Department of Transportation

Watertown Area Office

5000 9th Avenue SE

Watertown, South Dakota 57201 (605)882-5166
Fax: (605) 882-5117

March 21, 2016

Mr. Gary Egeberg
Brookings County Weed & Pest Board
826 32nd Avenue
Brookings, South Dakota 57006

Re: Noxious Weed Control, 2016

Dear Mr. Egeberg:

It is time again to plan for noxious weed control during the upcoming growing season. With the success of this program in the past, it is hoped that you will be able to continue the control of weeds within the state highway right-of way.

Enclosed is a contract for the "2016" weed spraying. Please fill out and return the contract in its entirety to this office. **Like last year, we need to have form DOT-967 completed and signed. It is required that a copy of the County Commission minutes or resolution authorizing the execution of the agreement be attached as Exhibit D. Also form Dot-967 needs to be signed by the County Commission Chairperson and have his signature notarized.**

We appreciate your county for doing weed spraying for the Department of Transportation and thank you for a job well done.

Sincerely,

DEPARTMENT OF TRANSPORTATION

Matthew R. Brey
Watertown Area Engineer

cc: Jeff Senst – Aberdeen Region Engineer
Rick Reichling, Highway Maintenance Supervisor

DOT-967
(03/2015)

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
JOINT POWERS AGREEMENT
FOR WEED SPRAYING SERVICES BY COUNTY

This Joint Powers Agreement (Agreement) is entered into 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 Brookings County, South Dakota, referred to in this Agreement as the "COUNTY."

BACKGROUND:

1. The STATE is the owner of real property located in Brookings County, South Dakota.

2. The STATE wants the COUNTY to control the growth of declared noxious weeds within the right of way of state highway routes.

3. The COUNTY is willing to provide weed spraying services to the STATE.

THE STATE AND THE COUNTY MUTUALLY AGREE AS FOLLOWS:

I. 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 in connection with this Agreement.

II. THE COUNTY

A. The COUNTY services under this Agreement will commence May 1, 2016, and will end April 30, 2017, unless terminated earlier pursuant to the terms of this Agreement.

B. The COUNTY will provide services in compliance with the Americans with Disabilities Act of 1990, and any amendments.

C. The COUNTY will:

1. Furnish the necessary equipment, materials, and labor to control the growth of declared noxious weeds in accordance with the bid proposal attached to this Agreement as Exhibit A.

2. Ensure that the weed spraying is accomplished by personnel properly licensed by the South Dakota Department of Agriculture.

3. Advise the STATE'S local maintenance shop of the COUNTY'S intent to spray, at least forty-eight (48) hours prior to spraying.

4. Ensure the COUNTY'S spraying vehicles are equipped with a flashing amber warning light which must be in operation while spraying highway right of way. The COUNTY will not stop its vehicle(s) on the roadway, driving lanes, or shoulders on the Interstate highway system.

5. Complete form DOT-820 Daily Pesticide Application Record, furnished by the STATE, a copy of which is attached to this Agreement as Exhibit B. The COUNTY will complete this form on a daily basis after completion of the spraying.

6. Provide the STATE with a completed copy of the DOT-820 Daily Pesticide Application Records within one (1) week after completion of the spraying.

7. Submit an invoice for payment to the STATE. The invoice will be accompanied by the completed original DOT-820 daily form(s). The COUNTY may submit separate invoices for the spring and fall spraying, if the COUNTY desires to do so.

8. Supply the STATE with visible proof the spraying operations are effectively killing noxious weeds. If the spraying operations do not effectively kill the noxious weeds, the COUNTY will not be paid for that portion of the spraying operations the STATE determines were ineffective.

II. THE STATE will:

A. Pay the COUNTY the actual costs for services as set out below. Payment will be made pursuant to itemized invoices submitted by the COUNTY, and accompanied by the required form DOT-820 Daily Pesticide Application Records.

B. Reimburse the COUNTY for all labor required to satisfactorily complete the work contemplated by this Agreement based on the hourly rate per employee as stipulated in the attached Exhibit B.

C. Reimburse the COUNTY for all pesticides and equipment required to satisfactorily complete the work contemplated by this Agreement based on the costs as stipulated in the attached Exhibit B.

D. Furnish the COUNTY with form DOT-820 Daily Pesticide Application Records.

III. AMENDMENT PROVISION

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.

IV. TERMINATION PROVISION

Either party may terminate this Agreement by providing thirty (30) days' written notice to the other. If the COUNTY breaches any term or condition of this Agreement, the STATE may terminate this Agreement with or without notice. If the STATE terminates this Agreement due to the COUNTY'S default, the STATE may adjust any payment due to the COUNTY at the time of termination to cover any additional costs to the STATE due to the COUNTY'S default. Upon termination, the STATE may take over the work and may award another party an agreement to complete the work under this Agreement. If, after the STATE terminates for a default by the COUNTY, it is determined the COUNTY was not at fault, then the COUNTY will be paid for eligible services rendered and expenses incurred up to the date of termination.

V. FUNDING PROVISION

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 may be terminated by the STATE. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.

VI. INDEPENDENT CONTRACTOR PROVISION

While performing services under this Agreement, the COUNTY is an independent contractor and not an officer, agent, or employee of the STATE.

No employee of the COUNTY engaged in the performance of services required under this Agreement will be considered an employee of the STATE. No claim under the South Dakota Workers' Compensation Act on behalf of said employee or other person while so engaged and no claim made by any third party as a consequence of any act or omission by the COUNTY will be the STATE'S obligation or responsibility.

VII. EMPLOYEE STATUS PROVISION

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

VIII. COMPLIANCE PROVISION

The COUNTY will comply with all federal, state and local laws, together with all ordinances and regulations applicable to the work and will be solely responsible for obtaining current information on such requirements. The COUNTY will procure all licenses, permits, or other rights necessary for the fulfillment of its obligation under the Agreement.

IX. INDEMNIFICATION PROVISION

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.

X. CONTROLLING LAW PROVISION

This Agreement will be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

XI. SEVERABILITY PROVISION

If any court of competent jurisdiction holds any provision of this Agreement unenforceable or invalid, such holding will not invalidate or render unenforceable any other provision of this Agreement.

XII. SUPERCESSION PROVISION

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 in this Agreement, this Agreement constitutes the entire agreement with respect to the subject matter.

XIII. 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 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 D.

By signature of their representatives below, each party certifies that approval of this Agreement by ordinance, resolution, or other appropriate means has been obtained by that party's governing body or officer pursuant to SDCL § 1-24-3 and § 1-24-6.

Brookings County, South Dakota

By: _____

Its: County Commission Chairperson

Date: _____

Attest:

_____
County Auditor/Clerk

(COUNTY SEAL)

State of South Dakota
Department of Transportation

By: _____

Its: Secretary

Date: _____

Recommended By:

_____
Construction/Maintenance Engineer

Exhibit A

BID PROPOSAL

CODE	PROJECT			MAINT UNIT	CONTROL REFERENCE	AFE	FUNCTION	BEGIN MRM	END MRM
	PRE	ROUTE	AGR						

COUNTY: _____ BUDGET SOURCE: _____

FEDERAL TAX ID NUMBER: _____

FINALS ENGINEER REVIEW REQUIRED: ☐ YES ☐ NO

REGION MATERIALS CERTIFICATION REQUIRED: ☐ YES ☐ NO

CERTIFIED INSPECTORS/TESTERS REQUIRED: ☐ YES ☐ NO

TO BE INSTALLED ON CM&P: ☐ YES ☐ NO

TYPE OF WORK: _____

PURPOSE OF WORK: _____

LOCATION OF WORK: _____

ESTIMATE OF QUANTITIES AND COST:

BID ITEM NUMBER	ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	2,4-D Amine	120,000	OZ	$0.11	$13200.00
	Equipment	140	HR	$50.00	$7000.00
	Labor	140	HR	$25.00	$3500.00
	Packet gopher Labor Bait + Equip	15	HR	50.00	$750.00
				TOTAL	$24,450.00

DOT-820

Exhibit B

"Contract" Daily Pesticide Application Record

Date: _____ Contact No: _____

Customer: _____

Contractor: _____

SPRAYING ON THIS DATE WAS ACCOMPLISHED ON: INDICATE WHICH DITCH

Highway No: _____ From MRM _____ To MRM _____ N S E W OR MEDIAN

Highway No: _____ From MRM _____ To MRM _____ N S E W OR MEDIAN

Highway No: _____ From MRM _____ To MRM _____ N S E W OR MEDIAN

Highway No.	Type of Pesticide	Amount Used		Cost/Unit		Cost
			X		=	
			X		=	
			X		=	

Highway No.	Employee Name	Hours Worked		Rate		Cost
			X		=	
			X		=	
			X		=	

Highway No.	Equipment	Miles or Hours Worked		Rate		Cost
			X		=	
			X		=	
			X		=	
				Total Cost	=	

_____

Sprayer Operator Signature

D.O.A. License Number: _____

THIS FORM WILL BE COMPLETED IN TRIPLICATE. ONE COPY WILL BE FORWARDED TO THE LOCAL MAINTENANCE UNIT FOREMAN, ONE TO BE RETAINED ON FILE BY THE COUNTY, AND ONE (ORIGINAL) TO ACCOMPANY THE COUNTY'S INVOICE TO THE STATE FOR PAYMENT.