

**JOINT POWERS AGREEMENT
BETWEEN THE STATE OF SOUTH DAKOTA
OFFICE OF ATTORNEY GENERAL AND THE
PENNINGTON COUNTY STATE'S ATTORNEYS OFFICE
(LEGAL ASSISTANT)**

THIS JOINT POWERS AGREEMENT is entered into by the State of South Dakota, Office of Attorney General, 500 East Capital Avenue, Pierre, SD 57501-5070, hereinafter identified as "AGO" and Pennington County, acting through the Pennington County State's Attorneys, 300 Kansas City Street, Rapid City, SD 57701, hereinafter referred to as "PCSA," pursuant to the authority as provided in SDCL ch. 1-24.

WHEREAS, the AGO has the authority under SDCL chapters 1-11 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 marijuana and controlled substance laws, and for overall drug control and drug offender apprehension efforts; and,

WHEREAS PCSA has the authority to enter into this type of agreement pursuant to SDCL 7-16-7.1; and,

WHEREAS PCSA provides assistance to the Unified Narcotics Enforcement Team (UNET), which is made up of the Rapid City Police Department, Pennington County Sheriff's Office, and the Division of Criminal Investigation, a division of the AGO, enforces the State's marijuana and controlled substance laws within Pennington County; and

WHEREAS requests for the AGO to prosecute cases arising out of the investigations done by UNET has increased to the extent that a legal assistant is needed to further assist in the investigation, apprehension, and prosecution of drug cases; and,

WHEREAS, AGO and PCSA believe it is a more efficient use of resources to enter into a joint undertaking for assistance in the investigation and prosecution of UNET files and cases 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 from year to year unless amended or terminated or extended pursuant to the terms hereof. This Agreement shall continue from year to year unless either party provides written notice to the other of its intent not to renew, not less than thirty (30) days prior to the anniversary date of this Agreement.

2. This Agreement depends upon continued availability of drug control funds and expenditure authority from the Legislature to AGO for the purposes contemplated herein. This Agreement will be terminated if the Legislature fails to grant expenditure authority, if the drug control fund is abolished, or if amount of money in the fund falls below the level required for the AGO to distribute the funds pursuant to SDCL 34-20B-64. It will also be terminated should drug control funds become unavailable for any reason, including but

not limited to the termination of federal match Byrne funds. This Agreement also depends upon the continued availability of appropriated funds and expenditure authority from the county commission to PCSA 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's observance and performance of the covenants, terms and conditions set forth herein, the PCSA agrees as follows:

a) PCSA will assign a legal assistant acceptable to AGO to assist the UNET and the drug prosecutor assigned by the AGO in the performance of their UNET duties. The legal assistant shall devote at least 40 hours per week to the services provided pursuant to this Agreement. The legal assistant shall remain an employee of PCSA, and PCSA shall retain the exclusive responsibility for any such employee,

including but not limited to regular and overtime wages and salary, unemployment benefits, worker's compensation coverage, health insurance and other benefits, and liability coverage, notwithstanding that the assistant will be acting under the supervision and control of AGO or the supervising DCI agent when performing duties pursuant to this Agreement. All actions of a disciplinary nature concerning this assistant will be handled by the PCSA with input from the drug prosecutor assigned to UNET and the DCI supervisor from UNET.

b) Daily supervision of the legal assistant will be done by the drug prosecutor assigned to UNET and the DCI supervisor from UNET jointly. PCSA agrees that upon request by AGO, PCSA will assign a different PCSA employee to provide the services described herein.

4. In consideration of PCSA's observance and performance of covenants, agreements, terms and conditions set forth herein, AGO agrees to reimburse PCSA for services by the legal assistant out of the South Dakota Drug Control Fund up to the maximum amount of twenty-six thousand dollars (\$ 26,000) for the first year. This maximum amount may be increased by the parties for subsequent years through amendments entered into consistent with this Agreement. Unless otherwise agreed, PCSA will submit monthly itemized invoices for the services provided to AGO. Payments to PCSA under

this Agreement shall be made within 30 days of receipt of a properly completed and documented invoice.

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

6. This Agreement may not be assigned without the express prior written consent of AGO. 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.

7. This Agreement can be terminated upon thirty (30) days written notice by either party and may be terminated for cause by AGO at any time with or without notice.

8. 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 AGO 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.

9. 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 and the Pennington

County State's Attorney and their authorized designees as contemplated in SDCL 1-24-5.

10. 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.

11. 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, PCSA or their authorized designees or by mail to the parties at the following addresses set forth above. The parties, by given notice hereunder may designate any further or different addresses to which subsequent notices, certificates, and other communications shall be sent.

12. 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.

13. 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.

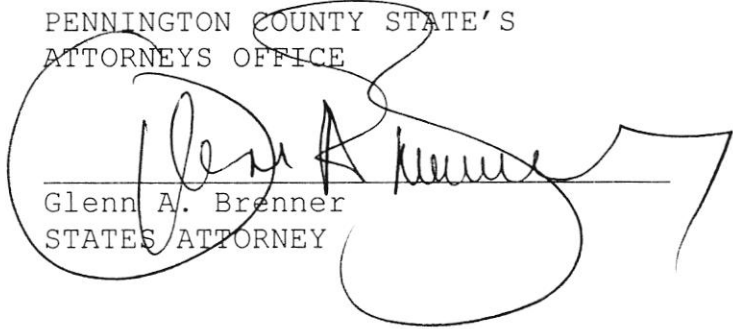
14. By the signature of their representative below, AGO and PCSA certify that approval of this Agreement has been obtained by that governmental entity's governing body or officer pursuant to SDCL 1-24-3 and 1-24-6, either by ordinance, resolution or other appropriate means, and that the representative is authorized to sign on that party's behalf. A copy of the authorizing resolution or ordinance is attached to this Agreement and incorporated herein by reference.

IN WITNESS HERETO, the parties have set their hand on this _____ day of _____, 2005.

OFFICE OF ATTORNEY GENERAL

Lawrence Long
ATTORNEY GENERAL

PENNINGTON COUNTY STATE'S
ATTORNEYS OFFICE



Glenn A. Brenner
STATES ATTORNEY

