

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
JOINT POWERS AGREEMENT TO PROVIDE FOR THE
STRIPING OF COUNTY ROADS WITHIN PENNINGTON
COUNTY WITH STATE AND RSI FEDERAL FUNDING**

This Agreement is made and entered into 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 Pennington County, South Dakota, referred to in this Agreement as the "COUNTY."

1. JOINT POWERS

- A. This Agreement does not establish a separate legal entity as contemplated by SDCL 1-24-5. The cooperative undertaking described in this Agreement will be financed and conducted under the provisions of this Agreement by the STATE and the COUNTY. Each party has responsibilities under the terms of this Agreement and no joint board or administrator will be used.
- B. Any COUNTY or STATE employee engaged in joint action under this Agreement will remain an employee of his agency during participation in joint action under this Agreement. Each agency will retain exclusive responsibility for its officers, agents, and employees while these officers, agents, and employees are engaged in joint action under this Agreement, including, but not limited to, any responsibility for regular and overtime wages and salaries, unemployment benefits, workers' compensation coverage, health insurance, or other benefits, and liability coverage and indemnity, except as otherwise specifically provided in this Agreement.

2. BACKGROUND

- A. The STATE has allocated Five Hundred Thousand Dollars (\$500,000) to a state-wide county highway striping project, designated as project number P 000S(00)288, PCN 07DV, and referred to in this Agreement as the "PROJECT." STATE funds will be used to pay sixty percent (60%) of the eligible PROJECT costs, up to a maximum amount of Five Hundred Thousand Dollars (\$500,000). Counties participating in the PROJECT will pay the remainder of the PROJECT costs with county funds.
- B. The COUNTY wants to participate in the PROJECT for the striping of approximately 274 miles of roads under COUNTY'S supervision and control.
- C. In addition, the STATE has allocated federal funds to the Roadway Safety Improvement Program (RSI), a state-wide county highway striping project, designated as project number PH 000S(421), PCN 07X1 and referred to in this Agreement as the "RSI PROJECT." Federal funds will be used to pay for one hundred percent (100%) of the RSI PROJECT costs.
- D. The federal funds allocated for the RSI PROJECT may only be used on county roads with Average Daily Traffic (ADT) greater than 500 vehicles.
- E. STATE funds and RSI federal funds cannot be used on the same project or public road. The federal funds allocated for the RSI PROJECT may not be used in conjunction with the STATE-funded sixty percent (60%) PROJECT costs as outlined in Paragraph 2.A., above.
- F. The COUNTY wants to participate in the RSI PROJECT for the striping of approximately 70.2 miles of roads under COUNTY'S supervision and control.

THE COUNTY AND THE STATE MUTUALLY AGREE AS FOLLOWS:

3. TERM

This Agreement will become effective upon the last signature and will end once the PROJECT and RSI

PROJECT are closed by STATE, unless terminated earlier pursuant to the terms of this Agreement.

4. PROJECT PLANNING AND CONSTRUCTION

- A. The STATE will prepare plans, advertise the PROJECT and RSI PROJECT for bids, award a contract to the lowest responsible bidder, be the contracting party for the PROJECT and RSI PROJECT, and administer construction of the PROJECT and RSI PROJECT, except for the tasks to be undertaken by the COUNTY as detailed in this Agreement.
- B. The COUNTY will sweep roadways to be striped in advance of the contractor's operations.
- C. The COUNTY will provide the PROJECT and RSI PROJECT inspection for that portion of the PROJECT and RSI PROJECT involving the COUNTY'S roads.
- D. The COUNTY will be solely responsible for ensuring that no passing zones are clearly marked for the benefit of the contractor for the PROJECT and RSI PROJECT. The COUNTY may satisfy this obligation by ensuring that the beginning and ending of each no passing zone is marked, in a manner clearly visible from the driving lane, with a "NO PASSING ZONE" sign (W14-3), a "DO NOT PASS" sign (R4-1), a "PASS WITH CARE" sign (R4-2), or 9' steel channel posts driven 3.5' to 4' near the right-of-way line with the top 2' painted yellow. The COUNTY will be solely responsible for the cost of marking no passing zones for the benefit of the contractor.

5. ELIGIBLE COSTS

PROJECT and RSI PROJECT costs that are eligible for STATE and RSI federal funds are preliminary engineering, construction engineering and administration, and construction costs, provided the costs are incurred in accordance with this Agreement. Costs incurred in violation of any terms or conditions of this Agreement will be deemed ineligible.

6. FUNDING THE PROJECT

- A. The STATE will pay all costs associated with the PROJECT and RSI PROJECT directly to any consultants and to the construction contractor.
- B. The STATE will pay one hundred percent (100%) of eligible RSI PROJECT costs with RSI federal funds.
- C. The parties will share eligible PROJECT costs totaling One Hundred Forty-One Thousand Eighty Dollars and Seventy-Seven Cents (\$141,080.77) as follows:
 - i. The STATE will pay 60% of eligible PROJECT costs up to a maximum limiting amount of Eighty-Four Thousand Six Hundred Forty-Eight Dollars and Forty-Six Cents (\$84,648.46) and the COUNTY will pay the remaining 40% match for eligible PROJECT costs, up to a total of Fifty-Six Thousand Four Hundred Thirty-Two Dollars and Thirty-One Cents (\$56,432.31) in matching funds.
 - ii. The COUNTY will be one hundred percent (100%) responsible for all ineligible PROJECT and RSI PROJECT costs, including any PROJECT costs in excess of One Hundred Forty-One Thousand Eighty Dollars and Seventy-Seven Cents (\$141,080.77) on the COUNTY'S roads.
- D. The STATE will bill the COUNTY for the COUNTY'S share of PROJECT costs. The COUNTY will pay the STATE within thirty (30) days of receipt of billings from the STATE.

7. AMENDMENTS

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.

8. TERMINATION

The STATE may terminate this Agreement at any time with or without cause and with or without notice. If the STATE terminates this Agreement for a default by the COUNTY, the COUNTY will reimburse the STATE for all STATE and RSI federal funds expended for the PROJECT and RSI PROJECT.

9. FUNDING AVAILABILITY

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement may be terminated by the STATE. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.

10. SUBCONTRACTING

The COUNTY may not assign, sublet, or transfer this Agreement or any interest in this Agreement without the STATE'S written permission to do so.

11. RECORDS RETENTION AND AUDIT

- A. All PROJECT charges will be subject to audit in accordance with the STATE'S current procedures and U.S. Office of Management and Budget (OMB) Circular regulations, found at 2 CFR Part 200. The CFDA Number for these funds is 20.205. Allowable costs will be determined in accordance with 2 CFR Part 200.
- B. The COUNTY will maintain accurate cost accounting systems for all costs incurred under this Agreement and clearly identified with activities performed under this Agreement.
- C. Upon reasonable notice, the COUNTY will allow the STATE, through any authorized representative to have access to and the right to examine and copy all records, books, papers, or documents related to services rendered under this Agreement. The COUNTY will keep these records clearly identified and readily accessible for a period of three (3) years after the date final payment under this Agreement is made and all other pending matters are closed.
- D. If the COUNTY expends Seven Hundred Fifty Thousand Dollars (\$750,000.00) or more in federal funds during any COUNTY fiscal year covered, in whole or in part, under this Agreement, then the COUNTY will be subject to the single agency audit requirements of the US Office of Management and Budget (OMB) Circular regulations, found at 2 CFR Part 200. If the COUNTY expends less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) during any COUNTY fiscal year, the STATE may perform a more limited program or performance audit related to the completion of Agreement objectives, the eligibility of services or costs and adherence to Agreement provisions.
- E. The COUNTY certifies the COUNTY has filed an Internal Revenue Services (IRS) Form 990 in compliance with federal law, if applicable. The COUNTY will display the filed IRS Form 990 on the COUNTY'S website immediately upon filing.
- F. The COUNTY certifies the COUNTY employs an effective internal control system.
- G. The COUNTY certifies the COUNTY is in compliance with the federal Single Audit Act and the requirements of SDCL § 4-11-2.1, if applicable. The COUNTY further certifies audits are displayed on the COUNTY'S website.

12. INDEMNIFICATION

The COUNTY will indemnify and defend the STATE, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceedings that arise as a result of any act or omission of the COUNTY or the COUNTY'S officers, agents, or employee. The COUNTY is not required to be responsible for nor to defend against claims or damages arising solely from errors or omissions of the STATE, its officers, agents, or employees.

13. NON-DISCRIMINATION

The COUNTY will provide services in compliance with the Americans with Disabilities Act of 2016 and any amendments.

14. CONFLICT OF INTEREST

The COUNTY warrants that the COUNTY has not employed or retained any company or person, other than a bona fide employee working solely for the COUNTY, to solicit or secure this Agreement, and that the COUNTY has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the COUNTY, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the STATE will have the right to terminate this Agreement without liability, or, in the COUNTY'S discretion to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

15. COMPLIANCE WITH LAWS

The COUNTY will comply with all federal, state, and local laws, together with all ordinances and regulations applicable to the work and will be solely responsible for obtaining current information on such requirements. The COUNTY will procure all licenses, permits, or other rights necessary for the fulfillment of their obligations under this Agreement. The COUNTY'S noncompliance with these requirements will be cause for the STATE to withhold participation and reimbursement.

16. CONTROLLING LAW

- A. This Agreement will be governed by and construed in accordance with the laws of the State of South Dakota. The venue for any lawsuit pertaining to or affecting this Agreement will be in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
- B. Any dispute between the parties concerning this Agreement will be referred to the Secretary of the South Dakota Department of Transportation or duly authorized representative for determination, whose decision in the matter will be final and conclusive on the parties to this Agreement.

17. 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 of this Agreement.

18. 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 the subject matter.

19. SIGNATURE AUTHORITY

The COUNTY has designated its Commissioner as the COUNTY'S authorized representative and has empowered the Commissioner with the authority to sign this Agreement on behalf of the COUNTY. A copy of the COUNTY'S Commission or Council minutes or resolution authorizing the execution of this Agreement by the COUNTY'S authorized representative is attached to this Agreement as **Exhibit A**.

The STATE and the COUNTY signify their agreement by signatures affixed on the next page.

Pennington County, South Dakota

By: *Lloyd Drake*

Printed Name: Lloyd Drake

Its: County Commission Chairperson

Date: 7-15-2023

Attest: *Mary Israel, Deputy Auditor*

Printed Name: Mary Israel

County Auditor/Clerk

[County Seal]



State of South Dakota
Department of Transportation

By: *Joel M. Jundt*

Printed Name: Joel M. Jundt

Its: Department Secretary

Date: 7-20-23

PENNINGTON COUNTY BOARD OF COMMISSIONERS
Meeting of July 5, 2023

The Pennington County Board of Commissioners met at 9:02 a.m. on Wednesday, July 5, 2023, in the Commission Chambers in the County Administration Building, Rapid City, South Dakota. Chair Lloyd LaCroix called the meeting to order with the following Commissioners present: Gary Drewes, Deb Hadcock & Travis Lasseter.

REVIEW AND APPROVE AGENDA

MOVED by Drewes and seconded by Lasseter to approve the agenda as presented. Vote: Unanimous.

CONSENT AGENDA ITEMS

MOVED by Drewes and seconded by Lasseter to approve the Consent Agenda as presented. Vote: Unanimous.

5. Approve the minutes of the June 20, 2023, regular meeting.
6. Approve the renewal of the Retail (on-off sale) Malt Beverage & SD Farm Wine Licenses for Mountain View Lodge & Cabins under Franco Hospitality and Tatanka Trading Post under Kimberly Sealine and to release the licenses upon payment of appropriate property taxes.
7. Declare one (1) Pitney Bowes Connect 3000+ postage machine, Asset #06296, S/N 0009942, as surplus for the purpose of disposal.
8. Approve the agreement with the SD Department of Transportation for the 2023 County Striping Project P 000S(00)288 PCN 07DV and PH 000S(421) PCN 07X1.

End of Consent Agenda Items

USDA FOREST SERVICE PROPOSED PERMANENT PRAIRIE DOG HUNTING ORDER; MOVED by Lasseter and seconded by Drewes to approve the resolution opposing the proposed permanent order prohibiting shooting and hunting of prairie dogs on 106,568.5 acres of Buffalo Gap National Grasslands in the Conata Basin. Vote: Unanimous.

PENNINGTON COUNTY RESOLUTION

A resolution opposing the proposed permanent order prohibiting shooting and hunting of prairie dogs on 106,568.5 acres of Buffalo Gap National Grasslands in the Conata Basin

WHEREAS, the Nebraska National Forest and Grasslands (NNFG) is proposing to issue a permanent order prohibiting prairie dog shooting and hunting on 106,568.5 acres of Buffalo Gap National Grasslands in the Conata Basin; and

WHEREAS, the 2007 introduction of black-footed ferrets onto Wind Cave National Park is one of the more successful introductions and only required 2,200 acres occupied by prairie dogs; and

WHEREAS, the NNFG permanent order prohibiting prairie dog shooting is proposed pursuant to Title IV of the John J. Dingell Act of 2019, which states that public land managed by the Forest



DOT-121: Agreement and Work Order Cover Sheet

South Dakota Department of Transportation, 700 E. Broadway Ave., Pierre, SD 57501 (605) 773-3265

Clear Form

Fill in all fields outlined in red. Hover cursor over field for instructions. [Click here for complete instructions](#)

1. Contract Type New agreement | 2. Contract Number 615317
 3. Party Name Pennington County Auditor
 4. Address 130 Kansas City Street, Rapid City, SD, 57701
 5. Vendor Number if Available 12055008 | 6. Purpose Code 642 Maint. agrmts.- Road maint., LGA pavement marking
 7. Start Date 7-20-2023 or check if upon execution | 8. Exp. Date or check if perpetual or end of project | 9. Grant? Y N

10a. Purpose of Agreement: Funding | 10b. Comments:

11. Originating Office No. 111212-Local Government Assistance
 12. DOT Contact Person/Phone # Noel Clocksin 773-4256 / Deanna Lehrkamp 773-2995
 13. Is this a joint powers agreement per SDCL I-24-6.I? Y N If yes, Finance will submit to LRC & ATG.
 14. If related to software or BIT consulting, did BIT approve a moratorium? Y N If yes, please attach.
 15. Will this project be in the STIP? Y N
 16. Agreement Type Actual cost If other, please describe below:

County is the primary owner - State funds are capped with a 40% local match, RSI funding is 100% federal - NO VALUE SHOWN BELOW AS ACTUAL TO BE PAID (actual value unknown)

17. Payment	*Amt. Payable in \$ (Top 2 boxes will be calculated for you.)	Fed. Share in \$	State Share in \$	Local/City Share (Include in Total)	Local/City Share (Do Not Include in Total)
Total Payable Amt.	141,080.77	0	84,648.46	56,432.31	0
Amendment	0.00	0	0	0	0
Total (These will be calculated for you.)	141,080.77	0.00	84,648.46	56,432.31	0.00
Fixed Fee Amt included in above	0.00	*Amount Payable includes total dollars payable by DOT. If we are paying the local match include those dollars in the amount payable. Amount payable equals the total amount shown in Section 18.			

[Click for center coding list on pg. 14](#)

DOT PROJECT CODING

18. Comp.	FUNDS TO BE USED FROM			C O D E	Project			Rpt. Unit	Cntrol. Ref.	AFE	Funct.	Beg. M.P.	End M.P.	P or N
	Account	Center	\$ Amount		Pre	Route	Agr							
3040	52047210	112001			P	0000S			288	07DV	3011			N
3040	52047210	112001			P	H000S1G				07X1	3500			P

19. Attachments Total 0.00

- a. Attach W-9—Vendor info required to make payment.
- b. Attach a copy of the RFP for professional services contract (\$50,000 or more per SDCL 5-18D-17).
- c. Attach a copy of the minutes for contracts with local government entities.

20. Is this for a service, professional service or supply of more than \$10,000? To determine, review instructions. Y N If yes, contract will be posted to Open SD (SDCL 1-27-45 and 46).

[Click here for Open SD information on pg. 15](#)

Legal Review N/A | Audit Review Jana Ullrich | 7-20-23
 Signature _____ Date _____ Signature _____ Date _____

Finance Office Use Only: Date Assigned 7-24-2023 Initial SG 8/2020