

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF YUMA  
AND  
UNITED STATES CUSTOMS AND BORDER PROTECTION**

This Memorandum of Understanding (“MOU”) is entered into by and between the Yuma Sector Border Patrol (“USBP”), through the United States Customs and Border Protection, and the Yuma Police Department (“YPD”), through the City of Yuma. USBP and YPD may be referred to individually as “Party,” and collectively as the “Parties”.

WHEREAS, there is evidence that criminal street gang activity and the trafficking of narcotics and dangerous drugs occurs in the City of Yuma, State of Arizona; and

WHEREAS, street gangs, drug trafficking, and related illegal activities have a substantial and detrimental effect on the health and welfare of the people of the City of Yuma; and

WHEREAS, transnational criminal organizations’ tactics, techniques, procedures involve the utilization of street gangs in support of cross-border drug trafficking and noncitizen smuggling; and

WHEREAS, the activities of transnational criminal organizations affects border security and national security, and

WHEREAS, USBP and YPD have varying resources, equipment, training, and skill sets useful for deterring, investigating and prosecuting criminal activity; and

WHEREAS, YPD has a Special Operations Group (“SOG”) with the mission to proactively deter crime and enforce laws through gathering intelligence, problem-oriented policing, and directed patrols and details; and

WHEREAS, USBP works to prevent the entry of individuals with criminal intent and the entry of illicit drugs into the United States; and

WHEREAS, the USBP and YPD, through SOG, desire to work in cooperation to combat street gangs, drug trafficking, and related illegal activity within the City of Yuma.

NOW THEREFORE, the Parties agree as follows:

**I. AUTHORITIES**

- a. The USBP is authorized by Department of Homeland Security Management Directive 0450.1, dated January 24, 2003, to enter into this MOU.
- b. USBP Agents derive their law enforcement authorities from the Homeland Security Act of 2002, and Titles 6, 8, and 19 of the United States Code.
- c. The City of Yuma is authorized to enter this MOU by Article III, Section 1, of the Yuma City Charter, and Article 13 § 2 of the Arizona State Constitution.
- d. YPD derives its law enforcement authority from Yuma City Code Chapter 32, Arizona Revised Statutes, Arizona Administrative Regulations, Title 13, § 4, and the rules and regulations of the Arizona Peace Officer Standards and Training Board.

- e. A.R.S. § 13-2403 provides for assisting a peace officer in the State of Arizona and limits liability in so doing.

## **II. DEFINITIONS**

- A. Criminal Street Gang: Ongoing formal, or informal, association of persons in which members or associates individually or collectively engage in the commission, attempted commission, facilitation or solicitation of any felony action that has at least one individual who is a criminal street gang member.
- B. Criminal Street Gang Member: Individual to whom at least two of the following seven criteria indicating criminal street gang membership apply: 1) self-proclamation; 2) witness testimony or official statement; 3) written or electronic correspondence; 4) paraphernalia or photographs; 5) tattoos; 6) clothing or colors; 7) any other indicia of street gang membership.
- C. Drug(s): Any substance listed in A.R.S. § 13-3401 and/or regulated by Title 13, Chapter 34.
- D. Drug Trafficking: Transporting drugs for sale, selling drugs, importing drugs into Arizona, transferring drugs, or offering to take any of these actions.

## **II. DUTIES AND OBLIGATIONS**

- A. YPD will perform the activities and duties described below:
  - 1. Disrupt Criminal Street Gang activity and Drug Trafficking in the City of Yuma by targeting and immobilizing Criminal Street Gangs, Criminal Street Gang Members, and Trafficking organizations.
  - 2. Conduct high-risk fugitive apprehension operations.
  - 3. Gather and share intelligence data with USBP relating to Criminal Street Gang activity and Trafficking.
  - 4. Conduct daily operations in a fully marked police uniform, unless plain clothes operations are a better tactical approach.
  - 5. Pursue prosecution before the courts of the United States and/or the State of Arizona and assist prosecuting agencies with achieving that goal.
- B. USBP will assign a minimum of one Agent to work with YPD for a period of not less than two (2) years.
- C. The assigned USBP Agent's investigative duties will be the same as SOG officers. All participating agencies will work within their specific procedures, regulations, jurisdictions, and appropriate scope of authorities.

- D. SOG Officers and the assigned USBP Agent(s) will complete investigative reports pursuant to YPD policy and procedure. The assigned USBP Agent(s) is not prohibited from also completing a report for USBP using USBP's reporting mechanism.
- E. USBP will provide necessary funds and equipment to support the activities of the Agent(s) assigned to YPD. This support includes the Agent's(s) base pay, differentials, overtime pay, travel funds, investigative equipment, training, pension or retirement, worker compensation coverage, and any other legally mandated employment costs.
- F. YPD shall not charge USBP, directly or indirectly, for the administration or implementation of this MOU. USBP shall not charge YPD, directly or indirectly, for the administration or implementation of this MOU. Each agency is responsible for its own costs arising from this MOU.
- G. USBP Agents assigned to SOG will not take enforcement action pursuant to Arizona law or operate as a YPD Member unless working directly with SOG, or YPD. When not involved in operations pursuant to this MOU, the Agents may operate only as USBP employees.
- H. All equipment used by the assigned Agent(s) will be provided by USBP. All assigned USBP Agents shall have a duty weapon, a tactical outer vest with body armor or ballistic plates and displayed USBP/ United States Customs and Border Protection patches. The use of subdued USBP/ United States Customs and Border Protection patches is authorized.
- I. The SOG Sergeant or Commander shall determine the shifts and hours worked by SOG Officers and assigned USBP Agents.
- J. Assigned USBP Agents will work the 40-hour YPD work week. If there are hours remaining in the USBP work week, beyond those 40 hours, the remaining hours will be used working for the USBP.
- K. USBP will provide unmarked vehicles, equipped with functional emergency lights and sirens as described in A.R.S. § 28-624, for use by the USBP Agent(s). These vehicles may only be operated by USBP Agents. No SOG Officer may operate a USBP vehicle, except in exceptional or emergency situations, or with consent of USBP.
- L. YPD will provide unmarked vehicles, equipped with functional emergency lights and sirens as described in A.R.S. § 28-624, for use by the SOG Officers. These vehicles may only be operated by YPD Members. No USBP Agent may operate a YPD vehicle, except in exceptional or emergency situations, or with consent of YPD.

### **III. SUPERVISION**

- A. The assigned USBP Agent(s) remains an employee of USBP but will be under the direct supervision of and receive direction from the SOG Sergeant and Commander during the assignment, providing the supervision and direction does not violate USBP's policies and procedures.
- B. The USBP Agent(s) assigned to YPD shall adhere to United States Customs and Border Protection policies and procedures. USBP will provide the SOG Sergeant with a copy of the United States Customs and Border Protection policy and procedure manual for reference.
- C. SOG Officers will abide by and adhere to all policies and procedures of YPD. Upon request, YPD will provide USBP with a copy of YPD's policy and procedure manual for reference.
- D. Any allegation of misconduct or policy violation(s) by the assigned Agent(s) or the SOG Officers will be investigated by the employee's parent agency in conformance with its rules and regulations. Assigned Agents and SOG Officers will cooperate with investigations by the other agency. Such cooperation will be in compliance with the parent agency's policies, procedures, governing laws and collective bargaining agreements.
- E. Direction and oversight of USBP-established confidential sources will be conducted by the assigned USBP Agent(s) in compliance with the guidelines set forth in CBP policy.
- F. Direction and oversight of YPD-established confidential sources will be conducted by SOG Officers in compliance with the guidelines set forth in YPD policy.

### **IV. FORFEITURE**

- A. Assets seized may be processed for State or Federal forfeiture.
- B. Assets processed for State forfeiture and equitable sharing shall comply with the applicable Arizona forfeiture laws (e.g., A.R.S. §§ 13-2314.03 and 13-4301, *et seq.*)
- C. Assets processed for Federal forfeiture and equitable sharing shall comply with all applicable Federal laws and regulations, in addition to any Federal agency policy (e.g., the United States Attorney General's Guidelines on Seized and Forfeited Property).
- D. YPD civil forfeiture staff will work in consultation with USBP, when requested, to determine the appropriate forfeiture process.

### **V. RECORDS AND MEDIA STATEMENTS**

- A. Records retained and maintained by USBP and United States Customs and Border Protection are Federal records for the purpose of the Privacy Act and Freedom of Information Act. USBP will follow all applicable CBP regulations, procedures, and policies before disclosing information to YPD SOG.
- B. The United States Customs and Border Protection policy and procedure manual provided to YPD for reference remains the property of the United States Customs and Border Protection and shall not be reproduced or released as an Arizona public record.
- C. Records retained and maintained by YPD and the City of Yuma are public records governed by Arizona state law.
- D. The Parties acknowledge some records may be both Federal records and Arizona public records.
- E. When issuing statements or press releases, YPD will only refer to or mention USBP involvement with approval from a USBP representative.
- F. YPD shall permit and have readily available all records relating to this MOU for examination and auditing by United States Customs and Border Protection and the Comptroller General of the United States, to include their authorized agents or representatives. YPD shall maintain all such records in compliance with the State of Arizona retention schedules, or for a period of three (3) years after termination of this MOU, whichever is longer. In the event of a pending examination or audit, YPD shall ensure the records are retained until the examination or audit is complete.

## **VI. USBP AGENT SELECTION AND TRAINING**

- A. The SOG Sergeant or Commander will have the opportunity to participate in the selection process, so the best candidate(s) is selected.
- B. The USBP Agent(s) selected to SOG must read and complete The New SOG Officer Transitional Manual and receive in-house gang training by SOG. The New SOG Officer Transitional Manual describes SOG and its functions and provides a checklist of job proficiencies and knowledge all SOG members must possess to be fully operational. All members of SOG must complete and pass this manual and checklist. In the event the assigned USBP Agent does not complete the manual and checklist within 3 months the Agent will be relieved of the assignment.
- C. The USBP Agent(s) assigned to SOG would be most effective if cross-certified, pursuant to A.R.S. § 13-3875; however, the position with SOG is not contingent on this. A lack of cross-certification may limit the Agent'(s) ability to be considered a "peace officer" pursuant to Arizona law.
- D. In order to be selected for SOG assignment, the USBP Agent(s) must:

1. Be willing to work in a team environment; and
2. Be willing to respond to callouts on nights and weekends; and
3. Be willing to work a flexible schedule that may change on short notice; and
4. Have an understanding of crime scene management, participating in and organizing proactive details, conducting surveillance, and completing complex investigations; and
5. Have, or demonstrate the ability to learn, thorough knowledge of Federal and Arizona search-and-seizure and warrant laws and be able to write search warrants.

**VI. GENERAL TERMS**

- A. **Effective Date.** This MOU is effective upon the date of the last Party signature.
- B. **Term.** This MOU is in effective for a period of two (2) years from the Effective Date. (“Initial Term”). Thereafter, the MOU will automatically renew for three (3) additional two (2) year terms. (“Renewal Term”).
- C. **Termination and Non-Renewal.** Either Party may terminate this MOU, with or without cause, by providing thirty (30) days written notice to the other Party. Either Party may opt to not renew this MOU, with or without cause, by providing written notice to the other Party not less than thirty (30) days prior to the Renewal Term.
- D. **Notices.** Any notices required or permitted hereunder shall be in writing and shall be deemed delivered if delivered in person, by electronic mail with delivery receipt, or ten (10) days from the date of mailing by registered or certified mail and addressed to the point of contact for the other Party.

<p>United States Customs and Border Protection</p> <p>Joseph H. Dressler Yuma Sector 4035 S. Ave A Yuma, Arizona 85364 (928) 341-6540 <a href="mailto:JOSEPH.H.DRESSLER@cbp.dhs.gov">JOSEPH.H.DRESSLER@cbp.dhs.gov</a></p>	<p>City of Yuma</p> <p>Sgt. Jordan Smith, SOG Sergeant Yuma Police Department 1500 South 1<sup>st</sup> Avenue Yuma, Arizona 85364 (928) 373-4388 jordan.smith@yumaAz.gov</p>
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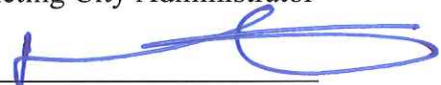
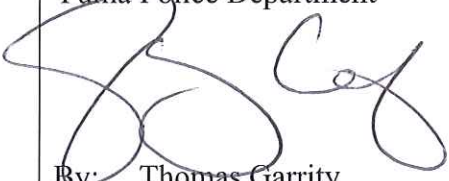
- E. **Non-Discrimination.** The Parties shall comply with all applicable State and Federal employment laws, rules, and regulations, which require that all persons shall have equal access to employment regardless of race, color, religion, disability, sex (including sexual preference and gender identity), age, national origin, veteran’s status, genetic code or political affiliation during the term(s) of this MOU.

- F. **Availability of Funds for Each Successive Fiscal Year.** Pursuant to A.R.S. § 41-2546, all Parties are government entities, and MOU validity is based upon the availability of public funding. In the event public funds are unavailable and not appropriate for the performance of any Party's obligations pursuant to this MOU, that Party's participation in this MOU shall automatically terminate without penalty, after written notice to the other of the unavailability and non-appropriations of public funds. It is expressly agreed that no Party shall activate this provision for its convenience or to circumvent the requirements of the MOU, but only as an emergency fiscal measure.
- G. **Impossibility.** No Party to this MOU shall be deemed to be in violation of this MOU 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.
- H. **Employee Worker Eligibility.** By entering into this MOU, the Parties warrant compliance with the Federal Immigration and Nationality Act (FINA), and all other Federal immigration laws and regulations at all times when operating in the State of Arizona. Either Party may request verification of compliance from any other Party's employee, contractor or subcontractor performing work pursuant to this MOU. A breach of this warranty shall be deemed a material breach subject to penalties up to and including termination of this MOU.
- I. **Responsibility.** The Parties shall be individually responsible for the conduct of their own operations and performance of obligations pursuant to this MOU and for any accidents, injuries to or the death of persons or damage or loss of property arising out of negligent or wrongful acts or omissions by its officers, agents or employees acting in the course or scope of their employment and/or while performing the duties undertaken pursuant to this MOU.
- J. **Severability.** The provisions of this MOU are severable to the extent that any provision or application held to be invalid by a court of competent jurisdiction shall not affect any other provision or application of the MOU, which may remain in effect without the invalid provision or application.
- K. **Governing Law.** This MOU shall be construed under the laws of the State of Arizona and shall incorporate by reference all laws governing the mandatory contract provisions of State agencies required by statute or executive order. The jurisdiction for any disputes shall be Yuma County, Arizona.
- L. **Rights of Parties Only.** The terms of this MOU are intended only to define the respective rights and obligations of the Parties. Nothing expressed herein shall create any rights or duties in favor of any potential third-party beneficiary or other person, agency or organization.
- M. **Relationship of the Parties.** It is clearly understood that 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 the one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever.

- N. **Authority of Parties.** The persons executing this MOU on behalf of the Parties hereby represent and guarantee that they have been authorized to do so, on behalf of themselves and the entity they represent. Further representation is made that due diligence has occurred, and that 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 MOU.
- O. **Counterparts.** This MOU may be executed in multiple counterparts, each of which shall constitute an original and together shall constitute the MOU.
- P. **Entire Agreement.** This MOU contains the entire understanding of the Parties hereto. There are no representations or other provisions other than those contained herein, and any amendment or modification of this MOU shall be made only in writing and signed by the Parties to this MOU.
- Q. **Automatic Incorporation.** All applicable Federal, State and local laws, court orders and decisions, Executive Orders, rules and regulations not specifically referenced herein are deemed automatically incorporated.

WHEREFORE, the Parties agree to the terms of this MOU as evidenced by the signatures below.

<p>United States Customs and Border Protection Yuma Sector</p>  <p>By: Sean L. McGoffin Chief Patrol Agent Date: <u>MAY - 9 2024</u></p>	<p>City of Yuma</p> <p>By: John D. Simonton Acting City Administrator</p>  <p>Date: _____</p>
	<p>Yuma Police Department</p>  <p>By: Thomas Garrity Chief of Police</p> <p>Date: <u>May 17, 2024</u></p>