

JOINT POWERS AGREEMENT
AMONG
MEADE COUNTY, PENNINGTON COUNTY,
THE CITY OF BOX ELDER, THE CITY OF RAPID CITY,
AND
THE SOUTH DAKOTA BOARD OF WATER AND NATURAL RESOURCES

JOINT POWERS AGREEMENT is made and entered into effective upon its execution by all parties, by the State of South Dakota, acting through its Board of Water and Natural Resources, Joe Foss Building, 523 East Capitol Avenue, Pierre, SD 57501-3182 Pierre, SD 57501, hereinafter identified as the “Board”, Pennington County, acting through its Board of County Commissioners, 300 Kansas City Street, Rapid City, SD 57701, hereinafter referred to as “Pennington County”, Meade County, acting through its Board of County Commissioners, 1425 Sherman Street, Sturgis, SD 57785, hereinafter referred to as “Meade County”, the City of Box Elder, acting through its Mayor, 520 N. Ellsworth Rd Ste 9C, Box Elder, SD 57719, hereinafter referred to as “Box Elder”, and the City of Rapid City, acting through its Mayor, 300 6th Street, Rapid City, SD 57701, hereinafter referred to as “Rapid City”, (collectively the “Local Governments”).

WHEREAS, Meade County, Pennington County, Box Elder and Rapid City have worked together to form the Moving Forward With Ellsworth Steering Committee to examine the concept of regional approaches to mutual goals such as water and sewer development, including a joint study with Ellsworth Air Force Base on the feasibility of building a mechanical sewerage treatment facility east of Box Elder in the Box Elder drainage basin for the eventual use of multiple qualified bulk users known as the EAFB, Box Elder Drainage, I-90 Corridor Multiple Jurisdictional Bulk Sewerage Treatment Feasibility Study Project (the “Project”); and

WHEREAS, the 2007 Legislature enacted section 9 of House Bill 1245 which appropriates \$100,000 to the Board for the purpose of providing grants to the local project sponsors for a feasibility study for developing regional water and sewer infrastructure in the Rapid City area to include Box Elder and portions of Meade County and Pennington County; and

WHEREAS, the Local Governments have determined to jointly serve as Project Sponsor for the Project to determine the feasibility of building a regional bulk sewerage mechanical treatment plant east of Box Elder in the Box Elder drainage basin that would treat sewerage for both

the City of Box Elder and Ellsworth Air Force Base, and potentially qualified bulk users further west up the Box Elder Drainage Basin; and

WHEREAS, the Board has determined that Meade County, Pennington County, Box Elder and Rapid City and the Project they are sponsoring meet the requirements for funding; and

WHEREAS, the Board and the Local Governments have the authority and power to enter into joint powers agreements pursuant to SDCL chapter 1-24; believe it is a more efficient use of scarce state and local governmental resources to enter into this joint undertaking for the feasibility study of the Project described herein; and that such an agreement is to their mutual benefit.

NOW THEREFORE IT IS MUTUALLY AGREED AS FOLLOWS:

1. That the term of this Agreement shall commence upon the execution hereof effective the day and year above first written and continue until such feasibility study is completed and presented to each of the various governments involved, at such time this Agreement will terminate, unless otherwise amended or terminated or extended pursuant to the terms hereof.

2. In consideration of the Board's agreement to provide funding for the Project pursuant to the Grant Agreement herein described, the Local Governments agree as follows:

a. To establish a committee consisting of one member of the governing body of each Local Government to provide active direction to and administration of the Project on behalf of the Local Governments;

b. To designate and supervise a Project Coordinator, who will serve as the official representative of the Local Governments in all matters connected with this Agreement and the Project;

c. To conduct the feasibility study and administer the Project in accordance with the Statement of Work attached hereto and by this reference incorporated herein. The feasibility study and Project will consist of two phases. Phase 1 is being conducted by Ellsworth Air Force Base ("EAFB"). Phase 2 is being undertaken by the Local Governments pursuant to this Agreement and the Grant Agreement herein described;

d. To receive the final completed feasibility study which shall be jointly owned by the Local Governments and EAFB, and provide a copy thereof to the Board; and

e. To submit any matters under this Agreement which require official action by the Local Governments to the respective governing bodies for final approval.

f. That nothing herein is intended to create any binding expectation for any party to this Agreement to participate in any formal way in developing a multi-jurisdictional bulk sewerage treatment facility as a result of the feasibility study.

3. In consideration of the Local Governments' observance and performance of the covenants, terms and conditions set forth herein, the Board agrees to provide funding up to \$100,000 for the Project pursuant to the terms and conditions of the SOUTH DAKOTA WATER AND ENVIRONMENT FUND GRANT AGREEMENT, a copy of which is attached hereto and by this reference incorporated herein. The parties agree that the \$98,772 in funding provided by EAFB for Phase 1 of the Project, incurred after approval of the Grant, qualifies as local match pursuant to section 7 of the Grant Agreement.

4. Each party to this Agreement shall bear responsibility for its own acts or omissions pursuant to this Agreement, and nothing in this Agreement shall be construed as an indemnification by one party of the other for liabilities of a party or third persons for property loss or damage or death or personal injury arising out of the performance of this Agreement. Any liabilities or claims for property loss or death or personal injury by a party or its agents, employees, contractors or assigns or by third persons, arising out of and during this Agreement shall be determined according to applicable law. Nothing in this Agreement shall be construed as creating any rights, claims or liabilities for property loss or death or personal injury by third persons, arising out of and during this Agreement.

5. 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 will be terminated by the Board. Termination for any of these reasons is not a default by the Board nor does it give rise to a claim against the Board or the State.

6. The parties acknowledge that no separate entity as contemplated in SDCL 1-24-4 is being created to implement this Agreement, and that the cooperative undertakings herein described shall be administered by the Secretary, Department of Environment and Natural Resources for the Board and the Chairman of the Board of County Commissioners for Meade County, the Chairman of the Board of County Commissioners for Pennington County, the Mayor of Box Elder for the City of Box Elder, and the Mayor of Rapid City for the City of Rapid City, or their designees as contemplated in SDCL 1-24-5. The approval of the Chairman of the Board, as required by SDCL 1-24-6, and the respective Chairmen and Mayors is signified by their execution of this Agreement. The parties acknowledge that the Board will file a true copy of this Agreement with the Office of Attorney General and the Legislative Research Council within 14 days of the execution hereof, as required by SDCL 1-24-6.1.

7. This Agreement may not be assigned without the express prior written consent of the parties. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

8. This Agreement can be terminated upon thirty (30) days written notice by any party and may be terminated for cause at any time with or without notice.

9. The rights and remedies herein conferred shall be cumulative and not alternative and shall be in addition and not in substitution of or in derogation of rights and remedies conferred by any other agreements between the parties hereto or by any applicable law. The failure to enforce strict performance of any covenant, promise, term, or condition herein contained, shall not operate as a waiver of that party's right thereafter to require that the terms hereof be strictly performed.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota.

11. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Secretary, Department of Environment and Natural Resources on behalf of the Board, by and to the respective Chairman, Board of County Commissioners on behalf of Meade County and Pennington County, and by and to the respective Mayor, on behalf of the City Box Elder and the City of Rapid City, or such authorized designees as either 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.

12. In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

13. 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.

14. Nothing in this Agreement is intended to waive the immunity of the State of South Dakota, including the Board, or its officers, agents and employees. The State and the Board fully retain all immunities and defenses provided by law with regard to any action based on this Agreement.

IN WITNESS WHEREOF, the parties have set their hands effective on the day and year first written.

STATE OF SOUTH DAKOTA
BOARD OF WATER
AND NATURAL RESOURCES

By: _____
Brad Johnson Date
Chairman, Board of Water
and Natural Resources

MEADE COUNTY

By: _____
Chairperson Date
Board of County Commissioners

PENNINGTON COUNTY

By: _____
Chairperson Date
Board of County Commissioners

CITY OF BOX ELDER

By: _____
Mayor Date

CITY OF RAPID CITY

By: _____
Mayor Date