

Notice of Hearing: \_\_\_\_\_  
 Date of Hearing: \_\_\_\_\_  
 Date Adopted: \_\_\_\_\_  
 Date Published: \_\_\_\_\_  
 Date Effective: \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING A JOINT POWERS AGREEMENT BETWEEN THE SOUTH DAKOTA OFFICE OF ATTORNEY GENERAL AND THE SIOUX FALLS POLICE DEPARTMENT.

WHEREAS, it appears appropriate that the South Dakota Office of Attorney General and the Sioux Falls Police Department enter into a joint powers agreement setting forth the responsibilities of each agency as they relate to the enforcement of drug laws of the state of South Dakota and the United States of America;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF SIOUX FALLS, SD:

That the document attached to and part of this resolution entitled "Joint Powers Agreement Attorney General's Office and Sioux Falls Police Department Joint Drug Enforcement" is hereby approved.

That the Mayor of Sioux Falls is authorized to execute the joint powers agreement described above, a copy of which is attached hereto and incorporated herein by this reference.

Date adopted: \_\_\_\_\_.

\_\_\_\_\_  
Paul TenHaken, Mayor

ATTEST:

\_\_\_\_\_  
Jermery J. Washington, City Clerk

**JOINT POWERS AGREEMENT  
ATTORNEY GENERAL'S OFFICE AND  
SIOUX FALLS POLICE DEPARTMENT  
JOINT DRUG ENFORCEMENT**

THIS JOINT POWERS AGREEMENT is entered by and among the South Dakota Office of Attorney General, 1302 East Highway 14, Pierre, SD 57501-8505 (hereinafter identified as AGO); and the Sioux Falls Police Department, pursuant to the authority provided in SDCL chapters 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 the Sioux Falls Police Department has police power authority under SDCL chapters 7-12, 34-20B and Title 23 and local ordinances to investigate and enforce state criminal laws within its 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 Sioux Falls Police Department 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 the AGO in investigating and enforcing the state's drug, marijuana, and controlled substance laws; and

WHEREAS, as AGO and the Sioux Falls Police Department 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. **PURPOSE:** The purpose of this Agreement is to set forth the responsibilities of the participating law enforcement agencies to work together to endeavor to effectively enforce the drug laws of the State of South Dakota and the United States of America with the goal of significantly diminishing the manufacture, availability, use, sale, and distribution of illegal drugs in Sioux Falls, SD.
2. **MISSION:** The Parties' mission is to investigate crimes relating to and arising out of, caused by or in any way connected with use, sale, distribution, or manufacture of illegal drugs. The Parties will target their joint investigations toward the investigation and apprehension of all levels of drug violators, prioritizing large scale traffickers or those

who are in the possession of all controlled substances to include highly dangerous synthetics such as Fentanyl. The coordinated drug enforcement effort is intended to maximize the Parties' law enforcement resources and to facilitate the flow of drug related intelligence information between the law enforcement agencies.

3. TERM: 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.
4. DUTIES AND RESPONSIBILITIES: Sioux Falls Police Department, in consideration of AGO's observance and performance of the covenants, terms, and conditions set forth herein agrees:

(a) 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. The decision to issue a special assistant appointment is solely within the discretion of the Attorney General, any appointee serves at the will of the Attorney General, and the Attorney General may revoke the appointment at any time and for any reason;

(b) That law enforcement officers appointed as special assistants, when acting under that appointment, may 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 Sioux Falls Police Department jurisdictional boundaries in the state of South Dakota, under the supervision and direction of AGO. The special assistant appointment will only be effective during the time period a Sioux Falls Police Department law enforcement officer is outside of the Sioux Falls Police Department jurisdictional boundaries and under the supervision and direction of the AGO. The supervision and direction will be generally through the Division of Criminal Investigation (DCI) agents and Assistant Attorney General's assigned drug enforcement and prosecution activities. All investigative activities will be properly documented in investigative files shared timely with appropriate DCI agent(s). Law Enforcement Officers appointed as special assistants will work at all times in a cooperative manner and will conduct or participate in basic narcotics preoperational planning meetings, briefings, CI Recruitment, CI Management, and deconfliction efforts and after-action reviews and other duties as assigned by the supervising the DCI agent. The appointment is activated by a verbal request from a DCI agent, and deactivated when the law enforcement officer is informed by a DCI agent verbally that services under the appointment are concluded or upon the officer's return to the Sioux Falls Police Department jurisdictional boundaries. Nothing in the Agreement authorizes or allows any law enforcement officer to take unilateral action while acting under a special assistant appointment;

(c) That upon termination of any law enforcement officer's special assistant appointment, whether by revocation by the Attorney General, termination of employment, or otherwise, the Sioux Falls Police Department will provide another law enforcement officer for consideration;

(d) That a law enforcement officer acting under a special assistant appointment, shall remain an officer or employee of the Sioux Falls Police Department, and the Sioux Falls Police Department 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 and discipline;

(e) That the Sioux Falls Police Department is solely responsible for acts of its law enforcement officers acting under the scope of this Agreement, including acting under a special assistant appointment. The Sioux Falls Police Department will 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 jurisdictional boundaries in the State of South Dakota, under the same terms and conditions of coverage for the Sioux Falls Police Department officers and employees while performing law enforcement activities for the Sioux Falls Police Department; and

(f) That its law enforcement officer may utilize all equipment and property that is available for use when the officer is on duty for the Sioux Falls Police Department. The Sioux Falls Police Department will retain title and ownership of all such property and equipment, and will be solely responsible for all maintenance upkeep, loss, or damage of such property and equipment.

5. AGO DUTIES AND RESPONSIBILITIES: In consideration of the Sioux Falls Police Department observance and performance of the covenants, terms, and conditions set forth herein, the AGO agrees:

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

(b) To provide additional training to the Sioux Falls Police Department law enforcement officers who receive special assistant appointments, as the AGO in its discretion determines appropriate. The cost of any such training shall be agreed to by the AGO and the Sioux Falls Police Department;

(c) To loan law enforcement officers performing duties under a special assistant appointment with specialized property and equipment the AGO determines is needed that is not available from the Sioux Falls Police Department, at no cost to the Sioux Falls Police Department under terms and conditions, including the Sioux Falls Police Department being responsible for loss or damage to the property caused by the Sioux Falls Police Department law enforcement officer;

(d) To supply buy funds, subject to DCI guidelines regarding expenditure, reporting, inspection and auditing requirements and subject to agreement by the Sioux Falls Police Department that the Sioux Falls Police Department special assistants will be subject to and adhere to these DCI buy fund guidelines;

(e) To the extent practicable, to notify the Sioux Falls Police Department in advance when a law enforcement officer is needed to perform services as a special assistant;

- (f) To assign an agent to act as supervisor whose duties will include:
- i) Directing special assistant assignments and manpower as necessary for a given investigation;
  - ii) Providing leadership, coordination, and direct field operations; and
  - iii) Acting as liaison with the Sioux Falls Police Department, AGO, and other law enforcement agencies; and

(g) That DCI agents acting under the Agreement shall remain an officer or employee of AGO, and AGO 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 and discipline. That the AGO is also solely responsible for acts of its law enforcement officers acting under the scope of this Agreement.

6. TERMINATION: This Agreement can be terminated by either Party for any reason by providing written notice or upon agreement of the Parties. Notwithstanding any other provision, this Agreement depends upon continued availability of appropriated funds and expenditure authority from the legislature and the Sioux Falls Police Department's governing body 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 the 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 once the determination of funding insufficiency is made. Termination under this provision does not constitute default or give rise to any claim against the AGO.

(b) The Sioux Falls Police Department may terminate this Agreement if its governing body fails to budget funds, or grant expenditure authority, or if there is a lack of sufficient appropriated funds or lack of expenditure authority available to the Sioux Falls Police Department to perform its obligations under this Agreement. The Sioux Falls Police Department will provide written notice once the determination of funding insufficiency is made. Termination under this provision does not constitute default or give rise to any claim against the Sioux Falls Police Department.

7. MEDIA: All media releases concerning arrests and investigations conducted under this Agreement may be conducted jointly or by the AGO with prior notification given to the Sioux Falls Police Department.

8. FORFEITURES: AGO will manage all conveyances seized as a result of law enforcement activities under this Agreement. Such conveyances will be placed into law enforcement service or will be sold with the proceeds being delivered to the State Drug Control Fund or other AGO authorized fund. Cash seizures will be delivered to the State Drug Control Fund or other AGO authorized fund. Federal real estate seizures will be shared consistent with federal guidelines. All seizures will be adjudicated in State Court by the AGO unless otherwise agreed to by the Parties.

9. STATE-OWNED VEHICLES: In order to pursue its mission, the Sioux Falls Police Department may be provided with the use of vehicles owned by the State of South Dakota ("State"). The Sioux Falls Police Department agrees to hold harmless and indemnify the State from and against any and all liability arising from the use, possession, operation, or maintenance of the State-owned vehicles by employees of the Sioux Falls Police Department who are participating in this Agreement. This section does not require the Sioux Falls Police Department to indemnify and hold harmless the State, its officers, agents, or employees from and against any claims or liability arising solely from the acts, omissions, or negligence of the State, its officers, agents, or employees.
10. GENERAL PROVISIONS:
- (a) 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 shall be signed by authorized representatives of the Parties.
- (b) This Agreement shall be governed and construed in accordance with the laws of the State of South Dakota.
- (c) 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 the AGO, through its DCI Director and the Sioux Falls Police Department by its Sheriff, or their authorized designees as a party may from time to time designate as contemplated in SDCL 1-24-5.
- (d) 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 above. Notices or 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.
- (e) This Agreement is intended 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.
- (f) 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.
- (g) 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.

(h) 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.

(i) By the signature of their representative below, the AGO and the Sioux Falls Police Department each certify 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 any 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 \_\_\_\_\_  
Marty J. Jackley (Date)  
Attorney General

By \_\_\_\_\_  
Daniel A. Satterlee (Date)  
Director, Division of Criminal Investigation

CITY OF SIOUX FALLS

ATTEST:

\_\_\_\_\_  
Paul TenHaken (Date)  
Mayor, City of Sioux Falls

\_\_\_\_\_  
Shawn Pritchett (Date)  
Director of Finance  
City of Sioux Falls

\_\_\_\_\_  
Jon Thum (Date)  
Chief, Sioux Falls Police