

INTERGOVERNMENTAL AGREEMENT FOR COOPERATIVE LAW
ENFORCEMENT TRAINING OPERATIONS BETWEEN THE TOWN OF GILBERT
AND THE CITY OF MESA
322000441

DO NOT REMOVE

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**INTERGOVERNMENTAL AGREEMENT FOR COOPERATIVE LAW
ENFORCEMENT TRAINING OPERATIONS BETWEEN THE TOWN OF
GILBERT AND CITY OF MESA**

THIS AGREEMENT (“Agreement”) is entered into as of the June 28, 2022 (“Effective Date”) between the TOWN OF GILBERT, an Arizona municipal corporation (“Gilbert”), and the CITY OF MESA, a/an an Arizona municipal corporation , collectively known herein as the “Parties” and each individually as “Party.”

RECITALS

WHEREAS, the Parties are authorized pursuant to A.R.S. § 11-951, *et. seq.*, and the respective provisions of their Town/City charters, if any, and related code and ordinances to enter into intergovernmental agreements to carry out public agency services; and

WHEREAS the Parties each perform the function of law enforcement within their respective jurisdictions; and

WHEREAS the Parties have a need for cooperative law enforcement training operations between their respective jurisdictions.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, and for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows.

AGREEMENT

I. Purpose of the Agreement:

The Parties desire to enter into this Agreement for the purpose of conducting joint law enforcement training or attending law enforcement training hosted by either Party. Such training may include, but is not limited to, recruit and in-service academy training and specialty schools for both sworn and civilian personnel.

II. Definitions:

a. “Host Agency” means the City or Town sponsoring or conducting the training at which Non-Host Agency Personnel participate, and Partnering Non-Host Agency recruits may participate.

b. “Non-Host Agency” means the City or Town that has sent its Personnel to train at a Host Agency.

c. “Partnering Non-Host Agency” means a third-party governmental agency that is not a signed Party to this Agreement, but who has entered into a substantially similar

intergovernmental agreement with the Host Agency related to cooperative law enforcement training.

d. "Personnel" means the sworn or civilian employees, recruits, or personnel of a Party.

III. Duration, Renewal and Termination:

a. This Agreement shall become effective on the date it is executed by the Parties, and shall terminate June 30, 2027. This Agreement shall automatically renew for additional five (5) year terms under the same terms and conditions, including any adopted amendments in effect at the time of renewal.

b. This Agreement may be terminated by either Party, with or without cause, upon thirty (30) days written notice to the other Party. Notwithstanding the foregoing, if the Host Agency terminates this Agreement, such termination, unless for cause, shall not affect the continued participation of any Non-Host Agency Personnel currently attending a training program until such time as the specific training attended by such Personnel has ended.

IV. Fees for Training:

The Parties, by and through their respective Chief of Police or their designee, shall execute a separate written agreement for each cooperative law enforcement training operation listing specific terms as well as fees that the Non-Host Agency shall pay to the Host Agency for training that falls under the terms of this Agreement ("Training Agreement"). Each Training Agreement shall be signed by both Parties prior to the start of training. If the training operation is to take place at the Gilbert Public Safety Training Facility ("PSTF"), fees pursuant to the then current PSTF Fee Schedule shall be included in the Training Agreement. If the training operation is to take place at a different location, such fees shall be included in the Training Agreement. In establishing those fees, the Parties may consider the nature and duration of the training, additional expenses associated with participation by the Non-Host Agency, non-monetary contributions by the Non-Host Agency in facilities, Personnel or equipment, and the experience, value and goodwill inherent in the Parties training together. The Chief of Police of the Host Agency, or their designee, has the discretion to waive, in whole or in part, applicable fees for the Non-Host Agency, if it is determined to be in the best interest of the Host Agency or in exchange for in-kind services, goods, or materials.

V. Availability of Training:

Nothing in this Agreement requires either Party to host training or to provide seats in any particular training class to a Non-Host Agency.

VI. Training Records:

The Host Agency will provide original training records for Non-Host Agency Personnel upon the completion of any training or in-service training academy, or termination of the Non-Host Agency's Personnel's attendance from an in-service training academy or other training pursuant to this Agreement. The Host Agency will maintain records of lesson plans, class rosters, and other documentation common to the class as a whole, according to applicable Arizona State Library and Archives records retention schedules.

VII. Equipment and Assistance With Training:

a. The Host Agency shall provide information to the Non-Host Agency that specifies the equipment and materials the Non-Host Agency must provide to its Personnel in order for its Personnel to participate in the training program. The Non-Host Agency agrees to provide such equipment to its Personnel as a condition of participating in the training program.

b. Upon reasonable request by the Host Agency and in consultation with and concurrence of the Non-Host Agency, the Non-Host Agency agrees to provide instructors or administrative assistance to the Host Agency. When the Non-Host Agency has facilities such as a driving track, firearm range, etc. that can facilitate a specific training, the Non-Host Agency agrees to allow the Host Agency to incorporate such facilities into the training when feasible and in the best interest of all Parties.

VIII. Discipline and Academic Requirements:

a. The Host Agency reserves the right in its sole discretion to decide whether the Personnel from the Non-Host Agency are maintaining the minimum requirements necessary to participate in or continue in a training. The Host Agency also retains the right in its sole discretion to remove any Non-Host Agency Personnel from training for training, academic, ethical, or disciplinary standards applicable to all law enforcement-training participants.

b. Host Agency and Non-Host Agency shall be treated in the same manner for purposes of training, academics, ethics and discipline. Should the need arise for an Internal Affairs investigation into the actions of the Personnel of the Non-Host Agency or Host Agency, each agency will conduct the investigation of its own Personnel.

c. The Host Agency will have the sole authority over (1) the curriculum and content of instruction, (2) the training schedule and hours, (3) decisions about whether Non-Host Personnel can participate in or should remain in the training, and (4) the implementation and execution of policies and procedures applicable to the training.

d. The Non-Host Agency understands, in certain training programs, the curriculum will consist of the standard Host Agency training. Although some facilitation of cross-training on Non-Host Agency materials may occur when feasible, training based heavily on policy and procedure shall focus on the policies and procedures of the Host Agency.

e. The Host Agency will maintain communication with the Non-Host Agency on issues such as academics, physical fitness, discipline, Arizona POST requirements, or other concerns that impact a Personnel's ability to successfully complete or participate in the training program. The Host Agency will consult with the Non-Host Agency if or when Personnel of the Non-Host Agency are in jeopardy of being separated from a training program for performance issues.

f. The Parties acknowledge that there may be instances where the Host Agency has recruits of a Partnering Non-Host Agency participating in a recruitment class in which Non-Host Agency Personnel is also participating and, in such instances, the Parties acknowledge:

1. for purposes of training, academics, ethics and discipline, the Partnering Non-Host Agency recruits shall be treated in accordance with the Partnering Non-Host Agency's intergovernmental agreement with the Host Agency; and

2. should the need arise for an Internal Affairs investigation into the actions of the Partnering Non-Host Agency's recruits, the Partnering Non-Host Agency will conduct the investigation of its own recruits in accordance with its intergovernmental agreement with the Host Agency.

IX. Agreement to Hold Harmless:

The Non-Host Agency shall indemnify, defend, and hold harmless the Host Agency and any of its elected officials, directors, agents, representatives, officers, or employees (collectively referred to in this paragraph as the "Host Agency") from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses (collectively referred to in this paragraph as the "Claims"), which may be brought or made against or incurred by the Host Agency on account of loss of or damage to any real or personal property or for injuries to or death of any person, to the extent caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the Non-Host Agency, its employees, officers, directors, agents, representatives, or contractors (or their employees, agents, or representatives) in connection with or incident to the performance of this Agreement. The Non-Host Agency's obligations under this paragraph shall not extend to any Claims to the extent caused by the negligence of the Host Agency. The Non-Host Agency's obligations under this paragraph shall survive the termination of this Agreement.

X. Contract Administrator:

The Contract Administrators for this Agreement are the Training Lieutenants of the Parties' Police Departments, or their designees.

XI. Notices:

All notices, requests for payment, or other correspondence between the Parties regarding this Agreement shall be in writing and mailed or delivered to the respective Parties as follows:

If to Gilbert: Chief of Police
Gilbert Police Department
75 E. Civic Center Dr.
Gilbert, Arizona 85296

If to Mesa: City Manager
City of Mesa
P.O. Box 1466
Mesa, AZ 85211
(480) 644-2066

With a copy to:
Chief of Police
Mesa Police Department
P.O. Box 1466
Mesa, AZ 85211
(480) 644-2030

XII. Other Duties Imposed by Law:

Nothing in this Agreement shall be construed as relieving the Parties of any obligation or responsibility imposed on it by law.

XIII. Waiver of Terms and Conditions:

The failure of either Party to insist in any one or more instances on performance of any of the terms or conditions of this Agreement, or to exercise any right or privilege contained herein, shall not be considered waiving such terms, conditions, rights, or privileges, and they shall remain in full force and effect. All waivers must be in writing signed by the waiving Party.

XIV. Conflict 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.

XV. Compliance with Laws and Policies:

The Parties shall comply with all federal, state, and local laws, rules, regulations, standards, and Executive Orders, applicable to this Agreement, including those designated within this Agreement. Furthermore, unless otherwise stated herein, the Parties agree to abide by each Party's applicable policies to the extent appropriate and required or permitted by law.

XVI. Employment Status and Compensation of Law Enforcement Officers:

a. The Parties shall each provide workers' compensation insurance, salary, benefits, appropriate equipment, and uniforms for their respective Personnel.

b. Except as otherwise provided by law, specifically A.R.S. § 23-1022(D), in the performance of this Agreement, each Party hereto will be acting in its individual governmental capacity and not as an agent, employee, partner, joint venture, or associate of the other.

c. Except as specifically provided in Section XVII, any and all persons employed by each Party, either directly or indirectly, are employees of their respective Party. Accordingly, each Party's employees are not entitled to any benefits provided to the other Party's employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded to the other Party's employees. Each Party's employees will not be regarded as the other Party's employees or agents for any purpose including the payment of unemployment or workers' compensation except as provided by A.R.S. § 23-1022(D). If a Party's employees assert a claim for wages or other employment benefits against the other Party, the employee's Party will defend, indemnify and hold harmless the other Party from all such claims.

XVII. Workers' Compensation:

Pursuant to A.R.S. § 23-1022(D), for the purposes of workers' compensation coverage, all Personnel of the Host Agency and Non-Host Agency, and Participating Host Agency receiving training pursuant to this Agreement shall be deemed to be an employee of all agencies. The Personnel of a Party shall be solely liable for payment of workers' compensation benefits for its Personnel. The Parties acknowledge that it is the intent of the Parties that the Partnering Non-Host Agency will be solely liable for payment of workers' compensation benefits for its Personnel.

XVIII. Compliance with Civil Rights:

The Parties to this Agreement agree to comply with all applicable provisions of A.R.S. Title 41, Chapter 9 (Civil Rights), Arizona Executive Orders 75-5 and 09-09 and any other applicable federal or state laws relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act. No Party shall engage in any form of illegal discrimination with respect to applications for employment.

XIX. Compliance with the E-VERIFY Program:

To the extent provisions of A.R.S. § 41-4401 are applicable, each Party warrants to the other Party that they will comply with all Federal Immigration laws and regulations that relate to their employees and that each now complies with the E-Verify Program under A.R.S. § 23-214(A).

a. A breach of this warranty will be considered a material breach of this Agreement and may subject the breaching party to penalties up to and including termination of this Agreement.

b. The Parties retain the legal right to inspect the papers of any employee who works pursuant to this Agreement, or any related subcontract, to ensure compliance with the warranty given above.

c. Either Party may conduct a random verification of the employment records of the other Party to ensure compliance with this warranty.

d. A Party will not be considered in material breach of this Agreement if it establishes that it has complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).

XX. Implied Terms

Each provision of law and any terms required by law to be in this Agreement are a part of this Agreement as if fully stated herein including, but not limited to, A.R.S. §§ 35-392 and 35-393.01, as applicable.

XXI. 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 or other Personnel. 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.

XXII. 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.

XXIII. Non-Assignment:

Neither Party shall assign its interest in this Agreement, either in whole or in part.

XXIV. 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.

XXV. Surviving provisions:

Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any Party from any liability or obligation arising prior to the date of termination.

XXVI. Governing Law, Dispute Resolution, and Jurisdiction:

The laws and regulations of the State of Arizona shall govern this Agreement, including the rights of the Parties, the performance of this Agreement, and any disputes hereunder. Venue will be in the Maricopa County Superior Court. In the event of any litigation or arbitration arising out of this Agreement, the substantially prevailing Party in such litigation or arbitration shall be entitled to recover its reasonable attorneys' fees, expert witness fees, and other costs of litigation.

XXVII. Entire Agreement:

This Agreement represents the entire agreement between the Parties on the subject matter 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.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year set forth below:

Town of Gilbert

DocuSigned by:
Brigette Peterson
C6599DB39B4D4DA...

Brigette Peterson, Mayor

City of Mesa

Christopher J. Brady, City Manager

ATTEST:

DocuSigned by:
Chaveli Herrera
609C1924D5B2428...

Chaveli Herrera, Town Clerk

ATTEST:

Holly Mosely, City Clerk

APPROVED AS TO FORM: The undersigned attorney acknowledges that they have reviewed the above agreement on behalf of Gilbert, and has determined that this Agreement is in proper form and is within the powers and authority granted to Gilbert under the laws of the State of Arizona.

DocuSigned by:
Chris Payne
AFDA551617E04AA...

Chris Payne, Town Attorney

APPROVED AS TO FORM: The undersigned attorney acknowledges that they have reviewed the above agreement on behalf of Mesa, and has determined that this Agreement is in proper form and is within the powers and authority granted to Mesa under the laws of the State of Arizona.

Geoffrey Balon, Police Legal Advisor