

ARIZONA INTERNET CRIMES AGAINST CHILDREN TASK FORCE

Intergovernmental Agreement

Between

Phoenix Police Department (Primary Grantee) /
Arizona ICAC Task Force Lead Agency

and

Flagstaff Police Department

THIS Intergovernmental Agreement (“IGA”) is entered into between the City of Phoenix, Arizona, through the Phoenix Police Department (“PPD” or “Primary Grantee”), and the City of Flagstaff, Arizona, through the Flagstaff Police Department (“Affiliate Agency”).

I. RECITALS

1.1 Whereas public agencies are authorized and empowered to enter into intergovernmental agreements for the provision of services or for joint or cooperative action pursuant to Arizona Revised Statutes (A.R.S.) §11-952. The City of Phoenix is also authorized and empowered pursuant to Chapter 2, Section 2 (i), of the Charter of the City of Phoenix.

1.2 Whereas the Phoenix Police Department / Arizona Internet Crimes Against Children Task Force (“ICAC Task Force”) Lead Agency, is the recipient of the United States Department of Justice (“DOJ”), Office of Juvenile Justice and Delinquency Prevention (“OJJDP”) grant regarding Internet Crimes Against Children (“ICAC”). The Task Force utilizes the grant, and funding from the Arizona Attorney General’s Office, for the purpose of administering and operating an ICAC Task Force in Arizona. PPD is the primary grantee for the ICAC Task Force. Agencies affiliated through this IGA are known as “Affiliate Agencies”.

1.3 Whereas the PPD / ICAC Task Force agrees to work with the affiliates to support and advance the goals of the Internet Crimes Against Children Task Force, a DOJ initiative. Phoenix PD / ICAC Task Force may be able to provide financial assistance to the Affiliate Agency, on a reimbursable basis, through various funding sources.

1.4 Whereas the OJJDP administers the ICAC Task Force Program, which is a national network of state and local law enforcement investigative units. The national ICAC program assists state and local law enforcement agencies in the

development of an effective response to cases involving images depicting the sexual exploitation of minors and the sexual assault and abuse of children facilitated by technology. Due in large part to the technological aspects of these cases, the ICAC Task Force Program promotes a multi-jurisdictional, multi-agency approach to investigating and prosecuting ICAC cases. ICAC's goals are to increase the investigations and prosecutions of Internet crimes against children offenses, and to increase public awareness and prevention of ICAC offenses.

1.5 Whereas the national policy objectives for ICACs are to:

- (1) Increase the investigative capabilities, including effectiveness and efficiency, of law enforcement officers in the detection, investigation of qualifying offenses and the apprehension of offenders;
- (2) Increase the number of ICAC-qualifying (state and federal) offenses being prosecuted;
- (3) Create a multi-agency task force response to ICAC offenses;
- (4) Enhance the nationwide response to ICAC offenses; and
- (5) Develop and deliver ICAC public awareness and prevention programs.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties hereby agree to the following terms and conditions:

II. PURPOSE

2.1 The purpose of this IGA is to provide funding for the Affiliate Agency, on a reimbursable basis, to support their efforts to investigate, prosecute, and deter the possession, production, and distribution of unlawful images depicting the sexual exploitation of minors and the utilization of the Internet to seek children as sexual victims.

2.2 The purpose of this IGA is to memorialize parties' agreement to work together to assist the ICAC Task Force in its efforts to investigate, prosecute, and deter the possession, production, and distribution of unlawful images depicting the sexual exploitation of minors and the utilization of the Internet to seek children as sexual victims.

2.3 Additionally, this IGA defines the responsibilities of the Affiliate Agency with the ICAC Task Force.

III. RESPONSIBILITIES

3.1 Affiliated ICAC Task Forces may include investigators, supervisors, or prosecutors from various local, state, and federal law enforcement agencies who provide assistance, subject to availability.

3.2 Affiliated ICAC Task Forces should identify and investigate individuals who exploit children for sexual purposes through the use of technology and/or who obtain, distribute, and/or produce child pornography.

3.3 Affiliated ICAC Task Forces should be focused on presenting evidence of criminal activity to prosecutors, which then leads to the successful prosecution of individuals who have committed coercion/enticement or unlawful image offenses.

3.4 Affiliated ICAC Task Forces may, subject to availability, sponsor community education efforts regarding the prevention of Internet crimes against children and provide ICAC training to other state and local law enforcement officials.

3.5 Affiliated ICAC Task Forces may, subject to availability:

- (1) Conduct undercover ICAC investigations; and
- (2) Conduct reactive investigations for which venue lies within the agency's jurisdiction(s), including investigations of unlawful images depicting the sexual exploitation of minors, CyberTip referrals from the National Center of Missing and Exploited Children (NCMEC), Internet Service Provider and law enforcement referrals, other ICAC-related investigations, and other sources.

3.6 The Affiliated ICAC Task Force will ensure that:

- (1) Only sworn law enforcement personnel will conduct undercover ICAC investigations;
- (2) Each investigator involved with undercover operations has received ICAC training prior to initiating investigations; and
- (3) ICAC investigations shall also be governed by the national ICAC program's Standard Operating Procedures (Attachment A).

3.7 Where investigations reveal that the safety of a child is at risk, it is of paramount importance that the safety and well-being of the child clearly outweigh any consideration being given to the continued investigation.

3.8 ICAC Task Forces have a substantial number of matters to investigate which requires prioritization of these matters. The Affiliate Agency agrees to use the guidelines in the ICAC Standard Operating Procedures (Attachment A) to prioritize cases.

3.9 An additional secondary role of the Affiliate Agency is to educate, as time and resources permit, both children and parents regarding online dangers, and empower them with information so they may visit the Internet in safety. Task force personnel may conduct education and prevention programs to foster awareness and provide practical, relevant guidance to the community about Internet child safety issues.

IV. DURATION AND TERMINATION

4.1 This IGA shall become effective upon the date of the last signature of the executing parties and will supersede any pre-existing agreements between the Affiliate Agency and the Arizona ICAC Task Force. This IGA will remain in effect

for five (5) years after the IGA becomes effective, unless the agreement is terminated in writing by either party upon thirty (30) day notice.

4.2 Violation of the ICAC Standard Operating Procedures (Attachment A) is considered a material breach of this agreement and cause for cancellation of Affiliate Agency's affiliation with the Arizona ICAC Task Force. Upon discovering a violation and notifying the Affiliate Agency, the Primary Party may cancel the contract and rescind any funding under this agreement.

V. GENERAL PROVISIONS

5.1 Conflict of Interest. This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

5.2 Immigration law compliance and warranty. As required by A.R.S. § 41-4401, each party hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Each party further warrants that after hiring an employee, it verifies the employment eligibility of the employee through the E-Verify program. If either party uses any subcontractors in performance of the IGA, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the IGA, subject to penalties up to, and including, termination. A party shall not be deemed in material breach if it and/or its subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). Each party retains the legal right to inspect the papers of the other party and/or its subcontractor engaged in performance of this IGA to ensure that the other party and/or its subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the parties may modify this paragraph consistent with state law.

5.3 Communication between state and local government agencies and federal immigration authorities; compliance. As required by 8 U.S.C. § 1373, each party hereby agrees that, notwithstanding any other provision of federal, state, or local law, it will not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, federal immigration authorities, including US Immigration and Customs Enforcement (ICE), US Customs and Border Protection (CBP), or US Citizenship and Immigration Services (USCIS), information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

5.4 Indemnification. To the extent permitted by law, each party will indemnify and save the other party harmless, including any of the parties' departments, agencies, officers, employees, elected officials or agents, from and against all loss,

expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or non-performance by the indemnifying party of any of the provisions of this IGA.

Each party, in all instances, shall be indemnified against all liability, losses, and damages of any nature for, or on account of, any injuries or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or non-performance of this IGA by the other party, except such injury or damage as shall have been occasioned by the negligence of that other party. The damages incurred by the other party, their department, agencies, officers, employees, elected officers, or agents shall include in the event of any action, court costs, expenses for litigation and reasonable attorneys' fees.

The parties are responsible and liable for the acts and omissions of their own officers, agents, or employees in connection with the performance of their official duties under this IGA.

This agreement does not relieve either agency of its official duties and shall not be construed as limiting or expanding the statutory responsibilities of the parties.

5.5 Binding effect. All terms, provisions, and conditions hereof shall be binding upon and inure to the benefit of all parties hereto and their respective heirs, personal representatives, successors, and assigns.

5.6 Severability. In the event any term or provision of this IGA is held to be invalid or unenforceable, the validity of the other provisions shall not be affected, and the IGA shall be construed and enforced as if it did not contain the particular term or provision that is deemed to be invalid or unenforceable.

5.7 Governing law. This IGA will be governed by the laws of the State of Arizona, both as to interpretation and performance.

5.8 Modification. This IGA may be modified only by mutual written agreement of the parties.

VI. SPECIAL PROVISIONS

6.1 Goals for cases prosecuted. Various County Attorneys' Offices throughout the State of Arizona have successfully prosecuted many cases investigated by the ICAC Task Force and its affiliated agencies. Cases investigated by the ICAC Task Force may be prosecuted in Federal or State Court.

The affiliated agency agrees that the criteria for determining whether to prosecute a particular violation in state or federal court will be determined based upon the forum in which the greatest overall benefit to the public will be achieved. The parties agree that the greatest overall benefit to the public and victims will be achieved in the forum in which the purposes of punishment will be accomplished

to the greatest possible extent. The parties agree that the sentences in ICAC cases should, to the greatest possible extent:

- (1) Reflect the seriousness of the offense;
- (2) Promote respect for the law;
- (3) Provide just punishment for the offense;
- (4) Afford adequate deterrence to criminal conduct;
- (5) Protect the public from further crimes of the defendant; and
- (6) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

Given these goals and the research regarding the typical hands-on offense histories of those convicted as on-line predators and child pornography offenders, incarceration is a desired outcome in ICAC cases.

6.2 Reporting statistics. The Affiliate Agency will provide monthly reports to the Phoenix PD / ICAC Task Force in the prescribed format, no later than ten (10) days after the end of the preceding month. If statistics are not provided by the deadline, any funding will be suspended until the reporting requirement is met.

6.3 Training. The affiliated agency may make investigators available for applicable specialized training provided through the national ICAC program and other appropriate training programs.

6.4 Media. Media outreach on cases should be coordinated with the prosecutor to whom the case has been, or will be, referred in order to ensure compliance with applicable bar rules. All lawful efforts will be made to protect ongoing undercover operations from media publication. Member agencies will refrain from unnecessarily releasing ongoing investigative techniques and ongoing undercover identities, including screen names, age or sex of undercover personas, unless authorized and mandated by public record law, or when the information is revealed pursuant to lawful discovery or at trial.

6.5 Confidentiality. It is understood that any confidential information pertaining to investigations of ICAC will be held in the strictest confidence, and will only be shared with participating ICAC Task Force members or other law enforcement agencies where necessary, or as otherwise permitted by federal and/or state law.

6.6 Text messaging while driving. Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), the Department encourages recipients and sub recipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this IGA, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

6.7 Data protection. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to affiliate agencies in connection with this agreement is to be kept confidential. Except as specifically provided in this IGA, the affiliate agencies shall not disclose data generated in the performance of the service to any third person without the prior written consent of all affiliate agencies, unless required by law.

Personal identifying information, financial account information, or restricted information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, affiliate agencies must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

Unless contrary to law, which includes Arizona State Records Retention statutes, when personal identifying information, financial account information or restricted information, regardless of its format, is no longer necessary, the information must be redacted, destroyed or secured through appropriate and secure methods that ensure the information cannot be viewed, accessed or reconstructed.

In the event that data collected or obtained by the affiliate agencies in connection with this IGA is believed to have been compromised, affiliate agencies shall notify all other agencies in writing within ten (10) business days.

Affiliate agencies agree that the requirements of this section shall be incorporated into all relevant subcontractor/subconsultant agreements entered into by the affiliate agencies. A violation of this section may result in immediate termination of the IGA.

The obligations of affiliate agencies under this section shall survive the termination of this agreement.

6.8 Consistency. No local agreement can be inconsistent with any provision herein or impair achievement of any provision herein.

6.9 Return of Proceeds of Sale or Auction. Affiliate agencies are prohibited from retaining the proceeds from the sale or auction of any equipment purchased with funding provided pursuant to this IGA. In the event that an affiliate agency sells or auctions any equipment purchased with funding provided pursuant to this IGA, the affiliate agency shall return the proceeds from the sale or auction of equipment to the City of Phoenix. The City of Phoenix shall remit the proceeds returned to the original funding source. The City of Phoenix shall have the authority to audit the records of an affiliate agency as shall be deemed proper to ensure that the proceeds from the sale or auction of any equipment purchased with funding provided pursuant to this IGA have been accounted for and returned pursuant to this section.

6.10 Affiliate Agency must abide by all federal, state, and local grant regulations.

IN WITNESS WHEREOF, the parties enter into this Agreement:

City of Phoenix, Arizona
An Arizona Municipal Corporation
(Primary Grantee)

City of Flagstaff, Arizona
An Arizona Municipal Corporation
(Affiliate)

Jeri L. Williams
Police Chief
Phoenix Police Department

(Authorized Signature)

Printed Name, Title

Date

Date

ATTEST:

ATTEST:

City Clerk

City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Acting City Attorney

City Attorney

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of A.R.S. § 11-952 (D), each of the undersigned attorneys Acknowledge: (1) that they have reviewed the above IGA on behalf of their respective clients; and, (2) that, as to their respective clients only, each attorney has determined that this IGA is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

City of Phoenix (Primary Grantee)

City of Flagstaff (Affiliate)

Sandra Hunter, Asst. Chief Counsel

Signature

Printed Name, Title

Date

Date