

**AGREEMENT FOR THE JOINT EXERCISE OF PEACE OFFICER DUTIES BETWEEN
THE MONTANA DEPARTMENT OF JUSTICE, DIVISION OF CRIMINAL INVESTIGATION,
and
THE NORTH DAKOTA ATTORNEY GENERAL, BUREAU OF CRIMINAL INVESTIGATION**

Whereas, the Attorney General of North Dakota has requested the Montana Department of Justice, Division of Criminal Investigation, investigate the circumstances surrounding and giving rise to a construction cost overrun associated with the leasing and remodeling of 1720 Burlington Drive, Bismarck, North Dakota, including whether any related emails from the deleted email accounts of Wayne Stenehjem and Troy Seibel may be retrieved, (hereinafter Cost Overrun);

Therefore, pursuant to North Dakota Century Code (N.D.C.C.) ch. 54-40.3 and § 54-40.3-04, and Mont. Code Ann. (MCA) §§ 44-11-301 through 44-11-312, the Montana Department of Justice, Division of Criminal Investigation (DCI), whose address is P.O. Box 201417, Helena, MT. 59620, and the North Dakota Office of Attorney General, Bureau of Criminal Investigation (BCI), whose address is 1720 Burlington Drive, Suite B, Bismarck, ND. 58504 (collectively referred to as the Parties) hereby enter into this Agreement for the Joint Exercise of Peace Officer Duties (Agreement) for the investigation into the Cost Overrun.

1) **Required Approvals.**

a) Pursuant to N.D.C.C. ch. 54-40.3 and § 54-40.3-04, this Agreement is subject to the approval of the North Dakota Attorney General, or his designee, and the Montana Attorney General, or his designee, and is not effective until approved.

b) Pursuant to Mont. Code § 44-11-310, within twenty days after the final approval by the governing bodies of all parties, this Agreement must be filed in the office of each clerk and recorder of each county of Montana where the principal office of one of the parties to the Agreement is located, and with the Montana Secretary of State.

2) **Purpose.** The purpose of this Agreement is to grant the authority and establish the terms and conditions under which DCI will perform an independent investigation of the Cost Overrun. The scope of the investigatory and law enforcement authority granted by this Agreement is limited to circumstances surrounding and giving rise to the Cost Overrun. No other law enforcement duties are requested or required under this Agreement.

3) **Duration.** This Agreement shall be effective as of the effective date of this Agreement and shall be valid until such time as the investigation is completed and a final investigative report is delivered pursuant to section 11.

4) **Termination.** This Agreement may be terminated by either party at any time upon thirty days written notice to the other party. All property provided by one party to the other shall be returned to the party who provided it during the course of the investigation.

5) **Manner of Financing and Budget.** Each party will be responsible for the payment of compensation, salary, and benefits for its law enforcement employees who provide assistance under this Agreement. Each party shall independently budget for expected expenses under this Agreement. Each party shall be responsible for acquiring and holding its own equipment as provided for in paragraph 13.

BCI shall reimburse DCI for expenses related to travel at amounts not to exceed those outlined below:

- a) Lodging: Reimbursement shall not exceed the then-current, published GSA rate for the travel location. Copies of receipts are required for lodging reimbursement. BCI shall not reimburse for incidental and miscellaneous expenses charged to the room, including: alcohol, telephone charges, or entertainment (e.g., movies).
- b) Transportation: Reimbursement for rented, chartered, or contracted vehicle transportation shall be limited to reasonable rates as determined by BCI.
- c) Meals: Meals shall be paid on a per diem basis for each day of travel at then-current, published GSA per diem rate for the travel location. Per diem for the first and last day of travel shall be paid at seventy-five percent (75%) of the GSA per diem rate. Requests for per diem payments must include the start and end dates of travel, the location where the services are performed, and the allowable per diem amount for each trip on the billing/invoice.
- d) Payment for any travel expenses that exceed the travel budget as agreed upon by the parties must be approved by BCI.
- e) Reimbursement shall be made by BCI in a timely manner, but no later than 30 days after submission.

6) **Agreement Not to Relieve Agency of Duties.** Nothing in this Agreement shall relieve any law enforcement agency of any duty imposed upon it by law.

7) **Powers Granted.** DCI agents assigned and acting in furtherance of this Agreement shall have the same authority and jurisdiction granted to BCI agents under North Dakota law, however, DCI agents are limited in scope to the investigation of the Cost Overrun. The Attorney General of North Dakota and BCI shall take all steps necessary to ensure that DCI agents acting on behalf of the North Dakota Attorney General related to the investigation of the Cost Overrun are vested with the authority necessary to act as law enforcement agents in North Dakota. This Agreement does not authorize DCI agents to exercise any power within the state of North Dakota that BCI agents are not otherwise authorized to

exercise. DCI agents are also required to comply with their own applicable State policies when acting under this Agreement.

8) **Minimum Standards for Law Enforcement Employees.** It is agreed that every DCI agent or employee exercising peace officer duties pursuant to this Agreement shall have met the minimum standards for certification or licensure in DCI agent's home state and that such agents and employees shall be deemed to meet the minimum standards for certification or licensure in North Dakota. However, nothing in this Agreement shall be construed to entitle such law enforcement employee to receive any actual license or certification from the state receiving aid.

9) **Authority Granted.** This Agreement grants a law enforcement employee of the DCI acting within the state of North Dakota the ability to act as if the DCI employee were a duly appointed and qualified BCI agent.

10) **Chain of Command and Delegation of Authority.** Law enforcement employees of DCI rendering assistance within the state of North Dakota shall remain under the command and control of DCI. DCI may consult with BCI as needed to further the investigation, however, BCI shall not participate in or direct the course of the investigation.

11) **Reports.** After the investigation into the Cost Overrun is completed, DCI shall provide a final investigative report to the North Dakota Attorney General and the North Dakota Legislative Audit and Fiscal Review Committee. DCI also shall provide the investigative file to BCI. Nothing in this Agreement shall purport to waive, limit, or remove confidentiality imposed or allowed by law in regard to the final investigative report or the contents of other reports or the investigatory file. Confidentiality of the report; contents of the report; or the investigatory file shall be governed by N.D.C.C. ch. 44-04.

12) **Workers' Compensation and Respective Liability.**

a) BCI and DCI are each responsible for its own acts and the acts of its employees and agrees to assume such liability for those acts and consequences. The liability of BCI is governed by N.D.C.C. ch. 32-12.2, and the liability of the DCI is governed by MCA 2-9-102.

b) For the purposes of the Montana Governmental Immunity Act, Montana Statutes §§ 2-9-101 through 2-9-906, and the North Dakota Risk Management Fund, N.D.C.C. ch. 32-12.2, the peace officers of the DCI are employees as defined in MCA § 2-9-101(2)(a) and N.D.C.C. § 32-12.2-01(8) of the BCI.

c) This Agreement shall not be construed, with respect to third parties, as a waiver of any sovereign or governmental immunity to which a party to this Agreement is otherwise entitled.

d) In accordance with the procedural and substantive limitations of each state's governmental claims act, and subject to each state's

governmental immunity laws, each party shall be responsible for defending its own law enforcement employees in any litigation which arises as a result of assistance provided under this Agreement. Officers and other employees of the DCI shall not be considered general employees or peace officers of the BCI. Under no circumstances shall either participating agency be required to pay in excess of its statutory liability limits under North Dakota or Montana law.

e) **Workers' Compensation Coverage:** DCI shall be responsible for its own actions and those of its employees and is responsible for complying with the rules established within its home State regarding workers' compensation coverage.

13) **Automobile Liability Coverage:** DCI is responsible for its own actions and is responsible for complying with the motor vehicle financial responsibility laws of its home state. DCI agrees to obtain automobile liability coverage with at least a \$350,000.00 per person and \$1,000,000.00 per occurrence limit and coverage extended to owned, non-owned, and hired vehicles.

14) **Provision for Equipment.** In performing the requested investigation under this Agreement, the employees of DCI shall be responsible for the provision and maintenance of its own equipment, material, and supplies.

15) **No Entity Created.** This Agreement shall not be construed to create an interlocal partnership, joint venture, or relationship of employer and employee or principal and agent. This Agreement shall not be construed to create any liability for one state with respect to any liabilities or obligations of the other state, and shall not require coverage under either state's governmental claims act. No Party is required to purchase insurance under this Agreement so long as each party is a self-insured governmental entity.

15) **Entirety of Agreement.** This Agreement represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

16) **Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.

17) **Assignment.** This Agreement may not be assigned without the express 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 party hereto.


18) **Sovereign Immunity.** The State of North Dakota and the State of Montana do not waive sovereign or governmental immunity by entering into this Agreement, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Agreement.

19) **Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to this Agreement and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.

20) **Effective Date.** The effective date of this agreement is the date when the last of the signatures required below is affixed to this page.

21) **Signatures.** The parties to this Agreement, through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.


For The State of Montana:

DocuSigned by:

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 Bryan Lockerby, Administrator
 Division of Criminal Investigation

11/30/2022

Date


For the State of North Dakota:

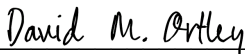
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 Lonnie Grabowska, Director
 Bureau of Investigation

12/1/2022

Date

Approved as legally sufficient:

DocuSigned by:

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 By: _____ Date: 12/2/2022
 Claire Ness
 North Dakota Chief Deputy Attorney General

DocuSigned by:

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 By: _____ Date: 11/30/2022
 David M. Ortle
 Montana Deputy Attorney General