

LF102903-15

LAW ENFORCEMENT JOINT POWERS AGREEMENT

THIS JOINT POWERS AGREEMENT is entered by and among the South Dakota Office of Attorney General, 500 East Capitol, Pierre, SD 57501-5070 (hereinafter identified as AGO), the City of Rapid City Police Department (address), the County of Pennington Sheriff's Office (address), the County of Meade Sheriff's Office (address) and the County of Lawrence Sheriff's Office (address) (hereinafter such local law enforcement agencies collectively identified as LLAs and separately by name or LLA), pursuant to the authority provided in SDCL chapter 1-24.

WHEREAS, the manufacture, distribution, sale and possession of illegal drugs and marijuana are serious problems in the State of South Dakota; and,

WHEREAS, although law enforcement officers for LLAs have the police power authority under SDCL chapters 7-12, 9-29, 23-3, 34-20B and Title 23A and local ordinances to investigate and enforce state criminal laws within their respective jurisdictional boundaries, due to the nature of drug trafficking and the limited geographical jurisdiction of the local law enforcement officers, it is difficult to effectively investigate illegal activity and enforce state drug, marijuana and controlled substance laws; and,

WHEREAS, AGO agents and assistants have statewide police power authority to investigate and enforce state criminal laws under SDCL chapters 23-3, 34-20B and Title 23 but AGO requires assistance in the form of additional personnel and financial resources to more fully investigate and enforce the state's drug, marijuana and controlled substance laws; and,

WHEREAS, AGO and the LLAs under SDCL chapter 34-20B jointly hold the police powers to investigate and enforce the state's drug, marijuana and controlled substance laws, and have the duty to cooperate in investigative and enforcement efforts; and

WHEREAS, the Attorney General has the authority under SDCL chapters 1-11 and 23-3 to appoint special assistants to aid AGO in investigating and enforcing the state's drug, marijuana and controlled substance laws; and,

WHEREAS, as AGO and LLAs believe it is a more efficient use of limited state and local resources to enter into this joint undertaking as set forth below:

NOW THEREFORE IT IS MUTUALLY AGREED AS FOLLOWS:

1. The term of this Agreement shall commence on the date of final execution by all parties and shall continue in effect until terminated as provided herein.

2. In consideration of AGO's observance and performance of the covenants, terms and conditions set forth herein, each LLA:

(a). Agrees to provide law enforcement officer(s) with drug , marijuana and controlled substance law enforcement training as candidates for potential appointment as a special assistant by the Attorney General;

(b). Agrees that if any law enforcement officer's appointment is terminated, whether by revocation by the Attorney General, reassignment by a LLA, termination of employment, or otherwise, the LLA may provide another law enforcement officer for consideration;

(c). Agrees if a law enforcement officer of a LLA is appointed a special assistant pursuant to this Agreement, the officer may, when acting under that appointment, participate in drug, marijuana and controlled substance investigations and law enforcement activities as well as other law enforcement duties that are associated with or arise out of these activities where the need arises outside of the LLA's jurisdictional boundaries in the state of South Dakota, all under the supervision, direction and control of AGO;

(d). Agrees that when a law enforcement officer is acting under a special assistant appointment, the officer shall remain an officer or employee of the LLA, and the LLA shall retain the exclusive responsibility for any such officer, including but not limited to regular and overtime wages and salaries, unemployment benefits, worker's compensation coverage, health insurance and other benefits.

(e). Agrees to obtain and maintain liability coverage for all law enforcement officers acting under a special assistant appointment pursuant to this Agreement, for all activities performed outside its jurisdiction boundaries in the state of South Dakota, under the same terms and conditions of coverage of the LLAs officers and employees while performing law enforcement activities for the LLA. Failure to obtain and maintain all liability coverage required under this Agreement will result in immediate withdrawal of the LLA from this Agreement and revocation of all special assistant appointments of the LLA's law enforcement officers. The LLA will provide AGO with satisfactory written evidence from the LLA's insurer or liability carrier of such liability coverage for activities of LLA's law enforcement officers outside of LLA's jurisdiction and will immediately notify AGO of any change or termination of coverage. The LLA understands that AGO has no liability coverage for any law enforcement officers appointed as special assistants pursuant to this Agreement;

Can the
police dept. budget
handle this
extra cost?

(f). Agrees, when acting under a special assistant appointment, that a law enforcement officer may utilize all equipment and property that is available for use when the officer is on duty for the LLA. The LLA will retain title and ownership of all such property and equipment and will be solely responsible for all maintenance and upkeep, loss or damage for such property and equipment; and

(g). Agrees, when acting under a special assistant appointment, that a law enforcement officer is under the supervision, direction and control of AGO. Nothing in the Agreement authorizes or allows any law enforcement officer to take unilateral action while acting under a special assistant appointment.

3. The parties understand that there is nothing in this Agreement which prevents any law enforcement officer who has received a special assistant appointment, when not acting hereunder, from performing law enforcement duties for the LLA or for another governmental entity outside the LLA's jurisdiction under a cross deputization agreement.
4. In consideration of the LLAs' observance and performance of the covenants, terms and conditions set forth herein, AGO:

(a). Agrees to review the qualifications of all law enforcement officers submitted to the Attorney General for appointment as a special assistant;

(b). Agrees to provide additional training to candidates for appointment and to appointees, as AGO in its discretion determines appropriate. The cost of any such training shall be borne equally by AGO and each LLA providing candidates;

(c). Agrees to loan LLA law enforcement officers performing duties under a special assistant appointment with specialized property and equipment AGO determines is needed that is not available from the LLA at no cost to the LLA under terms and conditions established by AGO including the LLA being responsible for loss or damage to the property caused by the LLA's law enforcement officer; and

(d) Agrees, to the extent practicable, to notify each applicable LLA in advance when an appointee is needed to perform services as a special assistant.

5. The parties acknowledge and agree that the decision to issue a special assistant appointment, and the terms and conditions of any such appointment, are solely within the discretion of the Attorney General, that any appointee serves at the will of the Attorney General and that the Attorney General may revoke the appointment at anytime and for any reason. The parties further understand that the law enforcement officers

who receive a special assistant appointment will be working primarily on drug, marijuana and controlled substance related law enforcement activities, but may perform other law enforcement activities that are associated with or arise out of these activities where the need arises, and will perform those additional law enforcement activities under the supervision, direction and control of AGO as provided in paragraph 6.

6. The parties acknowledge and agree that special assistant appointments issued under this Agreement and will only be effective during the time period a LLA law enforcement officer is outside of the LLA's jurisdictional boundaries and under the supervision, direction and control of AGO for the purposes established under this Agreement. The supervision, direction and control will be generally through Division of Criminal Investigation agents and Assistant Attorneys General assigned drug enforcement and prosecution activities. An appointment will not be valid until it is filed with the Secretary of State. The appointment is activated by a verbal request from a Division of Criminal Investigation agent for the LLA law enforcement officer to perform law enforcement activities outside LLA's jurisdictional boundaries, and deactivated when the LLA law enforcement officer is informed by a Division of Criminal Investigation agent verbally that services under the appointment are concluded or upon the officer's return to LLA's jurisdictional boundaries.
7. Nothing in this Agreement is intended to provide AGO with any ability to effect the terms and conditions of employment of LLAs' law enforcement officers. AGO's sole authority is to supervise, control and direct a special assistant while that person is performing services pursuant to this Agreement.
8. This Agreement is not meant and shall not be construed to limit any other or additional cooperative efforts between the parties.
9. Any LAA may withdraw from this Agreement by providing the other parties with 30-day written notice or as provided by section 11(b). The Agreement will remain in effect unless the remaining parties agree to terminate under terms and conditions agreed to at the time.
10. This Agreement can be terminated by AGO for any reason by providing written notice to the other parties or upon agreement of the parties.
11. Notwithstanding any other provision, this Agreement depends upon continued availability of appropriated funds and expenditure authority from the Legislature and the LLAs' governing bodies for the purposes contemplated herein.

(a). This Agreement will be terminated if the Legislature fails to appropriate funds or grant expenditure authority or if there is a lack of sufficient appropriated funds or lack of expenditure authority available to AGO to perform its obligations under this Agreement, whether due to lack of appropriations by the Legislature or otherwise. AGO will provide written notice of termination to the LLAs once the determination of funding insufficiency is made. Termination under this provision does not constitute a default or give rise to any claim against the notifying party.

(b). Any LLA may withdraw from this Agreement if its governing body fails to budget funds, or grant expenditure if there is a lack of sufficient appropriated funds or lack of expenditure authority available to a LLA to perform its obligations under this Agreement. The effected LLA will provide written notice to the other parties once the determination of funding insufficiency is made and the termination of the Agreement will be effective December 31 of the year in which notice is given. Withdrawal under this provision does not constitute a default or give rise to any claim against the notifying party.

12. This Agreement, or any part thereof, or benefits to be received hereunder, shall not be assigned, transferred or otherwise disposed of to any person, firm, corporation or other entity. This Agreement may not be modified or amended except in writing, which writing shall be expressly identified as part of this Agreement, and which writing shall be signed by the Attorney General on behalf of AGO, the Rapid City Chief of Police on behalf of the Rapid City Police Department, the Meade County Sheriff's Office on behalf of the Meade County Sheriff's Office, the Pennington County Sheriff on behalf of the Pennington County Sheriff's Office, and the Lawrence County Sheriff on behalf of the Lawrence County Sheriff's Office, or their authorized designees.
13. This Agreement shall be governed and construed in accordance with the laws of the State of South Dakota.
14. The Parties declare that no specific entity as contemplated in SDCL 1-24-4(2) is being created to implement this Agreement, and that the cooperative undertaking herein described shall be administered by AGO, through the Director of the Division of Criminal Investigation and LLAs through the persons identified in section 12 or authorized designees as contemplated in SDCL 1-24-5.
15. 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.

16. All notices or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the persons identified in sections 12 and 14 on behalf of AGO and each LLA, or such authorized designees as a party may from time to time designate in writing. Notices of communications to or between the parties shall be deemed to have been delivered when mailed by first class mail or, if personally delivered, when received by such party.
17. 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 herein.
18. 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.
19. This Agreement is intended to only to govern the rights and interest 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.
20. 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.
21. By the signature of their representative below, AGO and each LLA certifies that approval of this Agreement by ordinance, resolution or other appropriate means has been obtained by that governmental body's governing body or officer pursuant to SDCL 1-24-3 and 1-24-6 and that the representative is authorized to sign on the party's behalf. A copy of each LLAs' authorizing resolution or ordinance is attached to this Agreement and incorporated herein by reference.

IN WITNESS WHEREOF, the parties signify their agreement by signatures affixed below:

STATE OF SOUTH DAKOTA OFFICE OF ATTORNEY
GENERAL

By _____ Date _____
Larry Long
Attorney General

RAPID CITY POLICE DEPARTMENT

By: _____
Craig Tieszen Date
Chief of Police

MEADE COUNTY SHERIFF'S OFFICE

By: Ron Merwin 9-9-05
Ron Merwin Date
Sheriff

LAWRENCE COUNTY SHERIFF'S OFFICE

By: _____
Rick Mowell Date
Sheriff

PENNINGTON COUNTY SHERIFF'S OFFICE

By: _____
Don Holloway Date
Sheriff