

**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 the Rapid City Fire Department (RCFD"); and

WHEREAS, the AG, PCSO, and RC need the services of a psychologist for purposes of employment and training activities of law enforcement and emergency services personnel; and

WHEREAS, the AG, PCSO, and RC believe it is an efficient use of resources to enter into a joint undertaking for provision of psychologist 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 January 1, 2019 and will continue until December 31, 2021, unless amended or terminated or extended pursuant to the terms hereof.

2. Funding Out

This Agreement depends upon the continued availability of drug control funds, other appropriated funds, and expenditure authority from the Legislature to the AG for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, the drug control fund or

other funds which provide funding for this Agreement are abolished or funds become unavailable by operation of law, this Agreement will be terminated.

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 nor does it give rise to any claims against the terminating party.

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. The PCSO will hire a psychologist as a full-time employee of the PCSO and contribute \$67,000 (\$5,000 of which will come from the 911 Emergency Services Communications Center) to the salary of said employee. The psychologist's duties will include, at a minimum, the performance of activities for the PCSO, AG, RC, and other requesting law enforcement agencies as set forth in this Agreement.
- b. The psychologist shall remain an employee of the PCSO, and the 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 psychologist will be acting under the direction of the AG, RCPD, RCFD or other requesting law enforcement agency or fire department when performing duties pursuant to this Agreement.
- c. All actions of a disciplinary nature concerning this psychologist will be handled by the PCSO with input from the AG and RC.
- d. Daily supervision of the psychologist will be done by the PCSO consistent with section 6 of this Agreement. Direction to the psychologist will be given by the Party, agency or department to which the psychologist is providing services.
- e. The PCSO will submit itemized invoices to the AG along with its request for reimbursement.
- f. The PCSO will submit itemized invoices to RC along with its request for reimbursement.

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 the PCSO, on an annual basis from the date the psychologist is employed by the PCSO, for costs pertaining to the psychologist's employment in the amount of \$20,000. The reimbursement will be split between the state's Drug Control Fund and Law Enforcement Training funds and is payable in quarterly payments unless otherwise agreed.
- b. Payments to the 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 pursuant to Paragraph 9 of this Agreement during an annual payment cycle, the AG's payment obligations are limited to the pro rata share of the actual employment costs for the time period the AG's payment obligations under this Agreement were in effect.
- d. In lieu of paying on a reimbursement basis, the AG may prepay the PCSO any amounts it has agreed to pay under this Agreement which the PCSO will apply to cover the 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, the PCSO will reimburse the AG any prepaid funds that have not been applied to cover the 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 the PCSO, on an annual basis from the date the psychologist is employed by the PCSO, for costs pertaining to the psychologist's employment in the amount \$50,000 payable in quarterly payments unless otherwise agreed.
- b. Payments to the 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 pursuant to Paragraph 9 of this Agreement 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. Psychologist Scope of Services

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

- a. On an as needed basis, the psychologist will provide psychological services to the Parties to this Agreement, including but not limited to:
  1. Assisting in response to barricaded subjects and hostage situations;
  2. Assisting in critical incident debriefing;
  3. Provide training;
  4. Pre-employment testing and fitness for duty assessments on agents and basic students as needed, including but not limited to, psychological examinations.
  
- b. The psychologist will also provide these same services to other law enforcement agencies or fire departments upon request, based upon available time and priority given to the request as set forth in Paragraph 6(d) below.
  
- c. The services provided to the requesting law enforcement agencies and fire departments described in Paragraph 6(a) will be without charge except for pre-employment testing. For pre-employment testing, the PCSO will be reimbursed by the requesting agency for all out of pocket costs of the psychologist including per diem, travel and lodging, and a per hour fee agreed to in advance by the PCSO and the requesting agency for actual services performed.
  
- d. If the demands upon the psychologist exceed the 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:
  - 1) Critical need situations such as barricade, hostage, and critical debriefing;
  - 2) fitness for duty assessments;
  - 3) training;
  - 4) pre-employment screening for the AG, PCSO and RC; and
  - 5) pre-employment screening for other law enforcement agencies or fire departments.

If the timing of providing of services is still not resolved, the priority of services will be: First with the PCSO, second the RCPD, third the AG, fourth the RCFD and fifth other law enforcement agencies and fire departments on a first request basis.

- e. Additional services to be performed for Law Enforcement Training (“LET” hereinafter) include:
  1. Present at LET bi-annual meetings to inform LET employees of the services offered. Also, the psychologist should forge relationships with LET employees to make them feel more comfortable when using the services of the psychologist. The psychologist will work in conjunction with the state mental health professionals currently in place.
  
  2. Participate in certain CIT related topics covered at the Basic Academy as requested by the AG.

3. Psychologist must be available for follow-up after any high traumatic events including but not limited to Agent involved shootings.
- f. Additional services to be performed for Internet Crimes Against Children (“ICAC” hereinafter) include:
1. Psychologist to meet with prospective ICAC Agents to evaluate their fitness for duty in the ICAC Unit.
  2. Psychologist to serve as a resource for all ICAC Agents and Affiliates on an as needed basis.
  3. Psychologist would conduct routine meetings with ICAC Agents on a bi-annual basis to maintain good Mental Health for ICAC Agents.

All services will be provided to each of the Parties at no additional charge beyond the amounts set forth in Sections 4 and 5 above.

AG will pay travel expenses including mileage, per diem and room if necessary which the psychologist actually incurs when travelling to Pierre for LET or ICAC meetings.

#### 7. 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.

#### 8. 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.

#### 9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. Necessary Approvals

By the signature of their representative below, the AGO, 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)