

RESOLUTION NO. 18-16

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, AUTHORIZING THE CITY OF APACHE JUNCTION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH ARIZONA DEPARTMENT OF PUBLIC SAFETY FOR LAW ENFORCEMENT SERVICES AT THE UNIVERSITY OF PHOENIX STADIUM.

WHEREAS, the University of Phoenix Stadium ("Stadium") is operated under the authority of the Arizona Sports and Tourism Authority, which has delegated authority for the operation and maintenance of the Stadium to Stadium Management Group ("SMG"); and

WHEREAS, SMG has entered into an agreement with Arizona Department of Public Safety ("DPS") to provide law enforcement services at the stadium; and

WHEREAS, DPS is in need of Arizona Peace Officer Standards and Training Board certified law enforcement officers to provide assistance during scheduled events; and

WHEREAS, the Apache Junction Police Department ("AJPD") is willing to assist DPS by allowing officers to provide necessary law enforcement services; and

WHEREAS, AJPD officers will provide services in an off duty capacity and will be financially compensated by DPS; and

WHEREAS, the benefits to AJPD officers in participating in an events intergovernmental agreement with DPS for Stadium safety and security assignments include: (1) AJPD officers will have interaction with other law enforcement officers from valley municipalities at large scale events; (2) AJPD officers will receive hands-on training for large event crowd control; and (3) AJPD officers will learn large scale operational tactics and will develop professional liaisons for future events; and

WHEREAS, pursuant to A.R.S. § 11-952(A), public entities may enter into intergovernmental agreements with other municipalities and governmental entities for joint or cooperative activities; and

WHEREAS, the City and DPS have crafted the legal arrangement in the form of the attached intergovernmental agreement which sets forth the terms and conditions of the services requested.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION ARIZONA, AS FOLLOWS:

- 1) The mayor and city council approve the form of the intergovernmental agreement for law enforcement services to Arizona Department of Public Safety, as set forth in Attachment A; and the police chief is hereby authorized to sign the agreement on behalf of the City.
- 2) The police chief and/or his designee is authorized and directed to take all steps necessary to carry out the purpose and intent of this resolution and to fulfill all the duties required under the agreement.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, THIS ____ DAY OF _____, 2018.

SIGNED AND ATTESTED TO THIS ____ DAY OF _____, 2018.

JEFF SERDY
Mayor

ATTEST:

KATHLEEN CONNELLY
City Clerk

APPROVED AS TO FORM:

RICHARD J. STERN
City Attorney

ATTACHMENT A

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
ARIZONA DEPARTMENT OF PUBLIC SAFETY
AND
CITY OF APACHE JUNCTION**

This intergovernmental agreement (this “Agreement”) is entered into pursuant to Arizona Revised Statutes (“A.R.S.”) § 11-952 by the Arizona Department of Public Safety and the City of Apache Junction (“City”), an Arizona Municipal Corporation, collectively known herein as the “parties”.

RECITALS

- A. The University of Phoenix Stadium in Glendale (the “Stadium”) is governed by A.R.S. § 5-801 *et al*, and operates under the authority of the Arizona Sports and Tourism Authority, the owner of the Stadium.
- B. The Arizona Sports and Tourism Authority delegated its authority for the operation and maintenance of the Stadium to Stadium Management Group, (“SMG”) both of whom has an interest in ensuring the safety and security of those attending events at the Stadium by ensuring proper traffic control and a visible law enforcement presence during certain scheduled events at the Stadium.
- C. SMG has the need for qualified personnel to provide law enforcement and other personnel services at the Stadium.
- D. The DPS has entered into an agreement with SMG pursuant to A.R.S. §41-1713(B)(3), to provide law enforcement services at the Stadium.
- E. The City’s Police Department (“PD”) desires to assist DPS in providing law enforcement security services to SMG for the Stadium by making available City PD officers in accordance with the terms set forth herein.
- F. The parties desire to enter into this Agreement to cooperatively provide the necessary law enforcement and security services.

AGREEMENT

Therefore, in consideration of the foregoing recitals, the covenants, promises, terms and conditions set forth herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereby agree as follows:

- 1. Purpose and Intent** - The purpose of this Agreement is to provide the means through which the parties intend to provide professional law enforcement and security services to SMG by

maximizing cooperation, by integrating the City PD and DPS assets, and by addressing issues including, command, control, personnel, planning and training.

2. Supervision and Staffing

- 2.1 City acknowledges that command and control for all events worked for SMG pursuant to this Agreement (individually “Event” and collectively “Events”) shall be the duty and responsibility of DPS.
- 2.2 In carrying out this responsibility, DPS will in good faith assign officers to work Events in accordance with the procedures adopted in consultation with the Chiefs of Police for all of the member agencies providing officers to Events.
- 2.3 City agrees and understands that entities other than the State of Arizona and the DPS have input into the decisions regarding whether, and to what extent, law enforcement will provide service for Events; however, DPS will provide information regarding staffing decisions to City as soon as it becomes available.

3. Assigned Personnel

- 3.1 City shall have the discretion to determine which and how many of its officers will be allowed to apply for assignments at Events and how many officers will be assigned to the Events (hereinafter referred to as “Assigned Officers”).
 - a. All Assigned Officers will be required to enter into temporary employment contracts with the State of Arizona.
 - b. The contract will outline the mutual responsibilities of the Assigned Officer and DPS and will specify that the Assigned Officers are “at will” temporary employees of DPS and that either party can terminate the contract, with or without cause at any time and without notice.
 - c. If possible, DPS will consult with City prior to terminating any Assigned Officer.
- 3.2 While working an Event, the Assigned Officers must wear uniforms approved by DPS and City and the Assigned Officers may carry other equipment authorized by City.
- 3.3 When working an Event, DPS will make available to Assigned Officers forms and other supplies that are necessary to work the Event.
- 3.4 Upon termination of this Agreement and conclusion of any assignments, all personal property, assets, equipment, and supplies used by the parties and Assigned Officers in performance of their responsibilities shall remain with or be returned to the owner of such property.
- 3.5 Any inconsistency between DPS and City rules or regulations and all operational disputes will immediately be brought to the attention of the Director of DPS and will be fully and finally addressed and resolved by the DPS Director in accordance with his or her

determination of the best practices under the circumstances. The Director may delegate this responsibility to a specific command officer.

4. Compensation, Insurance and Reporting

- 4.1 The parties agree that during Events the Assigned Officers shall be temporary employees of DPS for compensation purposes and not independent contractors; provided however, that each such Assigned Officer will at all times also be deemed an employee of City and nothing in this Agreement is intended to contradict or otherwise modify the provisions of A.R.S. § 23-1022 (D).
- 4.2 Each Assigned Officer who works an Event will be paid the specified hourly rate, laid out in the temporary employment agreement.
 - a. Assigned Officers' compensation shall be subject to all applicable federal and state taxes, which shall be deducted prior to payment, and which shall be evidenced by a W-2 statement issued by DPS to each Assigned Officer.
 - b. Each officer's home agency (primary employer) shall provide the workers' compensation coverage for all Assigned Officers in such amounts and under the same terms and conditions as other sworn, full-time employees.
 - c. Except for liability coverage, Assigned Officers are not entitled to any other employee benefits or compensation from DPS.
- 4.3 DPS shall make available to the City information about the hours worked by Assigned Officers not later than seven days following each Event to enable City to properly monitor and regulate the hours worked by all of their Assigned Officers.
- 4.4 Each party affirms that it has complied with the provisions of A.R.S. § 23-1022 (E) with respect to activities addressed by the Agreement.

5. Indemnification

- 5.1 Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, agents, employees, or volunteers.

6. Agreement

- 6.1 Any release of information to the media, other than a public records release, regarding an Event or any activities under this Agreement will be coordinated by DPS in cooperation with City but, except as provided below, no unilateral media releases will be distributed by City without the prior approval of DPS.
- 6.2 A copy of all public record and media releases regarding an Event or any activities under this Agreement shall be forwarded to DPS prior to release; provided however, if an incident is primarily focused upon or concerned with the actions of City's Assigned Officer, City will be responsible for the release of information to the media relative to the incident.
- 6.3 The parties will not reveal any investigative information or operational procedures except as required by law.

7. Arizona POST Certification

- 7.1 Relative to its Assigned Officers, City agrees that it will be responsible to the Arizona Peace Officers Standards and Training Board ("POST") for complying with all requirements mandated by Arizona Administrative Code Regulation R13-4-101 *et seq.*; including but not limited to, City's responsibilities to POST for the hiring, fitness for duty, record-keeping, training, and testing requirements imposed upon law enforcement agencies employing police officers in Arizona.
- 7.2 DPS and City agree to cooperate to ensure any issues that arise relative to POST certification are resolved in a reasonable and efficient manner.

8. Execution, Duration and Renewal

- 8.1 This agreement will be effective immediately upon the approval of both parties' governing bodies and shall remain in full force and effect until June 30, 2022.
- 8.2 This Agreement may be executed in counterparts.
- 8.3 This Agreement may be renewed for successive additional one (1) year periods for up to (5) years upon mutual consent of the parties.

9. General Provisions

- 9.1 Entire Agreement. This Agreement embodies the entire understanding of the parties and supersedes any other agreement of understanding between the parties relating to the subject matter of this Agreement.
- 9.2 Severability. The provisions of this Agreement are severable to the extent that any provision of application held to be invalid by a court of competent jurisdiction shall not affect any other provision of application of the Agreement which may remain in effect without the invalid provision of application.
- 9.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- 9.4 Conflict of Interest. This Agreement may be canceled by any of the parties pursuant to the provisions of A.R.S. § 38-511.
- 9.5 Termination. City may, at any time, terminate this Agreement by giving DPS not less than sixty (60) days prior written notice. DPS may at any time terminate this Agreement by giving City not less than sixty (60) days prior written notice.
- 9.6 Dispute Resolution. In the event of any dispute regarding the terms or the interpretation of this Agreement the parties' command staff will consult with each other in an effort to settle the dispute, in good faith. If the parties are unable to settle the dispute, either party may terminate this Agreement. In the event of a dispute under this IGA, the parties agree to use arbitration to the extent required under A.R.S. §§ 12-1518 and 12-133.
- 9.7 Waiver. The waiver of any breach of this Agreement shall not be deemed to amend this Agreement and shall not constitute a waiver of any other subsequent breach.
- 9.8 Headings. Headings of this Agreement are for the convenience only and shall not affect the interpretation of this Agreement.
- 9.9 Further Acts. Each party shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

10. E-Verify

- 10.1 The parties acknowledge that immigration laws require them to register and participate with the E-Verify program (employment verification program administered by the United

States Department of Homeland Security and the Social Security Administration or any successor program) as they both employ one or more employees in this state.

- 10.2 The parties warrant that they have registered with and participate with E-Verify.
- 10.3 If either party later determines that the other non-compliant party has not complied with E-Verify, it will notify the noncompliant party by certified mail of the determination and of the right to appeal the determination. **The parties retain the legal right to inspect the papers of any employee who works pursuant to this Agreement or any related subcontract to ensure compliance with the warranty given above.** Either party may conduct a random verification of the employment records of the other party to ensure compliance with this warranty.
- 10.4 Failure to comply shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of the Agreement.

11. Availability of Funds

Every payment obligation of DPS under this agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of the agreement, the agreement may be terminated by DPS at the end of the period for which funds are available. No liability shall accrue to DPS in the event this provision is exercised, and DPS shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

12. Non-Discrimination

The parties must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. Military Veteran status or any disability.

{signatures appear on the following page}

DPS Contract No: _____

ARIZONA DEPARTMENT OF PUBLIC SAFETY

CITY OF APACHE JUNCTION

Colonel Frank L. Milstead, Director

Thomas E. Kelly, Chief of Police

CERTIFICATION BY LEGAL COUNSEL

The foregoing Intergovernmental Agreement between DPS and City of Apache Junction and is in proper form and is within the powers and authority of the DPS granted under the laws of the State of Arizona.

APPROVED AS TO FORM AND AUTHORITY:

Deputy Attorney General
Department of Public Safety

R. Joel Stern
Apache Junction City Attorney