

sheriff

07-060
ONGOING

**JOINT POWERS AGREEMENT
24/7 SOBRIETY PROGRAM**

This JOINT POWERS AGREEMENT (AGREEMENT) is entered into this 1st day of July, 2007, among the South Dakota Office of Attorney General (AGO) located at 1302 East Highway 14, Suite 1, Pierre South Dakota 57501, and the State agencies and county law enforcement entities (PARTICIPANTS) that agree to participate in this AGREEMENT by executing the Joint Powers Participation Form attached herewith.

WHEREAS, AGO and PARTICIPANTS acknowledge that each has the separate statutory authority to enter into and undertake certain activities described herein and the provisions of SDCL 1-24 permit such activities to be jointly undertaken; and

WHEREAS, the South Dakota Legislature enacted SL 2007 chapter 4 that created a statewide 24/7 Sobriety Program and the Attorney General promulgated rules under ARSD Art. 2:06 to implement the Program, both to become effective July 1, 2007; and

WHEREAS, it is a more efficient use of public resources to enter into this joint undertaking in order for AGO and PARTICIPANTS to carry out their respective duties and responsibilities under the 24/7 Sobriety Program, the authorizing statutes and administrative rules;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and the joint and mutual benefits and responsibilities flowing to each party as outlined in this AGREEMENT, the parties agree as follows:

1. The AGREEMENT shall commence on July 1, 2007 for AGO, and shall commence for each PARTICIPANT upon either July 1, 2007, or the date of the PARTICIPANT'S execution of the Joint Powers Participation Form attached herewith, whichever date is later, and shall continue in effect until terminated by agreement of the parties or as otherwise permitted by this AGREEMENT.
2. This AGREEMENT shall depend upon the continued availability of appropriated funds and expenditure authority from the Legislature to AGO for the purposes contemplated herein. In the event it becomes necessary that the Legislature appropriate funds and grant expenditure authority for the purposes contemplated herein but fails to do so, this AGREEMENT may be terminated by AGO. The participation in this AGREEMENT by PARTICIPANTS also depends upon the continued availability of appropriated funds and

expenditure authority from the Legislature or the governing boards of the county law enforcement entities for the purposes contemplated herein. In the event it becomes necessary that the Legislature or a county commission appropriate funds and grant expenditure authority for the purposes contemplated herein but fails to do so, then the applicable PARTICIPANT may terminate its participation in this AGREEMENT.

3. AGO agrees to provide to PARTICIPANT County Sheriff's Offices or the designated entities who will perform enrollment, testing and reporting activities under the 24/7 Sobriety Program:
 - a) Portable/initial breath testing equipment, continuous electronic alcohol monitoring devices, drug patches and associated supplies as determined by AGO, taking into consideration the needs of all PARTICIPANTS and available money in the 24/7 Sobriety Fund;
 - b) A web-based enrollment and reporting system;
 - c) Reimbursement for costs incurred by PARTICIPANTS associated with their enrollment, testing and reporting activities under the 24/7 Sobriety Program, taking into consideration the needs of all PARTICIPANTS and available money in the 24/7 Sobriety Fund.
4. AGO agrees to provide all PARTICIPANTS:
 - a) Access to the web-based enrollment and reporting system information for authorized government and law enforcement use;
 - b) Training on equipment provided and use of the web-based enrollment and reporting system;
 - c) Forms necessary for the 24/7 Sobriety Program;
 - d) Assistance in working with local judges, clerks of court, state's attorneys, court service officers, defense attorneys and state agencies in the implementation of the 24/7 Sobriety Program.
5. AGO agrees to pay third-party contractor costs associated with continuous electronic alcohol monitoring testing.
6. PARTICIPANT County Sheriff's Offices agree to:
 - a.) Safeguard the supplies and equipment provided to them from AGO;

- b.) Comply with court orders, written directives, the authorizing statutes, and administrative rules in conducting enrollment, testing and reporting activities;
 - c.) Complete all 24/7 Sobriety Program forms;
 - d.) Timely submit all applicable fees received by them or the designated entity for deposit in the 24/7 Sobriety Fund;
 - e.) In the event a PARTICIPANT County Sheriff's Office designates one or more entities to perform enrollment, testing and reporting functions under the 24/7 Sobriety Program, PARTICIPANT agrees to require such designated entity or entities to comply with the terms and conditions of this AGREEMENT resulting from such designation;
 - f.) Cooperate with and assist other PARTICIPANTS in testing individuals placed in the 24/7 Sobriety Program;
 - g.) Promptly report to the appropriate entity all individuals who violate the conditions of the 24/7 Sobriety Program and, if authorized, take into custody violators of the 24/7 Sobriety Program from other jurisdictions and hold such violators until the original participating law enforcement agency or appropriate governmental agency can respond to such notice of violation. PARTICIPANTS may take violators into custody only if authorized pursuant to the terms of the order or directive placing the person in the 24/7 Sobriety Program;
 - h.) Promptly respond to other PARTICIPANTS' notices of testing failure, violation of bond conditions, violation of sentence, violation of probation/parole, violation of work permits or violation of child placement orders;
 - i.) Timely submit vouchers to AGO for reimbursement of qualifying costs.
7. Each PARTICIPANT Sheriff's Office hereby designates the Department of Corrections through its parole agents as an entity to perform all enrollment, testing and reporting functions under the 24/7 Sobriety Program for electronic alcohol monitoring device testing of parolees under directives issued pursuant to 2007 SL Chapter 4 Section 7 and PARTICIPANT Department of Corrections accepts such designation and agrees to comply with all the terms and conditions of this AGREEMENT resulting from such designation.
8. All PARTICIPANTS agree:

- a) To limit access and disclosure to authorized personnel all information maintained on the AGO web-based enrollment and reporting system and information disclosed by other PARTICIPANTS concerning individuals placed in the 24/7 Sobriety Program. PARTICIPANTS agree to use such information for authorized governmental and law enforcement purposes only.
 - b) To fully cooperate with AGO and other PARTICIPANTS in implementing the 24/7 Sobriety Program.
9. This AGREEMENT may be terminated by AGO at any time upon 60 days prior written notice given to all other parties.
 10. A PARTICIPANT'S participation in this AGREEMENT may be terminated at any time upon 60 days prior written notice given by the PARTICIPANT to all other parties. Such termination only terminates that PARTICIPANT'S agreement to participate and does not serve to terminate this AGREEMENT as it relates to other PARTICIPANTS.
 11. The parties shall negotiate in good faith the terms of any other agreement that is determined to be necessary or desirable to carry out the terms of this AGREEMENT.
 12. Time is of the essence of this AGREEMENT and all of its covenants, terms, conditions, and provisions.
 13. This AGREEMENT and the covenants herein contained shall inure to the benefit of and be obligatory upon the legal representatives, successors in interest, and assigns of the respective parties hereto.
 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 the Attorney General for AGO and the persons identified by PARTICIPANTS in each of the Joint Powers Participation Forms or their authorized designees.
 15. All notices or other communications hereunder shall be in writing and shall be deemed given when delivered, and if delivered by mail, shall be sent by first class, postage prepaid, to the parties at the address set forth above for AGO and the addresses for each PARTICIPANT as set forth in the applicable Joint Powers Participation Form.
The parties, by notice given hereunder, may designate any additional or different methods of notification and addresses to which notices and communications shall be provided.

16. In the event that any court of competent jurisdiction shall hold any provision of this AGREEMENT unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.
17. 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.
18. The parties acknowledge that a true copy of this AGREEMENT, as well as a true copy of each PARTICIPANT'S Joint Powers Participation Form and any attachments, will be filed with the Office of Attorney General and with the Legislative Research Council within fourteen (14) days of the execution hereof, as required by law.
19. By the signature of its representative on the Joint Powers Participation Form, each PARTICIPANT certifies that approval of this AGREEMENT by ordinance, resolution or other appropriate means has been obtained by that governmental body or officer pursuant to SDCL 1-24-3 and 1-24-6 and that the representative is authorized to sign on the PARTICIPANT'S behalf. A copy of any authorizing resolution or ordinance is attached to this AGREEMENT and is incorporated herein by reference.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT, as reflected by their respective signatures below and on the Joint Powers Participation Form submitted by each PARTICIPANT.

STATE OF SOUTH DAKOTA
OFFICE OF ATTORNEY GENERAL

By: _____
Larry Long
Attorney General

JOINT POWERS AGREEMENT
PARTICIPATION FORM
(24/7 SOBRIETY PROGRAM)

The Pennington County Sheriff's Office, located at Rapid City, South Dakota, by an through its authorized representative, hereby joins the foregoing Joint Powers Agreement (24/7 Sobriety Program) dated July 1, 2007, and upon execution of this Participation Form agrees to comply with all terms and conditions set forth in the AGREEMENT. For purposes of Sections 14 and 15 of the AGREEMENT, PARTICIPANT'S authorized representative is identified below, and notices shall be sent to the address provided.

Dated this 10th Day of August 2007.

PARTICIPANT:

Pennington County Sheriff's Office

BY: 

Don Holloway

Sheriff

300 Kansas City St., Suite 100

Rapid City, SD 57701

Telephone Number: 605-394-6113