

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
GILBERT PUBLIC SCHOOLS
AND
THE CITY OF MESA,
AN ARIZONA MUNICIPAL CORPORATION**

This Agreement is made and entered into this ____ day of _____, 20____ by and between the City of Mesa, an Arizona Municipal Corporation, (“**City**”) and Gilbert Unified School District No. 41 (“**District**”), a political subdivision of the state of Arizona. City and District may also be referred to hereinafter as “**Party**” individually and as “**Parties**” collectively.

RECITALS

WHEREAS, the School Safety Program was established by A.R.S. § 15-154 in 1994 for the purpose of placing School Resource Officers (SRO) and Juvenile Probation Officers (JPO) on school grounds to contribute to safe school environments that are conducive to teaching and learning.

WHEREAS, through comprehensive prevention and intervention approaches, School Safety Program funded officers maintain a visible presence on campus; deter delinquent and violent behaviors; serve as an available resource to the school community; and provide students and staff with Law-Related Education instruction and training.

WHEREAS, District and City are authorized by A.R.S. § 11-951 et. seq. to enter into agreements for the joint exercise of any power common to the contracting parties as to governmental functions necessary to the public health, safety and welfare, and the proprietary functions of such public agencies.

WHEREAS, District and City desire to work in cooperation with one another to further the goals of the approved "School Safety Program" in accordance with the Guidance Manual.

AGREEMENT

THEREFORE, in consideration of the promises and covenants contained in this Agreement and for other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

1. Term, Renewal and Termination.

A. Term. The Term of this Agreement is for one (1) school year, beginning on July 1, 2023 and ending on June 30, 2024.

B. Termination for Convenience. Notwithstanding anything is this Agreement to the contrary, this Agreement may be terminated by either party by giving ninety (90) days’ written notice to the other party.

2. Purpose. The purpose of this Agreement is to establish a School Safety, Education, and Community Resource Officer Program at District schools within the City of Mesa and referenced in the Recitals above by assigning sworn Mesa police officers thereto to provide public safety, education resources, and community resources to students and the community.

3. Authority. City and District are authorized and empowered to enter into this Agreement pursuant to A.R.S. §§ 11-951, *et seq.* and the respective provisions of their City Charters or other governing statute or authority.

4. **City Responsibilities.** City will assign two (2) sworn Mesa police officers as School Resource Officers (the “SRO(s)”) to District for ten (10) months (the school year). The selection, school placement, and work hours of the police officers will be made at City’s sole discretion. Services provided by the City under this Agreement will not exceed 40 hours per work week.

A. Public Safety. The SROs shall:

- i. Assist the District in safety efforts in and around the schools;
- ii. Develop an emergency and incident response system;
- iii. Respond to calls for service from the schools and coordinate the response of other police resources;
- iv. Address crime and disorder problems in and around the schools;
- v. Conduct criminal investigations and follow up investigations related to crime by or between students and on the school campus;
- vi. Make arrests and issue citations on the school campus;
- vii. Monitor the school campus as a deterrent to criminal activity; and
- viii. Provide law enforcement services associated with keeping the school campus and surrounding community safe.

B. Education. The SROs shall:

- i. Provide one-hundred-and-forty (140) hours of law related education per year; and
- ii. Assist in developing law related programs.

C. Community Resources. The SROs shall:

- i. Meet with students to discuss public safety related concerns or issues;
- ii. Provide information to students and school personnel about law enforcement matters;
- iii. Serve as a liaison between the school and police;
- iv. Develop and expand crime prevention efforts for students; and
- v. Develop and expand community justice programs for students.

D. District Campuses. The SROs shall provide the services provided for under this Agreement at:

- i. Desert Ridge High School located at 10045 East Madero Ave. Mesa, AZ 85209;
- ii. Desert Ridge Junior High School located at 10211 East Madero Ave. Mesa, AZ 85209; and
- iii. Highland Junior High School located at 6915 East Guadalupe Rd. Mesa, AZ 85212.
- iv. Any locations, campuses, or details on a temporary as-needed basis by mutual agreement of the Parties.

5. **District Responsibilities.**

A. The District shall:

- i. Establish a School Safety Assessment and Prevention Team that meets quarterly;
- ii. Require the school administrator evaluate the SRO twice per year as further defined in Subsection 5(H);
- iii. Require the school administrator meet formally with the SRO Supervisor at least once per semester;
- iv. Establish that the School Administrator or their designee is responsible for administration of all school discipline;
- v. Require a teacher to be present in the classroom at all times while the SRO implements law related education (“LRE”) classroom instruction. Teacher and SRO shall work cooperatively in the planning and delivery of LRE;

- vi. Develop in conjunction with City a written document describing the chain of command for officers, school administrators and the Mesa Police Department (“MPD”);
- vii. Provide office space that provides privacy for the SROs to conduct confidential business. The office shall include necessary equipment for the SROs to perform duties to include telephone, chair, desk and filing cabinet. City shall provide the SROs with computer equipment necessary to conduct law enforcement business; and
- viii. Conduct performance evaluations on the sworn SROs assigned to the District and referenced in the above recitals. The performance evaluations shall be provided to the SRO Supervisor.

6. Cost and Reimbursement.

- A. Cost and Reimbursement.** The City will be responsible for any and all SRO costs accrued up to 40 hours per work week for services provided under this Agreement including salary, shift differential pay, benefits, vehicles, and equipment.
- B. Administrative Fee.** Neither City or District will charge the other for any administrative fees or for any work performed pursuant to this Agreement.
- C. Grant Funds.** If District receives grant funds designated for the School, Education, and Community Resource Officer Program, some or all of these expenses may be reimbursed to City.

7. Employment Status of Law Enforcement Officers.

- A.** Employment Status in performance under this Agreement, City and District will be acting in their individual government capacities and not as agents, associates, employees, partners, or joint ventures of the other. The agents, associates, employees or subcontractors of one party shall not be deemed or construed to be the agents, associates, employees or subcontractors of the other.

Each Party will be solely and entirely responsible for its acts and the acts of its employees, agents, servants, subcontractors, and volunteers during the performance of this Agreement. Except as applicable and when authorized under the terms of Section 6 above, each Party will have total responsibility for all salaries, wages, bonuses, retirement withholdings, worker’s compensation, occupational disease compensation, unemployment compensation, other employment compensation, other employee benefits, and all employer’s taxes and premiums concerning any Party-personnel involved in the performance of this Agreement, and each Party agrees to hold the other Party harmless from any liability thereof/therefrom.

The sworn Mesa police officers assigned to the District schools referenced above, shall fulfill his or her duties as a sworn law enforcement officer for the State of Arizona and District or school administrator shall not interfere therewith.

- B. Assignments, Hours, and Discipline.** City recognizes the necessity of coordinating and discussing with District assignments, hours, and discipline issues of the SROs and will consult with the relevant parties as needed.

8. Reporting and Records.

- A. Maintenance.** All records related to this Agreement shall be kept in accordance with Arizona Public Records law and each party’s policies and practices, as applicable.
- B. Release.** Any records related to this Agreement may be disclosed consistent with State and Federal law and each party’s policies and practices, as applicable.
- C. Confidentiality.** City acknowledges and agrees that District education records are subject to the provisions and confidentiality provided under the Family Education Rights and Privacy Act (20 U.S.C. § 1232g; 34 C.F.R. Part 99) (“**FERPA**”). City agrees that any use of District education records will comply with FERPA and City shall not access District education records except as permitted by law.

9. **Indemnification.** To the maximum extent permitted by law, each Party (as “**Indemnitor**”) agrees to indemnify, defend and hold harmless the other Party, its officers, officials, agents, employees, or volunteers from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney’s fees) (hereinafter collectively referred to as “**Claims**”) arising out of actions taken in performance of this Agreement to the extent that such Claims are caused by the acts, omissions, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. If a Claim or Claims by third parties becomes subject to this section, the governmental parties to this Agreement that are the subject of the Claim or Claims shall cooperate to the maximum extent possible.
10. **Insurance.** Each Party acknowledges and affirms that it has appropriate and adequate insurance coverage for its official operations, duties and activities, and that it will maintain such coverage, at its own expense, for the duration of this Agreement.

11. **General Terms.**

A. **Notices.**

If to District:

Superintendent
Gilbert Unified School District #41
140 South Gilbert Road
Gilbert, Arizona 85296

If to City:

Kenneth Cost, Police Chief
Mesa Police Department
Post Office Box 1466
Mesa, Arizona 85211

With a copy to:

Mesa City Attorney
20 E Main St
Mesa, Arizona 85201

- B. Manner of Funding.** No funds are expected to be exchanged between the Parties under this Agreement except as expressly provided for in this Agreement.
- C. Interparty Dispute Resolution.** If a dispute between the Parties arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation within sixty (60) days, the Parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation. The Parties shall mutually agree upon a mediator. Each party agrees to bear its own costs of mediation, and to split the mediator fee. If mediation fails, any claim or action arising out of this Agreement shall be brought in the Maricopa County Superior Court.
- D. Non-assignment.** This Agreement has been entered into based upon the personal reputation, expertise and qualifications of the Parties. Neither Party shall assign its interest in this Agreement, in whole or in part, without the prior written consent of the other Party. Neither Party shall assign any monies due or to become due to it hereunder without the prior written consent of the other Party.
- E. Modification.** This Agreement shall not be modified or extended, except by a mutually signed written agreement.

- F. Relationship of the Parties.** Each Party shall act in its individual capacity and not as an agent, employee, partner, joint venture, associate, or any other representative capacity of the other party. Each Party shall be solely and entirely responsible for its acts or acts of its agents and employees during the performance of this Agreement. This Agreement shall not be construed to imply authority to perform any tasks, or accept any responsibility, not expressly set forth herein. This Agreement shall be strictly construed against the creation of a duty or responsibility unless the intention to do so is clearly and unambiguously set forth herein. Nothing contained in this Agreement confers any right to any person or entity not a party to this Agreement.
- G. Governing Law and Venue.** To the maximum extent possible, terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws and regulations of the State of Arizona. Any action relating to this Agreement shall be brought in an Arizona court in Maricopa County.
- H. Interparty Dispute Resolution.** If a dispute between the Parties arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation within sixty (60) days, the Parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation. The Parties shall mutually agree upon a mediator. Each party agrees to bear its own costs of mediation, and to split the mediator fee. If mediation fails, any claim or action arising out of this Agreement shall be brought in the Maricopa County Superior Court.
- I. Entire Agreement.** This Agreement represents the entire agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either expressed or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties.
- J. Severability.** If any part, term, or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.
- K. Conflicts of Interest.** The provisions of A.R.S. § 38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this Agreement.
- L. Other Duties Imposed by Law.** Nothing in this Agreement shall be construed as relieving the involved public agencies of any obligation or responsibility imposed on it by law.
- M. Compliance with Laws and Policies.** The parties shall comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. Furthermore, the Parties agree to abide by each Party's policies to the extent appropriate and required or permitted by law.
- N. Workers' Compensation.** To the extent applicable by law, each Party shall comply with the notice of A.R.S. § 23-1022(E). For purposes of A.R.S. § 23-1022, each Party shall be considered the primary employer of all personnel currently or hereafter employed by that Party, irrespective of the operations of protocol in place, and said Party shall have the sole responsibility for the payment of Worker's Compensation benefits or other fringe benefits of said employees
- O. Non-Discrimination and Compliance with Civil Rights.** To the extent applicable by law, the Parties agree to comply with A.R.S. Title 41, Chapter 9 (Civil Rights), Arizona Executive Order 2009-09 and any other federal or state laws relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act, including flow down of all provisions and requirements to any subcontractors. In the performance of this contract, neither party shall discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

- P. E-Verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Parties and their respective subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). A Party's or subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by either party under the terms of this Agreement. The Parties each retain the legal right to randomly inspect the papers and records of each other Party and each other Party's subcontractors who work under this Agreement to ensure that the other party and its subcontractors are complying with the above-mentioned warranty. The Parties warrant to keep their respective papers and records open for random inspection during normal business hours by each other Party. The Parties and their respective subcontractors shall cooperate with each other Party's random inspections including granting the inspecting Party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.
- Q. No Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture, or employment relationship between the Parties or create any employer-employee relationship between the Parties' employees. Neither Party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other Party, including, but without limitation, the other Party's obligation to withhold Social Security and income taxes for itself or any of its employees.
- R. No Third-Party Beneficiaries.** Nothing in this Agreement is intended to create duties or obligations to or rights in third parties not Parties to this Agreement or affect the legal liability of either Party to the Agreement by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.
- S. Headings.** The section headings throughout this Agreement shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.
- T. Non-Appropriation.** Notwithstanding any other provision in this Agreement, this Agreement may be terminated if, for any reason, either party does not appropriate sufficient monies for the purpose of maintaining this Agreement. In the event of such cancellation, the canceling party shall have no further obligation other than for payment for services rendered prior to cancellation.
- U. Uncontrollable Events.** No Party shall be considered to be in default of this Agreement if failure of performance is due to an uncontrollable event. The term "uncontrollable event" means any cause beyond the control of the Party affected, including but not limited to flood, earthquake, storm, fire, epidemic, war, riot, civil disturbance or disobedience, labor dispute, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority or the electorate, labor or material shortage, sabotage and restraint by court order or public authority, that by exercise of due diligence and foresight the Party reasonably could not have been expected to avoid and that by exercise of due diligence it will be unable to overcome. A Party that is rendered unable to fulfill any obligation by reason of an uncontrollable event shall exercise due diligence to remove such inability with all reasonable dispatch.
- V. Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the date written below.

For the District

For the City

Dr. Shane McCord
Superintendent

Chris Brady
City Manager

Date

Date

ATTEST:

City Clerk

Date

As applicable, copies of appropriate action by ordinance, resolution, or otherwise authorizing the respective parties to enter into this Agreement are attached hereto.

In accordance with A.R.S. §§ 11-951 *et seq.*, this Agreement has been reviewed by the undersigned who have confirmed that this Agreement is in appropriate form and within the powers and authority granted to each respective party.

Attorney for the District

Attorney for the City

Date

Date