

**JOINT POWERS AGREEMENT
FOR THE
FORMATION OF THE PENNINGTON COUNTY AREA
EMERGENCY MANAGEMENT**

That certain agreement entitled “Joint Powers Agreement for the Formation of the Pennington County Area Emergency Management,” made and entered into the 2nd day of May, 2011, is hereby amended, and the parties now agree that this Joint Powers Agreement for the Formation of the Pennington County Area Emergency Management (hereinafter referred to as the “Agreement”) is hereby made and entered into as of the date of the last signature below.

WITNESSETH:

WHEREAS the City of Rapid City, acting by and through the Rapid City Common Council, and the County of Pennington, acting by and through the Pennington County Commission, have determined that in the interest of providing emergency management services, the public’s welfare and safety is best served by and through the cooperative effort of its Police Department, Fire Department, Sheriff’s Office and all other emergency agencies of the Pennington area through the execution of this Agreement under the authority vested to the parties of this Agreement by SDCL 1-24-2, the Constitution of the State of South Dakota, Article IX, Section 3, and as defined in SDCL 1-24-1; and

WHEREAS the parties hereto agree that this joint undertaking to create a unified emergency management team will result in the efficient utilization of resources and will improve emergency services to the City of Rapid City and Pennington County.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained the parties hereby agree with each other and their successors to the terms and conditions set forth herein:

I.

PARTIES

The parties to this Agreement shall be:

- a. The County of Pennington, South Dakota, a political subdivision of the State of South Dakota, as geographically defined pursuant to the provisions of SDCL 7-1-52, hereinafter referred to as “County”; and,
- b. The City of Rapid City, South Dakota, an incorporated municipality, as created pursuant to the general provisions of SDCL 9-1-1(1), 9-2-1(2) et.seq. hereinafter referred to as “City”.
- c. When the County and City are referred to collectively the term “Parties” shall be used.

II.

NAME OF ORGANIZATION

The name of the entity created pursuant to this Agreement shall be Pennington County Emergency Management (PCEM). PCEM shall serve a geographical area which shall primarily be limited to the boundaries of Pennington County although it is recognized that the functions performed under this Agreement may, on occasion, extend beyond these boundaries and operate in counties contiguous to Pennington County.

III.

DURATION

This Agreement shall be perpetual in duration and may only be terminated pursuant to the conditions set forth herein.

IV.

SCOPE AND PURPOSES OF AGREEMENT

The Parties recognize the need to consolidate emergency management functions within Pennington County in order to provide the most efficient method of dealing with the services to the public that are provided by each aforementioned party.

Emergency management functions shall be considered to mean, but shall not be limited to, the preparation for and the carrying out of all emergency functions to prevent, minimize, repair injury and damage resulting from disasters and provide for the relief of distressed humans and livestock in areas within Pennington County where such conditions prevail. These functions include but shall not be limited to, firefighting services, police services, medical and health services, hazardous materials, search and rescue, engineering, warning, communications, radiological, chemical, and other special weapons of defense, evacuation of persons or livestock, emergency welfare services, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services, and other functions related to civilian or livestock protection, together with other activities necessary or incidental to the preparation for any carrying out of the foregoing functions including cooperation with the federal government, county and city governments, national relief organizations, public or private organizations, and persons. Such emergency management functions shall also include maintenance of essential records and such other support functions as are necessary to fulfill this Agreement.

V.

POSITION OF DIRECTOR

There is hereby created the position of Director of Pennington County Emergency Management, hereinafter called "Director." The Director shall have responsibility for the development and implementation of emergency and disaster plans, organization, administration, and operation of the local organization for emergency management, subject to the direction and control of the Users Board and supervised by the management group as further defined in this Agreement. The usual channels of appeal shall be available to any aggrieved Director as provided by City or County personnel regulations, as the case may be.

VI.

EMPLOYEES

The Director may be an employee of the City or County, as the case may be, and subject to the rules, regulations and insurance coverage of that specific entity accordingly. For purposes of this Agreement, if an employee of the Rapid City Police Department or Fire Department is appointed to the position of Director, that individual shall be considered an employee of the City for all purposes contemplated under this Agreement. If an employee of the Pennington County Sheriff's Office is appointed to the position of Director, that individual shall be considered an employee of the County for all purposes contemplated under this Agreement. All other individuals hired to staff PCEM shall be considered employees of Pennington County, subject to the personnel rules and regulations of the County.

VII.

USERS BOARD

A Users Board is hereby created, and membership of the same shall be pursuant to section VIII below. The Users Board, acting through the Director, shall assume the responsibility of:

- a. Planning, organizing, control, and management of emergency management and such related programs as may be utilized by the parties; and
- b. Shall have the power to apply for, receive and expend grants of money from any local, state or federal government and from any private individuals, foundation or corporation and shall have full authority to enter into contracts and agreements with other entities under the authority guidelines and constraints set forth by the regulations of the County and the laws of the State of South Dakota.

It is expressly understood by the Parties to this Agreement that the only powers delegated to the Users Board are those dealing with the PCEM and its emergency management functions. All other powers granted by law are expressly reserved to the Parties.

VIII.

MEMBERSHIP OF USERS BOARD

The Users Board shall consist of seven (7) primary members. These members shall be the Sheriff of Pennington County, the Police Chief of Rapid City, the Fire Chief of Rapid City, a representative of the Pennington County Commission, a representative from the Rapid City Common Council, the Director of Military Support for the South Dakota National Guard, and a Pennington County resident appointed by the Pennington County Fire Service Board who is a volunteer member of an agency represented on the Pennington County Fire Service Board. All primary members listed above shall designate an alternate member who, in the absence of the primary member, shall attend all meetings and be authorized to act in place of the primary member for all purposes intended in this Agreement. Such alternate shall be named by informing the other members of the Users Board in writing. The designated alternate's authority may be revoked by the designating primary member at any time. Written notice of such revocation shall be given to the other members of the Users Board in a timely manner. A designated alternate shall have the same authority as any primary member of the Users Board including the power to vote on matters before the Users Board. A majority (at least 4) of the members of the full Users Board (made up of 7 members) may take official action on behalf of the Board. A quorum of (4) members may convene to conduct business as the Users Board, but in such case the full quorum (4) must vote unanimously in agreement in order to take affirmative action on behalf of the Board.

IX.

POSITION OF CHAIRPERSON AND VICE CHAIRPERSON

The position of Chairperson of the Users Board shall be held only by either the Fire Chief of Rapid City, the Police Chief of Rapid City, or the Sheriff of Pennington County, and the position of User Board Chairperson shall be a one year term. The position of Vice Chairperson may be held by any User Board member who is not currently serving a term as Chairperson. The Chairperson and Vice Chairperson shall be elected by a majority vote of the Users Board. The Chairperson and Vice Chairperson shall be voting members of the Users Board. The Chairperson shall preside over all meetings. If the Chairperson is unable to preside at meetings or in any other way carry out their function as Chairperson, the Vice Chairperson shall assume all responsibilities of the Chairperson position until such time as the elected Chairperson is once again available to resume all responsibilities of the position. In the absence of the elected Chairperson, the Chairperson's alternate shall attend all meetings and vote as a regular member of the Board.

X.

MANAGEMENT GROUP

There is hereby created a group within the Users Board called the "Management Group." The Management Group shall be comprised of the Police Chief of Rapid City, the Fire Chief of Rapid City, and the Sheriff of Pennington County.

It is agreed by the parties hereto that the Management Group shall make recommendations to the Users Board regarding: (1) PCEM Priorities; (2) Standards for the selection, supervision and termination of personnel; (3) Selection, supervision, and termination of the PCEM Director; and, (4) Policy governing the operations related to PCEM. All recommendations of the Management Group are subject to the approval of the majority of the Users Board. The Management Group shall serve as the primary contacts to the Director for day to day assistance as requested by the Director.

XI.

MEETINGS OF USERS BOARD

The Users Board shall meet a minimum of one time per calendar quarter. The meetings of the Users Board shall be conducted in accordance with open meetings provisions of SDCL Chapter 1-25 of the South Dakota Codified Laws. Special meetings of the Users Board may be held at any time or location upon the request of any member of the Users Board or the Director of PCEM in accordance with the open meetings provisions of state law.

XII.

LOCATION OF FACILITIES AND EQUIPMENT

PCEM and its equipment shall be located in a convenient location as determined by the Users Board. Portable equipment shall be placed in such vehicular units and locations of the Parties as are necessary to carry out the functions and purposes of this Agreement.

XIII.

OPERATIONS

The operations of PCEM shall be governed by the following general operating parameters:

- a. The fiscal year of the entity shall be the calendar year. The annual budget of PCEM shall be prepared by the Director and be submitted to the Users Board for review by the end of the first quarter. The Users Board and the Director shall meet and agree upon a proposed annual budget, the terms of which shall be presented to the City and County for approval. The annual budget, as approved, shall include all costs necessary to carry out PCEM's functions. Notification will be given to the City by the County of all budget supplements granted to PCEM.
- b. The budget as approved shall be administered by the County. The County shall request, and the City shall remit on a monthly basis, reimbursement to the County for expenses incurred that do not exceed the budget approved by the City and County.
- c. Financial responsibility for PCEM shall be primarily divided between the City, County, and the Emergency Management Performance Grant (EMPG) as administered by the

State of South Dakota Office of Emergency Management through the provisions of the annual State and Local Agreement (SLA) with the City and County responsible in equal shares for the portion of the budget not funded through the EMPG. At the end of each fiscal year, the County Auditor and City Finance Officer shall confer and determine any adjustments which might be necessary to achieve the full foregoing reimbursements.

- d. In the event capital assets/equipment must be acquired, the Director shall prepare appropriate bid specifications and bid evaluations on behalf of the Parties. The bidding process shall be administered by the County. Any such assets so acquired or contributed by the Parties shall be deemed to vest equally in the City and the County. Fixed assets shall be defined according to County policies and shall be recorded in the County Auditor's Office. The Director shall forward to the City Finance Office and County Auditor's Office a monthly statement of inventory adjustments (additions and/or deletions) and at the end of each fiscal year shall file a full inventory listing to the City Finance Office and County Auditor's Office. The Parties shall confer to make adjustments or corrections which might be necessary to the fixed asset records.
- e. All fees acquired by PCEM from the users of Pennington County Emergency Management or any of its assets or resources shall be deposited with the County Treasurer and shall be considered as part of the anticipated revenues of PCEM as determined in its annual budget to be used for PCEM.
- f. PCEM will maintain the equipment on inventory, either by maintenance contract or by other arrangement deemed suitable at the direction of the Users Board.

XIV.

TERMINATION

Either party hereto may terminate this Agreement with twelve (12) months written notice provided to the other party.

All financial obligations to PCEM of any withdrawing party are to be fulfilled for twelve (12) months beyond the date of termination notice so as to maintain continuity of operations of PCEM. Conditions of unilateral termination may, upon approval of all parties, be modified to accommodate any special conditions which may exist at such time. Under no circumstances shall any Party hereto take such action which would result in the compromise of emergency services to the citizens of the Pennington County area.

Upon dissolution of PCEM, all property listed on the inventory of PCEM shall be independently appraised to determine current value. Thereafter, in conformance with State law, the property may either be distributed in kind or liquidated and the proceeds thereof, together with any monies on hand, distributed to the City and County in the same proportion as to each Party's total contribution.

XV.

AMENDMENTS

This Agreement may be amended, modified or altered only by a majority vote of the full governing bodies for the City and County.

XVI.

GENERAL CONDITIONS

- a. **Recordkeeping and Audits:** The Parties to this Agreement acknowledge that each has an obligation to maintain accurate records. Upon reasonable notice, each party shall have the right to inspect and audit the other parties' operation, records and maintenance and security of the data as it pertains to this agreement. Once performed, the results of the audit shall be made available upon the request to the governing bodies of the City and County.
- b. **Indemnification:** Each Party shall be responsible for its own negligence.
- c. **Insurance:** County will furnish City with a Certificate of Insurance from an insurance carrier, including an actual copy of the required contractual liability endorsement, or shall deposit with the City a copy of said policy. Such certificate or policy will be furnished annually and will provide that the policy cannot be cancelled without thirty (30) day notice to the City. This provision shall be considered reciprocal thus requiring the City to provide the County with the same.
- d. **Non-Discrimination:** All parties hereto shall fully comply with applicable federal and state regulations; agreeing specifically not to discriminate against any employee on the account of race, color, sex, age, religion, disability or national origin.

IN WITNESS WHEREOF, the Parties agree and do now set their hands and seals in execution of this Agreement on the date(s) signed below:

CITY OF RAPID CITY

Mayor

Dated:_____

ATTEST:

Finance Officer

(SEAL)

COUNTY OF PENNINGTON

Commission Chairperson

Dated:_____

ATTEST:

County Auditor

(SEAL)