

**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 24<sup>th</sup> day of Sept, 2015, 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 and consumer protection laws and to 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 for the Rapid City Police Department (RCPD) and

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

WHEREAS, AGO, 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. That the term of this Agreement shall commence upon the execution hereof effective the day and year above first written and continue for three years from that date, unless amended or terminated or extended pursuant to the terms hereof.
2. The AGO'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. 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 computer forensic examiner as a full time employee of PCSO. The computer forensic examiner's duties will include the performance of activities for PCSO, AGO, 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 AGO, 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 AGO 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) In consideration of AGO's and RC's observance and performance of the covenants, agreements, terms and conditions set forth herein, PCSO agrees to contribute at least \$25,000.00 annually toward employment of the computer forensic examiner.

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 computer forensic examiner is employed by PCSO, for costs

pertaining to employment in the amounts of \$25,000, 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 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 computer forensic examiner is employed by PCSO, for costs pertaining to employment in the amount \$25,000 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 computer forensic examiner hired by 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. 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. This Agreement shall be governed and construed in accordance with the laws of the State of South Dakota.

9. 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. 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 PCSO

agrees if it terminates the Agreement to reimburse AGO and RC a pro rata share of any annual payments.

11. 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. 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.

13. 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. 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.

15. 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.

16. 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.

17. 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. 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.

19. 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    Date  
Attorney General

\_\_\_\_\_  
Bryan Gortmaker    Date  
Director DCI

PENNINGTON COUNTY SHERIFF'S OFFICE

    9-24-15  
\_\_\_\_\_  
Kevin Thom    Date  
Sheriff

CITY OF RAPID CITY

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Steve Allender                                  Date  
Mayor

ATTEST:

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Finance Officer                                  Date