



UNITED STATES MARINE CORPS
MARINE CORPS AIR STATION YUMA
BOX 99100
YUMA AZ 85369-9100

MCAS
5000-68
CP&L

MEMORANDUM OF UNDERSTANDING
BETWEEN
MARINE CORPS AIR STATION YUMA, ARIZONA
AND
CITY OF YUMA, ARIZONA
AND
YUMA COUNTY, ARIZONA
FOR
LAW ENFORCEMENT JURISDICTION AND PROCEDURES

M42974-24122-0206

This is an updated Memorandum of Understanding (MOU) entered by and between the United States (U.S.) Marine Corps, through the Marine Corps Air Station (MCAS) Yuma, the City of Yuma (City), on behalf of the Yuma Police Department (YPD) and the City of Yuma Prosecutor's Office (YPO), and the County of Yuma (County), through the Yuma County Sheriff's Office (YCSO) and the Yuma County Attorney's Office (YCAO). Each organization may be referred to individually as "Party," and collectively as the "Parties." This MOU cancels and supersedes the previously signed agreement between the same Parties with the subject, Law Enforcement and Jurisdiction, Agreement #206, and effective date 30 December 2005.

1. BACKGROUND: The U.S. Marine Corps operates MCAS Yuma and off-base housing within the City of Yuma and Yuma County, Arizona. Persons and/or military personnel located on MCAS Yuma property may engage in behavior that violates the laws of the State of Arizona, the City, the County and/or the U.S. MCAS Yuma, the City, the County, YCAO, and YPO desire to set forth parameters for the investigation, arrest, charging, and prosecution of persons in or on MCAS Yuma property, or employed by MCAS Yuma.

2. PURPOSE: The purpose of this agreement is to record the understanding and agreement of the Parties relating to: the investigation and prosecution of offenses pursuant to Arizona Revised Statutes, City ordinances and regulations, and County ordinances and regulations occurring on MCAS Yuma property; and the reporting of offenses and injuries occurring on MCAS Yuma property or to MCAS Yuma personnel; and arrests by YCSO and YPD on MCAS Yuma property; and arrests of MCAS Yuma personnel outside of MCAS Yuma property.

3. UNDERSTANDINGS OF THE PARTIES: The Parties agree and understand as follows:

3.1. JURISDICTION.

3.1.1. "MCAS Yuma property" means the Air Station proper, the front gate of which is located on Avenue 3E; military housing located at 3100 West 16th Street, Yuma, Arizona 85364 (commonly referred to as 16th Street Housing"); and those portions of the Barry M. Goldwater Range (BMGR) managed by MCAS Yuma.

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3.1.2. Incidents occurring within the City of Yuma shall be referred to YPD.

3.1.3. Incident occurring within Yuma County, but outside the City of Yuma, shall be referred to YCSO.

3.1.4. The Parties acknowledge the jurisdictions set forth here may be modified by other agreements, contracts, or by Arizona law.

3.2. POLICY. MCAS Yuma, the County, the City, YCAO and YPO recognize the proper administration and discipline of the U.S. Armed Forces require that, ordinarily, offenses committed by military personnel on MCAS Yuma be investigated and prosecuted by the military. However, there may be occasions when such offenses should be investigated and prosecuted by Arizona law enforcement agencies. Inflexible rules to determine this responsibility are not feasible where there are proprietary or concurrent jurisdictions. This MOU is intended to make the investigation and prosecution of offenses more expeditious and efficient, while considering the requirements of the U.S. Armed Forces, the policies of the State of Arizona, the City, and the County, and other matters of mutual interest. This MOU does not apply to offenses cognizable only under the Uniform Code of Military Justice (UCMJ), nor does it apply to investigations for administrative or security purposes. This MOU does not limit the authority of the Naval Criminal Investigative Service (NCIS) to pursue investigations and engage in activities as pronounced by the Secretary of the Navy Instruction 5520.3B.

3.3. INVESTIGATIONS. The following factors determine which law enforcement agency or jurisdiction will conduct a particular investigation:

3.3.1. Offenses Committed on MCAS Yuma Property.

3.3.1.1. Traffic Enforcement.

3.3.1.1.1. MCAS Yuma shall be primarily responsible for traffic control related to MCAS Yuma events and activities, enforcement of Air Station and BMGR traffic regulations, and investigation of motor vehicle accidents occurring at the Air Station and BMGR. YPD agrees to share responsibility for traffic enforcement on the 16th Street military housing.

3.3.1.1.2. Problems or difficulties encountered in traffic enforcement involving civilians may be referred to YPD or YCSO by MCAS Yuma.

3.3.1.2. Misdemeanor Offenses.

3.3.1.2.1. A misdemeanor is an offense for which a sentence to a term of imprisonment, other than to the custody of the Arizona State Department of Corrections, is authorized. Arizona Revised Statute (A.R.S.) § 13-105(25). See also A.R.S. § 13-707.

3.3.1.2.2. Investigations of misdemeanor offenses initially shall be conducted by the military. If a suspect is not subject to the UCMJ, investigative jurisdiction shall be referred to YPD or YCSO after the military purpose in conducting the investigation has been satisfied.

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3.3.1.2.3. This provision shall not restrict MCAS Yuma from enforcement of applicable Federal laws and regulations on the BMGR.

3.3.1.3. Felonies.

3.3.1.3.1. A felony is an offense for which a sentence to a term of imprisonment in the custody of the Arizona State Department of Corrections is authorized. A.R.S. § 13-105(18). See also A.R.S. § 13-701.

3.3.1.3.2. NCIS is responsible for the investigation of felonies, unless:

3.3.1.3.2.1. The suspect is not subject to the UCMJ; or

3.3.1.3.2.2. The circumstances surrounding the incident or complaint support a reasonable belief that the unknown suspect is not subject to the UCMJ.

3.3.1.3.3. In cases covered by 3.3.1.2.1. or 3.3.1.2.2., investigation by NCIS shall be limited to preliminary and/or exigent matters, pending notice to YPD or YCSO of the incident.

3.3.1.3.4. NCIS shall notify YPD or YCSO of all felony investigations in which the victim is a civilian.

3.3.1.3.5. Investigations initiated by MCAS Yuma regarding criminal conduct occurring on MCAS Yuma property may be pursued off MCAS Yuma property to the extent that the military interest dictates.

3.3.1.3.6. NCIS shall provide reports to YPD or YCSO when requested in writing. Provision of copies of all reports of investigations is a matter of cooperation and mutual interest. It is further understood that any inquiries by the news media concerning incidents occurring on MCAS Yuma property shall be referred to MCAS Yuma's Communication Strategy and Operations Office.

3.3.2. Offenses Committed Outside MCAS Yuma Property.

3.3.2.1. YPD or YCSO, as appropriate, is responsible for the initial investigation of offenses committed outside MCAS Yuma. The investigating agency shall notify MCAS Yuma's Provost Marshal's Office (PMO) when a suspect is determined to be a military member. If PMO determines the suspect may be subject to prosecution under the UCMJ, MCAS Yuma may conduct a parallel investigation.

3.3.2.2. It is understood by the Parties that no State, City, or County agency has the authority to interfere with the federal government in the performance of its authorized functions. Federal supremacy dictates that, among other things, YPD or YCSO may not arrest and detain for trial any member of the U.S. Armed Forces for alleged violations of Arizona law conducted during lawful performance of their official duties or done pursuant to lawful orders.

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3.3.3. Offenses Against the U.S.

3.3.3.1. When an offense involves fraud against the U.S., damage to or misappropriation or larceny of U.S. property, or any violations of the criminal laws of the U.S., the investigation shall be referred to the proper Federal authorities.

3.4. PROSECUTION.

3.4.1. Except as otherwise set forth here (in Section 3.4), prosecutions involving a military suspect(s) are handled by YCAO or YPO, pursuant to local rules and practices. YCAO and YPO agree to promptly provide status updates to MCAS Yuma when requested, if doing so does not violate any laws of the State of Arizona. In the event YCAO or YPO declines to prosecute in any case subject to this MOU, YCAO or YPO shall promptly provide NCIS with notice of and the reason(s) for the declination. Absent exigent circumstances or unnecessary delays by YCAO or YPO, MCAS Yuma shall not institute court-martial action prior to receiving a notice of declination.

3.4.2. When the investigation is conducted by MCAS Yuma, or involves a military suspect/military victim, any resulting prosecution will normally be conducted by MCAS Yuma. MCAS Yuma shall notify YCAO or YPO in all instances, except civil traffic offenses, when disciplinary action is not taken against the military suspect, who is subject to criminal prosecution by YCAO or YPO. YCAO or YPO may opt to pursue prosecution.

3.4.2. If MCAS Yuma determines it is in the best interest of the military community to prosecute the suspect for the conduct before a military tribunal rather than a civilian court, MCAS Yuma may request YCAO or YPO to waive jurisdiction and grant MCAS Yuma the opportunity for a court-martial prosecution. Waiver of jurisdiction is discretionary, but YCAO and YPO agree to give great weight to MCAS Yuma's request.

3.4.2. The Parties agree to exchange information in all cases involving a military suspect or military victim that are potentially controversial, involve theft of or damage to military property, assaults on military superiors, disorderly conduct towards a military superior, or involve acts of violence committed off MCAS Yuma property by a military suspect.

3.5. REPORTING OFFENSES AND INJURIES.

3.5.1. When an offense falls within the investigative jurisdiction of the military, as set forth in this MOU, YCSO or YPD shall promptly notify PMO.

3.5.2. MCAS Yuma, or the Branch Medical Clinic at MCAS Yuma, shall immediately report to YCSO or YPD when the following are discovered:

3.5.2.1. Injuries to any person inflicted using a knife, firearm, deadly weapon, or dangerous instrument, as defined in A.R.S. § 13-105, in violation of any law of the State of Arizona.

3.5.2.2. All suspected cases of child abuse, child neglect, vulnerable adult abuse, or dangerous crimes against children, as defined in A.R.S. § 13-705(T)(1), committed in violation of the law of the State of Arizona.

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3.5.3. YPD or YCSO shall report to MCAS Yuma the following when discovered:

3.5.3.1. Serious physical injuries, as defined by A.R.S. § 13-105, to military personnel occurring off base.

3.5.3.2. Serious physical injuries, as defined by A.R.S. § 13-105, to dependents of military members.

3.6. ARRESTS ON MCAS YUMA PROPERTY BY YCSO OR YPD.

3.6.1. MCAS Yuma shall assist with the delivery of members of the U.S. Armed Forces and civilians located on MCAS Yuma property when YCSO or YPD has a valid arrest warrant. The Provost Marshal is the designated authority for arrests occurring on MCAS Yuma property. Requests for arrest assistance shall be made Monday through Friday, between the hours of 8:00 AM and 5:00 PM, unless the violation is a felony and immediate arrest is necessary. Arrests will normally be conducted at PMO.

3.6.2. In accordance with Navy regulations, delivery of members of the U.S. Armed Forces may be refused when the suspect is being detained for ongoing military prosecution or the Commanding Officer determines extraordinary circumstances exist that support refusal.

3.6.3. In accordance with Navy regulations, if there is a possibility a member of the U.S. Armed Forces will be transported outside Yuma County, the transporting Party agrees to reimburse MCAS Yuma for the costs of the member returning to MCAS Yuma.

3.6.4. Warrants shall comply with the requirements of A.R.S. §§ 13-3914, 13-3915, and 13-3918. MCAS Yuma acknowledges duplicate warrants, telephonic warrants, and digital warrants are valid in the State of Arizona and MCAS Yuma will honor them.

3.6.5. When able, YCSO or YPD shall contact PMO to advise of a warrant for the arrest of a military member, dependent of a military member, or civilian employee located on MCAS Yuma property. The information will contain the name of person to be arrested, his or her location on MCAS Yuma property, if known, the court charges, amount of bail, and the date the warrant was issued.

3.6.6. PMO shall ensure, when a military member is to be arrested, that the member is ready for delivery to YPD or YCSO when requested. Prior to the time of the actual delivery of the military member, YCSO or YPD shall tender the warrant of arrest to PMO for review. Once the member is delivered by PMO, the member shall be provided a copy of the warrant by YPD or YCSO.

3.6.7. Before executing an arrest warrant on MCAS Yuma property, YCSO or YPD shall check in at PMO, unless the Provost Marshal indicates another location.

3.7. RELEASE FROM CIVIL JURISDICTION AND NOTICE OF BOOKING. The military possesses universal jurisdiction over military members and can prosecute offenses occurring within the County or City when a military member is involved. YCSO shall promptly notify PMO when a military member stationed at MCAS Yuma is booked into the Yuma County Detention Center. Such notification is solely for the purpose of alerting MCAS Yuma to the location of its personnel and is not to be considered an effort to affect an individual's military employment status. YCSO shall

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promptly notify PMO when a military member is scheduled for release from the Yuma County Detention Center and shall provide PMO with a copy of the release conditions and next court date.

3.8. PATROL.

3.8.1. PMO will patrol, by marked vehicle, the military housing located on 16th Street a minimum of three times each 24-hour period.

3.8.2. YPD will endeavor to patrol the military housing located on 16th Street at least one time each 24-hour period, when staffing and calls for service permit.

3.8.3. MCAS Yuma and YPD recognize that active and regular patrols deter criminal conduct which benefits all Parties and the Yuma community. Effective cooperation between military and civilian authorities is the hallmark of this agreement and nothing herein shall prevent simultaneous patrolling or prior coordinating of patrolling between the military and civilian authorities.

3.8.4. To ensure officer safety prior to entry on the BMGR, YCSO or YPD will coordinate its entry with MCAS Yuma's Range Control (Leg Iron) at: (928) 269-7080.

3.9. SERVICE OF PROCESS. Requests for service of process on members of U.S. Armed Forces and civilians located on MCAS Yuma property will be honored and promptly arranged. MCAS Yuma's Staff Judge Advocate is the designated authority to coordinate requests for service of process. Requests shall be made Monday through Friday, between the hours of 8:00 AM and 5:00 PM, except requests may be made at any time when service involves Orders of Protection, Injunctions against Harassment, and orders of a similar nature. When YCSO or YPD contacts PMO to advise of the service of civil process upon a military member, dependent of a military member, or civilian employee located on MCAS Yuma property, YCSO or YPD shall provide the name of the person to be served and their location, if known. PMO shall ensure all steps are taken to effectuate service. Service will normally take place at MCAS Yuma's Joint Law Center at the Legal Assistance Office (i.e., Building 852).

3.10. SERVICE OF SUBPOENA. Whenever necessary to secure testimony of a witness employed by MCAS Yuma or located on MCAS Yuma property, YCAO or YPO shall issue a subpoena and cause it to be served on the witness in the manner described in Section 10. A subpoena shall include the date, time and location of the testimony and a description of the offense that is the subject of the trial. YCAO and YPO are cognizant of national security issues that may arise when testimony of a military member is necessary and will use best efforts to limit questioning to those issues relevant to the case for which the subpoena is issued. MCAS Yuma will cooperate and make every effort to enable prompt and efficient service of the subpoena and to ensure military member witness' appearance at the designated date, place, and time. In the event the subpoena is not honored by the military member witness, or YCAO or YPO is unable to effect service of the subpoena upon the military member witness by the date and time stated in the subpoena due to military procedures or policies, YCAO or YPO may decline to prosecute offenses covered by this MOU. In the event the subpoena is not honored by MCAS Yuma, MCAS Yuma shall notify YCAO or YPO, in writing, of the reasons.

4. PERSONNEL: Each Party is responsible for all costs of its personnel, including pay and benefits, support, and travel. Each Party is responsible for supervision and management of its personnel.

5. GENERAL PROVISIONS:

5.1. POINTS OF CONTACT (POC). The following POCs will be used by the Parties to communicate matters concerning this MOU. Each Party may change its POC upon reasonable notice to the other Party, and all correspondence will be sent and addressed accordingly.

5.1.1. For MCAS Yuma —

5.1.1.1. Amy Martin, Support Agreement Manager
Community Planning & Liaison Office
Box 99106
Yuma, Arizona 85369
(928) 269-2941
MCASYuma_CPLO@usmc.mil

5.1.1.2. Major Kristin Mathias, Provost Marshal
PMO
Box 99300
Yuma, Arizona 85369
(928) 269-2205
MCASYuma_PMO_Common@usmc.mil

5.1.1.3. Major Frederick Lumpkin, Staff Judge Advocate
Office of the Staff Judge Advocate
Box 99100
Yuma, Arizona 85369
(928) 269-3484/3408/6767
SJA_MCASYuma@usmc.mil

5.1.2. For YPD —

5.1.2.1. Anthony Legros, Captain
1500 S. 1st Avenue
Yuma, Arizona 85364
(928) 373-4761
Anthony.Legros@yumaAz.gov

5.1.2.2. Jay Cairns, City Prosecutor
Yuma City Prosecutor's Office
190 W. 14th Street
Yuma, Arizona 85364
(928) 373-5060

5.1.3. For YCSO —

5.1.3.1. Adriana Alvarado, Paralegal – Administration
Yuma County Sheriff's Office
141 S. 3rd Avenue
Yuma, Arizona 85364

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(928) 539-7820
Adriana.Alvarado@ycsoyumacountyaz.gov

5.1.3.2. William J. Kerekes, Chief Civil Deputy County Attorney
Yuma County Attorney's Office
250 W. 2nd St., Suite G
Yuma, Arizona 85364
(928) 817-4300
Bill.Kerekes@yumacountyaz.gov

5.2. 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 10 calendar days from the date of mailing by registered or certified mail and addressed to the POC for the other Party. In the event the POC information changes, the Party shall notify all other Parties, in writing, within five calendar days of the change.

5.3. 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.

5.4. 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.

5.5. EMPLOYEE WORKER ELIGIBILITY. By entering this MOU, the Parties warrant compliance with A.R.S. § 41-4401, A.R.S. § 23-214(A), the Federal Immigration and Nationality Act, 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.

5.6. 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.

5.7. 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.

5.8. INDEMNITY. 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.

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5.9. 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.

5.10. TRANSFERABILITY. This MOU is not transferable except with the written consent of the Parties.

5.11. COUNTERPARTS. This MOU may be executed in multiple counterparts, each of which shall constitute an original and together shall constitute the MOU.

5.12. RIGHT 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.

5.13. 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. Each Party is responsible for all costs, supervision, and management of its personnel.

5.14. 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 to legally bind the entity to the terms of this MOU.

5.15. EFFECTIVE DATE. This MOU takes effects on the day of the last Party's signature.

5.16. EXPIRATION DATE. This MOU expires nine years after the effective date.

5.17. TERMINATION OF UNDERSTANDING. This MOU may be terminated at any time, for any reason, with or without cause, upon 30 calendar days written notice from a Party. The remaining Parties may opt to continue this MOU without the terminating Party.

5.18. FUNDS AND MANPOWER. This MOU neither documents nor provides for the exchange of funds or manpower between the Parties, nor does it make any commitment of funds or resources. No provision in this MOU will be interpreted to require obligation or payment of funds.

5.19. ENTIRE UNDERSTANDING. It is expressly understood and agreed that this MOU embodies the entire understanding between the Parties regarding the MOU's subject matter, thereby merging and superseding all prior understandings of the Parties with respect to such subject matter.

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ATTEST:

Lynda Bushong

City Clerk

Date:_____

In accordance with the requirements of A.R.S. § 11-952, the undersigned attorneys acknowledge: (1) they reviewed the above Agreement on behalf of their clients; and, (2) they have determined this Agreement is in proper form and is within the powers and authority granted to their clients by the laws of the State of Arizona. Pursuant to A.R.S. § 11-952(E), Counsel for MCAS is not required to approve the form of this Agreement.

City of Yuma

Yuma County

Richard W. Files, City Attorney

Date:_____

Karolyn Kaczorowski, Yuma County Attorney

Date:_____