

No. 30785

Filed with the Secretary of State

Date Filed: April 8, 2009

Ken Blum  
Secretary of State

By: Bicda Montano

**INTERGOVERNMENTAL AGREEMENT  
REGARDING PARTICIPATION IN  
THE EAST VALLEY GANG & CRIMINAL INFORMATION  
FUSION CENTER**

This Agreement is entered into among the City of Mesa, on behalf of the Mesa Police Department (MPD), and any public agencies, as that term is defined in Arizona Revised Statutes § 11-951, that, after invitation by the MPD, comply with the provisions of A.R.S. §11-952, and file a document with the Secretary of State that references this Agreement and meets the requirements of the statute. A public agency shall become a Party to this Agreement as of the date of that agency's filing with the Secretary of State. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Neither a signature for every party nor a signature line shall be required in each counterpart except that on a counterpart being brought forward by an agency to its legislative body or equivalent for approval, that particular counterpart shall have to be signed and executed in accordance with that jurisdiction's practice only by the particular agency seeking approval. This Agreement supersedes any previous Agreement concerning the Fusion Center whether filed or not filed with the Secretary of State.

**I. Purpose**

The purpose of this Agreement is to enhance Maricopa County East Valley law enforcement services concerning the collection, evaluation, analysis, dissemination of intelligence and intelligence products regarding criminal street gangs and criminal related incidents through the cooperative efforts of the Parties. This purpose is to be accomplished by the creation of the East Valley Gang & Criminal Information Fusion Center, which will be located at the Mesa Police Department.

**II. Authority**

The Parties are authorized and empowered to enter into this Agreement pursuant to A.R.S. §§11-951, 952, A.R.S. §13-3872 and the respective provisions of their City Charters, Tribal Constitutions or other governing authority.

**III. Participation**

The Parties agree to assign a law enforcement officer or non-sworn employee to the East Valley Gang and Criminal Information Fusion Center (Fusion Center) on a full-time basis for such assignments within the purposes of this contract. The officer(s) or non-sworn personnel shall remain on assignment to the Fusion Center for a minimum period of one (1) year unless otherwise agreed to by the Parties.

During the period of assignment to the Fusion Center, the assigned officer(s) and additional non-sworn personnel shall maintain all benefits, rights, and privileges available to said officer(s) or

non-sworn personnel as if they were assigned on a full-time basis to their parent agency. The assigned officer(s) or non-sworn personnel will abide by all Fusion Center policies and applicable rules and regulations regarding the center. All Parties agree that all assigned personnel shall comply with Title 28 of the Code of Federal Regulations, Part 23.

ATF will participate by providing resources as ATF deems necessary and appropriate.

#### **IV. Reimbursement**

The Parties will be responsible for all payroll expenses of their respective officer(s) and non-sworn personnel related to this assignment. The expenses include employee salary, shift differential pay, overtime compensation, benefits which accrue during the term of this Agreement, employee-related expenses to include employer's workman's compensation, social security at established rates, vacation and sick leave taken while working at the Fusion Center. All approved travel expenses and per diem will be the responsibility of the parent agency. All out of state travel must be pre-approved by the parent agency. If the MPD receives grant funds designated for the Fusion Center, some or all of these expenses may be reimbursed to the Parties.

#### **V. Duties of MPD**

MPD agrees to provide officer(s) and non-sworn personnel with workspace and connectivity to the Fusion Center network and databases at no cost to the Parties. MPD will also provide technical assistance to officer(s) and non-sworn personnel in establishing connectivity to the Parties respective systems. MPD will provide workstation and office furniture for the use of officer(s) and non-sworn personnel. MPD will provide stand-alone computers to facilitate state, and local access. MPD will maintain responsibility for maintenance of the facility and is responsible for the lease on the facility, which includes utility costs.

#### **VI. Duties of the Parties**

The Parties' sworn officer(s) and non-sworn personnel will occupy space within the Fusion Center facility. The Parties will provide their officer(s) and non-sworn personnel with network connectivity from the Fusion Center to their respective parent agency. The Parties will be responsible for maintenance of those personal computers and the network connectivity. The Parties will be responsible for providing their respective officer(s) with a duty vehicle, if necessary, during the period of this Agreement. The Parties agree to permit the other Parties' officer(s) to work in their jurisdictional boundaries pursuant to their AZPOST certification and A.R.S. §§13-3871, 3872, 3874 and 3875, except that, to the extent the law limits jurisdiction on Indian reservations, this Agreement shall only expand that jurisdiction for Fusion Center activities or other law enforcement activities discussed with the chief law enforcement officer for the Indian Community.

## **VII. Management of the East Valley Gang Information & Criminal Information Fusion Center**

The management of the day-to-day operation of the Fusion Center shall be the responsibility of MPD. The promulgation of policy and oversight of the operation of the Fusion Center shall be the responsibility of the Fusion Center Executive Team, the members of which shall be the chief law enforcement officer for each original participating agency, or his/her designee. Additional agencies may be invited to join the Fusion Center. The Executive Team may invite the chief law enforcement agency of a new participating agency to be a member of the Executive Team.

## **VIII. Nondiscrimination**

The Parties to this Agreement shall comply with all applicable provisions of state and federal non-discrimination laws and regulations including, but not limited to, State Executive Order No. 99-A, which mandates that all persons, regardless of race, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities and all other federal and state employment and educational opportunity laws, rules and regulations, including the Americans with Disabilities Act; provided however, an Indian Community is subject to 25 U.S.C. § 450e(c). No Party shall engage in any form of illegal discrimination with respect to applications for employment or student status or employees or students.

## **IX. Liability**

To the extent permitted by law, each Party does hereby covenant and agree to indemnify, defend, and hold harmless the other Party, its officers, employees, contractees, 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, contractees, agents, and anyone acting under its direction or control, whether intentional or negligent, in connection with or incident to this Agreement. The employees of the Parties shall remain employees of the Parties and shall not be considered MPD employees. The employees of MPD shall remain employees of MPD and shall not be considered employees of any of the other Parties. 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.

## **X. Fees**

In no event shall any Party charge other Parties for any administrative fees for any work performed pursuant to this Agreement.

## **XI. Jurisdiction**

The laws of the State of Arizona shall govern this Agreement. Venue will be in the Maricopa County Superior Court unless the subject matter of the dispute involves an Indian Community, then venue shall be in Federal District Court for the State of Arizona. 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.

## **XII. Worker's Compensation**

Pursuant to A.R.S. §23-1022 D., for the purposes of worker's compensation coverage, all employees covered by this Agreement shall be deemed to be an employee of both agencies. The parent agency shall be solely liable for payment of worker's compensation benefits.

## **XIII. Duration of this Agreement**

This Agreement shall become effective upon the execution by the Parties hereto and filing with the Secretary of State and shall remain in effect until July 1, 2027, unless otherwise terminated by the terms of this Agreement or operation of law. Any Party may withdraw from this Agreement by giving 30 days written notice to the MPD. All property provided by MPD to a withdrawing Party's officer(s) or non-sworn personnel shall be returned to MPD upon termination. The Parties reserve all rights that each may have to cancel this Agreement for possible conflicts of interest under A.R.S. § 38-511 as amended.

## **XIV. Other Provisions**

In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not affect the validity or enforceability of any other provision hereof.

This Agreement contains the entire understanding between the Parties with respect to the subjects hereof and supersedes all prior negotiations and agreements. This Agreement may be amended only by an instrument in writing and signed by all the participating Parties. The waiver of any breach of this Agreement shall not be deemed to amend this Agreement and shall not constitute waiver of any other subsequent breach. Headings are for convenience and shall not affect interpretation. This Agreement may be executed in counterparts, and which together constitute a single instrument.

This Agreement shall be recorded with the Secretary of State pursuant to A.R.S. § 11-952(g) upon its execution and an original bearing the stamp of the Secretary shall be forwarded to the Chief of Police of the Mesa Police Department.

## **XV. Notification**

Any notice required to be given under this Agreement will be provided to the Chief of Police of the Mesa Police Department with a copy to all Parties to this Agreement.

**XVI. Signatures**

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

City of Mesa:

Dated: March 23, 2009

By: Christopher J. Brady  
Christopher J. Brady,  
City Manager, City of Mesa

ATTEST:

Linda Crocker  
Linda Crocker  
City Clerk, City of Mesa



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

This 23<sup>rd</sup> day of March, 2008<sup>9</sup>.

Debbie Spinner  
for Debbie Spinner  
City Attorney, City of Mesa



**AMENDMENT #2 TO INTERGOVERNMENTAL AGREEMENT  
REGARDING PARTICIPATION IN THE EAST VALLEY GANG AND  
CRIMINAL INFORMATION FUSION CENTER**

**RECITALS**

Whereas, the Members Agencies ("Parties") of the East Valley Gang and Criminal Information Fusion Center ("Fusion Center") wish to amend the Fusion Center Intergovernmental Agreement ("Agreement"); and

Whereas, the Parties are authorized and empowered to enter into this Amendment pursuant to A.R.S. §§ 11-951 *et seq.*, A.R.S. §13-3872 and the respective provisions of their City Charters, Tribal Constitutions or other governing authority;

NOW, THEREFORE, in consideration of mutual covenants and promises contained in this Agreement and other good and valuable consideration, the Parties agree as follows:

**TERMS**

1. This Amendment shall be effective upon approval of the governing body or authority of the Parties in conformance with A.R.S. §11-951, *et seq.* and provision of an original copy of each of the authorizing documents to the Mesa Police Department ("MPD").
2. The above recitals are incorporated by this reference.
3. All the original terms and clauses of the Agreement, and all terms and clauses set forth in Amendment #1, remain in effect except as modified herein.
4. The following language is added to Sections IV. and VII of the Agreement as follows:

**IV. Reimbursement**

Registration fees related to Fusion Center approved training will be paid for by MPD. Associated travel costs will be paid for by each individual party and adjusted for within the subsequent years annual funding.

**VII. Management of the East Valley Gang Information &  
Criminal Information Fusion Center**

(F) Issues related to finances, funding, or operating expenditures shall be referred to the Fusion Center Finance Committee for discussion and

recommendation before being brought before the Executive Committee. Prior to bringing forth any recommendations to the Executive Committee, each individual member of the Fusion Center Finance Committee shall be responsible for reviewing those recommendations with their agency's legal advisor.

5. Section V. of the Agreement, is replaced, superseded, and amended in its entirety as follows:

#### **V. Duties of MPD**

MPD agrees to provide officer(s) and non-sworn personnel with workspace and connectivity to the Fusion Center network and databases.

MPD will also provide technical assistance to officer(s) and non-sworn personnel in establishing connectivity to the Parties respective systems and provide stand-alone computers to facilitate state and local access.

MPD will provide workstation and office furniture for use of officer(s) and non-sworn personnel.

MPD will maintain responsibility for maintenance of the facility and is responsible for the lease on the facility, which includes utility costs.

6. Section X. Fees shall be retitled Fees, Expenditures and Operating Costs and is replaced, superseded and amended in its entirety as follows:

#### **X. Fees, Expenditures and Operating Costs**

Each Party to the Agreement will provide ten thousand dollars (\$10,000.00) in funding (less any travel related adjustments as referenced in Section IV. above) to the City of Mesa in exchange for MPD managing and operating the Fusion Center, including all financial transactions and fiduciary responsibilities. Payments shall begin in fiscal year 2014/2015 and for subsequent fiscal years until a different amount is agreed upon by the Parties through an amendment to this Agreement.

Associate Parties to the Agreement may be assessed funding based on individual agreements between the MPD and those Associate Parties.

Operating expenditures may include association memberships, cellular telephone services, computers, consumables, imaging, internet access, office supplies, photocopy services, software, subscriptions to internet based services, travel and training.

Operating expenditures does not include facility related charges such as utilities or the cost of the member agency's assigned personnel working at the Fusion Center.

Assets of the Fusion Center acquired through expenditures of the Parties, belong to those Parties based on a pro-rata share. MPD shall be responsible for tracking and identifying which assets were acquired solely by MPD or with funds from the Parties. In the event of dissolution of the Fusion Center, the Executive Board in consultation with the MPD will determine distribution of Fusion Center assets.

If the level of service changes or the costs of operating the Fusion Center increase, the Parties may renegotiate funding obligations.

Increased funding for subsequent years will be determined each January following review and evaluation of operating costs associated with MPD operating the Fusion Center. Any such financial adjustments shall be set forth as an amendment to this Agreement otherwise the amounts specified above shall be paid to MPD on an annual basis.

MPD will invoice the Parties for services on or about July 1st of every year.

MPD agrees that funds collected by MPD from the Parties will be used exclusively for the operation of the Fusion Center, including any surplus or carry-forward funding from previous years.

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

Any of the Parties may request an independent audit related to the services provided under this Agreement with thirty (30) days written notice to MPD. If the audit indicates that fees or billable items have been charged incorrectly, the appropriate corrections or adjustments will be made. The cost of any such audit shall be the responsibility of the Party requesting the audit and the Executive Committee shall be responsible for selecting an independent auditor to perform any such audit.

7. The following Section XVIII. Public Records is added to the agreement as follows:

#### **XVIII. Public Records**

MPD shall preserve all records related to the services provided under this Agreement consistent with Arizona's records retention laws.

Any records in possession of the Fusion Center may be subject to disclosure in response to a public records request or to a subpoena or other judicial process.

In the event MPD receives a public records request for such documents or information, prior to disclosure, the MPD will notify the affected Agency(s) of the request and allow such Agency(s) five (5) business days to file in the Maricopa Superior Court any objection to disclosure of the requested records. Otherwise, the public record will be disclosed as required by law.

Any Agency objecting to a public records request or filing an objection thereto shall indemnify and hold harmless the City of Mesa and its Police Department, its employees, officers, agents, or elected officials from and against any award of attorneys' fees, costs, expenses, damages and/or double damages ordered by the court against City of Mesa and its Police Department following adjudication of an adverse ruling on the objection.

Nothing in this paragraph shall be construed against the withholding of information or reports that are otherwise made confidential or restricted from release as required by law.

8. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Neither a signature for every party nor a signature line shall be required in each counterpart except that on a counterpart being brought forward by an agency to its legislative body or equivalent for approval, that particular counterpart shall have to be signed and executed in accordance with that jurisdiction's practice only by the particular agency seeking approval.

IN WITNESS WHEREOF, the Party named below has executed this Agreement on \_\_\_\_\_

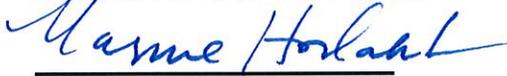
Salt River Pima-Maricopa Indian Community

By: 

ATTEST:



APPROVED AS TO FORM:



Reviewed By   
Chief of Police

## INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with A.R.S. §11-952, this Agreement has been reviewed by the undersigned who determined that this Agreement is in appropriate form and is within the powers and authority of the respective parties.

By: 

Assistant General Counsel

Dated: 1-30-15