

**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 this 20th day of April, 2012, by the State of South Dakota, Office of Attorney General, 1302 East Hwy 14, Ste. 5, Pierre, SD 57501, hereinafter identified as "AGO," Pennington County, acting through the Pennington County Sheriff's Office, 300 Kansas City Street, Ste. 100, 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 chapters 1-24.

WHEREAS, the AGO has the authority under SDCL chapters 1-11 and 23-3 to enter into this type of Agreement to aid AGO agents and prosecutors in investigating and enforcing the state's criminal 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 712-9; and

WHEREAS, RC has the authority to enter into this type of agreement pursuant to SDCL 929-2 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 employment and training activities of law enforcement and emergency services personnel.

WHEREAS, AGO, 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. That the term of this Agreement shall commence upon the execution hereof effective the day and year above first written and continue until December 31 2014, unless amended or terminated or extended pursuant to the terms hereof.
2. This Agreement depends upon continued availability of drug control, 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. 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, 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 AGO 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 psychologist as a full time employee of PCSO. The psychologist's duties will include the performance of activities for PCSO, AGO, RC and other requesting law enforcement agencies as set forth in this Agreement. The psychologist 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 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 PCSO. Consistent with section 6 of this Agreement direction will be given by the party or agency 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 \$26,000, split between the state's Drug Control Fund and Law Enforcement Training funds, 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 30 days of receipt of a properly completed and documented invoice. If the Agreement is terminated pursuant to this section during an annual payment cycle, AGO's payment obligations are limited to the pro rata share of the actual employment costs for the time period AGO's payment obligations under this Agreement were in effect.

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

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 \$35,000 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 30 days of receipt of a properly completed and documented invoice. 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. 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:

- 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.

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.

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:

- 1) Critical need situations such as barricade, hostage, and critical debriefing;
- 2) fitness for duty assessments;
- 3) training;
- 4) pre-employment screening for AGO, PCSO and RC; and
- 5) pre-employment screening for other law enforcement agencies.

If the timing 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. Further PSCO agrees if it terminates the Agreement to reimburse AGO and RC's a pro rata share of any annual payments.

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, 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:

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

Pennington County Sheriff's Office
300 Kansas City Street
Suite 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. 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. 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. 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 the party's behalf. A copy of PCSO and RC's authorizing resolution or ordinance are attached to this Agreement and incorporated herein by reference.

18. The Parties acknowledge that a true and correct copy of this Agreement will be filed with the Office of Attorney

General and the Legislative Research Council within 14 days of its final execution pursuant to SDCL 1-24-6.1.

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

OFFICE OF ATTORNEY GENERAL

Marty Jackley 4-10-12
Marty Jackley Date
Attorney General

Bryan Gortmaker 4-10-12
Bryan Gortmaker Date
Director DCI

PENNINGTON COUNTY SHERIFF'S OFFICE

Kevin Thom 4-12-12
Kevin Thom Date
Sheriff

CITY OF RAPID CITY

Sam Kooiker Date
Mayor

ATTEST:

Finance Officer Date

**APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE**
WEN 4/25/12
Attorney Date