

**INTERGOVERNMENTAL AGREEMENT
FOR
USE OF THE CITY OF YUMA PUBLIC SAFETY TRAINING FACILITY**

This Intergovernmental Agreement ("Agreement") is entered into by and between U.S. Border Patrol, Yuma Sector Special Operations Detachment ("User Agency") and the City of Yuma ("City"), on behalf of itself and the Yuma Police Department ("YPD"). User Agency and the City are referred to herein individually as the "Party" and collectively as the "Parties".

RECITALS

WHEREAS, the City owns a Public Safety Training Facility ("PSTF") that it makes available to other governmental agencies for training of personnel and related activities; and

WHEREAS, the User Agency is a Federal agency operating within the City; and

WHEREAS, YPD and User Agency often collaborate in areas of law enforcement and public safety; and

WHEREAS, the City and User Agency value their cooperative working relationship; and

WHEREAS, User Agency desires to use the PSTF for training; and

WHEREAS, it is in the best interest of the City to ensure User Agency has access to facilities that enable it to provide ongoing training to personnel.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the Parties hereby agree to the following terms and conditions:

- I. **USE OF THE PSTF.** User Agency may use the PSTF for training of sworn peace officers, special agents, fire fighters, and other personnel, so long as such individuals are employees of the Federal government and are acting within their capacity as an employee during the use of the PSTF, or such other uses as deemed appropriate by mutual written agreement of the Parties. User Agency shall schedule its use of the PSTF at least thirty (30) days before the planned use by contacting YPD.
- II. **AUTHORITY.** The City is authorized to enter into this Agreement pursuant to Arizona Revised Statutes ("A.R.S.") § 11-952, *et. seq.*, Article III, Section 13 of the Charter of the City of Yuma. User Agency is authorized to enter into this Agreement pursuant to Department of Homeland Security Management Directive 0450.1, dated January 24, 2003.
- III. **EFFECTIVE DATE.** This Agreement is effective as of the date of the last signature of the Parties.
- IV. **TERM; TERMINATION.** This Agreement shall be for a term of five (5) years starting on the Effective Date ("Initial Term"). This Agreement may be renewed for one (1) additional five (5) year period ("Renewal Term") upon written request from the User Agency to the City not less than sixty (60) days prior to the date of expiration of the Initial Term. The decision to renew shall be in the sole discretion of the City.

This Agreement may be terminated by either Party, with or without cause, upon thirty (30) days written notice to the other Party. Within ten (10) days following termination or non-renewal of this Agreement, the User Agency shall return all property belonging to the City unless otherwise agreed in writing by the Parties.

- V. **USE FEES AND OTHER CHARGES.** User acknowledges the City may opt to charge for the use of the PSTF in such amounts as may be established by the City and incorporated into a written fee schedule. The City will provide USER AGENCY with written notice of the fee schedule prior to implementation. In the event User Agency does not agree with the fee schedule, User Agency may terminate this Agreement as provided in Section III. The User Agency agrees to pay for all consumable product replacement, repair and/or replacement of property and loaned equipment at the PSTF that is damaged, destroyed or rendered inoperable, in part or in whole, as a result of the User Agency's use of the PSTF. Use fees and other charges shall be due and payable within thirty (30) days of receipt of the City's written itemized invoice.
- VI. **EQUIPMENT REQUIREMENTS.** Prior to the User Agency's use of the PSTF, the City shall provide User Agency a written list specifying the supplies and equipment necessary for the User Agency to safely and properly use the PSTF. The User Agency shall, at its sole cost, obtain all listed equipment and supplies prior to its use of the PSTF.
- VII. **SUPERVISION AND CONTROL.** The City may assign a monitor to ensure User Agency uses the PSTF appropriately. User Agency shall supply its own instructors and support personnel. The City reserves the right to immediately terminate User Agency's use of the PSTF if, in the City's sole discretion, it is determined that such use has resulted or may result in damage to the PSTF or if such use otherwise presents a threat to the safety of persons or property.
- VIII. **RELATIONSHIP OF THE PARTIES.** Each Party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee or agent of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Each Party is solely liable for any workers' compensation or other benefits received by their respective employees. Each Party is responsible for the supervision and management of its own personnel. The Parties shall not exchange funds or personnel as a provision of this Agreement.
- IX. **NON-DISCRIMINATION.** The Parties shall comply with the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order No. 2023-01, amending State Executive Orders 2003-22 and 2009-09, the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act, as amended.
- X. **RESPONSIBILITY**
- a. **Assumption of Risk; Liability.** User Agency agrees to conduct its activities at the PSTF in a careful and safe manner. User Agency agrees to assume all risk of damage to, loss, or theft of User Agency's property while such property is located or used at the PSTF. User Agency agrees that all persons in attendance at User Agency activities at the PSTF will be

Federal employees acting within the course and scope of their employment. User Agency waives all claims against the City.

User Agency agrees to be responsible and assumes liability for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees to the fullest extent required by law, to include the Federal Tort Claims Act, 5 U.S.C §2671, *et seq.* In the event of damage, loss, injury, or death arising from User Agency's use of or activities at the PSTF, the person or entity suffering the loss may submit a claim to User Agency under the Federal Tort Claims Act, and such claim will be processed and paid in accordance with applicable law.

- b. Limitation on Negligence of the City; PSTF Accepted "As Is". User Agency acknowledges and agrees the City has given User Agency full prior access to all portions of the PSTF for inspection of the PSTF to determine its suitability for the intended use. The City agrees to provide access for inspection, upon request, to User Agency prior to its scheduled use. User Agency avows that User Agency's personnel who conduct inspections have all the relevant structural, materials, electrical and other expertise necessary to make such a determination, and that any failure of User Agency's said personnel to locate any defect whatsoever that might lead to any of the losses, damage or liability indemnified against in paragraph (a) above, or User Agency's failure to inspect, will constitute negligence on the part of the User Agency and its inspectors, and will not be considered negligence on the part of the City. The City is providing User Agency with the use of the PSTF solely on an "As Is" basis. User Agency agrees not to conduct any activities on any portion of the PSTF that User Agency and its qualified employees have not fully inspected and found to be suitable and safe for the intended use at the time such use is undertaken.

- XI. INSURANCE. It is understood by the City that the User Agency, as an agency of the United States, is self-insured and as such does not carry liability insurance. The United States will be liable to the extent provided by the Federal Tort Claims Act, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission User Agency employee acting within the scope of his/her employment while using the PSTF.
- XII. WAIVER. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of either Party to insist upon strict performance of any of the provisions of this Agreement, or to exercise any of the rights or remedies provided by this Agreement, or any delay in the exercise of any rights or remedies, shall not release either Agreement from any of the responsibilities or obligations imposed by law or by this Agreement, and shall not be deemed a waiver of any right of either Party to insist upon strict performance of this Agreement.
- XIII. INSTITUTIONAL REVIEW PROCESS. Prior to the use of the PSTF, User Agency shall deliver to the City written descriptions of the User Agency's training program and intended uses and activities, including without special devices used in the training experience. User Agency agrees that the City may request intended activities not be undertaken, in the City's discretion. The City's failure to object to any activities so disclosed shall not constitute negligence on the part of the City under any circumstances, and User Agency shall remain fully responsible for the safe

conduct of all such activities. User Agency hereby acknowledges and agrees that no explosive charges will be detonated without the prior written consent of the City and that no live firearms will be discharged during any User Agency's use of the PSTF.

- XIV. ENVIRONMENTAL REGULATIONS.** User Agency will not permit any Hazardous Substance to be used, stored, generated or disposed of on, in or about the PSTF, or transported to or from the PSTF, by User Agency, User Agency 's officers, employees, contractors, invitees, agents, or persons attending or participating in User Agency's activities, without first obtaining the City's written consent, which the City has the sole discretion to grant and to revoke at any time. If the City consents, all Hazardous Substances must be handled at User Agency's sole costs and expense, in compliance with all applicable state, federal or local governmental requirements, using all necessary and appropriate precautions. If User Agency breaches these obligations or if the presence of Hazardous Substances on, in or about the PSTF caused or permitted by User Agency results in contamination of any part of the PSTF, or if contamination by Hazardous Substance otherwise occurs in a manner for which User Agency is legally liable, then User Agency will indemnify and hold harmless the City from and against any and all claims, actions, damages, fines, judgments, penalties, costs, liabilities, losses and expenses (including without limitation, any sums paid for settlement of claims, court costs, attorneys' fees, consultant and expert fees) arising during or after the expiration or termination of this Agreement as a result of any breach or contamination. Without limitation, if User Agency causes or permits the presence of any Hazardous Substance on, in or about the PSTF and this results in contamination of any part of the PSTF, User Agency will promptly, at its sole cost and expense, take all necessary actions to return the PSTF and any adjacent properties and structures to the condition existing prior to the presence of any Hazardous Substance. User Agency shall first obtain the City's approval for any such remedial action. "Hazardous Waste" or a "Hazardous Substance" as used herein are defined terms pursuant to state, federal or local government law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls and petroleum.
- XV. ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding of the Parties with respect to the subject matter thereof. There are no representations or agreements other than those contained in this Agreement. Any amendment or modification of this Agreement shall be made only by a written instrument executed by authorized representatives of the Parties.
- XVI. SEVERABILITY.** 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 the Parties.
- XVII. COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original and together shall constitute the Agreement.
- XVIII. GOVERNING LAW AND VENUE.** This Agreement shall be governed by the laws of the State of Arizona. All judicial proceedings arising from or related to this Agreement shall be instituted and maintained in a court of competent jurisdiction in Yuma County, Arizona (or, as may be appropriate, in the United States District Court for the District of Arizona, if, and only if, a Yuma County court lacks jurisdiction). The Parties expressly and irrevocably consent to the

exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.

XIX. CONFLICT OF INTEREST. This Agreement is subject to cancellation pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein.

XX. NOTICES. All notices and correspondence between the Parties regarding this Agreement shall be in writing and shall be deemed given if delivered in person, by electronic mail with delivery receipt, or ten (10) days after mailing, by United States registered or certified mail, postage prepaid, and addressed to persons below. In the event the contact information or notice destination of a Party changes, it shall notify the other Party of the new information, in writing, within five (5) business days.

City of Yuma Nathan Dusek Law Enforcement Training Supervisor Yuma Police Department 1500 South 1 st Avenue Yuma, Arizona 85364 (928) 373-4700	[ENTER USER AGENCY INFORMATION] United States Border Patrol Yuma Sector Special Operations Detachment 4035 S. Ave A Yuma, AZ 85365 928-785-6580
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XXI. ASSIGNMENT. This contract is not assignable unless both parties mutually consent otherwise in writing. The requirements of this contract are binding upon the heirs, executors, administrators, successors and assigns of both Parties.

XXII. RELATIONSHIP OF PARTIES. Each Party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee or agent of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Each Party is responsible for the supervision and management of its personnel, to include the payment of wages and provision of benefits. The Parties shall not exchange personnel or funds pursuant to this Agreement.

XXIII. EMPLOYMENT ELIGIBILITY. Each Party warrants, and shall require its subcontractors to warrant, that it is in compliance with all federal immigration laws and regulations that relate to its employees and with A.R.S. §§ 41-4401 and 23-214 relating to verification of employment eligibility. A breach of this warranty shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of this Agreement. The Parties retain the legal right to inspect the papers of any Party or subcontractor employee who works on this Agreement to ensure that the other Party or its subcontractors are complying with this warranty.

XXIV. RIGHTS/OBLIGATIONS OF PARTIES ONLY. The terms of this Agreement are intended only to define the respective rights and obligations of the Parties. This Agreement shall not create any rights or duties in favor of any potential third-party beneficiary or other person, agency or organization.

XXV. IMPOSSIBILITY. No Party to this Agreement shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder for any reasons beyond its control, including without limitation, global or national pandemics, acts of God or of the public enemy, flood or storm, strikes, court decision order, or statutory regulation or rule of any federal, state or local government, or any agency thereof.

XXVI. ATTORNEY'S FEES. In the event any action, suit or proceeding is brought for failure to observe any of the terms, covenants, or provisions of this Agreement, the prevailing Party shall be entitled to all litigation, arbitration and collection expenses, including, but not limited to, witness fees, court costs, and reasonable attorney fees.

XXVII. AUTOMATIC INCLUSION. All applicable Federal, State and local laws, court orders and decisions, Executive Orders, rules and regulations not specifically referenced herein are deemed automatically incorporated.

XXVIII. AUTHORITY OF SIGNATORIES. The persons executing this Agreement on behalf of the Parties represent and guarantee they are authorized to do so, on behalf of themselves and the entity they represent. Further representation is made that due diligence has occurred, and all necessary internal procedures and processes, including compliance with the open meeting law where necessary, have been satisfied in order to legally bind the entity to the terms of this Agreement.

[Signatures on the Next Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date first written above.

City of Yuma

U.S. Border Patrol, Yuma Sector
Special Operations Detachment

Jay Simonton,
Acting City Administrator

Jefferie Barfield
Patrol Agent in Charge, Yuma SOD

Date: _____

Date: 6/11/24

Yuma Police Department

Thomas Garrity
Chief of Police

Date: _____

ATTEST:

Lynda Bushong
City Clerk
Date: _____

In accordance with the requirements of A.R.S. § 11-952, the undersigned attorney acknowledges: (1) he reviewed the above Agreement on behalf of his clients; and, (2) he has determined this Agreement is in proper form and is within the powers and authority granted to his client by the laws of the State of Arizona. Pursuant to A.R.S. § 11-952(E), Counsel for User Agency is not required to approve the form of this Agreement.

City of Yuma

Richard W. Files, City Attorney
Date: _____