

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF YUMA AND MARINE CORPS AIR STATION YUMA FOR
USE OF THE CITY OF YUMA PUBLIC SAFETY TRAINING FACILITY**

This Intergovernmental Agreement ("Agreement") is entered into on _____, 2019 ("Effective Date"), between Marine Corps Air Station Yuma ("User Agency") and the City of Yuma, through the Yuma Police Department (the "City" or "YPD"). The User Agency and YPD are 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 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.
- 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.** The User Agency agrees to pay fees to the City for the use of the PSTF pursuant to this Agreement in such amounts as may from time to time be established by the City and incorporated into a written schedule of use fees. The User Agency also agrees to pay for any and all consumable product replacement, repair and/or replacement of property and/or loaned equipment at the PSTF that is or may be damaged, destroyed or rendered inoperable, in part or in whole, as a result of the User Agency's use of the PSTF pursuant to this Agreement. Use fees

and other charges as provided herein shall be due and payable within thirty (30) days' after receipt of the City's written invoice itemizing said fees and charges.

- 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 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.
- VII. **WORKERS' COMPENSATION/POSTING OF NOTICES.** 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, each Party 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, damage to the PSTF, and injury or death to persons arising from or related to User Agency's use or occupancy of the PSTF in, upon, or about the PSTF from any cause, and User Agency waives all claims against the City.

To the fullest extent permitted by law, 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, specifically the Federal Tort Claims Act, 5 U.S.C §2671 et seq. In the event of damage, loss, injury, death, or other type of loss arising from User Agency's use of, or activities on 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.

The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Agreement.

- b. Limitation on Negligence of the City; PSTF Accepted "As Is". User Agency acknowledges and agrees that 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, including the right to inspection of the PSTF prior to any scheduled use. User Agency acknowledges that User Agency's personnel who conducted such 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 such defect whatsoever which might lead to any of the losses, damage or liability indemnified against under 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, and User Agency agrees not to conduct any activities on any portion of the PSTF which 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. User Agency hereby represents and warrants to the City that the foregoing provisions are not in violation of any limitation on any certificate insurance which User Agency has provided to the City hereunder, and that nothing in this Agreement will cause any such insurance or certificate of insurance to be invalid.

- 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. 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 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 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 State of Arizona, 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 Superior Court in Yuma County, 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 Superior Court, Yuma County, Arizona (or, as may be appropriate, in the United States District Court for the District of Arizona, if, and only if, the Superior Court lacks jurisdiction over such action). 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:

Marine Corps Air Station Yuma
Attn: Provost Marshall Office
PO Box 99127
Yuma, AZ 85369-9127

Chief of Police
City of Yuma Police Department
1500 S 1st Ave
Yuma, AZ 85364

with a copy to

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

XIX. 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.

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. 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.

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.** 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

Marine Corps Air Station Yuma

John D. Simonton
Interim City Administrator

D. A. SUGGS
Colonel, United States Marine Corps
Commanding Officer

Susan Smith
Chief of Police

ATTEST:

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

Marine Corps Air Station Yuma

Richard W. Files, City Attorney

Marine Corps Air Station Yuma Attorney

1 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 the other state."