

**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 by and between Marine Corps Air Station Yuma ("MCAS") and the City of Yuma ("City"), on behalf of itself and the Yuma Police Department ("YPD"). MCAS and the City are referred to individually as "Party" and collectively as the "Parties".

RECITALS

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

WHEREAS, the United States operates MCAS, a military installation, within the City; and

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

WHEREAS, the City and MCAS value their cooperative working relationship; and

WHEREAS, MCAS desires to use the PSTF for training; and

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

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

- I. USE OF THE PSTF.** MCAS may use the PSTF for training of sworn peace officers, fire fighters, and other personnel, so long such individuals are employees of MCAS or employees of the Federal government under the control and jurisdiction of MCAS, for such uses as deemed appropriate by mutual written agreement of the Parties. MCAS shall schedule its use of the PSTF at least thirty (30) days before the planned use by contacting YPD. The City agrees to make the PSTF available to MCAS for a minimum of two (2) weeks per quarter, subject to prior City uses.
- II. AUTHORITY.** The City is authorized to enter into this Agreement pursuant to Arizona Revised Statutes ("A.R.S.") § 11-951, *et. seq.*, and Article III, Section 13 of the Charter of the City of Yuma. MCAS is authorized to enter into this Agreement pursuant to 10 U.S.C. § 2679 (Intergovernmental Support Agreements).
- III. EFFECTIVE DATE.** The Effective Date is June 25, 2024.
- IV. TERM; TERMINATION, AND RENEWAL.** This Agreement shall be for a term of five (5) years commencing on the Effective Date ("Initial Term"). This Agreement may be renewed for one (1) additional five (5) year period ("Renewal Term") upon written request by MCAS to the City made not less than sixty (60) calendar 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) calendar days' written notice to the other Party. Within ten (10) business days following termination or expiration of this Agreement, MCAS shall return all property belonging to the City unless otherwise agreed to in writing by the Parties.

- V. AGREEMENT REVIEW.** The Parties will review this Agreement at or before the mid-point of the Term.
- VI. USE FEES AND OTHER CHARGES.** MCAS 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 MCAS with written notice of the fee schedule prior to implementation. In the event MCAS does not agree with the fee schedule, MCAS may provide notice of termination of this Agreement as provided in Section IV. MCAS agrees to pay for all consumable product replacement. Use fees and consumable charges shall be due and payable within ninety (90) calendar days from date of receipt of the City's written invoice itemizing such fees and charges. MCAS further agrees to pay, under the authority of the Federal Tort Claims Act, 5 U.S.C. § 2671 et. seq., (FTCA) for repair and/or replacement of property and loaned equipment at the PSTF that is damaged, destroyed or rendered inoperable, in part or in whole, because of the MCAS's use of the PSTF.
- VII. EQUIPMENT REQUIREMENTS.** Prior to MCAS's use of the PSTF pursuant to this Agreement, the City shall provide MCAS a written list specifying the equipment and materials necessary for MCAS's personnel to safely and properly use the PSTF. MCAS shall, at its sole cost, obtain all listed equipment and supplies prior to its use of the PSTF.
- VIII. SUPERVISION AND CONTROL.** The City may assign a monitor to ensure MCAS uses the PSTF appropriately. MCAS shall supply its own instructors and support personnel. The City reserves the right to immediately terminate MCAS's use of the PSTF if, in the City's sole discretion, it is determined that such use has resulted in or may result in damage to the PSTF or if such use otherwise presents a threat to the safety of persons or property.
- 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. 2009-09, as amended by State Executive Order 2023-01, as applicable, which mandates all persons, regardless of race, color, religion, sex, age, national origin, or political affiliation, 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.
- X. LIABILITY**
- a. Assumption of Risk; Liability.** MCAS agrees to conduct its activities at the PSTF in a

careful and safe manner. MCAS agrees to assume all risk of damage to, loss, or theft of MCAS's property while such property is stored or used at the PSTF. MCAS agrees that all persons in attendance at MCAS activities at the PSTF will be employees of MCAS or federal employees under the control of MCAS. MCAS waives all claims against the City.

MCAS 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 allowed by law, specifically the FTCA. In the event of damage, loss, injury, or death arising from MCAS's use of or activities at the PSTF, the person or entity suffering the loss may submit a claim to MCAS under the FTCA, and such claim will be processed and paid in accordance with applicable law.

- b. **Limitation on Negligence of the City; PSTF Accepted "As Is."** MCAS acknowledges and agrees the City has given MCAS 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 MCAS prior to its scheduled use. MCAS avows that MCAS'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 MCAS's personnel to locate any defect whatsoever that might lead to any of the losses, damage or liability addressed in paragraph (a) above, or MCAS's failure to inspect will not be considered negligence on the part of the City. The City is providing MCAS with the use of the PSTF solely on an "As Is" assumed risk basis. MCAS agrees not to conduct any activities on any portion of the PSTF that MCAS 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 MCAS, 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 FTCA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an MCAS employee or a federal employee under MCAS' direction and control 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 Party 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, MCAS shall deliver to the City written descriptions of the MCAS's training program and intended uses and activities, including any special devices used in the training experience. MCAS agrees 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 MCAS shall remain fully responsible for the safe conduct of all its activities. MCAS 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 MCAS use of the PSTF.

XIV. ENVIRONMENTAL REGULATIONS. MCAS 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 MCAS, MCAS's officers, employees, contractors, invitees, agents, or persons attending or participating in MCAS'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 MCAS's sole costs and expense, in compliance with all applicable state, federal or local governmental requirements, using all necessary and appropriate precautions. If MCAS breaches these obligations or if the presence of Hazardous Substances on, in or about the PSTF caused or permitted by MCAS results in contamination of any part of the PSTF, or if contamination by Hazardous Substance otherwise occurs in a manner for which MCAS is legally liable, then MCAS will be responsible for environmental remediation under applicable federal and state laws. Without limitation, if MCAS 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, MCAS will promptly, at its sole cost and expense and under appropriate federal authorities, 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. MCAS 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 applicable state, federal or local government law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls, PFAS, and petroleum.

XV. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding of the Parties. There are no representations or agreements other than those contained within 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. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and together shall constitute the Agreement.

XVII. 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.

XVIII. GOVERNING LAW AND VENUE. This Agreement shall be governed by the applicable laws of the State of Arizona and the United States. 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, at the John M. Roll Courthouse, 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, to the extent allowed under federal law, 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 the following:

Marine Corps Air Station Yuma Support Agreement Manager Box 99106 Yuma, Arizona 85369-9106 (928) 269-2941 mcaseyuma_cplo@usmc.mil <i>or</i> Services Officer Box 99300 Yuma, AZ 85369-9300 (928) 269-5313 albert.d.flaherty@usmc.mil	City of Yuma Captain of Support Services 1500 South 1 st Avenue Yuma, Arizona 85364 (928) 373-4783 luis.marquez@yumaAZ.gov <i>or</i> Chief of Police 1500 South 1 st Avenue Yuma, Arizona 85364 (928) 373-4700 thomas.garrity@yumaAZ.gov
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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.

XXI. 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.

XXII. 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 immediate termination of this Agreement. MCAS employees' immigration status is contained in files that are protected by the Privacy Act, 5 U.S.C. § 552(a). MCAS avows all employees are vetted prior to hiring and are eligible for employment.

XXIII. DEFAULT. If MCAS 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.

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 recover all litigation, arbitration, and collection expenses, including, but not limited to, witness fees, court costs, and reasonable attorney fees, to the extent authorized under federal law.

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.

<p>City of Yuma</p> <p>_____</p> <p>John D. Simonton City Administrator Date: _____</p>	<p>Marine Corps Air Station</p> <p>_____</p> <p>Colonel Stone, Jared K. Commanding Officer Date: _____</p>
<p>Yuma Police Department</p>	

<p>_____</p> <p>Thomas Garrity Chief of Police Date: _____</p>	
<p>ATTEST</p> <p>_____</p> <p>Lynda L. Bushong City of Yuma Clerk Date: _____</p>	

In accordance with A.R.S. §11-952, this Agreement has been reviewed by the undersigned who has determined that this Agreement is in appropriate form and within the powers and authority granted to the City. Pursuant to A.R.S. § 11-952(E), Counsel for MCAS is not required to approve the form of this Agreement.

City of Yuma

Richard W. Files
City Attorney

Date: _____