

AGREEMENT ESTABLISHING THE RUSHMORE REGIONAL RAILROAD AUTHORITY

This agreement, made and entered into this ____ day of _____, 2014, by and between the political subdivisions which have executed this agreement (the "Members") pursuant to a resolution of the governing body of each political subdivision authorizing such execution, which resolutions are attached hereto as Exhibit "A" and by this reference made a part hereof as if fully set forth herein.

ARTICLE 1

CREATION, NAME, PURPOSE AND POWER

- 1.1 There is hereby created and incorporated a regional railroad authority under the provisions of SDCL Chap. 49-17A (the "Act") which shall be a political subdivision of the State of South Dakota, to exercise thereunder a part of the sovereign powers of the State.
- 1.2 The name of the regional railroad authority created and incorporated by this agreement shall be the **RUSHMORE REGIONAL RAILROAD AUTHORITY** (the "Authority").
- 1.3 Except as specifically provided to the contrary in this agreement or in the Authority's bylaws as the same may be adopted and amended from time to time, the Authority shall conduct its affairs in accordance with the Act for the purposes authorized therein and to that end shall be empowered to exercise all powers granted by the Act as the same may be amended from time to time.

ARTICLE II

MEMBERS OF THE AUTHORITY

- 2.1 The names of the political subdivisions of the State of South Dakota which approved this agreement and are the initial Members of the Authority are: Pennington County, the City of Rapid City, the City of Box Elder and the City of Wall.
- 2.2 Any political subdivision qualified under the Act which desires to join the Authority subsequent to the date of this agreement shall so indicate its desire by depositing with the Chairman of the Authority a supplement to this Agreement executed by such political subdivision and a resolution of the governing body of such political subdivision authorizing such execution. A political subdivision shall become a Member of the Authority upon approval of its executed supplement to this Agreement by

the existing Members of the Authority and the filing of the same and the Resolution with the Secretary of State.

ARTICLE III

REPRESENTATIVES

3.1 Each Member subdivision may appoint one (1) Representative and one (1) alternate to represent that subdivision with the exception of Pennington County which may appoint two (2) Representatives and two (2) alternates. The names and addresses of the persons initially appointed by the resolutions approving this Agreement to act as the Representatives/alternate Representatives of the subdivision Members of the Authority are as follows:

Pennington County Representatives: _____ and their
alternates: _____.

City of Rapid City Representatives: _____ and their
alternate: _____.

City of Box Elder Representatives: _____ and their
alternate: _____.

City of Wall Representatives: _____ and their
alternate: _____.

In the absence of a primary Representative or upon request of a primary Representative, an alternate shall attend all meetings and be authorized to act in place of a primary Representative for all purposes intended in this Agreement.

Each Member subdivision may remove and replace one or more of its Representatives/alternates at any time by motion and approval of the Member subdivision. Any change to the list of Member representatives/alternates shall be provided, in a timely manner, to the other Member subdivisions and to the Board of Commissioners of the Authority.

ARTICLE IV

BOARD OF COMMISSIONERS OF THE AUTHORITY

- 4.1 The Board of Commissioners of the Authority shall be comprised of five (5) Commissioners elected by the Representatives of the Member subdivisions. Each Member subdivision shall be entitled to have one of its elected governing body officials serve as a Commissioner for the Authority with the exception of Pennington County which shall be entitled to have two of its elected governing body officials serve as Commissioners for the Authority.

Each Commissioner for the Authority shall be elected for a term of three years and shall hold office until his/her successor has been elected and qualified. An elected Commissioner shall not serve more than two consecutive terms. Vacancies shall be filled for an unexpired term in the same manner as the original elections. If an elected official from a Member subdivision serving as a Commissioner of the Authority leaves his/her Member office, for any reason, that individual's term on the Board of Commissioners for the Authority shall be deemed vacant and shall be filled for the remainder of the unexpired term or for a new term, as the case may be, by another elected official from that respective Member subdivision. A Representative may be a Commissioner.

ARTICLE V

REGISTERED AGENT & OFFICE

- 5.1 The Registered agent and office address of the Authority is:

Pennington County State's Attorney
300 Kansas City St., Suite 400
Rapid City, SD 57701
(605) 394-2191

ARTICLE VI

LIABILITY OF MEMBERS

- 6.1 The political subdivisions (and their elected officials) which are Members of the Authority and the Commissioners, officers and agents of the Authority shall not be liable for any obligations of the Authority.

ARTICLE VII

BYLAWS AND ELECTION OF MANDATORY OFFICERS

- 7.1 A chairperson and a secretary-treasurer of the Authority shall be elected from among the Commissioners. The Authority through its Commissioners may also appoint or elect an executive director and such other officers, agents, and employees as it may deem appropriate. The Authority may delegate its powers and duties to one or more of its officers, agents or employees. The Commissioners of the Authority may adopt and amend such rules and bylaws as they deem appropriate to govern the operation of the Authority subject to the provisions of SDCL Chap. 49-17A and approval by the Members of the Authority.

ARTICLE VIII

VOTING, AMENDMENTS AND INTERPRETATION BY MEMBERS

- 8.1 Member approval of any matter required by this Agreement including, any amendment to this Agreement, shall be by a majority vote of the Members of the Authority. Each Member of the Authority shall be entitled to one (1) vote to be exercised by an approved motion of its governing body. In the event of any dispute or disagreement as to the interpretation/application of any of the provisions of this Agreement, a majority vote of the Members shall control.

ARTICLE IX

ISSUANCE OF BONDS OR NOTES

- 9.1 The Authority shall not issue bonds or notes as allowed by SDCL 49-17A-27 *et. seq.* without first having received the approval of the Members of the Authority.

ARTICLE X

TAX CERTIFICATION

10.1 The Authority shall not certify any annual tax levy as allowed by SDCL 49-17A-21 *et. seq.* without first having received the approval of the Members of the Authority.

ARTICLE XI

POWER OF EMINENT DOMAIN

11.1 The Authority shall comply with the provisions of SDCL 49-17A-18 when exercising the power of eminent domain. In all cases where the Authority may acquire real or personal property by condemnation, the Authority must first receive the approval of the Members of the Authority.

IN WITNESS WHEREOF, the undersigned have executed this agreement as of the date first written above with sufficient copies for each Member to have an original, plus an original to be sent to the Secretary of State of South Dakota, each of which shall constitute an original copy but all of which together shall constitute one and the same instrument.

PENNINGTON COUNTY, South Dakota

By: _____
Its Chairman
Pennington County Commission

ATTEST:

Pennington County Auditor/Deputy

CITY OF RAPID CITY, South Dakota

By: _____
Its Mayor

ATTEST:

Finance Officer

CITY OF BOX ELDER, South Dakota

By: _____
Its Mayor

ATTEST:

Finance Officer

CITY OF WALL, South Dakota

By: _____
Its Mayor

ATTEST:

Finance Officer

EXHIBIT A

This Exhibit contains the Resolutions of each initial political subdivision Member authorizing the formation of the **RUSHMORE REGIONAL RAILROAD AUTHORITY**:

Pennington County

City of Rapid City

City of Box Elder

City of Wall

**RESOLUTION AUTHORIZING AN AGREEMENT TO CREATE THE RUSHMORE REGIONAL
RAILROAD AUTHORITY AND TO BECOME A MEMBER THEREOF**

WHEREAS, in the interest of economic development, the County of Pennington finds it to be in the best interest of the public to join the City of Rapid City, the City of Box Elder and the City of Wall in the creation of a regional railroad authority pursuant to the provisions of SDCL Chap. 49-17A.

NOW THEREFORE, BE IT RESOLVED by the Pennington County Commission as follows:

1. Authorization of Agreement. The Pennington County Commission does hereby authorize the execution of an agreement by Pennington County to join the City of Rapid City, the City of Box Elder and the City of Wall to create the RUSHMORE REGIONAL RAILROAD AUTHORITY and to become a member thereof pursuant to the provisions of SDCL Chapter 49-17A, as amended.

2. Execution of Agreement. The Chairman of the Pennington County Commission and the Pennington County Auditor are hereby authorized to execute said Agreement on behalf of Pennington County and to take any further action necessary to carry out the intent of this Resolution.

3. Designation of Representatives. The following individuals are hereby appointed to act as the initial Representatives/alternate Representatives of Pennington County to the Railroad Authority:

Approved this _____ day of _____, 2014.

By: _____
Lyndell Petersen, Chairman
Pennington County Commission

ATTEST:

Pennington County Auditor/Deputy

CERTIFICATION

THE UNDERSIGNED HEREBY CERTIFIES THAT I AM THE DULY QUALIFIED AND ACTING AUDITOR OF THE COUNTY OF PENNINGTON AND THAT THE ABOVE AND FOREGOING RESOLUTION WAS DULY ADOPTED BY THE COUNTY COMMISSION OF PENNINGTON COUNTY, SOUTH DAKOTA, AT A REGULARLY SCHEDULED MEETING HELD THE _____ DAY OF _____, 2014, AND THE SAME IS IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.

Julie Pearson, Pennington County Auditor

NOTICE OF INCORPORATION OF THE
RUSHMORE REGIONAL RAILROAD AUTHORITY

The undersigned officer of the Rushmore Regional Railroad Authority does hereby certify pursuant to SDCL Chapter 6-10 and § 49-17A-4 that the attached copy of the Agreement establishing the Rushmore Regional Railroad Authority has been duly authorized and executed and conforms to the requirements of SDCL Chapter 49-17A.

Dated this _____ day of _____, 2014.

RUSHMORE REGIONAL RAILROAD AUTHORITY

By: _____

Its: _____

Attachment: Copy of Agreement Establishing the Rushmore Regional Railroad Authority along with certified copies of the resolutions of each member subdivision.