSTIC

**Diagnostic and preventive:** exams, cleanings, fluoride, space maintainers, x-rays, and sealants

100%

100%

### BASIC

**Minor restorative:** fillings

**Prosthetic maintenance:** relines and repairs to bridges, implants, and dentures

**Emergency palliative treatment:** to temporarily relieve pain

80%

80%

### MAJOR

**Major restorative:** crowns, inlays, and onlays

**Endodontics:** root canals

**Periodontics:** to treat gum disease

**Prosthodontics:** dentures

**Prosthetics:** bridges

**Implants:**

**Oral surgery:** extractions and dental surgery

50%

50%

## PLAN MAXES

Annual maximum applies to diagnostic & preventive, basic services, and major services. If at least one Covered Service is paid in a calendar (or plan) year and the total benefit paid does not exceed \$500.00 in that calendar (or plan) year, \$250.00 will be added to the next year rollover maximum. This amount will accumulate to the next period, but will not exceed \$1,000.00. Annual Max based on Calendar Year.

### ANNUAL MAX

\$1,000 /yr

## PLAN DEDUCTIBLE

The deductible is waived for diagnostic & preventive services.

### INDIVIDUAL

\$50.00 /yr

### FAMILY

\$150.00 /yr

## CLAIMS INFORMATION

Beam Insurance Administrators  
PO Box 75372  
Cincinnati, OH 45275

Electronic payer ID  
BEAM1

NEA ID  
BEAM1

Fax number  
(844) 688 - 4821

Phone number  
(800) 648 - 1179

Claim form accepted  
ADA form 2006 or later

Beam Dental PPO Standard coverages, as of August 1, 2019



FIND A DENTIST

[dentists.beam.dental](https://dentists.beam.dental)



QUESTIONS?

[support@beam.dental](mailto:support@beam.dental)



CHECK CLAIMS & ELIGIBILITY

<https://providers.beam.dental>

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## SMARTPREMIUM

### HOW LOWERING YOUR PREMIUM WORKS

Using the Beam Brush earns you a Beam score. The better your group's Beam score, the bigger potential drop in your premium at your renewal.\*

Brush better, get a lower premium—pretty simple. Don't worry, your rates will not increase based on your group Beam score alone. Just get rewarded for good brushing by your group.

\*Premium reduction occurs at renewal (plan year or calendar year) and is based on Beam score aggregate of your group, prior year claims data analysis, and changes in dentist reimbursement contracts. The reduction stated above nor any reduction in premiums is guaranteed. Premium rates can be increased based on the factors previously stated, if determined in the underwriting process. Increases in premium will not occur based on group aggregate Beam score alone.

## ADDITIONAL DETAILS

### SEE ANY DENTIST

Our PPO plans allow you to see any licensed dentist. Savings in plan cost and member out of pocket expenses may be obtained by utilizing participating network dentists.

Beam has partnered with leading regional and national PPO network partners through DenteMax Plus Network and Stratose to provide you with the most choices possible.

Note: The information contained in this proposal is not intended to be contractually binding without a written agreement executed by both parties memorializing the terms and conditions of dental benefit underwriting and/or administration anticipated to be provided by Beam and its partners. We and our partners reserve the right to withdraw this proposal at any time.

## RATING REQUIREMENTS

Minimum employer contributions: **0.0% for employee and 0.0% for dependent(s).**

Minimum employee enrollment: **20% of eligible employees**

Maximum number of subgroups: **10**

**Rates are valid for 90 days after 11/26/19**

This proposal is based on information provided with the proposal request. If accepted, final rates and benefits will be based on verification of the information provided with the rate request.

Once eligible, Certificate Holders and their Eligible Dependents must enroll for coverage under this policy within 30 days from the date upon which such Certificate Holder or Eligible Dependents become eligible for Benefits.

A Certificate Holder properly enrolls for coverage by completing all enrollment forms required by Beam and NGL and submitting such forms to the Policyholder.

If the Certificate Holder or Eligible Dependent is not properly enrolled for coverage within 30 days from the date upon which he/she becomes eligible for Benefits, then such Certificate Holder or Eligible Dependent must wait until the next Open Enrollment Period to enroll.



FIND A DENTIST  
[dentists.beam.dental](https://dentists.beam.dental)



QUESTIONS?  
[support@beam.dental](mailto:support@beam.dental)



CHECK CLAIMS & ELIGIBILITY  
<https://providers.beam.dental>

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DENTAL BENEFITS SUMMARY

# Oglala Lakota County

**PLAN:** SmartPremium 100/80/50-1000c

**POLICY EFFECTIVE DATE:** 04/01/20

**GROUP #:** SD04354

## WHY BEAM

Beam is the future of group dental insurance for employers large and small. We're pairing innovative tech with personal service to deliver an insurance experience unlike any other.

- No waiting period
- 95th Percentile UCR OON
- Digital implementation and admin
- No downgrades on composites
- Nationwide network (337,890 access points)
- Beam Perks included

## BEAM PERKS INCLUDED

Everything needed for great dental care delivered right to member's doors every 6 months.

- **Beam Brush**  
Sonic powered, smart, electric toothbrush.
- **Replacement heads**  
Soft bristle brush heads made specifically for your brush.
- **Beam Paste**  
High-quality, custom formulated toothpaste.
- **Beam Floss**  
50 yards of high quality ribbon floss.



## QUESTIONS?

If you have questions, call us at (800) 648-1179. We'd love to help! Or visit [app.beam.dental](https://app.beam.dental) and login to view more info. Please check your Certificate of Insurance for a description of coverage, limitations, and exclusions under the plan. Some Services require prior authorization.



FIND A DENTIST  
[dentists.beam.dental](https://dentists.beam.dental)



QUESTIONS?  
[support@beam.dental](mailto:support@beam.dental)



CHECK CLAIMS & ELIGIBILITY  
<https://providers.beam.dental>





## FREQUENCIES & LIMITATIONS

### COVERAGE RULES

CODE	PROCEDURE	COVERED UNDER	FREQUENCY	NOTES
D1110	Prophylaxis	Preventive	Two per benefit period	Shared freq with D4910
D0120	Periodic oral exam	Preventive	Two per benefit period*	No shared freq with D0140
D0140	Limited oral exam	Emergency Palliative	Two per 12 months	Can do treatment on same day; no shared freq with D0120
D0150	Comprehensive oral exam	Preventive	One per 60 months*	Shared freq with D0160, D0180
D0210	Radiographs-FMX	Preventive	One per 60 months	Shared freq with D0330, D0274
D0220, 0230	Radiographs-periapical	Preventive	One set per 3 months	Should not exceed 4 images when done on same day as D0274; not covered on same day as D0210, D0330
D0270 - 0277	Radiographs-bitewings	Preventive	Every 6 months	Can perform 6 months after D0210
D0330	Radiographs-panoramic	Preventive	One per 60 months	Shared freq with D0210
D0431	Cancer screening	Preventive	One per benefit period	No age limit
D1206, 1208	Fluoride	Preventive	One per 12 months	Covered through age 16
D1351	Sealants	Preventive	One per 36 months	Covered through age 16, 1st & 2nd permanent molars
D1516, 1517	Space maintainers	Preventive	One per lifetime per arch	Covered through age 16
D2390 - 2394	Fillings	Minor Restorative	One per 24 months, per tooth	No downgrades on posterior composite
D3330	Root canal (N, X2)	Endodontics	One per lifetime, same tooth	
D4341, 4342	Periodontal root planing (N, P, X)	Periodontics	One per 24 months, per quadrant	Can perform all 4 quads in one day, shared freq with D1110
D4355	Full mouth debridement (N)	Periodontics	Once per lifetime	No exams on same day; healing period required
D4381	Localized antimicrobial delivery (P, H)	Periodontics	One per 24 months, per tooth	Can perform 6 weeks after D4341
D4910	Periodontal maintenance (H)	Periodontics	One per 3 months	Shared freq with D1110; covered 90 days after D4341; previous periodontal treatment required
D5110, 5120	Dentures (N, X, A)	Major	One per 60 months	Paid on seat date, not prep date
D6010, 6056...	Implants (N, X)	Major	One per 60 months	Paid on seat date, not prep date; covered for single tooth replacement instead of 2 or 3 unit bridge; must abut natural tooth and not abut another implant
D2740, 2950...	Crowns (N, X, A)	Major	One per 60 months	No downgrades; build-up is covered separately
D7140	Simple extractions	Minor Restorative	No frequency restrictions	
D7210 - 7240	Extractions (N, X)	Oral Surgery	One per lifetime per tooth	
D7953	Bone replacement graft (N, X)	Oral Surgery	One per lifetime per tooth	Only covered in conjunction with an implant
D9110	Emergency palliative treatment (N)	Emergency Palliative	One per 12 months	Only medically necessary x-rays same day
D9223, 9243	General anesthesia (N)	Oral Surgery	No frequency restrictions	Only covered in conjunction with major oral surgery
D9310	Consultation	Preventive	One per 12 months per location*	Can do treatment same day; upon referral from dentist to specialist
D9944	Occlusal mouthguards (N)	Periodontics	One per 60 months	For bruxism only

**Not covered:** D0350, D0364, D0470, D1330, D2962, D3110, D3120, D8093, D9230, D9248

\*For exams, there is a limit of 3 (D0120, D0150, D9310) per 12 months

### FREQUENTLY ASKED QUESTIONS

<b>Continuation of service?</b>	Covered starting on patient's effective date
<b>Coordination of benefits?</b>	Standard – earlier effective date is primary
<b>Wisdom tooth coverage?</b>	Send to medical first, then covered by Beam
<b>Frequency of ortho payments?</b>	Monthly – submit claims for on-going treatment
<b>Are prior extractions covered?</b>	Yes – no missing tooth clause
<b>Timely filling limit?</b>	Yes – 12 months from date of service
<b>Is pre-authorization mandatory?</b>	No – but estimates recommended for \$300+ services

### REQUIRED DOCUMENTATION

<b>N</b> = Narrative of medical necessity
<b>P</b> = Perio charting
<b>X</b> = Dated, pre-op x-rays
<b>X2</b> = Dated, pre-op and post-op x-rays
<b>H</b> = Periodontal history
<b>A</b> = Age of existing prosthetics, if possible



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## VISION BENEFITS SUMMARY VSP Choice Plan #2



**CHOICE NETWORK:** 31,000 preferred providers | 57,000 access points

**Policy Effective Date:** 04/01/20

**GROUP #:** SD04354

### FREQUENCY

EXAMS	12 months
LENSES	12 months
FRAMES	12 months
CONTACTS (IN LIEU OF GLASSES)	12 months

### COPAYMENTS

EXAM	\$10
MATERIALS	\$10
CONTACT LENS FITTING & EVALUATION	15% discount (not to exceed \$60)

### IN NETWORK ALLOWANCES

RETAIL FRAME VALUE <sup>1,2,3</sup>	\$150 / 20% off coverage
ELECTIVE CONTACT LENSES	\$150
COVERED LENS OPTIONS	Low Vision and Polycarbonate for Children

<sup>1</sup>Extra \$20 Allowance on featured brands like bebe®, Calvin Klein, Flexon, Lacoste, Nike, Nine West and more. Featured frame brands and promotion subject to change.

<sup>2</sup>Frame allowance backed by a wholesale guarantee, meaning VSP fully covers more frames than retail allowance plans.

<sup>3</sup>Allowance may differ at Wal-Mart, Sams and Costco® Optical, however it is of equivalent value.



VSP QUESTIONS?  
(800) 877 7195

VSP OUT-OF-NETWORK REIMBURSEMENT CLAIMS  
PO BOX 385018, Birmingham, AL 35238-5018





## VALUE ADDED PROGRAMS

DIABETIC EYECARE PLUS PROGRAM	Included
HEARING AID DISCOUNTS	Included
EYE HEALTH MANAGEMENT	Included
DIABETIC EXAM REMINDER LETTERS	Included

## OUT-OF-NETWORK ALLOWANCES

EXAMINATION, up to	\$45
SINGLE VISION LENSES, up to	\$30
BIFOCAL LENSES, up to	\$50
TRIFOCAL LENSES, up to	\$65
LENTICULAR LENSES, up to	\$100
FRAME, up to	\$70
ELECTIVE CONTACT LENSES, up to	\$105
NECESSARY CONTACT LENSES, up to	\$210

## EXTRA DISCOUNTS & SAVINGS

LENS ENHANCEMENTS	Most popular are covered with a copay, saving 20-25% avg.
ADDITIONAL PAIRS OF GLASSES	20% off
SUNGLASSES	20% off
LASER VISION CORRECTION (LVC)	Average 15% discount

Insurance products underwritten by National Guardian Life Insurance Company (NGL), marketed by Beam Insurance Services LLC, and administered by Beam Insurance Administrators LLC (Beam Dental Insurance Administrators LLC, in Texas). Beam Perks provided by Beam Perks LLC. Beam Perks can be obtained separately without the purchase of an insurance product by visiting [perks.beam dental](http://perks.beam dental).

Policy form series numbers NDNGRP 04/06 or NDNGRP 2010. Not all products available in all states.

†National Guardian Life Insurance Company is not affiliated with The Guardian Life Insurance Company of America, a.k.a. The Guardian, or Guardian Life.



VSP QUESTIONS?  
(800) 877 7195

VSP OUT-OF-NETWORK REIMBURSEMENT CLAIMS  
PO BOX 385018, Birmingham, AL 35238-5018

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BM-SOB-0002-201709

## **Roger Risty**

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**From:** Roger Risty  
**Sent:** Tuesday, February 25, 2020 3:48 PM  
**To:** phil.bruns@beam.dental; Donna Arens  
**Subject:** FW: Beam Dental + Vision Proposal for Oglala Lakota County - 1/1/2020

Think this is the way we are going with this group - April 1, 2020 start  
But would want a short plan year with a Jan 1, 2021 renewal - can we do?

**From:** Roger Risty  
**Sent:** Tuesday, February 25, 2020 3:23 PM  
**To:** Julie Tomlinson (payroll@frcounty.org)  
**Cc:** Donna Arens  
**Subject:** FW: Beam Dental + Vision Proposal for Oglala Lakota County - 1/1/2020

### **Option 1: Beam SmartPremium \$1,000 Annual Max (Matching Plan)**

- 100/80/50 coinsurances
- \$1,000 annual maximum **with CARRYOVER**
- Endo, Perio, Oral Surgery covered under **MAJOR**
- 95th Percentile UCR OON Reimbursement

### **A few additional notes on what Beam Dental coverage includes:**

- **Implants with no missing tooth clause**
- **Posterior composites with no downgrades**
- **No Waiting Periods**
- **Occlusal (night) guards**
- **Beam Perks for every member that enrolls with an email address!**

### **VSP Choice Plan #2**

- 12/12/12/12
- \$10 Exams & \$10 Materials Copayments
- \$150 contact lens/frame allowance



## NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that Oyate Concern, Inc., a South Dakota nonprofit corporation, whose post office address is PO Box 148, Oglala, SD 57764 has presented to the Oglala Lakota County Commission a petition to have vacated the following subject to easements of record:

Tract 1 located in the Southwest Quarter (SW1/4) of Section Eleven (11) Township Thirty-Seven (37) North, Range Forty-Six (46) West of the Sixth Principal Meridian, Oglala Lakota (formerly Shannon) County, South Dakota filed for record on October 1, 1985 in Book XIII of Plats page 70 in the Office of the Register of Deeds, serving Fall River and Oglala Lakota Counties, South Dakota.

That the Oglala Lakota County Commission has directed that said Petition shall be considered by it at its regular meeting to be held at Hot Springs, South Dakota on March 22, 2021, at 2 o'clock p.m. and that notice of time and place wherein such Petition shall be considered be published once a week for one week in the Lakota Times, the official newspaper for said County.

Dated at Hot Springs, South Dakota, this 8<sup>th</sup> day of March, 2021.

/s/Sue Ganje  
Oglala Lakota County Auditor



February 11, 2021

Arthur Hopkins, Commissioner  
Oglala Lakota County  
906 N River St  
Hot Springs, SD 57747-1346

Dear Arthur:

We hope you, your loved ones, and those in Oglala Lakota County are staying healthy as we await widespread vaccinations!

Is Oglala Lakota County getting its fair share of federal support? The federal government will spend more than \$4.8 trillion during this fiscal year, including billions of dollars for local governments. Beyond regular federal grants, the Biden Administration's COVID-19 stimulus package contains major funding for local governments.

Specifically, the Congress will invest billions in 2021 through competitive and discretionary grant programs to support economic development, infrastructure, public safety, broadband, telehealth and distance learning, community arts programs, substance abuse prevention and treatment, community food projects, water/wastewater, surface transportation, brownfields remediation, and much more.

Does Oglala Lakota County need grant funding? Merchant McIntyre professionals are experts at winning it. Turn over this letter to review our recent grant awards and pending awards.

Merchant McIntyre will provide Oglala Lakota County a free consultation to review the federal grant opportunities available to fund your priority projects and needs. MM can help put Oglala Lakota County in the path of regular, significant federal support.

There is no fee, no obligation for our consultation. Call me at (240) 630-1846, or send an email to [mark.m@merchantmcintyre.com](mailto:mark.m@merchantmcintyre.com) and we will schedule a call right away.

Since 1994, Merchant McIntyre Associates has established an extraordinary track record for our clients, winning grants for projects that address budget needs and improve residents' quality of life. For example, MM helped a local government win \$14.1 million for roadway improvements and to create clearly delineated bicycle and pedestrian facilities and trails. On a weekly basis we are submitting multimillion-dollar applications for economic development, surface transportation, water/wastewater, the arts, and workforce development projects for our clients.

Let us demonstrate how Merchant McIntyre can help Oglala Lakota County secure significant federal dollars!

Sincerely,

Mark D. McIntyre Principal and Co-Founder

P.S. Do you want to win more federal grants? I urge you to take advantage of our free consultation. We are experts at winning federal grants, *and we're willing to audition to prove it to you!*

**P.P.S. You'll find Merchant McIntyre's recent grant wins and pending awards on the back of this letter.**

Here is a list of federal grants Merchant McIntyre Associates has won or recently submitted for local governments. The ultimate objective of every federal dollar Merchant McIntyre helps secure for local governments is to provide budget relief and/or help them better serve their citizens. **Why not Oglala Lakota County?**

- ✓ **\$14.1 million** to construct a multimodal greenway and pedestrian path through an urban area.
- ✓ **\$11.4 million** for roadway improvements and to create clearly delineated bicycle and pedestrian facilities and trails.
- ✓ **\$2.7 million** for water and wastewater infrastructure to generate economic development.
- ✓ **\$413,000** to hire, train, and equip two new school resource officers.
- ✓ **\$1.4 million** to enhance workforce training and drive economic development by developing a new welding program.
- ✓ **\$1.46 million** for the development of an industrial park in a rural city.
- ✓ **\$1.2 million** to retain nine School Resource Officer positions.
- ✓ **\$25 million** to construct a 26-mile paved multi-use pedestrian trail, pending.
- ✓ **\$8 million** for street reconstruction and beautification, pending.
- ✓ **\$4 million** to construct a central green space to attract residents, locals, and tourists, pending.
- ✓ **\$7.1 million** for the construction of a rural road connector to improve safety and maintenance outcomes, pending.
- ✓ **\$347,000** to train 37 firefighters and construct a live-fire training simulator, pending.
- ✓ **\$2.83 million** for the design, architecture, and construction of an Innovation Center to train skilled workers for auto-diesel and heavy machinery positions, pending.
- ✓ **\$284,000** to support rural business development and small business incubators, pending.

Do you need this type of funding? If so, let's schedule a call to discuss how Merchant McIntyre can help Oglala Lakota County win significant federal grants to support your priority funding needs.

Again -- there is no fee, no obligation for our consultation. Call me at (240) 630-1846, or send an email to [mark.m@merchantmcintyre.com](mailto:mark.m@merchantmcintyre.com) and we will schedule a call.

You may also review our agency's capabilities at [www.merchantmcintyre.com](http://www.merchantmcintyre.com)





SUPREME COURT OF SOUTH DAKOTA  
JANINE M. KERN, JUSTICE



February 9, 2021

Oglala Lakota County Commission Chair  
906 N. River Street  
Hot Springs, SD 57747

Dear Chair:

The safety and security of all those who work in or visit courthouses in this state is a matter of paramount importance to the South Dakota Supreme Court. The Court knows that Judges, Sheriffs, and County Commissioners in South Dakota share this same sense of importance. As noted in last year's report of the Supreme Court's committee to Study Courthouse Security, "Securing the courthouses requires a partnership and collaboration with the Unified Judicial System (UJS), County Sheriffs, County Commissioners, and other county officials that occupy our courthouses statewide."

Recently, the UJS engaged the National Center for State Courts (NCSC) to develop and propose a security program for South Dakota courthouses. Security is one of the NCSC's many areas of expertise relating to courts and court operations. The security program to be developed by the NCSC will include proposed security standards, security plan templates, and training curricula and materials for UJS staff.

As one of its first efforts, the NCSC will distribute a survey intended to capture data on security measures in place or needed throughout the sixty-three courthouses in South Dakota. In the next couple of weeks, the survey will be sent to the presiding judge for each of the seven judicial circuits in the state. The presiding judges will be instructed to designate a circuit judge to take responsibility for filling out and returning the survey for each courthouse within his or her circuit.

Each designated judge will be asked, upon receiving the survey, to reach out to the Sheriff and to a County Commissioner to discuss the survey and coordinate the response. The input of Sheriffs and Commissioners in this process will prove invaluable as we strive to make meaningful progress toward our shared goal of improved courthouse security.

Thank you in advance for your participation in this important effort and for your public service.

Sincerely,

Justice Janine Kern

STATE CAPITOL  
500 EAST CAPITOL AVENUE  
PIERRE, SOUTH DAKOTA  
57501-5070

605-773-4884