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PENNINGTON COUNTY
SHERIFF

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

THIS JOINT POWERS AGREEMENT is entered into the 18th day of August 2008, by the State of South Dakota Office of Attorney General, acting through its Attorney General, the Division of Criminal Investigation and Law Enforcement Training, Criminal Justice Training Center, 1302 East Highway 14, Pierre, SD 57501-5805, hereinafter identified as "AGO," Pennington County, acting through the Pennington Sheriff's Office, 300 Kansas City Street, Rapid City, SD 57701, hereinafter referred to as "PCSO," and the City of Rapid City, acting through its mayor, 300 Sixth Street, Rapid City, SD 57701, hereinafter referred to as "RC" pursuant to the authority as provided in SDCL ch. 1-24.

WHEREAS, the AGO has the authority under SDCL chapters 1-11 and 23-3 and SDCL 34-20B-64 to enter into this type of Agreement to aid AGO agents and prosecutors in investigating and enforcing the state's criminal laws, including the state's marijuana and controlled substance laws, and assist in training of law enforcement officers; and

WHEREAS PCSO has the authority to enter into this type of Agreement pursuant to SDCL 7-12-9; and,

WHEREAS, RC has the authority to enter into this type of agreement pursuant to SDCL 9-29-2 and 9-33-11 for the Rapid City Police Department (RCPD) and Rapid City Fire Department (RCFD); and

WHEREAS, AGO, PCSO AND RC need the services of a psychologist for purposes of training, pre-employment and employment related activities of law enforcement and emergency services personnel, that without this Agreement the parties would be required to contract for such services on an as needed basis, which results in inefficiency; and

WHEREAS, AGO, PCSO and RC believe it is a more 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. That the term of this Agreement shall commence upon the execution hereof and is effective as of January 1, 2008, and shall continue until December 31, 2010, unless amended, terminated or extended pursuant to the terms hereof. This Agreement replaces and supersedes the Joint Powers Agreement dated October 6, 2003, as amended among the parties.

2. This Agreement depends upon continued availability of drug control, and other appropriated funds and expenditure authority from the Legislature to AGO for the purposes

contemplated herein. This Agreement will be terminated if the Legislature fails to appropriate sufficient funding, grant expenditure authority, or the drug control fund or other funds which funding for this Agreement are abolished or diminished. It is also terminated should drug control funds or other funds become unavailable for any reason. 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, notwithstanding a good faith effort to secure such funds, 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. In consideration of the AGO and RC's observance and performance of the covenants, terms and conditions set forth herein, the PCSO agrees as follows:

- a) PCSO will employ a psychologist as a full time employee of PCSO. The psychologist's duties will

include the performance of activities for AGO, RC and other requesting law enforcement agencies as set forth in this Agreement. The psychologists shall remain an employee of PCSO, and PCSO shall retain the exclusive responsibility for any such employee, including but not limited to regular and overtime 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 AGO, RCPD, RCFD or other requesting law enforcement agency when performing duties pursuant to this Agreement. All actions of a disciplinary nature concerning this psychologist will be handled by the PCSO with input from AGO and RC.

- b) Daily supervision of the psychologist will be done by the PCSO. Consistent with section 6 of this Agreement, direction will be given by the party or agency for which the psychologist is providing services.

4. In consideration of PCSO's observance and performance of covenants, agreements, terms and conditions set forth herein, AGO agrees to reimburse PCSO, on an annual basis from the date

the psychologist is employed by PCSO, for costs pertaining to employment in the amounts of \$35,000 from the state's Drug Control Fund and \$11,400 from Division of Criminal Investigation Law Enforcement Training, payable in quarterly payments unless otherwise agreed. PCSO will submit itemized invoices to AGO along with its request for reimbursement. Payments to PCSO under this Agreement shall be made within a timely manner of receipt of a properly completed and documented invoice. If the Agreement is terminated during an annual payment cycle, AGO's payment obligations are limited to the pro rate share of the actual employment costs for the time period AGO's payment obligations under this Agreement were in effect.

5. In consideration of PCSO's observance and performance of covenants, agreements, terms and conditions set forth herein, RC agrees to reimburse PCSO, on an annual basis from the date the psychologist is employed by PCSO, for costs pertaining to employment in the amount of \$22,800, payable in quarterly payments unless otherwise agreed. PCSO will submit itemized invoices to RC along with its request for reimbursement. Payments to PCSO under this Agreement shall be made within timely manner of receipt of a property completed and documented invoice. If the Agreement is terminated during an annual payment cycle, RC's payment obligations are limited to its pro rate share of the actual employment costs for the time period

its payment obligations under this Agreement were in effect.

6. The parties agree and understand that the psychologist hired by 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: assisting in response to barricaded subjects and hostage situations; assisting in critical incident debriefing; provide training; pre-employment testing and fitness for duty assessments; and providing psychological services to law enforcement officers where the need arises due to employment related conditions. Said services will be provided to each of the parties at no additional charge beyond the billings set forth in Sections 4 and 5 above.
- b) The psychologist will also provide these same services to other law enforcement agencies upon request, based upon available time and priority given to the request as set forth in section c) below. The services provided to the requesting law enforcement agencies will be without charge except for pre-employment testing. For pre-

employment testing, 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 PCSO and requesting agency for actual services performed. The money received from such services will off set AGO and RC payment obligations described in Sections 4 and 5 above, such offset to be based upon the percentage of their respective payments as described in Sections 4 and 5 to the total employment costs incurred by PCSO for the psychologist.

- c) If the demands upon the psychologist 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: i) Critical need situations such as barricade, hostage, and critical debriefing; ii) fitness for duty assessments and other services for employment related condition; iii) training; iv) pre-employment screening for AGO, PCSO and RC; and v) pre-employment screening for other law enforcement agencies. If the time of providing

of services is still not resolved, the priority of services will be: first with PCSO, second RCPD, third DCI, fourth RCFD and fifth, other law enforcement agencies on a first request basis.

7. This Agreement shall be governed and construed in accordance with the laws of the State of South Dakota.

8. 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. This Agreement can be terminated upon thirty (30) days written notice by either AGO or RC, however, said party giving notice under this section is still responsible for payments set forth in Sections 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 with or without notice. If PCSO terminates the Agreement, then AGO and RC's financial obligations cease upon the effective date of the termination.

10. 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. The parties declare that no specific entity, as contemplated in SDCL 1-24-4, is being created to implement this Agreement, and that the cooperative undertaking herein described shall be administered by the Attorney General, the Pennington County Sheriff and the Rapid City Mayor and their authorized designees as contemplated in SDCL 1-24-5.

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

13. All notices or communications herein shall be in writing and shall be sufficiently given and shall be deemed given as delivered, if delivered by personal delivery to the Attorney General, Pennington County Sheriff, Rapid City Mayor or their authorized designees or by mail to the parties at the following addresses:

Attorney General's Office
1302 East Highway 14 Suite 5
Pierre, SD 57501

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

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

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

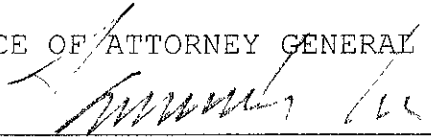
14. In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

15. 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 herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

16. By the signature of their representative below, AGO, 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 that party's behalf. A copy of PCSO and RC's authorizing resolution or ordinance are attached to this Agreement and incorporated herein by reference.

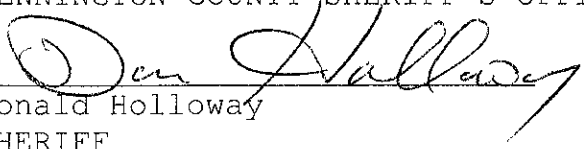
IN WITNESS HERETO, the parties have set their hand effective the day and year above first written.

OFFICE OF ATTORNEY GENERAL



Lawrence E. Long
ATTORNEY GENERAL

PENNINGTON COUNTY SHERIFF'S OFFICE



Donald Holloway
SHERIFF

CITY OF RAPID CITY

Alan Hanks
MAYOR

ATTEST:

James Preston
Finance Officer

JOINT POWERS AGREEMENT 2008-2010 (ATG-PCSO psychologist - Magnavito)