

**JOINT POWERS AGREEMENT  
BETWEEN THE  
DEPARTMENT OF PUBLIC SAFETY,  
DIVISION OF STATE RADIO COMMUNICATIONS AND PENNINGTON COUNTY  
AND THE CITY OF RAPID CITY**

THIS JOINT POWERS AGREEMENT is entered by and among the South Dakota Department of Public Safety, 118 West Capitol Avenue, Pierre, SD 57501 (hereinafter “DPS”); and the County of Pennington, South Dakota a political subdivision of the State of South Dakota, 130 Kansas City Street, Rapid City, SD 57701; and the City of Rapid City, South Dakota a political subdivision of the State of South Dakota, 300 Sixth Street, Rapid City SD 57701 (The County and City are hereinafter referred to jointly as “Providers”).

WHEREAS, efficient and dependable public safety communications services for local and state law enforcement are critical to the safety of both the citizens of South Dakota and all first responders;

WHEREAS, Providers have the resources necessary to facilitate all current local public safety communications needs as well as the dispatch needs of the western district of State Radio Communications (hereinafter “SRC”) a division of DPS; and

WHEREAS, both Providers and DPS believe that joint public safety communications services through Providers’ dispatch center will promote efficient and dependable dispatch services in the western district of SRC;

NOW THEREFORE IT IS MUTUALLY AGREED AS FOLLOWS:

1. The purpose of this Agreement is for Providers, through the Pennington County Emergency Services Communications Center, hereinafter referred to as ESCC, to provide all public safety communications for the western SRC district. These duties shall include but are not limited to dispatch and all ancillary communications responsibilities for the jurisdictional boundaries of DPS in the counties of: Bennett, Butte, Custer, Fall River, Haakon, Harding, Jackson, Jones, Lawrence, Lyman, Meade, Mellette, Pennington, Perkins, Shannon/Oglala Lakota, Todd and Ziebach. The DPS field units served through this Agreement include the South Dakota Highway Patrol; the South Dakota Division of Criminal Investigation; South Dakota Game, Fish and Parks; and the South Dakota Department of Transportation. Other agencies for whom communications services, and possible dispatch services, will be provided in the same manner previously provided by SRC include the United States Department of Agriculture, the United States Department of Veteran’s Affairs, the United States Forest Service, the Federal Bureau of Investigation, the Bureau of Alcohol Tobacco and Firearms, United States Immigration and Customs Enforcement, and the United States

Marshalls Service. Providers may be requested to occasionally provide short term communications services to state and federal agencies not specifically listed if an emergency situation occurs. Providers further acknowledge that DPS will continue to utilize Huron State Radio or Central South Dakota Communications (hereinafter "CSDC"); and that Huron State Radio, ESCC and CSDC serve as interdependent back-up for each other, for State Radio services only. Should either Huron State Radio or CSDC be unable to perform their duties, Providers shall also assume the public safety communications duties that would otherwise normally be performed by that DPS center. Providers' assumption of such additional duties will continue until the effected DPS center(s) is/are able to resume their own communications duties. As appropriate and practicable, Huron State Radio and CSDC will provide backup for ESCC, for State Radio services only. Protocols for the dispatch of all first responders shall continue to fit the primary mission of each first responder's respective agency. Provider agrees to operate on independent CAD systems until such time that the systems are consolidated into a single CAD/RMS accessible by all users.

2. This Agreement shall be effective on May 1, 2018 and shall continue in effect for five years. The Agreement may be renewed for additional five year periods, by the written agreement of the Parties. By execution of this Agreement, all previous Agreement among these parties pertaining to this subject matter are hereby cancelled and terminated. Specifically, the Parties agree that the termination of the previous Joint Powers Agreement effective May 1, 2015 is proper and no additional notices are required.
3. In consideration of Providers' assumption and provision of public safety communications duties for DPS' western SRC dispatch office, and the observance and performance of the covenants, terms and conditions set forth herein, DPS:
  - (a) Shall, as of May 1, 2018 pay to Pennington County ESCC \$203,975.71, minus the cost of the Director of the ESCC, an employee of DPS; as the base amount for the time period May 1, 2018 through December 31, 2018. This period will allow alignment of the payments with the Provider's calendar-year based budget. DPS will pay an extra \$3,059.67 so that the annual increase described in section 3 (c) below is also effective January 1 of each year. Therefore, as of January 1, 2019 DPS shall pay to Pennington County ESCC \$315,142.47, minus the costs of the Director of the ESCC.

Prior to June 30, 2019 DPS shall also pay to Providers the sum of \$60,287 to offset personnel costs. This one-time payment shall not be added to the base amount for 2018 or 2019.

(b) The base annual amounts in section 3 (a) above shall be paid by DPS to the ESCC in twelve (12) equal monthly payments to be due on the 15<sup>th</sup> day of each calendar month for the preceding month of service. Each month's payment shall be adjusted for the amounts spent by DPS for the Director of ESCC's prior month wages and benefits based on documentation of those costs provided by DPS. Providers shall provide annual projections for budgetary purposes to for the upcoming calendar year by June 30<sup>th</sup> for each calendar year.

(c) Beginning January 1, 2020, the base annual sum shall be allowed to increase or decrease up to three percent (3%) annually without an amendment to this Agreement. Should an annual projected increase or decrease be greater than three percent (3%); the Party proposing the change shall give ninety (90) days written notice to the other party explaining the rationale for the amount change.

Any annual base sum change greater than three percent (3%) shall be done by written amendment to this Agreement.

(d) In addition to the base annual sum, DPS shall pay to the Pennington County ESCC the sum of \$19,000 as an amortization of capital costs. This payment will be made with the monthly payment for services provided in May 2018. This one-time payment shall not be added to the base annual sum.

4. In consideration of DPS's observance and performance of the covenants, terms and conditions set forth herein, Providers:

(a) Agree to assume all public safety communications duties for the western district of DPS, as more fully enumerated in Paragraph 1 above.

(b) Agree to amend the composition of the ESCC Users Boards as more fully set forth in paragraph 12 below.

5. The parties agree that all joint public safety communications duties will be carried out by Pennington County employees, except the Director of ESCC who is a DPS employee; utilizing Providers' equipment and any equipment provided by DPS. DPS is not, nor shall be, responsible for any operating costs or any other costs or expenses beyond the agreed annual sum to be paid for services rendered less DPS's costs for the Director of the ESCC, and the one-time payments listed in Section 3 (a) and (d).

6. It is hereby specifically agreed that all records pertaining to DPS dispatch conducted by Providers are and shall remain the property of DPS. No records pertaining to DPS dispatch shall be released to any other person or entity without written approval from DPS, and all such records shall be immediately available to DPS.
7. This Agreement is not meant and shall not be construed to limit any existing or additional cooperative efforts between the parties.
8. This Agreement can be terminated by either party for any reason by providing ninety (90) days written notice to the other party or upon mutual agreement of the parties. Upon termination for any reason, each party shall retain title and ownership of all equipment purchased by that party.
9. 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 operations of law or federal funds reductions, this Agreement will be terminated by DPS. Termination for any of these reasons is not a default by DPS nor does it give rise to a claim against DPS.
10. This Agreement, or any part thereof, or benefits to be received hereunder, shall not be assigned, transferred or otherwise disposed of to any person, firm, corporation or other entity. This Agreement may not be modified or amended except in writing, which writing shall be expressly identified as part of this Agreement, and which writing shall be signed by all parties.
11. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
12. The Parties declare that no new entity is being created to implement this agreement as contemplated by SDCL 1-24-4 (2); but that the existing Pennington County Emergency Services Communications Users Board (hereinafter the "ESCC Board"), as created by the Intergovernmental Agreement for the Formation of the Pennington County Area Emergency Services Communication Center of 1992, and amended by the Joint Powers Agreement for Pennington County Emergency Services Communications in 2015, shall operate as follows:

- (a) Two (2) additional members shall be added to the existing Board. The members shall be the Secretary of the South Dakota Department of Public Safety and the Superintendent of the South Dakota Highway Patrol.
  - (b) The members of the board described in this section or their delegates, who shall be identified by written notice to the ESCC Board, shall be allowed to attend all Board meetings in person or via telephonic or electronic conference.
  - (c) The members added by this Agreement shall, in keeping with the powers of the current members, have the power to call emergency meetings or to add any subject or issue they deem necessary to the agenda of any Board meeting. The Superintendent of the Highway Patrol shall also be a member of the ESCC Users Board Executive Committee and shall be eligible to be Chairperson or Vice Chairperson of the ESCC Board. A designated alternate may not serve as the Chairperson or Vice Chairperson.
  - (d) Providers acknowledge that any other changes to the ESCC Board will require a written amendment to this Agreement as set forth in paragraph 10 above.
  - (e) In the event of termination of this Agreement, the members added hereby shall by operation of this Agreement automatically resign their positions and the Board shall revert to the membership structure and authority in effect prior to the addition of these two positions
13. This Agreement and the covenants herein contained shall inure to the benefit of and be obligatory upon the legal representatives, agents, employees, successors in interest and assigns to the respective parties hereto.
14. NOTICE: All notices or other communications required under this Agreement shall be in writing and sent to the addresses set forth above. Notice shall be given by and to the following persons: the Secretary of the South Dakota Department of Public Safety at the address given above; the Mayor of Rapid City at the address given above; and the chairman of the Pennington County Commission at the address given above or such authorized designees as a party may from time to time designate in writing. Notices or communications to or between the Parties shall be deemed to have been delivered when mailed by first class mail or, if personally delivered, when received by such Party.

15. In the event that any provision of the Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision herein. Failure to strictly enforce any provision of this Agreement shall not be construed to be a waiver of any provision, right or responsibility contained herein.
  
16. 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 herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.
  
17. This Agreement is intended only to govern the rights and interests of the parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable by law by any third party in any matters, civil or criminal.
  
18. The parties acknowledge that a true and correct copy of this Agreement will be filed with the Office of Attorney General and the Legislative Research Council by DPS within 14 days of its final execution pursuant to SDCL 1-24-6.1.
  
19. By the signature of the representative below, DPS and Providers certify that approval of this has been obtained by that government body's officer pursuant to SDCL 1-24-3 and 1-24-6 and that each representative is authorized to sign on the party's behalf.

IN WITNESS WHERE OF, the parties signify this Agreement by signature affixed below:

STATE OF SOUTH DAKOTA, DEPARTMENT OF PUBLIC SAFETY

By: \_\_\_\_\_  
 Trevor Jones  
 Secretary for the Department of Public Safety

Date: \_\_\_\_\_

PENNINGTON COUNTY

By: \_\_\_\_\_  
 Lloyd LaCroix  
 Chair, Pennington County Board of Commissioners

Date: \_\_\_\_\_

CITY OF RAPID CITY

By: \_\_\_\_\_

Steve Allender  
Mayor of Rapid City

Date: \_\_\_\_\_