

**First Amendment to South Dakota  
Internet Crimes Against Children Task Force  
Joint Powers Agreement**

FIRST AMENDMENT TO THE JOINT POWERS AGREEMENT AMONG the State of South Dakota, Office of Attorney General, Division of Criminal Investigation, 1302 E. Hwy. 14, Ste. 5, Pierre, SD 57501 (“DCI”), and the following “Participating Law Enforcement Agencies”:

- City of Aberdeen, acting through its Police Department, P.O. Box 53, Aberdeen, SD 57402;
- City of Brookings, acting through its Police Department, 307 3rd Ave., Brookings, SD 57006;
- City of Huron, acting through its Police Department, P.O. Box 1369, Huron, SD 57350;
- City of Mitchell, acting through its Police Department, 201 W. 1st Ave., Mitchell, SD 57301;
- City of Pierre, acting through its Police Department, 3200 E. Hwy. 34, Ste. 13, Pierre, SD 57501;
- City of Rapid City, acting through its Police Department, 300 Kansas City St., Ste. 200, Rapid City, SD 57701;
- City of Sioux Falls, acting through its Police Department, 320 W. 4th St., Sioux Falls, SD 57104;
- City of Vermillion, acting through its Police Department, 15 Washington St., Vermillion, SD 57069;
- City of Watertown, acting through its Police Department, 128 N. Maple St., Watertown, SD 57201;
- City of Yankton, acting through its Police Department, P.O. Box 176, Yankton, SD 57078;
- County of Minnehaha, acting through its Sheriff’s Office, 320 W. 4th St., Sioux Falls, SD 57104;
- County of Pennington, acting through its Sheriff’s Office, 300 Kansas City St., Ste. 100, Rapid City, SD 57701;
- Homeland Security Investigations, B.H. Whipple Federal Bldg., 1 Federal Dr., Ste. 1340, Fort Snelling, MN 55111; and
- United States Air Force, Office of Special Investigations, 2116 Scott Dr., Ellsworth AFB, SD 57706.
- County of Lake, acting by and through its Sheriff’s Office, 200 Center St E, Madison, SD 57042.
- County of Lincoln, acting by and through its Sheriff’s Office, 128 N Main St, Canton, SD 57013.

**WHEREAS**, DCI and the Participating Law Enforcement Agencies made and entered into a Joint Powers Agreement dated the 24<sup>th</sup> day of February, 2017 (the “Agreement” hereinafter); and,

**WHEREAS**, the Lincoln County Sherriff's Office wishes to become a Participating Law Enforcement Agency; and

**WHEREAS**, Paragraph 22 of the Agreement provides that "Modification of this Agreement may be made at any time during the effective period only upon timely notification to the Parties along with written consent and agreement of the Parties, their successors, or their duly-appointed representatives;" and

**WHEREAS**, the DCI wishes to add the Lincoln County Sherriff's Office as a Participating Law Enforcement Agency, to revise the Agreement to more easily add agencies who wish to become Participating Law Enforcement Agencies, and to revise the Agreement to clarify the roles and responsibilities of the Parties;

**WHEREAS**, by entering into this Amendment the parties intend to replace and supersede the Joint Powers Agreement South Dakota ICAC Task Force dated the 24<sup>th</sup> day of February 2017.

**NOW THEREFORE**, in consideration of the foregoing and of the mutual promises contained herein, the parties agree that the Agreement be amended to read as follows:

### **Overview/Mission Statement**

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) created the ICAC Task Force program, which is a national network of state and local law enforcement cyber-crime units. The national ICAC program assists state and local law enforcement agencies to develop an effective response to cyber enticement and child pornography cases. This help encompasses investigative and forensic components, training and technical assistance, victim services, and community education. Due, in large part, to the technological aspects of these cases, the ICAC Task Force program promotes a multi-jurisdictional, multi-agency, team approach to investigating and prosecuting ICAC cases.

The mission of the South Dakota ICAC Task Force is to: (1) properly investigate and prosecute those who sexually exploit children through the use of the internet and/or computers; (2) provide training and equipment to those involved in investigating and prosecuting ICAC cases; and (3) provide community education regarding the prevention of Internet Crimes Against Children.

Pursuant to South Dakota Codified Laws (SDCL), Chs.1-24, 7-8-20, 9-12-4, and 23-3, the DCI and Participating Law Enforcement Agencies (collectively the Parties) are empowered to enter into this Joint Powers Agreement for joint law enforcement and training purposes; and

The DCI is a recipient of a federal grant (true and correct copy of the current award is attached to this Agreement as Exhibit A) awarded by the OJJDP in Washington DC to assist law enforcement in investigating and combating the

exploitation of children which occurs through the use of computers by providing funding for equipment, training, and expenses including travel and overtime funding, which are incurred by law enforcement as a result of such investigations; and

Consistent with the terms of the federal grant and mission statement, DCI created and established the South Dakota ICAC Task Force and is one of the task forces created nationwide. The OJJDP ICAC Board of Directors has been established representing each of the existing ICAC Task Forces to oversee the operation of the federal grant and sub-grant recipients; and

The parties approve, authorize, and enter into this Agreement with the purpose of implementing a three-pronged approach to combat Internet Crimes Against Children: prevention, education, and enforcement; and

DCI and the Participating Law Enforcement Agencies have joined together to form a multi-agency task force intended to investigate and prosecute crimes committed against children and the criminal exploitation of children that is committed and/or facilitated by or through the use of computers and to disrupt and dismantle organizations engaging in such activity; and

The Parties agree to utilize applicable state and federal laws to prosecute criminal, civil, and forfeiture actions against identified violators as appropriate; and

DCI and the Participating Law Enforcement Agencies approve, authorize, and enter into this Agreement to participate in the South Dakota Internet Crimes Against Children Task Force (Task Force) with the purpose of implementing a three-pronged approach to combat Internet Crimes Against Children: prevention, education and enforcement.

1. Duration of Agreement.

This Agreement is effective as of the date first written above and will remain in effect until terminated by the agreement of the Parties or as provided in this Agreement.

2. Supersession

This Agreement replaces and supersedes any and all prior agreements between one or more of the Parties concerning the subject matter hereof. The Parties agree that all prior Joint Powers Agreements concerning the subject matter of this Agreement shall be terminated as of the effective date of this Agreement.

### 3. Obligations of the Participating Law Enforcement Agencies

- a. Each Party shall adhere to the OJJDP ICAC Task Force Operational and Investigative Standards, in addition to state and federal laws, when conducting undercover operations relative to ICAC (a true and correct copy of the current standards was provided as Exhibit B of the original Agreement).
- b. Each Party shall adhere to the South Dakota ICAC Task Force Policy Statement (a true and correct copy of the current standards was provided as Exhibit C of the original Agreement).
- c. Each Party shall adhere to the Memorandum of Understanding between OJJDP, U.S. Attorney for the District of South Dakota, and the Attorney General for the South Dakota ICAC Task Force (a true and correct copy of the current standards was provided as Exhibit D of the original Agreement).
- d. Each Party will contribute employees to the Task Force for carrying out the purposes of this Agreement. All employees contributed by a Party (“contributed employees”) will be employed by that Party.
- e. When a contributed employee acts within the scope of this Agreement, the contributed employee’s actions are within that employee’s scope of duty and course of employment to the same extent as if the contributed employee had acted on behalf of the employee’s employing Party.
- f. Each party will be solely responsible for the actions of its officers, agents, and employees under this Agreement. The parties agree that nothing in the Agreement shall be construed as an indemnification by one party or the other for liabilities of a party or third persons for property loss, damage, death, or personal injury arising out of the performance of this Agreement. Any liabilities or claims for property loss, death, personal injury by a party or its agents, employees, contractors or assigns, or by third persons arising out of and during this Agreement shall be determined according to applicable state law.
- g. All contributed employees shall continue to be employed by the contributing Party and all services, duties, acts or omissions performed by the contributed employee will be within the course and duty of that employment and, therefore, the contributing Party will retain the exclusive responsibility for any such contributed employee including, but not limited to, regular and overtime wages and salaries, unemployment, worker’s compensation, health insurance coverage, and other employer fringe benefits. Parties also agree to obtain and maintain liability coverage for all their

respective contributed employees acting under this Agreement under the same terms and conditions of coverage applicable to those employees while performing law enforcement and other activities for such Party.

- h. The Parties agree that nothing in this Agreement shall otherwise limit the jurisdiction, powers, and responsibilities normally possessed by contributed employees. The Parties understand that there is nothing in this Agreement which prevents any contributed employee who is assigned to the Task Force, when not acting hereunder, from performing law enforcement duties for the applicable Party.
- i. Each Party will be responsible for the day-to-day operational supervision, administrative control, and personal and professional conduct of its employees assigned to the Task Force. ICAC investigations are a cooperative effort and investigative decisions will be a joint process guided by ICAC standards.
- j. The Participating Law Enforcement Agencies shall make a reasonable good faith attempt to be represented at any scheduled meetings in order to share information and resources amongst the multiple entities. All contributed employees shall meet at least semiannually at a time and location selected by DCI.
- k. The Participating Law Enforcement Agencies shall make investigators designated as Task Force members available for applicable specialized training provided through the national ICAC program and other appropriate training programs. The Office will review training requests and provide funding for ICAC-approved training when appropriate.
- l. The Participating Law Enforcement Agencies shall be solely responsible for forwarding information relative to the indemnification of victims to the Child Victim Identification Program (CVIP) pursuant to OJJDP guidelines.
- m. The Participating Law Enforcement Agencies shall provide DCI, in a timely manner, all investigative equipment acquired through federal grant funding as a result of this Agreement in the event that future federal funding is no longer available, a Participating Law Enforcement Agency decides to withdraw its participation in this Agreement, the Agreement is terminated, or a Participating Law Enforcement Agency breaches the Agreement.
- n. The Participating Law Enforcement Agencies agree that any confidential information pertaining to investigations of Internet Crimes Against Children will be held in the strictest confidence

and will only be shared with participating Task Force members or other law enforcement agencies where necessary or as otherwise permitted by federal and/or state law.

4. Federal Grant Funds

- a. The Participating Law Enforcement Agencies may be eligible for federal grant funds for costs incurred under the Agreement. Receipt of any grant funds is contingent on a Participating Law Enforcement Agency complying with all the terms and conditions of the federal grant agreement (attached to this Agreement as Exhibit A).
- b. Participating Law Enforcement Agencies must submit a prior written request at least five weeks in advance and receive approval from the DCI to receive equipment or reimbursement for expenses paid from grant funds. The Participating Law Enforcement Agencies must supply original receipts to be reimbursed on preapproved requests.

5. Record Keeping

The Participating Law Enforcement Agencies shall maintain accurate records pertaining to prevention, education, and enforcement activities to be collected and forwarded monthly to the Director of DCI or his designee for statistical reporting purposes.

6. Audits

The Participating Law Enforcement Agencies shall participate fully in any audits required by the OJJDP or DCI.

7. DCI agrees as follows:

- a. To include in all future federal grant fund requests to OJJDP money to be disbursed to Participating Law Enforcement Agencies under terms of this Agreement.
- b. Timely consider and respond to Participating Law Enforcement Agencies' requests for grant funds for training, equipment, and activities performed for the Task Force.
- c. Assist Participating Law Enforcement Agencies that are performing Task Force activities under this Agreement.
- d. Timely notify Participating Law Enforcement Agencies of training opportunities for employees assigned to the Task Force and equipment that may be purchased under the grant.

- e. Timely notify Participating Law Enforcement Agencies of the time and place of Task Force meetings and any amendments or changes to the federal grant OJJDP ICAC Task Force Operational and Investigative Standards or South Dakota ICAC Task Force Policy Statement that may affect the terms and conditions of this Agreement including, but not limited to, DCI's ability to provide grant funds to Participating Law Enforcement Agencies.

#### 8. Modification and Amendment

Modification of this Agreement may be made at any time during its effective period only upon timely notification to the Parties along with the written consent and agreement of the Parties, their successors, or their duly-appointed representatives; notwithstanding the foregoing, additional law enforcement agencies may be added to the task force to become Participating Law Enforcement Agencies by a side agreement, which contains substantively the same terms and conditions as this Agreement, at the sole discretion of DCI. In the event a law enforcement agency becomes a Participating Law Enforcement Agency pursuant to a side agreement, that agency shall be deemed to be a part of this Agreement as if a new Agreement were signed to include that agency without need of the Parties to re-execute this Agreement.

#### 9. Withdrawal from Agreement

Any Participating Law Enforcement Agency may withdraw from this Agreement by providing the other Parties with a 30-day prior written notice. Compliance with the terms and conditions of the federal grant agreement survives withdrawal from the Agreement. The Agreement will remain in effect unless the remaining Parties agree to terminate.

#### 10. Termination

This Agreement can be terminated by the DCI for any reason by providing 30-day prior written notice to the other Participating Law Enforcement Agencies.

#### 11. Funding Out

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the South Dakota Legislature for this purpose. If, for any reason, the Legislature fails to appropriate funds or grant expenditure authority or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the DCI. The termination for any of these reasons is not a default nor does it give rise to a claim against the terminating Party.

12. Administration of Agreement

The Parties declare that no separate governmental 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 Director of DCI for the DCI and the respective Sheriff or Police Chief for the Participating Law Enforcement Agencies or their authorized designees as contemplated in SDCL 1-24-5.

13. Notices

All notices or other communications required under this Agreement shall be in writing and sent to the addresses set forth above. Notices shall be given by and to the persons identified above on behalf of the Parties or such authorized designees as a Party may from time to time designate in writing. 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.

14. Third Party Beneficiaries

This Agreement is intended only to govern the rights and interests 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.

15. Filing of Agreement

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.

16. Necessary Approvals

By the signature of their representative below, the DCI and each Participating Law Enforcement Agency certify that they have abided by all laws required of it to enter into this Agreement and that the appropriate person(s) have executed the Agreement on behalf of the Agencies and 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.

17. Limitation on Jurisdiction

Nothing in this Agreement shall otherwise limit the jurisdiction, powers, and responsibilities normally possessed by an employee of the DCI or Participating Law Enforcement Agency.

18. Counterparts

This Agreement may be executed in any number of counterparts and by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original but such counterparts together shall constitute one and the same instrument.

In Witness hereto the Parties signify this Agreement by signatures affixed below:

\_\_\_\_\_  
David Natvig, Director  
SD Division of Criminal Investigation

\_\_\_\_\_  
Date

Approved:

\_\_\_\_\_  
Jason R. Ravensborg, Attorney General  
Office of the Attorney General

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dave McNeil, Chief of Police  
Aberdeen Police Department

\_\_\_\_\_  
Date

\_\_\_\_\_  
Travis Schaunaman, Mayor  
City of Aberdeen

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Finance Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dave Erickson, Chief of Police  
Brookings Police Department

\_\_\_\_\_  
Date

\_\_\_\_\_  
Oepke Niemeyer, Mayor  
City of Brookings

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Finance Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kevin Van Diepen, Chief of Police  
Huron Police Department

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gary Harrington, Mayor  
City of Huron

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Finance Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Michael Koster, Chief of Police  
Mitchell Police Department

\_\_\_\_\_  
Date

\_\_\_\_\_  
Bob Everson, Mayor  
City of Mitchell

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Finance Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jason Jones, Chief of Police  
Pierre Police Department

\_\_\_\_\_  
Date

\_\_\_\_\_  
Steve Harding, Mayor  
City of Pierre

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Finance Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Don Hedrick, Chief of Police  
Rapid City Police Department

\_\_\_\_\_  
Date

\_\_\_\_\_  
Steve Allender, Mayor  
City of Rapid City

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Finance Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jonathan Thum, Chief of Police  
Sioux Falls Police Department

\_\_\_\_\_  
Date

\_\_\_\_\_  
Paul TenHaken, Mayor  
City of Sioux Falls

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Finance Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Matt Betzen, Chief of Police  
Vermillion Police Department

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kelsey Collier-Wise, Mayor  
City of Vermillion

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Finance Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Tim Toomey, Chief of Police  
Watertown Police Department

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ried Holien, Mayor  
City of Watertown

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Finance Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jason Foote, Chief of Police  
Yankton Police Department

\_\_\_\_\_  
Date

\_\_\_\_\_  
Michael Milstead, Sheriff  
Minnehaha County Sheriff's Office

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cindy Heiberger, Chairman  
Minnehaha County Commission

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Auditor, Minnehaha County

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kevin Thom, Sheriff  
Pennington County Sheriff's Office

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lloyd LaCroix, Chairman  
Pennington County Commission

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Auditor, Pennington County

\_\_\_\_\_  
Date

\_\_\_\_\_  
Tim Walburg, Sheriff  
Lake County Sheriff's Office

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kelli Wollmann, Chairman  
Lake County Commission

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Auditor, Lake County

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jamie Holt, Special Agent in Charge  
Homeland Security Investigations

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ryan Music, Special Agent  
United States Air Force OSI

\_\_\_\_\_  
Date

\_\_\_\_\_  
Steve Swenson, Sheriff  
Lincoln County Sheriff's Office

\_\_\_\_\_  
Date

\_\_\_\_\_  
Tiffani Landeen, Chairman  
Lincoln County Commission

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Auditor, Lincoln County

\_\_\_\_\_  
Date