

COPY

INTERGOVERNMENTAL AGREEMENT

**Between
THE CITY OF MESA AND THE GILA RIVER INDIAN COMMUNITY
Concerning
EMERGENCY POLICE SERVICES**

This Agreement is made, entered into and effective this 1ST day of January, 2015 (the "Effective Date"), by and between the City of Mesa, a municipal corporation of the State of Arizona ("City"), and Gila River Indian Community, a federally recognized Indian tribe (the "Community"). The City of Mesa and the Community shall be collectively referred to as the Parties.

RECITALS

Whereas, the Community's governing body is the Gila River Indian Community Council ("Community Council"). And the Community Council is empowered pursuant to Article XV, Sec. 1(a)(1) of the Constitution and Bylaws of the Gila River Indian Community (approved March 17, 1960) ("Constitution") to enter into this Agreement on behalf of the Gila River Indian Community; and

Whereas, the Community Council is further empowered pursuant to Article XV, Sec. 1(a)(17) of the Community's Constitution to establish a police force and define the powers and duties thereof; and

Whereas, the City is authorized to enter into this Agreement pursuant to A.R.S. Section 11-952, A.R.S. Section 13-3872 and the Mesa City Charter Article 1, Section 103, Intergovernmental Relations; and

Whereas, the Parties both employ Arizona POST certified peace officers and are authorized by A.R.S. Section 13-3871, et seq. to enter into this Agreement; and

Whereas, the City and the Community have a long history of cooperation involving law enforcement; and

Whereas, the City has provided both emergency and specialty law enforcement services through the Mesa Police Department to the Community in the past; and;

Whereas, the Parties recognize that having a mutual aid Agreement covering emergency and specialty law enforcement response will provide their respective communities with enhanced public safety services and;

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises of the parties and the benefits to be received by the Parties under this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

RECITALS: The above recitals are incorporated herein by this reference.

1. EMERGENCY AND SPECIALTY LAW ENFORCEMENT MUTUAL AID: The Parties agree to provide emergency and specialty law enforcement mutual aid upon the request of the other Party. Such requests shall whenever possible be initiated by the Command Duty Officer of each Party's Police Department but in the event a Command Duty Officer is not available, such requests may be initiated by the Communications Section of the respective Police Departments. Each Party reserves the right to decline to provide such assistance based on the availability of law enforcement resources at the time of the request. The Parties agree to follow the National Incident Management System (NIMS) for management of any incidents involving joint response by the law enforcement agencies of each Party.

After occurrences in which emergency and specialty law enforcement mutual aid was given, each party shall exchange with the other party all reports arising out of such occurrence when requested by the other party; provided that nothing in this section shall be interpreted to waive, limit, or remove the duty of confidentiality imposed or allowed by law as to such reports or the contents thereof. Reports generated pursuant to mutual aid between the agencies remain the records of the respective agencies and any public records request shall be the responsibility of the agency creating the record.

2. AUTHORITY: The provisions of A.R.S. Section 13-3872 shall apply to the Parties' peace officers operating pursuant to this Agreement. Arizona POST certified City police officers have the authority of state peace officers pursuant to Arizona law and shall also have the authority of Gila River Indian Community tribal peace officers when responding to requests for assistance by the Community Police Department to incidents occurring within the boundaries of the Community. Arizona POST certified Community police officers have the authority of state peace officers pursuant to A.R.S. Section 13-3874 and shall also have the authority granted by A.R.S. Section 13-3871(1) when responding to requests for assistance by the City Police Department to incidents occurring within the boundaries of the City. Nothing in this section shall be construed to limit in any way, the authority of either Party's police officers within their primary or home jurisdiction.

3. COSTS: Each Party shall absorb its own costs in support of this Agreement except that if deployment of responding police officers to the other Party's jurisdiction is going to be for an extended period beyond an immediate emergency response, the Parties can enter separate agreements for reimbursement of costs for extended deployment periods. Nothing contained in this Agreement shall be construed or constructed as an employment contract of or for individual officers of the City or the Community.

Each Party will pay its own incurred overtime and expenses associated with officers working an occurrence or traveling to testify or testifying, unless provided for in a separate agreement for extended deployment periods. It is also contemplated that the Chief Law Enforcement Officer for each Party shall direct and require his/her officers to travel and testify, under subpoena, to the court with jurisdiction over the occurrence.

4. INDEMNIFICATION: To the extent permitted by law, each Party does hereby covenant and agree to indemnify, defend, and hold harmless the other Party, its elected officials, officers, employees, volunteers and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands or damages of any kind or nature relating to this Agreement which, are the result of any act or omission of the Party, its elected officials, officers, employees, volunteers, agents, and anyone acting under its direction or control, whether intentional or negligent, in connection with or incident to this Agreement. Each party shall have the right of contribution against the other to the extent of the liability caused by the others' employees in activities under this agreement that create joint liability. Officers of the assisting party shall not be considered employees of the requesting party.

5. TERM: This Agreement shall be effective January 1, 2015 and shall expire on January 1, 2025.

6. TERMINATION: Either Party may terminate this Agreement upon sixty (60) days prior written notice by registered and/or certified mail or personal delivery to the other Party.

7. WORKERS COMPENSATION/EMPLOYER'S LIABILITY: Pursuant to A.R.S. §23-1022 D., for the purposes of worker's compensation coverage, all employees covered by this Agreement shall be deemed to be an employee of both Parties. The employing Party shall be solely liable for payment of worker's compensation benefits.

8. ENTIRE UNDERSTANDING: This Agreement embodies the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous Agreements and understandings, inducements and conditions, express or implied, oral or written, except as herein contained. This Agreement may not be modified or amended other than by an Agreement in writing.

9. BINDING NATURE OF AGREEMENT: This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns, except no party may assign or transfer such party's rights or obligations under this Agreement without the prior written consent of the other party.

10. STATUTORY CANCELLATION RIGHT: In addition to its other rights hereunder, the City shall have the cancellation rights specified in A.R.S. § 38-511 (relating to conflicts of interest).

11. LEGAL WORKER REQUIREMENTS. To the extent applicable under the provisions of A.R.S. §41-4401, both Parties warrant to the other that each party will comply with all Federal Immigration laws and regulations that relate to their employees, and as applicable with the E-Verify Program under A.R.S. §23-214(A).

12. SEVERABILITY: The provisions of this Agreement shall be deemed severable and the invalidity or enforceability of any provision shall not affect the validity or enforceability of the other provisions hereof.

13. ARBITRATION: Any dispute or claim arising from, or relating to, this Agreement, or breach thereof between the Parties, that cannot be resolved promptly by the Parties shall be resolved by arbitration in accordance with the then current rules of Commercial Arbitration of the American Arbitration Association. The prevailing Party in such arbitration shall be entitled to file the decision and award with the Maricopa County Superior Court and have judgment rendered thereon, pursuant to A.R.S. § 12-1501 *et seq.* The prevailing Party shall be entitled to all costs incurred in connection with the arbitration proceeding, including its reasonable attorneys' fees, the arbitrator's fees, witness fees and other costs as determined by the arbitrator. It is understood that arbitration as set forth in this paragraph is the exclusive remedy for any dispute or claim between the Parties related to this Agreement. The limited consent to arbitration and enforcement of arbitration for disputes or claims arising under or relating to this Agreement by the Parties or breach between the Parties does not otherwise impair or limit either Parties sovereign immunity and does not extend to other parties.

14. SOVEREIGN IMMUNITY. Nothing in this Agreement shall be construed as a waiver of any government's sovereign immunity, and is not intended to impair, limit, or affect the status of any Party or its sovereignty. Further, it is not the intent of this Agreement to create, and nothing contained in this Agreement shall create, any partnership, joint venture or similar arrangement by the Parties.

15. CONTRACT ADMINISTRATOR FOR CITY. The contract administrator for the City ("City Contract Administrator") shall be Mesa Police Assistant Chief John Meza, or his designee or replacement. The City Contract Administrator shall be authorized to represent the City on all matters relating to the performance and enforcement of this Agreement.

16. CONTRACT ADMINISTRATOR FOR THE Community. The contract administrator for the Community (the "Community Contract Administrator") shall be Chief Kathleen Kirkham, Gila River Indian Community Police Department, or her designee or replacement. The Community Contract Administrator shall be authorized to represent the Community on all matters relating to the performance and enforcement of this Agreement.

17. NOTICES: All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Gila River Indian Community
Attn: Stephen R. Lewis, Governor
Post Office Box 97
Sacaton, Arizona 85147

With a copy that shall not constitute notice to:

Gila River Indian Community
Office of General Counsel
Post Office Box 97
Sacaton, Arizona 85147

With a copy that shall not constitute notice to:

Gila River Indian Community Police Department
Attn: Chief Kathleen Kirkham
Post Office Box 2186
Sacaton, Arizona 85147

City of Mesa

Attn: John Meza, Chief of Police
Mesa Police HQ
130 North Robson
Mesa, Arizona 85201

With a copy that shall not constitute notice to:

Mesa Police Department Legal Unit
Attn: Nancy Sorensen, Staff Attorney
130 North Robson Street
Mesa, Arizona 85201

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[Signatures on following page]

In witness whereof, the parties have executed this Agreement on the day and year first written above.

FOR THE CITY OF MESA, an Arizona municipal corporation

By _____
Christopher J. Brady, City Manager

ATTEST:

Clerk

AUTHORIZED PURSUANT TO A.R.S. SECTION 13-3871, ET SEQ.

By _____
John Meza, Chief of Police

APPROVED AS TO FORM:

Nancy Sorensen
Staff Attorney

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with A.R.S. §11-952, this Agreement has been reviewed by the undersigned who determined that this Agreement is in appropriate form and is within the powers and authority of the respective parties.

City of Mesa

By: _____
Nancy Sorensen
Staff Attorney

Dated: _____

FOR THE GILA RIVER INDIAN COMMUNITY:

Stephen R. Lewis, Governor

Date

Approved as to form:

Linus Everling, General Counsel

Date

For the Gila River Police Department:

Kathleen Kirkham, Chief

Date