

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF YUMA AND THE DRUG ENFORCEMENT ADMINISTRATION  
PHOENIX FIELD DIVISION FOR  
USE OF THE CITY OF YUMA PUBLIC SAFETY TRAINING FACILITY**

This Intergovernmental Agreement (“Agreement”) is entered into on \_\_\_\_\_, 20\_\_ (“Effective Date”), between the Drug Enforcement Administration, Phoenix Division (“User Agency”) and the City of Yuma, through the Yuma Police Department (the “City” or “YPD”). The User Agency and YPD are may be referred to herein individually as the “Party” and collectively as the “Parties.”

**RECITALS**

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

WHEREAS, User Agency wants to use the City’s PSTF for training its personnel and related activities.

**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 DEA Special Agents and Task Force Officers, sworn peace officers, fire fighters, civilian personnel, and volunteers, 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 in the manner and in the form prescribed by the City.
- II. AUTHORITY.** The City is authorized to enter into this Agreement pursuant to Arizona Revised Statutes (“A.R.S.”) § 11-951, et. seq., Article III, Section 13 of the Charter of the City of Yuma, and A.R.S. § 13-3872.

This Agreement is necessary to ensure proper training of its Special Agents and Task Force Officers.

- III. 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 upon written request by the User Agency to the City no 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’ notice to the other Party. Within ten (10) days following termination or non-renewal of this Agreement, the User Agency shall return any and all property of City unless otherwise agreed in writing by the Parties.

- IV. USE FEES AND OTHER CHARGES.** Currently, the City does not require the User Agency to pay any use fees for the PSTF. If the City were to establish any such fees, the User Agency does not agree to pay such fees and either party may elect to immediately terminate this Agreement. User Agency shall be responsible for all claims of damage to property and/or equipment or from injury, including death, arising out of the acts or omissions of User Agency's officers pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671, et. seq., or other federal law authorizing the waiver of sovereign immunity.
- V. EQUIPMENT REQUIREMENTS.** Prior to use of the PSTF pursuant to this Agreement, the City shall provide to the User Agency a written list of supplies and equipment that specifies the equipment and materials that will be necessary for the User Agency's personnel to 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.
- VI. SUPERVISION AND CONTROL.** The City may assign a monitor to ensure User Agency uses the PSTF appropriately. User Agency shall supply all instructors or support personnel. The City reserves the right to immediately terminate User Agency's any 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.
- VII. WORKERS' COMPENSATION/POSTING OF NOTICES.** If applicable, and so long as not inconsistent with Federal law, an employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for the purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Pursuant to A.R.S. § 23-1011, the City of Yuma shall post a notice in substantially the following form:
- "All employees are hereby further notified that they may be required to work under jurisdiction or control of or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona, to be employees of both public agencies for the purposes of workers' compensation."
- VIII. 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. 2009-09 which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. The Parties shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap, and the Americans with Disabilities Act.
- IX. INDEMNIFICATION**
- a. Assumption of Risk; Indemnity. User Agency agrees to conduct its activities on the PSTF in a careful and safe manner. As a material part of the consideration to the City, User Agency agrees to assume all risk of damage to and loss or theft of User Agency's

property or the property of persons attending or participating in User Agency's activities while such property is stored or used on the PSTF, to the extent permitted by federal law.

Each Party expressly agrees that it shall be solely responsible and liable for claims, demands or judgments (including costs, expenses and attorney fees) resulting from personal injury to any person or damage to any property arising out of its own employees' performance under this Agreement to the extent permitted by law. User Agency shall be responsible for all claims of damage to property or from injury, including death, arising out of the acts or omissions of User Agency's officers pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671, et. seq., or other federal law authorizing the waiver of sovereign immunity. This Agreement is an internal arrangement between the Parties and does not create or confer any right or benefit on any other person or party, private or public.

- X. **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.
- XI. **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.
- XII. **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 specific details as to the use of the PSTF and specific activities, including without limitation any special devices used in the training experience. User Agency agrees that the City may request that any individual such activities not be undertaken, in the City's discretion. The foregoing notwithstanding, the City's failure to object to any such 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 in the course of any of the use of the PSTF.
- XIII. **ENVIRONMENTAL REGULATIONS.** User Agency will not permit any Hazardous Substance to be used, stored, generated or disposed of on, in or about, 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 may give or withhold in its sole discretion, or 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. The User Agency agrees that it shall be responsible for all claims of damage to property or from injury, including death, arising out of the acts or omissions of User Agency's officers pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671, et. seq., or other federal law authorizing the waiver of sovereign immunity. 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 facility to the condition existing prior to the presence of any Hazardous Substance; provided, however, 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.

**XIV. ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding of the Parties with respect to the subject matter thereof. Any amendment or modification of this Agreement shall be made only by a written instrument executed by authorized representatives of the Parties.

**XV. 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.

**XVI. GOVERNING LAW AND VENUE.** This Agreement shall be governed by the laws of the United States of America, as to validity, interpretation and performance. Any and all suits for any and every breach of this Agreement, or other judicial proceeding for the enforcement or interpretation of this Agreement shall be instituted and maintained in United States District Court for the District of Arizona. Any action to enforce any provision of this Agreement or to obtain any remedy with respect this Agreement shall be brought exclusively in the United States District Court for the District of Arizona. 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.

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

**XVIII. NOTICES.** All notices, requests for payment, or other correspondence between the Parties regarding this Agreement shall be mailed or delivered to the respective Parties at the addresses set forth below or at such alternate addresses as may be specified in writing:

Drug Enforcement Administration  
Attn: Yuma Resident Office  
7101 E. 29<sup>th</sup> Street, Suite 104  
Yuma, AZ 85365

Chief of Police  
City of Yuma Police Department  
1500 S 1<sup>st</sup> Ave  
Yuma, AZ 85364  
*with a copy to*

City of Yuma  
Attn: City Administrator  
One City Plaza  
Yuma, AZ 85364

- XIX. ASSIGNMENT.** This Agreement is not assignable unless both parties mutually consent otherwise in writing. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors and assigns of both Parties.
- XX. NO PARTNERSHIP.** Nothing in this Agreement constitutes a partnership or joint venture between the parties, and neither party is the principal or agent of the other.
- XXI. NO OBLIGATIONS.** Nothing in this Agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury, in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341-1519. Each party will fund its own participation in this Agreement. The ability of the parties to carry out their responsibilities under this Agreement is subject to their respective funding procedures and the availability of funds used only for legitimate needs. This Agreement does not create any obligation of funds between the Parties. Any obligation of funds by the Parties will be subject to separate documentation and the availability of funds.
- XXII. DEFAULT.** If User Agency fails to comply with or observe any provision of this Agreement, in addition to any other remedy that may be available to the City, whether at law or in equity, the City may immediately terminate this Agreement and any and all rights of User Agency.
- XXIII. 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.
- XXIV. ATTORNEY'S FEES.** If permitted by federal law, 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 recover as part of such action or proceeding, all litigation, arbitration and collection expenses, including, but not limited to, witness fees, court costs, and reasonable attorney fees.
- XXV. PROVISIONS REQUIRED BY LAW.** Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement will promptly be physically amended to make such insertion or correction.

*[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**

**Drug Enforcement Administration**

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John Simonton  
Interim City Administrator

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By: Douglas W. Coleman  
Special Agent in Charge

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Susan Smith,  
Chief of Police

ATTEST:

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Lynda L. Bushong  
City Clerk

In accordance with the requirements of A.R.S. § 11-952(D), each of the undersigned attorneys acknowledge: (1) that they have reviewed the above Agreement on behalf of their respective clients; and (2) that, as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

City of Yuma

[INSERT USER AGENCY TITLE]<sup>1</sup>

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Richard W. Files, City Attorney

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[INSERT NAME], [USER AGENCY] Attorney

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<sup>1</sup> Agency counsel is not required to approve the form of this Agreement. Per A.R.S. § 11-952(E), "A federal department or agency or public agency of another state that is a party to an agreement or contract made pursuant to this article is not required to submit the agreement or contract to the attorney for the department or agency unless required under federal law or the law of another state."