

**PROGRAM-FUNDED STATE AND LOCAL TASK FORCE AGREEMENT
BETWEEN
DRUG ENFORCEMENT ADMINISTRATION
AND
CITY OF MESA, AN ARIZONA MUNICIPAL CORPORATION**

This agreement is made this 1st day of October, 2018, between the United States Department of Justice, Drug Enforcement Administration (hereinafter “DEA”), and the City of Mesa, an Arizona Municipal Corporation, Mesa Police Department (hereinafter “MPD”). The DEA is authorized to enter into this cooperative agreement concerning the use and abuse of controlled substances under the provisions of 21 U.S.C. § 873.

WHEREAS there is evidence that trafficking in narcotics and dangerous drugs exists throughout Arizona, and that such illegal activity has a substantial and detrimental effect on the health and general welfare of the people of the State of Arizona, the parties hereto agree to the following:

1. The DEA Phoenix Task Force will perform the activities and duties described below:
 - a. disrupt the illicit drug traffic in the State of Arizona by immobilizing targeted violators and trafficking organizations;
 - b. gather and report intelligence data relating to trafficking in narcotics and dangerous drugs; and,
 - c. conduct undercover operations where appropriate and engage in other traditional methods of investigation in order that the Task Force’s activities will result in effective prosecution before the courts of the United States and the State of Arizona.
2. To accomplish the objectives of the DEA Phoenix Task Force above, the MPD agrees to detail two (2) experienced Officers to the DEA Phoenix Task Force, for a period of not less than two years. During this period of assignment, the MPD Officer will be under the direct supervision and control of DEA supervisory personnel assigned to the Task Force.
3. The MPD Officer assigned to the Task Force shall adhere to DEA policies and procedures. Failure to adhere to DEA policies and procedures shall be grounds for dismissal from the Task Force.
4. The MPD Officer assigned to the Task Force shall be deputized as Task Force Officers of DEA pursuant to 21 U.S.C. §878.

5. To accomplish the objectives of the DEA Phoenix Task Force, DEA will assign nine (9) Special Agents to the Task Force. DEA will also, subject to the availability of annually appropriated funds or any continuing resolution thereof, provide necessary funds and equipment to support the activities of the DEA Special Agents and MPD Officer assigned to the Task Force. This support will include: office space, office supplies, travel funds, funds for the purchase of evidence and information, investigative equipment, training, and other support items.
6. During the period of assignment to the DEA Phoenix Task Force, the MPD will remain responsible for establishing the salary and benefits, including overtime, of the MPD Officers assigned to the Task Force, and for making all payments due them. DEA will, subject to availability of funds, reimburse the MPD for overtime payments made by it to the MPD Officers assigned to the DEA Phoenix Task Force for overtime, up to a sum equivalent to 25 percent of the salary of a GS-12, Step 1, law enforcement officer general schedule locality pay tables, rest of the United States table (currently \$18,343.75), per officer. ***“Note: Task Force Officer’s Overtime shall not include any costs for benefits, such as retirement, FICA, and other expenses.”***
7. In no event will the MPD charge any indirect cost rate to DEA for the administration or implementation of this agreement.
8. The MPD shall maintain on a current basis complete and accurate records and accounts of all obligations and expenditures of funds under this agreement in accordance with generally accepted accounting principles and instructions provided by DEA to facilitate on-site inspection and auditing of such records and accounts.
9. The MPD shall permit and have readily available for examination and auditing by DEA, the United States Department of Justice, the Comptroller General of the United States, and any of their duly authorized agents and representatives, any and all records, documents, accounts, invoices, receipts or expenditures relating to this agreement. The MPD shall maintain all such reports and records until all litigation, claim, audits and examinations are completed and resolved, or for a period of three (3) after termination of this agreement, whichever is later.
10. The MPD shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, as amended, and all requirements imposed by or pursuant to the regulations of the United States Department of Justice implementing those laws, 28 C.F.R. Part 42, Subparts C, F, G, H, and I.
11. The MPD agrees that an authorized Officer or employee will execute and return to DEA the attached OJP Form 4061/6, Certification Regarding Lobbying: Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements. The MPD acknowledges that this agreement will not take effect and no Federal funds will be awarded to the MPD by DEA until the completed certification is received.

12. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with federal money, the MPD shall clearly state: (1) the percentage of the total cost of the program or project which will be financed with Federal money; and, (2) the dollar amount of Federal funds for the project or program.
13. **Liability**
Unless specifically addressed by the terms of this MOU, the parties agree to be responsible for the negligent or wrongful acts or omissions of their respective employees. Legal representation by the United States is determined by DOJ on a case-by-case basis. The DEA cannot guarantee the United States will provide legal representation to any Federal, state or local law enforcement officer.

Congress has provided that the exclusive remedy for the negligent or wrongful act or omission of an employee of the United States government, acting within the scope of his employment, shall be an action against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b), §§ 2671-2680.

For the limited purpose of defending claims arising out of TASK FORCE activity, state or local law enforcement officers who have been specially deputized and who are acting within the course and scope of their official duties and assignments pursuant to this MOU, may be considered an "employee" of the United States government as defined in 28 U.S.C. § 2671. See 5 U.S.C. § 3374 (c) (2).

Under the Federal Employees Liability Reform and Tort Compensation Act of 1988 (commonly known as the Westfall Act), 28 U.S.C. § 2679(b) (1), the Attorney General or her designee may certify that an individual defendant acted within the scope of his employment at the time of the incident giving rise to the suit. *Id.*, 28 U.S.C. § 2679 (d) (2). The United States can then be substituted for the employee as the sole defendant with respect to any tort claims. 28 U.S.C. § 2679(d) (2). If the United States is substituted as defendant, the individual employee is thereby protected from suits in his official capacity.

If the Attorney General declines to certify that an employee was acting within the scope of employment, "the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment." 28 U.S.C. § 2679 (d) (3).

Liability for any negligent or willful acts of TASK FORCE employees, undertaken outside the terms of this MOU will be the sole responsibility of the respective employee and agency involved.

Liability for violations of federal constitutional law rests with the individual federal agent or officer pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971) or pursuant to 42 U.S.C. § 1983 for state and local officers or cross-deputized federal officers. Both state and federal officers enjoy qualified

immunity from suit for constitutional torts "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800 (1982).

Task Force Officers may request representation by the U.S. Department of Justice for civil suits against them in their individual capacities for actions taken within the scope of employment. 28 C.F.R. §§ 50.15, 50.16.

An employee may be provided representation "when the actions for which representation is requested reasonably appear to have been performed within the scope of the employee's employment and the Attorney General or [her] designee determines that providing representation would otherwise be in the interest of the United States." 28 C.F.R. § 50.15(a).

A Task Force Officer's written request for representation should be directed to the Attorney General through coordination with DEA Chief Counsel and the Phoenix Field Division Special Agent in Charge. The Phoenix Field Division will then forward the representation request to the DEA Office of Chief Counsel (CC) who will forward the request to the Civil Division of DOJ. 28 C.F.R. § 50.15(a)(3).

If a Task Force Officer is found to be liable for a constitutional tort, he/she may request indemnification from DOJ to satisfy an adverse judgment rendered against the employee in his/her individual capacity. 28 C.F.R. § 50.15 (c) (4). The criteria for payment are substantially similar to those used to determine whether a federal employee is entitled to DOJ representation under 28 C.F.R. § 50.15(a).

14. The term of this agreement shall be effective from the date in paragraph number one (1) until September 30, 2019. This agreement may be terminated by either party on 30 days advance written notice. Billings for all outstanding obligations must be received by DEA within 90 days of the date of termination of this agreement. DEA will be responsible only for obligations incurred by MPD during the term of this agreement.

For the Drug Enforcement Administration:

Douglas W. Coleman
Special Agent in Charge

Date: _____

For the City of Mesa, an Arizona Municipal Corporation:

City Manager

Date: _____

Ramon Batista
Chief of Police

Date: _____

Attachment