

Upon Recording, Return to:
Richland City Attorney
505 Swift Blvd. MS-07
Richland, WA 99352

CONTRACT NO. 217-17

**SOUTHEAST REGIONAL
INTERNET CRIMES AGAINST CHILDREN TASK FORCE (SERICAC)
INTERLOCAL AGREEMENT**

THIS INTERLOCAL COOPERATIVE AGREEMENT (hereinafter “Agreement”) is made and entered into by and between the Cities of RICHLAND and KENNEWICK, the County of BENTON, and the Department of HOMELAND SECURITY (DHS), Immigration and Customs Enforcement, Homeland Security Investigations Seattle (“HSI-Seattle”) (collectively, the “Parties”), and shall be effective on the date on which it was executed after adoption by the legislative authority of the last executing Party.

WHEREAS, Chapter 39.34, RCW (Interlocal Cooperation Act) permits local government units to make the most efficient use of their powers by enabling them to cooperate with other localities and thereby to provide services and facilities in a manner that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, The Washington Mutual Aid Peace Officer Powers Act of 1995, codified as RCW 10.93, is liberally construed to promote mutual aid and cooperative enforcement of the laws among general authority local, state, and federal agencies; and

WHEREAS, the Department of Justice (DOJ) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) have created the Internet Crimes Against Children (ICAC) Task Force Program, which is a national network of state and local law enforcement cybercrime units; and

WHEREAS, the ICAC Task Force Program assists federal, state and local law enforcement agencies in developing an effective response to cyber enticement and child pornography cases, to include 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; and

WHEREAS, the ICAC Task Force Program’s goals are to increase the investigation and prosecution of ICAC offenses, and to increase public awareness and prevention of ICAC offenses; and

WHEREAS, the national policy objectives for the ICAC Task Force Program are: (1) increase the investigative capabilities, including the 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; and

WHEREAS, the primary purpose of the ICAC Task Force Program is to investigate, prosecute, and deter the possession, production, and distribution of child pornography and the utilization of the Internet to seek children as sexual victims; and

WHEREAS, creation of a regional ICAC Task Force comprised of local jurisdictions pooling resources and knowledge to investigate, prosecute and deter the possession, production, and distribution of child pornography and the utilization of the Internet to seek children as sexual victims serves the public's best interest.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and upon approval of each of Party in accordance with RCW 39.34, the Parties do hereby agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to establish a regional Internet Crimes Against Children (ICAC) Task Force consisting of law enforcement officers from the participating agencies who shall be responsible for investigating, prosecuting, and deterring the possession, production, and distribution of child pornography and the utilization of the Internet to seek children as sexual victims.
2. **FORMATION.** Upon the effective date of this Agreement as specified herein, there shall be established the Southeast Regional Internet Crimes Against Children (SERICAC) Task Force consisting of law enforcement officers from the participating agencies. HSI-Seattle shall supply office space for the SERICAC Task Force. Participating law enforcement officers will, within the limitations of their resources, conduct both reactive and proactive investigations, including the following activities:
 - a. Actively engaging in undercover chats, Peer-to-Peer investigations, and monitoring other technology which could be used for the sexual exploitation of children.
 - b. Responding in a timely manner to referrals from local law enforcement agencies and CyberTips as workload and resources permit. In order to maintain a strong team capable of deploying a proactive approach, referrals shall be distributed among participating jurisdictions in a balanced and equitable ratio.
 - c. Participating in community outreach and media presentations stressing the importance of Internet safety protocols and the prevention of victimization of youth.

3. **FULL-TIME/PART-TIME PARTICIPATION.** Member agencies of SERICAC will participate on either a full-time or a part-time basis.
 - a. **Full-Time Participating Agencies.** Full-time participating agencies will designate an investigator whose primary duties will be as an ICAC Detective/Agent assigned to the SERICAC Task Force. The SERICAC Task Force will attempt to work proactive and Cyberstip cases primarily in the jurisdictions of the full-time participating agencies, understanding that these cases often cross jurisdictional boundaries.
 - b. Part-time participating agencies will provide resources on a part-time or “as time permits” basis. In return, the SERICAC Task Force will assist with resources and expertise, to the extent reasonably possible, when the part-time participating agency requests assistance with a case.
4. **TERM OF AGREEMENT.** This Agreement shall be of unlimited duration, subject to the termination provisions contained herein. This Agreement shall become effective only upon execution by all Parties and filing with each County Auditor and/or posting an electronic copy of the Agreement on each Parties’ respective websites in compliance with RCW 39.34.040. The effective date of this Agreement shall be the date the last-signing Party executes the Agreement after obtaining the requisite legislative approval.
5. **WITHDRAWAL AND TERMINATION.** A party may withdraw from participation in the SERICAC Task Force by providing written notice of intent to withdraw to the chief law enforcement officer for each participating jurisdiction. Notice of withdrawal shall become effective ninety (90) days after service of the notice.
 - a. **Effect of Withdrawal.** A party that withdraws from the SERICAC Task Force prior to the termination of this SERICAC Task Force Interlocal Agreement shall forfeit all equipment and monies received as the result of lawful seizure by the SERICAC Task Force, or purchased with grant funds provided to the SERICAC Task Force. Equipment provided exclusively by the participating jurisdiction for use by its representative officer shall remain the property of the agency and shall be returned. Upon return, no depreciation value shall be recognized in aging equipment.
 - b. **Termination.** This Agreement shall be terminated by mutual agreement of the local participating jurisdictions (excluding HSI-Seattle), or at the discretion of the sole remaining local jurisdiction in the event all other local participants withdraw from the SERICAC. Termination shall be effective on the 30th day following the date approval is given by the last-approving legislative body.
 - c. **Effect of Termination.** Upon termination of the SERICAC as provided in Section 4.b. of this Agreement, each participating jurisdiction shall retain ownership of the equipment and monies it received that were lawfully seized by the SERICAC.

- c. As soon as practical, Detectives assigned to the SERICAC Task Force will be designated as Task Force Officers through the Department of Homeland Security, HSI-Seattle.
 - d. Computer Forensics/Cell phone Extraction. Due to the nature of the investigations, most cases will require computer forensic examinations and/or cell phone extractions. On an “as-needed” basis, each participating jurisdiction will provide computer forensic and cell phone extraction assistance with cases originating in their jurisdiction.
 - e. SERICAC Administrator. The City of Richland shall serve in the capacity of administrative jurisdiction under this Agreement, and shall supply a supervisory person of the grade of lieutenant or captain to provide administrative oversight. Selection and retention of the SERICAC administrator shall be at the discretion of the Richland Police Chief.
 - f. Evidence Retention. Any evidence recovered by the SERICAC Task Force will be processed and stored depending on the case’s jurisdiction. For cases prosecuted by the U.S. Attorney’s Office, the evidence will be processed and retained by HSI-Seattle. When cases will be prosecuted at the state level, the evidence will be processed and retained by the Richland Police Department.
7. **GOVERNANCE**. The SERICAC Task Force shall be an affiliate of the Washington State Internet Crimes Against Children Task Force. The regional unit will abide by the following ICAC Investigation Standards:
- a. Only sworn law enforcement personnel may conduct ICAC investigations.
 - b. Each investigator involved with ICAC operations must receive ICAC training prior to initiating proactive investigations.
 - c. All ICAC investigations shall be governed by and conducted in strict compliance with the ICAC Task Force Program’s Operational and Investigative Standards to the extent that they do not contravene HSI operational and investigative policy.
 - d. Where an investigation reveals that the safety of a child is at risk, the safety and well-being of the child will clearly outweigh any consideration being given to the continued investigation.
8. **ICAC CASE PROSECUTION**. Cases investigated by the SERICAC Task Force may be prosecuted in federal or state court. SERICAC and participating agencies will consult with the U.S. Attorney’s Office and the appropriate county Prosecutor’s Office to make referral decisions that, 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) provide the defendant with the needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. Prosecutors will consult with law enforcement throughout the case about charging decisions and sentencing recommendations, with prosecutors having the final authority to make such decisions. Research regarding the typical “hands-on” offense histories of those convicted as on-line offenders and child pornography offenders show that incarceration is the normal expected outcome in ICAC cases.

9. **ALLOCATION OF LIABILITY; INDEMNIFICATION**. Each party shall be responsible for the wrongful or negligent actions of its employees while assigned to the SERICAC Task Force as their respective liability shall appear under State and Federal law, and this Agreement is not intended to diminish or expand such liability.

- a. **Federal Entities**. HSI-Seattle, as part of the United States government, is bound by federal laws including the FTCA and the Anti-Deficiency Act, 31 U.S.C. § 1341. HSI-Seattle is effectively “self-insured” under the FTCA, which provides the United States may be sued for damage to or loss of property, personal injury, or death caused by the negligent or wrongful acts or omissions of HSI-Seattle’s employees while those employees are acting within the scope of their offices. The United States is liable to the same extent an individual would be in like circumstances. The FTCA substitutes the United States as the defendant in such a suit and the United States—not the individual employee—bears any resulting liability.
- b. **State/Local Entities**. Kennewick, Richland and Benton County promise to hold harmless and release each other from any loss, claim or liability arising from or out of the negligent tortious actions or inactions of its own employees, officers and officials. Such liability shall be apportioned among the Parties or other at-fault persons or entities in accordance with the laws of the State of Washington. Nothing herein shall be interpreted to:
 - i. Waive any defense arising out of RCW Title 51.
 - ii. Limit the ability of a participant to exercise any right, defense, or remedy which a party may have with respect to third parties or the officer(s) whose action or inaction give rise to loss, claim or liability, including, but not limited to, an assertion that the officer(s) was acting beyond the scope of his or her employment.
 - iii. Cover or require indemnification or payment of any judgment against any individual or Agency for intentionally wrongful conduct outside the scope of employment of any individual or for judgment for punitive damages against any individual or agency. Payment of punitive damage awards, fines or sanctions shall be the sole responsibility of the individual against whom said judgment is rendered and/or his or her agency employer, should that employer elect to make said payment voluntarily. This

Agreement does not require indemnification of any punitive damage awards or for any order imposing fines or sanctions.

10. **NOTICES.** Written notice shall be directed to the Parties as follows:

Benton County Sheriff
7122 W Okanogan Pl, Bldg B
Kennewick, WA 99336
(509) 786-5615

Kennewick Chief of Police
211 W. 6th Avenue
Kennewick, WA 99336
509-585-4208

Richland Chief of Police
505 Swift Blvd.
Richland, WA 99352
(509) 942-7340

HSI-Seattle
Resident Agent in Charge Yakima
402 East Yakima Ave, Suite 1000
Yakima, WA 98901
509-469-0898

11. **PUBLIC RECORDS.** The intent of the Parties is for all records related to SERICAC investigations to be generated and maintained in the HSI database or on HSI devices. To comply with SERICAC's obligation to respond to public records requests, and to minimize legal risk to each participating jurisdiction, the Parties agree that all requests for SERICAC Task Force records maintained in the HSI database or generated on HSI devices shall be processed by HSI-Seattle. To the extent that legal review is needed to respond to a request, the ICE Office of the Principal Legal Advisor and/or the U.S. Attorney's Office shall provide the review. In fulfilling the request, the Parties acknowledge that HSI-Seattle has the ultimate authority to release or withhold records pursuant to the Freedom of Information Act. In the event any Party to this Agreement other than HSI-Seattle holds records related to a SERICAC investigation that are subject to disclosure under the Washington Public Records Act, said Party agrees to give timely notice to HSI-Seattle prior to disclosure, and to coordinate the records response; provided, however, that such coordination shall not abrogate the Party's authority to determine the applicability of any statutory exemption available under state or federal law.

12. **STATISTICS REPORTING.** Prior to December 31 of each calendar year, Richland, as the administrative jurisdiction, shall provide to each participating city and county crime statistics for cases investigated and/or prosecuted in their jurisdiction under Washington state law by the SERICAC Task Force.

13. **ACQUISITION AND USE OF EQUIPMENT.** All equipment purchased for the SERICAC Task Force using OJJDP grant funds or Washington State ICAC funds are the property of the Washington State ICAC Task Force, and shall be considered "on loan" from such entity. Upon termination of this Agreement, The Washington State ICAC Task Force Commander shall be responsible for either reallocating the equipment to any jurisdiction still investigating ICAC cases, or reclaiming possession of the equipment.

14. **SEIZURES; FORFEITURES**. All seizures effectuated by the SERICAC Task Force under RCW 10.105.010(2) or RCW 9.68A shall be forwarded to the contracted prosecutor for the City of Richland for review and prosecution. Richland's contracted prosecutor shall retain prosecutorial discretion in reviewing, pursuing, negotiating and/or dismissing any forfeiture case presented for prosecution. Richland's contracted prosecutor will coordinate with participating agencies as necessary. Seizures under federal law will be prosecuted by the U.S. Attorney's Office. All forfeitures and proceeds from forfeitures that result from SERICAC Task Force seizures shall be allocated to the SERICAC Task Force for ongoing operational needs.

15. **FUNDING**. The full-time participating agencies commit to the following funding obligations in support of training and equipment for the SERICAC Task Force:
 - a. **Training**. Each full-time participating agency contributing an investigator shall, at its sole cost and expense, send its investigator to one (1) national ICAC conference per year. This training is in addition to the training necessary for the investigator to become qualified to investigate ICAC cases (i.e., Basic Computer Investigations, Undercover Chat, P2P, etc.). This training shall also be provided at the participating agency's sole cost and expense.

 - b. **Equipment**. Each full-time participating agency contributing an investigator shall, at its sole cost and expense, provide the investigator with an unmarked vehicle and basic computer equipment.

 - c. **Financial Contribution**. Each full-time participating agency contributing an investigator, other than HSI Seattle, shall contribute \$5,000 annually to the SERICAC budget to secure the purchase of UC computers, data storage devices, network equipment, software licensing, equipment for field searches, router identification, and other similar technology tools. This annual financial contribution is due on or before December 31 of each year. HSI-Seattle agrees to provide office space to include a designated forensic lab room and overtime reimbursement for federal cases worked by members of the task force pursuant to the terms of the separate State and Local Overtime (SLOT) Agreement.

16. **NO LEGAL ENTITY**. No separate legal entity is created upon execution of this Interlocal Cooperation Agreement.

17. **AMENDMENT**. This Agreement may be amended from time-to-time as deemed appropriate by the Parties, provided that such amendment shall become effective only after it has been adopted in writing by authorized representatives of each of the Parties after legislative approval.

18. **SEVERABILITY**. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable as written, the remainder of the Agreement or the applications of the remainder of the Agreement shall not be affected. To this end, the terms and conditions of this Agreement are declared severable.
19. **GOVERNING LAW; VENUE**. Jurisdiction and venue for any action relating to the interpretation, enforcement, or any dispute arising from this Agreement shall be in Benton County Superior Court. This Agreement shall be construed, and the legal relations between the parties hereto shall be determined in accordance with the laws of the State of Washington. Any action relating to the interpretation, enforcement or any dispute arising from this Agreement involving HSI-Seattle shall be heard in U.S. Federal District Court and shall be determined in accordance with the laws and regulations of the United States.
20. **INTEGRATION**. This Agreement and the application contain all the terms and conditions agreed upon by the Parties, except necessary operational agreements between the law enforcement agencies of the respective jurisdictions pursuant to Chapter 10.93 RCW. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties. This Agreement shall expressly supersede all prior Agreements among the jurisdictions regarding the SERICAC Task Force creation, operation, and administration.
21. **WAIVER**. No waiver by any Party hereto of any terms or conditions of this Agreement shall be deemed or construed to be a waiver of any other term or condition, nor shall the waiver of any breach be deemed or construed to constitute a waiver of any subsequent breach, whether of the same or any other term or condition of this Agreement.

[Signature Page to Follow]

In Witness Whereof, the Parties have signed this Agreement as of the day and year written below.

City of Richland


By:  8-21-17
CYNTHIA D. REENTS, ICMA-CM Date
City Manager

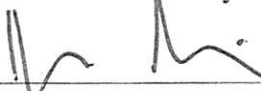
Attest: 
MARCIA HOPKINS
City Clerk

Approved As to Form:

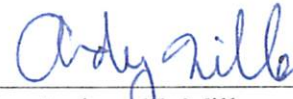

HEATHER KINTZLEY
City Attorney


County of Benton

 5-15-2018
By: James Beaver Date
Benton County Commission

 5-15-2018
By: Jerome Delvin Date
Benton County Commissioner

 5-15-2018
By: Shon Small Date
Benton County Commissioner

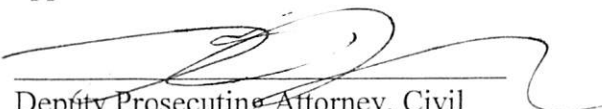

By: Andrew K. Miller Date
Benton County Prosecuting Attorney

 4/30/18
By: Jerry Hatcher Date
Interim Benton County Sheriff

Attest:


Clerk of the Board

Approved as to Form:


Deputy Prosecuting Attorney, Civil

City of Kennewick

By: Marie E. Mosley _____ Date
MARIE E. MOSLEY
City Manager

Attest: Terr L. Wright _____
TERRI L. WRIGHT
City Clerk

Approved As to Form:

Lisa Beaton _____
LISA BEATON
City Attorney

HSI-Seattle

By: Bradford A. Bench 8/31/17 _____ Date
Bradford A. Bench
Special Agent in Charge Seattle

Attest: Sam Bishop 8/31/2017 _____

Approved As to Form:

Anne P. McElearney _____
Anne P. McElearney
Seattle Office of the Chief Counsel/ OPLA
Legal Counsel for HSI-Seattle

RESOLUTION NO. 132-17

A RESOLUTION of the City of Richland authorizing the execution of an Interlocal Cooperation Agreement with the Cities of Richland and Kennewick, the County of Benton, and the Department of Homeland Security (DHS), Immigration and Customs Enforcement, Homeland Security Investigations Seattle ("HSI-Seattle").

WHEREAS, the Interlocal Cooperation Act, Chapter 39.34 RCW, permits local government units to make the most efficient use of their powers by enabling them to cooperate with other localities, and thereby to provide services and facilities in a manner that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, the Internet Crimes Against Children (ICAC) Task Force Program assists federal, state and local law enforcement agencies in developing an effective response to cyber enticement and child pornography cases, to include investigative and forensic components, training and technical assistance, victim services and community education; and

WHEREAS, the goals of the ICAC Task Force Program are to increase the investigation and prosecution of ICAC offenses, and to increase public awareness and prevention of ICAC offenses; and

WHEREAS, the national policy objectives for the ICAC Task Force Program are: (1) increase the investigative capabilities, including the 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; and

WHEREAS, the primary purpose of the ICAC Task Force Program is to investigate, prosecute, and deter the possession, production, and distribution of child pornography and the utilization of the Internet to seek children as sexual victims; and

WHEREAS, creation of a regional ICAC Task Force comprised of local jurisdictions pooling resources and knowledge to investigate, prosecute and deter the possession, production, and distribution of child pornography and the utilization of the Internet to seek children as sexual victims serves the public's best interest; and

WHEREAS, the Richland Police Department is willing and able to serve as a participating jurisdiction in the proposed Southeast Regional Internet Crimes Against Children (SERICAC) Task Force to further the goals identified herein related to investigation and prosecution of child sex predators.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the City Manager is authorized to sign and execute the Southeast Regional Internet Crimes Against Children Task Force Interlocal Agreement.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland at a regular meeting on the 1st day of August, 2017.


ROBERT J. THOMPSON
Mayor

ATTEST:


MARCIA HOPKINS
City Clerk

APPROVED AS TO FORM:


HEATHER KINTZLEY
City Attorney