

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE GILBERT UNIFIED SCHOOL DISTRICT
AND
THE MESA POLICE DEPARTMENT
FOR
SURVEILLANCE SYSTEM EMERGENCY ACCESS**

This Intergovernmental Agreement (“**IGA**”) is entered into this ____ day of _____, 20____, by and between the Gilbert Unified School District, a political subdivision of the State of Arizona, (“**District**”) and the City of Mesa, a political subdivision of the State of Arizona, on behalf of the Mesa Police Department (“**City**”) for the provision of emergency access to District campus surveillance systems. District and City may be referred to herein individually as “**Party**” and collectively as “**Parties.**”

RECITALS

WHEREAS, District and City are authorized to enter into this IGA pursuant to A.R.S. §§ 11-951 *et seq.*; and

WHEREAS, the Parties have placed peace officers in certain District schools campuses as School Resource Officers; and

WHEREAS, City responds to calls for police service at District campuses located within the boundaries of the City; and

WHEREAS, in the event of an ongoing emergency on a District school campus or involving a District campus, the Parties desire to provide first responders with information available through the respective campus security camera/surveillance system(s) in the interest of the safety of all involved; and

WHEREAS, the Parties desire to work in cooperation with one another to further the public interests served by prompt and informed emergency response services pursuant to applicable laws, policies, and the terms of this IGA.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

I. PURPOSE AND INTENT

The purpose of this IGA is to set forth the responsibilities of the parties for the provision of emergency access to District campus surveillance systems, and to address legal and administrative matters among the parties.

II. SCOPE AND CONDITION

City acknowledges and agrees that access to any District campus surveillance system(s) shall only be available during and in response to an active/ongoing emergency occurring on or involving a District campus. “Emergency” means a situation in which articulable facts indicate that a significant threat to the health or safety of a student or other individuals exists. City shall not access any District campus surveillance system for any other purpose or at any other time without the District’s express written permission for such non-emergency access. City shall not access the surveillance system of any campus that is not involved in the active/ongoing emergency without

the District's express written permission. The permission provided under this IGA is solely for emergency circumstances and only for the campus(es) involved in such emergency(ies).

III. TERM, TERMINATION AND RENEWAL

- A. This IGA shall become effective on the ____ day of _____, 20____ and shall remain in effect for 5 years thereafter, unless otherwise terminated or renewed as provided herein.
- B. Either Party to this IGA may request a renewal of this IGA, for subsequent 5-year term(s) by providing advance notice, pursuant to **Section XI.A** below, at least 60 days' prior to the termination date. Any renewal of this IGA must be via a written mutually agreed upon and signed Amendment to this IGA.
- C. Either Party may terminate this IGA, with or without cause, by providing 15 days' advance written notice of termination to the other Party as set forth in **Section XI.A** below.

IV. ACTIONS BY THE PARTIES

- A. Under this IGA District will:
 - 1. Provide City with access to District campus surveillance systems pursuant to the terms of this IGA.
- B. Under this IGA City will:
 - 1. Access District campus surveillance systems only on an ongoing/active emergency basis pursuant to the terms of this IGA.
 - 2. Provide copies of reports and/or other supporting documentation to District upon request.

V. CONFIDENTIALITY

City acknowledges and agrees that District campus surveillance footage is 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 campus surveillance footage will comply with FERPA and City shall not access District campus surveillance footage outside of the terms of this IGA.

VI. SUPERVISION, EQUIPMENT AND MATERIALS

No employee, agent, or servant of a Party shall be deemed to be an employee, agent or servant of the other Party. 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 IGA. 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 IGA, and each Party agrees to hold the other Party harmless from any liability thereof/therefrom.

District shall have sole supervisory authority over District personnel, operations, services, property, facilities and materials; and City shall have sole supervisory authority over City personnel, operations, services, property, facilities and materials.

Except as otherwise provided in this IGA, the Parties agree to avoid using the other Party's materials and/or equipment for purposes not directly associated with the purpose and intent of this IGA without the prior express written consent from the Party to whom the equipment and/or materials belong. However, this provision shall not be construed to prohibit any use of materials or equipment of another Party that is merely nominal, incidental, or on an emergency basis.

VII. RECORDS

Each Party acknowledges and agrees that the other Party shall respectively administer records in its possession according to applicable laws, regulations, rules and policies.

VIII. OPEN COMMUNICATIONS

District and City shall maintain open communications between each Party's designated point of contact ["**POC**"] (listed in **Section XI.A** below) to ensure the agreed upon performances are provided and maintained throughout the term of this IGA. Parties shall maintain open communication regarding needs arising out of the IGA.

IX. 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 IGA.

X. 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 IGA 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 IGA that are the subject of the Claim or Claims shall cooperate to the maximum extent possible.

XI. STANDARD TERMS

A. Notices. All notices to the other Party required under this IGA shall be in writing and sent to the following personnel:

If to District: Superintendent
Gilbert Unified School District
140 S. Gilbert Rd.
Gilbert, AZ 85296
(480) 497-3300

If to City: 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

B. Modification. This IGA shall not be modified or extended, except by a mutually signed written agreement.

- C. 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 IGA. This IGA shall not be construed to imply authority to perform any tasks, or accept any responsibility, not expressly set forth herein. This IGA 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 IGA confers any right to any person or entity not a party to this IGA.
- D. Governing Law and Venue.** To the maximum extent possible, terms and conditions of this IGA shall be governed by and interpreted in accordance with the laws and regulations of the State of Arizona. Any action relating to this IGA shall be brought in an Arizona court in Maricopa County.
- E. Interparty Dispute Resolution.** If a dispute between the Parties arises out of or relates to this IGA, and if the dispute cannot be settled through negotiation within 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 IGA shall be brought in the Maricopa County Superior Court.
- F. Non-assignment.** This IGA has been entered into based upon the personal reputation, expertise and qualifications of the Parties. Neither Party shall assign its interest in this IGA, 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.
- G. Entire IGA.** This IGA 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 IGA shall be valid unless made in writing and signed by the Parties.
- H. Severability.** If any part, term or provision of this IGA shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.
- I. 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 IGA.
- J. Other Duties Imposed by Law.** Nothing in this IGA shall be construed as relieving the involved public agencies of any obligation or responsibility imposed on it by law.
- K. 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 IGA. Furthermore, the Parties agree to abide by each Party's policies to the extent appropriate and required or permitted by law.
- L. 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
- M. 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.

- N. 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 IGA and may result in the termination of the IGA by either party under the terms of this IGA. 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 IGA 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.
- O. No Joint Venture.** It is not intended by this IGA to, and nothing contained in this IGA 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.
- P. No Third-Party Beneficiaries.** Nothing in this IGA is intended to create duties or obligations to or rights in third parties not Parties to this IGA or affect the legal liability of either Party to the IGA by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.
- Q. Headings.** The section headings throughout this IGA shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.
- R. Non-Appropriation.** Notwithstanding any other provision in this IGA, this IGA may be terminated if for any reason either party does not appropriate sufficient monies for the purpose of maintaining this IGA. In the event of such cancellation, the canceling party shall have no further obligation other than for payment for services rendered prior to cancellation.
- S. Uncontrollable Events.** No Party shall be considered to be in default of this IGA 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.

T. Counterparts. This IGA 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 caused this IGA to be executed by the following duly authorized representatives:

For DISTRICT:

For CITY:

By: _____
Shane McCord, Superintendent

By: _____
Christopher J. Brady, City Manager

Date

Date

ATTEST:

Holly Mosley, City Clerk

Date

Approved as to form:

Approved as to form:

By: _____
_____,
Print Name
Attorney for District

By: _____
Geoff Balon
Mesa Police Legal Advisor