

Memorandum of Agreement

Between

The Alabama Law Enforcement Agency,

Internet Crimes Against Children Unit

And

MADISON POLICE DEPARTMENT

This Agreement is entered into by the Alabama Law Enforcement Agency (“ALEA”) and the Madison Police Department (“affiliate” or “affiliate agency”) pursuant to § 41-19-10(e), Ala. Code 1975.

I. Purpose:

The purpose of this Agreement is to establish a joint multi-agency working group between ALEA and Madison Police Department intended to combat the exploitation of children by using the Internet or other electronic means. This working group will be known as the Alabama Internet Crimes Against Children ("ICAC") Task Force.

II. Period of Performance:

This Agreement shall be effective upon signature of all parties and will continue in effect until terminated. Either party may terminate this agreement for any reason by providing 30 days' written notice to the other party.

III. Standard Terms and Conditions:

Any amendment to this Agreement shall be made in writing and will become effective upon the signature of all parties.

Failure of either party to abide by and comply with the terms and conditions of this Agreement shall provide grounds for immediately terminating this Agreement. At any time should a party default on its obligations under this Agreement, the other party may give written notice to the defaulting party of the nature of the default and the expected remedy. The defaulting party shall respond in writing within 10 days of receiving the written notice of default; however, this provision shall in no way limit a party from seeking immediate termination for default.

The parties hereto are separate and distinct entities. The relationship established herein is purely contractual. Employees of the parties are not

considered to be officers, agents, volunteers, or employees of the other party, and each party takes responsibility only for the acts and omissions of its employees.

In the event of any dispute between the parties, senior officials of both parties shall meet and engage in a good-faith attempt to resolve the dispute. Should that effort fail and the dispute involves the payment of money, a party's sole remedy is to file a claim with the Alabama Board of Adjustment. For any and all other disputes arising under the terms of this Agreement which negotiation does not resolve, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of the Alabama State Bar.

If any provision of this Agreement is declared void, unenforceable, or against public policy, or if any provision shall contravene any state or federal statute or constitutional provision or amendment, either now in effect or which may be enacted during the course of the Agreement, the provision shall be modified to reflect the parties' intention(s) and all remaining provisions shall remain in full force and effect. Invalidation or unenforceability of any part or portion of the Agreement will not invalidate the remainder of the Agreement, and the remaining portions shall remain in full force and effect, deemed to be written, construed, and enforced as so limited. In any event, this Agreement will be interpreted as far as possible to give effect to the parties' intent.

It is agreed the terms, conditions, and commitments contained herein shall not be constituted a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment XXVI.

This Agreement is subject to the appropriation of funds to ALEA to fulfill obligations laid out herein and will be subject to termination if such funds cease to be available. Should funding or service requirements relative to any executed agreements be altered, those agreements may be amended accordingly. In the event of the proration of the fund from which payment under any agreement is to be made, that agreement will be subject to termination. Each party agrees to use its best efforts to secure sufficient appropriations to fund any executed agreement. However, ALEA's obligations under any executed agreement will cease immediately without penalty or further payment being required if the Alabama Legislature fails to make a sufficient appropriation or if grant money is not received. ALEA will determine whether amounts appropriated are sufficient. ALEA will give the other party written notice of insufficient funding as soon as practicable after becoming aware of the insufficiency, and ALEA's obligation to perform will immediately cease.

This Agreement shall be governed by the laws of Alabama as to interpretation, construction, and performance. Compliance hereunder will be performed in accordance with applicable state and federal law, statutes, provisions, and regulations, as well as any federal court orders that pertain to ALEA and/or the State of Alabama to which ALEA is required to adhere.

The parties hereto understand and agree this Agreement shall not be assigned to any other person, group, organization, department, agency, entity, etc., without ALEA's express written approval. Any such approval shall not be considered a waiver by either party.

The terms and provisions of this Agreement shall apply to and be binding upon and inure to the benefit of the parties hereto. Failure of either party to insist upon strict compliance with the Agreement's terms and conditions or strict performance hereunder shall not constitute or be construed as a waiver or relinquishment of either party's right to enforce the same in accordance with the Agreement. Any waiver of the terms of this Agreement shall be invalid unless such waiver is in writing and signed by the waiving party. A waiver in one instance shall not be deemed a continuing waiver unless expressly stated in writing and signed by the waiving party. The parties are responsible for total performance.

Notwithstanding any provision of this Agreement and any incorporations or amendments hereto, the parties do not release or waive, expressly or impliedly, their right to assert sovereign immunity or any other affirmative defense/right they may have under law.

The parties agree and hereby acknowledge that all terms, covenants, and conditions, or actions taken under this Agreement shall comply with all applicable state, federal, or local laws, including the Alabama Beason-Hammon Alabama Taxpayer and Citizen Protection Act, as amended. By signing this Agreement, the contracting parties affirm, for the duration of this Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within Alabama. Furthermore, a contracting party found to have violated this provision shall be deemed in breach of the Agreement and responsible for all resulting damages.

In compliance with Act 2016-312, the affiliate agency hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

The parties acknowledge and understand this Agreement is not effective until it receives all requisite approvals and that service/performance shall not begin until this Agreement is fully executed.

This Agreement shall constitute the entire agreement of the parties, and there are no other promises or conditions, oral or written, unless the parties otherwise mutually agreed upon those promises or conditions in writing.

IV. Jurisdiction:

The ICAC Task Force is a statewide Task Force; however, the principal sites of task force activity by the affiliate agency will be within the jurisdictional areas of the respective members' law enforcement agency, consistent with the level of membership of that law enforcement agency and statutes governing mutual aid. Nothing in this Agreement shall otherwise limit or enhance the jurisdiction and powers normally possessed by an employee as a member of the employee's agency.

V. Records, Reports and Presentations:

- The parties will coordinate and forward information through the ICAC Task Force, or as directed, to the Office of Juvenile Justice Delinquency Prevention ("OJJDP").
- The U.S. Department of Justice Internet Crimes Against Children Task Force Review Board reviews proposed undercover operations for compliance with federal guidelines. If applicable, each party to this Agreement must submit a brief report to the Board listing all current undercover online operations. Any additional online undercover operations to be developed must be approved as outlined in the ICAC Task Force Program Guidelines.
- No later than the 10th day of each month, the affiliate agency will submit a monthly activity report pertaining to ICAC cases to ALEA for consolidation and reporting to OJJDP.
- As directed by ALEA, the affiliate agency shall maintain information necessary to enable compliance with this Agreement and any other federal grant guideline subject to this operation, as well as any ICAC Review Board recommendations.
- All records, reports, and presentations shall be consistent with grant guidelines and approved ALEA/ICAC protocols and procedures.

VI. OJJDP Internet Crimes Against Children Task Force Program Guidelines:

Parties to this Agreement acknowledge that they received and reviewed the attached OJJDP ICAC Task Force Program (Operational and Investigative Standards) Guidelines which are hereby incorporated by reference. These guidelines specify how the parties may conduct ICAC Task Force investigations, and by entering into this Agreement, the parties agree to abide

by all covenants, restrictions, limitations, and guidelines contained therein and conduct all investigations in accordance thereto.

VII. Equipment and Training:

When funding is available, ALEA may provide limited training and equipment. Any equipment provided pursuant to this Agreement shall only be used for ICAC investigations. All Task Force affiliates will have access to ICAC training through Fox Valley Technical College ("FVTC"), which currently provides free tuition and lodging to investigators chosen for a class. However, due to budget constraints, FVTC reserves the right to terminate free tuition and lodging without notice. The affiliate agency must cover all other expenses. Any other expenses must be coordinated and receive prior approval from the ALEA ICAC Task Force Commander.

Any and all equipment provided to the affiliate agency remains property of ALEA. The affiliate agency shall maintain any and all equipment in good repair and will also maintain an inventory of all said equipment.

VIII. Failure to Follow Agreement Guidelines:

Any affiliate agency who fails to follow any of the above-stated guidelines and/or ICAC Operational and Investigative Standards as determined by ALEA will be deemed to have violated the Agreement and shall be subject to termination pursuant to the terms outlined therein. Any equipment issued by ALEA, including a copy of the equipment inventory, shall be immediately returned to ALEA.

(Intentionally Left Blank)

IN WITNESS HEREOF, and as evidenced by their authorized signatures, the Alabama Law Enforcement Agency and Madison Police Department agree to the conditions of this Agreement as set forth above.

Hal Taylor, Secretary
Alabama Law Enforcement Agency

Paul Finley, Mayor
City of Madison

Date

Date

Approved as to form:

Legal Counsel
Alabama Law Enforcement Agency