

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE CITY OF MESA AND THE CITY OF TEMPE  
FOR LABORATORY SERVICES**

This Intergovernmental Agreement (Agreement) is entered into pursuant to A.R.S. §§ 11-951 et seq. between the City of Mesa (City), an Arizona municipal corporation, acting through its Forensic Services Laboratory, and the City of Tempe, an Arizona municipal corporation on behalf of its Police Department (Tempe or TPD), which shall collectively be referred to as the Parties and each individually as a Party.

**1. TERM OF AGREEMENT**

The term of this Agreement shall become effective upon signature and shall for a term of five (5) years unless otherwise terminated or cancelled by either Party in writing as provided herein but include an annual review and approval of the Agreement on or about the beginning of every fiscal year. A fiscal year is July 1 through June 30.

Acceptance of casework will begin upon signature of this Agreement by both City and TPD.

**2. TERMINATION**

Each Party shall have the right to terminate this Agreement for any reason or for no reason, by mailing the other Party written notice of termination by certified mail, return receipt requested, as follows,

City shall provide written notice at least five (5) years prior to the termination date.

TPD shall provide written notice at least one (1) year prior to termination date.

**3. AMENDMENT**

This Agreement may be amended or modified at any time as agreed upon in writing between the Parties.

**4. CONFIDENTIALITY**

Any information that may be exchanged through this Agreement shall not be used for purposes other than those covered in Exhibit A, Forensic Services Statement of Work, without prior approval of all the Parties to this Agreement except as may otherwise be required by law.

## **5. COST AND REIMBURSEMENT**

Tempe will provide funding to Mesa in exchange for forensic laboratory services.

Tempe will provide funding of \$700,334.00 for Fiscal Year 2021-2022. These costs represent the entire financial obligation of Tempe for the Fiscal Year 2021-2022 based on the services provided herein.

Going forward, the base obligation is \$764,000.00. Funding for each year thereafter will be adjusted each December following a review and evaluation of workload associated costs of services and agreed to in writing between the Parties.

At any time, Mesa or Tempe may evaluate the services provided hereunder and make any and all financial adjustments necessary based on demand for services. Any financial adjustments shall be agreed upon in writing between the Parties.

In the event forensic services are increased beyond that which is provided in Exhibit A, the Parties agree to negotiate in good faith an increase in the annual fee charged by Mesa to Tempe to compensate Mesa for the extra services provided, any agreement shall be in writing between the Parties within thirty (30) days.

## **6. PAYMENT**

Mesa will invoice Tempe for forensic laboratory services on July 1 of each year this Agreement is in effect.

## **7. PURPOSE**

This Agreement establishes the basis for Mesa Forensic Services to provide forensic services to Tempe for criminal investigations conducted by the Tempe Police Department.

The forensic services performed will be in accordance with the terms and conditions stated in this Agreement.

## **8. STATEMENT OF WORK – FORENSIC SERVICES PROVIDED**

Unless otherwise agreed to in writing between the Parties, the Mesa Forensic Services shall only provide forensic services to Tempe within its capabilities and as set forth in Exhibit A, Statement of Work, and incorporated herein by reference.

As capabilities and service needs change over time, the Parties shall amend this Agreement accordingly indicating services no longer provided as well as new services to be provided and the cost thereof.

Tempe will be subject to the Mesa Forensic Laboratory's standard operating procedures for analyzing priorities which is attached herein as Exhibit B (FSQA-M2-7.12).

Tempe will be subject to Mesa Forensic Laboratory's standard operating procedures for evidence preservation, which is attached herein as Exhibit C (FSQA-M2-7.40), Exhibit D (FSQA-M1-7.4), Exhibit E (Scope of Accreditation).

Mesa Forensic Services will be responsible for notifying Tempe of any revisions to Exhibits B, C, D, and E.

Any reports generated pertaining to services rendered under this Agreement, will be subject to Mesa Forensic Services standard operating procedures and Arizona's public records law.

Mesa Forensic Services staff, upon adequate notice, will be available to participate in legal proceedings (discovery hearings or court appearances) to testify as to any testing or certification services performed under this Agreement.

If Forensic Services staff is scheduled for simultaneous court appearances in Mesa and Tempe cases, the older case will take precedence. Irrespective, the staff member will notify the court with the newer case of the case conflict.

## **9. RECORDS**

The Parties agree to maintain and furnish to each other records and documents pertaining to the forensic services provided under this Agreement as may be required by Federal, State, and local laws, regulations, and rules.

Tempe may request an audit related to the services provided under this Agreement for any reason or for no reason with thirty (30) days written notice to Mesa. If the audit reveals fees or billable items have been charged incorrectly, the appropriate corrections and adjustments will be made.

Mesa shall preserve all records related to services provided under this Agreement for the time period set forth in its statutory retention schedule. The Parties acknowledge that all records related to this Agreement may be subject to disclosure pursuant to Arizona State law in response to a public records request or to a subpoena, court order, or other judicial process.

## **10. EMPLOYMENT**

This Agreement does not create an employee/employer relationship between Mesa and Tempe. Mesa personnel and Tempe personnel will be acting in their individual capacities and not as agents, associates, employees, partners, or joint ventures of the other.

The agents, associates, representative, employees, or subcontractors of one shall not be deemed or construed to be the agents, associates, employees or subcontractors of the other.

## **11. INDEMNIFICATION AND INSURANCE**

To the extent permitted by law, each Party agrees to indemnify, defend, and hold harmless the other Party, their elected officials, appointees, officers, employees, authorized volunteers and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands or damages of any kind or nature relating to this Agreement which, are the result of any act or omission of the Party, its officers, employees, authorized volunteers, agents, and anyone acting under its direction or control, whether intentional or negligent, in connection with or incident to this Agreement. Failure of a Party to comply with the terms of this Agreement shall not provide the basis of any third-party action against any of the Parties.

The Parties agree to secure and maintain insurance coverage for any and all risks that may arise out of the terms, obligations, operations, and actions as set forth in this Agreement including, but not limited to, public entity insurance. The acquisition of insurance or the maintenance and operation of a self-insured program may fulfill this insurance requirement; provided, however, that the unencumbered reserves available under any such self-insurance program shall be equal to or greater than the required minimum coverage amounts of Three Million Dollars. The Parties to this Agreement shall exchange certificates of insurance or self-insurance.

## **12. CONFLICT OF INTEREST**

Pursuant to ARS §38-511, the State, its political subdivisions, or any department or agency of either may, within three (3) years after its execution, cancel any Agreement, without penalty or further obligation, made by the State, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the State, its political subdivisions, or any of the departments or agencies of either 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 a consultant to any other party of the Agreement with respect to the subject matter of the Agreement. Cancellation of the Agreement shall be effective upon written notice as provided in ARS § 38-511.

## **13. ARBITRATION**

Pursuant to A.R.S. § 12-1518, disputes under this Agreement that cannot be resolved among the Parties shall be resolved through the use of arbitration as follows,

- A. Cases under the Jurisdictional Limit. In all cases filed in superior court in which the court finds, or the Parties agree that the amount in controversy does not exceed the jurisdictional limit, arbitration shall be used, unless all

Parties file a written stipulation waiving the arbitration requirement, and the court waives the arbitration requirement with good cause shown.

#### **14. COMPLIANCE WITH E-VERIFY**

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

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

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

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 ARS § 23-214(A).

The provisions of this Section must be included in any contract either Party enters into with any and all of its contractors or subcontractors who provide services under this Agreement.

#### **15. NON-DISCRIMINATION**

The Parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the American with Disabilities Act.

#### **16. OTHER PROVISIONS**

1. Entire Agreement. This Agreement including Attachments and Exhibits contains the entire understanding between the Parties. This Agreement replaces and supersedes any previous agreements, representations, understandings, and negotiations of the parties, oral or written, with respect to the subject matter of this Agreement.
2. Amendment or Modification. There are no representations or other provisions other than those contained herein, and any amendment or modification of this Agreement shall be made as provided herein at Section 3, Amendment.

3. Invalidity. The Parties agree that should any part of this Agreement be held to be invalid or void, the remainder of the Agreement shall remain in full force and effect and shall be binding upon both Mesa and Tempe.
4. Governing Law. This Agreement shall be construed under the laws of the State of Arizona and shall incorporate by reference all laws governing agreements and mandatory contract provisions required by statute or executive order.
5. Waiver. The waiver of any breach of this Agreement shall not be deemed to amend this Agreement and shall not constitute waiver of any subsequent breach.
6. Headings. Headings are for convenience and shall not affect interpretation.

**17. NOTICE**

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

City of Tempe

City of Mesa

This \_\_\_\_ day of \_\_\_\_\_, 2021

This \_\_\_\_ day of \_\_\_\_\_, 2021

By: \_\_\_\_\_

By: \_\_\_\_\_

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. §11-952, this contract has been reviewed by the undersigned who have determined that this contract is in appropriate form and within the powers and authority granted to each respective public body.

This \_\_\_\_ day of \_\_\_\_\_, 2021

This \_\_\_\_ day of \_\_\_\_\_, 2021

By: \_\_\_\_\_  
Attorney for Tempe

By: \_\_\_\_\_  
Nancy Sorensen  
Staff Attorney  
Mesa City Attorney's Office

## **EXHIBIT A**

### **STATEMENT OF WORK**

#### **2021-2022 Fiscal Year Forensic Services Provided**

The following services are provided under the terms of this Agreement,

1. Biology (Serology, DNA Analysis)
2. Controlled Substances
3. Firearms and Toolmarks Analysis
4. Toxicology (Blood & Urine Alcohol, Inhalants and Urine & Blood Drug Analysis)
5. Latent Print Development and Corresponding Latent Analysis (AFIS & NGI database searches)
6. Bloodstain Pattern Interpretation
7. Fire Debris Analysis
8. NIBIN
9. Shoe and Tire Impressions
10. Hand Drawn Composites

The forensic services provided will be based on the standard working protocols and policies of the Mesa laboratory. Tempe will have control of their case priority and the ability to request cases be expedited to meet their public safety mission as stated in Exhibit B (Case acceptance policy, FSQA-M2-7.12).

#### **Forensic Services under this Agreement does not include the following services:**

1. Response to crime scenes.
2. Latent Print Analysis
3. Inked Print Analysis

The foregoing services are not included under this Agreement. In the event Tempe shall require any or all of the foregoing services, Tempe shall agree in writing to pay any and all associated costs in addition to what is provided under this Agreement.