

LAWRENCE COUNTY RESOLUTION #2021-__

A RESOLUTION SETTING THE NUMBER OF PACKAGE OFF-SALE LIQUOR
LICENSES PURSUANT TO SDCL 35-4-11.1 AND ESTABLISHING THE METHOD OF
SALE

WHEREAS, the Legislature of the State of South Dakota has provided for the approval package off-sale liquor licenses by the boards of county commissioners of the counties of said State pursuant to SDCL Title 35 as amended; and

WHEREAS, SDCL 35-4-11.1, as amended, provides that the board of county commissioners shall on or before the first of September in each year determine by ordinance or continuing resolution the number of package off-sale liquor licenses (other than malt beverage) it will approve for the ensuing calendar year and the fees to be charged for the various classifications of licenses; and

WHEREAS, the maximum number of package off-sale licenses issued outside municipalities are based upon the population of the county outside incorporated municipalities and improvement districts. However, the maximum allowable licenses need not be the number which the county commissioners authorize; and

WHEREAS, Lawrence County now qualifies for six (6) package off-sale liquor licenses, making four (4) additional licenses available for issuance July 1, 2021; and

WHEREAS, the Lawrence County Board of County Commissioners wishes to make 1 (one) license presently available to a qualified applicant; and

WHEREAS, the fairest and most equitable method to issue the 1 (one) package off-sale license is through competitive sealed bids; and

WHEREAS, it is in the County's best interest that a minimum bid be established for such license.

NOW, THEREFORE, BE IT RESOLVED, that the Lawrence County Board of County Commissioners hereby approve the sale of a maximum of one (1) package off-sale liquor license outside municipalities; and

BE IT FURTHER RESOLVED, that the minimum bid for the issuance of a new package off-sale liquor license shall be \$25,000; and

BE IT FURTHER RESOLVED, that sealed bids shall be received and opened on [Date] and [Time] and that the Lawrence County Auditor will give notice of that fact by publication published at least twice.

Dated this ___ day of June, 2021

ATTEST:

FOR THE BOARD:

Brenda McGruder, AUDITOR

Richard Sleep, CHAIRMAN

LAWRENCE COUNTY RESOLUTION #2021-__

A RESOLUTION SETTING THE FEE FOR PACKAGE OFF-SALE LIQUOR LICENSES
PURSUANT TO SDCL 35-4-11.1

WHEREAS, the Legislature of the State of South Dakota has provided for the approval package off-sale liquor licenses by the boards of county commissioners of the counties of said State pursuant to SDCL Title 35 as amended; and

WHEREAS, SDCL 35-4-11.1, as amended, provides that the board of county commissioners shall on or before the first of September in each year determine by ordinance or continuing resolution the number of package off-sale liquor licenses (other than malt beverage) it will approve for the ensuing calendar year and the fees to be charged for the various classifications of licenses; and

WHEREAS, the maximum number of package off-sale licenses issued outside municipalities are based upon the population of the county outside incorporated municipalities and improvement districts. However, the maximum allowable licenses need not be the number which the county commissioners authorize; and

WHEREAS, Lawrence County (hereinafter "County") now qualifies for six (6) package off-sale liquor licenses, making four (4) additional licenses available for issuance July 1, 2021; and

WHEREAS, County, in the previous Resolution #2021-____, set the number of available licenses presently available for sale at one (1) and established the method of sale through competitive sealed bids; and

WHEREAS, on [Date], with notice having been previously given, competitive sealed bids were received and opened and the highest responsible bid determined to [Amount].

NOW THEREFORE, BE IT RESOLVED, that the Lawrence County Board of County Commissioners hereby establishes that the fee for the issuance of the new package (off-sale) liquor license shall be \$[Amount].

NOW THEREFORE, BE IT FURTHER RESOLVED, that a successful bidder will be required to enter into a Package (Off-sale) Liquor License Issuance Agreement with County.

Dated this ___ day of [Month], 2021

ATTEST:

FOR THE BOARD:

Brenda McGruder, AUDITOR

Richard Sleep, CHAIRMAN

**NOTICE OF PUBLIC SALE
PACKAGE (OFF-SALE) LIQUOR LICENSE**

NOTICE IS HEREBY GIVEN by the undersigned Auditor of Lawrence County, South Dakota, a political subdivision of the State of South Dakota, that the Auditor's Office will accept sealed bids for a Package (Off-Sale) Liquor License hereinafter described, held by Lawrence County, in the Commission Room of the Lawrence County Annex Building, 90 Sherman Street, Deadwood, South Dakota on the ____ day of _____, 2021 at the hour of _____ a.m.

Sealed bids shall be delivered to the Auditor's Office before ____ a.m., _____, 2021 and shall include: the amount bid; the name and address of the proposed licensee; the address of the proposed licensed premises; and, a description of the proposed use of the license.

The license, if awarded, will be granted to the highest suitable bidder subject to the restrictions set forth in SDCL Ch. 35-2, and all other applicable State and County rules and regulations.

Finalization of bid award will not be officially effective until approval by the Lawrence County Commission and South Dakota Department of Revenue/Special Tax Division. The license referred to and to be sold is described as follows:

One (1) Package (Off-Sale) Liquor License. This license allows the sale of any alcoholic beverage, for consumption off the premises where sold. Minimum bid for the license shall be \$25,000.

A successful bidder will enter into a Package (Off-sale) Liquor License Issuance Agreement with County.

Lawrence County maintains the right to reject any and/or all bids.

Dated this ____ day of _____, 2021.

LAWRENCE COUNTY

BY: _____
Brenda McGruder
AUDITOR

Publish:

Published at the approximate cost of \$ _____

PACKAGE (OFF-SALE) LIQUOR LICENSE ISSUANCE AGREEMENT

This Agreement is made and entered into this _____ day of _____, 2021 by and between **LAWRENCE COUNTY**, a political subdivision of the State of South Dakota, 90 Sherman Street, Deadwood, South Dakota 57732, (hereinafter “County”) and _____ [Name] _____, _____ [Corporate designation if applicable] _____, _____ [Address] _____, _____ [City] _____, _____ [State] _____ [Zip] (hereinafter “Applicant”).

1. On [Date] and [Date], Lawrence County published notice it was accepting sealed bids to potentially sell a package (off-sale) liquor license (hereinafter the “License”).
2. At [Time] [Date], sealed bids to purchase the License were opened in the Lawrence County Annex Building, 90 Sherman Street, Deadwood, South Dakota 57732.
3. Applicant submitted a sealed bid in the amount of \$[Bid amount] (hereafter “Bid Amount”), together with the remaining bid requirements, and was the apparent high bidder.

In consideration of the covenants, conditions, benefits, and obligations herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

4. Applicant specifically understands and acknowledges that neither the submission of the high bid nor this Agreement creates any promise or obligation for County to sell or otherwise issue Applicant the License or any license to sell alcoholic beverages of any kind for any reason. Instead, this Agreement merely sets forth the procedure by which Applicant’s application will be considered and the terms upon which the License may be issued.
5. In the event the State approves Applicant’s application, such application will be submitted to the Lawrence County Commission for its approval or denial.
6. If the application is approved by the Lawrence County Commission, Applicant will remit payment of the Bid Amount to the Lawrence County Auditor’s Office on or before [Date]. If payment is received by that time, Lawrence County will issue Applicant the License by [Date]. If payment of the entire Bid Amount is not received by that time, Applicant’s application will be deemed withdrawn, County will have no obligations to Applicant; and the License may be issued to another bidder.

7. If the License is issued to Applicant, Applicant agrees that the License will be in use within six (6) months from the date of issuance. For the purposes of this provision, the term “in use” means that the Applicant or some other person properly using the License owned by Applicant will be engaged in the sale of alcoholic beverages within Lawrence County. If the License is not in use within six (6) months’ time, the License will be forfeited to County, and County will refund the Bid Amount.. In the event the License is forfeited, County shall not be liable for any damages Applicant or anyone else may claim as a result.
8. If Applicant sells the License to a third-party within nine (9) months from the date of issuance, Applicant agrees that any profits over the Bid Amount price shall belong to County.
9. **Complete Agreement.** This Agreement constitutes a written memorandum of the entire understanding and agreement between the parties and supersedes all prior understandings, negotiations, or agreements between them, whether written or verbal, with respect to the subject matter hereof.
10. **Non-Waiver.** Failure by County to insist upon or enforce any of its rights shall not constitute a waiver thereof, and nothing shall constitute a waiver of County’s right to insist upon strict compliance with provisions hereof. Either party hereto may waive the benefit contained in this Agreement.
11. **Modification.** No oral modification hereof shall be binding upon the parties, and any modification shall be in writing and signed by the parties.
12. **Attorney’s Fees and Costs.** In the event any legal action is filed to enforce or recover under any provision of this Agreement, the prevailing party in the suit will be entitled to recover court costs and reasonable attorney’s fees from the non-prevailing party.
13. **Severability.** In the event that any portion of this Agreement is determined to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other provision herein.
14. **Notice.** Notice, demand, or other communication made pursuant to this Agreement by any party to another shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally at the address state above.
15. **Construction and Governing Law.** This Agreement shall be construed and governed in accordance with the laws of the State of South Dakota. This Agreement was prepared by County. However, each party has had the opportunity to review and revise this Agreement, has

had equal opportunity for input into this Agreement, and has had the opportunity to have this Agreement reviewed by that party's own independent legal counsel. No individual party, nor its respective legal counsel, shall be construed to be the drafter or primary drafter of this Agreement. In the event of any dispute regarding the constructions of this Agreement or any of its provisions, ambiguities or questions of interpretation shall not be construed more in favor of one party than the other. Instead, questions of interpretation shall be construed equally as to each party.

16. **Other Documents.** The parties hereby mutually agree to execute any and all other documents necessary or needed to effectuate the purposes of this Agreement.

17. **Counterparts.** This Agreement may be executed in two or more counterparts, both or all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing any such counterpart. Facsimile and electronic versions of signatures shall be treated as originals.

[Separate signature pages follow]

LAWRENCE COUNTY

By: _____
Richard Sleep, Its Chairman

(Seal)
Attest:

Brenda McGruder, Auditor

State of South Dakota)
)ss.
County of Lawrence)

On this ____ day of _____, 2021, before me, the undersigned officer, personally appeared Richard Sleep, the Chairman of the Lawrence County Commission, a political subdivision of the State of South Dakota, known to me or satisfactorily proven to be the person described in the foraging instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In *Witness Whereof*, I have set my hand and official seal.

(Seal) _____
Notary Public

[APPLICANT NAME]

By: _____
[Name], Its [Title]

State of South Dakota)
)ss.
County of Lawrence)

On this ____ day of _____, 2021, before me, the undersigned officer, personally appeared [Name], the [Title], known to me or satisfactorily proven to be the person described in the foraging instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In *Witness Whereof*, I have set my hand and official seal.

(Seal)

Notary Public