

**JOINT POWERS AGREEMENT
BETWEEN THE
SOUTH DAKOTA OFFICE OF THE ATTORNEY GENERAL DIVISION OF CRIMINAL
INVESTIGATIONS, THE COUNTY OF PENNINGTON, THE PENNINGTON COUNTY
SHERIFF'S OFFICE AND THE CITY OF RAPID CITY**

JOINT POWERS AGREEMENT ("Agreement" hereinafter) made and entered into by and between the Attorney General of the State of South Dakota, 1302 East Highway 14, Suite 1, Pierre, South Dakota 57501 (the "AG" hereinafter), Pennington County, a political subdivision of the State of South Dakota, acting by and through the Pennington County Sheriff's Office, 300 Kansas City Street, Ste. 100, Rapid City, South Dakota (the "PCSO" hereinafter), and the City of Rapid City, acting through its mayor, 300 Sixth Street, Rapid City, South Dakota 57701 ("RC" hereinafter) (collectively the "Parties" hereinafter) pursuant to the authority in SDCL Chapter 1-24.

WHEREAS, the AG has the authority under SDCL chapters 1-11 and 23-3 to to enter into this type of Agreement to aid AG agents and prosecutors in investigating and enforcing the state's criminal laws and assist in the training of law enforcement officers; and

WHEREAS, Pennington County is authorized to enter into this Agreement under the provisions of SDCL Chap. 1-24 and its fiscal responsibility pursuant to SDCL §§ 7-8-20 & 10-12-9 to support the PCSO; and

WHEREAS, RC has the authority to enter into this type of agreement pursuant to SDCL 9-12-4 for the Rapid City Police Department ("RCPD"); and

WHEREAS, the AG, PCSO, and RC need the services of a computer forensic examiner for purposes of providing computer forensic services; and

WHEREAS, the AG, PCSO, and RC believe it is an efficient use of resources to enter into a joint undertaking for provision of computer forensic services and that this Agreement is for their mutual benefit.

NOW THEREFORE IT IS MUTUALLY AGREED AS FOLLOWS:

1. Duration of Agreement

The term of this Agreement shall commence on September 25, 2018, and will continue until September 25, 2021, unless amended or terminated or extended pursuant to the terms hereof.

2. Funding Out

The AG's ability to comply with the terms of this Agreement depends upon continued availability of consumer protection funds. This Agreement will be terminated if consumer protection funds, grant expenditure authority, or other funds which may provide funding for this Agreement are no longer available. This Agreement also depends upon the continued availability of appropriated funds and expenditure authority from the Pennington County Commission to PCSO and the Rapid City Council to RC for these purposes. If sufficient funding or expenditure authority is not available to a

party, whether through a lack of appropriations, expenditure authority, or if a party otherwise lacks sufficient funds to carry out its obligations and responsibilities under this Agreement, or if funds become unavailable by operation of law or federal funds reductions, that party shall provide written notice of termination within seven days of determining that it lacks the necessary funding. Termination for the reasons set forth in this section shall not constitute a default.

3. The PCSO Agrees to:

In consideration of the AG and RC's observance and performance of the covenants, terms and conditions set forth herein, the PCSO agrees as follows:

- a. PCSO will hire a computer forensic examiner as a full-time employee of PCSO. The computer forensic examiner's duties will include the performance of activities for PCSO, AG, RC. The computer forensic examiner shall remain an employee of PCSO, and PCSO shall retain the exclusive responsibility for any such employee, including but not limited to regular wages and salaries, unemployment benefits, worker's compensation coverage, health insurance and other benefits, and liability coverage, notwithstanding that the computer forensic examiner will be acting under the direction of AG, or RCPD when performing duties pursuant to this Agreement. All actions of a disciplinary nature concerning this computer forensic examiner will be handled by the PCSO with input from AG and RC.
- b. Daily supervision of the computer forensic examiner will be done by PCSO. Consistent with section 6 of this Agreement direction will be given by the party or agency for which the computer forensic examiner is providing services.
- c. PCSO agrees to contribute at least \$25,000.00 annually toward employment of the computer forensic examiner.

4. The AG Agrees to:

In consideration of the PCSO's observance and performance of covenants, agreements, terms and conditions set forth herein, the AG agrees to:

- a. Reimburse PCSO, on an annual basis from the date the computer forensic examiner is employed by PCSO, for costs pertaining to employment in the amount of \$25,000, payable in quarterly payments unless otherwise agreed.
- b. PCSO will submit itemized invoices to AG along with its request for reimbursement. Payments to PCSO under this Agreement shall be made within 30 days of receipt of a properly completed and documented invoice.
- c. If the Agreement is terminated during an annual payment cycle, AG's payment obligations are limited to the pro rata share of the actual employment costs for the time period AG's payment obligations under this Agreement were in effect.

- d. In lieu of paying on a reimbursement basis, AG may prepay PCSO any amounts AG has agreed to pay under this Agreement which PCSO will apply to cover AG's obligations until the amount prepaid has been fully expended.
- e. If the Agreement is terminated prior to the full expenditure of the prepaid fund, PCSO will reimburse AG any prepaid funds that have not been applied to cover AG's payment obligations.

5. RC Agrees to:

In consideration of the PCSO's observance and performance of covenants, agreements, terms and conditions set forth herein, RC agrees to:

- a. reimburse PCSO, on an annual basis from the date the computer forensic examiner is employed by PCSO, for costs pertaining to employment in the amount \$25,000 payable in quarterly payments unless otherwise agreed.
- b. PCSO will submit itemized invoices to RC along with its request for reimbursement.
- c. Payments to PCSO under this Agreement shall be made within 30 days of receipt of a properly completed and documented invoice.
- d. If the Agreement is terminated during an annual payment cycle, RC's payment obligations are limited to its pro rata share of the actual employment costs for the time period its payment obligations under this Agreement were in effect.

6. Computer Forensic Examiner Scope of Services

The Parties agree and understand that the psychologist hired by the PCSO under this Agreement will provide the following services:

- a. Conduct forensic examination of computers, files and related storage media (technology), to assist in investigation and prosecution of criminal and consumer protection laws.
- b. Provide technical expertise and support to state and local agencies on computer forensic issues.
- c. Provide in-court, expert testimony concerning data recovery.
- d. Document investigative activities by keeping detailed notes and using them to generate investigative summaries, intelligence reports and a description of applicable investigative procedures.
- e. Maintain knowledge of current trends and developments in the field by reading appropriate literature and attending related trainings, conferences, and seminars.
- f. Provide appropriate training to law enforcement personnel and the general public.

These services will be provided to each of the parties at no additional charge beyond the billings set forth in Sections 4 and 5 above.

7. Priority of Requests

If the demands upon the computer forensic examiner are in excess of time available, or if there are multiple requests for services during the same time period, the services will be provided based upon the following priority:

- a. Computer forensic examination, and any other related activity, necessary to allow the computer forensic examiner to competently testify in court or to comply with other court-imposed deadlines.
- b. Computer forensic examination of technology potentially connected to child exploitation crimes.
- c. Computer forensic examination of technology potentially connected to violations of consumer protection laws.
- d. Prioritization of other services to be provided by the computer forensic examiner shall be determined by the computer forensic examiner in consultation with the parties to this Agreement.

8. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

9. Assignment & Amendment

This Agreement may not be assigned without the express prior written consent of all 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.

10. Termination

This Agreement can be terminated upon thirty (30) days written notice by either AG or RC, however, the party giving notice under this section is responsible for payments set forth in Sections 2, 4, and 5 of this Agreement for the calendar year in which notice is given. This Agreement may be terminated by PCSO at any time upon written notice to the AG and RC. If the PCSO terminates the Agreement, then the AG and RC's financial obligations cease upon the effective date of the termination. Further the PCSO agrees if it terminates the Agreement, it will reimburse the AG and RC a pro rata share of any annual payments.

11. Cumulative Remedies & Strict Performance

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 of a party 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.

12. Administration of Agreement

The Parties acknowledge that no separate entity as contemplated by SDCL 1-24-4 is being created to implement this Agreement, and that the cooperative undertaking herein described shall be administered by the AG, the PCSO, and the RC, or their designees, as contemplated in SDCL 1-24-5. No real or personal property will be acquired or disposed of as part of this cooperative agreement. The Parties acknowledge that the PCSO 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.

13. Successors in Interest

This Agreement and the covenants herein contained shall inure to the benefit of and be obligatory upon the legal representatives, agents, employees, successors in interests and assigns to the respective Parties hereto.

14. Notices

Notices or communications to or between the Parties shall be deemed to have been delivered when mailed by first class mail, provided that the notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party to the Attorney General, Pennington County Sheriff, Rapid City Mayor or their authorized designees or by mail to the Parties at the following addresses:

Office of the Attorney General 1302 East Hwy 14, Ste. 1
Pierre, SD 57501

Pennington County Sheriff's Office 300 Kansas City Street
Ste. 100
Rapid City, SD 57701

City of Rapid City
300 Sixth Street
Rapid City, SD 57701

The Parties, by giving notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, and other communications shall be sent.

15. Severability

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

16. Supersession

All 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.

17. Third Party Beneficiaries

This Agreement is intended only to govern the rights and interests of the parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal.

18. Necessary Approvals

By the signature of their representative below, the AG, the PCSO and RC certify that approval of this Agreement has been obtained by that governmental entity's governing body or officer pursuant to SDCL 1-24-3 and 1-24-6 by ordinance, resolution or other appropriate means, and that the representative is authorized to sign on the party's behalf. A copy of the PCSO and RC's authorizing resolution or ordinance are attached to this Agreement and incorporated herein by reference.

In Witness hereto the Parties signify this Agreement by signatures affixed below:

Marty J. Jackley (Date)
Attorney General
State of South Dakota

Bryan Gortmaker (Date)
Director DCI

Lloyd LaCroix, Chairman (Date)
Pennington County Commission

ATTEST:

Auditor, Pennington County (Date)

Kevin Thom (Date)
Sheriff
Pennington County

Steve Allender (Date)
Mayor
City of Rapid City

ATTEST:

Finance Officer (Date)