

**INTERGOVERNMENTAL AGREEMENT  
FOR USE OF REAL PROPERTY**

**G-30188  
C-70-16-035-1-0**

This Intergovernmental Agreement for Use of Real Property ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2016 ("Effective Date"), by the City of Mesa, an Arizona municipal corporation, ("City") and Maricopa County, a political subdivision of the State of Arizona ("County"), together the "Parties".

**RECITALS**

- A. City is authorized to execute this Agreement pursuant to action by the Mesa City Council and A.R.S. §11-952.
- B. County is authorized to execute this Agreement pursuant to A.R.S. §§ 11-201 and 11-952.
- C. County supports City in City's effort to upgrade its holding and processing facility.
- D. City's Police Department has a need to process and hold arrestees in an off-site location during remodeling of City's holding and processing facility.
- E. City has indicated that approximately 4,467 square feet of vacant space in County-owned Southeast Sheriff's Substation Building at 1840 S. Lewis Street, Mesa, Arizona, (the "Building") can be made suitable by City for use by City as a temporary facility for processing and holding arrestees as well as for the initial arraignment of the arrestees.
- F. The Parties are willing to participate in a cooperative Agreement pursuant to the terms and conditions provided hereinafter in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the sufficiency and adequacy of which the Parties acknowledge, the Parties agree as follows:

**1. Subject Premises.**

- 1.1 *Premises.* County will make available to City, and City accepts in the "As-Is" condition, certain space in the Building that City will use for holding, processing and arraignment, subject to the further terms and conditions of this Agreement. For purposes of this Agreement, the space to be used by City equates to approximately

4,467 square feet within the Building, and as such holding, processing and arraignment space is depicted on the floor plan shown in **Exhibit “A”** (the “Premises”) which is attached hereto and made a part of this Agreement.

- 1.2 *Permitted Use of Premises.* City shall use the Premises solely as a facility for processing, holding and initial arraignment of arrestees. City shall not use, or permit the Premises, or any part thereof, to be used for any other purpose or purposes without the prior written consent of County, which may be withheld in County’s sole discretion. City recognizes and acknowledges that others occupy space within the Building and the other occupants of the Building perform essential governmental functions. With that understanding, City is hereby granted a non-exclusive right to use in common with County, other tenants and occupants and other parties authorized by County, their respective employees, agents, contractors, customers and invitees, such sidewalks, hallways, stairways, toilets, elevators and other common areas and facilities as County shall from time to time designate for common use (“Common Areas”). City shall not disrupt or prevent the quiet enjoyment of other occupants of the Building. City shall be solely responsible for compliance with all federal, state and local laws, regulations, orders, statutes, stipulations, ordinances, and guidelines governing City’s specific use of the Premises.
- 1.3 *Parking.* City may use, for parking of vehicles, the loading dock ramp at the Building (“Parking Area #1”) and the designated parking area within the gated County-owned facility to the south of the Building (“Parking Area #2”). Parking Area #1 and Parking Area #2 combined are collectively referred to in this Agreement as the “Parking Areas.” County, in its sole discretion, has the right to revise the Parking Areas during the term of this Agreement with written notice to City of said revision(s) to the Parking Areas. City shall use only the designated Parking Areas. The Parking Areas are shown on **Exhibit “B”** which is attached hereto and incorporated herein. City shall use the Parking Areas solely for the purpose of parking City-owned vehicles and vehicles of employees, invitees, agents, elected officials, and contractors of City.
- 1.4 *Facility Use Fee.* In addition to payment to County for the Utility Cost Reimbursement as outlined in Section 1.6 of the Agreement and the O&M Expense Fee as outlined in Section 1.15 of the Agreement, City shall pay to County, upon beneficial occupancy of the Premises by City, the following monthly Facility Use Fee for the right to use the Premises and the Parking Areas:

**The monthly Facility Use Fee shall be waived for the term of this Agreement.**

- 1.5 *Condition Upon Surrender.* The term is defined in section 2.1 below. At the expiration of the term, or earlier termination, of this Agreement, City shall restore the Premises to the condition and configuration as existed prior to this Agreement. City will surrender the Premises in as good condition and repair as the Premises are in at the beginning of the Agreement, normal wear and tear excepted.

- 1.6 *Utility Cost Reimbursement.* In addition to the Facility Use Fee as outlined in Section 1.4 of the Agreement and the O&M Expense Fee as outlined in Section 1.15 of the Agreement, City shall prepay County, without notice, \$4,800.00 within thirty (30) days of the Effective Date for the anticipated costs to provide electrical, water and sewer utility services to the Premises (“Utility Cost Reimbursement”). City shall solely bear the entire cost and expense of all telephone, voice-data, cable, security, internet and other communication services for City’s use of the Premises.
- 1.7 *Security.* As pertaining to City’s use of the Premises, City shall be solely responsible and liable for all security requirements necessary to ensure the safety of City, County, and 3<sup>rd</sup> parties.
- 1.8 *Insurance.* From and after the Effective Date, City shall carry, at its sole cost and expense, contents insurance on all City personal property while it remains on the Premises. City shall provide evidence of coverage by or before the Effective Date. City shall provide County with a certificate of insurance or proof of self-insurance.
- 1.9 **Commercial General Liability.** Commercial General Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 General Aggregate Limit. The policy shall include coverage for premises liability, bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provisions which would serve to limit third party action over claims. There shall be no endorsement or modifications of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.
- 1.10 **Automobile Liability.** Commercial/Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any of the Lessee’s owned, hired, and non-owned vehicles assigned to or used in performance of the Lessee’s work or services or use or maintenance of the Premises under this Lease.
- 1.11 **Workers’ Compensation.** Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Lessee’s employees engaged in the performance of the work or services under this Lease; and Employer’s Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.
- 1.12 Lessee, its contractors and its subcontractors waive all rights against Lessor and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers’ Compensation and Employer’s Liability or commercial umbrella liability insurance obtained by Lessee, its contractors and its subcontractors pursuant to this Lease.
- 1.13 *Condition of Premises.* City hereby accepts the Premises in its condition existing as of the Effective Date. City acknowledges that neither County, nor County’s agents, have made any representation or warranty as to the condition of the Premises or the suitability of the Premises for the conduct of City’s business and that City and its

agents and contractors have been provided with an opportunity to thoroughly inspect the Premises.

1.14 *Improvements.* City may, at City's sole cost and expense and after receiving expressed written approval of County, which approval may be withheld solely at County's discretion, cause to have made alterations, additions, improvements and changes (collectively referred to in this paragraph as "Improvements") in and to the interior of the Premises as City may find necessary, or convenient, for City's permitted use, provided that the value of the Premises is not diminished. City shall not make, or have made, any changes of a structural nature to the Premises or Building. County will decide its approval or non-approval of the proposed Improvements within seven (7) calendar days of receiving a complete set of Improvement documents and/or information. Upon the termination of this Agreement, City shall be responsible for all costs and expenses to restore the Premises to its original configuration and condition as existed prior to this Agreement.

1.14.1 *FF&E Installation.* City, at its sole cost and expense, is responsible for furnishing and installing all furniture, fixtures and equipment in the Premises consistent with this Agreement. The move-in of said furniture, fixtures and equipment shall be coordinated with Southeast Sheriff's Substation District 1 personnel.

1.15 *Operations and Maintenance - O&M Expense Fee.* In addition to payment of the Facility Use Fee as outlined in Section 1.4 of this Agreement, and the Utility Cost Reimbursement as outlined in Section 1.6 of this Agreement, within thirty (30) days of the Effective Date City shall reimburse County \$9,700.00 without notice for the costs and expenses associated with the operation, maintenance and repair of the Premises (the "O&M Expense Fee"). City shall be solely responsible for maintaining all supplemental equipment and personal property installed at the Premises for City's use of the Premises. City, at City's sole cost and expense, is responsible for providing all janitorial and custodial services to the Premises. City shall be solely responsible for properly storing, removing and disposing of all waste, including bio-hazardous waste, generated as a result of City's use of the Premises. City shall be solely responsible for any, and all, damage caused to the Premises as a result of City's use of the Premises. City shall reimburse County, within ten (10) days of notice, for all costs incurred by County for the repair, replacement or refurbishment of the Premises and/or Building resulting from City's use of the Premises.

1.16 *Access to Premises.* County shall have the right to inspect the Premises at reasonable times after reasonable notice to City. In the event of an emergency, County shall have the right to enter the Premises and respond to the emergency situation without notice to City and City shall cooperate with County for emergency access to the Premises.

- 1.17 *Environmental.* City assumes responsibility for injuries or health-related exposures arising out of City's use of the Premises.

## **2. Term and Termination.**

- 2.1 *Term.* The term of this Agreement shall commence on May 13, 2016, and expire December 31, 2016, unless terminated earlier as provided for in the Agreement. Upon written request from City to County prior to December 1, 2016, City may extend the term of this Agreement on a month-to-month subject to County's prior written consent. Said written consent from County for any term extension of this Agreement may be withheld at County's sole discretion and with no liability to County related to such withholding. Either party may terminate this Agreement for any reason by providing 30-day written notice to the other party. In the event City exercises City's right to terminate this Agreement early under this Agreement, including this Section 2.1 of this Agreement, City recognizes and agrees that City waives forever any and all reimbursement by County of the Facility Use Fee, the Utility Reimbursement Fee and the O&M Expense Fee.
- 2.2 *Termination.* Either party may terminate this Agreement in the event that the other party has committed a material breach of any of its obligations under this Agreement that has not been cured within thirty (30) days after the breaching party has received written notice thereof or such additional period of time thereafter as County and City may agree in writing and may be reasonably necessary under the circumstances to cure such default if breaching party commences to cure such default within said thirty (30) day period and thereafter diligently proceeds to cure such default.
- 2.3 *Conflicts.* This Agreement is subject to the provisions of A.R.S. § 38-511, the provisions of which are incorporated herein by this reference.
- 2.4 *Non-appropriation.* The Parties recognize that each payment obligation created under this Agreement is conditioned upon the availability of funds. The Parties recognize that the continuation of this Agreement after the close of a party's fiscal year is subject to the approval of a budget of that party providing an appropriation covering such payment obligation. Neither party represents that such budget items will be adopted, as the Mesa City Council and the Maricopa County Board of Supervisors make that determination at the time of the adoption of their respective budgets. As a result, this Agreement may be terminated by County or City at the end of any fiscal year due to non-appropriation of funds without any penalty or liability to the terminating party. County's fiscal year ends June 30<sup>th</sup>. City's fiscal year ends June 30<sup>th</sup>. The non-terminating party and/or any of its employees, agents, officers, directors, members, successors or assigns hereby waives any and all rights to bring any claim against the terminating party or its employees, agents, officers, directors, members, successors or assigns from or relating in any way to the terminating party's termination of this Agreement pursuant to these Sections 2.3 and 2.4.

## **3.0 Default; Remedies**

- 3.1 *Default.* Each of the following shall constitute a material breach of this Agreement and an event of default by City (“Event of Default”) hereunder:
- (a) City’s failure to pay any installment of the Facility Use Fee, Utility Cost Reimbursement and/or the O&M Expense Fee or any other dollar amount under this Agreement when due, where such failure shall continue for a period of ten (10) business days after City receives written notice thereof from County.
  - (b) City assigning or subleasing the Premises without County’s prior written consent.
  - (c) City’s failure to observe or perform any of the material covenants, conditions or provisions of this Agreement to be observed or performed by City, where such failure shall continue for a period of thirty (30) days after City receives written notice thereof from County, or such additional period of time thereafter as County and City may agree in writing and may be reasonably necessary under the circumstances to cure such default if City commences to cure such default within said thirty (30) day period and thereafter diligently proceeds to cure such default.
- 3.2 *County Remedies.* Upon the occurrence of any Event of Default and at any time thereafter, County may, but shall not be required to, exercise any remedies now or hereafter available to County at law or in equity without such exercise being deemed (a) an acceptance of surrender of the Premises; or (b) a termination of this Agreement.
- 3.3 *County Default.* Each of the following shall constitute a material breach of this Agreement and an event of default by County (“County Event of Default”) hereunder:
- (a) County’s failure to observe or perform any of the material covenants, conditions or provisions of this Agreement to be observed or performed by County, other than as where such failure shall continue for a period of thirty (30) days after County receives written notice thereof from City, or such additional period of time thereafter as County and City may agree in writing and may be reasonably necessary under the circumstances to cure such default if County commences to cure such default within said thirty (30) day period and thereafter diligently proceeds to cure such default.
- 3.4 *City Remedies.* In the event County fails to perform any of its material obligations under this Agreement and is in default pursuant to Section 3.3 of this Agreement, City may, at its option, terminate this Agreement. Further, upon the occurrence of any County Event of Default and at any time thereafter, City may, but shall not be required to, exercise any remedies now or hereafter available to City at law or in equity.
- 3.5 *Attorneys’ Fees and Costs.* In the event County or City resorts to legal proceedings to enforce any right under this Agreement or to obtain relief for any default by the

other party, the party prevailing in such proceedings shall be entitled to recover from the defaulting party the costs thereof, including reasonable court awarded attorneys' fees and documented costs.

4. **Disposition of Property upon Termination.** Upon expiration or termination of this Agreement, all equipment and other tangible personal property used by City in connection with this Agreement shall be City's tangible personal property.
5. **Indemnification/Hold Harmless.** Except as otherwise expressed herein, each party (as "indemnitor") agrees to indemnify, defend and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or expenses (including reasonable court awarded attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims are not caused by the willful misconduct or gross negligence of the indemnitor, its officers, officials, agents, employees or volunteers.
6. **Successors and Assigns.** City may not assign or delegate its rights and duties under this Agreement without the written consent of County. Any attempt to assign or delegate such rights or duties in contravention of this Agreement will terminate this Agreement pursuant to section 2.2 above.
7. **Modification.** This Agreement shall constitute the entire agreement between the Parties and sets forth all of the covenants, promises, agreements, conditions and understandings between County and City, and there are no covenants promises, agreements, conditions or understandings, either oral or written, between County and City other than as set forth herein, and those agreements that are executed contemporaneously herewith. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the party drafting this Agreement. This Agreement cannot be modified or changed except by a written instrument executed by County and City. County and City have reviewed this Agreement and have had the opportunity to have it reviewed by legal counsel.
8. **Notice.**

8.1 Any notice, consent or other communication ("NOTICE") required or permitted under this Agreement shall be in writing and either delivered in person, sent by facsimile transmission, or deposited in the United States mail, return receipt requested, addressed as follows:

If intended for County:

Maricopa County Facilities Management Department  
Attention: Chief Real Estate Officer  
2801 West Durango Street  
Phoenix, AZ 85009

If intended for City:

City of Mesa Police Department

Attention: Commander Michael Beaton  
PO Box 1466  
Mesa, AZ 85211-1466

8.2 Notice shall be deemed received ("Receipt Date") at the time it is personally served, and, if mailed, ten (10) days after the notice is deposited in the United States Postal Service mail as above provided. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address, or the person to receive the notice, by notifying the other party as provided in this Section.

9. **Maintaining and Producing Records.** Each party will retain, for inspection and audit at all reasonable times by the other party, all books, accounts, reports, files and other records relating to this Agreement for a period of six (6) years after termination of this Agreement. Upon request of a party, a legible copy of all such records will be produced by the other party, and the cost to copy such requested documents/records shall be the responsibility of the requesting party. The original of all such records also will be available and produced for inspection and audit when needed to verify the authenticity of a copy.
10. **No Third Party Beneficiaries.** Neither party intends to benefit any person who is not named as a party to this Agreement, to assume any special duty to supervise the operations of another party, to provide for the safety of any specific person or to assume any other duty other than that imposed by general law.
11. **Venue; Governing Law.** The proper venue for any proceeding at law or equity or under the provisions of arbitration shall be Maricopa County, Arizona and County and City hereby waive any right to object to venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona.
12. **Waiver.** The failure of either party to insist upon strict adherence to any term of this Agreement will not be considered a waiver or deprive the party afterwards of the right to insist upon the strict adherence to that term of the Agreement.
13. **Severability.** In the event any term or condition of this Agreement or application to any person or circumstance is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition or application. To this end the terms and conditions of this Agreement are declared severable.
14. **Obligations Imposed by Law.** Nothing in this Agreement is intended to relieve, relinquish or delegate any obligation or responsibility imposed upon either party by law. This Agreement is not intended to, nor shall it be construed so as to, supersede or restrict the jurisdiction, function or power of either party.
15. **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, judicial



orders, enemy or hostile government action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

16. **Recordation.** Either Party may have a memorandum of the Agreement or the Agreement recorded by the County Recorder after its approval and execution of the Agreement by both parties.

17. **Nondiscrimination.** The Parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act, and affirmative action.

19. **Authority to Execute.** Any individual executing this Agreement on behalf of or as representative for a corporation or other person, firm, partnership or entity represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of said corporation, person, firm, partnership or other entity and that this Agreement is binding on said entity in accordance with its terms.

20. **Headings.** Sections and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

21. **Cooperation.** County and City agree to execute and/or deliver to each other such other instruments and documents as may be reasonably necessary to fulfill the covenants and obligations to be performed by County and/or City pursuant to this Agreement.

22. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Faxed and copied signatures are acceptable as original signatures.

23. **Recitals.** The Parties agree that the Recitals in this Agreement are true and correct, and the Recitals shall be incorporated into this Agreement by this reference.

.....

**G-30188**  
**C-70-16-035-1-00**

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

**Maricopa County**, a political  
Subdivision of the State of Arizona

**City of Mesa**, an Arizona municipal  
corporation

By: \_\_\_\_\_  
Clint Hickman  
Chairman, Board of Supervisors

By: \_\_\_\_\_  
Christopher J. Brady, City Manager

**ATTEST:**

**ATTEST:**

By: \_\_\_\_\_  
Clerk of the Board                      Date

By: \_\_\_\_\_  
City Clerk                                      Date

In accordance with A.R.S. 11-952 this Agreement has been reviewed by the undersigned attorneys who have determined that this Agreement is in proper form and within the powers and authority granted to Maricopa County and the City of Mesa under the laws of the State of Arizona.

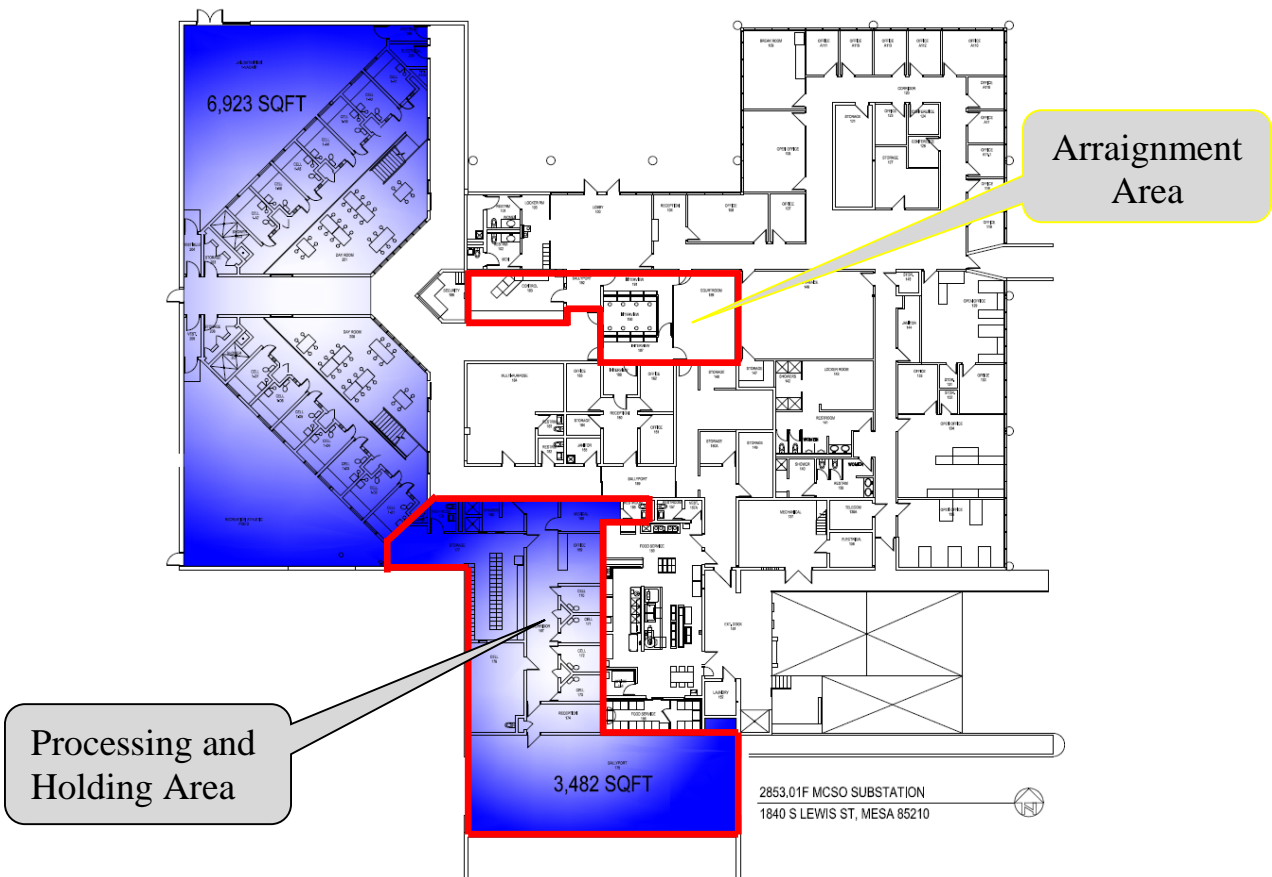
By: \_\_\_\_\_  
Deputy County Attorney              Date

By: \_\_\_\_\_  
City Attorney                                      Date

**EXHIBIT "A"**

**Premises**

Maricopa County Southeast Sheriff's Substation  
1840 South Lewis Street, Mesa, Arizona



G-30188  
C-70-16-035-1-00

## EXHIBIT “B”

### Parking Areas

