

SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs
Consent

AGENDA ITEM: 4 – E
DATE: October 2-3, 2019

SUBJECT

Fusion Center Joint Powers Agreement – DSU, Dept. of Public Safety & City of Sioux Falls Police Department

CONTROLLING STATUTE, RULE, OR POLICY

[BOR Policy 5:3](#) – Agreements and Contracts

BACKGROUND / DISCUSSION

Dakota State University (DSU) desires to enter into an agreement with the South Dakota Department of Public Safety (DPS) and City of Sioux Falls Police Department to cooperate in establishing and maintaining a cyber analyst at the Fusion Center in Sioux Falls to provide technical case support consultation and technical resource assistance to law enforcement agencies within South Dakota. DSU would receive \$100,000 from the City of Sioux Falls over the term of this JPA, in addition to other related funds already secured to advance the underlying objective of the JPA.

BOR Policy 5:3 (“Contracts Requiring Board Action...D. Joint powers agreements”), requires Board approval of Joint Powers Agreements (JPA). As such, Board approval of the JPA set forth in Attachment I is necessary.

IMPACT AND RECOMMENDATION

The attached JPA will allow DPS and the City of Sioux Falls Police Department, in addition to law enforcement agencies statewide, to capitalize on the unique cyber expertise of DSU through its provision of the services and support contained therein.

Staff recommends approval.

ATTACHMENTS

Attachment I – Fusion Center JPA

DRAFT MOTION 20191002_4-E:

I move to approve the Joint Powers Agreement set forth in Attachment I and to authorize the DSU President to finalize and execute the JPA in substantially similar form to that set forth in Attachment I.

JOINT POWERS AGREEMENT
BETWEEN
SOUTH DAKOTA DEPARTMENT OF PUBLIC SAFETY,
CITY OF SIOUX FALLS POLICE DEPARTMENT
AND
DAKOTA STATE UNIVERSITY

THIS AGREEMENT is entered by and among the South Dakota Department of Public Safety, 118 West Capitol Avenue, Pierre, South Dakota, (hereinafter identified as DPS), City of Sioux Falls Police Department, 320 West Fourth St., Sioux Falls, South Dakota, (hereinafter identified as SFPD) and Dakota State University, 820 N Washington Ave. Madison, SD 57042 (hereinafter identified as DSU).

WHEREAS, cyber-enabled crime, data breaches, identity theft and cyber-attacks have become a serious problem for businesses, individuals and government entities in South Dakota and are expected to increase significantly in the years ahead;

WHEREAS, the FBI's IC3 report shows annual financial losses from cybercrime activities in 2016 for South Dakota victims were approximately \$1 million. This is thought to represent only a small portion of actual losses;

WHEREAS, a need exists for additional digital forensics education, training and services for law enforcement officers and agencies throughout South Dakota;

WHEREAS, DPS operates a Fusion Center in Sioux Falls, SD which provides assistance to law enforcement officers in South Dakota, and DPS recognizes a need to address cybercrime by access to cybercrime technical services in order to provide information and assistance to address cybercrime;

WHEREAS, SFPD recognizes a need to address cybercrime by access to cybercrime technical services in order to provide information and assistance to address cybercrime;

WHEREAS, DSU and its faculty are recognized for excellence in digital forensics and cyber security education and research by the United States National Security Agency ("NSA") and the United States Department of Homeland Security ("DHS"). In addition, its faculty includes experts in network protection, threat detection and mitigation and reverse engineering. DSU currently holds four Centers of Academic Excellence designations from the NSA and DHS and offers cybersecurity education programs at the Certificate, Associate, Baccalaureate, Master's and PhD levels;

WHEREAS, DPS, SFPD and DSU desire to collaborate to put in place, at the Fusion Center, a cyber intelligence analyst to provide information and services to the law enforcement agencies within South Dakota;

NOW THEREFORE, in consideration of the covenants and agreements contained herein, and the joint and mutual benefits and responsibilities flowing to each party as outlined in this Agreement, the parties agree as follows:

1. AUTHORITY: The parties enter into this AGREEMENT pursuant to the provisions in SDCL . 1-24 and the authorization granted by the South Dakota Board of Regents.

2. PURPOSE OF AGREEMENT: The purpose of this Agreement is for DPS, SFPD and DSU to cooperate in establishing and maintaining a Cyber Analyst to provide technical case support consultation and technical resource assistance to the law enforcement agencies within South Dakota.

(a) In consideration of DSU's observance and performance of the covenants, terms and conditions set forth herein, SFPD agrees to provide DSU with a \$10,000 grant on October 1, 2019 and a \$30,000 grant, each year thereafter, for three years to establish and maintain a Cyber Analyst at the Fusion Center located in Sioux Falls, South Dakota. This grant will be paid yearly starting October 1, 2020. In the event this agreement is terminated at a time other than the end of a year, DSU will refund a pro-rata amount for any month of service that has not yet started. Indirect fund cost will be limited to 2% for the purposes of the money provided by SFPD. DSU acknowledges that in consideration of DSU's observance and performance of the covenants, terms and conditions set forth herein that DPS is providing a separate \$75,000 grant, each year, for three years to establish and maintain a Cyber Analyst at the Fusion Center located in Sioux Falls, South Dakota. DSU will comply with the grant agreement entered into with DPS regarding those funds.

(b) In consideration of the grant from DPS and the SFPD, and observance of the covenants, terms and conditions set forth herein, DSU agrees to employ a Cyber Analyst to be housed at the Fusion Center located in Sioux Falls, South Dakota to provide technical case support consultation and technical resource assistance to DPS and the SFPD. Specific duties and obligations of the Cyber Analyst employed by DSU will include, but are not limited to:

- 1) Provide timely notification and analysis to the SFPD regarding any threats discovered by the Cyber Analyst to the City of Sioux Falls systems and reputation;
- 2) Provide to the SFPD and DPS monthly security summaries regarding threats to critical utilities infrastructure;
- 3) Provide to the SFPD and DPS monthly security summaries regarding threats to the City of Sioux Falls business community, including hospitals, banking industry, and school systems;
- 4) Participate in a quarterly in-person meeting with the City of Sioux Falls (represented by a team of the City's choosing) to provide updated threat

- information and knowledge transfer;
- 5) Provide assistance to DPS and SFPD to mitigate threats;
 - 6) Provide timely investigative support for SFPD criminal investigations, including, but not limited to, narcotics trafficking, internet crimes against children, identity theft, credit card fraud, and DDOS attacks; and
 - 7) Coordinate with SFPD Investigative Services Division on matters involving criminal intelligence from Internet and Dark Web sources.
- (c) This Agreement is not meant and shall not be construed to limit any existing or additional cooperative efforts between the parties. Except as expressly provided herein, nothing in this Agreement is intended to affect the respective rights, duties, and responsibilities of DPS, SFPD or DSU.
- (d) It is understood by DPS and SFPD that DSU will seek to enhance and expand its services and capacity by working with other governmental agencies at the local, regional and Federal level.
- (e) It is understood by all parties to this agreement that Cyber Analyst is a new position and encompasses new services in South Dakota, and therefore it is difficult to estimate the demand for services provided under this Agreement. Therefore, the Director of the Fusion Center, DPS and SFPD agree to meet quarterly to evaluate the volume and type of services needed and the ability of the Cyber Analyst to meet the demand.
3. PERIOD OF PERFORMANCE: The term of this Agreement shall be 3 years and will commence on _____ and conclude on _____ unless extended by written agreement of the parties.
4. TERMINATION: This Agreement can be terminated by DSU, DPS or SFPD for any reason by providing 30 days prior written notice to the other parties; upon agreement of the parties; or as set forth in paragraph 5 below. In addition, DPS and SFPD can terminate this Agreement immediately for violation of the confidentiality provision in paragraph 7. The obligations of DSU under the confidentiality and records retention provisions set forth in paragraphs 7 and 8 below shall survive termination or expiration of the Agreement between the parties.
5. FUNDING: Notwithstanding any other provision, the performance by DPS and SFPD of its obligations under this Agreement depends upon the receipt by DPS and SFPD of both funds and expenditure authority. This Agreement will be terminated if DPS and/or SFPD funds become unavailable or if DPS or SFPD does not have expenditure authority for the funds. DPS and SFPD will provide DSU with written notice of the unavailability of funds or expenditure authority and the effective date of the termination of the Agreement. Termination under this provision does not constitute a default or give rise to any claim against DPS and/or SFPD.

6. ASSIGNMENT AND SUBCONTRACTING: This Agreement, or any part thereof, or benefits to be received hereunder, shall not be assigned, transferred or otherwise disposed of to any person, firm, corporation or other entity. DSU may not use subcontractors to perform the services described herein.

7. CONFIDENTIALITY PROVISION: For purposes of this paragraph, "DPS and SFPD Confidential Information" shall include all information disclosed to DSU by DPS and/or SFPD, including any division or program of DPS or SFPD, to the extent that such disclosure was for purposes of this Agreement. DPS and SFPD Confidential Information shall not include information that (i) was in the public domain at the time it was disclosed to DSU; (ii) was known to DSU without restriction at the time of disclosure by DPS and/or SFPD; (iii) was independently developed by DSU without the benefit or influence of DPS's or SFPD's information; or (iv) becomes known to DSU without restriction from a source not connected to DPS or SFPD.

- (a) DSU acknowledges DPS and SFPD need to keep confidential information they maintain, that is subject to various confidentiality statutes and legal privileges held by DPS and SFPD, and other agencies, state agency clients, in-state and out-of-state government entities, and third parties.
- (b) Unless specifically authorized under this Agreement, DSU shall not disclose any DPS and SFPD Confidential Information to any third person or entity for any reason without the express written permission of a DPS and/or SFPD officer or employee, as relevant, with authority to authorize the disclosure. DSU shall not make use of DPS and SFPD Confidential Information except to exercise rights and perform obligations under this Agreement. DSU agrees to immediately notify DPS and SFPD of any request for, or demands for release of, any DPS and SFPD Confidential Information, or of any unauthorized release or disclosure of DPS and SFPD Confidential Information, whether such release or disclosure was intentional or inadvertent.
- (c) DSU acknowledges and agrees that DSU is held to the same standard of care in guarding DPS and SFPD Confidential Information as applies to DPS and SFPD in protecting their own confidential or proprietary information and materials of a similar nature, and no less than holding DPS and SFPD Confidential Information in the strictest confidence. DSU shall protect the confidentiality of DPS and SFPD Confidential Information from the time of receipt to the time that such information is either returned to DPS and SFPD or destroyed to the extent that it cannot be recalled or reproduced.
- (d) DSU agrees to return all DPS and SFPD Confidential Information to DPS 's and/or SFPD's custody upon the end of the term of this agreement, unless

otherwise agreed in a writing signed by both applicable parties.

- (e) DSU acknowledges and agrees that DPS and SFPD Confidential Information may include personal and/or identifying information regarding a "person". In addition to any notice or disclosure required pursuant to SDCL 22-40-20, DSU shall notify DPS and SFPD of any "breach of system security", as defined in SDCL 22-40-19. Such notice shall be given by email delivered to: (list). Such notice must be provided by DSU within not more than two (2) business days following the discovery by or notification to DSU of the breach. As used herein, "person" is as defined in SDCL 22-1-2.
- (f) DSU will enforce the terms of this Confidentiality Provision to its fullest extent possible. DSU shall not make DPS and SFPD Confidential Information available to any of its employees, officers, or agents except those who have agreed to obligations of confidentiality at least as strict as those set out in this Agreement and who have a need to know such information. DSU further agrees to immediately remove any employee or agent from performing work under this Agreement that has or is suspected to have violated the terms of this Confidentiality Provision and shall notify DPS and SFPD of such violation or suspected violation within two (2) business days at the contact information provided in paragraph 7(d) of this Agreement.
- (g) Neither this Confidentiality Provision, nor any part thereof, shall establish any privacy rights to, for or on the part of, any employee of DSU, DPS or SFPD or waive any remedies against any such person for illegal, improper, or unauthorized use of DPS and SFPD Confidential Information.(h)
 Upon request by DPS and/or SFPD, DSU shall securely dispose of all DPS and/or SFPD Confidential Information in all of its forms, such as disk, CD/ DVD, backup tape and paper. Such information shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods. Certificates of destruction shall be provided to DPS and/or SFPD.
- (i) DSU will implement, maintain and update security incident and data breach procedures that comply with all State and Federal requirements, including but not limited to, the Information Technology Security Policy established by the State of South Dakota, Bureau of Information and Telecommunications. DSU officers, employees, agents, and subcontractors who may have access to any DPS and/or SFPD Confidential Information will complete a state criminal background check the findings for which will be provided to both DPS and SFPD. DPS and SFPD reserve the right to prohibit access to DPS and SFPD Confidential Information by any person

based upon the results of the background check. Additionally, DSU shall immediately notify DPS and SFPD via email to the contacts provided in paragraph 7(d) above in the event that any individual is arrested for or charged with a crime during the term of this Agreement which is punishable as a felony, or which involves theft, deceit or dishonesty.

8. **RETENTION OF RECORDS:** DSU agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program. At a minimum, DSU shall retain such records for not less than five (5) years after termination or expiration of this Agreement. If any litigation, claim, or audit is started before the expiration of the five-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. The five-year retention period may be extended upon written notice by DPS and/or SFPD.

9. **ACCESS TO RECORDS:** DSU acknowledges that records related to the provision of digital forensics and analysis services of case information and data under this Agreement may be subject to discovery in civil or criminal proceedings. DSU agrees to allow DPS and SFPD, through any authorized representative, access to and the right to examine and copy such records for purposes of responding to requests for discovery.

10. **REPORTING:** DSU agrees to report to DPS and SFPD any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject DSU, DPS or SFPD to liability. DSU shall report any such event to DPS and SFPD immediately upon discovery. DSU's obligation under this section shall only be to report the occurrence of any event to DPS and SFPD and to make any other report provided for by their duties or applicable law. DSU's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications).

11. **AMENDMENTS:** This Agreement may not be modified or amended except in writing, which writing shall be expressly identified as part of this Agreement.

12. **ADMINISTRATION OF AGREEMENT:** The Parties declare that no specific entity as contemplated in SDCL 1-24-4(2) is being created to implement this Agreement, and that the cooperative undertaking herein described shall be administered by DSU, through its Vice President of Research and Economic Development, the Secretary of DPS, and Chief of Police for SFPD, or authorized designees as contemplated in SDCL 1-24-5.

13. **NOTICE:** Unless otherwise provided herein, all notices or other communication required under this Agreement shall be in writing and sent to the addresses set forth above. Notices shall be given to the Vice President of Research and Economic Development on behalf of DSU and to the Secretary of DPS and the Chief of Police for SFPD, 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, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

14. SEVERABILITY: If any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision herein.

15. SUPERCESSION: All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

16. THIRD PARTY RIGHTS: 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, substantive or procedural, enforceable at law by any third party in any matters, civil or criminal.

17. FILING REQUIREMENTS: The parties acknowledge that a true and correct copy of this Agreement will be filed by DSU 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.

18. GOVERNING LAW: The validity, performance, and enforcement of this Agreement are governed by the laws of the State of South Dakota. Jurisdiction and venue of any legal proceedings involving the parties in connection to this Agreement will lie exclusively with the state courts located in Sioux Falls, South Dakota.

19. AUTHORIZED SIGNATURES: By the signature of their representative below, DSU, DPS and SFPD certify that approval of this Agreement has been obtained by that governmental body's officer pursuant to SDCL 1-24-3 and 1-24-6 and that each representative is authorized to sign on the party's behalf.

State of South Dakota
Department of Public Safety

By: _____

Printed Name: Paul TenHaken_____

Title: Mayor_____

City of Sioux Falls, Police Department

Attest:

City Clerk

Dakota State University
