

CONTRACT NO. C-95-16-009-3-00

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
CITY OF MESA, CITY OF PHOENIX,
AND
COUNTY OF MARICOPA, ARIZONA
FOR
EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM
FY 2016 LOCAL SOLICITATION (CFDA #16.738)**

Pursuant to A.R.S. §11-952, this Intergovernmental Agreement (AGREEMENT) is entered into as of the ____ day of _____, 2016 by and between Maricopa County (COUNTY), a political subdivision duly organized and existing under the laws of the State of Arizona and the Cities of Mesa and Phoenix, municipal corporations duly organized and existing under the laws of the State of Arizona (CITIES). COUNTY and the CITIES may also referred to individually as 'PARTY' or collectively as 'PARTIES'.

RECITALS

WHEREAS, the COUNTY and the CITIES have become entitled to certain grant funds through the Edward Byrne Memorial Justice Assistance Grant (JAG) Program; and

WHEREAS, a disparity exists between the funding eligibility of the COUNTY and CITIES as determined by 42 USC § 3755 (d)(3)(4); and

WHEREAS, Federal law requires that units of local government within a group of jurisdictions identified as disparate to agree upon an allocation process; and

WHEREAS, the COUNTY and CITIES believe it to be in their best interests to reallocate the JAG funds to resolve said disparity;

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PARTIES hereby agree as follows:

SECTION 1

The purpose of this AGREEMENT is to reallocate the funds available to the COUNTY and the CITIES from the Edward Byrne Memorial Justice Assistance Grant (JAG) Program and to resolve disparities in compliance with 42 USC § 3755 (d)(3)(4). In compliance therewith the PARTIES agree the COUNTY shall receive all the funds and distribute the funds to the CITIES as follows:

1. The COUNTY agrees to receive \$1,064,609 from the JAG award for the Maricopa County JAG Program; and

2. The COUNTY agrees to pay City of Mesa a total of \$135,000 of JAG funds; and
3. The COUNTY agrees to pay City of Phoenix a total of \$675,000 of JAG funds ; and
4. The COUNTY shall retain \$253,609 for the JAG Program (collectively “allocated funds”).
5. All payments to CITIES will be made within thirty (30) days after receipt of the JAG funds by COUNTY.

SECTION 2

The Parties agree to use allocated funds for the JAG Program on or before September 30, 2019.

SECTION 3

1. **Term.** The term of this AGREEMENT shall commence simultaneously with the FY2016 JAG grant program year on October 1, 2015 and continue until September 30, 2019 unless terminated sooner in accordance with the terms of the grant, and such reasonable time thereafter as may be needed to complete the administration of the grant.
 - A. **Obligations of the COUNTY.** The COUNTY agrees to administer the Funds as provided in Section 1, and shall:
 - (a) Ensure that the funds received by COUNTY are dispersed to the CITIES in accordance to this AGREEMENT; and
 - (b) Collect and transmit to the appropriate Federal funding authorities all financial and program reports as required by the terms and conditions of the grant and applicable Federal regulations.
 - B. **Obligations of the CITIES.** During the term of this AGREEMENT the CITIES:
 - (a) Agree that the COUNTY will administer the Funds as provided in Section 1; and
 - (b) Will maintain and provide to the COUNTY all financial and program reports as required by the terms and conditions of the grant and applicable Federal regulations; and
 - (c) Will be responsible for the actions of their respective employees in providing services under this AGREEMENT and shall hold harmless the PARTIES to this AGREEMENT from any liability that may arise from the furnishing of the services by the other PARTIES.
2. **DISCLAIMER.** This AGREEMENT is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, agency, partnership or formal business association or organization of any kind among the PARTIES, and the rights and obligations of the PARTIES shall be only those expressly set forth in this AGREEMENT.

- 3. NON-AVAILABILITY OF FUNDS.** Each payment obligation of the PARTIES created hereby is conditioned on the availability of funds. The PARTIES recognize that the continuation of this AGREEMENT after the close of any of their respective fiscal years shall be subject to the approval of their respective governing bodies providing an appropriation covering this item as an expenditure. None of the PARTIES represent that said budget items will be actually adopted.

SECTION 4

The PARTIES to this AGREEMENT do not intend for any third party to obtain a right by virtue of this AGREEMENT.

SECTION 5

Notice is given that pursuant to A.R.S. 38-511 the PARTIES may cancel any AGREEMENT without penalty or further obligation within three years after execution of the AGREEMENT, if any person significantly involved in initiating, negotiating, securing, drafting or creating the AGREEMENT on behalf of the PARTY is at any time while the AGREEMENT or any extension of the AGREEMENT is in effect, an employee or agent of any other party to the AGREEMENT in any capacity or consultant to any other party of the AGREEMENT with respect to the subject matter of the AGREEMENT. Additionally, pursuant to A.R.S. 38-511 the PARTIES may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the AGREEMENT on behalf of the PARTIES from any other party to the AGREEMENT arising as the result of the AGREEMENT.

SECTION 6

By entering into this AGREEMENT, the PARTIES do not intend to create any obligations express or implied other than those set out herein. Further, this AGREEMENT shall not create any rights in any party not a signatory hereto.

SECTION 7

The COUNTY and CITIES warrant they are in compliance with the provisions in A.R.S. §41-4401 (e-verify).

SECTION 8

Each PARTY (as “Indemnitor”) agrees to indemnify, defend, and hold harmless the other PARTY (as “Indemnitee”) from and against all claims, losses, liability, costs, or expenses (including reasonable attorneys’ fees, expert witnesses’ fees and other litigation costs) (hereinafter collectively referred to as “Claims”) arising out of bodily injury (including death) of any person or property damage, but only to the extent that such claims, which result in vicarious liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

SECTION 9

Each PARTY agrees to comply with the federal certifications regarding lobbying, debarment, suspension and other responsibility matters, and drug free workplace requirements for this grant.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the PARTIES certify that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT)

Pursuant to Executive Order 12549, Debarment and Suspension, implemented at 2 CFR Part 2867, for prospective participants in primary covered transactions, as defined at 2 CFR Section 2867.20(a), and other requirements:

A. The PARTIES certify that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this AGREEMENT been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery,

bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- (c) Have not within a two-year period preceding this AGREEMENT been convicted of a felony criminal violation under any Federal law, unless such felony criminal conviction has been disclosed in writing to the Office of Justice Programs (OJP) at Ojpcompliancereporting@usdoj.gov , and, after such disclosure, the has received a specific written determination from OJP that neither suspension nor debarment of the PARTY is necessary to protect the interests of the Government in this case.
- (d) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (e) Have not within a three-year period preceding this AGREEMENT had one or more public transactions (Federal, State, or local) terminated for cause or default.

B. Where any PARTY is unable to certify to any of the statements in this certification, said PARTY shall attach an explanation to this AGREEMENT.

3. DRUG-FREE WORKPLACE

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 83, Subpart F, for grantees, as defined at 28 CFR Sections 83.620 and 83.650:

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an on-going drug-free awareness program to inform employees about
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will
 - (1) Abide by the terms of the statement; and

- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the granting agency, and the COUNTY Grant Administrator (Exhibit A), in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 810 7th Street, N.W., Washington, D.C. 20531. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted
 - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

As the duly authorized representative of the PARTY, the undersigned hereby certify that the PARTY will comply with the above certifications.

(Remainder intentionally left blank. Signatures to follow)

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THE STATE OF ARIZONA
COUNTY OF MARICOPA

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CITY OF MESA, CITY OF PHOENIX, AND COUNTY OF MARICOPA, ARIZONA
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FY 2016 LOCAL SOLICITATION (CFDA #16.738)

MARICOPA COUNTY

This Agreement is in the proper legal form
and is within the powers and authority
granted under the laws of this State to those
parties represented by the undersigned legal
counsel.

By: _____

Type Name: Clint Hickman

Its: Chairman of the Board of Supervisors

Deputy County Attorney

Attest: _____

Type Name: Fran McCarroll, Clerk of the Board

Date _____

Date: _____

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COUNTY OF MARICOPA**

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CITY OF MESA

This Agreement is in the proper legal form
and is within the powers and authority
granted under the laws of this State to those
parties represented by the undersigned legal
counsel.

By: _____

Type Name: _____

Its: _____

Attest: _____

Mesa City Attorney

Type Name: _____

Date _____

Date: _____

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COUNTY OF MARICOPA**

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CITY OF PHOENIX

This Agreement is in the proper legal form and is within the powers and authority granted under the laws of this State to those parties represented by the undersigned legal counsel.

By: _____

Type Name: _____

Its: _____

Phoenix City Attorney

Attest: _____

Type Name: _____

Date _____ **Date:** _____

**EXHIBIT A
TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN
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Notices provided under this AGREEMENT shall be directed to the following persons:

<p>The <u>COUNTY</u>:</p> <p>Alice Bustillo, Grant Administrator C/O County Manager's Office 301 W. Jefferson Street, 10th Floor Phoenix, AZ 85003 602-372-7059 Fax: 602-506-1642</p>	
<p>The CITY of <u>MESA</u></p> <p>Name: Dorothy O'Brien Address: Mesa Police Department Address: P.O. Box 1466 Address: City/St/Zip: Mesa AZ 85211 Phone: 480-644-2331 Fax: 480-644-2857</p>	<p>The CITY of <u>PHOENIX</u></p> <p>Name: Gary Turner Address: Phoenix Police Department Address: 4th Floor, Suite 422 Address: 620 W. Washington St City/St/Zip: Phoenix AZ 85003 Phone: 602-534-3622 Fax: 602-534-1613</p>