

911178

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
FUNDING AGREEMENT

This Agreement is by and between the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the "STATE," and Dakota and Iowa Railroad Company, referred to in this Agreement as "D&I."

BACKGROUND:

1. The STATE owns the railroad line located between Elk Point and Canton, South Dakota, and Beresford, South Dakota and Hawarden, Iowa, referred to collectively as the "Sioux Valley Line."
2. Dakota and Iowa Railroad Company (D&I) is the rail operator for the Sioux Valley Line.
3. The Sioux Valley Line has experienced major flooding damage in 2019. The damage includes collapse of the railroad bridge near Canton, South Dakota, and damage to the railroad grade and various bridge elements from near Hawarden, Iowa to Elk Point, South Dakota.
4. The Sioux Valley Line is inoperable because of the flooding damage and is out of service to shippers who use this line to efficiently and cost-effectively move goods and materials.
5. Repairs are necessary to re-establish the railroad infrastructure, including bridge work, so the Sioux Valley Line can be placed back in operation and provide common carrier service to shippers along the line.
6. The loss of rail service constitutes a threat to public health, welfare or safety and provides urgent and compelling reasons to make emergency procurements.
7. The parties wish to enter into this Agreement to fund the necessary repairs to line.

THE STATE AND THE COMPANY MUTUALLY AGREE AS FOLLOWS:

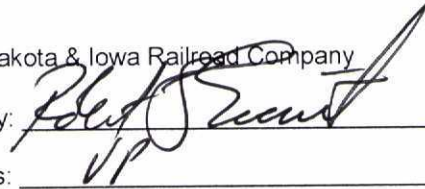
- A. **Funding Commitment.** D&I agrees to pay for all work necessary to repair the Sioux Valley Line, except that D&I will not be required to pay costs that are covered by reimbursements from the Federal Emergency Management Agency (FEMA) or from other funding sources that may be awarded after execution of this Agreement. The parties agree that the work necessary to repair the Sioux Valley Line includes all design and planning services, hydraulic engineering, environmental analysis, materials, labor and work of whatever nature needed to return the line to the same level of service in effect prior to the flooding damage.
- B. **Other Funding Sources.** D&I reserves the right to request additional funds from sources other than FEMA for the necessary repairs to the Sioux Valley Line.
- C. **FEMA Funding Application.** The STATE will apply for federal funds from FEMA for the necessary repairs of the Sioux Valley Line. D&I agrees to pledge and provide all match funding required by FEMA, except that if funding match becomes available from other sources, D&I's financial liability will be reduced to the extent of the additional funding.
- D. **Making Repairs.** In reliance on D&I's promise to finance repairs to the Sioux Valley Line, the State will do the following:
 - 1) Enter into a contract with L.G. Everist, Inc., on terms consistent with its bid, to perform repair work for that portion of the line from near Hawarden, Iowa, to Elk Point, South Dakota;
 - 2) Issue a work order for Civil Design, Inc., to perform design and planning services for reconstruction of the railroad bridge near Canton, South Dakota and to perform project administration for the repair work from near Hawarden, Iowa to Elk Point, South Dakota;
 - 3) Issue a work order for RESPEC to perform hydraulic engineering necessary for reconstruction of the railroad bridge near Canton, South Dakota;
 - 4) Make an emergency purchase of steel girders needed for reconstruction of the damaged railroad bridge near Canton, South Dakota, and for repair of bridge elements on the line from near Hawarden, Iowa to Elk Point, South Dakota.


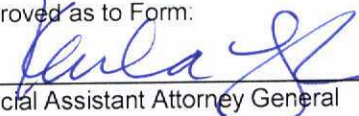
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DOB



- E. **Invoices.** The STATE will submit invoices to D&I for reimbursement of expenditures incurred pursuant to this Agreement. D&I will reimburse the STATE within thirty (30) days of receipt of invoices from the STATE.
- F. **Amendment.** This Agreement may not be amended except in writing, which writing will be expressly identified as a part of this Agreement and be signed by an authorized representative of each of the parties.
- G. **Controlling Law.** This Agreement will be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit enforcing the terms of this Agreement between D&I and the STATE will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
- H. **Severability.** If any court of competent jurisdiction holds any provision of this Agreement unenforceable or invalid, such holding will not invalidate or render unenforceable any other provision.
- I. **Supercession.** All other prior discussions, communications, and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided in this Agreement, this Agreement constitutes the entire agreement with respect to its subject matter.
- J. **Authorization.** The South Dakota State Railroad Board (the "Board"), with the consent of the Governor, has authorized the Secretary of the Department of Transportation to execute this Agreement on behalf of the STATE. A copy of the fully executed resolution of the Board is attached to this Agreement as **Exhibit A**.

The parties signify their agreement by signatures affixed below.

Dakota & Iowa Railroad Company
 By: 
 Its: _____
 Date: 4.9.19
 (Corporate Seal)

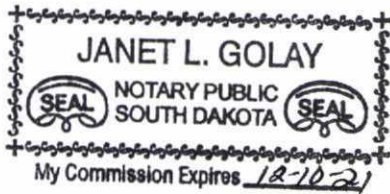
State of South Dakota
 Department of Transportation
 By: 
 Its: Secretary
 Date: 4/7/19
 Approved as to Form:

 Special Assistant Attorney General

ACKNOWLEDGMENT

STATE OF South Dakota)
COUNTY OF Minnichaha)SS

On this the 9 day of April, 2019, before me Janeth Golay a notary public, personally appeared Robert Everist, who acknowledged himself to be the VP of Dakota and Iowa Railroad Company a corporation, and that he/she, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

In witness whereof I hereunto set my hand and official seal.



[Notary Seal]

Janeth Golay
Notary Public
My commission expires: 12-10-21

ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES)SS

On this the 17th day of April, 2019, before me, Kari G. Kroll, a notary public, personally appeared Darin P. Bergquist, Secretary of the State of South Dakota, Department of Transportation, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



[Notary Seal]

Kari G. Kroll
Notary Public
My commission expires: 2/25/25

DOT Legal: KCB