

**STATE OF SOUTH DAKOTA
JOINT POWERS
FINANCIAL AND MAINTENANCE AGREEMENT
BETWEEN
DEPARTMENT OF TRANSPORTATION
AND
PENNINGTON COUNTY**

This Agreement is made 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

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 COUNTY and the STATE. 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 for use for this Agreement.

2. BACKGROUND

The STATE and the COUNTY concur in the construction of a Federal Aid Construction Project in the Roadway Safety Improvement Category, listed in the Department of Transportation Statewide Transportation Improvement Program in Pennington County, South Dakota, as follows:

Sign and Delineation on various roads.

THE STATE AND COUNTY MUTUALLY AGREE UPON THE FOLLOWING:

3. STATE PROJECT

The STATE and the COUNTY concur in the proposal for the Sign and Delineation project identified as Roadway Safety Improvement Project Number PH 00SW(72) PCN 05WJ, located on various COUNTY roads in Pennington County, referred to in this Agreement as the "PROJECT."

4. CONTRACT PROCUREMENT

- A. The STATE will design, advertise, let to contract, and be the contracting party for the PROJECT.
- B. The STATE will obtain the required environmental clearances for the PROJECT.
- C. The STATE will provide construction engineering including construction supervision and inspection.

5. COUNTY RESPONSIBILITY

- A. Once the PROJECT is completed, the COUNTY will have the sole obligation and responsibility for maintaining, repairing, and replacing all traffic control devices on all highways and for all bridges identified in the attached **Exhibit A**. In addition, the COUNTY will maintain, repair, and replace all street name signs installed on any part of the PROJECT outside of municipal boundaries, regardless of whether or not the signs were installed on highways and bridges identified in the attached **Exhibit A**. The COUNTY will perform all maintenance, repair, and replacement work in conformance with the most recent version of the Manual on Uniform Traffic Control Devices (MUTCD) as of the date the work is performed.

- B. The COUNTY will use the following method(s) for maintaining sign retroreflectivity in conformance with the MUTCD: (check all that apply)

- Visual Nighttime Inspection
- Measured Sign Retroreflectivity
- Expected Sign Life Method
- Blanket Replacement Method
- Control Sign Method

These methods can be found at the following website address:

http://safety.fhwa.dot.gov/roadway_dept/night_visib/retrotoolkit/moreinfo/intro/index.htm.

- C. If the COUNTY terminates or breaches this Agreement, the COUNTY will be one hundred percent (100%) responsible for all costs incurred to construct the PROJECT to date of termination or breach, including but not limited to design engineering, construction engineering, and material costs. The COUNTY will pay all PROJECT costs to the STATE within thirty (30) days of receipt of a billing from the STATE.

6. FINANCIAL RESPONSIBILITY

The STATE will pay One Hundred Percent (100%) of the actual cost for the PROJECT with Federal Section 154/164 Funds, subject to the provisions of Section 4.C.

7. INDEMNIFICATION

The COUNTY will indemnify the STATE, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceedings that may arise as the result of performing services under this Agreement. This section does not require the COUNTY to be responsible for or defend against claims or damages arising from errors or omissions of the STATE, its officers, agents, or employees.

8. RECORDS RETENTION AND AUDIT

- A. All PROJECT charges will be subject to audit in accordance with the STATE'S current procedures and United States Office of Management and Budget (OMB) Circular regulations, found at 2 CFR Part 200 Subpart F. The CFDA Number for these funds is 20.205. Allowable costs will be determined in accordance with 2 CFR Part 200.
- B. Upon reasonable notice, the COUNTY will allow the STATE or U.S. Department of Transportation representatives to examine all records of the COUNTY related to this Agreement during the COUNTY'S normal business hours. The COUNTY will keep all records for a period of three (3) years after the date of final payment is made by the STATE under this Agreement and all other pending matters are closed.
- C. 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 U.S. Office of Management and Budget (OMB) Circular regulations, found at 2 CFR Part 200 Subpart F. If the COUNTY expends less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) in federal funds during any COUNTY fiscal year, the STATE may perform a more limited program or performance audit related to the completion of Agreement objectives, the allowability of services or costs and adherence to Agreement provisions.

9. 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.

10. TERMINATION

Either party may terminate this Agreement by giving thirty (30) days' written notice to the other party. If the COUNTY breaches any of the terms or conditions of this Agreement, this Agreement may be terminated by the STATE at any time with or without notice. The COUNTY'S obligation, to repay all PROJECT costs to the STATE pursuant to Section 4.C. of this Agreement, will survive the COUNTY'S termination of this Agreement and the STATE'S termination of this Agreement for breach by the COUNTY.

11. EMPLOYEE STATUS

Any officer, employee, or agent engaged in joint action under this Agreement will remain an employee of his or her employer during participation in joint action under this Agreement. Each party 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 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.

12. CERTIFICATION OF NO PROHIBITED STATE LEGISLATOR INTEREST:

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, COUNTY hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

13. SIGNATURE AUTHORITY

The COUNTY has designated its County Commission Chairperson as the COUNTY'S authorized representative and has empowered the Chairperson 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 Chairperson as the COUNTY'S authorized representative is attached to this Agreement as **Exhibit B**.

[SIGNATURE PAGE FOLLOWS]

This Agreement is binding upon the signatories not as individuals but solely in their capacities as officials of their respective organizations and acknowledges proper action of the STATE and the COUNTY to enter into same.

Pennington County, South Dakota

By: *Lloyd LaCroix*

Printed Name: Lloyd LaCroix

Its: County Commission Chairperson

Date: May 21, 2024

State of South Dakota
Department of Transportation

By: *Joel M. Jundt*

Printed Name: Joel M. Jundt

Its: Department Secretary

Date: 5-30-24

Attest:

Mary Israel, Deputy Auditor

Printed Name: Mary Israel
County Auditor/Clerk



Exhibit A

Sinusoidal Transverse Rumble Strips



Sinusoidal Transverse Rumble Strips



Country Rd

ElkVale Rd

ElkVale Rd



PENNINGTON COUNTY BOARD OF COMMISSIONERS
Meeting of May 21, 2024

MOVED by Rossknecht and seconded by Drewes to approve the transfer of Retail (on-off sale) Malt Beverage & SD Farm Wine License from The Gaslight under Rockerville OPPS, LLC to The Gaslight under Gold Town LLC. Vote: Unanimous.

ITEMS FROM SHERIFF

A. REINSTATE POSITION – ACCOUNTANT 1: MOVED by Hadcock and seconded by Drewes to reinstate the Accountant 1 position in the Sheriff's Office at DBM B23, \$22.34/hr and to update the position listing on file. Vote: Unanimous.

ITEMS FROM BUILDINGS & GROUNDS

A. 900 CONCOURSE – DISCRETIONARY SPENDING: MOVED by Drewes and seconded by Rossknecht to authorize Buildings and Grounds Director, Davis Purcell, spending authority of \$150,000 from capital project funds for the initial renovation costs of the newly acquired property located at 900 Concourse with the understanding that all procurement will follow South Dakota Procurement rules. Vote: Unanimous.

ITEMS FROM EMERGENCY SERVICES COMMUNICATIONS CENTER

A. KNBN REQUEST FOR PLACEMENT - WEATHER CAMERAS ON RADIO TOWERS (AGREEMENTS FOR CO-LOCATION): MOVED by Drewes and seconded by Lasseter to authorize KNBN to install three weather cameras, one each, at the Rockerville, Keystone, and Hill City radio tower sites. Vote: Unanimous.

B. NEW POSITION REQUEST - TECHNOLOGY MANAGER: MOVED by Drewes and seconded by Hadcock to approve a new position of Technology Manager at DBM C42, \$2,594.40 bi-weekly, and to update the position listing on file. Vote: Unanimous.

ITEMS FROM FIRE ADMINISTRATION

A. MUTUAL AID AGREEMENT BETWEEN ELLSWORTH AIR FORCE BASE FIRE DEPARTMENT AND PENNINGTON COUNTY FOR MUTUAL AID IN FIRE AND EMERGENCY SERVICES (US): MOVED by Rossknecht and seconded by Lasseter to approve the Mutual Aid Agreement between the Ellsworth Air Force Base Fire Department and Pennington County for mutual aid in fire and emergency services. Vote: Unanimous.

ITEMS FROM HIGHWAY DEPARTMENT

A. JOINT POWERS AGREEMENT – COUNTRY ROAD AND ELK VALE ROAD INTERSECTION SAFETY IMPROVEMENTS: MOVED by Drewes and seconded by Lasseter to approve the Joint Powers Agreement with the South Dakota Department of Transportation for Project Number PH 00SW(72) PCN 05WJ to provide for the installation of signing and delineation safety improvements at the intersection of Country Road and Elk Vale Road. Vote: Unanimous.

ITEMS FROM BUILDING COMMITTEE