

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION  
JOINT POWERS AGREEMENT TO PROVIDE FOR  
THE PAVEMENT MARKING OF COUNTY ROADS  
WITHIN PENNINGTON COUNTY**

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. No real property will be purchased in connection with this Agreement.
- 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 (\$500,000.00), in 2024, for County Pavement Marking to be distributed annually based on the STATE Certified Road Mileage for County Primary and County Secondary Paved Roads. Future annual allocations will be determined by the STATE.
- B. COUNTY will receive a proportional share of the Five Hundred Thousand Dollars (\$500,000.00), or other amount as determined by the STATE, based on the number of pavement miles in said COUNTY as compared to the total number of pavement miles statewide, as computed by the STATE.
- C. The COUNTY will use the funds distributed under this Agreement solely for the purpose of pavement markings on the county highway system and county secondary 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 have a term of fifteen years.

**4. PROJECT PLANNING AND CONSTRUCTION**

The COUNTY will be the contracting party for all pavement marking projects funded under this Agreement and will be responsible for the preliminary engineering, construction engineering, contract administration and construction costs for all projects.

## **5. ELIGIBLE COSTS**

Pavement marking project costs that are eligible for funding under this Agreement are preliminary engineering, construction engineering, contract 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. 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.

## **7. 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 material breach by the COUNTY, the COUNTY will reimburse the STATE for all funds expended in violation of this Agreement.

## **8. 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.

## **9. 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.

## **10. 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.

## **11. RECORDS RETENTION AND AUDIT PROVISION**

- A. All project charges will be subject to audit in accordance with current STATE procedures and 2 CFR Part 200.
- B. The COUNTY will keep accounting records clearly identified with the 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.

## **12. AMERICANS WITH DISABILITIES ACT**

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

### **13. 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.

### **14. 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.

### **15. 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.

### **16. 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.

### **17. CERTIFICATION OF NO PROHIBITED STATE LEGISLATOR INTEREST**

The COUNTY (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to this Agreement. By signing this Agreement, the COUNTY hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

### **18. 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: *[Signature]*  
Printed Name: Lloyd LeCraw

Its: County Commission Chairperson

Date: 3-19-24

Attest: *Mary Israel, Deputy Auditor*  
Printed Name: Mary Israel

County Auditor/Clerk

State of South Dakota  
Department of Transportation

By: *[Signature]*  
Printed Name: Joel M. Jundt

Its: Department Secretary

Date: 4-2-24



PENNINGTON COUNTY BOARD OF COMMISSIONERS  
Meeting of March 19, 2024

MOVED by Lasseter and seconded by Hadcock to award AS 2024-01 Aggregate Materials as follows: Items No. 1 and 3 to Simon Contractors of SD, Inc., Rapid City, SD Items No. 2, 4 and 5 to Western Construction, Inc., Klapperich Pit and Konechne Pit, Rapid City, SD, based on location. Vote: Unanimous.

MOVED by Lasseter and seconded by Hadcock to award AS 2024-02 Asphalt Concrete Composite to Western Construction, Inc., Rapid City, SD, based on simulated project costs. Vote: Unanimous.

MOVED by Lasseter and seconded by Hadcock to award AS 2024-03 Asphalt Maintenance Materials to Simon Contractors of SD, Inc., Rapid City, SD. Vote: Unanimous.

MOVED by Lasseter and seconded by Hadcock to award AS 2024-04 Base Stabilization Materials to Team Lab Chemical Corp., Bismarck, ND. Vote: Unanimous.

MOVED by Lasseter and seconded by Hadcock to award AS 2024-05 Pre-Cast Concrete Pipe and Bridge Products to Rinker Materials, Rapid City, SD. Vote: Unanimous.

MOVED by Lasseter and seconded by Hadcock to award AS 2024-06 Cutback and Emulsified Asphalt to Simon Contractors of SD, Inc., Rapid City, SD. Vote: Unanimous.

MOVED by Lasseter and seconded by Hadcock to award AS 2024-07 De-Icing Sand to Western Construction, Inc., Rapid City, SD. Vote: Unanimous.

MOVED by Lasseter and seconded by Hadcock to award AS 2024-10 Dust/Ice Control Solution to Dustbusters Enterprises, Inc., Evanston, WY. Vote: Unanimous.

MOVED by Lasseter and seconded by Hadcock to award AS 2024-12 Timber Bridge Materials to Wheeler, Whitewood, SD. Vote: Unanimous.

**C. JOINT POWERS AGREEMENT - PAVEMENT MARKING:** MOVED by Lasseter and seconded by Rossknecht to approve the Joint Powers Agreement to Provide for the Pavement Marking of County Roads within Pennington County with the South Dakota Department of Transportation. Vote: Unanimous.

**ITEMS FROM EMERGENCY MANAGEMENT**

**A. JOINT POWERS AGREEMENT WITH SD DEPARTMENT OF THE MILITARY:** MOVED by Hadcock and seconded by Lasseter to approve the Joint Powers Agreement with the SD Dept. of Military providing alternate EOC space in Room 103, Building 450 on Camp Rapid for a monthly utility fee of \$50.00. Vote: Unanimous.

**ITEMS FROM EQUALIZATION**